



Cynulliad Cenedlaethol Cymru
The National Assembly for Wales

Pwyllgor Deddfwriaeth Rhif 2
Legislation Committee No. 2

Dydd Iau, 13 Mai 2010
Thursday, 13 May 2010

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

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

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Michael German	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Gareth Jones	Plaid Cymru The Party of Wales
Val Lloyd	Llafur (Cadeirydd y Pwyllgor) Labour (Chair of the Committee)
Rhodri Morgan	Llafur Labour
Brynle Williams	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Pat Ardis	Rheolwr Gyfarwyddwr, Camgas Managing Director, Camgas
Ann Beynon	Cyfarwyddwr, BT Cymru Director, BT Cymru
Eleanor Bonner-Evans	BT Cymru BT Cymru
Domhnall Dods	Pennaeth Materion Llywodraethol, Cymdeithas Telathrebu Cystadleuol y DU Head of Government Affairs, UK Competitive Telecommunications Association
Hamish MacLeod	Mobile Broadband Group UK Mobile Broadband Group UK
Kay Powell	Cymdeithas y Cyfreithwyr The Law Society
Rob Shuttleworth	Prif Weithredwr, UK LPG Chief Executive, UK LPG

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

Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior 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 9.11 a.m.
The meeting began at 9.11 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions

[1] **Val Lloyd:** Good morning, everybody, and welcome to this morning's meeting of Legislation Committee No. 2. To deal with a few of the usual housekeeping arrangements, we are not expecting a fire alarm today, so, if you hear it sound, it will be for real and you must make your way to the exit. Please turn off all mobile phones, BlackBerrys and pagers because they interfere with the broadcasting equipment even when they are in silent mode. The National Assembly operates through the media of Welsh and English. Translation is available on channel 1 and amplification is on channel 0.

9.12 a.m.

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

[2] **Val Lloyd:** We are continuing our scrutiny of the Proposed Welsh Language (Wales) Measure. Today, we will be taking evidence from the Law Society, the telecommunications sector and providers of liquefied petroleum gas. We have a great number of questions to get through in a relatively short time, so I would be grateful if we could remain focused. I intend to keep to the allotted time. If we do not manage to get through our questions, I will ask the witnesses if they will be kind enough to send us written answers. We need to cover the issues, but, of course, things sometimes take a little longer than planned.

[3] I would very much like to welcome our first witness this morning, Kay Powell from the Law Society. Good morning. As I was saying, we have a number of questions to get through this morning, and I would appreciate it if Members asking the questions could be focused. It is a very important topic and I understand the need for comprehensive replies, but we must be focused. Thank you. Are you ready to begin?

[4] **Ms Powell:** I am. I have been given an indication of the type of discussion that we are going to have this morning and the topics that we are going to touch on. A number of them fall outside the scope of our written evidence, which was settled with our members. So, I will need to refer to my notes quite often to be sure that I am not making statements that fall outside my remit and because topics have been reconsidered. I want to be careful that I am clear with you about our response. So, if I am looking down and reading from my notes, that is why.

[5] **Val Lloyd:** That is fine. Thank you for your explanation; we understand. I will ask the first question. Do you agree with the general intent of the proposed Measure?

[6] **Ms Powell:** We do. The Law Society supported the transfer of law-making powers on the language through the LCO. We agree with the general intent to legislate through this proposed Measure, and in our manifesto for the third Assembly we asserted that we would work to promote the use of Welsh in the delivery of legal services and that we support legislation in this field.

[7] **Michael German:** The Welsh Assembly Government's objective is to confirm the official status of both Welsh and English. It is a stated policy agreement. Do you think that this proposed Measure fulfils that objective?

[8] **Ms Powell:** Looking at section 1, it does not operate to create official status for Welsh, and it does not deal specifically with English either. So, the objective, taken from 'One Wales', to confirm official status for both Welsh and English is not delivered through

section 1.

[9] **Michael German:** The Minister told us that:

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

[11] Do you think that lawyers would agree with that statement?

[12] **Ms Powell:** Signalling the law is not what we need. We need clear legislation. We need to be clear that problems that can be foreseen are dealt with at the time of law making and that we do not leave any queries and issues as grey areas. So, we would say that the legislation should deal with these topics thoroughly and clearly at this stage.

[13] **Michael German:** Does that mean that there should be a clear statement at the beginning of the proposed Measure that confirms official status of the Welsh and English languages?

[14] **Ms Powell:** It is probably the only way to deal with it clearly and finally.

[15] **Michael German:** Does the mere reference to the designation of Welsh as an official language create any rights or obligations? If you were to put that statement in section 1, what would that mean legally in terms of rights and obligations?

[16] **Ms Powell:** I know that the matter of simply referring to the designation of Welsh as an official language has been an issue previously, and I would refer to the evidence of Emyr Lewis, who is a solicitor and a member of the Law Society as well as a specialist on minority languages. I would refer to his view in particular with regard to mere references.

[17] **Rhodri Morgan:** Chair, I wish to come in on that. I am relying on my memory here, but I think that when we pressed Emyr Lewis in an evidence session he agreed that making a declaratory statement that Welsh had official status would not have any practical legal implications. I realise that, to a degree, you are deferring to Emyr because he is a specialist lawyer with regard to minority languages and official status questions. However, although you have to rely on me and I am relying on my memory, which is not 100 per cent, in light of my putting it to you that there are no practical implications of a declaratory legal statement in a statute that Welsh has official status—I think that he said that it does not change anything in practical terms—does the Law Society have a view on that?

[18] **Ms Powell:** It does not currently because, obviously, official status has not been confirmed.

[19] **Rhodri Morgan:** Yes, but does it have a view on whether there are practical implications of declaring official status? Is it the case that it is nice to have it but that it does not have any practical implications?

[20] **Ms Powell:** Absolutely. We already have legislative provision for the acknowledgement of Welsh in society. Given that, at the same time, we use English effectively as an official language although it is, again, not stated because of the lack of a written constitution, I would tend to agree that there would not be an immediate practical impact, particularly as, given that we are a bilingual nation, we already speak Welsh and English and it is available to people, particularly through the administration of justice, to assert rights and to have those viewed in either language.

[21] **Rhodri Morgan:** If you were to confirm official status by way of a declaratory

statement, you could not leave English dangling there, relying on custom and practice. You would also have to declare English to have official status. It does not need it, because it is the overwhelming language of the law, but would you accept that, in legal terms, if you declare Welsh as having official status you could not very well not do the same thing for English?

[22] **Ms Powell:** I am aware of the committee's concerns in relation to, effectively, having an official language and another language that is operating as an official language without a similar declaration. I could not give a definitive view on that on behalf of the Law Society.

[23] **Rhodri Morgan:** I do not know how the Law Society works, but could you provide a definitive view for the committee after passing it around your chambers, offices or however you work?

9.20 a.m.

[24] **Ms Powell:** I could certainly take that forward. As I said initially, the Law Society took the view that we would look at the legislation and consider the parts and the mechanics of the legislation. Therefore, some matters were not considered in their entirety. I take the point that this is an important part of the impact, and I will certainly take that back to the members and bring the full view to you on that.

[25] **Michael German:** I just wanted to go back to my question, which was the same question really. However, since you have made us an offer, I will go back to my question. Does having that statement of clarity, as you and Rhodri have put it, provide any rights or duties and obligations in legal terms? That is the question that I was really asking. If you could come back on that, that would be really helpful.

[26] **Ms Powell:** Yes, certainly. It is important, at the same time, to underline that the proposed Measure, as stated, is stated in a particular way, and even though the intent of the 'One Wales' agreement was that the status of both Welsh and English would be dealt with, English is not dealt with at all in this legislation.

[27] **Gareth Jones:** Ychwanegaf un pwynt, Gadeirydd, sydd yn cymhlethu pethau, o'm rhan i beth bynnag. Derbyniaf y pwynt y mae Rhodri'n ei wneud, sef os ydych yn gwneud y datganiad hwn, yn ymarferol, nid yw'n golygu fawr ddim, oherwydd natur y berthynas rhwng y Gymraeg a'r Saesneg. Fodd bynnag, lle mae Ewrop yn y cwestiwn—ac yr ydym wedi derbyn tystiolaeth ar hyn—Saesneg yw'r iaith swyddogol. Felly, mae goblygiadau ar y lefel hynny, ac mae hynny'n fy mhoeni i, yn yr ystyr ein bod ni'n barod i dderbyn pethau fel ag y mae o ran statws. Yn amlwg mae goblygiadau lle mae Ewrop yn y cwestiwn gan ei fod wedi cael ei ddatgan yn bendat mai Saesneg yw'r iaith swyddogol. Mae goblygiadau i Gymru yn nhermau hynny.

Gareth Jones: I will just add one point, Chair, which complicates things, as far as I am concerned anyway. I accept Rhodri's point that if you make this statement, it means hardly anything on a practical basis because of the nature of the relationship between the Welsh and English languages. However, as far as Europe is concerned—and we have received evidence on this—English is the official language. There are, therefore, implications on that level, and that concerns me, in the sense that we are willing to accept the status quo in terms of status. There are obviously implications as far as Europe is concerned because it has been clearly stated that English is the official language. There are implications for Wales in that regard.

[28] **Rhodri Morgan:** Turning to the issue of your agreement or otherwise with the creation of the post of a commissioner and the abolition of the board, will you amplify your comments on whether it is a good idea or a bad idea?

[29] **Ms Powell:** We note the intention to establish a commissioner. A number of approaches could have been taken, and it is one method to deal with a regulator. We do not hold a firm view on whether a commissioner would be the most appropriate method, because there are other ways of dealing with it, and there could be a commission rather than a commissioner. In further evidence, I will come on to the similarities and parallels between the Equality and Human Rights Commission and what we are looking at as a Welsh language commissioner in Wales.

[30] **Rhodri Morgan:** Just to test your views on this a little further, if we were to have a commissioner, does the Law Society take the line that you cannot have a commissioner defined as a regulator who also acts as a champion? Or do you take the view, which I think is the Minister's view, that if the commissioner was solely a regulator, as some of the other language commissioners in Ireland, Canada and so on are, there would not be enough work to make the post attractive to anyone, because there would be a lot of sitting around waiting for a case to come up, and, therefore, to justify the post you need to have someone who is both a champion and a regulator? Or do you take a strict legal view that you cannot be a champion and a regulator, and that you have to be one or another and that two different kinds of personality are needed?

[31] **Ms Powell:** We do not have a specific view in relation to the Welsh language commissioner, but, again, I would draw parallels with other established commissions in England and Wales that satisfy the role of an adviser and a regulator, for example, the Charity Commission and the Equality and Human Rights Commission. It is a way of operating that is already established within our system.

[32] **Rhodri Morgan:** On this question of independence from Welsh Ministers, several of the witnesses have put it to us—I cannot remember whether Emyr Lewis was one of them, but certainly Colin Williams, as an academic with a huge amount of international study experience behind him, takes this view—that if a commissioner is appointed by Welsh Ministers, he or she would be, dangerously, a creature of the person who has made the appointment, and it would therefore be better for the Assembly as a whole to make the appointment in the same way as the ombudsman or the auditor general, who are appointed almost to counterpoise the Government—these are the people who might have to give the Government a kicking. If the Ministers appoint them, then they are not appointed in counterpoise to the Government; they are independent of the Government once appointed, but not to be a counterweight to the Government. What is the Law Society's view on independence?

[33] **Ms Powell:** Again, I would refer to other commissions and commissioners, where they are appointed by the executive. The commissioners of the Equality and Human Rights Commission are appointed by the Secretary of State. They serve this dual role of enforcement and providing advice and support, and they would also come into contact with areas in which Ministers have acted. So, they would be testing Ministers in a similar way.

[34] **Rhodri Morgan:** So, you do not share the view that, to be independent, it must be the Assembly as a whole that makes the appointment.

[35] **Ms Powell:** We do not have a formal view on where it should lie.

[36] **Rhodri Morgan:** What is your experience of dealing with these different tribunals and commissions? You have mentioned the Charity Commission, which is not one that has previously come up in evidence to us, and it is an interesting example, because it is a commission rather than a commissioner. However, in relation to litigation, the Equality and Human Rights Commission is famous for adopting cases from complainants. In order to be able to fight them with adequate resources, it will take on the complaint. Do you think that it

is appropriate for the commissioner to play a role that involves advocacy and litigation where it fits in with, and does not cut across, the promotional role?

[37] **Ms Powell:** The role of taking test cases on is an important one, because it is only when the grey areas are tested that legislation can be taken forward. In many circumstances, individual citizens do not have the resources to take claims further than an initial tribunal, so it is important that, somewhere along the line, the resources are made available so that those cases can be brought through.

[38] **Rhodri Morgan:** Do you think that it is appropriate for the Welsh language commissioner to have the power to initiate a judicial review?

[39] **Ms Powell:** Once again, if the Welsh language commissioner is the main mover in relation to the Welsh language, it would be important for that power to be attached to the role. It is quite possible that, because of the way in which the proposed Measure is drawn, reasonableness would be in question in a number of areas. So, it is important that that, in relation to public duties, can be tested.

[40] **Rhodri Morgan:** My next question gets to the nub of the Law Society's interest in this matter. Can you explain why you believe that a 'condition or limitation' for the calculation of charges in respect of costs should be set out in the proposed Measure? You are the first witnesses to refer to the question of costs and charges.

[41] **Ms Powell:** The concern was that it comes into play only where there is an intervention by the commissioner. So, the commission can intervene in a case and then effectively take over an individual citizen's case and take the matter further. If that matter then goes to court and an award of costs is made, the provision here ensures that the commissioner can claw back his or her costs from the costs award. The concern is that the costs award may itself be curtailed for certain reasons, so we would not want to see individuals who would otherwise have taken their cases themselves losing a larger proportion of those costs than they might have done because the commissioner is looking to recover 100 per cent of his or her costs where the award is perhaps reduced by a percentage. It was about having a framework in place to provide a basis for the type of costs that could be claimed initially, because expert witnesses and so on would not necessarily be covered by court costs, and the level that they would be at. It was a suggestion that more provision should be made in the proposed Measure.

9.30 a.m.

[42] **Rhodri Morgan:** Okay. I do not think that I should have asked you this, quite frankly; I will have to reread your answer to see if I can understand it the second time around.

[43] On a slightly broader issue to do with costs, would your members by and large understand the concern that we humble politicians have when facing the prospect of lawyers, civil servants and Ministers' parliamentary draftsmen or women writing legislation, namely that the driving force behind the quality of that legislation should be—and I am sorry to say this to you—that the new Act of Parliament or Assembly Measure does not provide a paradise for lawyers by creating a blizzard of claims and litigation cases, and so on. In other words, their aim is to keep the legal costs that might flow from it down to the minimum by making it clear and practical, and so on. That is not to deny anyone their rights; it is about not having a blizzard of new claims from no-win, no-fee clever lawyers who can dream up a wholly inappropriate use of the legislation because it was badly drafted. Does the Law Society share the view that good legislation should minimise the opportunities for smart alec lawyers to make a fortune out of it? Do you see this proposed Measure potentially creating a blizzard of claims, a feast for lawyers, or will it be an appropriate piece of legislation that will confer

rights and will have legal cases emanating from it, but not a blizzard of claims?

[44] **Ms Powell:** I cannot comment on whether a raft of claims will follow; the legislation is very broad, and much of the detail on the standards and so on is not on the face of the proposed Measure. So, I could not offer an opinion in respect of that. The Law Society has a better law-making agenda, and that has driven a number of our responses. A lot of the evidence that we have given to the Constitutional Affairs Committee has been driven by our role in promoting good law. It does not help anyone if the law is unclear; it just leaves it open to problems.

[45] **Rhodri Morgan:** Let me ask the question in another way. Some of the witnesses that we are to hear after you may say, 'Oh my goodness, if this legislation goes through, we know that litigious individuals up and down Wales will find lawyers to help them to seek opportunities to sue us for some alleged breach of the Welsh language Measure'. They are fearful of such opportunities being created. Therefore, do you agree that the proposed Measure should be tightened so that, while it does not deny appropriate rights, without which there is no point in having it at all, it does not create an opportunity for inappropriate use of the law caused by bad drafting?

[46] **Ms Powell:** In terms of discrimination law, it could be argued that spurious or numerous claims will be made; the important thing is that the law is clear. If service provider witnesses from the private sector are expressing concern, I expect that it is because the standards are an unknown quantity in their level and content compared with the current schemes in which most of them are operating fairly successfully.

[47] **Rhodri Morgan:** Okay. This is the last question from me. On the question of the other commissioners or ombudsmen in the system, could standard enforcement investigations under sections 19 and 20 give rise to confusion, because there could be overlap between the work of the proposed language commissioner and the already existing ombudsmen and other commissioners or commissions?

[48] **Ms Powell:** This is not an area where we have personal knowledge. There is a similar provision at sections 16 and 17 of the Commissioner for Older People (Wales) Act 2006, but we are not aware that any problems have arisen through those sections.

[49] **Brynle Williams:** Moving on to Part 3, can you explain why you consider an advisory panel to assist the commissioner to be unnecessary?

[50] **Ms Powell:** We question the necessity of having an appointed panel to work with the commissioner. There are areas on which the commissioner must consult the advisory panel, as well as many optional areas in which consultation can occur. The main section on the advisory panel states that the commissioner may consult on anything, but, crucially, the consultation at section 23(3) is with any or all of the panel members, so we would say that it lacks teeth. Even where consultation is required by the sections where a 'must' appears, many of the areas might involve only certain members of the advisory panel, rather than a consensus among all of them. We do not feel that the advisory panel is a necessary part of the whole mechanism, particularly given the additional areas of operation in the proposed Measure. It is perhaps unnecessary.

[51] **Brynle Williams:** Moving on, why do you consider it important that the proposed Measure should give a clear and detailed outline of the substance of the standards? Why do you think Welsh Ministers should indicate how they will approach the drafting of the standards?

[52] **Ms Powell:** To understand the impact of the standards on the relevant organisations

and to appreciate the costs involved for the committee to exercise its scrutiny role, it is important that we understand fully what we expect the standards to look at, and we, too, would like to see them. In moving from schemes to standards, it has been suggested that the standards would replicate the schemes, but there is no point in making new law if you are going to replicate what has gone before under a different name. It is such an important aspect of the new legislation, and new bodies are being brought into the required part of the section as well. It is therefore important that we start to see the types of requirements and, where there are variations, see how they might operate in practice, such as with a geographic variation, for example. If that comes into a standard, will it affect a national body? Would it be outside any geographic requirement? It is not so much the detail as an overarching framework that we need to see; that is not available to us at the moment, so it is difficult to draw a conclusion on whether the standards are the best way forward.

[53] **Michael German:** I will follow on from that question, but I also want to probe your evidence about standards in general. There is a distinction between putting something on the face of a Measure and doing it by subordinate legislation, and you have made it clear that there is not enough about standards on the face of the proposed Measure and that what is there is unclear. You have said that we could set out the range of organisations that might be affected by matter 20.1 of the LCO. Where would you draw the line between what ought to be on the face of the proposed Measure and what ought to be done by subordinate legislation in respect of standards and clarity on the range of organisations?

[54] **Ms Powell:** In respect of the categories of organisations?

[55] **Michael German:** Yes, but I really wanted to pursue the question that you have just been asked, which had both in it.

[56] **Ms Powell:** To deal with the standards initially, although there is a reference to service provision, policy provision, and so on, I note that the Minister's letter to the committee refers to a request for amplification of what these standards would be. That general amplification should be available to everyone on the face of the proposed Measure. In terms of services, it would be useful to draw on what we have already to give an indication of the type of areas where people could expect to have Welsh and English language services available. For example, telephone and written communications would always be available. It is that sort of detail that we need, rather than getting into the nitty-gritty of whether a particular electricity company that is servicing, say, Pwllheli would be required to add other elements of Welsh provision.

[57] **Michael German:** Do you think that it would be relatively straightforward to do that?

9.40 a.m.

[58] **Ms Powell:** It should be; particularly drawing on the schemes that are already in operation. The level of service delivery in Welsh and English, and where they should be parallel, is already in our knowledge. We are already a bilingual nation, so we are not looking to add anything to the mix. We are looking to crystallise what we have in new legislation, to be clear and sure that what is available is known to the citizen. It would be easier if we had that outline on the face of the proposed Measure.

[59] **Michael German:** As regards the categories of companies, you suggest that we follow the LCO. Why would that be less complicated or make it easier?

[60] **Ms Powell:** The outline in matter 20.1 is clear. They are clear descriptions of the types of organisations that are included. As we know, we have Schedule 5, which then leads

to Schedule 6. Schedule 5 gives that general description and then Schedule 6 should be in regulations, because it is continually changing. Bodies are being added to it and it is difficult to keep a check on the Schedule within the primary legislation. It will always be added to. It would be better if that was kept out of the primary legislation.

[61] **Michael German:** You also say in your submission that the way in which the legislation seeks to apply standards to different organisation is complicated. In your view, is the identity of organisations to which standards could potentially apply sufficiently clear?

[62] **Ms Powell:** The descriptions themselves are clear. What is unclear is how new bodies will be brought into it. It appears that compliance notices will have to be awarded, so that will complicate that area further.

[63] **Michael German:** For fear of repeating evidence that you gave, which both Rhodri Morgan and I heard, to the Constitutional Affairs Committee, you said that Schedule 5 to the Government of Wales Act is complicated. You suggest in your evidence to this committee that we are in danger of repeating that complication by doing the same in this proposed Measure. Will you expand a little on that?

[64] **Ms Powell:** We feel that there is a direct correlation between Schedule 5 and the proposed Schedules 6 and 8, because they are Schedules that are set within primary legislation and are open to change. As we stated in our written evidence, Schedule 5 to the Government of Wales Act 2006 was required to be such. It is a constitutional solution, so it is very complicated and difficult to access. It is continually changing, and because the matters also change, the basis of our legislative powers in Wales is now running into many pages. In the same way, these Schedules have been brought forward with the knowledge that they will be changing in the future, and we do not feel that adding Schedules that you know will be changing in the future into primary legislation is a good way of lawmaking.

[65] **Michael German:** To paraphrase, for a non-lawyer, you are saying that Schedule 5 to the Government of Wales Act 2006 is uncertain, because it does not give certainty to those who wish to interpret it. You say that it is complicated and that we are in danger of Schedule 6 doing the same thing.

[66] **Ms Powell:** Yes, because each time you come to consider whether a particular organisation— or in terms of Schedule 5, a particular power—is within that Schedule, you cannot look at the primary legislation alone. You then have to look to other Acts and Orders; legislative competence Orders, in our instance. For example, in this proposed Measure, you will be continually looking for those Orders made by Ministers. It will not be possible to just look in one place for the whole picture. You will have to make the jigsaw up each time. As we have said previously, it is not always immediately available, even through commercial legal services providers. It would be there, but you would be researching each time to see if a particular organisation was there.

[67] **Michael German:** It might be useful, Chair, to make the evidence that was given to the Constitutional Affairs Committee available to Members for the relevant areas, because it clarifies that question.

[68] **Val Lloyd:** Thank you for that suggestion. We will take it forward. I have a few questions now. My first question is on the relationship between rights and standards. When the Minister came to the committee to give evidence, he said

[69] ‘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’.

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

[71] **Ms Powell:** In order to have the right to use Welsh, the intention of the provision should be clear and transparent. We have heard what the Minister has said and we have also heard the views of the previous witnesses with regard to this section and to Part 6 more generally. There has been reference to the interference aspect to rights, but the way of dealing with that interference in relation to the individual who has suffered the interference is by very little sanction, because the commissioner would investigate and report, and the final sanction would be the publication of the report of that investigation. However, there is no clear redress for the individual involved. It is not appropriate for me to comment further on this aspect of the legislation. The committee will be aware of the debate on whether freedom can be a sufficient protection or whether only a right will do in this case. It is a specialist area of law. There is no consensus among our members, so my counsel is that you seek further opinion on this. It might even be a case of, extraordinarily, the committee wanting to take specialist legal advice and an independent opinion, although it may be available in-house. Whether rights and freedoms deliver the same consequence is not particularly contentious, but it is an area of debate, and I would add that, when you are looking at a right, it is also important to look, when that right or freedom has been interfered with, what the redress is to the individual citizen.

[72] **Val Lloyd:** The next question is on the standards framework. Do you think that the standards framework that is proposed will improve on the current system of language schemes in providing services in Welsh? If not, can you explain your reason?

[73] **Ms Powell:** I have lost my place in my notes.

[74] **Val Lloyd:** Would you like me to repeat the question?

[75] **Ms Powell:** Yes, please.

[76] **Val Lloyd:** To what extent do you think that the standards framework proposed in the proposed Measure will improve on the current system of language schemes in providing services in Welsh?

[77] **Ms Powell:** I apologise; that was an area on which I was not going to comment. It is important to say that it is not clear whether it will or will not improve on the area, but it is a situation in which we cannot express an opinion.

[78] **Brynle Williams:** I will now move on to Part 5, enforcement of standards. This Part of the proposed Measure establishes the procedure for the commissioner to investigate a failure to comply with standards. To what extent would members of the public have recourse to other methods of enforcement, for example, administrative law and other remedies, outside of the mechanisms created under Part 5?

[79] **Ms Powell:** The mechanism in the proposed Measure would have to be wholly exhausted before you would look outside of the proposed Measure. As you have suggested, under administrative law, there would be remedies relating to judicial review. Otherwise, it is difficult to see what an individual could do, because the mechanism is on the face of the proposed Measure and it also includes clear lines of appeal.

[80] **Gareth Jones:** Hoffwn symud i ystyried Rhan 6, rhyddid i ddefnyddio'r Gymraeg. Mae gennyf ddyfyniad gan y Gweinidog, ac yr wyf yn siŵr y byddwch yn ei ddeall, pan oeddem yn cyfeirio at y **Gareth Jones:** I want to move on to consider Part 6, the freedom to use Welsh. I have a quote from the Minister, and I am sure that you will understand it, from when we were referring to the freedom rather than the right

rhyddid yn hytrach na'r hawl i siarad Cymraeg. to speak Welsh.

[81] '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.'

[82] A ydych yn cytuno gyda'r hyn a ddywedodd y Gweinidog? Do you agree with what the Minister said?

9.50 a.m.

[83] **Ms Powell:** Ni allaf gytuno nac anghytuno. Fel yr wyf wedi ateb yn barod, mae nifer o ddadleuon yn y maes hwn, ac mae'n bwysig bod y pwyllgor yn siarad â chyfreithwyr. Ni allaf roi barn gan nad oes consensws ymhlith ein haelodau.

Ms Powell: I cannot agree or disagree. As I have already responded, there are a number of arguments in this respect, and it is important that the committee speaks to lawyers. I cannot give an opinion, as there is no consensus among our members.

[84] **Gareth Jones:** A fyddech yn derbyn bod rhyw fath o *conundrum* yn y gwahaniaeth rhwng rhyddid a hawl? **Gareth Jones:** Would you accept that there is a kind of conundrum in relation to the difference between a freedom and a right?

[85] **Ms Powell:** Byddwn. **Ms Powell:** Yes.

[86] **Gareth Jones:** Mae'n agored inni i gyd i'w ddehongli. **Gareth Jones:** It is open for all of us to interpret.

[87] **Ms Powell:** Mae rhai tystion wedi sôn am y ffaith nad yw'r ffordd mae'r Mesur arfaethedig yn ymdrin â'r gair 'rhyddid' yn helpu'r sefyllfa, gan nad yw'n creu gwahaniaeth gwirioneddol. **Ms Powell:** Some witnesses have mentioned that the way in which the proposed Measure deals with the word 'freedom' does not help, as it does not create much of a difference.

[88] **Gareth Jones:** Mae hynny'n dod â mi at y cwestiwn nesaf. Efallai eich bod yn cyfeirio at farn gref Mr Emyr Lewis a'r Athro Colin Williams. Maent yn teimlo bod y Rhan hon o'r Mesur arfaethedig yn ddiangen, gan fod rhyddid i bobl gyfathrebu yn y Gymraeg a bod fframwaith cyfreithiol i ddiogelu cyfathrebu o'r fath eisoes yn bodoli. Teimlaf eich bod, efallai, yn cyd-fynd â hynny. A fyddech yn mynd cyn belled ag Emyr Lewis a Colin Williams, ac yn dymuno gweld Rhan 6 yn cael ei dileu gan ei bod yn ddiangen? **Gareth Jones:** That brings me to the next question. You are, perhaps, to the strongly held opinion of Mr Emyr Lewis and Professor Colin Williams. They feel that this Part of the proposed Measure is unnecessary, as people are free to communicate in Welsh and a legal framework to protect such communications already exists. I feel that you are perhaps in agreement with that. Would you go as far as they have gone in saying that Part 6 should be removed as it would be unnecessary?

[89] **Ms Powell:** Byddwn yn cytuno, ond ni allaf gytuno ar ran y gymdeithas. **Ms Powell:** I would agree, but I cannot agree on behalf of the society.

[90] **Gareth Jones:** Trown at Ran 7, **Gareth Jones:** We shall turn to Part 7, on the

ynghylch tribiwnlys y Gymraeg. Yr ydych wedi gwneud sylwadau ar hynny o ran y costau ac ati, ond a allwch wneud sylwadau pellach am gostau tribiwnlysoedd eraill yng Nghymru, a chostau a llwyth gwaith tebygol tribiwnlys y Gymraeg?

Welsh language tribunal. You have commented on the costs and so on, but can you comment further on the costs of other tribunals in Wales, and the costs and likely workload of the Welsh language tribunal?

[91] **Ms Powell:** Trof at y Saesneg, oherwydd yr wyf wedi paratoi nodyn am hyn.

Ms Powell: I will turn to English, because I have prepared a response on this.

[92] We cannot advise on the specific costs, but we would suggest that the committee explore the working of the tribunals with the Administrative Justice and Tribunals Council's Welsh Committee. It recently produced a report that looks at all the tribunals that are operating in Wales. It is a very comprehensive report. There are figures for appeals, the use of the language as well as figures on costing. I will give you an idea of the range of costs of these types of tribunals. The figures for 2007-08 show that the costs of the independent review of determination panels, which look at adoption determinations, were £14,000 for the year. The traffic penalty tribunal's costs were £2.2 million. It is a really comprehensive report, and I know that the Welsh Committee is keen to give evidence to you.

[93] **Gareth Jones:** Diolch yn fawr. Mae gennyf un neu ddau gwestiwn cyffredinol yn awr. Yn eich tystiolaeth yr ydych yn cyfeirio at gwmni o gyfreithwyr yn cael arian cyhoeddus gan Lywodraeth Cymru am gyngor a roddwyd iddi. A ydych wedi ystyried cwmnïau sy'n cael symiau mawr o arian mewn cysylltiad â chymorth cyfreithiol? A oes gennych farn benodol am y ffordd y gallai'r Mesur arfaethedig effeithio arnynt?

Gareth Jones: Thank you. I now have one or two general questions. You referred in your evidence to firms of solicitors receiving public money from the Welsh Government for advice given to it. Have you considered firms that receive large sums of money in relation to legal aid? Do you have any specific views on the way in which the proposed Measure could impact on them?

[94] **Ms Powell:** We did not deal with the impact of legal aid in relation to the proposed Measure, but we did so in relation to the LCO, when that was passing through. The definition of 'public money' is very broad, and does not only relate to funding for particular contracts. The provision does not distinguish between funding that is merely given to an organisation and funding that is given for services. In respect of legal aid, it would be given for a specific service. However, we would expect that the agreements of the Legal Services Commission—and the commission may be changing quite soon—would also cover the provision of legal advice in Welsh. Therefore, we would expect the standards and terms of that provision to be included in the agreements. However, there is a concern that there would be an additional impact for a firm, if, because of the legal aid funding stream, the rest of their services are all subject to the Welsh language standard, when other firms do not have to meet that requirement. In that case it would impact on competition.

[95] **Gareth Jones:** Yn olaf, beth yw eich barn am y darpariaethau ar gyfer is-ddeddfwriaeth yn y Mesur arfaethedig?

Gareth Jones: Finally, what are your views on the provisions for subordinate legislation in the proposed Measure?

[96] **Ms Powell:** The particular provisions in relation to ministerial powers especially with regard to subordinate legislation are a vast improvement on a number of the other proposed Measures that we have seen. So, we are pleased in that respect.

[97] **Rhodri Morgan:** Controversial. [*Laughter.*]

[98] **Ms Powell:** They are well controlled and, in the main, the powers are subject to the affirmative procedure, which is where we have previously had concerns. The only query lies in relation to section 143, namely the power to make a provision to give full effect to the proposed Measure. It is subject to the negative procedure, but it could be used to modify or repeal enactments and so we would advise that the affirmative procedure is used in relation to that area of work.

[99] **Val Lloyd:** I have one final comment. The final paragraph of your evidence refers to the fact that there are minor drafting issues in the proposed Measure and in the explanatory memorandum. We would be very grateful if you could let us have details of the issues that you have identified.

[100] Thank you for the clarity and directness of your evidence and for keeping so smartly to time. You will be sent a draft transcript in around a week's time so that you can verify it before it is published in final version. Again, on behalf of the committee, thank you very much.

[101] We will now take a short break. I ask Members to return promptly at 10.15 a.m.

*Gohiriwyd y cyfarfod rhwng 9.55 a.m. a 10.15 a.m.
The meeting adjourned between 9.55 a.m. and 10.15 a.m.*

[102] **Val Lloyd:** Good morning and welcome to the resumed meeting of Legislation Committee No. 2. I would like to welcome Ann Beynon, director of BT Cymru; Eleanor Bonner-Evans, from BT Cymru; Domhnall Dods, head of government affairs, UK Competitive Telecommunications Association, and Hamish MacLeod of the Mobile Broadband Group UK. You are all welcome. This session will operate as a panel session. Some questions will be directed at specific individuals and others will be directed more broadly, so please feel free to chip in. Also, I need to remind you that we have a fixed time slot and need to keep to the allotted time, so please be as focused as possible in your answers. I do not want to cut your answers short, but I would ask you to be focused. Before we start, would any panel member like to make any opening remarks?

[103] **Ms Beynon:** Yr ydym wedi atodi i'n hymateb ar gyfer y bore yma ddisgrifiad o'r hyn y mae BT yn ei wneud dros yr iaith Gymraeg. Hoffwn dynnu eich sylw at yr hyn sy'n cael ei wneud yn barod gan y cwmni ac ategu'r ffaith ein bod ni, fel cwmni, yn falch o'r gwaith yr ydym yn gallu ei wneud i gefnogi'r iaith Gymraeg yng Nghymru.

Ms Beynon: We have attached a description of what BT is doing for the Welsh language to our response for this morning's committee. I would like to draw your attention to what is already being done by the company and stress the fact that we, as a company, are proud of the work that we are able to undertake to support the Welsh language in Wales.

[104] **Val Lloyd:** Does anyone else wish to make any opening remarks? I see that no-one does, so we will move straight into questions. I have some questions to start with. My first question is not directed at anyone specifically. Do you agree with the intent of the proposed Measure? Ann, would you like to start?

[105] **Ms Beynon:** Yr ydym wedi nodi yn barod ein bod yn gefnogol o'r egwyddor o drosglwyddo cyfrifoldeb am ddeddfwriaeth ar yr iaith Gymraeg i Gaerdydd. Mae hynny'n hollol resymol ac yn gwneud synnwyr perffaith. Yr unig beth yr ydym yn anghytuno ag ef yn y Mesur arfaethedig yw

Ms Beynon: We have noted already that we support the principle of transferring legislative responsibility for the Welsh language to Cardiff. That is quite logical and makes perfect sense. The only thing that we disagree with in the proposed Measure is the extension of powers for enforcement in the

ymestyn y pwerau i osod gorfodaeth ar y private sector.
sector breifat.

[106] **Mr Dods:** We endorse everything that Ann has said. We come from a different position to BT, which is much more embedded in the community, but we endorse fully the support for the Welsh language. It is the extension to the private sector that concerns us.

[107] **Mr MacLeod:** I have nothing to add to that.

[108] **Val Lloyd:** I now have a question for you, Mr Dods. You have stated in your written evidence that

[109] ‘the Proposed Measure is based on a premise that the telecoms sector is comprised of a uniform type of operator.’

[110] Will you please expand on that comment and explain how the proposed Measure impacts on different kinds of operators?

[111] **Mr Dods:** I will try. I am not sure whether Members are aware of the nature of the UK Competitive Telecommunications Association. It is a regulatory trade association promoting competitive market players in the telecoms market, and therefore does not by nature include BT or the mobile operators. Having said that, the rest of the market comprises a great variety of different sizes and types of operator. I will just refer to my notes of who our members are at the moment: we have companies such as AT&T, Cable and Wireless and Sky at the very big end of the market, and companies such as Geo, which has operations here in Wales, and Exponential-e which are very much smaller. Not only is it a question of difference in size, but there is also a difference in focus. Some companies will address the entire residential and consumer market, while other companies will only focus on the residential market. Some will only focus on the business market, and, within that, you have a split again between the corporate and the small and medium-sized enterprise market. So, it is a very complex picture. There is a great variety in the size and type of operators, and the impact of a proposed Measure such as this will vary according to the type of operator.

[112] **Val Lloyd:** Thank you. I now have a question for Mr MacLeod. You refer in your submission to the definition of telecommunication services used in Schedule 7, which derives from the definition used in the legislative competence Order. Are you saying that you would want the proposed Measure to apply only to certain organisations that come within the scope of this definition?

[113] **Mr MacLeod:** The point that I was trying to make is that the definition that comes out of the LCO and is going into the proposed Measure is different from the definitions that we have been used to working with in, for example, the Communications Act 2000. It is much wider. I understand why, within the proposed Measure, you would go as wide as the LCO allows you to go, but it is much wider than one is used to going, and, when you come to drawing up the regulations, there needs to be much more upfront work than we currently see envisaged within the proposed Measure to set out what exactly that definition encompasses—it is potentially very wide indeed—and to provide explanations and justifications as to what services and products you would be bringing within the scope of regulations.

[114] **Michael German:** I will start with a general question, and I suspect that BT will want to answer this primarily because it is about the number of Welsh language services that you currently provide. Obviously, when you have a range of providers, it will be much more complicated. I wonder whether BT could tell us in more specific terms, and perhaps the others in more general terms, what members do in Wales.

[115] **Ms Beynon:** Mae BT wedi bod yn darparu gwasanaethau drwy gyfrwng y Gymraeg ers oddeutu 16 mlynedd bellach. Mae'n cynnwys yn bennaf gwasanaethau ar gyfer cwsmeriaid yn y farchnad ddomestig. Yr ydym yn darparu gwasanaeth ym Mangor. Mae canolfan galw Cymraeg ym Mangor, sy'n derbyn ymholiadau ynglŷn â derbyn gwasanaethau, cywiro namau ar y gwasanaeth ac yn y blaen. Yr ydym hefyd yn darparu gwasanaeth 118404 o Fangor, sef gwasanaeth ymholiadau rhifau ffôn, sy'n boblogaidd dros ben. Yr ydym yn darparu biliau yn Gymraeg ac yn gofalu bod hysbysiadau yn ein cabanau ffôn yn ddwyieithog, ac mae'r llyfr ffôn yn cynnwys y ddwy iaith. Yr ydym yn darparu arwyddion dwyieithog yn ein hadeiladau. Yr ydym hefyd yn hyrwyddo'r Gymraeg mewn ffyrdd gweladwy eraill yn y gweithle, drwy ddarparu cefnogaeth i aelodau o staff sydd am ddysgu Cymraeg. Yr ydym wedi bod yn llwyddiannus iawn yn gweithio gyda Undeb y Gweithwyr Cyfathrebu yn ddiweddar, gyda chymorth y Cynulliad, i ddarparu cyrsiau Cymraeg yn y gweithlu ar gyfer pobl ym Mangor a Chasnewydd.

10.20 a.m.

[116] Yr ydym yn edrych yn gyson am ffyrdd newydd o ddefnyddio'r Gymraeg. Yn y flwyddyn a fu, yr ydym wedi datblygu gwasanaeth ar gyfer busnes drwy gyfrwng y Gymraeg sy'n cael ei weithredu o Parc Menai. Mae cwmni bach yno sy'n dal rhyddfraint gan BT ac y mae'r cwmni wedi cyflogi nifer ychwanegol o Gymry Cymraeg. Yr wyf yn falch o ddweud bod hwn yn enghraifft benodol lle y gallwn ddweud bod defnyddio'r iaith Gymraeg wedi bod o fantais fasnachol i'r cwmni. Fel arall, nid oes gennyf brawf o hynny. Felly, mae'r hyn yr ydym yn ei wneud yn eithaf helaeth ac nid yw'n statig; mae'n rhywbeth sy'n esblygu ac yn datblygu.

Ms Beynon: BT has been providing services through the medium of Welsh for around 16 years now. It mainly includes services for customers in the domestic market. We provide a service in Bangor. There is a Welsh language call centre, which takes inquiries about receiving services, correcting faults in the service and so on. We also provide a 118404 service from Bangor, which is a telephone inquiry line, which is very popular. We also provide bills in Welsh, and ensure that notices in phone booths are bilingual, and the phonebook includes both languages. We provide bilingual signage in our buildings. We also promote the Welsh language in other visible ways in the workplace, by providing support for staff members who want to learn Welsh. We have been very successful in working with the Communications Worker Union recently, with the assistance of the Assembly, in providing work-based Welsh language courses for people in Bangor and in Newport.

We are frequently looking for new ways of using the Welsh language. In the last year, we have developed a service for business through the medium of Welsh, which is operated from Parc Menai. A small company there acts as a franchisee of BT and that company has employed a number of additional Welsh speakers. I am pleased to say that this is a specific example where we can say that using the Welsh language has given the company a commercial advantage. Otherwise, I do not have proof of that. Therefore, we are doing quite a considerable amount and it is not static; this is something that is evolving and developing.

[117] **Mr Dods:** As I said earlier, when I explained the type of members that comprise UKCTA, we are in a slightly different position from BT, in that we are much less embedded in Wales and much less embedded in the community. When I heard this question yesterday, when I was called to give an opinion on this, I struggled, because I did not know what the level of provision was by UKCTA members. However, I did some calling around and e-mailing and it seems that, with the exception of one, which I will return to in a minute, there is no Welsh provision whatsoever. That is indicative of the fact that not one of them has been approached to develop voluntary schemes under the Welsh Language Act 1993 by the current Welsh Language Board. There was no sense of, 'No, absolutely not; we must not do anything

in Welsh'; it was far more supportive than that. However, no-one has been approached and, therefore, there is no current Welsh provision.

[118] As I said, there is one exception. One member, which joined recently, is a company called Geo, which provides the FibreSpeed network in Wales, which, I think, is a Welsh Assembly Government project. In relation to that, Geo, although it is a small company, provides a bilingual website, all of its marketing activity is done bilingually, and any launch events and so on are bilingual. It was keen to stress that its back-office operations, the day-to-day operation of the network and the support services, are not bilingual. It is not a Welsh company and it said that it feels that it has done what it can and what it should have done. Its customers for the FibreSpeed network are not end users like you or me, whether a residential customer or small business, but other service providers who seek to use that network. There has been no demand from them for Welsh services.

[119] Geo has said that its concern about the proposed Measure in particular is that if it was forced to adopt a fully bilingual operation by a compulsory approach, that might present it with some difficulty. In the past, it has sought to recruit Welsh-speaking staff for some of the technical roles, but that has not happened. It has recruited according to who has the best technical skills rather than prioritising someone who happens to speak Welsh, and it so happens that it has not recruited any Welsh-speaking members of staff for those roles. So, it is concerned that if it was forced to employ people simply because they speak Welsh rather than because they are technically suited to the job, it might hamper its operations.

[120] However, more significantly, it was concerned about the cost. The phrase that my colleague in Geo used was, 'Who knows? The costs could potentially go through the roof'. That cost would be passed back to the Welsh Assembly Government, which seems rather perverse. The Welsh Assembly Government could potentially be legislating to give itself a higher bill. That illustrates the difficulties that the companies have. However, other than Geo, there is no provision in Welsh, nor has there been a call for anyone to make provision in Welsh.

[121] **Mr MacLeod:** The mobile situation is different again, because we are licensed on a UK-wide basis and we are set up to provide a seamless UK system to mobile customers—Welsh people going to other parts of the UK and vice versa. So, the Welsh-language provision of the mobile operators is focused at the moment on the shops. I think that around two-thirds of the branded stores in Wales are set up with bilingual signage, with Welsh-speaking members of staff identified, and so on.

[122] We have recently seen the launch of a handset that will provide menus driven in Welsh and predictive texting that is predicated on the Welsh language. All of our customers have access to a Welsh-language directory inquiry service, which is provided by BT. I should also mention that, although it is not provided by any of the mobile operators, with the advent of smart phones—the mini computers that are now handsets—you can easily download, for a couple of quid, a Welsh-language dictionary onto your phone. These applications are currently being developed in the marketplace.

[123] **Michael German:** Is that an 'app'?

[124] **Mr MacLeod:** Yes.

[125] **Michael German:** For the record, Hamish and Domhnall, if the proposed Measure goes through as it stands, what percentage of your members and how many companies would be affected?

[126] **Mr MacLeod:** I expect that 100 per cent would be affected, but I have quite a small

membership.

[127] **Mr Dods:** It is rather more difficult for me to answer because, as I said in the written evidence that we submitted, none of our members identify particular customers as being Welsh, any more than they identify them as being Scottish, Northern Irish or English. Indeed, I do not think that they would be able to press a button on their customer management system and draw up a list of all of their Welsh customers. They might be able to do it manually by consulting the Royal Mail and figuring out what postcodes are in Wales in order to produce a list. So, we are not entirely certain to what extent services are provided in Wales. As Hamish said, although we are not licensed anymore, unlike the mobile operators, our members provide UK-wide services. We now have a roaming problem with voice over IP telephony. It is possible for a customer of any of our members, as I have done this morning, to fly into Wales, open up a laptop, fire-up the mobile broadband connection and use the telephony. Are these members caught by the proposed Measure as they are providing services in Wales? If so, do they have to provide Welsh-language services potentially 100 per cent of the time? I do not know.

[128] **Michael German:** Broadly, what has been your experience in dealing with minority languages? BT operates in 170 countries around the world, as it says in its evidence. What experiences have you had with minority languages in other countries, because your range of companies is also worldwide?

[129] **Ms Beynon:** O ran ieithoedd lleiafrifol, y Gymraeg yw'r unig iaith lleiafrifol sy'n cael ei chefnogi a'i chynnal o fewn gwasanaethau BT. O fewn ein harolwg boddhad gweithwyr ym Mhrydain, mae'r Gymraeg yn opsiwn fel ag y mae ieithoedd ethnig lleiafrifol eraill fel Punjabi. Dyna'r unig enghraifft sydd gennyf o ieithoedd lleiafrifol ar wahân i'r Gymraeg.

Ms Beynon: In terms of minority languages, Welsh is the only minority language that is supported in BT's services. In our employee satisfaction survey in Britain, Welsh is an option as well as other ethnic minority languages such as Punjabi. That is the only example that I can provide of minority languages apart from Welsh.

[130] Mewn marchnadoedd tramor, mae BT yn gweithredu fel cwmni sy'n darparu gwasanaethau i gwmnïau mawr neu i lywodraethau lleol, megis Llywodraeth Bafaria sydd yn un o'n cwsmeriaid dramor. Felly, byddem yn gweithredu yn Almaeneg yn yr achos hwnnw, ond nid mewn ieithoedd lleiafrifol mewn gwledydd eraill.

In foreign markets, BT operates as a company that provides services to large companies or to local governments, such as the Bavarian Government, which is one of our foreign customers. So, we would be operating in German in that case, but we would not operate in minority languages in other countries.

[131] **Michael German:** Hamish, you obviously have the greatest experience of this.

[132] **Mr MacLeod:** I could not give you a complete A-to-Z list, but there are experiences from Spain, Switzerland and Belgium that immediately spring to mind. We are certainly not saying that what you are asking us to do is technically impossible, but as a previous witness said, there are similarities and differences in every situation. What we hope to get out of this process is a legislative process, set in the regulations, that is suitable for Wales today.

[133] **Michael German:** What consultation have you had with the Welsh Assembly Government about the drawing up of the proposed Measure? Have you had an opportunity to have a discussion before today?

[134] **Mr MacLeod:** No, not about the drawing up of the proposed Measure. I have, however, had discussions with officials since the proposed Measure was published.

[135] **Mr Dods:** To answer your previous question, I can certainly endorse Ann's view. I am a Gaelic speaker and there is certainly no support for it within Scotland or, as far as I am aware, in Northern Ireland. We have members who operate internationally as well and, again, as Ann said, their experience is that they are very much used to dealing with other languages—it is not an English versus Welsh question—but it is the duality that would be of concern to them.

10.30 a.m.

[136] In the other foreign countries where they operate, such as Germany and France, they are operating in the language of that country. The difficulty that our members have with the proposed Measure is that they are operating UK-wide, and there is a concern that the proposed Measure would almost require them to identify Wales separately, whereas it is not identified as such by our members. It is not their universal focus in the way that it is for BT Cymru, which may be able to identify its operations in that way.

[137] **Rhodri Morgan:** I am relying on memory here, but I think that one of the witnesses will have read some of the evidence that was given to us by the electricity sector. I seem to recall that Telefónica, the giant, Spanish, legacy telecommunications company, equivalent to BT, is the parent company of one of the big mobile phone companies.

[138] **Mr MacLeod:** That company is O2.

[139] **Rhodri Morgan:** Is O2 a member of the Mobile Broadband Group UK?

[140] **Mr MacLeod:** That is correct.

[141] **Rhodri Morgan:** Is it possible that you could ask Telefónica, via your member, O2—and provide us with a written memorandum of the answer—how it would rate the proposed legislation in comparison with the legislation in the Basque Country, Catalunya and Galicia, where it would have some real-time experience of minority languages? 'Minority language' is not an accurate description of the situation in Catalunya, but it probably is for the Basque Country and Galicia. Could you ask about these bilingual environments, which involve a state language and a local language, in a part of its trading area? We could then have a feel for whether this proposed legislation is much tighter or onerous than theirs, or whether it is less onerous, but on the other hand, the customer base is much smaller and, therefore, it is still onerous in financial terms. Would it be possible for you to do that?

[142] **Mr MacLeod:** Yes, but we only have half of the picture so far. The proposed Measure is here, and sets out the underpinnings of the legislation, but the real action will happen when the regulations and standards are drawn up. It is only once one has seen the whole picture that one would be able to give you a realistic assessment.

[143] **Rhodri Morgan:** However, you understand the point that I am making, do you not?

[144] **Mr MacLeod:** I do.

[145] **Rhodri Morgan:** Any information on the real-time experiences of the parent companies of your major UK members that gives us a basis for comparison to decide whether this legislation is unreasonable and onerous would be useful. Is the legislation appropriate to Welsh circumstances, when compared with how people are already coping in real business life in roughly comparable circumstances or circumstances that are as comparable as we can find in the three similar regions of Spain? One of you has said, absolutely correctly, that there is no such thing as an identical language situation, because they are always different. Would it

be onerous for you to ask O2 to ask Telefónica to send us an email from their opposite numbers in the Basque Country, Galicia and Catalunya?

[146] **Mr MacLeod:** It is not onerous for us to ask them, and I will endeavour to obtain that information. However, I want to manage your expectations: we have only seen half of the picture so far.

[147] **Michael German:** Some witnesses have suggested that we should be encouraging people to take up the services that are already provided through the medium of Welsh. Do you think that that should be a focus, and should it be an additional or a primary focus?

[148] **Ms Beynon:** Yr wyf yn cytuno bod angen cymell siaradwyr Cymraeg a dysgwyr i ddefnyddio gwasanaethau Cymraeg llawer mwy nag y maent yn ei wneud ar hyn o bryd. Dyna pam yr ydym yn pwysleisio'n glir yr angen i gefnogi'r iaith Gymraeg yn y gymuned, oherwydd mae cymunedau lle mae'r Gymraeg yn iaith y mwyafrif, lle nad yw'r defnydd o'r iaith Gymraeg yn digwydd yn naturiol mewn sefyllfaoedd busnes. Gall y sefyllfaoedd hyn fod yn brosesau syml iawn, fel tynnu arian o'r banc drwy beiriannau twll yn y wal, ond nid yw pobl yn defnyddio hyd yn oed y rheini drwy gyfrwng y Gymraeg. Mae hyn yn mynd â ni yn ôl at roi hyder a balchder i unigolion yn eu hiaith, eu cymunedau a'u bröydd. Fy ngofid yw bod cymaint o adnoddau ac amser wedi cael eu trosglwyddo i broses ddeddfwriaethol lle, pe bai'r holl adnoddau ac ynni hynny wedi eu trosglwyddo i gefnogi'r iaith yn y gymuned, i gynnal unigolion a'u hybu a'u cymell i ddefnyddio'r Gymraeg, byddai wedi gwneud mwy o les.

Ms Beynon: I agree that we need to encourage Welsh speakers and learners to use Welsh-language services far more than they do at present. That is why we strongly emphasise the need to support the Welsh language in our communities, because there are communities where Welsh is the language of the majority, where the Welsh language is not used naturally in business situations. These situations can include very simple transactions, such as withdrawing money from a hole-in-the-wall machine, but people do not even use those through the medium of Welsh. This takes us back to the issue of giving individuals confidence and pride in their language, their communities and their areas. My concern is that so many resources and so much time have been put into a legislative process whereas, if all those resources and all that energy had been put into supporting the Welsh language in the community, to support individuals and to encourage them to use the Welsh language, it would have done more good.

[149] **Mr Dobbs:** I would endorse that. I do not have experience with the Welsh language, but that very much mirrors the Scottish experience with Gaelic. It is more about promotion and encouraging people to feel that they can and should use a language, rather than forcing private sector companies to make provision.

[150] **Rhodri Morgan:** Let us get your views on the record about the creation of the post of Welsh language commissioner and the abolition of the Welsh Language Board, which has been around for 20 years or so. What has formed the views that you and your members hold on this switchover?

[151] **Ms Beynon:** Dechreuaf i a gall Eleanor ddilyn. Y cwestiwn yr ydym yn ei ofyn yn ein tystiolaeth yw sut y bydd y comisiynydd yn sicrhau parhad yr hyrwyddo allweddol sydd wedi digwydd drwy gyfrwng Bwrdd yr Iaith Gymraeg. Yr ydym fel cwmni wedi manteisio'n fawr ar y cydweithredu cadarnhaol dros ben sydd wedi bod rhyngom a'r bwrdd. Os mai'r comisiynydd a fydd yn

Ms Beynon: I will begin and Eleanor can follow. The question that we ask in our evidence is how the commissioner would ensure that the key promotion work facilitated by the Welsh Language Board continues. As a company, we have greatly benefited from the extremely positive co-operation that has taken place between us and the board. If the commissioner continues to

parhau i wneud hynny, sut y cysonir hynny gyda'r rôl a fydd gan y comisiynydd i blismona a rheoleiddio gweithrediadau'r sector preifat? Mae cwestiwn ynghylch sut mae'r ddwy rôl yn gweithredu gyda'i gilydd.

do that, how will that be squared with the commissioner's role to police and regulate the private sector's activities? There is a question regarding how those two roles will work together.

[152] **Ms Bonner-Evans:** Fel dywedodd Ann, yn y gorffennol, mae BT wedi gweithio'n dda gyda bwrdd yr iaith ar hyrwyddo'r iaith. Y peth pwysicaf yw bod y gwaith yn cael ei wneud yn iawn ac nad yw'r hyrwyddo'n cael ei wanhau. Mae'n rhaid cofio ei bod yn haws ennyn ffydd a chydweithrediad cyrff preifat wrth iddynt ddelio â chorff hyrwyddo'n unig yn hytrach na chorff sydd yn hyrwyddo ar un lefel a phlisma ar lefel arall.

Ms Bonner-Evans: As Ann said, in the past, BT has worked well with the language board on the promotion of the Welsh language. The most important thing is that that work is done properly and that the promotion is not weakened. We must remember that it is easier to gain the trust and co-operation of private bodies when they deal with a solely promotional body rather than a body that is responsible for promotion on one level and policing on another.

[153] **Rhodri Morgan:** Gofyn cwestiwn yr ydych; nid ydych yn rhoi'r safbwynt i'r pwyllgor ei bod yn amhosibl bod yn hyrwyddwr ac yn rheoleiddiwr ar ddiwydiant. Er gwybodaeth, yr wyf newydd ofyn yr un cwestiwn i Gymdeithas y Cyfreithwyr yng Nghymru. Dywedodd cynrychiolydd y gymdeithas nad oedd problem o gwbl, a bod cynsail ymhlith comisiynau eraill, fel y comisiwn ar gyfartaledd, anabledd ac yn y blaen.

Rhodri Morgan: You are posing a question; you are not expressing the view that it is impossible to be a champion and a regulator of an industry. On a point of interest, I have just posed the same question to the Law Society in Wales. Its representative said that there was no problem, and that there is precedent among other commissions, such as the commission for equality, disability and so on.

[154] **Ms Beynon:** Mae'n bosibl—

Ms Beynon: It is possible—

[155] **Rhodri Morgan:** Cwestiwn yw hwnnw ar eich rhan chi, nid gosodiad pendant i'r pwyllgor.

Rhodri Morgan: You are posing that question, not making a definitive statement to the committee.

[156] **Ms Beynon:** Ie, cwestiwn yw. Mae'n dychwelyd at beth fydd cod gweithredu'r comisiynydd. Bydd yn rhaid i'r cod gweithredu hwnnw fod yn glir, a dyna sy'n digwydd yn y comisiynau eraill.

Ms Beynon: Yes, that is a question. It returns to the operational code of the commissioner. That operational code will have to be clear, as is the case in the other commissions.

[157] **Rhodri Morgan:** Cwestiwn penodol i BT yw'r nesaf. Ym mharagraff 9 eich tystiolaeth ysgrifenedig yr ydych yn rhoi llawer o bwyslais ar y camau sydd wedi cael eu cymryd gan fwrdd yr iaith yn y gymuned. A ydych yn gweld perygl i'r gweithredoedd a'r syniadau sydd wedi eu seilio yn y gymuned os bydd bwrdd yr iaith yn diflannu o dan y ddeddfwriaeth hon?

Rhodri Morgan: The next question is specifically for BT. In paragraph 9 of your written evidence you place considerable emphasis on the steps that have been taken by the language board in the community. Do you see a danger to community-based initiatives and ideas if the language board is abolished under this legislation?

[158] **Ms Beynon:** Nid oes rhaid iddo ddifflannu, ond ar hyn o bryd mae gennym gorff sy'n gwybod sut mae marchnata ac

Ms Beynon: It does not have to disappear, but, at present, we have an organisation that knows how to market and which has nurtured

sydd wedi meithrin cydweithredu bodddhaol iawn gyda'r sector preifat. Byddwn am weld y berthynas honno'n parhau. Mae hefyd angen osgoi bwllch gan fod cyfrifiad y flwyddyn nesaf. Bydd yr hyn a ddywed y cyfrifiad hwnnw'n allweddol. Felly, mae hyrwyddo'r iaith Gymraeg yn y misoedd nesaf yn arbennig o bwysig, ac os bydd unrhyw fwllch neu wyrdroi pethau yn y cyfnod hwn, gallai gael effaith niweidiol ac felly rhaid i ni sylweddoli pa mor bwysig yw rôl hyrwyddo, yn arbennig ar hyn o bryd.

10.40 a.m.

[159] **Rhodri Morgan:** Mae gennyf gwestiwn arall, am y ffordd y bydd y comisiynydd yn cael ei benodi. A oes gan BT, neu rai o'r cynrychiolwyr eraill, safbwynt ynglŷn â phwy ddylai benodi'r comisiynydd? A ddylid ei benodi gan y Frenhines ar argymhelliad y Cynulliad, fel yn achos Ombwdsmon Gwasanaethau Cyhoeddus Cymru neu Archwilydd Cyffredinol Cymru? Byddai, felly, yn hollol annibynnol ar y Llywodraeth. Ynteu, a ddylid ei benodi gan y Gweinidog, fel Comisiynydd Pobl Hŷn Cymru a Chomisiynydd Plant Cymru, ar raddfa Cymru, a'r comisiynydd cydraddoldeb ar raddfa'r Deyrnas Unedig?

[160] **Ms Bonner-Evans:** Nid oes gennym farn benodol. Byddai proses benodi fwy cynhwysfawr, sy'n ystyried barn pobl eraill—barn plant yn achos y comisiynydd plant—yn rhoi argraff o fwy o annibyniaeth ar y Llywodraeth. Yn y pen draw, mae'r modd y bydd y comisiynydd yn gweithredu ar ôl cael ei benodi yn bwysicach.

[161] **Rhodri Morgan:** Felly nid oes gennych farn glir y byddai'n hollol amhriodol pe bai'r Gweinidog yn penodi'r comisiynydd, yn hytrach na'r Cynulliad, neu'r Frenhines ar argymhelliad y Cynulliad, fel sy'n digwydd yn achos yr Ombwdsmon.

[162] **Ms Beynon:** Na. Mae'n bwysig bod y broses yn dryloyw ac yn dilyn argymhellion Nolan, fel y gall pawb fod yn hollol hyderus bod popeth wedi cael ei

very satisfactory co-operation with the private sector. One would want to see that relationship continuing. We also need to avoid a hiatus given that a census is being held next year. What that census reveals will be crucial. Therefore, promoting the Welsh language over the next few months is crucial, and if there is any hiatus or undermining during this period, that could be damaging, so we must realise how important the promotional role is, particularly at this time.

Rhodri Morgan: I have another question, on the way in which the commissioner is to be appointed. Does BT, or any of the other representatives, have any views as to who should appoint the commissioner? Should the commissioner be appointed by the Queen on the recommendation of the Assembly, following the pattern of the Public Services Ombudsman for Wales or the Auditor General for Wales? In that way, he or she would be entirely independent of Government. Should it be a ministerial appointment, such as that of the Commissioner for Older People in Wales or the Children's Commissioner for Wales, on a Wales level, or the equality commissioner on a UK level?

Ms Bonner-Evans: We do not have a set view. A more comprehensive appointment process, where the opinions of others are taken into account—children's opinions in the case of the children's commissioner—would give the impression of more independence from Government. Ultimately, how the commissioner operates after appointment is more important.

Rhodri Morgan: So you do not have a set view that it would be entirely inappropriate for the Minister to appoint the commissioner, rather than the Assembly, or the Queen, following a recommendation from the Assembly, as is the case with the Ombudsman.

Ms Beynon: No. It is important that the process is transparent and that it follows the Nolan principles, so that everyone can be entirely confident that everything has been

wneud mewn dull priodol.

done in an appropriate manner.

[163] **Rhodri Morgan:** I have a further final question to the UKCTA rather than BT. In your written evidence, on pages 8 and 9, you suggest that, in advance of any regulations relating to standards being drafted, the legislation should require Welsh Ministers to commission a report on the impact of the proposed regulations, and you have suggested that this report could be prepared by the commissioner. Given the other roles contemplated for the commissioner, is it appropriate for the commissioner to prepare this report?

[164] **Mr Dods:** The point that we were trying to make is that, at the moment, as Hamish said earlier, we only have half the story. It is very difficult to gauge the impact of what we will be required to do, if anything. We were trying to bring out the point that, before any standards are implemented, we need to have some proper impact assessments, due process and consideration. We have been very light on that so far. We felt that, perhaps, there is a position of ignorance of how matters in relation to the Welsh language are dealt with, because, as I said, the Welsh Language Board has made no approach to any of our members. We are coming at this as a group of innocents in Welsh matters. It was a suggestion that, if the Welsh language commissioner is the subject matter expert, then, perhaps in consultation with Ofcom, the commissioner could provide sufficient expertise, both in the impact on the language and on telecoms, to inform the Welsh Assembly Government as to how it should proceed. It was not by any means the only possible suggestion; it was one option that we thought might be available.

[165] **Mr MacLeod:** I was struck by how the proposed Measure goes into great detail about the policing, enforcing and compliance notice process. There is virtually no upfront investment in setting what the proposed Measure should cover in the first place in terms of assessing demand, which types of services would be of greatest benefit to Welsh citizens and consumers, or doing a detailed assessment of the costs and the impact on competition. Telecoms will be the most complex sector in which to make these assessments, more than any other sector that is singled out by the proposed Measure. As Domhnall described, the subject matter expert should be involved in this upfront exercise.

[166] **Mr Dods:** A great deal of importance is now attached to telecoms, and if you look at the pledges made by all parties in the recent UK election campaign, they were all stressing how much they were going to do about broadband. Everyone wants faster broadband, more of it, and they want it now. Everyone attaches great importance to it because there will be economic and social benefits. To a greater extent than for any other sector, it is the topic of the moment and it will have a great impact on us.

[167] **Ms Beynon:** Yr ydym ni fel cwmni wedi cyhoeddi £2.5 biliwn heddiw ar gyfer cyflenwi band llydan tra chyflym i 70 y cant o Brydain, ac yr ydym yn falch iawn, mewn hinsawdd economaidd anodd, ein bod wedi gallu gwneud hynny. Mae mater y gost yn allweddol. Mae'n beth clodwiw iawn nad yw BT, mewn cyfnod pan ydym wedi gorfod cael gwared ar 35,000 o bobl, wedi lleihau'r gwasanaethau Cymraeg o gwbl. Mae'n anodd iawn esbonio pa mor anodd yw dadlau dros barhau gwasanaethau fel hyn mewn hinsawdd economaidd mor anodd. Yr ydym yn y tywyllwch i ryw raddau, gan nad ydym yn gwybod, mewn difrif calon, faint y bydd hyn yn ei gostio inni. Nid oes gennym ffordd

Ms Beynon: We as a company have today announced £2.5 billion to provide superfast broadband to 70 per cent of Britain, and we are very proud that, in a difficult economic climate, we have been able to do that. The issue of the cost is crucial. It is commendable that BT, at a time when we have had to let 35,000 people go, has not reduced its provision of Welsh-language services at all. It is very difficult to explain how hard it is to argue for the continuation of such services in such a difficult economic climate. We are in the dark to some extent, because at the moment we do not know, in all honesty, what this will cost us. We have no way of assessing the cost.

o fesur y gost.

[168] **Ms Bonner-Evans:** Fframwaith yn unig sydd yn y Mesur arfaethedig. Mae'r memorandwm yn ceisio asesu faint y bydd yn ei gostio. Gwneir cymhariaeth yn y memorandwm â faint mae'r ddeddfwriaeth bresennol yn ei chostio. Er enghraifft, mae'n dweud na ddylai cwmni mawr ddisgwyl gwario mwy na £200,000—ond yr ydym ni yn gwybod ein bod yn gwario llawer mwy na £200,000 ar wasanaethau Cymraeg yn barod.

Ms Bonner-Evans: There is only a framework in the proposed Measure. The memorandum tries to assess how much it will cost. In the memorandum a comparison is made with how much the current legislation costs. For example, it mentions that a large company should not expect to pay more than £200,000—but we know that we already spend a lot more than £200,000 on Welsh-language services.

[169] **Mr Dods:** That takes me back to the point that I made at the outset about different types of company. For a big company such as BT, which, on the face of it, may be comparable with a large operator such as Cable&Wireless, it will be completely different, because BT has already invested substantially in Welsh-language services and is already making that provision. To go from a standing start, the cost will be completely different.

[170] **Rhodri Morgan:** However, you realise the difficulty that we are in. BT's argument is the opposite to yours. It is arguing that, because it is the legacy telecommunications company, it has an embedded investment in Wales, and protecting the bilingual nature of that represents a particular cost for BT, which puts it at a competitive disadvantage compared with those who are not legacy 'telcos'. On the other hand, those who are not legacy 'telcos' say that it is much easier for BT, because it has an embedded level of service in Wales that it can make bilingual, whereas the new companies, at the sharp end, do not have a back-office function in Wales, and are therefore at a competitive disadvantage. One of those propositions may be true, but both cannot be true, can they?

[171] **Mr Dods:** I do not think that we are saying that it is easier or harder for anyone; I was trying to say that the impact assessment that we have undertaken to date characterises organisations according to their size. The point that I am making is that there is one big organisation, BT—and there are other big organisations in the marketplace—but the costs for BT will be completely different from those for another organisation. I was not saying that it was easier or harder. It cannot be a case of one size fits all, because that is overly simplistic, and you need to analyse the impact to a much greater extent.

[172] **Ms Bonner-Evans:** Ni ddylai BT— **Ms Bonner-Evans:** BT should not—

[173] **Val Lloyd:** I am sorry to interrupt you, and I will let you finish afterwards, but I need to remind Members and witnesses that we are running late with our questions.

[174] **Ms Bonner-Evans:** Ni ddylai BT gael ei gosbi oherwydd ei fod wedi gwneud gwaith da yn y gorffennol ac yn y presennol. Mae'r egwyddor o chwarae teg, sef y cysyniad o gael *level playing field*, yn bwysig. Mae BT yn cael ei reoleiddio ynghylch gwahanol bethau ar lefel Brydeinig, Ewropeaidd a byd-eang. Mae'r cysyniad o *level playing field* yn hollol hanfodol. Er mwyn sicrhau cysondeb, mae'n rhaid gosod safonau tebyg inni i gyd. Bydd cwsmeriaid yng Nghymru yn disgwyl cael gwasanaeth tebyg gan yr holl gwmnïau yn y sector

Ms Bonner-Evans: BT should not be penalised because of the good work that it has done in the past and that it is doing now. The principle of fair play and the concept of a level playing field are important. BT is regulated in relation to a number of things on a UK, European and global level. The concept of a level playing field is essential. In order to ensure consistency, similar standards have to be in place for all of us. Customers in Wales will expect a similar service from all the companies in the telecommunications sector.

telegyfathrebu.

[175] **Ms Beynon:** Mae ein costau blynyddol yn dal i fodoli. Nid y costau cychwynnol sy'n uchel, ond y costau parhaol.

Ms Beynon: Our annual costs still exist. It is not the initial costs that are high, but the ongoing costs.

[176] **Ms Bonner-Evans:** Mae hynny'n cynnwys y gost o gyflogi pobl, er enghraifft.

Ms Bonner-Evans: That includes the cost of employing people, for example.

[177] **Mr MacLeod:** The main point is that this is a very complicated market, and I fear that the telecoms regulator will have to be consulted on the competition aspect, because it is not always obvious which playing field you are trying to level in the market.

10.50 a.m.

[178] **Brynle Williams:** Do you think that the standards framework proposed will improve on the current system of language schemes in providing services in Welsh?

[179] **Ms Bonner-Evans:** Yr ydym wedi sôn bod y Mesur arfaethedig yn creu safonau, ac mae'r system safonau yn y Mesur arfaethedig yn ymddangos yn un gymhleth iawn. Mae hynny'n gwneud i rywun feddwl y bydd llawer o fiwrocratiaeth. Mae'r system bresennol o gynlluniau iaith hefyd yn fiwrocraidd. Fodd bynnag, mae'n anodd dweud gan fod y system safonau mor gymhleth. Mae'n dibynnu beth fydd y comisiynydd yn ei wneud yn weithredol.

Ms Bonner-Evans: We have mentioned the fact that the proposed Measure will create standards, and the fact that the system of standards in the proposed Measure appears to be very complex. That leads one to think that it will be very bureaucratic. The current system of language schemes is also bureaucratic. However, it is difficult to say because the standards system is so complex. It depends on what the commissioner does in practice.

[180] **Ms Beynon:** Yr ydym yn dod o gefndir sector preifat, a'r hyn sy'n bwysig i ni yw'r effaith a'r prawf bod rhywbeth wedi gweithio. Nid ydym yn gallu gweld y bydd cynllun iaith na safonau yn gwarantu hynny. Y ffigur allweddol yw faint o Gymry Cymraeg sy'n defnyddio gwasanaethau Cymraeg ac a yw'r nifer o Gymry Cymraeg yn cynyddu. Dyna sy'n bwysig. A fydd cynllun iaith yn effeithio ar hynny? Nid ydym yn siŵr.

Ms Beynon: We come from a private sector background, and, for us, it is the impact and the proof that something has worked that are more important. We do not think that a language scheme or standards will necessarily guarantee that. The important figure is the number of Welsh speakers who use Welsh-language services and whether the number of Welsh speakers is increasing. That is what is important. Will a language scheme have an impact on that? We are not sure.

[181] **Ms Bonner-Evans:** Mae'r safonau yn y Mesur arfaethedig yn rhoi'r hawl i amrywio rhwng sectorau, rhanbarthau, amserlenni, ac yn y blaen. Mae hynny'n swnio'n gymhleth.

Ms Bonner-Evans: The standards in the proposed Measure allow for variety between sectors, regions, timetables, and so on. That sounds complicated.

[182] **Mr Dods:** As I said, we have had no contact whatsoever with the board and none of our members has a voluntary scheme in place because there has been no contact. It just has not figured. We are looking at a potentially quite dramatic transformation in relation to that. For some members, that might well mean that, as they have very little exposure to the Welsh market, the simplest thing might be to say that they do not offer services in Wales because it is too complicated. One of our members might have a large multinational customer that has several sites, one of which happens to be in Wales. Does it then have to make all its

operations bilingual because it has one factory or an office in Wales? What would be the cost of that? So, potentially, the move from a voluntary arrangement, where you do something that fits—and BT has more experience of that and, presumably, it fits well for it and it gets some benefit from it when serving Welsh customers—to a situation where our members suddenly have nothing but costs, we fear that it may lead to some people exiting or not entering the market in Wales. It is a barrier to entry.

[183] We are all used to seeing the words ‘Not available in Northern Ireland’ at the bottom of our television screens, in car insurance advertisements, for example. The fear that we have—although we do not have television adverts for all these services—is that there could be an equivalent of that strapline to the effect that these services are not available to customers in Wales. That would be a perverse outcome.

[184] **Brynle Williams:** Fel y dywedasoeh **Brynle Williams:** As you said at the beginning, Ann, it is a matter of getting people to use the services. That is the most important thing.

[185] Ann, you have had a voluntary Welsh language scheme for the past decade. What are your views on being required by law to meet standards?

[186] **Ms Beynon:** Caiff Eleanor roi ateb llawn, ond gallaf ddweud ein bod yn gofidio am y safonau. Fel y bu imi ei ddweud, credwn y dylai pawb cael eu trin yr un peth. Yr ydym hefyd yn gofidio oherwydd nad ydym yn gwybod yn union beth y bydd hwn yn ei olygu nes i'r comisiynydd benderfynu. Felly, yr ydym mewn rhyw fath o *limbo*, ac mae'n anodd iawn inni fynegi barn.

Ms Beynon: Eleanor can give a fuller answer, but I can tell you that we are concerned about the standards. As I have said, we believe that everyone should be treated in the same way. We are also concerned as we will not know exactly what this means until the commissioner decides on it. So, we are in limbo, and it is very difficult for us to express an opinion.

[187] **Ms Bonner-Evans:** Fel yr ydym wedi'i ddweud, nid ydym yn credu mewn gorfodaeth, ond mae gwneud rhywbeth yn wirfoddol yn golygu llawer mwy o ymroddiad, fel y mae BT wedi'i ddangos.

Ms Bonner-Evans: As we have said, we do not believe in compulsion, but doing something voluntarily means a good deal more commitment, which is what BT has demonstrated.

[188] **Ms Beynon:** Credaf fod angen pwysleisio ei fod yn bwysig nid yn unig o ran y gwasanaethau, ond hefyd i ddangos ein hymrwymiad i'r cymunedau hyn os ydym eisiau i'r Gymraeg ffynnu. Felly, nid ar gyfer ein busnes yn unig y mae peth o'r gwaith yr ydym wedi'i wneud, ond ein cyfrifoldeb cymdeithasol hefyd. Yr ydym wedi rhestru yn ein papur yr hyn yr ydym yn ei wneud i gefnogi elusennau yn y gymuned. Yr ydym yn gwneud hynny am fod ein egwyddor fel cwmni yn dweud wrthym y dylem boeni am gymunedau ac ymwneud â nhw, fel cwmni da a chyfrifol yng Nghymru. Felly, byddem yn awgrymu y dylai unrhyw gwmni sector preifat da fod â chydwybod gymdeithasol a dylai wneud rhywbeth yn y gymuned. Yng Nghymru, mae hynny'n golygu gwneud

Ms Beynon: I believe that it is necessary to emphasise that it is important not only in relation to services, but also to show our commitment to these communities if we want the Welsh language to thrive. Therefore, part of the work that we have done was not only for the benefit of the business, but also as a part of our social responsibility. We have listed in our paper the contributions that we have made to charities in the community. We do that because our principles as a company tell us that we should be concerned about communities and interact with them, to be a good and responsible company in Wales. So, we would suggest that any good private sector company should have a social conscience and should do something for the community. In Wales, that means doing

rhywbeth yn y cymunedau Cymraeg.

something in Welsh-speaking communities.

[189] **Brynle Williams:** How easy is it to understand the standards that will be applied to your organisation? You have answered this question in part, when talking about your members.

[190] **Ms Bonner-Evans:** Mae'n sicr yn gymhleth iawn a rhaid inni gofio mai fframwaith yn unig ydyw. Mae'r rhan fwyaf ohono'n dibynnu ar y comisiynydd yn y pen draw. Fodd bynnag, mae'r Mesur arfaethedig yn gymhleth iawn i'w ddeall.

Ms Bonner-Evans: It is certainly very complex and we must remember that this is only a framework. Most of it depends on the commissioner, at the end the day. However, the proposed Measure is very complicated to understand.

[191] **Brynle Williams:** In paragraph 12 of your written evidence, you suggest that the Welsh Government and local authorities 'could' take a proactive step in supporting the Welsh language by

[192] 'ensuring that a company's credentials in supporting the Welsh language and promoting the use of Welsh amongst its customers, employees are included in procurement procedures.'

[193] Could you explain that further?

[194] **Ms Beynon:** Mae Llywodraeth y Cynulliad eisoes wedi gwneud hyn gyda phrosiectau mawr megis prosiectau adeiladu ffyrdd, lle mae wedi gofyn i'r cwmnïau ymrwmo i gyflogi hyn a hyn o brentisiaid. Felly, mae'r cwmni, wrth gytuno ei gytundeb wedi dweud, 'Gwnawn ni, fel cwmni cyfrifol, ymrwmo i gyflogi prentisiaid a hyfforddi pobl oherwydd ein bod ni wedi ennill cytundeb gan Lywodraeth y Cynulliad'. Felly, yr hyn yr awgrymwn yw eich bod yn ymestyn hynny i gaffael egwyddorol, er enghraifft, nid yn unig ar y Gymraeg, ond ar safonau amddiffyn yr amgylchedd. Mae hwn yn bwnc trafod byw iawn yn Swyddfa Masnach y Llywodraeth ac ni allaf weld pam na all Gwerth Cymru gael trafodaeth gyffelyb a pham na allwch chi, fel Cynulliad, wrth bwrcasu nifer sylweddol o wasanaethau, ddisgwyl i'ch cyflenwyr gyrraedd safonau arbennig. Mae BT yn gwneud hynny: gofynnwn i'n cyflenwyr gydymffurfio ag anghenion amddiffyn yr amgylchedd ac â safonau sy'n ymwneud â sicrhau amrywiaeth cefndiroedd ethnig a diwylliannol y cwmnïau yr ydym yn prynu oddi wrthynt. Felly, fel cwmni cyfrifol, yr ydym eisoes yn gwneud hyn ac yr ydym yn awgrymu bod Llywodraeth y Cynulliad yn edrych ar yr un math o bolisi.

Ms Beynon: The Assembly Government has already done that with major projects such as road construction projects, where it has asked companies to commit to employing a certain number of apprentices. Therefore, the company, when agreeing its contract, has said, 'As a responsible company, we will commit to employing apprentices and to training people, because we have won a contract from the Assembly Government'. So, we suggest that you extend that to principled procurement, for example, not only on the Welsh language, but on environmental protection standards. This issue is a hot topic in the Office of Government Commerce and I cannot see why Value Wales could not have a similar discussion or why you, as an Assembly, when purchasing substantial services, could not expect your suppliers to attain certain standards. We in BT do that: we ask our suppliers to conform to environmental standards as well as to standards that relate to ensuring the ethnic and cultural diversity of the companies from which we purchase. So, as a responsible company, we already do that and we suggest that the Assembly Government also look at a similar policy.

[195] **Mr MacLeod:** We would, I am afraid, disagree very strongly with that.

[196] **Rhodri Morgan:** I thought that you would. *[Laughter.]*

[197] **Mr MacLeod:** If we are to have a Welsh-language commissioner, who is the regulator for the Welsh language, that should be the only source of regulations on the Welsh language. Otherwise, there would be huge confusion.

[198] **Gareth Jones:** Mae fy nghwestiwn i'n dilyn o hynny. Mae tystiolaeth BT yn dweud nad yw'r Mesur arfaethedig yn rhoi mwy o eglurder a chysondeb gan nad yw'r safonau cyflenwi'n cael eu cynnwys ar ei wyneb. Yr ydych yn mynd ymlaen i ddweud eich bod yn gobeithio y bydd y comisiynydd iaith yn gallu rhoi'r eglurder hwnnw.

Gareth Jones: My question follows on from that. BT's evidence states that the proposed Measure will not provide greater clarity or consistency because the standards of delivery are not included on the face of it. You go on to say that you hope that the language commissioner will be able to provide that clarity.

[199] Yn eich barn chi, ac o gofio'r pryderon a ddisgrifir gennych mewn rhan arall o'ch tystiolaeth ysgrifenedig am swyddogaeth ddeuol y comisiynydd, a yw'n briodol i'r comisiynydd chwarae'r rhan hon neu a ddylai'r Mesur arfaethedig ei hun ddarparu'r eglurder hwn?

In your opinion, and given the concerns that you have described in another part of your written evidence on the duality of the role of the commissioner, do you think that it is appropriate for the commissioner to play this role or should the proposed Measure itself provide that clarity?

[200] **Ms Bonner-Evans:** Mae i fyny ichi benderfynu yn union ble mae'n sefyll. Fodd bynnag, fel unrhyw gwmni, yr ydym yn gofyn am eglurder. Ar hyn o bryd, nid ydym ond yn trafod y fframwaith, ond yn y pen draw, pan fydd y Mesur arfaethedig hwn yn cael ei weithredu, mae angen inni, fel cwmni, ddeall yr hyn sy'n ofynnol arnom ni ac mae hynny'n wir am unrhyw gyfraith dda. Cyhyd â bod gennym yr eglurder hwnnw, boed drwy'r Mesur arfaethedig neu ddulliau eraill, mae hynny'n iawn.

Ms Bonner-Evans: It is up to you to decide exactly where it stands. However, what we are asking for, like any company, is clarity. At the moment, we are just discussing the framework, but, at the end of the day, when this proposed Measure is implemented, we, as a company, need to understand what is required of us, and that is true of any good law. As long as we have that clarity, whether that is through the proposed Measure or by other means, that is fine.

[201] **Gareth Jones:** A yw'n briodol, felly, fod y safonau hyn yn cael eu cyflwyno gan reoliadau?

Gareth Jones: Is it therefore appropriate for these standards to be introduced by regulations?

[202] **Ms Beynon:** I ddechrau, yr ydym yn awgrymu ymgynghori manwl â'r sector. Nid ydym yn derbyn y gall safonau gwirioneddol effeithiol gael eu creu heb ymgynghori â'r sector, sy'n gymhleth dros ben.

Ms Beynon: To begin with, we recommend detailed consultation with the sector. We do not accept that any truly effective standards could be created without consultation with the sector, as it is extremely complex.

[203] **Ms Bonner-Evans:** Efallai y byddai gan y comisiynydd fwy o amser i allu gwneud deddfwriaeth sy'n bwrpasol i bob sector.

Ms Bonner-Evans: Perhaps the commissioner would have more time to make legislation that is tailored to each sector.

[204] **Ms Beynon:** A bod yn hollol ymarferol, o ystyried ei fod mor gymhleth, ni welaf fod amser i roi'r pethau hyn ar wyneb y Mesur arfaethedig. Un safbwynt yw y byddai'n haws inni gael gwybod yn

Ms Beynon: In practical terms, given the complexity, I cannot see that there is time to put these things on the face of the proposed Measure. One point of view is that it would be easier for us to know sooner rather than

gynharach na'n hwyrach fel ein bod yn gallu asesu'r effaith yn well, ond, yn ymarferol, mae mor gymhleth fel nad wyf yn gweld sut y gallech obeithio cyflawni hynny.

later so that we can assess the impact more effectively, but, in practice, it is so complex that I cannot see how you can hope to achieve that.

11.00 a.m.

[205] **Gareth Jones:** Diolch yn fawr. Mae'r cwestiwn hwn i Domhnall o UKCTA. Yn eich tystiolaeth, yr ydych yn awgrymu newid geiriad Atodlen 9 i ddisodli 'mae'n rhaid' â'r gair 'gallai'. Pam yr ydych am weld y newid hwn, ac a allwch esbonio ymhellach pa hyblygrwydd y byddai hynny'n ei ganiatáu ichi?

Gareth Jones: Thank you. This is a question for Domhnall of UKCTA. In your evidence, you suggest a change to the wording of Schedule 9 to replace 'must' with the word 'may'. Why do you wish to see that change, and can you explain further what flexibility it would give to you?

[206] Yr wyf wedi gwranddo yn ofalus ar yr hyn sydd gan bawb ohonoch i'w ddweud. Y dilema yw bod BT yn hyrwyddo'r Gymraeg ar hyn o bryd, ond mae'r cwmnïau yr ydych yn gyfrifol amdanynt yn meddu ar y gallu i adeiladu neu danseilio'r Gymraeg. Dyna'r sefyllfa ar hyn o bryd. Fel chithau, yr wyf am weld y Gymraeg yn cael ei hyrwyddo ac yn tyfu, ond os byddwn yn creu sefyllfa lle mae dewis gennych i wneud hynny, felly y bydd hi: 'Gallwn droi at BT i wneud y gwaith a bydd pawb yn hapus'. Yr ydym mewn ychydig o ddilema, a hoffwn glywed eich sylwadau ar hynny.

I have listened carefully to what every one of you has said. The dilemma is that BT already promotes the Welsh language as things stand, but the companies for which you are responsible have the ability to promote or undermine the Welsh language. That is the situation as it stands. Like you, I want to see the Welsh language being promoted and growing in numbers, but if we create a situation in which it is optional for you to do this, that is how things will be: 'We can all look to BT to do the work and everyone will be happy'. We are in a bit of a dilemma, and we would like to hear your comments on that.

[207] **Mr Dods:** To deal with the 'may' versus 'must' point, the point that we were trying to make was that, after the impact assessment analysis had been carried out, as it stands, the commissioner might find that, if he makes Welsh or bilingual provision mandatory for all telecoms companies, everyone will exit the market bar BT, which will be left there struggling on alone. That is how I fear things, so it is my doomsday scenario. As the legislation is worded at the moment, the obvious conclusion the commissioner might draw from that is that he should go for a voluntary approach and continue to encourage people. As it stands, it does not say that he 'may' make standards but that he 'must' make standards, so his—or her—hands are tied. We were simply trying to make that point, namely that it is fettering his discretion, to use that horrible Ofcom phrase that we probably all know well. So, it might mean that he does not have any discretion and must make a standard, even if it is completely inappropriate to do so. That is the simple point that we make. Hamish, do you feel the same?

[208] **Mr MacLeod:** We had a similar view. If you had to undertake a cost-benefit analysis prior to setting the standards, and, under Schedule 9, you came up with one or two that would never pass muster, it seems that you would still have to make a standard for that. It is a fairly simple point.

[209] **Mr Dods:** To go back to answer the other part of your question, namely the voluntary versus compulsory approach, to deal with the voluntary approach first, you are characterising it as no-one having done anything. For our membership, by and large, with the exception of one who is operating a project in Wales, that is correct. However, no-one has approached our members to ask them to make provision in Welsh. So, I would not say that the voluntary approach has failed—to use that horrible phrase—rather that it has not really been tried, with

respect to our members.

[210] **Gareth Jones:** So, you are saying that you would be amenable to that.

[211] **Mr Dods:** It would obviously depend on each individual company, and I cannot speak in detail for them, but some of them will have much more presence in Wales, and it would therefore be more appropriate for them. Some of them will have marginal business provision in Wales. The fear that we have is that if you suddenly tell a company that has one customer site in Wales—if it can even identify that—that it has to increase its costs exponentially, it may no longer be cost-effective for it to provide a service to that business, and it may simply have to withdraw from serving that customer. It means that other customers in Wales who could potentially take advantage of the competitive offering from that service provider are denied it.

[212] In relation to the business market, it is the small and medium-sized enterprises that tend to go for the more innovative offerings from some of the smaller, nimble and dynamic operators in the markets. I am not saying that no SMEs go to the big operators, Ann, so do not worry. However, SMEs will often shop around and pick from a range of service providers. Therefore, if you raise the barrier to entry into Wales for those smaller, more innovative operators, you are disadvantaging those who would be most willing to take this up.

[213] **Rhodri Morgan:** Sorry to interrupt, but do you find any comfort in the provision for a challenge on the basis of proportionality and reasonableness? What UKCTA and Mobile Broadband Group UK have said this morning seems to be based on the fact that this is a steam hammer to crack a nut, and that disproportional and unreasonable obligations will be placed on your member companies. The legislation will be based on a right of challenge on the grounds of reasonableness and proportionality, but you do not seem to find any comfort in that, and I was wondering why that was.

[214] **Mr MacLeod:** I have not been trying to convey that impression, so I apologise if I have. The point that I have been trying to make is that I understand the two-step process: the proposed Measure sets the framework, and then the regulations set the detail. As far as the proposed Measure is concerned, we are seeking comfort that there will be a rigorous process to assess demand, benefits and costs. We do not want to be put in a position of having to challenge on the basis of reasonableness and proportionality. We want to ensure that the demands in the first place are reasonable and proportionate, and for the commissioner to go through that exercise prior to the regulations being set. That is all that we are asking for, really. There is no question of any mobile operator exiting or not serving the Welsh market. We will all be doing that.

[215] **Mr Dods:** You are right to pick up that we have issues around proportionality, and Hamish is also right. We are in a different position from that of my colleagues sitting either side of me, as our members may or may not have networks in Wales. Some of them definitely do not. Therefore, it is much more open to them to exit the market or refrain from offering services. Again, I am not saying that they will do that, but it is difficult to predict. As has been said, we are in the dark at the moment about exactly what we are facing. Proportionality is what we are worried about. As Hamish has said, we do not want to be in a situation of having to go through the time and expense of mounting a challenge, as we would rather the Assembly Government passed a Measure that was proportionate and reasonable in the first place. The scrutiny in advance and the impact assessment should ensure that.

[216] **Gareth Jones:** Mae Rhodri wedi cyfeirio at ddau gwestiwn am yr hawl i herio, felly symudaf ymlaen i ofyn cwestiwn am Ran 5, sy'n ymwneud â gorfodi safonau. **Gareth Jones:** Rhodri has referred to two questions on the right to challenge, so I will move on to ask about Part 5, which deals with the enforcement of standards. What are

Beth yw eich barn am y gyfundrefn orfodi a'r cosbau y gellid eu gosod ar sefydliadau?

your views on the enforcement regime and the penalties that could be imposed on organisations?

[217] **Ms Bonner-Evans:** Mae gorfodaeth a chosbau yn rhan bwysig o sicrhau chwarae teg. Ni allwn gael chware teg heb sicrhau bod y safonau sy'n cael eu gosod yn addas a bod pawb yn eu dilyn. Mae BT yn gwmni sy'n cadw at y gyfraith, ac felly, os na fydd y cosbau yn ddigonol, ni fyddai'n hoffi gweld cwmnïau eraill yn penderfynu gwneud llai a derbyn y cosbau yn hytrach na chydymffurfio.

Ms Bonner-Evans: Enforcement and penalties are an important part of ensuring fair play. We cannot guarantee fair play without ensuring not only that the standards set are appropriate, but that everyone adheres to them. BT is a law-abiding company, and if the penalties were inadequate, it would not like to see other companies deciding to do less and to accept the penalties rather than comply.

[218] **Gareth Jones:** A allwch ymhelaethu ychydig ar hynny? Mae'r cwestiwn hwn yn benodol i BT. Yr ydych yn cyfeirio at y ffaith y byddai unrhyw sancsiynau'n gorfod bod yn realistig. Beth, yn eich barn chi, fyddai'n 'realistig'?

Gareth Jones: Could you expand a little on that? This question is specifically for BT. You refer to the fact that any sanctions would have to be 'realistic'. What, in your view, would count as 'realistic'?

[219] **Ms Bonner-Evans:** Yr hyn sy'n bwysig yw bod sancsiynau'n sicrhau cydymffurfio. Mae'n anodd dweud beth yn union yw ystyr hynny, ond mae cydymffurfio yn rhan bwysig o sicrhau'r egwyddor o chwarae teg.

Ms Bonner-Evans: What is important is that any sanctions ensure compliance. It is hard to say exactly what that means, but compliance is an important part of safeguarding the principle of fair play.

[220] **Ms Beynon:** Mae hyn yn dangos perygl gorfodi yn y sector preifat. Unwaith yr ydych yn dechrau mynd i lawr llwybr gorfodi, yr ydych yn dechrau sôn am sancsiynau, a rhaid i sancsiynau fod yn sylweddol er mwyn iddynt fod yn realistig. Mae hon yn enghraifft dda o pam nad yw gorfodi yn syniad da.

Ms Beynon: This demonstrates the danger of enforcement in the private sector. Once you start going down the route of enforcement, you start talking about sanctions, and, to be effective, sanctions will need to be substantial. This is a good example of why enforcement is not a good idea.

[221] **Gareth Jones:** Mae Domhnall wedi egluro bod ochr arall i hyn, a all fod yn gwbl negyddol. Yr wyf yn ddiolchgar am hynny.

Gareth Jones: Domhnall has explained that there is a flip side to this, which can be entirely negative. I am grateful for that.

11.10 a.m.

[222] **Mr Dods:** I do not think that I have heard anyone suggesting this morning that any company would decide that it would be cheaper and easier just to take the fine and continue to flout the law. I would be horrified if any UKCTA member company did that.

[223] On the size of the fine, I think that Ann was absolutely right in saying that it shows the real peril of extending this type of regulation to the private sector. Again, you have the question of the complexity of the sector. What counts as a serious fine for a very small operator might be trifling for a bigger operator, and what might be a serious fine for a bigger operator might be quite devastating for a small operator. So, it is very difficult. That simply underlines Ann's point about the perils of this route.

[224] **Mr MacLeod:** There is one point in the proposed Measure of which I am not quite clear. I can see the process here. When the commissioner gets the powers to issue compliance notices, he or she can issue one to the current market players. However, I am not sure that, in this market, it will ever be 100 per cent obvious when an operator has entered the Welsh market, and at what point it would be appropriate to issue a compliance notice. I just do not think that the proposed Measure contemplates that.

[225] **Gareth Jones:** That is a valid point.

[226] Yn gyffredinol, pan soniwch am yr apeliadau i'r tribiwnlys, sydd yn bwynt go bwysig sydd wedi cael tipyn o sylw, a ydych yn fodlon y bydd y tribiwnlys apeliadau yn annibynnol, gan dderbyn yr hyn y mae Hamish newydd gyfeirio ato?

Generally, when you refer to the appeals to the tribunal, which is quite an important point and it has received a great deal of attention, are you content that the appeals tribunal will be independent, given what Hamish has just referred to?

[227] **Ms Bonner-Evans:** Ni chredaf fod rheswm i feddwl na fyddai'n annibynnol. Mae'r Mesur arfaethedig yn gosod system sy'n weddol debyg i lawer o dribiwnlysoedd eraill.

Ms Bonner-Evans: I do not think that there is any reason to think that it would not be independent. The proposed Measure sets out a system quite similar to other tribunals.

[228] **Val Lloyd:** I am afraid that we are now out of time. If it were a matter of only a few more questions, we could progress it, but I think that the fairer and most sensible option would be to thank you very much for your contributions and suggest that we send the further questions that we had to each of you for a reply in writing. We will then publish those replies. Thank you, again, for everyone's input. We will send you a transcript of today's meeting, which you can verify before the final version is published. You should expect that within a week or so.

[229] I now welcome to the table Mr Pat Ardis, managing director of Camgas, and Mr Rob Shuttleworth, chief executive of UK Liquefied Petroleum Gas, hereafter referred to as LPG. Welcome, gentlemen. We have a fixed amount of time, and so I would be grateful if Members and witnesses could focus their replies. I believe that Gareth has some questions.

[230] **Gareth Jones:** Dywed Camgas nad yw wedi cael unrhyw geisiadau gan gwsmeriaid am filiau yn y Gymraeg. I ba raddau y byddech yn cytuno â'r gosodiad y bydd cwsmeriaid yn cymryd yn ganiataol nad yw gwasanaeth ar gael yn Gymraeg os nad yw wedi'i gynnig?

Gareth Jones: Camgas says that it has received no requests from customers to receive their bills in Welsh. To what extent would you agree with the submission that customers will assume that a service is not available in Welsh if it has not been offered?

[231] **Mr Ardis:** I do not assume anything in business. I believe that the customer will lead the business world. If customers want something, companies will follow. So, if customers asked for it, we would offer it. I have been in this business for a long time, and I have never been asked for this. That does not mean that our people do not speak Welsh. I wrote in my letter to you that we have several people who speak Welsh, but the company has never officially been asked to offer that service.

[232] **Gareth Jones:** I ddilyn y pwynt hwn ymhellach, byddech yn disgwyl i'r cwsmeriaid ddod atoch chi, yn hytrach na bod y cwmni'n datgan yn glir bod y gwasanaeth ar gael yn Gymraeg.

Gareth Jones: To pursue that point, you would expect customers to come to you, rather than the company having to state clearly that a Welsh-language service is available.

[233] **Mr Ardis:** Absolutely. I would expect customers to request it. If they did so, we would consider it and probably follow up on it.

[234] **Gareth Jones:** Yr ydych hefyd yn sôn am resymoldeb a chymesuredd, ac yn cyfeirio atynt fel rhesymau dros eithrio UK LPG o'r Mesur arfaethedig. Pam fod cyflenwyr nwy petrolewm hylifedig yn credu bod y Mesur arfaethedig yn afresymol ac yn anghymesur mewn cysylltiad â'u gweithgareddau hwy?

Gareth Jones: You also mention reasonableness and proportionality, and refer to those as reasons why UK LPG should be exempted from the proposed Measure. Why do liquid petroleum gas suppliers think that the proposed Measure is unreasonable and disproportionate in relation to their activities?

[235] **Mr Ardis:** From my company's point of view, I just want to say that I would be a bit more comfortable if I had an oil man and a coal man alongside me today, because they are our competitors, not British Gas. We are not a regulated market but a private enterprise. My company has a turnover of £5.5 million. It is a small family business, and, quite frankly, this is discrimination. My competitors are not sitting here. Why not? If they were, you might get a more relaxed Pat Ardis.

[236] **Gareth Jones:** Pa lefel o wasanaeth Cymraeg i gwsmeriaid LPG y byddech yn ei hystyried yn rhesymol ac yn gymesur? A ydych yn credu nad yw cynnig dim gwasanaeth iaith Gymraeg yn rhesymol?

Gareth Jones: What level of Welsh-language service for LPG customers would you consider to be reasonable and proportionate? Do you believe that not offering any service in Welsh is reasonable?

[237] **Mr Ardis:** As I said in my letter, in the areas where the Welsh language is important, which are Gwynedd and Anglesey, out of five staff, three are fluent, with Welsh as their first language, and the other two take part in a Welsh-language course. I believe that we have a gold certificate to say that we are trying hard on that. So, I do not have a problem with that. However, if you were to talk to my people in Neath, they would also need these headsets for the translation, as would my people in Prestatyn, Wrexham and Queensferry. When the situation changes, we will follow. My grandchildren speak Welsh at school, and so, in 10, 15 or 20 years' time, when that generation is speaking Welsh in Holywell, Denbighshire, Flintshire, Mid Glamorgan and everywhere else, the market will follow. At the moment, there is no market apart from in Anglesey and Gwynedd, where we offer that service.

[238] **Rhodri Morgan:** I am slightly surprised that you refer only to Caernarfon and Anglesey. I understand the broad distinction that you are making with very anglicised areas, but you seem to imply that you never have such requests in Llandysul, for example. I know Llandysul very well, and about 90 per cent of the population speaks Welsh, do they not?

[239] **Mr Ardis:** That may be so, but I am talking about my experience. I am sure that there are other areas, but we do not cover the totality of Wales. I am referring only to the areas that I cover.

[240] **Rhodri Morgan:** Fine. The general thrust of the legislation is that reasonableness and proportionality offer protection to a company or public body to which the legislation might apply, so they have a right of challenge on that basis. Are you not saying, essentially, that you could be comforted by the potential protection of reasonableness and proportionality for people coming under the umbrella of the legislation, because, where there are very few Welsh speakers in Deeside or Prestatyn, for example, it would be unreasonable and disproportionate to expect the service to be provided bilingually? Although you know that reasonableness and proportionality are built into the legislation, giving you a right to challenge it, you seem to be fearful that you might be asked to supply an unreasonable and disproportionate level of

bilingual service in the more anglicised parts of Wales.

11.20 a.m.

[241] **Mr Ardis:** My biggest contention is the fact that this is not a level playing field. It would appear that my competitors are outside this. I would say that that is unfair, and I would ask why. It is particularly unfair for LPG, which is the smallest sector of the non-mains fuels. So, if that is the case, why am I sitting here?

[242] **Rhodri Morgan:** So, you are saying that you are sitting here because you are a Welsh company, or a company with a headquarters in Wales, while your competitors without headquarters in Wales are free to deliver into Wales without being caught by the proposed Measure.

[243] **Mr Ardis:** I am not talking about my fellow LPG companies. I assume that there are companies based in Manchester or Bristol that serve Wales and I am sure that, if the proposed Measure is passed, they will need to comply. I am referring to my competitors in oil and solid fuel. They do not appear to be sitting here. So, again, I ask, 'Why?'. To simplify it: why pick on me?

[244] **Michael German:** We do not have the competence to include them.

[245] **Rhodri Morgan:** Yes. You are not paranoid, but you want to know why they are picking on you.

[246] **Mr Ardis:** It is my business. I am protecting my business. I have built this business from scratch. I am defending my business. That is why I am sitting here. I want my children and my grandchildren, who speak Welsh, to have the opportunity to be running this business in 20 or 30 years' time. Then, if there is a demand for Welsh, they will be in a position to speak it because the rest of the community will also be in a position to request it. At this moment in time, I do not think that we are there, gentlemen and ladies.

[247] **Rhodri Morgan:** On the issue of additional costs, what cost assumptions have you made in your written submission?

[248] **Mr Ardis:** In all honesty, I have not made any cost assumptions because we do not really know what we are talking about. My biggest fear is an erosion of staff. I have questioned all my staff who have trained with me for a long time—for 20 years—and who are mostly between 40 and 50 years of age. I have asked them all whether they would be prepared to learn Welsh, and they say that they will go to get a job in England or work for an English company. I would lose all of their expertise. That is my biggest fear.

[249] **Rhodri Morgan:** Has UK LPG as an association or its individual member companies given thought to how you might work with the present Welsh Language Board or its successor, the commissioner, on voluntary Welsh language schemes in the way that, not your competitors exactly, but people in the power and energy field, such as SWALEC and Northern Power, have done? Is this a new area for you or are you reasonably familiar with this?

[250] **Mr Shuttleworth:** For me, it is a new area, but I would need to ask my member companies what they think. As I represent them, I cannot tell you without going back to consult with them. I said in my submission that we thought that there would be about seven companies operating in Wales, but we now think that it is more likely to be nine or 10. We are not privy to every aspect of our members' operations, because there are highly sensitive competition issues, but there are various business models. For example, one company

operates out of Manchester and subcontracts the delivery of LPG. So, the telephone orders are taken in one place, but the delivery is made by subcontracted companies. There are companies that have operations based in Wales, and there are people who deliver into Wales from depots in the midlands, the Gloucestershire and Herefordshire area and the greater Manchester and Liverpool areas. I would need to come back to you on what our members have done specifically.

[251] **Rhodri Morgan:** Mr Ardis from Camgas has made a very interesting point about his perception of his main competition coming not from the gas companies or Wales Gas, or the legacy companies that used to be Wales Gas, but from solid fuel and central heating oil suppliers, which are the other non-mains fuel providers. So, we can understand that there is a dilemma for those framing the legislation. As gas mains providers see themselves as analogous to non-mains gas providers, which are the companies that you represent, if you are going to catch the old gas board as a statutory provider, you need to catch the non-mains equivalent of that, which is LPG. On the other hand, your perception is that you are not in the same market as mains gas, but in a market with the other non-mains suppliers of fuel, namely solid fuel and central heating oil providers. That is roughly the dilemma that you think this legislation faces. What is the analogous and true competition for your members? Is it solid fuel and central heating oil providers or is it mains gas, for those who have it?

[252] **Mr Shuttleworth:** We function in areas that are off the gas grid. We cannot compete with mains gas. The price of LPG is greater than the price of mains gas and it has a different supply chain. LPG brings the advantage of gas to rural areas, and the choice the consumer has in rural areas currently is that they can use oil for their central heating and electricity for cooking or LPG for both cooking and central heating. My members' marketing is based on the benefits that gas brings versus a mix of oil and electricity, in terms of convenience for the consumer. We do not compete with mains gas; we compete with oil and solid fuel.

[253] More importantly, there are new entrants to this market with the growth of renewables and, indeed, the incentivisation of renewables by the Government. We will be facing increased competition from, say, biomass boilers or heat pump manufacturers. A heat pump manufacturer could be based anywhere in the world, frankly. However, let us say that there are manufacturers based in the midlands of England who would then install a heat pump in a property in Wales. The person having the heat pump installed might well have used oil or LPG before. Correct me if I am wrong, but looking through the proposed Measure, virtually everyone mentioned in the Schedules seems to be funded by Government, a Government agency of some sort or is a previously state-owned, now privatised, utility company. LPG has never been in that position. Like oil and solid fuel, LPG is a private sector industry. People have chosen to supply it. There are 40 or so suppliers throughout the UK and about eight, nine or 10 of those companies supply LPG to Wales in one form or another. So, our biggest concern is that we are not sure how you start to legislate in the private sector in a very complex and fragmented market.

[254] There are many more small companies supplying solid fuel and oil than there are gas suppliers. I cannot give you figures for Wales only; it is quite hard to get UK figures. However, in the UK, there are estimated to be between 1.8 million and 2.2 million houses that are not on the gas grid. UK-wide, LPG's share of those is 150,000. It is very small. We are the smallest of the suppliers and we have 40 companies. Oil, with which we compete, has many more small companies and they probably have a share of about 800,000 homes or so.

[255] **Brynle Williams:** To what extent are the members of UK LPG that operate in Wales aware of the Welsh Language Board's advice to businesses in Wales?

[256] **Mr Shuttleworth:** Again, I would have to ask them. I imagine that those who have operated in Wales for some time would be aware of that advice. I think that most of them

would take the view that Pat has expressed, which is that, if there are is a demand, they will meet it. It is a market; they have competitors out there, and if there is sufficient demand, they will rise to it.

[257] **Mr Ardis:** From my point of view, I think that it is the best kept secret. I was not aware of it. I have seven other businesses operating in Wales, including caravan parks and various other things, and I am not aware of it. However, again, as I said in my footnote, which was not meant to be obnoxious or rude, I was not aware of this legislation. So, with respect, a great deal could happen in this room, but you need to tell the business world that. You have not really expanded on that.

[258] **Brynle Williams:** Thank you. That point has been taken on board. Based on the Welsh Language Board's advice to businesses in Wales and the existing voluntary Welsh language schemes, what cost implications would UK LPG and Camgas anticipate were you to follow such advice or schemes?

[259] **Mr Shuttleworth:** Not being familiar with the advice, but having looked through the guidance notes to this legislation, there is clearly a range of costs. The guidance talks about a 100-personnel business that operates throughout Wales facing a cost of about £100,000. A reasonably sizeable LPG operation, if all the drivers were required to speak Welsh for example, could face a significant cost in recruitment and training. As an industry, we would need to come back to you on that. Pat just mentioned that he has seven other businesses that are not even covered by the proposed Measure. We are not really sure why LPG has been included as a private enterprise-based operation, when not only are its competitors not included, but no other similar enterprises are included either. We need to register that concern.

11.30 a.m.

[260] **Mr Ardis:** I would endorse that. As far as the cost is concerned, I do not know, because I do not know what you are asking for at this moment in time. I am a broad-brush businessman and I do not go into detail until I have something in front of me, and then I will count the pennies and see what it will cost. My biggest concern is the training and the re-training of people. We have our drivers and I do not know what the cost would be if I had to push all my drivers through training to learn Welsh. I have a gas training school and we charge £3,500 for a 16-week course. Can I teach someone Welsh in 16 weeks? I doubt it. So, I would assume that the cost would be much greater than £3,500. There may be grants available, but I do not know. My greatest concern is that people will turn their backs on me. If I were a 55-year-old or 60-year-old driver and I was asked to learn another language, I would say goodbye.

[261] I have a boat in Spain, and when I go there, people keep telling me that I ought to be able to speak Spanish. That is true, but I am too old to learn Spanish. If, all of a sudden, the Spanish people said that in order to skipper a boat in Spain, you had to speak Spanish, I would move the boat up to France. If they then said that I had to learn French, I would go to Italy, or sell the boat. Skilled labour is my greatest cost. It has taken me a long time to get these people to a certain level and I think that they might walk away, and I would walk away with them. That is not a threat; it is a fact.

[262] **Mr Shuttleworth:** To add to that in relation to cost, the delivery of LPG is subject to a lot of European and British legislation on health and safety. For example, drivers have to reach certain levels of qualification that are far greater than an oil driver would need. They are already a skilled workforce in that they are able to deliver a potentially hazardous product safely. The industry has a good reputation on that, and that came about through investment in skills and processes to ensure that gas is delivered safely. There is quite a high-cost

infrastructure to deliver gas and, therefore, I would imagine that there would be a real fear of any additional cost.

[263] **Brynle Williams:** In your evidence, Mr Ardis, you say that any measure to force Camgas to provide Welsh-language services in your depots, excluding Anglesey, would result in an exodus of experienced staff. On what evidence is that claim based? Have you sought the views of all your staff?

[264] **Mr Ardis:** I said to them, 'If I asked you to go to learn Welsh as a part of your job, to retain your job, what would you say?', and they said, 'We would look for other jobs.' Every man and every lady said that. They were not being difficult; if they were 25 or 30 years of age, I think that they might have had a slightly different approach. We do not have a problem in Anglesey, but we do have a problem in Aberystwyth, because most of the people who work there have a Birmingham accent. That is Aberystwyth, I am afraid. If you ask people that straightforward question, they say that they are not knocking the language, they think that it is marvellous, but they would not want to learn it as part of their job. My two grandchildren come and sing 'Happy Birthday, Grandpa' to me in Welsh, and tell all sorts of funny tales about me that I do not understand. I think that that is marvellous, but I am running a business, and I am running it today. In 20 or 30 years' time there may be demand for Welsh, but this needs to be market-led. You cannot buck the market. The market will determine it. If the market is saying, 'I want that to be bilingual', 'I want the drivers to speak to me in Welsh', 'I want invoices and billing in Welsh', or, 'I want the call-centre service in Welsh', the market will respond to that. However, with respect, I think that we are some years away from that. My grandchildren and all their contemporaries have to grow up before we will be in that position. That is my personal view.

[265] **Brynle Williams:** The Welsh Language Board's advice for businesses webpage states:

[266] 'In an increasingly global market, businesses are seeing the value of creating a personality for themselves and identifying themselves as being Welsh. In addition, a bilingual service is evidence of a commitment to ALL customers. Even those who can't speak the language value seeing and hearing Welsh.'

[267] To what extent do you agree with that?

[268] **Mr Ardis:** I understand what you are trying to say and, culturally, it is fine. I am a Scouser. I moved my business to Wales, I live in Wales, and all of my family live in Wales. I do not have a problem with that. In some ways, you can see Wales from the inside, and I see a lot of movement in Wales. However, there is a need to be sensitive and careful about mixing cultural requirements with industry. The market carries on. The market is a cruel business. By pushing this too far and into the wrong areas, you could deter business people. That is a big fear. Culturally, it is a different thing. I understand where you are going, but timing is absolutely crucial.

[269] **Michael German:** It is not our job to answer those questions. I want to make reference to Schedule 7 to the proposed Measure, in which the first entry of qualifying persons listed in columns 2 and 3 refers to:

[270] 'Qualifying persons who provide the public with gas, water or electricity services (including supply or distribution).'

[271] The 'qualifying persons' is then qualified further on, in Schedule 8, by the addition of the words:

[272] ‘Supply of gas to the public under the relevant gas licence.’

[273] So, I presume that all LPG suppliers to the public have to have a gas licence.

[274] **Mr Ardis:** No.

[275] **Michael German:** The question is—and I do not know the answer—whether Schedule 7 therefore applies to a person who does not need a gas licence, except for those who distribute, which is in the second paragraph of Schedule 8. We will need an answer on that matter, although we do not necessarily need it now.

[276] The second point on which I also need a legal answer is that we cannot alter the qualifying persons in Schedule 7 at the moment, because they are governed by the scope of the Government of Wales Act 2006. In order to include oil and other suppliers, we would have to have a change to our legislation or a successful referendum. I am being nodded at by a lawyer, so I have got that bit right. My question, therefore, is: do you think that, because the inclusion of oil and solid fuel has been postponed because we do not have the competence, this legislation should not apply to you? We then have the question of whether you and your competitors should be included. That is the question that I want to pose to you.

[277] **Mr Ardis:** The lawyer who drafted that question does not know the market. He has assumed that every gas supplier is part of a regulative body, but LPG suppliers are not.

[278] **Michael German:** The question is: if we have the legislative competence to include oil and solid fuel suppliers, is that the point at which it should be done, or should we just ignore the suppliers of all three? That is the question for the industry in general.

[279] **Mr Ardis:** It would relax me. I would still ask why we are here. You are applying legislation to independent sectors. We are not like BT or electricity suppliers, Transco, and so on; we are mostly small, independent companies. I have other businesses and my fear is that, if you are going to apply it to LPG, when will you apply it to my caravan parks, my training centres, my documentation businesses? Will you then apply it to Tesco and Sainsbury’s, and, if not, why not? It has to be applied across the board.

[280] **Michael German:** I understand entirely the question about the wider private sector, but I am trying to get at this business of competition—perhaps Rob would like to answer this question. When we have the competence to include solid fuel and oil suppliers, is that the point at which we either include everyone, or exclude all three?

[281] **Mr Shuttleworth:** It is greater than three, because we know that biomass is being advocated and is coming in. People are using biomass boilers. There are air source heat pumps and ground source heat pumps, wind power, solar panels on roofs, and solar thermal and photovoltaics for electricity. It is a developing market and it is enough of a competitive issue for LPG. It is a fossil fuel, albeit a clean fossil fuel that has lots to offer rural communities. However, it is a hugely competitive area and I do not think that you can limit it to two or three sectors; you almost have to include every energy provider, which includes a great swathe of businesses. Many of the start-ups will be very small.

[282] **Michael German:** That is all I wanted to ask.

11.40 a.m.

[283] **Mr Ardis:** Could I comment on that? According to the latest Federation of Small Businesses leaflet, the Forestry Commission Wales, on behalf of the Welsh Government, has received a £17 million European grant for wood pellet schemes. It is a competitor, so why is it

not included? It is either as broad or as narrow as it needs to be.

[284] **Mr Shuttleworth:** Could I ask a question? You just referred to Schedules 7 and 8. Were you saying that Schedule 7 is already in statute and Schedule 8 is what we are consulting on and where it—

[285] **Michael German:** No, what I was saying was that the ability to specify persons in Schedule 7 is constrained by the current legislative powers of the National Assembly for Wales and that it would require either a further legislative competence Order or, more likely, a successful referendum to extend the scope of the proposed Measure to the bodies that we were referring to earlier. I have had a nod from the lawyer on that.

[286] **Mr Shuttleworth:** So, for clarity, LPG suppliers are not licensed. We are not part of the regulated gas supply industry.

[287] **Michael German:** That comes under Schedule 8.

[288] **Val Lloyd:** We have come to the end of our questions. Is there anything that either or both of you would like to comment upon before we close?

[289] **Mr Ardis:** I have probably said too much, but thank you for the opportunity to say it.

[290] **Mr Shuttleworth:** I have covered all the points about our industry, how it works and its competitive sector.

[291] **Val Lloyd:** I am sure that you heard me say this to the previous witnesses, but I will repeat it. You will be sent a transcript of today's proceedings, which you can comment upon and verify before it is published in final version. You will receive that in about a week. On behalf of the committee, thank you very much for attending and answering our questions. We have now come to the end of the meeting, and I formally declare it closed.

*Daeth y cyfarfod i ben am 11.41 a.m.
The meeting ended at 11.41 a.m.*