



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

**Y Pwyllgor Cyfle Cyfartal
The Committee on Equal Opportunities**

**Dydd Mawrth, 2 Mehefin 2009
Tuesday, 2 June 2009**

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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. This is a draft version of the record. The final version will be published within five working days.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Ann Jones	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Jonathan Morgan	Ceidwadwyr Cymreig Welsh Conservatives
Janet Ryder	Plaid Cymru The Party of Wales
Joyce Watson	Llafur Labour

Eraill yn bresennol
Others in attendance

Kate Bennett	Cyfarwyddwr Cenedlaethol Cymru, y Comisiwn Cydraddoldeb a Hawliau Dynol National Director for Wales, Equality and Human Rights Commission
Rhian Davies	Prif Weithredwr, Anabledd Cymru Chief Executive, Disability Wales
Graham Francis	Rheolwr Polisi a Materion Cyhoeddus, Age Concern Cymru a Help the Aged yng Nghymru Policy and Public Affairs Manager, Age Concern Cymru and Help the Aged in Wales
Martyn Jones	Rheolwr Cydraddoldeb, Age Concern Cymru a Help the Aged yng Nghymru Equalities Manager, Age Concern Cymru and Help the Aged in Wales
Nick Lambert	Y Comisiwn Cydraddoldeb a Hawliau Dynol Equality and Human Rights Commission

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

Tom Jackson	Clerc Clerk
Rita Phillips	Dirprwy Glerc Deputy Clerk
Lisa Salkeld	Cynghorydd Cyfreithiol Legal Adviser

Dechreuodd y cyfarfod am 9.32 a.m.
The meeting began at 9.32 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Ann Jones:** Good morning, everybody. I welcome you to this morning's Committee on Equality of Opportunity. I have just the normal housekeeping rules to run through. There is no-one in the public gallery at the moment, so if all those around the table could switch off their mobile phones, pagers and so on, I would be grateful. Translation facilities are available. If you want to hear the proceedings verbatim, the amplification is available on channel 0 and

the translation, if anyone should speak in Welsh, is on channel 1.

[2] We are not expecting a fire alarm test, so if there is an alarm, we will await the instructions of the ushers; or, as I always say, if you follow me out, I will be one of the first out of the building. Do Members have anything that they wish to declare under Standing Order No. 31.6? I see that they do not.

9.33 a.m.

Mesur Cydraddoldeb y DU UK Equality Bill

[3] **Ann Jones:** Our agenda today is taken up by the UK Equality Bill. We are delighted to have Kate Bennett with us. Kate is the national director for Wales of the Equality and Human Rights Commission. We thank you for submitting a paper, Kate; you are no stranger to the Committee on Equality of Opportunity. If it is all right with you, Kate, we have decided to gauge some of the emerging themes from some stakeholders and then we are going to ask Brian Gibbons to come to the next meeting on 16 June. We were hoping that Harriet Harman might have come, but that has proved to be slightly difficult, although we are still working on a future video link to her office. May we go straight into questions, Kate? Is that all right with you or is there anything that you feel that you really want to add?

[4] **Ms Bennett:** The one thing that I would particularly draw attention to—on the first page, the fourth bullet point down—is the inclusion of associative discrimination. I am not sure whether Members are familiar with this, but it is a very important development that I would just like to take a minute to explain to people, if I may.

[5] This has arisen as the result of a case that you may have heard of, involving Sharon Coleman, in which the commission intervened. She was a young woman, who had a job in a legal firm, who had a disabled son, and asked for a quite modest rearrangement of her working arrangements—I think that she wanted to come in 10 minutes later and leave 10 minutes later. That was not allowed, and she ended up leaving her job as a result, after which she entered a massive cycle of legal cases, which ended up in Europe. Consequently, it was decided that, although she was not a disabled person, a reasonable adjustment should have been made for her because of her association with a disabled person. This judgment came some time during 2008, and we have been waiting to see how it would be built into law.

[6] We are particularly pleased that this concept of associative discrimination applies not only to the disability strand, but to other strands as well. It is particularly notable that it would apply to anybody who is discriminated against because of their association with an older person, for example. If your caring responsibilities for an older person require you to request a change to your working arrangements, there would be an obligation on the employer to consider it, just as though you were in one of the protected grounds yourself. You can also imagine it happening in other forms—unfortunately, we still hear tales of racial abuse aimed at mixed race couples as they walk down the street and that sort of thing. Associative discrimination is a massively important consideration, and we are particularly pleased that it is included.

[7] We are more disappointed about the retirement age of 65 being retained and about the poor provision for younger people. Undoubtedly, the area that we would probably want to focus on in discussion with the Minister is that of the specific duties set out on the second page, as that is where the Welsh Assembly Government really has the opportunity to make an impact.

[8] **Ann Jones:** Thanks very much for that.

[9] We have all worked on the equal pay campaign; you more than most. Why do you think the provisions in the Bill will succeed in achieving equal pay between women and men when previous legislation has failed?

[10] **Ms Bennett:** I am not sure that we are confident that the provisions will close the gap. The commission, along with others, has been calling for stronger measures to address the equal pay problem. Nevertheless, the proposed measures here are a forward move.

[11] I think that I have distinguished between the public and the private sectors. In the public sector, there has been, since around 2007, a specific duty in England to consider taking action to address the causes of the pay gap. We and you, collectively, and the various Ministers felt ‘considering taking action’ to address the cause of the pay gap to be a very weak obligation, so the Assembly decided a couple of years ago that it would not adopt that as the specific duty for the public sector in Wales, but that it would do something stronger. We are therefore extremely optimistic that the specific duties—which, as you know, the Assembly Government will be writing for Wales—will include something more than ‘considering taking action’. We expect to be consulted imminently by the Equality and Human Rights Division about the Minister’s and the division’s thoughts. Dr Gibbons will undoubtedly have more to say to you when you meet him on 16 June.

[12] With regard to the private sector, the Bill envisages some reporting and transparency about the width of the pay gap, which is complicated to measure. I know that Harriet Harman has been keen on having a single figure for a private sector organisation, and that could be the average of what women earn and the average of what men earn. The difficulty with that is that it does not necessarily tell you much. It can reflect a small number of very high wages. Nevertheless, it is something, and the power of it is in signalling the Government’s determination and that it is not giving up on this battle to close the pay gap.

[13] **Jonathan Morgan:** The Equal Pay Act 1970 is clear in its intention. For decades now, local authorities in Wales in particular have struggled to meet their obligations under that Act. The Health, Wellbeing and Local Government Committee has examined this issue and it found that some local authorities in Wales simply have not adhered to the provisions of the Act, despite having received money from the Assembly Government to close the gap between male and female workers. How will the provisions in this Bill strengthen the Equal Pay Act, which was pretty clear anyway?

9.40 a.m.

[14] **Ms Bennett:** As I said, the opportunity to strengthen the public sector lies in the hands of the Welsh Assembly Government, because its role is to write the specific duty on equal pay. The Assembly Government can decide what and how many specific duties there should be and when to introduce them. We are expecting the consultation on the specific duties in England to be launched in June and Dr Gibbons will undoubtedly have more to tell you about the timing when he comes before the committee. In England, I envisage that they would expect the specific duties to be in place and formalised before the general election. There is a longer timescale in Wales, but the Assembly Government can introduce the new specific duty at any time. So, it is the Welsh Assembly Government’s responsibility to identify the action that it wants the Welsh public sector to take. It will consult with us as the commission, which it is obliged to do under the Act, and then consult much wider on how demanding and stringent it wants to be.

[15] **Jonathan Morgan:** I am still uncertain as to how this needs to be strengthened. I accept that the Assembly Government will have the right to pull together those duties that it wishes to put on local authorities, for example, but there is already a legal duty on local

authorities in black and white, which is not being adhered to. So, how do we strengthen that when the duty already exists?

[16] **Ms Bennett:** Technically, the entitlement is for an individual woman to be paid equally to an individual man. As that is the entitlement, it can be challenged only by an individual woman taking an individual case against a named man. That has been the difficulty in enforcing the Equal Pay Act 1970. We hope and anticipate that, in Great Britain, the specific duties will place a new obligation on an employer to deliver equal pay. At the moment, the entitlement has been on the individual to receive it, which is challenged by an individual case. If the employer is told that they must carry out a pay audit and do this and that, and that they should put it in the public domain, it opens the door for enforcement action elsewhere on transparency and scrutiny.

[17] It comes down to how the duty is written. If it says ‘You must do these things’ and then a local authority does not do what is prescribed in the specific duty, there will be enforcement action which will be enforceable through the methodologies identified in the new Welsh Assembly Government legislation. That is why it is incredibly important that it relates not only to equal pay, but also to procurement and the involvement of disabled people and other disadvantaged people, and so on.

[18] **Eleanor Burnham:** What is your view on the need for a change in the law to ensure that we have forward strategies in real pay equality, as opposed to the historical pay-offs that we have seen in the north-east of England? I have talked to some local authorities, and there seems to be some variation in the interpretation of the law. There is also a difference in engagement between the trade unions, which are naturally trying to do their best to get pay-offs for a considerable number of people. Do you not think that this is the time to have a steer, so that local authorities can do the forward planning properly? As local authorities do not have the money to make the historical pay-offs, we must look forward and not keep looking back, because the example of north-east England tells us that if we do not do that, we will never get out of this hole.

[19] **Ms Bennett:** The north-east of England tells every employer ‘Do not end up in a tribunal case on equal pay—do what you need to do to resolve it’. If a woman can demonstrate that she has been illegally underpaid and has not received equal pay, she has a legal entitlement to six years’ worth of backpay. That is the difficulty. If you say ‘As of tomorrow, this is the pay structure—the men are here and the women will come up to this level, everyone will say, ‘These particular people are now at this level’, so there is a ready-made case that there should be six years’ backpay, which is why there is a necessity to address the backpay situation as well as the forward situation. It is a complicated picture, as you know. Three quarters of the local government workforce are women, overwhelmingly congregated in casual, short-term jobs. Until we can address those inequalities, it will be difficult for the majority of women workers to have a sufficiently strong base to get promoted and compete with men on a more equal basis, which is what will address the pay gap, because it is about gender stereotyping as much as anything else. If you have a short-term, unreliable, low-paid job, you cannot afford to organise sustainable childcare and you cannot afford to travel to a new job. So, as you said, it remains an intractable problem.

[20] **Ann Jones:** We could spend the rest of the time allotted for the meeting on equal pay, and certain committees have done so, so we will move on. Joyce will ask the next question.

[21] **Joyce Watson:** Good morning, Kate. I read your paper with interest and I thank you for it. You mention in the commission’s paper that it is critical to involve inspectorates in ensuring improved outcomes in relation to equality and human rights. That said, how do you think that the Equality and Human Rights Commission will work with other organisations, including the various audit and inspection bodies in Wales, to ensure that the Bill is

implemented successfully?

[22] **Ms Bennett:** There is an inspectors' forum, which a range of organisations, including the Wales Audit Office, Estyn and others, attend, so the bodies that inspect the Welsh devolved public sector already meet. As a commission, we have had two meetings with that group and have a forthcoming meeting on 2 July. We need to talk to that group, which is very interested in driving up performance and quality in the Welsh public sector. Our suggestion is that you cannot drive up performance and quality without ensuring equality. If you do not have sustainable systems in place that enable people to compete for jobs and secure them on an equal basis, you are unlikely to get the best person for the job, and that means that you are unlikely to be in the best position to deliver public services. We are optimistic, on the basis of the early discussions that we have had, that we will be able to ensure that people in those audit and inspection bodies have an increased understanding of equality and its importance when they go around from day to day. We are not necessarily expecting any formalised protocols between us and the inspection bodies, although that is a possibility, and it is clear that, for the majority of the content of the Equality Bill, we would be the regulator and the enforcement body, whereas the Wales Audit Office is responsible for improvement in general terms in health and local government.

[23] **Joyce Watson:** That leads me on quite nicely to a follow-up question. What do you think the challenges will be for your organisation in carrying out your enforcement role?

[24] **Ms Bennett:** The challenge is to work out which actions will have the most lasting and substantial impact. There is a range of ways that we can carry out an enforcement role. It can be through taking individual cases, like the case of Sharon Coleman, which I mentioned earlier, namely strategic cases that can change the law and have an impact on others. We can also work to encourage better practice by the public sector and also the private sector on sharing experience and so on. Ultimately, if public authorities are in breach of their public duty, especially the specific duties that have yet to be determined, we would want to intervene.

9.50 a.m.

[25] On the role that audit organisations may play, if they become concerned that organisations need some help to deliver on equality, we would become involved. We would prefer, initially, to help organisations that are seeking to do the right thing to achieve that. If we find that there are intractable problems and breaches of the legislation, we might ultimately need to step in with some enforcement action. There is a range of options open to us, such as formal investigations, inquiries, legal interventions, judicial review and so on.

[26] **Joyce Watson:** To pursue that, coming back to equal pay in a way, I suppose, we have to wait for the specific duty and see what comes out of that, and we also know that some local authorities, although they have done a review of single status, will not currently announce whether they have any obligations under the current legislation or not. Assuming that the specific duty places—and we hope that it will—an onus on them to actually do something, are you saying that if those authorities, whichever and wherever they might be, will not disclose the figures that tell the public or their employees about their obligation to deliver, you would go in and take appropriate action?

[27] **Ms Bennett:** It depends on the nature of the duty. If the nature of the duty is to publish certain information within a particular timescale and it was not done, I expect that we would be able to make some kind of intervention. It may not be as clear as that. If you are trying to require public authorities or anyone else to do something that you can tell in absolutely black and white terms is either legal or not, you have to be explicit about what you want to happen: publish this information; publish the statement of the average male and

female wage, which could be £280 and £340. That does not actually get you very far. You could take action if those two figures had not been published. To a degree, our experience of the public sector duties, up until now, is that in order to be absolutely clear as to what you wanted authorities to do, there were requirements to collect particular data and publish it, and to have a scheme and to publish it. The difficulty is that you may do all of those things—and, hopefully, they will drive change; our experience is that they have driven change—but they may not necessarily drive change. If what you want to say is, ‘We want you to address your pay problem’, it is then very difficult to tell whether it has been addressed, and fully and adequately addressed, and addressed quickly enough. There is a real dilemma between ensuring absolute clarity as to whether the law has been broken or not, which might involve an equal pay tribunal case, which takes a long time, and ensuring that sufficient priority is being placed on carrying out the equality measure, which is what this very important consultation on what the specific duty on equal pay will be about. The more precise it is, the less certain it is to address specific problems.

[28] In order to address the equal pay problem and get to grips with it, we need leadership, commitment, determination and joint working by the political leadership, the executive leadership, the staff and the trade unions. Our suggestion is that this is worth doing, because in doing that you will empower your workforce. You will get to a position where local government and the health service, which will have increasing problems to deal with—because, as the recession bites, and more disadvantaged people are in difficulty, they will turn to public authorities—will have to be as efficient as they possibly can in delivering services to the public.

[29] **Ann Jones:** Jonathan is next. We need to move on and make progress.

[30] **Jonathan Morgan:** The paper that you submitted, Kate, refers to particular concerns about certain age groups: those aged 65 and those under 18 years of age. Could you expand on your concerns about the limitations of the Bill with regards to those particular age categories?

[31] **Ms Bennett:** In terms of the older group, the prime concern is that it will continue to be possible for an employer to require someone to retire at the age of 65. We think that there should be greater flexibility. I know that you have Age Concern Cymru and Help the Aged in Wales giving evidence next, and I am sure that that will be on their agenda. Of greater concern to us is the exclusion—or less coverage than we would have expected—of young people’s issues in relation to the delivery of goods, facilities and services. The public duty to promote equality of opportunity across all strands—race, gender, disability, sexual orientation, age, and religion—does not apply to those aged under 18. Therefore, in relation to the delivery of public and private services for under 18s, because of the lack of a specific duty—which again comes back to the Assembly—young people cannot say that they have been discriminated against in a shop, or in the provision of mental health services, for example, and that, if they were adults, they would get better services.

[32] **Jonathan Morgan:** The Bill does not make it unlawful to harass someone because of sexual orientation in a range of settings, including the provision of services for pupils. I would imagine that you have concerns about that, and I wonder whether you could offer a view as to why the Government chose not to address that in the Bill. It would seem an obvious thing to do, particularly for pupils in the school setting.

[33] **Ms Bennett:** I was extremely surprised to see that both religion and sexual orientation are excluded from third-party harassment. We have made some suggestions for amendments to the Bill, which recently had its Second Reading, I believe. We do not have great expectations of big changes to the Bill, either in making it weaker or stronger; we think that it will probably remain pretty much as it is. I would emphasise that it will replace 116 bits

of legislation, and that in itself will make this simpler for organisations and individuals to understand, which is important.

[34] **Jonathan Morgan:** Are there any other areas of inequality that you do not feel have been addressed by the Bill?

[35] **Ms Bennett:** No. You can always do more, but the Bill does many of the things that we want. We are pleased about the extension of all-women shortlists and measures to encourage other groups to put themselves forward into politics. We are pleased that the public sector is included across the strands, and that discrimination against transgender people is explicit. We are pleased that civil partnership is explicitly included alongside marriage in relation to grounds for discrimination, and with the inclusion of issues relating to pregnancy and maternity that have previously been covered by employment Acts. The socio-economic stuff is quite tentative, but you have to start somewhere, and we hope that this legislation will address a couple of areas, and create some opportunities, because it is not the legislation that will address inequality—it is the Government, employers and individuals who use the legislation. We hope that the Bill, when enacted, will prompt action on a couple of areas, particularly in relation to discrimination against people with mental health problems and inadequate services for women at risk of violence.

[36] **Eleanor Burnham:** The body that runs the Assembly—and I mention this in case anyone listening is not sure—is the Assembly Commission, but it is not listed in Schedule 19 as a public authority subject to specific equality duties. Do you think that it should be?

[37] **Ms Bennett:** There are some issues with the list, both in the detailed content and in the question of who gets to add names to that list within Wales—whether it is the Welsh Assembly Government, Ministers of the Crown, or whether both have to agree. That is something that I am sure Dr Brian Gibbons will be taking up with Westminster colleagues: clarifying the content of the list, and the issue of who gets to add names to it.

[38] **Eleanor Burnham:** So your view is that additional bodies should be added to the current list. Do you want to specify which ones?

[39] **Ms Bennett:** I think that the one that you mentioned may be one. There may be others. I am looking hopefully at my colleague—is the Wales Audit Office on that list at the moment?

[40] **Mr Lambert:** No.

10.00 a.m.

[41] **Ms Bennett:** So, organisations such as the Wales Audit Office do not seem to be on the list. We should not get too concerned—I suspect that it is just that it is not a comprehensive list. We had quite a lot of difficulty with whether the lists with regard to the duties to promote equality were up to speed under the previous legislation. I think that there will be opportunities for the lists to be amended. A key issue might be whether it should be the Welsh Assembly Government that gets to add to those lists, as opposed to Westminster.

[42] **Janet Ryder:** You have talked quite a bit about the specific duties that the Minister will be able to impose on local authorities. Would you say a little more about how broad the scope of those duties that the Welsh Ministers could impose on public bodies is? Are there any aspects of inequality that could not be dealt with through those powers? I would like you to expand on the scope that they have to bring those in and to tell us what they could do and what you would like to see them do, and elucidate a bit more what is in your paper. Could you clarify whether there are more things that they could do?

[43] With reference to the answer that you gave Jonathan on harassment or bullying in school on the basis of religion or sexual orientation, given that schools fall within the remit of local authorities, could the Minister impose a duty on local authorities to do something about that, even if that is not included in the Bill?

[44] **Ms Bennett:** As I understand it, the Welsh Assembly Government can devise, following a procedure including consultation with us and others, specific duties that would apply only to the devolved public sector—in other words, not the police or the Driver and Vehicle Licensing Agency, for example—and which would relate to the protected grounds, which are the six that we are familiar with, plus marriage and civil partnership, transgender, and pregnancy and maternity. That is a very wide, open and non-time-limited scope. So, the things that we would be expecting to be covered in the early round of consultation would be issues such as equal pay and the involvement of disabled people. We are hoping that there will be something about procurement—the European Commission has just launched a new consultation on procurement—and there may well be things that we have been familiar with in the past, such as equality schemes, data collection, and equality impact assessment. All of this is open for discussion. We have done some research on a British level and in Wales on what has been particularly successful in the duties, and the involvement of disadvantaged groups in setting policies has come out as being very significant. Everybody seems to be strongly committed to the equal pay issue. This is where the issue about children, which I was speaking to Jonathan about, comes in. You can expand on the protected grounds, but if there is no protection in the main legislation, it will not be possible for the Welsh Assembly Government to build on that.

[45] The other thing that I would say is that we should not imagine that every single thing that you might want to do in relation to equality will be covered in this Bill. There are all kinds of things that the Assembly does with regard to children, and I am mindful of the good work that was done in relation to guidance on uniform policies, and that then related to children of different religious beliefs and what their entitlement would be with regard to wearing what they want to wear in school, and that guidance is already different from that in England. So, there are quite a lot of things that can be done there.

[46] We are hopeful that there will be a duty on procurement, but work can also be done elsewhere on that with other legislative opportunities. So, equality can be promoted other than through the fallout of the Equality Bill.

[47] **Janet Ryder:** You said that the Minister could introduce a new specific duty at any time, but that has to be within the parameters of the Bill. Is that right?

[48] **Ms Bennett:** Yes.

[49] **Ann Jones:** Eleanor would like to come in before you ask the next question, Janet. We are running out of time, Eleanor, so we need to be quick.

[50] **Eleanor Burnham:** You have just explained very clearly that there are bodies to which these duties would not apply, and you mentioned the police and the DVLA. Does this not show that this is the time to devolve some of these bodies? The public is going to be confused, and employees will not realise that there is a different requirement in those bodies—

[51] **Ann Jones:** I think that that is a wider subject. [*Laughter.*] Time is pressing, so we will move on. We will save you from answering that one, Kate.

[52] **Janet Ryder:** Are there any powers in the Bill that you think would have been

exercised more effectively by Ministers in Wales than at Westminster? Should the Ministers have asked for any further powers?

[53] **Ms Bennett:** The Bill gives significantly more powers to the Welsh Assembly Government to promote equality in the public sector than it had previously. The duty to promote race equality was a single duty across England, Wales and Scotland, as was the duty to promote equality on the grounds of disability, and all that was in legislation written at Westminster. The duties, across all nine strands, can now be in legislation written in Wales and in Scotland. It is a very significant new power and responsibility. We have talked for the past 10 years—I certainly have—about the cross-party consensus on equality and how people have worked together very well here. There is now this power that did not exist in the past. The challenge for us all is to work together to maximise the impact of the new powers and responsibilities that are available to the Assembly.

[54] **Ann Jones:** Kate, we have run out of time, but thank you. You have stayed longer than intended, and I know that you have other engagements to attend. There are further questions that we wanted to ask you, and so, if we were to write to you with them, could you supply us with your answers? Given that the Equality Bill is a major reform of equality law—and you said that it would bring together 116 pieces of legislation—is there anything that you feel is not included in the Bill but should be? If so, could you let us know?

[55] **Ms Bennett:** Yes, I will certainly do that. We would be happy to answer your questions. We are going to watch the next part of this meeting from the gallery. We cannot stay until 11 a.m., but we will be up there for a while keeping an eye on you.

[56] **Ann Jones:** Thank you. We will send you a copy of the transcript.

[57] It is now my pleasure to welcome our next set of witnesses to the committee: Martyn Jones, Graham Francis and Rhian Davies. We thank you for your papers. Stonewall Cymru was unable to attend this session, but it has submitted a paper, which Members will have seen in their packs. As there are three of you, I will move straight to questions, if that is okay. If there is anything that you feel you want to add to your paper, perhaps you could weave it into your answers. Members are very good at bringing other subjects into their questions, so I am sure that you will learn how to do it from them.

[58] I will start with the first question. In which ways do you expect the Bill to strengthen previous legislation aimed at improving the lives of disabled people? Rhian, I suppose that that would be one for you to start with.

[59] **Ms Davies:** I apologise that we did not submit a paper beforehand, but I have one now that I can circulate. One thing that I have found is that the disability aspects of the single Equality Bill are very complex, because some new definitions have been introduced on disability-related discrimination. Not having a legal brain, it has been quite a challenge to get to grips with it.

10.10 a.m.

[60] There are things in the Bill that we welcome. It has sought to address the situation that arose from the judgment in the Mayor and Burgesses of London Borough of Lewisham v. Malcolm, which was about indirect discrimination. The definition of ‘disability’ has been addressed somewhat, which was always a bone of contention for the disability campaign. Under the Disability Discrimination Act 1995, you had to prove that you were a disabled person according to a list of capacities. That list has now been done away with, but the need for the disability to be substantial and long-term, that is, lasting at least 12 months, has been retained. So, people with fluctuating or episodic conditions, such as mental health conditions,

might not be protected by the Bill. My colleagues from Age Concern and Help the Aged will touch on this, but older disabled people will enjoy protection given that the age limit has now been extended.

[61] **Ann Jones:** Gentlemen, do you have anything to add to that? I see that you do not.

[62] **Janet Ryder:** Could you just clarify one thing? Anyone on the autism spectrum or with Asperger's syndrome is not classified as having a disability because those conditions are not quantifiable. However they are lifelong conditions and many people need lifelong support because of them. Will this Bill deal in any way with the discrimination that those people often suffer, not only in childhood but in adult life?

[63] **Ms Davies:** From a disability rights perspective, we have always wanted to see a definition that was based more on the social model of disability, so recognising the barriers that people face rather than their actual impairments. There may be some protection in the Bill, as the words 'discrimination arising from disability' have been introduced. People with conditions such as autism or Asperger's syndrome might exhibit particular behaviours that might result in their being put in a different corner in a restaurant, for example. That would be because of their behaviour not because of their perceived disability. There is also the issue of people who are perceived to be disabled or who are associated with disability, and that has been brought into the Bill and so may well be covered. The Disability Discrimination Act 2005 recognises that, because of people's particular characteristics, you need to offer support, services, make adaptations or remove a physical feature, which is not the case with other equality groups. There is a notion of asymmetry: the Disability Discrimination Act is asymmetric, because it gives protection to disabled people but not to non-disabled people. Our concern is that that notion of asymmetric legislation is not quite as robust in the Equality Bill as it is in the DDA. There is a lot of wriggle room.

[64] **Ann Jones:** Gentlemen, did you have anything to add to that answer?

[65] **Mr Jones:** Clearly, there is a strong alignment between the disability movement and age-related issues. We welcome the fact that the Equality and Human Rights Commission and the Bill seem to recognise that there is a theoretical ability to transpose the social model of disability to the social model of ageing. It seems to be recognised within the Bill that older people's ability to engage is very much about how society allows them to engage, not about their physical attributes.

[66] **Ann Jones:** The Bill does not expressly cover methods of communication such as British Sign Language, or even Braille. Do you have any concerns about that? Should they be included in the Bill?

[67] **Ms Davies:** Do you mean people's access to those, and their having a right of access?

[68] **Ann Jones:** Yes. If British Sign Language or Braille is your method of communication, should that be covered in the Equality Bill? It is not covered at the moment, so should you have the right to have access to Braille or British Sign Language?

[69] **Ms Davies:** It comes down to the issue of 'reasonable adjustments', and an employer, a service provider or an educational service provider responding to the needs of individuals if they need to access information in Braille or large print, or if they want to communicate using sign language. So, I suppose that it depends on whether that counts as a 'reasonable adjustment'. I would not want to speak for colleagues from the deaf movement, but they might feel that we should be increasing non-deaf people's ability to communicate in sign. So, they may not see a 'reasonable adjustment' as an appropriate response to being deaf.

[70] **Jonathan Morgan:** Looking at the potential impact of the Bill for younger people and particularly older people, in what way do you think the Bill will strengthen previous legislation aimed at improving the lives of older people?

[71] **Mr Francis:** We are pleased that age is now included as an equality strand to the same extent as the more traditional strands. So, building on previous legislation, we feel that this is fairly groundbreaking in some of its provisions and its impact on older people. I do not know whether Martyn wants to add anything.

[72] **Mr Jones:** Absolutely. It has been an essential campaigning point for the age lobby for many years. In many ways, age as an equality strand was not at the same level as race, disability and gender were, so Harriet Harman's announcement that the Bill would include an age equality duty was welcomed by us.

[73] **Jonathan Morgan:** Are you concerned about the retention of the compulsory retirement age of 65? That is not old, is it?

[74] **Mr Jones:** No, it absolutely is not. We are glad to hear that the EHRC will also continue to seek amendments to the Bill to ensure that that occurs, as will we. We welcome the Bill for its inclusion of the age equality duty, but we perceive it to be a missed opportunity to repeal the mandatory retirement age.

[75] **Mr Francis:** The existence of the mandatory retirement age in this legislation contradicts many of its other provisions. We would be particularly concerned in times of recession and in the current economic climate about older people, who, evidence suggests, tend to be hit harder by problems when there are employment issues and redundancies. The problem with the mandatory retirement age is that it probably compounds that, because we know that employers will inevitably take it into account when making employment decisions. It might be thought of as an easy time to let those who may be close to reaching 65 go. The knock-on effect of that is that we know that many older people will never get back into work after that happens.

[76] **Ann Jones:** Joyce wanted to come in on that point.

[77] **Joyce Watson:** I want to raise two points. I understand fully what you are saying, but employers do not have to let people go. They can choose to force them out, but they do not have to let them go. I was trying to think through the reasons why this has been retained and I am sure that you have also asked many of these questions yourselves. My question is twofold. Is it not a safety net for those who need to retire because they have done many years of hard physical labour and they need the option to go if they want to? It is therefore a law that tells them that they may go if they want to. Secondly, is the reason for keeping a mandatory retirement age tied up with receiving your pension at the age of 65?

[78] **Mr Francis:** That second point is possibly a reason why the Government has decided to retain that in this legislation. On the first point, it is important to allow people to have a choice about when it is appropriate for them to retire, perhaps when they feel they need a change from the working lifestyle that they have had for a number of years. However, that is not the same issue as keeping it in there. The main issue that we have is that employers could force people to retire at that age if they choose to operate the mandatory retirement age. As you say, they are not obliged to, but that is our concern about removing the choice for older people. People who are well capable of continuing in work and who may want to do so for financial or health and wellbeing reasons, or who want to continue to contribute to society through a working position may be forcibly consigned to the scrapheap due to an arbitrary policy that an employer may operate.

10.20 a.m.

[79] **Mr Jones:** When the chronological age of 65 was identified, that was clearly placed in line with the existing pension age, which, as you know, is up for review at the moment. The other point is that there is no mandatory retirement age in the United States, Canada and Ireland; employees there clearly reach a negotiated individually based arrangement.

[80] **Joyce Watson:** I just want to dig beneath this and I assume that you have done the same, which is why I am asking you, as the experts. I am concerned that people do not have a choice to work or not to work, but I am more concerned about people being forced to work longer and later in life, if they are not physically able to do so, with all the related problems, or if they do not want to because they left school at 15 and feel that 50 years of working is enough. I have done a lot of work with Prime Cymru, so I take your points on board, but I am trying to get at what evidence you have managed to gather. You have cited countries where there is no mandatory retirement age and you say that this is about individual agreement. I am not absolutely convinced that individual agreement is always on the side of the individual who needs as opposed to the individual who gets. So, how does that play out? What is your evidence to show that the majority of people get their pensions? Are there mandatory state pensions in those countries?

[81] **Mr Jones:** I am not able to answer that question on the employment situation in other countries as regards pensions and so on. From our point of view, removing a mandatory retirement age from the legislation would have to be matched by a commitment that people could retire and pick up their state pension as and when they like, which I believe is currently the case in employment. We do not believe that removing the ability from employers to force people to retire at a certain age would then remove that choice from people to make an informed decision on when it is right for them to give up work. Those provisions already exist. On how that ties in with pensions, as Martyn says, the age happens to be the same at the moment, but that may be reviewed. If the pension age were reviewed, we would expect the mandatory retirement age, if it still existed, to be reviewed at the same time, but it will be reviewed in 2011 anyway. However, we feel that that is too long for people to have to wait to remove what we feel is clear age discrimination in the legislation.

[82] **Jonathan Morgan:** I have a question for Rhian. Looking at the provisions in the Bill, are you concerned about the exclusion of young people under the age of 18 with regard to the provision of services, facilities and goods, for example?

[83] **Ms Davies:** Yes. Often, disabled children are born with that impairment, so that is something that happens from birth onwards. They should have the same opportunities, rights of access and rights of redress as anyone else. We would like to see a disabled child being able to take a case in his or her own right. At the moment, that has to be done by a parent or guardian. On education, in particular, if your parent is your local education authority, even if you feel that you do not get adequate support at school, you are unlikely to take your local authority to court. So, there are a few issues relating to disabled children and general access to goods and services and educational provision, which we would like to see more firmly addressed.

[84] **Joyce Watson:** I have a question for all of you. How will the Bill improve the lives of older people, people from BME communities and disabled people? What are you hoping that this Bill will do to improve the prospects of those people?

[85] **Mr Jones:** We very much welcome the introduction in the Bill of multiple discrimination and the acknowledgement that that is a truer representation of people's real experiences in life, particularly from an older people's perspective. By adopting the idea of multiple discrimination, you are able to factor in the experiences of older gay and lesbian

people and older minority ethnic people, so that you actually see people as full individuals.

[86] **Mr Francis:** To carry on with the age perspective, as we have outlined in the paper, there are several areas where we think that this could have a real beneficial effect for older people in avoiding discrimination in the provision of goods, facilities and services, including industries such as the financial services industry. At the moment, people fairly regularly come up against mandatory blocks that are purely based on their date of birth, so that they are no longer able to get insurance or hire a car when they may be easily physically able to do that. The second aspect that we identified as being one of the key bits is in the provision of health and social care, where age discrimination currently exists in the policies of both areas. A number of doctors even admit that they would like to be able to tailor treatments closer to the needs of older people but, due to policies that exist in the NHS across the UK, they are prevented from doing so. In social care, that manifests itself in the level of funding that local authorities will give to care for an older person, which is substantially less than for a younger person with similar needs in some cases. Those are two key areas where we think that there could be a real beneficial effect from removing this discrimination against older people.

[87] **Ms Davies:** I think that public procurement should be used more. I think that the function of public procurement can be important because a lot of services provided to disabled people are contracted out to private companies and I think that that can be really important. Another issue is about tribunals being empowered to make wider recommendations, because, often, what happens is that, if an individual takes a case against their employer, things have got so bad that they have probably already resigned. Also, if the case goes in favour of an employee and they have already left the organisation, it means that the chances are that whatever was learned will not be properly addressed. Whatever was learned from the case needs to be applied across the employment setting as a whole, so that you are not losing learning. It is pretty traumatic to take a case as far as a tribunal, and to lose the learning from that and for employers to be able to wipe their hands and walk away if the employee has left is not going to help—in our case—disabled people who are seeking employment and hoping to retain employment in future.

[88] **Eleanor Burnham:** It is 40 years since equal pay legislation was brought in in the UK and we still hear it being discussed now—I listened to a discussion on it on *Women's Hour* only a few weeks ago. We know that legislation alone does not get rid of inequalities. In your view, what arrangements in the Equality Bill will have the desired effect and move the issue on so that the pay gap will eventually and finally be closed?

[89] **Ms Davies:** We have heard about the gender pay gap, but I would particularly like to raise the issue of the disability pay gap. It has been shown that disabled men are paid 11 per cent less than non-disabled men, whereas disabled women are paid 22 per cent less than non-disabled men. I understand that questions have been asked in the House of Commons on this. Apparently, disabled people working in Government departments are paid up to a third less than their non-disabled colleagues. That is obviously in Whitehall. I would be interested to know if that is read across into the Assembly. Of course, many disabled people are more likely to get employment in the civil service or local government. There could be a massive injustice hidden below the surface.

10.30 a.m.

[90] Obviously, with regard to your point, simply having legislation does not necessarily address the problem. Disabled people are twice as likely to be economically inactive and twice as likely to have fewer qualifications than non-disabled people, so attention must be paid to why disabled people face such discrimination and exclusion from economic activity.

[91] **Eleanor Burnham:** That is quite stark.

[92] **Mr Jones:** With regard to the older people's perspective, we too welcome the inclusion of the socioeconomic measures in the Bill, as they will have a huge affect on older people. Quite often, when poverty is assessed at policy level, its true effects on older people are not fully recognised in conjunction with older people's true contribution to the economy. The inclusion of that aspect in addition to the duty that will cover older people is to be welcomed.

[93] **Eleanor Burnham:** That brings us back to the issue that Joyce quite rightly pointed out about flexibility, should there be the economic need for an older person to work. Do you think that this Bill will be sufficiently robust, or will you have problems still?

[94] **Mr Jones:** That takes us rather cyclically back to the retention of the mandatory retirement age. That has such a significant economic effect on older people and their ability to make choices about their own lives that we need to continue to campaign on that issue.

[95] **Eleanor Burnham:** Certain sectors of society, such as judges, can continue to work until they are 70 years of age.

[96] **Ann Jones:** Jonathan, you have a supplementary question.

[97] **Jonathan Morgan:** Chair, it is a question for you, I think, as opposed to a question for Rhian and our other guests. In the light of the information that Rhian has just provided about the pay gap between disabled and non-disabled people, particularly in the public sector, can you, as Chair of this committee, write to the Permanent Secretary to ask for some detailed analysis of the civil servants working for the Assembly Government, and to the Presiding Officer to inquire about employees of the Assembly Commission? If the gap exists in Westminster, we need to make sure that it does not here. We ought to take a strong and firm view on that.

[98] **Ann Jones:** That is fine. I will ask the clerk to find a way of doing that. We will certainly take your request on board and write something after today's meeting.

[99] **Joyce Watson:** I have a brief extra question, which brings us back to Eleanor's question, for the people who are representing Age Concern about the pay gap. The figure of 40 years would mean that those are the very people affected. Forty years ago, equal pay was recognised as being crucial to the wellbeing of the client group that you are particularly concerned about, and it is their cause that you are championing. Those people are now collecting their pensions, such as they are. My question is very pointed. In your experience, as advocates for those people, how many—men or women—have suffered disproportionately as a consequence of not having had equal pay? Have you looked at the breakdown of who those people?

[100] **Mr Francis:** I do not think that we have a huge amount of evidence on that, to be honest. The concerns that we are aware of through Age Concern organisations, locally and nationally, go across the spectrum of older people's experiences, and they are not particularly related to the gender pay gap. I am not particularly aware of any evidence that we have sought, either on the UK level or in Wales, on that basis.

[101] **Mr Jones:** It is clearly an area that requires scoping and further research. As you mentioned, Prime Cymru has extensive statistical data on the employment status of older people in Wales. We would always look to those data to assist us in gathering data in this area.

[102] **Janet Ryder:** I wish to change the emphasis slightly and look at the powers that

Welsh Ministers will acquire. The Bill will place a duty on the public sector to promote equality. That is one of the big shifts in it in some respects. It also gives Welsh Ministers the power to determine the public sector equality duties that will be imposed on public authorities. What will be the potential advantages of that?

[103] **Mr Jones:** We wish to have further guidance as to exactly what the Assembly's powers are in the development of the specific duties for Wales. Clause 147 states that there will be a facility for an extension of powers and duties, and that an extension of relevant authorities within Wales is given to Welsh Ministers. This is potentially hugely beneficial, but it is still a very muddy area and I am not exactly clear what that will mean.

[104] **Mr Francis:** Picking up on the evidence that you received from the Equality and Human Rights Commission earlier, we have the same reading of these powers, which appear to be fairly broad and wide ranging. So, we would be looking to work with the National Assembly for Wales and the Welsh Assembly Government to discuss exactly what this could mean for Wales, and the duties to be imposed. However, as Martyn said, we look forward to receiving more information on that and on the direction that the Welsh Assembly Government sees this going in the future, and how it believes it could implement the powers.

[105] **Mr Jones:** I wish to re-emphasise Kate Bennett's comments about the Equality Bill not being the only strategic driver for equality in Wales, especially from an older people's perspective. We wish to know how the Bill will be implemented in the Welsh policy framework that already has an older people's strategy for Wales, and a national service framework with clear guidance on age discrimination. It is about taking a joined-up approach to the new Bill.

[106] **Ms Davies:** I think that involvement under the disability equality duty has been one of the success stories. However, more needs to be done: there should be more engagement of disabled people and more support for the organisations that represent them, so that they can engage effectively with public bodies in looking at policies and strategic priorities. That is important.

[107] I also agree that there is a key role for inspectorates, such as the Wales Audit Office, education inspectorates and others, to regard equality as a key aspect of public service performance, because equality is a key driver for improvement in public services, so, for me, that would be another advantage.

[108] **Janet Ryder:** Given what you have just said about seeking greater clarification on the powers that will come under the Minister and how the Minister might be able to use those in Wales, have you made any assessment of the Bill as a whole and of whether the powers that might be created in the Bill would be better exercised by the Minister in the Assembly, rather than the Minister in Westminster, which have not been transferred already?

[109] **Mr Francis:** Without being too political, our general view as an organisation would be that exercising power closer to people in Wales would be beneficial. In general, we would be quite positive about those wide-ranging powers being devolved to the National Assembly, particularly in light of what Martyn said previously about the existing strategies. The fact that the Government of Wales Act 2006 has a clear equality duty means that the Welsh Assembly Government and the National Assembly for Wales have fairly forward-thinking equalities processes in place already, and we feel that these extra powers would fit quite nicely with those and give a good, wide-ranging way to tackle various problems in Wales.

[110] **Mr Jones:** As we have the strategy for older people, as Graham mentioned, the constitutional commitment via the Government of Wales Act 2006 and the appointment of an older people's commissioner, Wales is very much perceived in England and internationally as

being ahead of the game on age equality. So, we would very much like to see the Equality Bill complementing what we already have.

[111] **Eleanor Burnham:** I asked Kate Bennett a question on the Assembly Commission, as opposed to the other commission, which is not listed in Schedule 19 as a public authority subject to the equality duties. Do you think that it should be?

10.40 a.m.

[112] **Mr Francis:** On this, we probably take the same view as Kate Bennett of the EHRC earlier, in that the list, although fairly extensive, does not seem to cover everything that it could cover. The major issue, as was outlined earlier, would be who has the power to add to that list and whether that could be done in Wales by the Ministers of the Welsh Assembly Government or whether it would have to be referred to Westminster and go through a lengthy procedure.

[113] **Eleanor Burnham:** Is that because you believe that there should be additional bodies on this list?

[114] **Mr Francis:** If it is to cover public authorities and bodies, the list should be as extensive as possible, covering all employers or all public bodies in Wales.

[115] **Eleanor Burnham:** Do you have anything to add?

[116] **Ms Davies:** I agree with that. One thing to add is that, under the single Equality Bill, political parties are able to do more to support disabled people and others to seek selection, whether it is to Parliament or the Assembly, so it is important that the Assembly buildings and the functions of the Assembly are fully accessible to those who are representing us as they exercise their duties. I would be interested to know the case for excluding it.

[117] **Joyce Watson:** I think that this next question is a nice one. It is the almost final question from me. We have received evidence from the Equality and Human Rights Commission, which says,

[118] ‘Clarifying these laws will help businesses and public services avoid confusion, and provide consistency across different groups rather than risk the growth of a “hierarchy of rights”’.

[119] Are you in agreement with that and do you think that it eliminates the danger of a hierarchy of rights?

[120] **Ms Davies:** One of the strengths of the Bill is that it brings all the strands together in one piece of legislation and gives a level playing field to the different groups, because one of the challenges in the equality field is that there has been a perceived hierarchy: some issues have been more ‘equal’ than others. That is a strength, provided that we do not lose any of the distinct characteristics of people of a particular identity. I have mentioned disability, because of the asymmetric nature of existing legislation, which I would not want to lose because of an imperative to bring everything under one roof. The idea of ‘the same but different’ needs to be incorporated within the Act as a whole.

[121] **Mr Jones:** We, as the age lobby, would make similar comments. We warmly welcomed age as a relevant characteristic in the Bill, but, on a more holistic level, on frictions between the equality strands, age was almost a cinderella equality strand, standing outside the core areas or the perceived core areas of race, disability and gender. The point that we would make on this relates more directly to disability and the duties when they come in, because we

would very much want to see the Bill raising its level to the disability equality legislation and the measures that it contains, rather than finding the lowest common denominator that makes things easiest for the public authorities to comply with. There was recognition that the Disability Discrimination Act 1995 had learned from previous pieces of equality legislation and was much fitter for purpose in comparison with its predecessors. That is where we would like the starting point of the Bill to be.

[122] **Joyce Watson:** Do you think that the provisions in this Bill adequately take account of the fact that people have a range of characteristics, and that some people could be subject to discrimination on multiple grounds?

[123] **Ms Davies:** My understanding is that the Government is planning a consultation on intersectional or multiple discrimination, which will be crucial. I think that it would be a missed opportunity if we do not address the fact that we are all complex individuals and our identities are such that sometimes it is difficult to distinguish whether it is a race or a disability issue, for example. I look forward to seeing the consultation, which I think could be very exciting and prove to be a groundbreaking piece of work. I certainly welcome that and hope that whatever materialises from it will find its way into the Bill.

[124] **Ann Jones:** Does anyone have anything to add?

[125] **Mr Jones:** We alluded to multiple discrimination in the previous response. We support what Rhian stated.

[126] **Ann Jones:** Finally, the Equality Bill is a major reform of equality law. Kate mentioned that 116 items of legislation can be rolled into one on this; therefore, it will be considered a landmark and we have to get it right. Is there anything additional that you think should be included in the Bill that is not already there? You can go away and think about it, if you like, and come back to tell us.

[127] **Ms Davies:** We already see genetic discrimination in things like insurance and so forth as we know more and more about the human body and conditions such as Alzheimer's disease and coronary disease. In talking about twenty-first century issues, the Bill should respond to that.

[128] **Mr Francis:** As we have already talked about it at some length this morning we will not go back into it in detail, but the major issue for us has more to do with something that is currently in the Bill that should be taken out, namely continuing with the mandatory retirement ages and so forth.

[129] **Ann Jones:** Does any Member have a question? I see that you do not. Therefore, I thank all three witnesses for coming in to share their thoughts with us on this matter. The Minister for Social Justice and Local Government will attend our next meeting, during which we will put a set of questions to him. We will certainly make our observations on this Bill. Your contribution today has helped us no end. Thank you very much.

[130] That is it for today's meeting. The next meeting will be held on 16 June, during which Brian Gibbons will be in attendance.

[131] **Janet Ryder:** I will arrange for someone to substitute for me at that meeting.

[132] **Ann Jones:** Okay, thank you. The meeting is now closed.

*Daeth y cyfarfod i ben am 10.48 a.m.
The meeting ended at 10.48 a.m.*