



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

**Y Pwyllgor Is-ddeddfwriaeth  
The Subordinate Legislation Committee**

**Dydd Mawrth, 9 Hydref 2007  
Tuesday, 9 October 2007**

**Cynnwys**  
**Contents**

- 4 Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau  
Introduction, Apologies, Substitutions and Declarations of Interest
- 4 Offerynnau ac Offerynnau Drafft na Chafodd y Cynulliad ei Wahodd i Roi Sylw  
Arbennig iddynt o dan Reol Sefydlog Rhif 15.2  
Instruments and Draft Instruments in Respect of which the Assembly is Not Invited to  
Pay Special Attention under Standing Order No. 15.2
- 5 Offerynnau na Chafodd y Cynulliad ei Wahodd i Roi Sylw Arbennig iddynt o dan Reol  
Sefydlog Rhif 15.2  
Instruments in Respect of which the Assembly is Not Invited to Pay Special Attention  
under Standing Order No. 15.2
- 6 Y Mesur Arfaethedig ynghylch Gwneud Iawn am Gamweddau'r GIG  
(Cymru) 2007—Trafodaeth â Chymdeithas y Cyfreithwyr  
NHS Redress (Wales) Measure 2007—Discussion with the Law Society
- 13 Unrhyw Fusnes Arall  
Any Other Business

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**

Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Alun Davies	Llafur Labour
Andrew R.T. Davies	Ceidwadwyr Cymreig Welsh Conservatives
Paul Davies	Ceidwadwyr Cymreig Welsh Conservatives
Irene James	Llafur Labour
David Lloyd	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Sandy Mewies	Llafur Labour
Janet Ryder	Plaid Cymru The Party of Wales
Karen Sinclair	Llafur Labour

**Eraill yn bresennol**  
**Others in attendance**

Jonathan Morgan	Aelod Cynulliad, Ceidwadwyr Cymreig Assembly Member, Welsh Conservatives
E. Kay Powell	Cyfreithiwr ac Ymgynghorydd Polisi, Cymdeithas y Cyfreithwyr Solicitor and Policy Adviser, The Law Society

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

Keith Bush	Cyfarwyddwr Gwasanaethau Cyfreithiol Director of Legal Services
Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Joanest Jackson	Cynghorydd Cyfreithiol Cynorthwyol Assistant Legal Adviser
Olga Lewis	Dirprwy Glerc Deputy Clerk
Chris Reading	Clerc Clerk

*Dechreuodd y cyfarfod am 8.15 a.m.  
The meeting began at 8.15 a.m.*

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

[1] **David Lloyd:** Mae'r awr benodedig wedi cyrraedd. Croeso i chi i gyd i gyfarfod diweddaraf Pwyllgor Is-ddeddfwriaeth y Cynulliad. Croesawaf fy nghyd-Aelodau ac E. Kay Powell, o Gymdeithas y Cyfreithwyr. Mae Jonathan Morgan, Cadeirydd y Pwyllgor ar y Mesur Arfaethedig ynghylch Gwneud Iawn am Gamweddau'r GIG (Cymru), yma hefyd i wrando ar y trafodaethau. Croeso i gyd-Aelodau, swyddogion ac aelodau'r cyhoedd.

**David Lloyd:** The appointed hour has arrived. I welcome you all to this latest meeting of the Assembly's Subordinate Legislation Committee. I welcome my fellow Members and E. Kay Powell from the Law Society. Jonathan Morgan, the Chair of the Proposed NHS Redress (Wales) Measure Committee, is also here to listen to our deliberations. I extend a warm welcome to fellow Members, officials and members of the public.

[2] Os bydd argyfwng, bydd y tywyswyr yn eich hanfon at yr allanfa agosaf. Nid ydym yn disgwyl argyfwng ond hynny yw natur bywyd ar adegau. Gellid defnyddio'r clustffonau i glywed cyfieithiad ar y pryd ac i addasu lefel y sain a gall y tywyswyr hefyd ddangos i chi sut i'w defnyddio os bydd rhaid. Rhaid diffodd ffonau symudol yn llwyr am eu bod yn amharu ar yr offer cyfieithu. Mae cyfieithiad ar y pryd, o Gymraeg i Saesneg, ar gael ar sianel 1 a gellid clywed y cyfraniadau yn yr iaith wreiddiol ar sianel 0.

Should there be an emergency the ushers will indicate the nearest exit. We are not anticipating an emergency, but such is life at times. The headsets can be used to listen to the simultaneous translation and to amplify the sound and the ushers can also show you how to use them, if necessary. All mobile phones should be switched off entirely because they interfere with the translation system. The simultaneous translation, from Welsh into English, is available on channel 1 and contributions in the floor language can be heard on channel 0.

[3] A oes unrhyw ymddiheuriadau? Gwelaf nad oes.

Are there any apologies? I see that there are none.

8.17 a.m.

### **Offerynnau ac Offerynnau Drafft na Chafodd y Cynulliad ei Wahodd i Roi Sylw Arbennig iddynt o dan Reol Sefydlog Rhif 15.2**

#### **Instruments and Draft Instruments in Respect of which the Assembly is Not Invited to Pay Special Attention under Standing Order No. 15.2**

[4] **David Lloyd:** Yr eitem i'w drafod yw SLC46, y Rheoliadau Lles Anifeiliaid a Ffermir (Cymru) 2007. Dyna'r rheoliadau a gyflwynwyd o dan y weithdrefn gadarnhaol. Joanest, a ydych am ddweud rhywbeth amdanynt?

**David Lloyd:** The item under discussion is SLC46, the Welfare of Farmed Animals (Wales) Regulations 2007. Those are the regulations put forward under the affirmative procedure. Joanest, do you have anything to say about them?

[5] **Ms Jackson:** Nid wyf am ddweud unrhyw beth yn arbennig, dim ond mai dyma'r rheoliadau cyntaf sydd wedi dod o'n blaenau o dan y weithdrefn hon.

**Ms Jackson:** I do not wish to say anything in particular, just that these are the first regulations to have come before us under this procedure.

[6] **David Lloyd:** Diolch, Joanest. A oes unrhyw un am wneud sylwadau? Gwelaf fod pawb yn hapus.

**David Lloyd:** Thank you, Joanest. Does anyone wish to comment? I see that everyone is content.

8.18 a.m.

**Offerynnau na Wahoddir y Cynulliad i Roi Sylw Arbennig iddynt o dan Reol Sefydlog Rhif 15.2**  
**Instruments in Respect of which the Assembly is Not Invited to Pay Special Attention under Standing Order No. 15.2**

[7] **David Lloyd:** Mae SLC47 o'n blaenau, sef y Rheoliadau Addysg (Diwygiadau i Reoliadau ynghylch Cydnabod Cymwysterau Proffesiynol) (Cymru) 2007, SLC48, Gorchymyn Cyngor Addysgu Cyffredinol Cymru (Swyddogaethau Ychwanegol) (Diwygio) 2007, ac SLC49, Rheoliadau Grantiau a Benthyciadau Dysgu y Cynulliad (Addysg Uwch) (Cymru) (Diwygio) (Rhif 2) 2007. Maent oll o dan y weithdrefn negyddol. A oes gennych sylwadau, Joanest?

**David Lloyd:** SLC47 is before us, which is the Education (Amendments to Regulations regarding the Recognition of Professional Qualifications) (Wales) Regulations 2007, SLC48, the General Teaching Council for Wales (Additional Functions) (Amendment) Order 2007, and SLC49, the Assembly Learning Grants and Loans (Higher Education) (Wales) (Amendment) (No.2) Regulations 2007. They all come under the negative procedure. Do you have any comments, Joanest?

[8] **Ms Jackson:** I have nothing really to add. The first two, SLC47 and SLC48, implement European legislation regarding the recognition of professional qualifications. SLC49 adds another category of student who is eligible to receive support from the Assembly; that is, people who are doing distance-learning courses. That instrument also corrects some errors in the previous higher education grants and loans legislation that has been before the committee.

[9] **Eleanor Burnham:** Gan ein bod yn dilyn trefn newydd, a wnewch chi fy atgoffa o rywbeth, Gadeirydd? Gan fod y rheoliadau hyn o dan y weithdrefn negyddol, deallaf na fyddant yn cael eu trafod mewn Cyfarfod Llawn yn y Senedd.

**Eleanor Burnham:** As we are working under a new procedure, will you remind me of something, Chair? As these regulations are under the negative procedure, I understand that they will not be discussed in a Plenary meeting in the Senedd.

[10] **David Lloyd:** Na fyddant; ond, fel Aelod, gallwch ofyn am drafodaeth arnynt neu ofyn iddynt gael eu dirymu o fewn 40 diwrnod. Dyna sut mae'r system yn gweithio. Mae pŵer anghyffredin gennych, Eleanor.

**David Lloyd:** That is correct; however, as a Member, you may request a debate on them or ask for them to be annulled within 40 days. That is how the system works. You have an unusual power, Eleanor.

[11] **Eleanor Burnham:** Diolch yn fawr iawn, Gadeirydd.

**Eleanor Burnham:** Thank you very much, Chair.

[12] **David Lloyd:** Dyna ni—yr ydym i gyd yn falch. A oes unrhyw sylwadau eraill? Gwelaf fod pawb yn hapus i basio'r rheoliadau hynny.

**David Lloyd:** There we are—we are all pleased. Are there any other comments? I see that everyone is happy to pass those regulations.

8.20 a.m.

**Y Mesur Arfaethedig ynghylch Gwneud Iawn am Gamweddau'r GIG  
(Cymru) 2007—Trafodaeth â Chymdeithas y Cyfreithwyr  
NHS Redress (Wales) Measure 2007—Discussion with the Law Society**

[13] **David Lloyd:** Prif drafodaeth y bore yma yw'r drafodaeth bellach ar y Mesur Arfaethedig ynghylch Gwneud Iawn am Gamweddau'r GIG (Cymru) 2007 a heddiw cawn dystiolaeth gan Gymdeithas y Cyfreithwyr. Fel cyflwyniad, bydd pawb yn ymwybodol bod y Mesur hwn yn caniatáu iawn i gael ei ddarparu heb ddwyn achos sifil. Dyna'r meddylfryd sydd y tu ôl i'r Mesur hwn yn y lle cyntaf. Bydd Aelodau'n cofio trafodaeth yn y Siambr pan oedd cydnabyddiaeth a chytundeb trawsbleidiol bod hwn yn sylfaenol yn beth da. Yr oedd pawb yn cytuno gyda'r syniad o gyflymu'r broses o sicrhau ymddiheuriad ac iawndal mewn achosion llai difrifol heb ymyrraeth neu gymorth cyfreithwyr.

**David Lloyd:** The main discussion this morning is the further discussion on the NHS Redress (Wales) Measure 2007 and today we will hear evidence from the Law Society. By way of introduction, you will all be aware that this Measure allows for redress to be provided without taking a civil case. That is the thinking behind the Measure in the first instance. Members will recall the discussion in the Chamber when there was acknowledgement and cross-party agreement that this was fundamentally a good thing. Everyone agreed with the idea of speeding up the process of ensuring an apology and redress in less serious cases without the interference or help of lawyers.

[14] Bydd pobl yn ymwybodol ein bod wedi penderfynu cymryd tystiolaeth fel pwyllgor ar briodoldeb y pwerau i wneud Gorchmynion a rheoliadau sy'n cael eu darparu o dan y Mesur arfaethedig hwn. Fe gofiwch i ni gymryd tystiolaeth gan Alan Trench o Gymru Yfory yr wythnos diwethaf. Heddiw, hoffwn gyfarch a chroesawu Kay Powell, sy'n gyfreithiwr ac yn gynghorydd polisi i Gymdeithas y Cyfreithwyr, i ddarparu tystiolaeth gerbron a hefyd i ateb cwestiynau. Byddwch wedi cael copi caled o gyfraniad Cymdeithas y Cyfreithwyr i'r drafodaeth ar y Mesur hwn. Yn naturiol, byddwch i gyd wedi ei ddarllen yn drwyadl ac yn gallu seilio eich cwestiynau arno. Felly, gyda'r geiriau hynny, Kay, cymrwch y llawr.

People will be aware that we have decided to take evidence as a committee on the appropriateness of the powers to make Orders and regulations provided under this proposed Measure. You will recall that we took evidence from Alan Trench, from Tomorrow's Wales, last week. Today, I welcome Kay Powell, who is a solicitor and policy adviser to the Law Society, who will provide us with evidence and also take questions. You will have received a paper copy of the Law Society's contribution to this discussion on this Measure. Naturally, you will all have read it in great detail and can base your questions on that evidence. So, with those words, Kay, the floor is yours.

[15] **Ms Powell:** I will start by pulling together the main points and explaining to you the interests of the Law Society. The Law Society Wales responded to the Measure committee. As a consequence of those comments, I have been invited here today. The Law Society plays an active role in law reform and the effective operation of legal institutions and access to justice in England and Wales.

[16] Since devolution, the Law Society's Wales committee has monitored the progress of devolution in Wales and its impact on the profession as well as monitoring the programme of legislation of the National Assembly for Wales. We disseminate information on the activities of the Assembly to the profession in Wales and to inform solicitors in England of the impact of Welsh legislation. We lobbied on the Government of Wales Bill in relation to access to legislation, as problems of access to subordinate legislation made by the Welsh Assembly Government had arisen. That is part of a better law-making programme, which looks at the process of law-making through the preliminary and consultation stages through to the

publication and implementation of new legislation.

[17] Our aims in the third Assembly include ensuring that our members have access to legislation and that the public has access to legal advice. We will give evidence to the Measure committee next Tuesday on specific matters, but here I outline the issues that we feel arise out of the lack of any limitation on the power granted to the Government under the Measure. Members are now aware that the proposed Measure, while outlining power to establish redress arrangements, does not make a single substantive provision. Every provision will require explanation and determination through regulations. This is our main concern—access to the law is compromised by the lack of solid provisions.

[18] We are discussing the first Measure to be made by the National Assembly for Wales. The new Standing Orders set out the Measure procedure and prescribe the content of an explanatory memorandum. The explanatory memorandum addresses the points required, but does not provide satisfactory commentary. For example, on costs, we have a variation from a saving of £750,000 to a cost of £3 million. It is stated that these figures must be treated with caution as they are very early estimates.

[19] Two further comments in the explanatory memorandum raise concerns. For example, the Government admits in paragraph 4.1 that there has been no formal consultation on the policy objectives and that that will take place in 2008 subject to the Measure being passed. In referring to the point that the Measure provides a wide-ranging power to make consequential amendments to Acts of Parliament, the Government asserts that this is needed for when the policy—to be set out in the regulations—is fully developed and consulted upon. In isolation, this is a careless approach to law-making. As no draft regulations are available to consider alongside the proposed Measure, decisions regarding what provisions should appear in the primary legislation, as opposed to the regulations, are more difficult to make. Many questions of principle remain outstanding, such as what NHS services are covered. The framework power and thus the Measure are wider than the Act for England, in that primary care services can be included. However, there is no indication of whether they will be. Questions also arise over secondary services such as laboratory services and breast cancer screening and whether these will be included.

[20] The Government has established an advisory body drawing together members of the health and legal professions to look at the redress arrangements, but the group has not made any useful contributions yet. It could not have been anticipated that the Government would introduce its first proposed Measure in an area on which it has no clear policy and on a subject that has not previously been subject to consultation and scrutiny by stakeholders. The approach to law-making in Wales has followed an open and inclusive process. The Government has prided itself on its consultation procedures, but this Government proposed Measure does not follow this strong practice. As it stands, Welsh Ministers would be given full discretion under the proposed Measure. Such a provision could have been included, and indeed it was, in the Westminster Act.

[21] Law-making powers have been devolved to the National Assembly so that the Assembly can do just that, and not so that it can devolve power to the Executive without robust scrutiny of Government policy and stakeholder views. Ultimately, it will be the individual Assembly Members who will experience the consequences of any deficiencies in the Measure and the later regulations as the public will approach Assembly Members when problems arise. Our message is that the Measure has been brought to the National Assembly too early. The Government is acting with undue haste to propose its first Measure at the expense of good law making. The Government is obviously keen to exercise its power to propose legislation; the obligation now falls to the National Assembly to exercise the new law-making powers in a responsible way, knowing that the first laws will set a precedent and create a historic milestone in devolution in Wales. I hope that this outline of the underlying

issue is helpful.

[22] **David Lloyd:** Diolch, Kay, am y dadansoddiad trwyadl a graenus hwnnw. Mae Keith Bush, prif gynghorydd cyfreithiol y Cynulliad, wedi ymuno â ni. Gwelaf fod pawb yma yn cymryd nodiadau ar y manylion yn awyddus. Gwahoddaf gwestiynau gan Aelodau.

**David Lloyd:** Thank you, Kay, for that thorough and expert analysis. Keith Bush, the chief legal adviser to the Assembly, has also joined us. I can see that you are all keenly taking notes on the details. I invite Members' questions.

[23] **Eleanor Burnham:** What exactly do you envisage to be the best way forward in view of your concerns and the weaknesses that you mentioned?

[24] **Ms Powell:** The Government already has in place a system to consult. As I said, there has been no formal consultation with stakeholders. We, and the British Medical Association, for example, are concerned that that consultation has not taken place. Because of the nature of the redress arrangements and the nature of legislation that we put in place, the regulations are exceedingly important, because that is where we will have the detail of the types of cases that will be caught, if they are indeed small cases, as is the intention, although there is nothing currently in the Measure to restrict that. Therefore, the draft regulations need to be laid at the same time as the Measure, and it is only by doing that that we, as a nation with close links and a fairly rigid national health system, will be able to draw together the primary, as opposed to the secondary, legislation. Moving into the third Assembly, it is important that the National Assembly gets that right from day one and effectively exerts its authority in terms of the legislature turning policy into law, as opposed to allowing the Government to continue with its policy and to change it over time without any checks.

[25] **Eleanor Burnham:** We also have ahead of us the minefield of negotiation with Westminster to get approval. Have you discussed this with anybody beyond Wales? For instance, have you been invited to the Select Committee on Welsh Affairs to give your opinion?

8.30 a.m.

[26] **Ms Powell:** We have not. This Measure will go through the National Assembly, so we are in the arena of the scrutiny of that. Our real concern is that this needs to be right the first time. A process is also developing on how the Measures are going to come into the Assembly. We are aware of the Standing Orders, and of the process through the Standing Orders, but, in terms of how that is undertaken on the ground, we are expressing our concerns early on in this matter.

[27] **David Lloyd:** Diolch. A oes gwestiynau eraill?

**David Lloyd:** Thank you. Are there any other questions?

[28] **Sandy Mewies:** You have expressed quite a few concerns there, but they seem to be about the detail as much as anything else. You say that it is not specific in the detail, for example in relation to the costings of up to £3 million. Do you not think that being too prescriptive might restrict the Measure in some way, or do you think that it has to be more prescriptive in what it does? You also mentioned that the covered services are not detailed enough. You gave two examples, but are there other services that are not covered in your opinion? What needs to be done and what needs to be included in that detail in your opinion? You mentioned some things in your paper, but can you be a bit more specific in what you think needs to be done?

[29] **Ms Powell:** As I mentioned, we are at a stage where the National Assembly, as a



legislature, is turning policy into law. So, the Government has effectively brought to you—I hesitate to say a half-baked policy—a policy that is supported by you, as you have had cross-party discussions in Plenary, and supported by the British Medical Association and the Law Society, in terms of the concept and the idea of having a redress arrangement. The operation now is for the National Assembly to know its position in terms of making legislation and not simply, as the current Measure does, to pass over the regulation-making power to the Government.

[30] This is a very difficult first Measure for the National Assembly to deal with, because, of course, it comes under a framework power derived from a Westminster Act. That framework power was originally given to the pre-2007 National Assembly, but the power is now given to Welsh Ministers. So, this Measure need not have occurred, but, following the Order-making powers, a conversion Order now places it in the arena of the National Assembly. So, the National Assembly is not in the position that it will be in future for making Measures, which will be following legislative competence Orders. We are in a situation today where most of the provisions would naturally fall within regulations. However, because we have the legislature and the system of bringing forward the regulations, it is important that the Government does not try to ignore the legislature by saying that there is a lot to be decided and that everything can, and possibly should, pass over to us.

[31] So, from the point of view of law making, it is important for the National Assembly to be live to all the current issues, including finance, which is a major concern in terms of policy and law making. You need to be aware of the provisions' costings before you can approve, or at least sensibly discuss, giving power to the Government. As the provisions are so broad, there will be no way outside the first regulations for the National Assembly to easily restrict the application. As you say, the papers show that the redress situation is there for the smaller claims; it is not for the major claims or for claims where there is an issue or question of negligence liability. So, it will be easier to describe them, but we feel that they have not even been described in the papers that support the request for the Measure.

[32] You mentioned the various services covered. This is a much broader matter for Wales because of the broader definition of services and of the tort liability, and there are people other than healthcare professionals who may be brought within the redress arrangements. So, we cannot even look to England to see where people are being brought in. We can only look to what the Welsh Assembly Government has given us, and our view is that that is too light for a sensible decision to be made in relation to the Measure by the National Assembly as a whole.

[33] **Janet Ryder:** I accept your concerns about where power should lie—with the Government to bring forward these Measures or with the Assembly in retaining more power—but, were the Government to come forward with those definitions of the sizes and types of claims and the services to be included, would the Law Society be more amenable to seeing this go through or would you still have concerns?

[34] **Ms Powell:** In its current form, I feel that the National Assembly is not able to make a true decision on where the primary legislation should extend to. There are no draft regulations, so there is nothing to draw alongside the current Measure. Were there draft regulations, they could, effectively, be passed as a package, so that the National Assembly would be aware of where the first stage was, for example, for the size of the claims that would be caught. So, on day one, the National Assembly would be passing over to the Government a system that it understood and everyone would be aware of where that system began from, whereas, currently, the Government, effectively, has carte blanche. It will come back for the regulations to be scrutinised, but the danger is that you will miss, in terms of the Measure, ensuring that all Assembly Members are aware of what the Government is able to do under the Measure, simply because it is so broad currently. I am not saying that it needs to be

restricted and that there need to be conditions; I am simply saying that, currently, there is not sufficient information or policy from the Government to support the Measure as it stands.

[35] **Janet Ryder:** You would be happy, then, if that clarification came forward.

[36] **Ms Powell:** Were that to come forward and be considered, and if it did support it, then we would take a view at that stage, but our point is that, in terms of good law-making, the Government has not led with good and solid policy in this area, in order to lead the Measure through the National Assembly.

[37] **Janet Ryder:** I will play devil's advocate, if I may, and be a little cynical. All the way through this paper, there seems to be mention of recourse to advice from solicitors. My understanding of the reasons behind introducing such a system was that, where possible, with small claims and claims that were easily identifiable, it was an attempt to make it a clear system where perhaps we did not even need solicitors and that people would be happy to accept that. Am I being a little too cynical here or is there some vested interest?

[38] **Ms Powell:** Not at all. We have made comments about legal advice, and legal provision—legal aid and so on—is another issue that is not really covered in the policy. The reason for my coming here today is to discuss the law-making process, and the Law Society Wales office has historically been involved. As I said, in terms of the Government of Wales Act 2006, we lobbied very hard in relation to access to legislation, which is access for all. There are also concerns, in relation to access to this legislation, that the provisions in the Measure are not terribly clear. So, if a member of the public wanted to read them, they would not necessarily be clear. We have, in terms of our better law-making programme, a wider public interest in law reform.

[39] **David Lloyd:** Diolch, Janet a Kay. A **David Lloyd:** Thank you, Janet and Kay. Are oes unrhyw gwestiynau eraill? there any other questions?

[40] **Andrew R.T. Davies:** I have a point to raise, if I may. Thank you for your presentation this morning, Ms Powell; it is much appreciated. As a layman, I find that it is always good to get the professional view on things. You use quite strong language in relation to the Measure: 'half-baked', for example—I have never before heard that used around a committee table when something is being commented on.

[41] **Ms Powell:** I apologise.

[42] **Andrew R.T. Davies:** No, it is best to be blunt. From what I heard in last week's evidence and from this week's evidence, it is almost as if the brake should be pulled on this and far more information provided for people to take these issues on board. Both you and last week's witness are very unhappy with what has been put forward. I do not profess to be a legal expert in any shape or form, and we all agree with the sentiment of what is trying to be achieved here, and there is provision, from my reading of the Finance Committee's report, for legal representation. That is an integral part of it—anyone can seek legal advice, free of charge. However, does the Law Society believe that this should be stopped in its tracks and that far more evidence should be brought forward before it progresses any further and there is more blood on the carpet?

8.40 a.m.

[43] **Ms Powell:** We certainly feel that, in terms of the National Assembly's approach to passing a Measure, there is currently insufficient solid policy being led by the Government.

[44] **Andrew R.T. Davies:** So, you would be happy for it to be stopped in its tracks as it

stands. I see that you are nodding.

[45] **Karen Sinclair:** I would not be happy with that, and, let us be fair, the vast majority of people wants the proposed NHS Redress (Wales) Measure and I welcome it wholeheartedly, so I am slightly worried by what you said, Andrew. In 2003, there was full consultation on this policy and the way that we wanted to go. This might not be 2003, but this issue was absolutely and fully explored at that time, so I would hate for people to get the idea that the Measure needs to be stopped, because it does not. It will make a huge difference, because an awful lot of people are not aiming for millions of pounds when they want redress from the NHS; they want an acknowledgement that things went wrong. It is because of litigation that the NHS will not apologise, and because of the morass in which it can find itself through the process of law. You can look at this through a completely different window.

[46] You say that things will not come to Assembly Members, but anything going through the negative procedure can be brought to Plenary. Do you not see that that is a backstop measure that will ensure that there are checks and balances?

[47] **Ms Powell:** It is a backstop measure, but, for example, we touched on the explanatory memorandum, and the issue of redress has been looked at over a period of time, but the Government has not led solid policy in that area—it has referred to various matters. The better approach, in our opinion, would have been to lay the draft regulations with the Measure. As I said, in that case, the debates and so on in relation to the Measure and the first regulations could have occurred side by side; they could have been taken on as a package. Then, the backstop of the affirmative procedure would not have been such a concern, because the initial regulations would have been considered alongside this Measure.

[48] **Eleanor Burnham:** So, you have two concerns. First, you are suggesting that we are giving carte blanche to Ministers, who, in your view, have not done their homework. Are you also concerned about the costings? You mentioned that aspect, so I wondered whether you would like to say a few extra words on that.

[49] **Ms Powell:** I have not looked at the costings in terms of any savings; I have simply taken an example from the explanatory memorandum, where the costings varied greatly and nothing was done in order to try to draw them together. The costing of the new law being made is an issue that should concern the National Assembly when it is giving power to Ministers. However, I cannot comment specifically in relation to costs.

[50] **Paul Davies:** I have a quick point. Is there a wider issue here? Is the Law Society trying to make the wider point that the framework, not just for this legislation but any future legislation, is too broad?

[51] **Ms Powell:** The point in relation to this Measure is that it is very broad. As you said, your witness last week, who is a constitutional expert, was of the opinion that the Measure, as it stands, has the same effect as an Act of Parliament—it is primary legislation—and that it is important that it does not simply pass on power to the Executive. The legislation should be robust and should have been properly considered. That is where defects in the explanatory memorandum and in the policy will have an impact on the legislation that is made.

[52] **David Lloyd:** Diolch yn fawr. A oes **David Lloyd:** Thank you. Are there any unrhyw gwestiynau eraill? other questions?

[53] **Karen Sinclair:** You talked about the lack of clarity in the costings. Are you seriously saying that you think that this Measure could end up costing the taxpayer more money than the present system does?

[54] **Ms Powell:** As I said, I have not studied the costings and I am not aware of specific costs currently in relation to legal cases that are brought. The concern is that that figure is not closer in time or in size. If a broad Measure is made, it then gives the Government power to move beyond what might be considered to be the first case. We are all talking about the type of cases that are currently under the speedy resolution procedure, which are at the £15,000 to £20,000 level. However, that is not covered in the Measure, and because we do not have the regulations, they cannot be tied to that currently either. So, after Christmas, when the policy is made, they could come back with very different figures, and, at that point, it will be difficult to deal with the issues afresh.

[55] **Sandy Mewies:** I think that one of the problems that we have—and it happened in the evidence that we had before us last week—is that you are putting forward a view about costings, and then you are telling us that you have no idea whether or not what you are saying is based on fact.

[56] **Ms Powell:** No; I was saying that I had not studied the costs. I am simply taking that cost as an example of where the explanatory memorandum is unclear. So, it could just as easily be the other examples that I have raised in relation to the services and so on. I hoped not to concentrate too much on the specific costs. I was referring to the fact that the level of costs put forward in relation to this Measure was so broad—it varies from a loss of £750,000 to a cost of £3 million. It was simply an example of where the explanatory memorandum and the supporting policy and evidence are not robust.

[57] **Sandy Mewies:** It still seems to me that implications are being put forward. There is a definite implication in what you have said, and it is being left on the table. You were asked—and I think that it is a fair question—what you thought ought to be done. Are you saying that, even if the concerns that you have raised today are addressed, you will still feel that this ought to be stopped and explored further?

[58] **Ms Powell:** The reason for coming to this committee today is simply to look at the law-making power of the National Assembly and the Measures.

[59] **Sandy Mewies:** With the greatest respect, do you think that it ought to be stopped?

[60] **Ms Powell:** I do not think that I said that it should be stopped.

[61] **Sandy Mewies:** That is the conclusion that I drew from what you said.

[62] **Ms Powell:** I do not mean stopped in terms of it being withdrawn; I mean that the Measure is rushing ahead without support. In my view, the regulations should have been brought forward at the same time as the Measure. The Law Society supports NHS redress as a policy and has supported it in Westminster; I am here today to discuss how we get to those redress arrangements.

[63] **Sandy Mewies:** I would have thought that our job, in many ways, is to facilitate this Measure in any way that we can. If concerns are addressed, we are facilitating the Measure rather than stopping it. Would you agree?

[64] **Ms Powell:** Yes.

[65] **David Lloyd:** A oes unrhyw gwestiwn arall? Nac oes. Diolch, Kay, am drafodaeth hynod ddiddorol, am gyflwyniad graenus ac am ateb y cwestiynau yn dda iawn. **David Lloyd:** Are there any further questions? No. Thank you, Kay, for a very interesting discussion, an excellent presentation and for answering the questions excellently.

8.49 a.m.

### **Unrhyw Fusnes Arall Any Other Business**

[66] **David Lloyd:** Nid oes unrhyw faterion eraill ar hyn o bryd. Er mwyn sicrhau ein bod yn craffu ar bob manylyn posibl—cyfeiriwyd at hyn eisoes—byddwch wedi derbyn adroddiadau o bwyllgorau eraill sydd hefyd yn edrych ar y Mesur hwn. Yr ydym wedi derbyn y linc i drafodaeth y Pwyllgor Cyllid ar y Mesur hwn yn ei gyfarfod ar 20 Medi, er gwybodaeth, sydd i'w ychwanegu at eich gwaith darllen, fel y mae'r broses hon o graffu ar y Mesur hwn yn y pwyllgor hwn ac yn y Pwyllgor ar y Mesur Arfaethedig ynghylch Gwneud Iawn am Gamweddau'r GIG yn mynd yn ei blaen.

[67] Er gwybodaeth, bydd Edwina Hart, y Gweinidog dros Iechyd a Gwasanaethau Cymdeithasol, yn bresennol yn ein cyfarfod yr wythnos nesaf i roi tystiolaeth. Mewn pythefnos, bydd Peter Walsh, prif weithredwr Gweithredu yn Erbyn Damweiniau Meddygol, yn bresennol i roi tystiolaeth ac i ateb cwestiynau. Cynhelir y cyfarfod nesaf am 8.15 a.m. ddydd Mawrth nesaf. Diolch i chi am eich presenoldeb a diolch am y cyfieithu.

**David Lloyd:** There are currently no other matters. To ensure that we scrutinise every possible detail—reference has already been made to this—you will have received reports from other committees that are also considering this Measure. We have received the link to the Finance Committee's discussion on this Measure at its meeting on 20 September, for information, which is to be added to your reading matter, as the process of scrutinising this Measure both in this committee and in the Proposed NHS Redress (Wales) Measure Committee moves forward.

For your information, Edwina Hart, the Minister for Health and Social Services, will be present at our meeting next week to give evidence. In two weeks' time, Peter Walsh, the chief executive of Action Against Medical Accidents, will be present to give evidence and to answer questions. The next meeting will be held at 8.15 a.m. next Tuesday. Thank you for your presence and thank you for the translation.

*Daeth y cyfarfod i ben am 8.50 a.m.  
The meeting ended at 8.50 a.m.*