



Cynulliad Cenedlaethol Cymru
The National Assembly for Wales
Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol
The Communities, Equality and Local Government
Committee
Dydd Llun, 31 Mawrth 2014
Monday, 31 March 2014

Cynnwys
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Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o'r Cyfarfod
Motion under Standing Order 17.42 to Resolve to Exclude the Public from the Meeting

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal, cynhwysir
trawsgrifiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In
addition, a transcription of the simultaneous interpretation is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Leighton Andrews	Llafur Labour
Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Christine Chapman	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Janet Finch-Saunders	Ceidwadwyr Cymreig Welsh Conservatives
Mike Hedges	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives

Gwyn R. Price	Llafur Labour
Jenny Rathbone	Llafur Labour
Rhodri Glyn Thomas	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Nick Bennett	Yr Ymgeisydd a Ffefrir i'w Benodi i Swydd Ombwdsmon Gwasanaethau Cyhoeddus Cymru Preferred Candidate for Appointment to the Office of Public Services Ombudsman for Wales
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Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Sarah Beasley	Clerc Clerk
Leanne Hatcher	Dirprwy Glerc Deputy Clerk
Rhys Iorwerth	Y Gwasanaeth Ymchwil Research Service

Dechreuodd y cyfarfod am 16:11.
The meeting began at 16:11.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Christine Chapman:** Good afternoon and welcome to a special session of the Communities, Equality and Local Government Committee. May I just remind Members and our witness that, if they have mobile phones, they should be switched off, as they affect the transmission? We have had an apology today from Jocelyn Davies.

16:12

Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn Dystiolaeth gyda'r
Ymgeisydd a Ffefrir
Public Services Ombudsman for Wales: Evidence Session with the Preferred
Candidate

[2] **Christine Chapman:** The only item on the agenda today is regarding the Public Services Ombudsman for Wales, and this is an evidence session with the preferred candidate for that office. First of all, may I welcome Mr Nick Bennett to the meeting?

[3] **Mr Bennett:** Thank you.

[4] **Christine Chapman:** Members may be aware that, in line with the Assembly's public appointment procedures, shortlisted candidates for the office of Public Services Ombudsman for Wales were interviewed by a panel comprising of Jocelyn Davies, as the Chair of the Finance Committee—Jocelyn, as you know, is a member of this committee—Claire Clancy, clerk and chief executive of the National Assembly, and Jim Martin, Scottish

Public Services Ombudsman. The panel was also supported by Assembly Commission staff and Green Park recruitment consultants. Mr Bennett has been selected as the interview panel's preferred candidate for the office of Public Services Ombudsman for Wales, and he has been invited to attend today's session with the committee in advance of his formal nomination by the Assembly on Wednesday.

[5] Before I ask Mr Bennett to make a few opening remarks, I would like to congratulate him on behalf of the committee on being the preferred candidate. There is a series of questions that this committee would like to ask you. So, first of all, Mr Bennett, could you just make a few brief opening remarks before the Members put some questions to you?

[6] **Mr Bennett:** I can, Chair. I would prefer to start in Welsh, if I may.

[7] Diolch, Gadeirydd. Mae'n ffrainc cael dod yma gerbron y pwyllgor fel yr ymgeisydd dewisol i fod yn Ombwdsmon Gwasanaethau Cyhoeddus nesaf Cymru. Rwy'n meddwl ei fod yn gyfle i gyfrannu at welliannau yn y gwasanaethau cyhoeddus yn ystod cyfnod anodd, heriol. Rwyf eisiau adeiladu ar y gwaith da y mae Peter Tyndall wedi ei wneud yn y swydd. Rwy'n gwybod hefyd yr ydych chi eisiau i mi sôn am fy ngweledigaeth am y swydd.

Thank you, Chair. It is a privilege to appear before the committee as the preferred candidate for the post of Public Services Ombudsman for Wales. I believe that this is an opportunity to contribute to making improvements to public services, during what is a challenging and difficult period. I want to build on the good work done by Peter Tyndall in the post. I also know that you want me to discuss my vision for the post.

16:15

[8] I think that you also want me to refer to my vision for the post. First of all, it is important not to throw the baby out with the bathwater. The current vision for the ombudsman's role, I think, is a robust one. It talks about accessibility, fairness, a learning culture, the effectiveness of the post and the need to be a good employer and so forth. So, the key themes that I would like to add to that, given that we will be looking at a new corporate planning period very shortly, would be around how we could really test access for the citizen—certainly the most vulnerable citizens in Wales—and then also the impact of the service for complainants, namely individual complainants, as well as the broader community of service users across Wales. There are several ways in which we can do that, but, for me, I would want to see a methodology that looks, first of all, at innovation—what have we learned, and what can we glean from the nine years, or almost a decade, that the ombudsman's office has been in existence? I know that there has been some innovation—perhaps 10% of complaints are now dealt with through the quick-fix procedure. However, it is likely that there will be an ongoing increase in the amount of complaints going through the office, so it is about what more we can do to make sure that we are fit for the future.

[9] I think that timeliness is a critical issue, and I know that there is a good story currently in terms of timeliness and the way in which complaints are handled. However, we are living in an increasingly ageing society, and if you look at some of the case studies that are referred to, and at some of the public interest reports that have been here, I am sure that Members will feel, as I do, that there is something very, very unfortunate where, perhaps, a case has been developed and has been found in favour of a citizen of Wales, but, unfortunately, they have passed away before they have been able to find out that result. So, I think that there is a good, humane rationale behind our ensuring that we are never complacent about timeliness, and, the more that we can do to make sure that those types of occurrences do not occur, then all the better.

[10] The final theme for me, really, would be that of influence. I am very pleased that the

current vision refers to this issue of learning, but I think that there is an awful lot more to do. I think that it is going to be a critical issue as well, in terms of being able to lead and manage the staff within the ombudsman's office. I think that it is vital for them—particularly over the next few years where, perhaps, we are looking at an expectation of more for less, and an increasing throughput of complaints, but with no increase in the resources that are available—that I can give them the assurance that, through their day-to-day roles, we are actually capturing that information and making sure that we try to influence as much as we can, to make sure that those types of public service failures do not occur again.

[11] So, that is really pretty much all from me. I know that you have had a copy of my CV, as well as my statement, so I am very happy to take questions from the committee.

[12] **Christine Chapman:** Thank you, Nick. I am going to go straight to Leighton Andrews for the first question.

[13] **Leighton Andrews:** You mentioned the work of Peter Tyndall. What will be the difference between Peter's approach to this job, and the way that you will approach it?

[14] **Mr Bennett:** I think that we are both very different people, but I have huge respect for Peter and the contribution that he made. I would like to build on his work, particularly in areas that I have already alluded to, such as developing quick fixes—I think that slow justice, in certain cases, can be no justice. However, I think, perhaps, that I have a different background to Peter, and I would like to build on the influencing skills that I have been able to develop over the last few years, and make sure that what we are capturing, in terms of public service failure, is communicated, and is used as far as possible in preventing further service failures for the future.

[15] **Leighton Andrews:** But what do you see as the main kind of developments over the period that Peter was in the role?

[16] **Mr Bennett:** I am sorry—

[17] **Leighton Andrews:** What do you see as the main developments during the period that Peter was in the role?

[18] **Mr Bennett:** I think, first of all, the approach that he took towards improving standard complaints, locally and nationally. Secondly, the action that has been taken in terms of dealing with complaints around conduct at a more local level—I know that that has not quite been adopted by all local authorities across Wales just yet, but I think that that is something that we really need to look at. I guess that an area of incomplete business, but which Peter alludes to—and he alluded to this in his last report as well—is that area of own initiative, in terms of making sure that the ombudsman's role is fit for purpose for the future. I think that Peter made a huge contribution in terms of the international networking of this role, and was struck by the fact that, if you look across the continent, you will see that it is rare to find ombudsmen within Europe who do not have an own-initiative role.

[19] **Christine Chapman:** I think that Janet has a supplementary question.

[20] **Janet Finch-Saunders:** There are concerns across Wales about transparency and accountability, and I know that the previous ombudsman made mention of corporate governance. How do you see your role in strengthening those elements?

[21] **Mr Bennett:** I am very glad that Peter, again, took some action here and had an advisory committee as well as an audit committee to try to strengthen his own corporate governance. Good governance has been an important role for me in my current job. I have

always advocated more dedicated resources to financial and government regulation within the housing field rather than microregulation. I hope that I am able to demonstrate a good track record in that regard. It is almost eight years that I have currently been a chief executive. We have always been able to exercise good governance. I made the current organisation that I work for a charity so that it had to comply not just with company law but with charity regulations as well. I have been a member of the housing regulatory board, which looks at issues of good governance, and I also undertook some work some time ago in Harvard looking at innovations in governance and what good governance and policy making can seek for the future.

[22] **Janet Finch-Saunders:** What about transparency?

[23] **Mr Bennett:** In terms of transparency, certainly under the current standing orders that I operate under, any member of Community Housing Cymru is free to enter our premises and to inspect any piece of paper and any electronic device that we have. I have always operated under the most robust considerations when it comes to transparency.

[24] **Janet Finch-Saunders:** I will just come back with a tiny question on that one, Chair. I meant, across the board, in all public bodies, how will you advocate that that is the principle?

[25] **Mr Bennett:** I think that it clearly is a principle. I would hope that it would be through good leadership and demonstrating that I can meet those behaviours myself that others would be expected to do the same.

[26] **Christine Chapman:** Mark, did you want to come in with a question?

[27] **Mark Isherwood:** Question 3?

[28] **Christine Chapman:** Yes.

[29] **Mark Isherwood:** Oh, we are on question 3 already. We have a script, Mr Bennett. What are your views on Peter Tyndall's concerns that if the current level of maladministration complaints continues to grow the ombudsman's office would struggle?

[30] **Mr Bennett:** I hope that I alluded in my opening remarks that we have to make sure that the ombudsman's role is fit for the future. Considerable progress was made in areas during Peter's period of tenure, but we have to make sure that we are fit for the future, not just in terms of increasing the number of complaints around maladministration, but more generally. Simply, the profile of the office will increase. There is evidence of that over the past three or four years where, year on year, there has been a significant increase in the number of complaints. There is also some evidence that citizens, not just in Wales but more generally, are more likely to complain, perhaps, going forward than they have been in the past, historically. I think that, for those reasons as well, it is really important that we make sure that we are fit for the future.

[31] **Mark Isherwood:** Can you cope? From your understanding of the office, is there the capacity, and if not, what different ways of working could you envisage to address that capacity issue?

[32] **Mr Bennett:** I do not think that it would be wise for me to give a detailed answer to that now, but I can give an undertaking that, certainly in my current role, it was a very different role when I started, in terms of trying to seek change and being able to cope for the future. I always sought the advice of all stakeholders, including those on the front line. So, if there is anything—. I think that I alluded to this in my opening remarks, but it has been nine

years since the office began and I am sure that there is a massive amount of corporate memory and improvements to good practice that can be made through listening to the current staff complement, including those who work very much on the chalk face. So, I give you the undertaking that, certainly within the first 100 days of my being in office, I would be seeking to hear the voices of everyone within the ombudsman's office and to make sure that we listen and learn before we act.

[33] **Mark Isherwood:** Given that, in my experience, many of those maladministration complaints, particularly around corporate governance and public finance, have actually gone to the Wales Audit Office as opposed to the ombudsman's office, is there perhaps work to be done on better agreeing the demarcation lines and distribution of work between the respective oversight bodies?

[34] **Mr Bennett:** Well, I am sure that there is. I came here to see you last Thursday with another hat on, and complexity within public services was one of the themes of the Williams commission. So, it would be a bit rich of me to say only two or three days later that that was not the case.

[35] **Christine Chapman:** Okay, thank you. Jenny is next.

[36] **Jenny Rathbone:** You said that people are more inclined to complain, and I think that I would not disagree. Nevertheless, a 260% increase in health complaints indicates that local resolution of complaints is not as well honed as it needs to be. How would you encourage health bodies to be a bit more proactive in resolving complaints so that you only get the ones where there is no agreement?

[37] **Mr Bennett:** That type of innovation is exactly the sort of thing that we need to be doing, I think, to make sure that we can cope with the pressures of the future. I currently run a trade body. It is a housing trade body, but I would be very concerned if 85% of the complaints coming to the ombudsman's office were coming from my members. I think that, currently, 84% of complaints that come into the office come from either health or local government. So, I would be very happy to work as closely as possible with the Welsh Local Government Association, the NHS Confederation and other key stakeholders to make sure that we can reduce the incidence of those complaints and improve complaints handling more generally. Clearly, given the figures that you have already referred to, there is quite a job to be done there.

[38] **Jenny Rathbone:** How do you ensure that bodies learn from complaints as a tool for improving services? Having investigated something and given an opinion, how would you envisage that learning being embedded in the organisation?

[39] **Mr Bennett:** That is why I would like to put a lot of emphasis on the learning aspect and the influencing aspect of the role, giving that undertaking to staff and other key stakeholders that we will capture the intelligence around where complaints emerge, on a sectoral basis, geographically or on a cluster basis. I can think of nothing more depressing than the fact that that learning does not take place. Unfortunately, if we do not succeed in making sure that learning takes place, we will be finding out about it very soon.

[40] **Jenny Rathbone:** Having chaired health complaints myself under the previous system, I wonder how you would prevent bereaved relatives from pursuing complaints as a mechanism for getting over the inevitable guilt that we all feel when loved ones depart without, obviously, getting in the way of their right to demand an explanation when they think that things have gone wrong.

[41] **Mr Bennett:** I think that that is absolutely the point, is it not? It is not the

ombudsman's role to get in the way of anyone's rights. I would never wish to do that, should I take up the office. However, as I alluded to earlier, I hope that it is an office where you can look at issues around timeliness, certainly, and efficiency in a humane way. However, I do not think that we can fudge the criteria around which someone has a legitimate complaint simply because they are upset or recently bereaved.

[42] **Jenny Rathbone:** However, do you think that there needs to be a mechanism in place to deter vexatious complaints?

[43] **Mr Bennett:** I am happy to look at that. Going back to an earlier answer that I gave, that is something that I would be looking to have more feedback on from current caseworkers—senior caseworkers within the ombudsman's office.

[44] **Jenny Rathbone:** How would you cope with the fact that, sometimes, people are pursuing complaints but may also be thinking of making a claim for compensation—pursuing the health bodies legally for financial compensation? How are you going to ensure that your investigations are completely separate from that process?

[45] **Mr Bennett:** Well, I would want to make sure that all processes within the office were robust and respected confidentiality as laid out in the statute, and that where a citizen has a right to go down that route, that it is protected and not confused by other processes.

16:30

[46] **Peter Black:** There has been some acknowledgement that the complaints systems within a number of health boards are not fit for purpose. I know that Peter Tyndall had already started a series of meetings with local health boards to try to help them to understand how to handle complaints. Is it your intention to carry on that process, and can you see any ways that you could add value to what Peter Tyndall has already done?

[47] **Mr Bennett:** Yes, and I hope so, but obviously I do not know so, in terms of the detail of what Peter did. The intention certainly would be to continue that work. You have to justify within the independence of the office to the individual citizen that your time reflects where the serious complaints exist. As I alluded to earlier, if 85% of the complaints are coming from health or local government, I think that all stakeholders have a right to expect me to be spending 85% of my time making sure that those are areas of continual improvement, and that we see some turnarounds there.

[48] **Peter Black:** Do you think that you have a role in making recommendations to Ministers about how they might improve the process, even if it relates to legislation?

[49] **Mr Bennett:** That is something that I am happy to look at. It is early days, perhaps, for me to be too specific in terms of my role. It is one that is independent of Government, but as I said earlier, I see the influencing aspect as being an important one. If there are specific recommendations that have to be made, and are currently made, either by committee or to public bodies individually, then I do not think that it is a huge step for mankind for us to ensure that those are made available to the Ministers who have responsibilities for those bodies as well.

[50] **Christine Chapman:** Mark, did you want to come in?

[51] **Mark Isherwood:** In Peter Tyndall's final session with this committee, when he had already announced that he was leaving the role, he made statements about the complaints processes in the NHS in Wales being a high priority and a concern, and talked about the need for a change in culture from a legalistic, risk-management approach, where letters received by

complainants are now increasingly focused on standard clauses and paragraphs at the end to cover their legal backs, rather than prevention, conflict resolution, thanking people who raise a problem, and trying to address it with them earlier on through an open dialogue. Do you agree with Peter Tyndall about that? It is a comment that he made publicly to the press about two weeks after he spoke to us. Would that be something that you would wish to prioritise also?

[52] **Mr Bennett:** Given that such a substantial proportion of complaints come to the office from that particular direction, and following on from the pretty clear answer that I gave to Peter in terms of being ready to continue Peter Tyndall's work in that area, then broadly the answer is 'yes'.

[53] **Rhodri Glyn Thomas:** Roeddech yn sôn yn gynharach eich bod yn dymuno gweld system a oedd yn fwy tryloyw a'i bod yn rhwyddach i bobl gael mynediad at swyddfa'r ombwdsmon. Ar y llaw arall, rydym yn gweld cynnydd yn nifer y cwynion sy'n cael eu gosod gerbron y swyddfa yn barod. A oes gwrthdaro yn hynny o beth? Os ydych yn mynd i wneud y system yn rhwyddach i bobl gael mynediad ati, rydych yn mynd i gael mwy o bobl yn ei defnyddio ac yn cyfeirio achosion atoch.

Rhodri Glyn Thomas: You mentioned earlier that you wanted to see a more transparent system and that you wanted it to be easier for people to access the office of the public services ombudsman. On the other hand, we are already seeing an increase in the number of complaints being made to the office. Is there a conflict in that regard? If you are going to make the system easier for people to access, you are going to get a greater number of people using that service and directing complaints to you.

[54] **Mr Bennett:** Mae perygl y bydd hynny'n digwydd, onid oes? Fodd bynnag, rwy'n gobeithio, os gallwn gyfathrebu yn effeithiol gyda phobl Cymru, y byddant yn deall yn well natur y swyddfa, a pham y dylent gysylltu â'r ombwdsmon neu â chorff gwahanol. Cawn weld, rwy'n gobeithio, trwy gyfathrebu'n effeithiol, y bydd nifer y cwynion nad ydynt yn ddilys yn dod i lawr dros gyfnod. Mae'n ddiddorol iawn hefyd, rwy'n meddwl, y gallem weithio gyda phobl mewn cyrff gwahanol i sicrhau bod dinasyddion Cymru yn mynd at y corff priodol, oherwydd eu bod yn deall y gwahaniaethau yn y rolau gwahanol.

Mr Bennett: There is a risk of that being the case, is there not? However, I hope that, if we can communicate effectively with the people of Wales, they will better understand the nature of the office, and why they should contact the ombudsman or another organisation. Through effective communication, I hope that the number of invalid complaints will fall over a period of time. It is also very interesting, I think, that we could work with people in different organisations to ensure that Welsh citizens approach the appropriate body, because they understand the different roles.

[55] **Gwyn R. Price:** I notice that you touched on local authorities; you have been around the local authorities with another hat on lately. Could you give me your views on how effective the current processes are to deal with complaints to the office that local authority members have broken their codes of conduct?

[56] **Mr Bennett:** I think that the Calver case was a very interesting one. I think that that means that there will be change in terms of the way in which we deal with complaints in this area in the future. It has already been alluded to that there will be an increase in complaints more generally, particularly in terms of public services. I think that there was a peak in local government complaints in 2011, which was the last election year. In terms of challenges for the future, I think that 2015, 2016 and 2017 could be quite demanding.

[57] The Calver case was an interesting one where it talks about what happens to be legitimate political expression. I think that we have to respect the fact that there is such a

thing as legitimate political expression, which I am sure that all of you and I have been party to at one time or another. Clearly—Peter’s last statement refers to this as well—there are occasions on which the ombudsman’s office may be used for mischievous, or perhaps even malicious, reasons. I think that, perhaps, we need to build on the case law that exists around Calver in particular to make sure that we are able to minimise time spent in that area, and that time is really devoted to the citizen who, perhaps, is not elected and feels vulnerable and neglected. We have a finite amount of resources; that would be my priority.

[58] **Gwyn R. Price:** I am glad to hear that.

[59] **Christine Chapman:** I have Members who want to ask supplementary questions. Peter first, then Mike and then Mark.

[60] **Peter Black:** You have already alluded to the voluntary arrangement that a number of councils have adopted in terms of member-on-member complaints, whereby the idea is that they are meant to be resolved before they reach the ombudsman’s office. As a member of an authority that has that arrangement, but tends not to take much notice of it, I wonder whether you intend to consider being more robust in terms of member-on-member complaints, maybe insisting that there is evidence that it has gone through that process before you consider it, for example.

[61] **Mr Bennett:** Given my previous answer, I think that that is certainly something that I am going to have to look at.

[62] **Mike Hedges:** On member-on-member complaints and, more specifically, defeated-candidate-on-member complaints, Swansea has a lot of those. I have two questions, really, on two things that have been referred to the ombudsman in the past. One is a member who said, ‘My cat knows more than most people in this room’, and that was sent to the ombudsman. Another member said something along the lines of, ‘The council is full up of the unemployed and the unemployable’. It is what, 10 years ago, was considered to be political debate—*[Interruption.]* Things that, 10 years ago, were considered general debate now seem to be the cause of complaints to the ombudsman. People are a lot more sensitive in local government, and there are some things that I feel could be dealt with by the presiding officer, the mayor or whoever is chairing the meeting telling the speaker to withdraw the remark end up getting a full-scale investigation. Do you have any views on this?

[63] **Mr Bennett:** I do not think that I want to be drawn on an individual case today, but I hope that, through referring to the fact that we have some recent case law in this area in terms of the Calver case in particular, and my views around the way in which—. I think that we have a responsibility to the taxpayer. If we have a finite resource, a significant number of genuine complaints, over nine years’ experience now and some evidence of where people have been a little mischievous, shall we say, anyone would expect a responsible purseholder of public resources to devote those resources to those who are vulnerable, rather than to those who are feeling mischievous. I would seek, within that office, to be responsible, to be reasonable and to exercise the type of judgment that would support those priorities.

[64] **Mark Isherwood:** You refer to the Calver case. When I have mentioned that—I declare that I am married to a county councillor, but I am not necessarily referring to my wife—to councillors, along with its consequences, invariably they had never heard of it, even though your predecessor wrote to all local authority chief executives to cascade that information. Your predecessor expressed concern about two particular cases that had gone on, year after year, remaining open. One of the consequences of those cases, which were in my patch, was that he put the £10,000 limit on local authority funding of legal action where there are complaints—in this case, by officers against members. Again, it turned out that members had not been advised that an equivalent cap had been put on councils in terms of them

‘prosecuting’ the members or bringing a case against members. How do you propose to ensure that, where complaints are made by officers against members or by members against members, the first test is whether it is vexatious or whether there is intent to silence members whose scrutiny is, perhaps, a little bit too close to getting the facts out, as some have alleged, before this turns into a multiyear issue at huge public expense without resolution and with other members afraid to speak openly for fear that they will land on the desk of the ombudsman themselves?

[65] **Mr Bennett:** I alluded earlier to the work that I would like to undertake with the WLGA. Having run a trade body myself, I know the difficulties—it can be very challenging to ensure that individual pieces of information are cascaded in the sector that I represent, which currently employs 8,000 people. I can only imagine the challenge in terms of local government, employing 150,000-160,000 people currently, and the huge number of stakeholders, elected councillors and so forth. It is not something that is going to happen overnight; it can take a while for those messages to percolate. However, I would be very happy to look at ways in which we can continue that communication and ensure that it starts to resonate with people in a way that it has not, perhaps, so far.

[66] **Mark Isherwood:** Would you be concerned if a hypothetical council chief executive was suggesting to members that they might be referred to the ombudsman if they pursued a particular line of questioning?

[67] **Mr Bennett:** That would depend on individual circumstances. I do not think that it is the job of the ombudsman to be concerned about individual debates in councils across the country. The concern of the ombudsman is to ensure that citizens get redress when they have a grievance around public services and maladministration, and that councils broadly stick to their codes of conduct. I think that there is a difference that can be made, though, in terms of the behaviours that one might expect in debate in the chamber and, sometimes, the relationship between officers and elected members. I think that it is fair and reasonable that there is a nuance, if you like, in terms of how those different relationships are managed more generally.

[68] **Mark Isherwood:** I am talking about clarity and the dividing line between scrutiny and alleged harassment, and how we ensure that there is transparency in that for members in particular, who sometimes feel restrained in pushing things as far as they might otherwise.

[69] **Jenny Rathbone:** Clearly, it is not appropriate for your office to get involved in political disputes and disagreements—one candidate trying to get your office involved, somehow, in scoring a hit against another. Nevertheless, in terms of upholding the codes of conduct that we ought to be able to expect of people who are elected, there are three reports by the Wales Audit Office around the setting of the remuneration of chief executives that are now the subject of police investigations. This is indicative of either a failure by councillors to understand what their role should be or an actual decision to ignore what their role should be. How are you going to raise the standards overall? How can your office be used to ensure that there is clarity around Nolan principles?

16:45

[70] **Mr Bennett:** I would hope by perhaps being more robust around getting rid of some of the mischief and really looking at the meat and the type of issues that you have alluded to there. It is important that, in a country of 3 million people, with 22 local authorities, we focus on the delivery of the best possible public services. Clearly, there is an important role that elected members have around exercising proper scrutiny. I think that it is important that we are able to focus on complaints around conduct where members of the public feel that that is not happening, rather than perhaps some of the more mischievous flimflam that can occur. I

would want to assure all of you in this room, in terms of getting drawn into complaints and party politics, that I clearly understand that this is a politically restricted role and you all have the right to expect me to behave with and exercise absolute neutrality when it comes to any party-political issues.

[71] **Christine Chapman:** We will move on now, because there are some other themes that we want to explore. Rhodri wants to come in next.

[72] **Rhodri Glyn Thomas:** Diolch yn fawr iawn, Gadeirydd. Fe wnaethoch chi sôn yn gynharach am gyfraniad Peter Tyndall fel ombwdsmon. Rwy'n siŵr y byddem i gyd yn cytuno bod Peter wedi gwneud cyfraniad cadarnhaol i ddatblygu swydd yr ombwdsmon a gwaith y swyddfa. Un o'r pethau roedd e'n awyddus iawn i weld yn digwydd—rydych chi wedi cyfeirio at hyn yn gynharach—oedd bod yr ombwdsmon yn cael yr hawl i weithredu ei bwerau ei hun mewn rhai achosion, a fyddai'n ei alluogi i edrych ar faterion ehangach na'r materion uniongyrchol sy'n dod o dan awdurdod yr ombwdsmon. Rydych chi wedi dweud y byddech chi'n dymuno dilyn hynny petaech chi'n cael eich penodi. A allwch chi esbonio sut y byddech chi am weld hynny yn datblygu? Pa mor fuddiol ydych chi'n meddwl y byddai hynny?

Rhodri Glyn Thomas: Thank you very much, Chair. You mentioned earlier the contribution of Peter Tyndall as ombudsman. I am sure that we would all agree that Peter has made a very positive contribution to developing the post of ombudsman and the work of the office. One of the things that he was very eager to see happening—you referred to this earlier—was that the ombudsman would have the right to pursue own-initiative powers in some cases, which would allow the ombudsman to look at wider matters than the direct matters that come under the auspices of the ombudsman. You have said that you would want to pursue that too, if appointed. Could you explain how you would wish to see that developing? How beneficial do you think that would be?

[73] **Mr Bennett:** Diolch yn fawr. Yn sicr, byddwn yn licio dilyn ochr yr hon o'r gwaith yr oedd Peter wedi ei gychwyn. Rwy'n meddwl ei bod hi'n bwysig iawn; os ydym yn sôn am wasanaeth ombwdsmydd ledled Ewrop, mae'n wir i ddweud bod gan y mwyafrif o ombwdsmydd y pwerau hynny. Mae'n rhaid inni godi'r cwestiwn pam nad yw'r pŵer hwnnw'n bodoli yng Nghymru ac ym mha ffordd mae hynny'n golygu bod llai o hawliau gan bobl yng Nghymru sy'n defnyddio ein gwasanaethau cyhoeddus. Efallai y byddai'n help hefyd i ystyried—rwy'n meddwl bod rhwydwaith o ombwdsmydd yn yr Undeb Ewropeaidd hefyd—sut mae'r pŵer hwnnw wedi cael ei ddefnyddio mewn gwledydd eraill, pa fath o werth y mae wedi'i ychwanegu i wasanaethau cyhoeddus, sut y gallwn ni ei ddefnyddio yng Nghymru lle rydym yn gweld methiannau drwy'r system, a sut y gallwn wella hynny drwy ddefnyddio'r pŵer.

Mr Bennett: Thank you very much. Certainly, I would like to pursue that aspect of the work that Peter initiated. I think that it is very important; if we are talking about ombudsmen's services across Europe, it is true to say that the majority of ombudsmen have these own-initiative powers. We have to ask the question as to why that is not the case in Wales and how that actually affects the rights of people who use public services in Wales. Perhaps it would also assist us if we were to consider—I think that there is a network of ombudsmen across the European Union—how this power has been used in other nations, what value it has added to public services in those nations, how we could make use of these own-initiative powers in Wales where we do see systematic failings, and how we can improve that through using this power.

[74] **Christine Chapman:** Janet, I think that you had a question.

[75] **Janet Finch-Saunders:** Yes. Could you give your views, please, on the previous

ombudsman's assertion that more should be done on an all-Wales level to gather information about the way that different sectors are handling complaints? If you agree, how should this work be taken forward?

[76] **Mr Bennett:** I think that the more standard you can have a complaints system, and the more uniform it is, the more likely it is to be more widely understood by citizens in Wales, which means that it is more likely that people will know how to go through the system correctly and how to go to the right ombudsman or other invigilator should they be seeking a remedy. So, I would broadly agree with Peter's views in that area. I know that he did some specific work on standardising complaints procedures and clearly that would be an area on which I would want to work with the office in the early days and see what further work needs to be done there.

[77] **Janet Finch-Saunders:** One query I have, from my previous experience, which I am aware of, is about where somebody writes in to an ombudsman. I know that we have talked about just members, but, when people do write in, the people having the complaint made against them often get informed that a matter has been referred to the ombudsman, and that can make people feel quite demoralised. Then, it can be investigated and it comes back that, 'I won't be upholding any complaint.' Do you have any plans to look at that and to deal with that in a different manner?

[78] **Mr Bennett:** I am not sure that I do. I know that there are other aspects of the current system that perhaps need looking at more closely. I know that one or two issues have come up in terms of publicity or confidentiality of third parties. So, I am happy to look at key priority issues, where there might be a concern, but I think, more broadly, one would expect people to feel a certain concern if any complaint has been made, as well as if it has been referred to an ombudsman. So, I am not sure that I could give you any further undertaking on that, to be honest.

[79] **Christine Chapman:** May I just pursue that? I think that the point was well made by Janet about the timeliness of some of these, because, on the other side, there could be cases where the ombudsman is involved, but it could take perhaps a number of years before there is a final resolution. Do you have any thoughts on the process?

[80] **Mr Bennett:** It is really good news that the quick-fix solution has been used now in 10% of cases. Wherever not haste, but pace can be used, that is good for the citizen or the complainant. It can also be good for the organisation involved. Given some of the pressures that public services in Wales will be facing over the next few years, the more that we can do in that regard, the better, generally, for the taxpayer.

[81] **Christine Chapman:** What about the cases where—I think that we have all probably seen this—people sometimes turn their attention to complaining about the ombudsman himself? How have you thought about dealing with that, because I have seen that happen on a number of occasions?

[82] **Mr Bennett:** I have seen the figures and the coverage of that within the ombudsman's report. I am afraid, on occasion, that that will occur. You have to have shoulders broad enough to accept that you cannot please all of the people all of the time, and it is about being absolutely clear that, on occasion, it will not have been possible to provide an individual with the solution that they might have felt was justified, and, if that is the case, one would always want to explain that in as lucid a fashion as one possibly could. However, I do not think that you can go beyond that line.

[83] **Christine Chapman:** Peter is next.

[84] **Peter Black:** There is an increasing tendency now in the public sector, mostly for financial reasons, to have services delivered through private sector or third sector organisations. How does the ombudsman resolve complaints in the situation where maladministration is alleged against one of those private sector or third sector organisations?

[85] **Mr Bennett:** Well, again, that is something that has been alluded to by Peter in his last report. I think that it will also be an important issue when it comes to the future of social care, where, regardless of whether somebody is purchasing those care services through the state or through private means, there should be access to redress. I think that it is a really interesting area. It is alluded to in terms of deregulation in the current ombudsman's report and that is the one part of the language there that I would not have used. This was about the privatisation, in some cases, of services, not their deregulation. Regulation should, of course, still apply to key public services, and in terms of the Welsh language—the former Minister with responsibility for the language would have a view on this—which utilities should or should not that apply to, given what has happened there with the Welsh Language (Wales) Measure 2011? So, I think that it is really important that we have a clear view, from a citizen's perspective, that there are certain standards that you can expect in terms of public services regardless of who is the deliverer. However, there might be an additional question there in terms of who bears the cost of handling those complaints. So, for example, is it right that the taxpayer bears the cost of maladministration by a private or voluntary sector provider? I think that there are ways around that, and that is alluded to in the ombudsman's report as well. It is a really interesting area.

[86] **Christine Chapman:** I think Mike has the next question.

[87] **Mike Hedges:** May I ask for your views on the current governance and accountability arrangements that underpin the ombudsman's role, including the relationship with the Assembly, this committee and the Finance Committee?

[88] **Mr Bennett:** I think that the relationship with this committee was a really fruitful one for the previous ombudsman. It has meant more accountability. Here, you cover the key areas of the post in terms of public service provision. So, I hope that that relationship is one that we can build on over the next few years, particularly in terms of the other issues that you will be facing in terms of public service reform. It was obviously of interest to me that I was here last Thursday to talk about the Williams commission and public service governance and delivery more generally. I have come here today with another hat—or another potential hat—on and I am very interested to see where we can capture some examples of systemic failure that might resonate with other issues that you are grappling with.

[89] **Mike Hedges:** You have been closely associated with one political party in the past. Are you currently a member of that party or are you currently active in supporting it?

[90] **Mr Bennett:** No, I am not, and I have not been a member or active for a number of years.

[91] **Christine Chapman:** Jenny is next.

[92] **Jenny Rathbone:** As one of the authors of the Williams report, which lays out in great detail the challenges ahead for local government, how is your office going to make a contribution to improving the quality of delivery in local government? Leaving aside codes of conduct, and thinking of just the layers of complacency around mediocre and adequate services, as opposed to aspirations to high-quality services, what role can your office play in helping to make this a game changer, as opposed to just reorganising the pieces on the chess board?

[93] **Mr Bennett:** I hope that it can play a really constructive role for the future and make a contribution. As I said earlier, in terms of being able to motivate staff within the office over the next few years, when we are going to see an increase in pressure on public services, it is really important for them to know that they are making a contribution to the improvement of public services. I am an author of the Williams commission report, which was a report to the First Minister, and it will be for the First Minister and the Government to decide how they wish to take that forward, with the support of other key players. It talked very clearly about poor and patchy services and the need for us to raise performance—not just to be comparing with the mediocre or the best in Wales, but to have an international view, and certainly a view across the United Kingdom, and to learn more perhaps, post-devolution, about what not just good, but excellent, can look like. I think there are ways in which the ombudsman's role, building upon the work that Peter did, could do that and we could ensure that we always have an eye in the ombudsman's role as to what excellence and international good practice can look like as well.

[94] **Christine Chapman:** I do not think that there are any other questions for you, Nick. Just before we close today—. Sorry, Mark, did you want to ask a question?

[95] **Mark Isherwood:** I have a quick supplementary question that may sum up the general themes. How do you believe that the ombudsman's office can help to redress the imbalance of power between the individual citizen, the individual councillor, or individual constituent who is fighting the enormity of an institution or coalition of institutions with apparent vast resources available to them in terms of responding in cleverly written letters, giving a version of events that is apparently credible, so that that individual can operate on the basis of parity of power rather than from a position of weakness because they do not have the resources that the other side might have?

[96] **Mr Bennett:** J.K. Galbraith was fond of talking about the need in any market or service area for a countervailing power. So, I guess that the ombudsman's role can be one of a countervailing power for the citizen, but only under certain circumstances. It has to be one that is absolutely fair and straight down the line. The issue of the individual citizen or the size of the public service provider is neither here nor there: really it has to be about establishing the facts when it comes to maladministration and service failure, and ensuring that justice is done. I hope that, with your support, I will be able to demonstrate a genuine commitment to making sure that all citizens in Wales can expect that standard of service, regardless of their background or which public service they have been using.

17:00

[97] **Christine Chapman:** Thank you. I think that the committee has had a good airing of the issues, Nick. I want to finally ask whether you feel that there is anything else that you would like to say to the committee before we make our recommendation.

[98] **Mr Bennett:** I have appeared in front of the committee on a regular basis in my previous role as chief executive of Community Housing Cymru. I have also been here with a Williams commission hat on. So, *tri chynnig i Gymro*. I would very much enjoy the opportunity of working with you with the ombudsman's hat on, so I hope that you feel able to support my candidacy, based on our previous dealings and the answers that I have given you today.

[99] **Christine Chapman:** On that note, I thank you for attending. There will be a transcript of the meeting for you to check for factual accuracy. Thank you very much for attending, Nick.

[100] **Mr Bennett:** Thank you very much. Diolch yn fawr.

17:01

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o'r
Cyfarfod**
**Motion under Standing Order 17.42 to Resolve to Exclude the Public from the
Meeting**

[101] **Christine Chapman:** I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order 17.42(vi).

[102] I see that Members are content.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 17:01.
The public part of the meeting ended at 17:01.*