



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

Y Pwyllgor Cyllid **The Finance Committee**

Dydd Mercher, 4 Chwefror 2015
Wednesday, 4 February 2015

Cynnwys **Contents**

Cyflwyniadau, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions

Papurau i'w Nodi
Papers to Note

Rhagolygon ar gyfer Trethi Cymru: Sesiwn Dystiolaeth 1
Welsh Tax Forecasts: Evidence Session 1

Ystyried Pwerau—Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn Dystiolaeth 2
Consideration of Powers—Public Services Ombudsman for Wales: Evidence Session 2

Ystyried Pwerau: Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn Dystiolaeth 3
Consideration of Powers: Public Services Ombudsman for Wales: Evidence Session 3

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

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi 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

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Christine Chapman	Llafur Labour
Jocelyn Davies	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Mike Hedges	Llafur Labour
Alun Ffred Jones	Plaid Cymru The Party of Wales
Ann Jones	Llafur Labour
Julie Morgan	Llafur Labour
Nick Ramsay	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Robert Chote	Cadeirydd, y Swyddfa Cyfrifoldeb Cyllidebol Chairman, Office of Budget Responsibility
Jim Martin	Ombwdsmon Gwasanaethau Cyhoeddus yr Alban Scottish Public Services Ombudsman
Jon Riley	Uwch-ddadansoddwr, Y Swyddfa Cyfrifoldeb Cyllidebol Senior Analyst, Office for Budget Responsibility
Simon Rogers	Cadeirydd, Cymdeithas Gofal Iechyd Annibynnol Cymru Chair, Welsh Independent Healthcare Association
Sally Taber	Cyfarwyddwr Gwasanaeth Dyfarnu Cwynion y Sector Annibynnol Director of Independent Sector Complaints Adjudication Service

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

Richard Bettley	Gwasanaeth Ymchwil Research Service
Bethan Davies	Clerc Clerk
Leanne Hatcher	Ail Glerc Second Clerk
Martin Jennings	Gwasanaeth Ymchwil Research Service

Tanwen Summers Dirprwy Glerc
 Deputy Clerk
Joanest Varney-Jackson Uwch-gynghorydd Cyfreithiol
 Senior Legal Adviser

*Dechreuodd y cyfarfod am 08:59.
The meeting began at 08:59.*

Cyflwyniadau, Ymddiheuriadau a Dirprwyon Introductions, Apologies and Substitutions

[1] **Jocelyn Davies:** Well, it's time for us to start, so, welcome, everyone, to a meeting of the Finance Committee. Can you just check, if you've got any mobile devices, that they're switched to 'silent'? Thank you. We've no apologies or announcements this morning.

9:00

Papurau i'w Nodi Papers to Note

[2] **Jocelyn Davies:** We've got one paper to note, which is the minutes of our previous meeting. Everybody happy with those?

Rhagolygon ar gyfer Trethi Cymru: Sesiwn Dystiolaeth 1 Welsh Tax Forecasts: Evidence Session 1

[3] **Jocelyn Davies:** Well, we'll move then to our first substantive item on the agenda. This is evidence session 1 on Welsh tax forecasts, and we're using video-conferencing this morning with the Office for Budget Responsibility—we've tested it, so I hope you can still hear us.

[4] **Mr Chote:** Yes, we can, thank you.

[5] **Jocelyn Davies:** Lovely. Before we go to the first question, would you like to introduce yourselves, just for the record?

[6] **Mr Chote:** Yes. I'm Rob Chote; I'm chairman of the OBR, and my colleague is Jon Riley, who leads our revenue forecasting operation.

[7] **Jocelyn Davies:** Thank you, and we're delighted that you're able to help us out with this inquiry. Just for the benefit of the record, could you briefly summarise the responsibilities that the Office for Budget Responsibility now carry in terms of providing forecasts for Wales, and your reporting relationship with the Assembly and with the Welsh Government?

[8] **Mr Chote:** Yes. Basically, as you're aware, our broader overarching responsibility is to keep an eye on the sustainability of the public finances across the UK level, but, through legislation, initially for Scotland, now for Wales, we also have additional responsibility to produce forecasts on the same timetable as those we do for the UK as a whole for those taxes that are due to be devolved. And so, the four taxes that we have responsibility for producing forecasts for, we produce those alongside the budget and autumn statement forecasts in the UK, consistent with those and published on the same timetable.

[9] In terms of the reporting responsibility, I mean, essentially speaking, all these forecasts are made public at the same time as the Chancellor of the Exchequer sits down,

having given his statement, and, obviously, as we can see here, we're very happy to talk to you and to others about what those forecasts show and to provide any further information we can.

[10] **Jocelyn Davies:** Thank you very much. Chris, shall we come to your questions?

[11] **Christine Chapman:** Okay. Good morning. Your methodology for forecasting most Welsh taxes is based on Wales's historic share of the relevant UK tax. I wonder if you could explain why this approach is considered the best option.

[12] **Mr Chote:** Yes. Essentially speaking, there would be two main options that you could use. One is that you would have a separate set of macroeconomic forecasts for Wales, for Scotland, for the rest of the UK, which would all have to be consistent with our overall UK forecast, and then you could use those subsidiary macroeconomic forecasts to generate economic determinants that would in turn allow you to directly forecast, for example, what's going on with labour income and how that feeds through to income tax forecasts, and what's going on in the housing market and how that feeds through to stamp duty. Unfortunately, both in the case of Scotland and Wales, we don't have the same data in terms of the amount of data, the frequency of the data, the timeliness of the data that you would require to do that. It would also be, you know, a much larger operation having to produce a subdivided economic forecast of that form. So, given that that isn't a practical possibility, what we do, essentially, is to look at the historic relationship between the share of revenues for each of the relevant taxes as the share of the UK whole. And in some cases those are relatively stable, in some cases you see trends, in some cases you see volatility, and we have to decide how to deal with that in each case. What we've essentially done, initially with Scotland, now with Wales as well, is to look at the past movements in the share, to make a projection of what that would look like on existing policy, if there are any particular reasons, either in what's going on in the economy, or in what's going on in the particular nature of the policies that are being announced, that might affect, for example, different parts of the income distribution differently, and how that is likely to affect the share looking forward into the future. And so, basically, the same principle applies to Scotland and Wales, and the same principle broadly applies across each of the taxes that we look at.

[13] If there are—and we had discussions of the forecasts before what we call the pre-measures forecast; the forecast before the addition of additional policies that we know are going to be announced ahead of, or at the time of, the budget or autumn statement, which obviously can't be shared publicly beforehand, but we had a discussion with which Welsh Government officials have been involved looking at those pre-measures forecasts and saying, 'Is there any additional information we can bring to the table that would allow us to take a more sophisticated view of this?', but, generally speaking, sticking with the notion of looking at what the shares do and seeing how that's likely to evolve to see whether newly announced policies are likely to be asymmetric—they'll have a different effect in Wales and rest of the UK, for example—which would change those shares, and then take that accordingly.

[14] **Christine Chapman:** Okay, thanks. That's fine.

[15] **Jocelyn Davies:** Julie, shall we come to your questions?

[16] **Julie Morgan:** Yes. I was going to ask about policy changes of the Welsh Government, and how you took that into account. If the policy statements were made earlier, you know, before the autumn statement, would you be able to include the impact of those policies in your forecast?

[17] **Mr Chote:** In terms of the policies announced by the Welsh Government or by the UK Government? Either of those, or both of those?

[18] **Julie Morgan:** Well, the Welsh Government first, I mean—. And the UK Government, basically.

[19] **Mr Chote:** Basically, what happens in terms of producing the forecast—what we call the pre-measures forecast, which is prior to the measures that are going to be announced in the particular budget or autumn statement that we're going to be publishing the forecasts alongside, and those are obviously UK policy measures—is that, if there are announcements of policy changes that are relevant that take place either at the UK level or at the devolved level, then you can take those into account in advance. So, for example, if you look at the last set of forecasts that we produced, we knew that the Scottish Government had already announced that it wanted to have a different system of stamp duty, a different system of property transactions tax, and we were able to take that into account in preparing our pre-measures forecast because the details of that, although they have subsequently been changed, were made clear in October or so, which is just before we start the autumn forecasts that lead up to a December change. So, you can take those things into account. Clearly, for that we depend on the particular administration announcing publicly what those policy changes were going to be. There would be a slightly different world if they wished to tell us confidentially what those policy changes were going to be, and then the timing could get a little more complicated, but, broadly speaking, as I say, if you take the Scottish example, they announced a change in policy because of their budget cycle—and I don't know how this differs or is similar to the Welsh one—so, that was announced for a draft budget in October, which gave us plenty of time to look at its likely implications for the UK pre-measures forecast, which we then published in early December.

[20] **Julie Morgan:** Thank you. And, as tax policies will differ in Wales and Scotland, and that will be an increasing trend, will it be necessary to have separate forecasting methodology for Wales?

[21] **Mr Chote:** I think that depends very much on how different the nature of the new policy is. If you look at the example of income tax, and we are talking about changing the rates of income tax that apply to particular bands of income, then that doesn't necessitate a difference in methodology. You have to apply the same methodology to a different set of rates, and there are then some potentially complicated issues—the bigger the differential between the rate of tax that's imposed on a particular band of income in, say, Wales versus the rest of the UK, if Wales were to decide to exercise that option, then the more we would have to worry about the potential behavioural effect of the fact that you had different rates in different but relatively geographically close places, and what sort of outcome would result from that. We haven't yet had to deal with those sorts of issues. In the case of the Scottish Government, they announced that they would produce a really very different structure of stamp duty, moving from the so-called slab system to a slice system whereby you're taxed in a particular value of a housing transaction in particular bands at a rate, rather than the whole transaction at the same rate. That required us to think about the methodology there, although ironically, of course, the UK Government then decided to adopt the same methodology at the time of the autumn statements, and so now we're likely to have different rates but, again, roughly the same sort of methodology. So, I think the key point to bear in mind here is that, if Wales were to take the opportunity to produce a very differently structured tax system, that might require a different set of methodologies to approach it. If it's dealing with different rates for the same sort of tax system, there's much less of a problem there, or much less of a methodological challenge there, but you do have to worry about this behavioural consequence of having different rates in different places.

[22] **Julie Morgan:** Thank you. And what about external factors, such as a rise in oil prices? How do you factor that in?

[23] **Mr Chote:** Well, essentially speaking, those factors will be taken into account in generating the UK-wide forecast, and then you would assume, unless there was good reason otherwise, that the shares of those external factors were unlikely to have a differential effect from one jurisdiction to another and that therefore the share should be relatively unaffected by that. I think you might want to look at whether that's likely to be the case, depending on the particular nature of the external shock. It's not clear, I think, that you would—. So, the fall in the oil price, we took that into account in the change in the oil price between our forecast in March last year and December last year, so that would have affected the whole macroeconomic forecast in a number of different ways, but it wouldn't have affected our view on the likely relationship between the share of the particular taxes we were talking about. If we were talking about oil receipts, then that might be a rather different story.

[24] **Julie Morgan:** Thank you.

[25] **Jocelyn Davies:** Okay. Thank you, Julie. Peter, shall we come to your questions?

[26] **Peter Black:** Thank you, Chair. Sticking to methodologies, have you improved your forecasting model since you started forecasting Scottish taxation in 2012?

[27] **Mr Chote:** Well, we've basically taken the same approach, as I say, of basing it on shares. What we have tried to do, though, is to learn more from the evolution of the information as it's come in. In some cases, if you look at the accuracy or the performance or the way in which you had to think about the changes in the forecast, you can identify areas where the forecasts have changed, but primarily because the forecast for the UK has changed. And there are some cases, with, I think, stamp duty land tax being an example, where actually predicting what the share is going to be has turned out to be more complicated than one would have hoped, depending on what's going on with the economy and what's going on with policy.

[28] One thing, as I say, you want to look back at is to say, you know, each time we're looking at the nature of the policy changes, can we think of ways in which they're likely to affect the share? So, for example, the nature of the income tax changes that we've seen over the last few years have tended to raise money at the top to give away money at the bottom, with a rise in the personal allowance. That's the sort of thing that you would expect to have asymmetric effects when you have, as in Wales—Scotland too—a higher proportion of income towards the bottom of the UK income distribution, rather than the top. And so, those sorts of things you want to keep an eye on and try to make sure that your methodology is robust to those changes, and that you're learning from the new information along the way.

[29] So, I would say you do keep this—. It's a constant effort to improve and keep things up to speed. What I wouldn't say there's been is any dramatic new scientific breakthrough in terms of change of methodology from when we started out on this process to when we went through. The share-based methodology looked the right one to start with, and, as we've gone on, I think it still looks the best bet in terms of producing these forecasts.

[30] **Peter Black:** Will you be able to—. Sorry. How accurate have your estimates been in comparison to those independently produced in Scotland by the Scottish Fiscal Commission?

[31] **Mr Chote:** Well, on that one, we haven't really got a long enough track record with the Scottish Fiscal Commission to judge on this, because it's only been up and running relatively recently. What we do now have is a situation where we have different forecasts, or have had different forecasts, for the new land and buildings transactions tax that has been introduced in Scotland. We've spoken and we've obviously had good conversations; we are having a good working relationship with the officials in the Scottish Government, and it is the Scottish Government—. Unlike in the UK, where we are producing the forecast, in Scotland

it's the Scottish Government producing the forecasts and the commission looking over them and saying whether it's happy or not, so that the shoe is somewhat on the other foot there. We've discussed the way these things—the methodologies that we're using. There is some difference between our forecasts for what the Scottish tax rates would have raised relative to theirs, but I think that the differences in terms of methodology and the information that's used to draw those up are dwarfed by the uncertainty that surrounds either of those forecasts, in particular, because of the difficulty of knowing what the level of property transactions is.

09:15

[32] So, our forecast on a like-for-like basis of how much revenue would come in is somewhat higher than the Scottish Government's, but if the revenues come in even higher I wouldn't claim that as a victory for us; I would basically say that's probably down to the fact that the property transactions have come in at a different level. If it comes in at the other direction, you know, that again is no more a cause for self-flagellation as the other direction would be for self-congratulation.

[33] **Peter Black:** I mean, obviously, the accuracy of these forecasts is best measured against the actual outturn, and no doubt you'll be adjusting methodology as this progresses forward, to make sure you can get it as accurate as possible. Will you be able to provide the committee with those sorts of comparisons, then—your estimates against the outturn figures—so we can actually learn lessons from this for Wales?

[34] **Mr Chote:** Absolutely. I mean, we do that. We have a rigorous exercise for doing that across the UK forecasts as a whole. We produce an annual publication called the forecast evaluation report, separate from the forecast, which is precisely to look back at why things have evolved as they have, what the difference was in terms of outturn, and how that's come through. A couple of points I'd caution on that are that, for the time being, in terms of the particular share that's coming from Wales, say of income tax—the same would be true of Scotland—we're still at the moment reliant on the survey of personal income as the way of estimating what the share has been in the past, and using that to project forward into the future. So, that's an estimate; it's not something that you can say, hard and fast, was correct in the past. In both the Scottish and Welsh cases, we will move to a situation in which the revenue and customs department flags specific taxpayers as being Scottish, Welsh or rest of UK, and that will give you a firmer basis for those estimates of the share. The survey of personal income is a good data source; it's a good way of doing this. Unfortunately, it does happen with a lag, and we're still, in the last forecast, working off the survey of personal income for 2011-12. So, we have to forecast where we are now as well as forecasting where we're going to be in the future because of the nature of the data we have to work with.

[35] **Peter Black:** How often are those surveys carried out?

[36] **Mr Chote:** Sorry?

[37] **Peter Black:** How often are those surveys carried out?

[38] **Mr Chote:** They're annual. So, for the forecast that we're about to engage in at the moment—Jon will correct me if I'm wrong—we're moving to the 2012-13 survey of personal income, which could give us a slightly different picture.

[39] **Peter Black:** But there's a three-year lag between the survey and being able to use it, effectively. Is that how it works?

[40] **Mr Riley:** We're having to project it forward from that base year of 2011-12 to 2012-13. Once taxpayers are flagged on the system then hopefully the lags in the data and outturn

information will be less.

[41] **Peter Black:** Okay, and is there any way of reducing that lag or is that inevitable given the size of the task?

[42] **Mr Chote:** I think that's inevitable. I don't know whether this is partly a function of the way in which self-assessment works and that, therefore, tax is being paid on the previous year's income, so, therefore, the full tax data are not available immediately, partly because, for pay as you earn, it's relatively real-time but for self-assessment you've got people looking back a year. So, I'm certainly not aware of any attempts to shrink that timescale, and I think there would be obstacles in the tax system for getting it really right down.

[43] **Peter Black:** I understand, yeah, that's fine. What level of variability of tax forecasts would you consider acceptable for a nation the size of Wales?

[44] **Mr Chote:** I'm not sure there's a particular horizon. I think the key point that we always make about all the tax projections and other economic projections that we put on is that variability and uncertainty are inevitable in this. We're not giving policy advice or making policy decisions, but the people need to bear that volatility in mind when they're setting out plans and deciding on the fiscal architecture to deliver particular proposals. I think it's clear that there are some areas of tax revenue that are more volatile than others, and that you have to live with. So, stamp duty will be more volatile than income tax. I think it would be fair to say that income tax is, in turn, more volatile than landfill—

[45] **Mr Riley:** Yeah, it is, yeah.

[46] **Mr Chote:** Beyond the devolved taxes, the classic, and probably the single most volatile one, particularly in the light of recent events, would be North sea receipts. So, you have different degrees of variability across different taxes partly because of the volatility of the underlying tax base. So, consumption, consumer spending, tends to move up and down less than income, because people smooth their consumption by using savings. Profits will be more volatile; they'll swing up and down more dramatically. In terms of stamp duty, you have the issue that not only do you have a cycle in house prices, but you also have big movements in transactions. So, you have two sources of variability for stamp duty—two significant sources of variability just in what's going on with income. So, as ever with these things, it would be wonderful if all these things were a lot less volatile and the forecasting task was much easier. I think we see a key part of our role as to say that there is volatility, there is uncertainty, and it's inevitable in this. We try to set out a forecast as transparently as we can, but the policy makers need to address that uncertainty and not ignore it.

[47] **Peter Black:** My last question. Although borrowing is beyond your remit, in your view, is the £500 million borrowing limit for Wales sufficient to allow for potential forecasting errors if there are future economic shocks?

[48] **Mr Chote:** That's not an issue on which we've been asked to advise or to take a view, so I wouldn't go beyond that, particularly. I think in terms of the degree of variability, obviously, only over time will you see how variable that is. In part, obviously, the degree of differentiation in the tax systems may create a greater degree of uncertainty about what the outcomes are going to be. Jon, is there anything to add on that?

[49] **Mr Riley:** No.

[50] **Mr Chote:** No, it's not an issue on which we've been asked to advise as to what the appropriate width of that room for manoeuvre ought to be.

[51] **Peter Black:** Thank you.

[52] **Jocelyn Davies:** Okay. Nick, shall we come to your questions?

[53] **Nick Ramsay:** Thanks, Chair. This may be slightly outside of your—good morning, by the way—remit as well, but in terms of the Assembly's role as a scrutiny body and trying to scrutinise these financial decisions, do you think it would help if the Assembly had equal access to anonymised data in areas of devolved taxation?

[54] **Mr Chote:** I'm not sure how much additional—I mean, there's quite a lot of data available anyway in terms of HM Revenue and Customs statistics in particular. I think having obviously independent scrutiny and examination of these sorts of forecasts is a helpful thing. As is implicit in your question and right in your question, we obviously don't have access to the un-anonymised information; we have to abide by taxpayer confidentiality. That's only known to HMRC, and so we don't have any additional information there. So, I'm not sure, as I say, given what's out there already and capacity to use that and to examine that, whether there would be much additional advantage. Jon, have you got anything to add?

[55] **Mr Riley:** No.

[56] **Nick Ramsay:** Are you having much involvement in the setting up of the Welsh revenue office?

[57] **Mr Chote:** No, not at all. We haven't been asked to be involved in that at all. I think from our point of view, there's obviously an interesting issue, and we dealt with this in terms of the evolution of policy in Scotland. From our point of view, we will continue to have to produce tax forecasts and public finance forecasts that encompass the entire UK. So, to take the Scottish example, we continue to have to produce five-year forecasts for the receipts from the taxes that are fully devolved to Scotland, including, for example, the land and buildings

[58] transactions tax, which they've designed themselves and they're operating themselves. I think the key point there is obviously the Scottish Government produces a forecast—at the moment, just a one-year forecast. The Scottish Fiscal Commission looks at that. I think it's to everybody's advantage that all the bodies that are looking at these things share their experience and their understanding, and, obviously within the confines of policy confidentiality, that we can look at these things, learn from each other and share what we're doing on these sorts of questions.

[59] That relationship has worked out pretty well. As I said, we have regular discussions with Scottish Government officials; we've extended that, and we've had very good discussions with Welsh Government officials on the same basis. So, I think that, if this thing was being set up and to what extent there was policy differentiation and a Welsh revenue office ended up being responsible for running a particular element of the tax system, were that not to be done entirely through HMRC, then, I would hope for—and, certainly, we would aim to ensure—a very good working relationship, so that we all look at the same set of information and draw the best conclusions that we all can, without prejudicing anybody's ability to come up with a different answer from anybody else.

[60] **Nick Ramsay:** You've just given a comprehensive answer to my next question, actually. You're obviously very good at predicting where the questions will go. Can I just ask you, you mentioned the Scottish Government revenue offices, but I don't think you mentioned the Scottish Fiscal Commission? That's obviously been unique to Scotland, or we certainly haven't got one here in Wales, or haven't had one. What are your relationships like with the Scottish Fiscal Commission, and how do you think that's been operating?

[61] **Mr Chote:** Very good. I had an initial meeting in Edinburgh with the members of the

fiscal commission when it was being set up, so we could share experiences and, you know, we obviously discussed the ways in which we've been working, and the pros and cons and the problems and the successes that emerged out of that. I think, in terms of the first set of forecasts, we found it useful to look—. When the Scottish Government produced its first set of forecasts for the land and building transactions tax, the Scottish Fiscal Commission published a response to that, talking about some of the methodology issues and some of the forecasting issues there. We found that very useful to look at, as well. We've been very clear that we're very happy to have the Scottish Fiscal Commission sitting in—normally like this: sitting in virtually—with the Scottish Government, when we're talking about the Scottish revenue forecast, not just at this stage for the taxes that the Scottish Fiscal Commission has direct responsibility for. They don't yet on income tax, but we saw no reason not to have them involved in that discussion, as well, and I hope and think that they found that useful. So, I think, you know, as I say, they've been set up with a similar mission to ours, and it's one that we're very happy to collaborate on, although we entirely understand that they have their own independent decisions to take at the end of the day, as we do.

[62] **Nick Ramsay:** Thank you.

[63] **Jocelyn Davies:** Mike.

[64] **Mike Hedges:** Can I move on to income tax? I've got three or four questions on income tax. The first one is: income tax has been fairly static in 2012-13 and in the predictions for 2014-15, yet you predict that you expect more rapid growth in tax liabilities in 2016-17. I can think of a good reason why that would occur, but why do you?

[65] **Mr Chote:** Why do we expect more rapid growth from 2015-16 to 2016-17 than in the previous year?

[66] **Mike Hedges:** No. We've had fairly static income tax now for three years, and now you expect it to sort of take off. You see it growing by almost a third between 2014-15 and 2019-20.

[67] **Mr Chote:** I'll ask Jon to say a bit more about this. The key important factor here is that we are hoping, or, rather we are assuming, in the economic forecast—and most forecasters are assuming—that we'll move back to a situation in which you start to see real wages growing again. So, for some considerable period of time, we've had relatively weak earnings growth relative to inflation, and that's as a consequence of the fact that you see what is normally called 'fiscal drag', which is a process that, when incomes or earnings normally grow more rapidly than inflation, helps pull people, or pull incomes further up into higher tax brackets, and therefore the average tax rate rises, and you get a relatively rapid increase in revenue. We've had a run of years in which that hasn't been happening, because wage growth has been relatively subdued. What we assume in the forecast is that, as productivity growth across the UK picks up, again after a long historical period of weaker expected experience, that will come alongside an improvement in real earnings growth and therefore a resumption in fiscal drag, which helps the receipts to pick up. There would also be the policy changes to take into account, as well. Jon, do you want to expand on that?

[68] **Mr Riley:** I would agree. The PAYE receipts are expected to pick up, reflecting the pick-up in earnings growth and fiscal drag. Similarly on self-assessment, they have been depressed. Self-assessment receipts have been depressed in recent years, partly because, although there's been a large rise in the number of self-employed, most of them have been at the lower end of the income distribution. So, we're assuming, further out in the forecast, that those in self-assessment are getting real income gains and therefore will start to contribute more receipts.

[69] **Mike Hedges:** Also, of course, income tax has reduced for people with savings, hasn't it, because their savings rates have dropped dramatically? Are you assuming that interest rates will go up in order to increase that income tax?

09:30

[70] **Mr Chote:** Well, we assume that interest rates move in line with the expectations in the financial markets. So, we don't make a separate forecast for market interest rates. We take the assumption that's in the financial markets, which, over time, as the financial markets have concluded that interest rates are likely to remain lower for longer, we take on those sorts of changes in whichever direction they go from forecast to forecast, looking at, basically, an average of what the market expectations in the yield curve is showing over a number of days prior to the forecast.

[71] **Mr Riley:** So, our UK forecast for income tax, which includes tax on savings income, will be boosted a little by higher interest rates further out. But, the Welsh share of income tax, because it's on a non-savings, non-dividends basis, won't include that effect.

[72] **Mike Hedges:** Sorry, I wasn't including a dividend taxation; I was talking about somebody who's got £10,000 invested, is getting 1%, and will actually have that run against their taxation, won't they? If somebody's got money in the bank, and the rate is 1% and they get £10,000 there and it goes up to £1,000, if it goes up to 4%, it goes up to £4,000 if interest rates move, and that won't be in dividend; that will be in taxation.

[73] **Mr Chote:** Well, I mean, the would-be devolved elements of income tax is a non-savings, non-dividend basis, so that wouldn't effect the income tax attributed to the Welsh Government and Assembly.

[74] **Mike Hedges:** Okay. What's your prediction on movement in personal allowances within this?

[75] **Mr Chote:** We basically take on board the announced policy in terms of what happens with movements in the personal allowances, and I'm trying to remember how far ahead that's been announced for now.

[76] **Mr Riley:** That's been announced to 2016-17, and I think it's going up to £10,600. Thereafter, like most of our tax forecasts, we assume that they'll be indexed in line with either consumer price index inflation or retail price index inflation. The Government's policy is that they'll be indexed in line with CPI inflation, so, beyond next year, the personal allowance is supposed to increase in line with CPI inflation.

[77] **Mr Chote:** So, any further changes beyond that, we would take on board as a—. So, that would be what would be in the pre-measures forecast. If the Government, at a future budget, or autumn statement, announced further changes up or down on a personal allowance, you would take that on board as the impact of a policy change and then it would be in the baseline for the subsequent forecast.

[78] **Mike Hedges:** Can I move on next to contractors and other people who actually have a home based in Wales, but lots of them go and work mainly in England, but also in Scotland and other places, where they may well spend most of the year working there on contracts, in places like Bristol, Swindon and London? Classic examples in the past have been the building of Olympic villages and Olympic stadia and the building of the channel tunnel. How would you allocate them?

[79] **Mr Chote:** Well, we don't make a separate decision. It's on the basis of how HMRC

has the rules in terms of what would account—you know, who would constitute a Welsh, or a Scottish, or a rest-of-UK taxpayer? As I say, that's not an issue that we have to judge for ourselves. As I understand, it's where your principal—. It's not your principal residence, is it? I've not got a precise definition, but, as I say, it's basically one that's not in our hands, so we don't have to allocate that. It will be for HMRC to basically say who counts as being a Welsh, Scottish or a rest-of-UK taxpayer for these purposes, and then we take that as the basis for our forecast that HMRC help to prepare for us. So, it's not something that we are making—. We don't have to make a decision who to allocate to Wales or Scotland or the rest of the UK; that's one for HMRC.

[80] **Mike Hedges:** But you must have put it in your predictions.

[81] **Mr Chote:** On the basis of who HMRC is flagging as being implicitly as a UK or a Welsh or a Scottish taxpayer, as I say, at the moment, the shares are based on looking at who's been allocated to particular countries through the survey of personal income. In the future, there will be an explicit flagging by HMRC of individual taxpayers, which means you won't have to rely on the survey for making those sorts of distinctions, which will clearly make the calculation of the share rather more concrete than it is at the moment.

[82] **Mike Hedges:** Thank you. How would you forecast the impact of change in the Welsh rate of income tax, and would the methodology differ from that in Scotland to account for the different behaviour responses likely in Wales, due to how closely integrated the border is with England?

[83] **Mr Chote:** Well, at this stage, obviously, Scotland has had for some years the ability, in principle, to be able to vary the rates, and that hasn't happened yet, so we haven't had to cross that particular methodological Rubicon and decide how to do it. As I say, as and when that turns out to be the case—and we do have to produce forecasts on that basis—you know, one of the things we will have to look at is the likely behavioural response of individuals, and of taxable income, as it were, shifting across the border, in response to differentials in tax rates, and, the larger the differential, the more likely that sort of behaviour is to take place. But, what we haven't done, as this hasn't been policy anywhere yet, is to produce those sorts of estimates for elasticities. But, one of the things, I'm sure, that we will take into account is whether you would think it was more likely—let's say there was a 5 percentage point differential in both Scotland and Wales, from the rest of the UK, we wouldn't necessarily apply the same behavioural response in Scotland and Wales, if there seems to be good empirical and analytical evidence for suggesting, as you seem to be implying, for example, that there might be more likely to be, or would be likely to be, a bigger behavioural response in Wales, to a given differential, than there would be in Scotland.

[84] **Mike Hedges:** Okay. Thank you.

[85] **Jocelyn Davies:** Ann.

[86] **Ann Jones:** Yeah, thanks. I wanted to talk about stamp duty land tax, if I may. Apart from the impact of the recent UK changes, made in the autumn statement, how confident are you that the Welsh share of the stamp duty tax will remain constant over the forecast period?

[87] **Mr Chote:** I wouldn't say one's ever confident about predictions of these sorts. It seems the best judgment to make at the moment. I think the distinction you would draw between what's happened in the past, and what we're projecting in the future, is the differential between the rate of house price growth—not really Wales versus the rest of the UK, but London versus everywhere else other than London. So, I think what you've seen for both Wales and Scotland has been a fall in the share, partly as a result of the fact that the London-relative-to-the-rest-of-the-UK share has risen, because of more rapid house price

growth in the capital.

[88] Looking forward, we've made the assumption that you don't continue to see London house prices growing consistently more rapidly than they do in the rest of the country, and, I think, you know, as far as one can tell, the evidence seems to be more in that direction than a continuation of London outperformance, as there have been over some years. And, as a consequence, you wouldn't expect that to have that continued, downward drag on the Welsh share, because, as I say, in a sense, it's not really the Welsh share versus the rest of the UK; it's a symptom—or the falling Welsh share has been a symptom—of rising London versus the rest of the UK.

[89] **Ann Jones:** Okay, thanks. How can such radical changes in a tax that's due to be devolved impact on how the Treasury calculates its reductions to the Welsh—and, for that matter, Scottish—block?

[90] **Mr Chote:** Well, I mean, the key point to make there is that we've been tasked with producing the forecasts on the basis that we've been discussing them, on the basis of existing policy. It's not our job to say how that should translate into changes in the block grant. So, that's a matter for negotiation between the particular Governments. In terms of Scotland, you know, there has been a discussion over that and, I think, decisions over that, but that's not something that we get involved in at all. We're providing the bricks; it is for the Governments to build the houses.

[91] **Ann Jones:** Okay, thanks. What impacts are there on tax taken forecasts when announcements on tax changes are made well in advance of the implementation of, for example, the Scottish land and building transaction tax, and also the UK experience with the introduction of the 50p rate of income tax?

[92] **Mr Chote:** The short answer is it makes all our lives a lot more complicated. You have to worry about forestalling, reversible stalling, which is, basically: if you know that a tax rate is going to change in the future, and if it's going to go up, you want to be taxed today rather than tomorrow; if it's going to go down, you want to be taxed tomorrow rather than today. Depending on what sort of tax it is, there are some transactions, there are some flows of income, that are easier to move through time than there are for others. And there are some people for whom it is easier to move that over time. So, I think what you would have expected to see in Scotland would have been, you know—if you basically have a move to a system that is pre-announced that raises the average tax rate on property transactions at some levels and reduces it at others, you would expect to see the mix of those things changing and, obviously, an encouragement to anybody who knows that their tax rate is going to rise to do their housing transaction earlier; the opposite being true if it's going to fall.

[93] The same has been true, as you said, of the 50p and the moves and the highest rates of income tax—40p, 50p and 45p. There are obviously some people with income—people who have a choice of when to take dividend income, for example—who find it easier to move their income band. The likes of you and me on salaries don't really have that same opportunity for being moved around. So, I think one of the things that struck us, from the experience of the 50p and 45p rate, is that, you know, these sums of money can be very large and they can have quite a complicated impact on the forecasting task, because, if you've got people moving income backwards and forwards in time and moving receipts forward and backwards in time, distinguishing when you look at the new news about how many receipts are coming in, between what is the underlying trend and what is the temporary distortion being caused by people responding to the fact that they know there are tax changes coming in the future, can get very complicated and it doesn't make the task of identifying what the system is going to settle down to at the end any easier.

[94] On the Scottish situation, now obviously you had the Scottish Government announcing a set of tax rates in advance, then the UK following with a new system and then the Scottish Government has now announced a new set of rates and thresholds. So, that clearly creates a very complicated set of incentives for people to have to respond to in terms of the timing of their transactions.

[95] **Jocelyn Davies:** Okay. Fred?

[96] **Alun Ffred Jones:** Coming on to landfill tax, you stated that the forecast tonnage has been formed using the Department for Food, Environment and Rural Affairs projections for England. So is this because Natural Resources Wales or the Welsh Government have been unable to provide the equivalent figures for Wales?

[97] **Mr Chote:** John will correct me if I'm wrong, but I think, basically, the score is: what you start with, in terms of getting a UK landfill estimate, is a DEFRA estimate for England. You then have to gross that up to the UK level and then, in terms of getting to the Welsh share, it's not DEFRA but the Environment Agency that basically have the relevant data that tell you what proportion of that is landfill to Wales. I think, if there was other information that gave you a better indicator of that, wherever it came from, we would certainly be happy to take that on board. I think, certainly, the discussions that we've had with people suggest there isn't. I don't know—John, is there anything that you want to add to that?

[98] **Mr Riley:** Nothing to add.

[99] **Alun Ffred Jones:** Has any consideration been given to the possibility that the recycling strategy would be more successful in Wales, which would mean a fall, presumably, in landfill and landfill tax raised in Wales?

[100] **Mr Chote:** Yes. I think it's very hard, and the issue has arisen in the same way in Scotland, to make a sort of robust judgment on how the relative success of particular policies in those areas—. Governments and devolved administrations may have particular sets of targets for these things, but knowing whether that will translate into a greater success in terms of policy differentials isn't straightforward. So, we've not made any explicit adjustments to forecast on the basis that we think that policy is likely to be more or less successful in one area or another.

[101] **Mr Riley:** I would agree. The Welsh share of landfill tax has been between 4% and 5% for the last four or five years, which generally suggests that the downward trend seen in overall UK waste going into landfill is happening in Wales as well, but there is not, from the data that we've got, clear evidence that the trend is steeper in Wales than elsewhere.

[102] **Mr Chote:** I think you'd probably want to rely more on evidence of greater or lesser success, as it were, showing up in the outturn data and the outturn shares than you would to make a hard-and-fast judgment. We'll take any information on that and certainly look at it, but it would have to be pretty robust and convincing to lead you away from the assumption that the past shares have been the best guide.

09:45

[103] **Jocelyn Davies:** Nick, you wanted to ask the final question.

[104] **Nick Ramsay:** Yeah, thanks Chair. Just going back to Mike Hedges's question earlier—maybe you answered this and I wasn't listening properly at that point—was I right in thinking you said that you didn't think there would be a big behavioural change, or a big difference in behavioural change, between England, Scotland and Wales in terms of different

tax rates and income tax rates?

[105] **Mr Chote:** No, not at all. I think the key point to bear in mind is that, obviously, the larger the differential is—i.e. the bigger the difference between the tax rate in any one part of the UK and any other part of the UK—the more you're providing an incentive for people to change their behaviour. The incentive to change behaviour will also depend on whether people think those things are going to persist or not. The point to make is, obviously, we don't have, you know, past evidence to go by. The obvious source of that evidence would be if the Scottish Government, or if Scotland, had used its existing ability to vary tax rates in the past, but that opportunity or that freedom has never been exploited. So, it would be a difficult judgment to have to make, as and when the time arises, that you do see those differentials or it becomes Government policy, or policy in a devolved administration, to have different rates as to exactly how much behavioural response there is going to be. We haven't attempted to estimate all of those things in advance of it actually happening, partly conscious of the fact that, you know, you could have prepared those estimates for Scotland years ago and it would never have needed to be applied. As I say, there's an interesting issue as to whether you think the behavioural response would be bigger in Wales, relative to the UK, than it would be in Scotland for a given differential for the reasons that were raised in the earlier question. But, that's not something we've reached a judgment on yet.

[106] **Nick Ramsay:** I think the point that Mike Hedges was trying to make was that the border between Wales and England is quite a different kettle of fish to the Scottish border, in that most people live near the border. But you've answered my question, so thank you.

[107] **Jocelyn Davies:** I want to assure you that the rest of us were listening. But, I'm very grateful that Nick was very honest, saying why he was repeating that. And, of course, I think what you were telling us was that it depends on who it's affecting, how much tax they're paying and whether they're able to move back and forth over the border. You would take all those things into consideration if you were in a position where you felt you needed to make a forecast, but you're not going to do that unless there's a need to make a forecast, because it could be a waste of everybody's time.

[108] **Mr Chote:** I think that's right. As I say, there are complicated judgments and I would be the first one to come back here, as and when it happened, and say that the estimates of the precise behavioural effect are highly uncertain.

[109] **Jocelyn Davies:** Okay. Well, thank you; we've run out of questions. I think that's been an excellent session and you've contributed to our work here. We'll send you a transcript, as usual; if you would check that for accuracy, we'll then be able to publish it. So, thanks very much.

[110] **Mr Chote:** Thank you very much. Good morning.

[111] **Jocelyn Davies:** I think we can break now until our next session starts at 10 a.m. Okay, thanks.

*Gohiriwyd y cyfarfod rhwng 09:48 a 09:59
The meeting adjourned between 09:48 and 09:59.*

**Ystyried Pwerau—Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn
Dystiolaeth 2
Consideration of Powers—Public Services Ombudsman for Wales: Evidence
Session 2**

[112] **Jocelyn Davies:** Welcome back, everyone. We're on agenda item 4, which is our consideration of the powers of the Public Services Ombudsman for Wales. This is evidence session 2. I'm delighted that the Scottish ombudsman is able to join us this morning. Before we move to the first question, do you want to introduce yourself, with your full title, and then we'll go straight to questions?

[113] **Mr Martin:** Sure. My name's Jim Martin, I'm the Scottish Public Services Ombudsman.

[114] **Jocelyn Davies:** Lovely. Just for the record, can you summarise your role and how this has evolved over time?

10:00

[115] **Mr Martin:** My office was created by an Act of the Scottish Parliament in 2002, and that Act consolidated a number of existing UK ombudsmen offices—housing, local authority and health were the three main ones. We take complaints about all of these sectors. In 2010, there was a public services reform Act in Scotland, which sought to give us extra powers over complaint-handling processes generally in Scotland in the public service. Following on from the reports in Scotland—one called the Crerar report, and one called the Sinclair report—it was agreed that, in the public service in Scotland, the best model would be to have a one-stop shop for public services. So, from the beginning of my tenure in 2009, the Parliament has added to our jurisdiction. For example, it has given us responsibility for prisoner complaints, for all aspects of water complaints—domestic and commercial—prisoner health complaints, and a number of other areas. So, our jurisdiction is expanding. Soon, we will be the body that deals with appeals under the Scottish welfare fund, the previous social fund, and we'll have extended powers in social work. I think that the main area where my office perhaps differs from the office in Wales is that the 2010 Act asked me to establish the Complaints Standards Authority, to set principles and standards for complaint handling in the public service in Scotland. These are basically simple and standardised procedures, which are the same across the piece. Between 2010 and now we have introduced that in all sectors except the health service. Just last week, the chief executives of all the health boards in Scotland were notified that they were going to move towards complaint-handling procedures similarly in the national health service in Scotland. So, it's a broad remit.

[116] **Jocelyn Davies:** Is that the main difference between you and other UK ombudsmen, especially in England?

[117] **Mr Martin:** I have to choose my words carefully when I talk about what's happening in England. At the Public Administration Select Committee, I think I described the English system as 'stuck in time'. I think that it's a creature of the discussions that Crossman had in 1967, and I don't think that there has been much progress since. There are separate ombudsmen for health, local government, housing and various other aspects of the public service, as well as a UK parliamentary ombudsman who deals with matters relating to the UK Parliament. I think that in the devolved jurisdictions, particularly Wales and Scotland, we have moved a long way from the UK model. Our colleagues in Northern Ireland, I think, are leading the way in making sure that everything is human-rights-based—they are an exemplar there—but I think the rest of the United Kingdom is looking to the devolved administrations now for the correct model to take the role of the ombudsman forward. I'd be happy to discuss

that in relation to the kinds of things that we do. For example, the kind of Complaints Standards Authority procedures that we have in Scotland were of interest to PASC as something they think may be worthy of consideration for introduction in England, for example. So, maybe they are beginning to catch up. But, in my view, we are a bit further ahead of the game than our colleagues are in England.

[118] **Jocelyn Davies:** Lovely. Thank you. Mike, shall we come to your questions?

[119] **Mike Hedges:** Are there any trends in recent years in the types of complaints you are dealing with, in terms of areas and also in terms of complexity?

[120] **Mr Martin:** Yes. The number of health complaints we receive is increasing. It has increased very considerably in the time that I've been ombudsman. We have seen year-on-year increases in the number of complaints across sectors. In the first six months of this year, for example, my office has seen a 14% increase in the number of complaints being brought to us across all sectors. The largest single sector is local authority. If the trends continue, I think that, in five years' time, the largest area will be health. I see an awful lot more people coming forward in health. There are a number of reasons for that. One, I think, is that, the Scottish Parliament passed in 2011 a patient rights Act, which consolidated—it didn't introduce new rights, particularly—and made more visible the rights that people have to take complaints forward when things go wrong. I think that the Francis report into mid Staffs had an impact, and I think that, generally, people are more confident of seeing a positive outcome to complaints in the health service than elsewhere.

[121] One of the things that we have noticed—and you mentioned complexity—is that, in the year and a half, two years, that we've been operating the Complaints Standards Authority standardised procedures, the number of premature complaints coming to my office, and that is people who are coming to me who should have gone to a local authority, or to a health board, or to a university or wherever, has fallen from 54% to 31%. But, even though the number of premature complaints to my office has fallen, the actual number of complaints has increased. And these are coming in, and they are more complex—they're more complex health cases, more complex local government cases, more complex higher education cases, more complex prison cases. So, we rely heavily on the investigative skills that our team members have to get us through that. Is that the kind of area that you were—

[122] **Jocelyn Davies:** Before you go on, do the cases that you deal with get media coverage in Scotland?

[123] **Mr Martin:** Yes.

[124] **Jocelyn Davies:** So, people would have read about that, and then they can relate that to themselves, do you think?

[125] **Mr Martin:** Yes. We managed to get an amendment to our Act in 2010 that enabled me to make public the outcomes of cases. The reason we wanted that is not, particularly, publicity for the ombudsman's office, but to share the learning from complaints. So that, every month, we will publish individual complaints that we have laid before Parliament—these tend to be the major ones, maybe two or three a month, which we'll individually lay before Parliament—and then we'll publish summaries of the other decisions we've taken. So, in an average month, that may be 70 cases that we will publish. These are picked up by the press—we don't seek the press, but they are picked up by the press. And so, I was just checking this morning, I think it was the beginning of last week that we issued our last compendium, and there is still press coverage coming from that today. That's going from the national, but also to the local press, where people are interested in how their local services are performing.

[126] **Jocelyn Davies:** So, do you keep records on the press coverage?

[127] **Mr Martin:** Yeah.

[128] **Jocelyn Davies:** Do you think you could send those to us?

[129] **Mr Martin:** Of course, yes.

[130] **Jocelyn Davies:** It would be of interest to us.

[131] **Mr Martin:** You can get them on our website.

[132] **Jocelyn Davies:** Yes. Mike.

[133] **Mike Hedges:** I was going to say that the ombudsman in Wales did exactly the same thing, and the local press are always interested in things that are local and newsworthy. The other question I was going to ask was: as you are well aware, the reason you're here is that the ombudsman in Wales is looking to alter his remit, and that's why we're undergoing this investigation now, so, without asking you to name anything, are you happy with the remit you've got in Scotland, and would you wish to extend yours?

[134] **Mr Martin:** At the moment, the thing that's exercising us—a number of things are exercising us—is getting all of the public service onto the standardised complaints handling process that we have; that's a major element. I think, by the end of the next financial year—maybe into the financial year after that—we will have all of Scotland's public services onto that. That's a major undertaking. But, that only takes up two members of my team, and it only takes up 3% of my financial resource to do that, and so that can be done relatively efficiently, from the ombudsman's perspective. But the reason that that's relatively easy to do is because it comes with a statutory underpin—I have Parliament's backing to do that. So, that's one area.

[135] We are interested in looking at where cases are currently being determined at the discretion of local officials, because my legislation says that, unless I can show maladministration in the first instance, I cannot go into areas where local authority officials, for example, have exercised their discretion. That is a throwback to the Crossman idea, and what Crossman was trying to do in his legislation was to protect the elected member. He didn't want local councillors, and others, having their decisions overturned by a paid official—an ombudsman. But, since 1967, more and more decisions in Scotland—I don't know about Wales—have been delegated to officials to take. One of the things I want to do is to give the consumer, the customer, the client, the ratepayer, a balanced playing field, as far as that's concerned, and be able to open some of these things up. So, that's an area that I'm keen to explore.

[136] **Mike Hedges:** Thank you.

[137] **Jocelyn Davies:** So, in that case, somebody would have to have a judicial review of an unfair decision, if it wasn't maladministration, or they'd have no recourse at all?

[138] **Mr Martin:** They may do that, they may have no recourse or they may need to go to a judicial review, but if they felt that an officer was acting unprofessionally, they could go to the professional body, assuming it exists.

[139] **Jocelyn Davies:** Oh, okay then. Nick, shall we come to your questions?

[140] **Nick Ramsay:** Yes, thanks, Chair. Can you describe how you perform your role as a Complaints Standards Authority?

[141] **Mr Martin:** Would it help if I explained how we set it up? Once we got the two committees, which decided that we needed to have a one-stop shop and simple standardised procedures, basically Parliament gave us a blank sheet of paper after that. We were asked to come up with principles, which we did—happily, I’ll go through them with you if you want. What we decided to do is to consult on those principles. So, we consulted widely across the public service about whether the principles that underpin a Complaints Standards Authority would be commonly what people would expect them to be. We then engaged with a number of sectors first and we chose local authorities, housing associations, and further and higher education. The other authorities being the 32 local authorities in Scotland with 32 different complaints processes—some of them with five and six stages.

[142] We decided that the best way to do that was not to set the ombudsman up as a regulator, but to set the ombudsman up as an enabler. So, we spoke to SOLACE and asked if we could work in partnership to create a model that would suit local authorities, for example, and to the housing regulator for housing. We set one or two red lines. They were that there should be a two-stage process. The first stage should be five working days and the second should be 20 working days. We engaged with that sector, meaning local government, for, I would say, the best part of eight or nine months. It was sometimes stormy—it wasn’t, by any means, something that was welcome in every quarter—but, eventually, we managed to get people to the position where they all agreed that they would do this.

[143] We set up a network of complaint handlers within local authorities, housing associations and further and higher education, of people who actually are the practitioners. We gave them an e-forum where they could talk to each other and we basically said to them, ‘These are the SPSO’s processes at the beginning, but they’re yours thereafter’. Because I didn’t want to set the ombudsman up as a regulator, I asked Audit Scotland, which is the equivalent of your auditor general, to include the complaint handling processes as part of their regular audits of public bodies. So, if I believe that a public body is not carrying forwards the complaints handling processes with the principles and in the manner I want, I could report them to Parliament, but I am not going to be the body that looks every year at how they do that, and that is the same for the audit office.

[144] **Jocelyn Davies:** So, that is looking at the governance and that includes part of the Government.

[145] **Mr Martin:** Yes. Otherwise my role as an ombudsman would be compromised, in my view, because I would become a regulator.

[146] **Jocelyn Davies:** Yeah.

[147] **Mr Martin:** What we found is that, and I can give you some numbers on it if you want, there is now an enthusiasm in all of these areas for this process. People believe it has improved customer service; for the first time, we have data across all of the sectors in Scotland about the number of complaints. For example, we now know that, in 2013-14, there were over 60,000 complaints going to local authorities in Scotland. We didn’t know that before. We will know what these complaints were about; we will know whether there are trends. We know how many have been satisfactorily resolved in the first stage or may have been resolved in the second stage and so on and so on.

[148] From my perspective in my office, the most staff that we’ve had involved in this is three. Today, I have two. The initial start-up costs were something around £120,000, perhaps, for my office. The first year running costs, because there was lots of training and stuff, went

to £200,000, but we will run that now, going forward, at around £105,000 to £110,000 a year. So, it's not a huge bureaucracy; it's something that we've built in partnership and we've given ownership to the sectors.

[149] **Nick Ramsay:** I think the committee always appreciates it when witnesses volunteer numbers without us having to—

[150] **Mr Martin:** I have been to finance committees before. [*Laughter.*]

[151] **Nick Ramsay:** It does show. Can I ask you about the statutory nature? Was that vital to the position?

[152] **Mr Martin:** Yes, absolutely vital. Because with the best will in the world, when you invite people to participate voluntarily, everyone is up for it until it comes to taking a decision to do something different to what they're doing themselves currently.

10:15

[153] One chief executive said to me, 'How can the people of my area possibly know that a complaint has been dealt with properly unless it's been across my desk?' It took a long time to persuade that person that the transport of a complaint across her desk wasn't what this was about. It was about getting the customer a solution to their problem as quickly as possible, and the most effective place to do that was the front line. So, we began to change the culture of where people begin to think about front-line resolution, rather than how many stages it would take to get to the chief executive who would give a final decision. So, culturally it's been very important for the bodies we've dealt with.

[154] **Nick Ramsay:** Like in the last session, you've just anticipated my next question about—. I was going to ask you about cultural change. You've mentioned one change there. Was there any other cultural change that was needed in the implementation—

[155] **Jocelyn Davies:** Because this doesn't just apply to local authorities, does it?

[156] **Mr Martin:** No, no.

[157] **Jocelyn Davies:** So, SOLACE, then, is the—

[158] **Mr Martin:** It's the society of local authority chief executives.

[159] **Jocelyn Davies:** Right. Okay.

[160] **Mr Martin:** When I first went to speak to the universities in Scotland, together, their universal view was that a university is far too complex an organisation to have such a simplistic complaints standard put in place. We had the usual to and fro, and as I was leaving, and being walked to my car, one of the universities' secretaries said to me, 'You know, Jim, when you say it's too complicated for universities, it's certainly too complicated to apply to the ancient universities, but the post-Robbins guys should be able to handle it, no problem.' So, even within sectors, you know, you're getting, 'Well, it's not for us because this is not our way'. What I think Douglas Sinclair, who is the author of the one-stop-shop thing, tried to do, and what the legislation has tried to do, is to tilt the thinking from what is it an organisation does, to what is it that the citizen needs. That's coming out from the system's perspective forward. This is—

[161] **Nick Ramsay:** Good grief. Where will that end? [*Laughter.*]

[162] **Jocelyn Davies:** Okay. Nick, do you have anything else?

[163] **Nick Ramsay:** Yes, there was one more, just about data. What data do you ask organisations to collect and how do you use them?

[164] **Mr Martin:** Well, we ask them to collect numerical data, but also we ask them to make sure that they're collecting data using the same language as everyone else. So, for example, in housing, we have got into three figures of housing associations in Scotland, all of whom deal with tenants, all of whom deal with repairs—all of them, you know, deal with the same stuff but call things slightly different things. If I can give you an example that is not from the SPSO: in a previous incarnation, I was police complaints commissioner for Scotland, and we found that if someone had put the handcuffs on too tightly in Argyll, up near Oban, that was a matter that the procurator fiscal required to be reported to him, because of potential criminal prosecution. If it happened in Glasgow, it didn't go to the procurator fiscal, but it might be a matter for the disciplinary procedure of a police officer. If it happened in Aberdeen, it was filed under 'corrupt practice'. What happens is that you have people getting handcuffs put on, but we're describing it in the three different ways, so it's impossible to get those data.

[165] What we try to do was learn from that kind of experience to encourage the sectors to define for themselves what each of the things they do will be called, so that, hopefully, we'll be able to look across various local authorities and say, 'Is there a trend here in council tax collection? Is there a trend here in refuse collection? Is there a trend here in GP diagnosis that we need to look at?' So, it's to enable that. But, I can give you numbers, if you'd like numbers on that.

[166] **Jocelyn Davies:** Do you want some numbers?

[167] **Nick Ramsay:** Give us a couple of numbers.

[168] **Mr Martin:** For example, in local authorities—let's stick with local authorities—for the first time we know that 85% of the cases in Scottish local authorities have been closed at the first stage, within five days on average. We know that 15% have been closed at the second stage. But, we also know the percentage gap, if you like, that gets us to that average figure for those closed at stage 1 in five days, goes from 53% to 95%. So, some authorities are only closing half of their cases in five days, and others nearly all. At the second stage, we know that that's running from 33% to 98%. Now, you then begin to ask yourself: well, why is that? Why is the level of service in different authorities happening in different ways? Are they investigating complaints in the same way? Are they more thorough in some cases and that's why it takes longer? Are they superficial in some cases and that's why they're being quicker? It enables that qualitative discussion to take place.

[169] **Jocelyn Davies:** Because you're comparing the same thing between two local authorities, which you couldn't do before.

[170] **Mr Martin:** Yes.

[171] **Nick Ramsay:** Could I just—

[172] **Jocelyn Davies:** Yes, sure.

[173] **Nick Ramsay:** Just to put what you've said in a nutshell, you're looking at it from the citizen's point of view all the time. So, when you get those data, rather than having whatever the organisations are telling you, you're trying to interpret that as how the citizen is feeling and how you bring that back together—

[174] **Mr Martin:** Except it's not me that's interpreting it. What we're saying to these groups is, 'These are your data. I'm not the quality management unit for the public service in Scotland. I am the ombudsman. You're the service deliverers. Here's information you now have. What are you going to do with that information?' And we say to Parliament, 'You now have that information, so when you come to scrutinise further education, housing associations, local authorities, here are more data that you can have to help your scrutiny'.

[175] **Jocelyn Davies:** And the Scottish Government, the Minister, has that information?

[176] **Mr Martin:** Yes.

[177] **Jocelyn Davies:** Okay. Julie, shall we come to you?

[178] **Julie Morgan:** Yes. I was going to ask about the finances, and you've already responded to some of that. Just to confirm, did you say you're only employing two people—

[179] **Mr Martin:** At the moment, yes.

[180] **Julie Morgan:** —to the Complaints Standards Authority?

[181] **Mr Martin:** For the record, two very good people whom I value highly—because they will read this. *[Laughter.]*

[182] **Julie Morgan:** Yes, I'm sure they're excellent. But you started off with three.

[183] **Mr Martin:** Yes.

[184] **Julie Morgan:** So why has it come down one?

[185] **Mr Martin:** Because, in the initial stages, we had to engage with all of the sectors, and that takes more time. Then, once the system's up and running, it's managing that system through and managing the data through.

[186] **Julie Morgan:** Right, and you're able to separately identify the costs and the benefits of the Complaints Standards Authority?

[187] **Mr Martin:** Yes. I mean, the benefits are less easy to work out in cash terms, you know. A lot of it's cultural. But, yes, in terms of the money spent and where it's going, yes, we are. We do know that, with local authorities, housing associations, Scottish Government and its agencies, some of them have spent money trying to move onto this new system, and we've tried to help them by producing e-learning materials for front-line staff, so that I think all local authorities in Scotland—and New Zealand; I think some in New Zealand now—are using our e-learning materials on front-line staff resolution. The national health service in Scotland is using our e-learning materials on investigation skills, and I think that's now been taken into the NHS in England. That's very little investment but a lot of impact.

[188] **Julie Morgan:** Right. I think you said, I think in an answer to Nick, that it cost £120,000 in start-up costs for—

[189] **Mr Martin:** Yes, for my organisation, yes.

[190] **Julie Morgan:** So what are the running costs of that part of your organisation now?

[191] **Mr Martin:** Well, the start-up costs were because we had a fixed head count, and we

got this new authority responsibility put on us, so we needed to have more staff. It's mainly in staffing costs that that comes up. I think if you do move down the road of introducing this, it's like everything else that you start as a new initiative: you will have an initial impact on the organisation as it tries to adjust to its new responsibilities, you will have a first to second-year spike in costs as you get things up and running, and then you'll have a settled-down cost. So, I'm confident that, going forward, the cost of the organisation will be around £100,000 to £110,000 a year.

[192] **Julie Morgan:** That's the settled cost?

[193] **Mr Martin:** Yes.

[194] **Julie Morgan:** Yes, which is very reasonable.

[195] **Mr Martin:** Yes, and I think it's worth its weight in gold, to be honest, for the impact it's had.

[196] **Julie Morgan:** Yes.

[197] **Mr Martin:** But then I'm biased. [*Laughter.*]

[198] **Julie Morgan:** You've referred to the costs to public services of complying with the guidance issued by the Complaints Standards Authority, and you're trying to make that fairly small because of the guidance you're issuing.

[199] **Mr Martin:** Yeah. I mean, some of the larger bodies—the bigger housing associations, the local authorities—will have a customer management system somewhere in there. Many of them have it, and it requires adjustments to that if you're going to change the timescales and change the models. So, they will have some costs initially. I'm not aware, even in the larger local authorities like Glasgow, Edinburgh and places like that, of the financial issues being seen as a block or something difficult to overcome, because I do think they recognise the benefit that they've had of having to re-examine how they engage with the public in these things. So, I'm unaware of anyone who has said that this has been a financial disaster.

[200] **Julie Morgan:** I think you were saying it's difficult to measure the benefits in a financial way. Do you think you will ever reach a position where you'll be able to say how this approach—you know, the citizen-centred approach—will actually save money in the long run?

[201] **Mr Martin:** I always think that that is going to be difficult. I think people who sit where I am, sitting before the Finance Committee, will think of a number and will always justify it. I think there's a common consensus in Scotland that it has been a good thing, that there's not been an economic hit to introduce it but it's improved the quality of the customer service that's offered by public services in Scotland.

[202] **Jocelyn Davies:** There must've been people who were reluctant to start with who said, 'This is going to cost...', and they've not said, 'Yes, I was right; it did cost us'. You haven't found people saying that?

[203] **Mr Martin:** No. Where, for example, people have said they had difficulty in the first instance was in making changes to systems or whatever. I think I had set a deadline of April 2013—the beginning of the financial year of 2013-14—for all local authorities in Scotland to be on the new system, and one very large local authority said, 'Look, our computer system changes won't enable us to do that. We've got another couple of big things on. Can we do it

in August?', and we said, 'Of course you can', because when we look back in time, those four months are going to mean nothing. What it did do was send a message to the local authorities and others that, while we're setting the standards here, it's your system, and you need to manage it and make sure that you're comfortable with it.

[204] **Jocelyn Davies:** Okay. Peter?

[205] **Peter Black:** Yes. Thank you. Just moving on to own-initiative investigations, do you think those own-initiatives powers are needed by ombudsmen?

[206] **Mr Martin:** I think they're useful. I do think they're useful. I do not have own-initiative powers. I am pleased that the legislation in Northern Ireland is going that way. There are a number of reasons for that. I think that we, as ombudsmen generally, particularly in the devolved administrations, are very frustrated that we very often can't follow things through. So, we are looking at individual complaints, and we see a collection of individual complaints. We think there's a systemic issue probably there, but certainly my legislation would preclude me from, you know, just going in and looking at some of these things. So, from that perspective, it would be very useful, and I can think of areas where I might want to use it.

[207] I've been watching closely what they've been doing in Ireland, and I think, in Ireland, that it's been used very often to help the disadvantaged, to help the kind of people who don't find it easy to come to an ombudsman office, but to look at issues that have arisen there. The usual arguments that are put against it are that this gives an ombudsman too much power, and the ombudsman could just decide to go and look at something. I am unaware, in any of the jurisdictions in Europe where this happens, of that argument actually holding. I think it's a question of the maturity of the parliament, the maturity of the ombudsman office, and the degree of trust between parliament and the ombudsman. That comes into play here. So, in principle, it is something which I very much welcome: the Northern Ireland initiative.

[208] In 2009-10, the Scottish Parliament looked at the ombudsman office in light of the Sinclair and Crerar reports. Given that our office was only one Parliament old—2002 to 2009; really, only one Parliament through—I think the view was taken then that it's best to let things ride for a while before going for any change. I think, you know, you're right to be looking at this now because I do think that when Northern Ireland put it through, the rest will follow. I think we will be very keen to see how it works and we'll probably want to follow it.

[209] **Peter Black:** If you had these powers, how would you identify and carry out investigations?

[210] **Mr Martin:** The way I think I would look at it is I'd be looking at trends of investigations that I'm seeing coming through. At the moment, I can use informal channels, when I see something like that happening, to try to get things done to have people to look at it, but that's not the most effective way of doing things. For example, in a health authority, we may have a view that, in one area—radiography, colorectal surgery or something like that—we're seeing enough issues coming through to give us a concern generally about the provision of that service.

10:30

[211] We may think that's only in one hospital, but we may think it's in the whole health board, or we may think it is across health boards. At the moment, I spend a lot of time on the phone trying to talk to other people to raise my concerns with them; whereas, I think, if some of these cases were serious enough and I had own-initiative powers, I may want to go down that route.

[212] **Peter Black:** Is there a danger that you are replicating the work of the audit office in Scotland or Wales, wherever it's being put in place?

[213] **Mr Martin:** Yeah, that's always a danger, but I think it's important to recognise the difference of function of these two offices. My understanding of how this is operating most effectively in Europe is that the ombudsman's office tends to work on the basis of information that they have seen and investigations they have conducted, and then they, effectively, expand that investigation, rather than say, 'Here's a whole new area that needs to be looked at by the other office that has different skills, different ways of doing things and different ways of investigating'. So, I think it would be, in my view, more efficient in many cases to have that power in one place rather than two places.

[214] **Peter Black:** Would you be concentrating on possible maladministration, as opposed to, I think, flaws in process in doing that?

[215] **Mr Martin:** That would depend. My powers are not just to look at maladministration, but to look at maladministration and service failure, but also, in health, to look at clinical decision making. So, in the various sectors that I'm responsible for, I have different powers. For example, in higher education, I'm not allowed to look at the quality of teaching. Academic attainment, I'm not allowed to look at. So, it would vary in different areas, so what you'd have to make sure is that the ombudsman was operating on own initiative within the scope of his or her powers on that point. I think it's for Parliament to hold the ombudsman to account for that. I think if an ombudsman were to, you know, go daft, and quite obviously be seen to do something, then I'm sure the Assembly here has enough parliamentary scrutiny to ask serious questions and to pull that back in.

[216] **Peter Black:** Okay, thanks.

[217] **Jocelyn Davies:** Okay. Chris.

[218] **Christine Chapman:** I know that, obviously, all the complaints that come to your office must be in writing. I just wonder, are you allowed to receive complaints in anything other than writing?

[219] **Mr Martin:** Yes.

[220] **Christine Chapman:** You are.

[221] **Mr Martin:** That'd be our discretion.

[222] **Christine Chapman:** Right, okay.

[223] **Mr Martin:** So, you have some people who will find it very difficult to communicate on paper, or on screen, and you have to be aware of that, so you need to be careful. What we do do is that, when someone comes in and we've assessed, in our advice team or wherever, that that person has raised something that we can look at, we'll engage with them by telephone, we will work out whether or not we think they do have something, we will then write to them or to an advocate, if they're having difficulty, saying, 'These are the heads of complaint that we think that you're bringing to us; provided you can show us that you've been through the complaints procedures of the body that you're complaining about, then we will take your case further, but under these heads of complaint'. So, if someone phones up, as happens daily, and says, 'I want the chief executive of such and such a health board to be sacked', you know, we basically say, 'Well, actually, there's not a lot we can do about that'. If they come and say, 'I'm really concerned, because this has happened to a member of my

family' et cetera, et cetera, we will engage with them, we will then go back to them, and then, for our processes, we will say, 'These are the things that we want to look at'. So, we try to enable people to come into the building, rather than find ways of keeping people out of the building.

[224] **Christine Chapman:** Do you think that the flexibility you have there, does that work? I mean, do you feel that that is operating as well as it can, or do you think there could be improvements?

[225] **Mr Martin:** I'm sure it could be better. I mean, I don't understand social media. I'm of that generation where much of it's a great mystery to me, and I've got people in my office who tell me, 'You're a dinosaur'. I try to get them to tell me, 'You're a dinosaur, sir', you know—[*Laughter.*] You've got to keep that perspective. I do think things are moving on, but it is important that we understand that we're involved in a serious process here, so that, if someone comes with a query or a complaint about a public service provider, it is very important that we get accurate information from them, not just impressionistic, and that by saying to them, 'Here are the heads of complaint; please agree that these are what we're going to look at', they would all know, you know, what it is we're looking at, and we bring it into the system. There are too many young people, there are too many people in deprived areas, and there are too many people who are unwilling or afraid to make complaints about public services out there for us not to try to open that door and encourage them in.

[226] **Christine Chapman:** So you think there's more—there're still groups of people out there who need to access you more?

[227] **Mr Martin:** Yes.

[228] **Christine Chapman:** And your systems—obviously, going back to, you know, generally, the necessity to put complaints in writing, although you've got the flexibility, it does tend to work. Is that what you're saying, that the system you've got now is working to get those people in, or should there be some—

[229] **Mr Martin:** I always think we can do more. I always think we can do better. You see, when I said earlier that one of the things the Complaints Standards Authority has done is reduce the number of premature complaints in my office from 54% to 31%, I think that means that more people are now finding the right place earlier to have their complaint dealt with. That's a big plus. That is good. But my workload is continuing to increase despite that. So, we're still getting an awful lot more complaints coming through, and what we've been preaching to the public services in Scotland is, 'You need to be open and accessible', and, in my office, we believe that we need to be that, too. What we're trying to do is use the discretion that I have in the Act to enable us to do some of that. But some of the stuff that's happened in Wales over the last four or five years in trying to reach difficult-to-reach groups has been the thing that we have tried to live up to, because I think when Peter Tyndall was here as ombudsman, he tried very hard to find ways of making the office more visible and accessible, you know, and we've tried to learn from that.

[230] **Christine Chapman:** Okay, thanks.

[231] **Jocelyn Davies:** Ann.

[232] **Ann Jones:** I wanted to just go on to private healthcare, if I could. Are there any circumstances where you are able to consider complaints against private healthcare providers in Scotland?

[233] **Mr Martin:** If the treatment is continuous and has begun in the national health

service, yes.

[234] **Ann Jones:** So it has to have begun in the national health service.

[235] **Mr Martin:** Yes.

[236] **Ann Jones:** If you were to have the power extended to take complaints against the private healthcare sectors, do you think that that would be—is that something that you would welcome, or do you see, you know, problems with that?

[237] **Mr Martin:** I see problems with it. I might welcome it, in some respects, but I see problems with it. I have an issue about using public funds to scrutinise private bodies, and I think that if a provision to look at private healthcare were to come in then that should be funded by the private sector. For example, I look at water complaints. Scottish Water's a kind of hybrid, public-private organisation, but I look at commercial water complaints between Scottish Water, its commercial and business stream, and small businesses. That is funded by a levy on Scottish Water, which goes a circuitous route to find its way to me, I hope intact—all the cash comes to me. That is not a problem, but I would have, you know, some reservations about using public resources to settle private areas. That's one concern. When we talk about private healthcare, we tend to talk about private hospitals, but there's a whole panoply of provision out there, much of which is unregulated, and I think it would be difficult, let's put it that way, to embark on those kind of complaints in unregulated care areas. I think that might be a bit difficult. The question that my Parliament has asked me is: does that mean you stop being the public services ombudsman once you do that? Because, really, my office was established to look at public services. I listened carefully to what Mr Keogh, the medical director in England, said about, you know, extending this provision, and I think as an idea it was good, but I don't think it has been fully thought through.

[238] **Ann Jones:** Okay. You actually then touched on the fact, which was my next question, around how that would be funded. So, if you were able to have it—. I mean, the current public ombudsman here has reiterated in his paper the views of Peter Tyndall, who suggested there should be an annual levy to cover additional costs, or to cover costs of complaints, on the basis that the polluter pays. Those were his words. Is that something that you would envisage would happen if you were to have those additional powers?

[239] **Mr Martin:** I think there has to be—. If that power were to be suggested to me by the Scottish Parliament, then what I would be saying to them is, 'You must find a way of looking at my funding model, which would enable me to do that without diverting public resources to dealing with it'. Take out the word 'health', and, effectively, it is a customer-supplier relationship in the private sector. It's a consumer issue. So, you know, we mustn't get confused because the word 'health' is in there. There's a financial transaction between a supplier and a customer. And, at that point, I think there are many ways in which this can be done. There is an argument—and I've led this argument—that, to fund an ombudsman's office in the public service on a polluter-pays basis, or even a partial polluter-pays basis, might be a way forward in the future, because I do think there is an incentive in charging public bodies who use what Parliament has established as the end of their complaints process. It is their complaints process, and, you know, I think there's an argument—. So, I don't think there's an issue of principle that would stop me in that, and I do think that the practicalities can be overcome.

[240] **Ann Jones:** Okay, thanks. Thanks, Chair.

[241] **Jocelyn Davies:** Peter, on this point, is it?

[242] **Peter Black:** Yes, on this point. You said you have an issue about public funds being

used in terms of scrutinising private providers. Do you not accept that there is a public interest in making sure—. I mean, obviously private providers are regulated by public bodies; there's a public interest in giving people who use those private providers a means of redress.

[243] **Mr Martin:** I think they need a means of redress; the question is whether that should be through a public body or another body that is not funded by the public purse. I think we're stretched enough at the moment trying to find resources to offer a good service for the public services without some of these resources being syphoned off into the private sector.

[244] **Peter Black:** The regulator of private healthcare is a public body funded by public funds.

[245] **Mr Martin:** I understand that.

[246] **Peter Black:** So, would you say that, if you were to—. Theoretically, if you were to take on the role of acting as the ombudsman for the private healthcare sector, you would expect them to contribute towards the costs.

[247] **Mr Martin:** Yes.

[248] **Peter Black:** Right, okay. Thanks.

[249] **Jocelyn Davies:** Ffred.

[250] **Alun Ffred Jones:** Byddaf yn gofyn yn Gymraeg. Rwyf eisiau gofyn dau gwestiwn ynglŷn â sut mae achosion ombwdsmon yn rhyngweithio â'r llysoedd. A allwch chi ddisgrifio sut rydych chi, ar hyn o bryd, yn ystyried y cwynion hynny sy'n gallu cael eu hystyried gan y llysoedd hefyd?

Alun Ffred Jones: I will ask my questions in Welsh. I want to ask you two questions about how ombudsman cases interact with the courts. Could you describe how you currently consider those complaints that can also be considered by the courts?

[251] **Mr Martin:** We have a provision in the Scottish Public Services Ombudsman Act 2002 that, effectively, suggests that, if someone's taking legal recourse, then we should not look at the case that is going through. The question is: when does that begin? We have used discretion in there. If there is a specific statutory provision of an appeals process that someone could follow as an alternative route, then we would encourage people to use that route. If, for example, people were to say, 'The correct route here is judicial review', which is sledgehammer to crack the nut, very often, we'd probably use our discretion to say that, once it's come to us, we will look at that complaint and give a view on it, although the outcome that we can give may not be the outcome that the court can give. So, we will exercise some discretion in that regard, but I think the intention of the Act as it was written was to make sure that we are an alternative to the court system and not another court system. So, whoever is ombudsman has to exercise some judgment in some cases—sometimes, painfully, having to say to people, 'I'm very sorry, we would love to look at your case, but, unfortunately you will have to go to the courts', knowing that that might take a very, very long time and their chances of getting a satisfactory outcome are slim. So, it's a discretionary thing for us. To be honest, in the time I've been in Scotland, it hasn't been an issue. It's not really been an issue.

[252] **Alun Ffred Jones:** Felly, nid ydych yn credu bod angen newid i'r Ddeddf er mwyn ei gwneud hi'n haws i chi ddelio efo materion fel hyn, lle gall rhywun fod yn mynd i'r llys neu beidio. A ydych chi'n credu bod y sefyllfa fel ag y mae hi yn gweithio ac

Alun Ffred Jones: Therefore, you don't believe that we need to change the Act in order to make it easier for you to deal with these issues, where somebody could go to court or not. Do you think that the situation as it is works and is acceptable to you?

yn dderbyniol i chi?

10:45

[253] **Mr Martin:** Yes, but I'm operating in Scotland, and we have a separate legal system. The Law Commission review into this looked at England and Wales. I'm not an expert on that, nor am I an expert on the Welsh Act. I can tell you that in Scotland it's not much of an issue. I've no idea whether it is an issue in Wales, or how big an issue or how little an issue it is.

[254] **Jocelyn Davies:** And you do have the discretion if it meant a judicial review. You do have the discretion to—

[255] **Mr Martin:** If I were to use my discretion and somebody disagreed with it, they could then go to judicial review, yes. And I think, if the courts felt I was trampling on their toes, they would very soon tell me I was trampling on their toes, but that hasn't happened either.

[256] **Jocelyn Davies:** Okay. Any other questions? Thank you; I think that's been very enlightening. We've enjoyed our session, I have to say. We'll send you a transcript; if you'll check it for accuracy before it's published we'd be very grateful.

[257] **Mr Martin:** I'd be happy to.

[258] **Jocelyn Davies:** Thanks very much.

[259] **Mr Martin:** Thanks for having me.

[260] **Jocelyn Davies:** Okay. We'll move straight to the next session, if that's okay. And, of course, we're hearing then from private healthcare.

10:47

**Ystyried Pwerau: Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn
Dystiolaeth 3
Consideration of Powers: Public Services Ombudsman for Wales: Evidence
Session 3**

[261] **Jocelyn Davies:** Okay, we're moving now to item 5, which is our consideration of the powers of the Public Service Ombudsman for Wales. This is our evidence session 3. We have the Independent Sector Complaints Adjudication Service and the Welsh Independent Healthcare Association with us. You've sent us information in advance. We have read that. If you'd like to introduce yourselves for the record, and then we'll go straight to questions if that's okay. Shall we start with you?

[262] **Ms Taber:** I'm Sally Taber, and I'm the director of the Independent Sector Complaints Adjudication Service, ISCAS.

[263] **Jocelyn Davies:** Thank you.

[264] **Mr Rogers:** I'm Simon Rogers. I'm chair of the Welsh Independent Healthcare Association.

[265] **Jocelyn Davies:** Lovely. Obviously, as I said, we've all read the papers that you've

sent us. Could you just briefly for the record then explain the role of the organisations that you represent today? We'll start with you, Simon.

[266] **Mr Rogers:** Thank you. WIHA is a membership body for independent hospitals within Wales. It's a relatively small organisation. It has a secretariat, which Sally is part of. It is, effectively, a trade body for the independent hospitals in Wales. It is an arm of the Association of Independent Healthcare Organisations, which is based in London. So, WIHA is the kind of Welsh branch of that body, representing all the main healthcare organisations. It's mainly acute hospitals but also mental health and learning disabilities.

[267] **Jocelyn Davies:** Lovely. Sally.

[268] **Ms Taber:** Yes. The Independent Sector Complaints Adjudication Service is separate from the trade association—it's financed separately—and it was started 14 years ago following the 1999 Health Select Committee, which criticised in England—well, it was for the whole country then—the fact that the independent sector did not have a complaints mechanism that was recognised by the general public. And we've gone through a variety of iterations of the code, but, basically, the three-stage process for ISCAS doing the independent review stage. And we're recognised by the system regulators, in particular in Wales, England and Scotland; not so much in Northern Ireland—the private sector is small there.

[269] **Jocelyn Davies:** Okay. And in terms of the private sector here in Wales, what types of numbers of private healthcare providers do we have, say compared to the NHS in Wales? Simon, can you tell us?

[270] **Mr Rogers:** WIHA just represents the main hospitals, the private hospitals.

[271] **Jocelyn Davies:** But are you aware of the size of the—

[272] **Mr Rogers:** Yeah, I think there are 170 bodies providing private healthcare, but they range from beauty clinics to high-street, kind of, laser services. But WIHA is really representing what you really see as private hospitals and private healthcare providers of a medium size.

[273] **Jocelyn Davies:** So, inspection bodies then and regulators.

[274] **Mr Rogers:** All regulated by Healthcare Inspectorate Wales. We have a very strong relationship with Healthcare Inspectorate Wales and we are regulated by them as part of the national minimum health standards and the Care Standards Act 2000. We are compliant with those and that's how we're regulated through HIW.

[275] **Jocelyn Davies:** Okay. Thank you. Ann, shall we come to your questions, then?

[276] **Ann Jones:** Yeah, fine, thank you. How would a patient go about complaining about treatment they'd received from a private healthcare provider? So, who would they go to?

[277] **Ms Taber:** Shall I answer that?

[278] **Mr Rogers:** I'm happy for you to.

[279] **Ms Taber:** Well, I think you've got our code attached to our evidence, and we would obviously expect the patient, first of all, to go to the place where they've had the treatment, and that's the first stage. And if the patient isn't happy with the first stage of the process, then, if they're an individual hospital, they've got a board of trustees that could look at them. With a main provider like Simon's—Nuffield—it would be Nuffield's head office that would look

at how the hospital had handled it. If, again, they're not happy, then the patient is signposted to Independent Healthcare Sector Complaints Adjudication Service, and we have, obviously, a check mechanism that the two stages have been gone through thoroughly, which includes perhaps meeting with the complainant and ensuring that they've done absolutely everything possible. You'll see in our figures that we've got quite a small number of adjudications, but a larger number of complaints that we know about. So, some patients will come directly to us. We consequently signpost them back or, also, go to the ombudsman. And, on the ombudsman, both in England and Scotland, and I hope in Wales, then that signposting would be back to us. The Patients Association signposts back, Action for Victims of Medical Accidents signpost back. So, I think the majority of patients that seek private treatment are aware of how to complain, we hope anyway.

[280] **Ann Jones:** And is the complaint handled differently if a patient had been receiving treatment paid for by the NHS but then delivered by private healthcare?

[281] **Ms Taber:** We've got in the code how that is handled. They would go through the first and second stages, but then, as the third stage, they can go to the ombudsman. We have handled NHS-funded care if the patient chooses that that's the way that they want to go. But, the majority will be handled at the hospital level; the head office will check that it's been done correctly, but then the complainant has access to the ombudsman because they are NHS funded.

[282] **Ann Jones:** So, is it the third stage where there is access to the ombudsman?

[283] **Ms Taber:** Yes, but if you just remember that the NHS has only got two stages. When the NHS brought in the two stages, instead of three, we made it very clear that the independent sector is not the correct place to only have two stages, because, say you've got a 50-bedded hospital rather than a 1,000-bedded board, then it needs to be checked whether that complaint has been handled by a higher authority. So, we communicated to the Department of Health and the system regulators and the Welsh Assembly. We made it very clear that the independent sector was sticking to three stages, and that works for private patients.

[284] **Ann Jones:** Okay, but does it work for patients who are having their treatment done through the NHS, paid for by the NHS?

[285] **Ms Taber:** I think it does, yes. I think, probably, in the ombudsman evidence, we saw that he had had problems in looking at the continuity of the complaint, and I think, in our evidence, what we have suggested is that there should be an information sharing arrangement. We have an information sharing protocol between the Care Quality Commission and HIW, and I think what we'd like is an information sharing protocol with the ombudsman.

[286] **Ann Jones:** Okay, thanks. So, what are the various functions of the independent sector complaints adjudication service?

[287] **Ms Taber:** The functions, obviously, are to handle the review stage of the complaints, but we also look at—. We have an auditing mechanism to make sure that organisations are adhering to the three stages. We monitor trends, and I've got a briefing for you if you want us to send it afterwards, which will be in our annual report. The largest trend this time of the complaints that have come to us is actually complaints handling, followed closely by nursing care and then medical care. It goes down so that you can actually see the trends that we're looking at. One of the things that we've just recently done is have an ISCAS seminar, to bring the staff who handle the complaints to that seminar and to say, 'Look, it's complaints handling—what are you doing about seeing patients, writing records and things like that?' We have three adjudicators who will review the third-stage complaints. They will identify any trends and, when they adjudicate on a complaint, they will write to the chief

executive of the main organisation. So, if there was a complaint in Simon's hospital, the chief executive of Nuffield would be written to. So, we want to make sure that it's owned by the chief executive of the whole organisation.

[288] **Ann Jones:** Thank you. How is the adjudication service paid for? How is it financed?

[289] **Ms Taber:** It's financed by providers. So, in order to belong to the trade association, they pay a fee, and, to belong to ISCAS, they pay a fee. So, not all people are eligible to belong to the trade association, because we have much smaller organisations belonging to ISCAS as well as the larger ones. What we would like to see—and CQC have started doing it, and HIW—is that if they register a smaller organisation, then they should signpost to having a third-stage review, because I don't think that anybody should go without an independent stage, particularly on some of the areas that I have dealt with a lot on the cosmetic side—you know, they can just tell the patient to go away, and that is not appropriate. So, I think the regulator on all of these ones that we've got on the list, which HIW have, on the smaller clinics, should be signposting them to belong to ISCAS so that the complainant then has an independent review stage.

[290] **Jocelyn Davies:** And the levy depends on the size.

[291] **Ms Taber:** On the size, yes, it is—on their turnover.

[292] **Jocelyn Davies:** On their turnover, okay. Peter, shall we come to your questions?

[293] **Peter Black:** Do you compare the complaints procedures and the number of complaints received for private healthcare providers to those in the NHS?

[294] **Ms Taber:** Obviously, we see the NHS reports and, at the seminar that I talked about these. We had a CQC representative, and we did say, 'Look, please include the independent sector in your annual report'—I think it's called 'Complaints Matter'. On HIW, we would encourage them to actually put how many complaints that the independent sector providers have. I think that we've sent you the credentials document on Wales, where you'll see the percentage of complaints at the first stage. We encourage HIW to report those. I think you must realise that Wales's acute sector is quite small actually, in comparison to England. But, certainly, Scotland do fairly regular checks as well on the independent sector, but I think that's probably aspirational for the future—that there is a comparison. You know, you have to look at the case mix that we've got. The case mix in the acute side is elective procedures, whereas the case mix in your health boards is the older population, the patients with other comorbidities.

11:00

[295] **Mr Rogers:** From our point of view, we wouldn't really seek to compare, because they are quite different organisations.

[296] **Peter Black:** And, in terms of the procedures—how you deal with a complaint—are they comparable?

[297] **Mr Rogers:** In terms of the procedures we undertake compared to the NHS, do you mean?

[298] **Peter Black:** Yes.

[299] **Mr Rogers:** I'd say that, inevitably, we have a very low level of complaints in comparison, but, actually, it's quite hard to judge, because, percentage-wise, I've never seen a

percentage of elective surgery in the NHS complaints compared to—

[300] **Peter Black:** No, but, if someone comes to you with a complaint, is the process where you handle that complaint similar to what the health—?

[301] **Mr Rogers:** No, it's a little bit different, and one of the things I wanted to share with you is it's different in this respect: if you're running the NHS and you have a complaint, then the NHS deals with it in its entirety, because the consultant is employed by the NHS and covered by the Welsh risk pool. In the private sector, if it's a clear case of medical negligence or an allegation of that, or medical fault, then it's dealt with by the medical defence union of the consultant concerned. So, in the private sector, it's a little bit different; we tend to distinguish at an early stage whether this is a complaint against us as a provider or whether it's a complaint against consultants operating within our premises. It doesn't absolve us of fault; it means that we still help manage the complaint, but it actually has a slightly different resolution, because there's no risk pool covering the consultant. The consultant has to cover their own indemnity. So, it's quite a little bit of a subtle difference, but it's quite an important one.

[302] **Peter Black:** Okay. Although the independent sector complaints adjudication service can consider complaints, membership of the organisation is voluntary. How do patients complain about healthcare providers that are not members?

[303] **Ms Taber:** Well, our figures, in the annual report last year—which we can leave a copy of, and, hopefully, we'll get our next one out shortly—are such that, in the last year, 63% of our contacts were ISCAS members. So, 37% were non-members. We do try to signpost them to wherever is appropriate, but, for instance, in the Keogh review, there was quite a lot about hair transplantation—the rate of that is really growing—and there is no mechanism for those members to belong, or they don't want to belong, to ISCAS. So, what we did was highlight it to the Keogh review, and it's great that they've now been included in the work that Health Education England is doing. I think we're going to the Welsh Assembly Government tomorrow, and they have mentioned that they are going to look at that work and acknowledge it. We do have extreme concerns that 37% of the people who come to us haven't got a mechanism for an independent review stage.

[304] **Peter Black:** So, basically, they either go to law or they have nowhere else to go.

[305] **Ms Taber:** Well, most patients haven't got the money to go to law, so there's nothing, yes.

[306] **Mr Rogers:** Yes, but we need to point out that there will be people who are not part of ISCAS that have their own organisational complaints processes. They might not necessarily be part of ISCAS. You would hope that they would follow a code of good practice, but we just don't know. One of the things that is quite helpful in Wales is that HIW, as part of their regulatory and inspection regime, do review the way complaints are handled. It's clearly a part of their remit. Clearly, working with us, we have a protocol between us and them, and that gives them assurance. They also regulate all the other independent providers who are not part of WIHA, and, therefore, it's part of their remit to pick that up and review that.

[307] **Peter Black:** Do you work with HIW in terms of that 37%? Would you say to them, 'Look, we have this number and we're concerned about this particular organisation', and they would then go and regulate that?

[308] **Ms Taber:** There is no power for—

[309] **Peter Black:** No, I understand there's no power, but would you voluntarily? Would you work with HIW and say to them, 'This is something we're concerned about', and then HIW would then look at that organisation in terms of—?

[310] **Ms Taber:** The agreement with HIW is that they will signpost organisations to us. I think that needs to be emphasised in your report, because these smaller organisations must have an independent review stage and we do have a fee that's proportionate to their turnover, so it wouldn't be enormous. I think we should aim that all patients that have health treatment have an independent review stage to their complaint if they're not satisfied with the way the organisation handles it.

[311] **Peter Black:** Okay, thank you.

[312] **Jocelyn Davies:** Because patients or customers are hardly likely to say, 'What's your complaints procedure?', before they commission a service, are they? If you were asking that, you'd probably go somewhere else, wouldn't you, to start with? It's not the sort of thing customers ask up front, is it? They want to know that people are covered, but they probably don't want to know about the complaints procedure at that point.

[313] **Mr Rogers:** From a patient point of view, you're right. But, if you think about it, a lot of customers are insurance companies, probably 60%; certainly from my hospital, 60% is really through insurance. That's either corporate insurance or else personal insurance. So, insurance companies are fairly rigorous in ensuring that they will only deal with providers who've got all of the necessary processes in place. So, yes, you're right from a patient point of view, the first thing they don't do is ask for the complaint booklet.

[314] **Jocelyn Davies:** I shouldn't think so, anyway.

[315] **Mr Rogers:** But, HIW's insistence on the way they regulate us, in terms of the statement of purpose we have, in terms of the documentation we're required to provide to patients upfront, I think is a really helpful kind of signpost before they start. You raise the point about unregulated providers; I think we share that concern too about that.

[316] **Jocelyn Davies:** Yeah, of course. Julie.

[317] **Julie Morgan:** Thank you. If you were to come within the ombudsman's remit, what additional resources would private healthcare providers need to put forward?

[318] **Mr Rogers:** I don't—. That's an interesting question. I've looked at it from the point of view of what the resource of the ombudsman—. From our point of view, we are heavily regulated. Obviously, as we're part of a national group, we're both heavily regulated by the national body we're part of, which is Nuffield Health, but also regulated as part of our local regulator in Wales. So, I'm not sure it would have a significant impact on us from a resource point of view, because we have very strong clinical governance and complaints processes already in place. Hopefully, it wouldn't be another layer of regulation; it would be an instead-of regulation. But, I guess that would depend on how—

[319] **Julie Morgan:** So, you think there would be not a large amount of resources involved.

[320] **Mr Rogers:** We don't know until we see the structure, but, we're already—. Certainly, we have members who follow a very strong code of practice. We handle complaints in a very rigorous way. I think, getting externally audited or overseen by another body, we don't necessarily locally see that as going to cause a lot of work, but other smaller providers may feel differently about it.

[321] **Ms Taber:** I think it's important that—as the Scottish ombudsman, Mr Martin, said—you don't use public funds, because patients have paid for the service that they're getting. Obviously, the model that's proposed is a levy model. Well, that's the same as ISCAS. They pay, if you want to call it that, a levy to us to run it. I would actually propose that the first step forward is to have more communication and, perhaps like we've got with HIW, an operating protocol to work together—more of an operating protocol. The complaints in Wales, the private patients that you're dealing with in Wales, are quite small. The way forward has to be proportionate to the size of the sector.

[322] **Julie Morgan:** I note you say in your written evidence that you would welcome an information sharing agreement. Obviously, that's for complaints that would cross the NHS and the independent sector. Could you describe how you would see that operate?

[323] **Ms Taber:** I think where there is a patient that transverses between the NHS and the independent sector, and if there is a complaint, then the information-sharing protocol, which we've drawn up with HIW—because, obviously, patients have to consent that we're sharing information between us—I think we would work it on that model, that there is an information-sharing protocol, and the patient is aware, or the complainant or the relative is aware, that we are sharing information with the ombudsman, with HIW about their complaint. So, I mean, as such, we've got a suite of attachments that go with the sharing agreement to ensure that the confidentiality is there and the patients are aware that their information isn't just with one hospital—it's going to be shared with other people.

[324] **Julie Morgan:** So, that is something that you would like to move towards.

[325] **Ms Taber:** I think that's a sensible way, because a levy system—. I mean, as such, you've got six private hospitals in Wales, you've got lots of mental health hospitals, but they mainly deal with NHS patients, but you've got all of these smaller ones, and I think the first thing to do with some of the smaller ones is to ensure that they belong to an independent review stage, so they can't just say to a patient, 'We've done as much as we can; go away'. This is the kind of thing that comes to us, as ISCAS—patients will find us and they'll say, 'They've said they're not going to do anything else'. Well, if they belonged to ISCAS, then we could actually ring them and say, 'Look, the patient has approached us; what have you done about this?' I mean, sometimes, the patient hasn't even seen their complaints process. So, you know, there's quite a lot that we could do and put in place before something that requires a levy on just a small number of providers.

[326] **Julie Morgan:** Thank you.

[327] **Jocelyn Davies:** Nick, do you have any questions?

[328] **Nick Ramsay:** Yeah. Julie Morgan has pretty much covered what I was going to ask. You've just explained the process by which an extension to the ombudsman's powers might work. Can I ask you simply: do you think that it would be beneficial to extend those powers, or detrimental, or wouldn't make much impact?

[329] **Mr Rogers:** It's worth trying to work out what's the problem that we're trying to solve, to some extent. We would say that the way in which we're handling complaints, certainly for WIHA members, using the code of practice—. I think the results that you can see in the credentials document show that we're certainly trying to be as transparent as possible about how we handle our complaints, but it seems to be quite a satisfactory system. I think you've highlighted the point about the anomaly about an NHS patient transferring across, and we think there's a solution for that. It comes back to what the Scottish ombudsman was saying about the public services ombudsman—whether it's part of his responsibilities or not. I

guess we don't see a compelling case to broaden them at the moment, because we've engaged very closely with the public sector regulator and, certainly, the protocol we've got with HIW gives that assurance that, actually, there is oversight from a public regulatory point of view. But, I think, if you're getting into handling complaints and the ombudsman having to get into performing the role ISCAS does, that is quite a different proposition, and it's something that we don't see an immediate need for. That's our point of view.

[330] **Ms Taber:** Just to add to that, I mean, I think what Mr Martin said about resources—. Resources, certainly, if I can quote England, if you don't mind—. The ombudsman's resources there have been at such a stage that the patients' association have actually given a vote of no confidence in the ombudsman, because of the length of time some of the complaints are taking to be dealt with. So, if you added us to them, then that would be another layer. We pride ourselves on the turnaround time, because we're smaller and we can manage that. So, I think this is aspirational for the future, but it's not right now, until we've got all the other steps in place. If I were in your position I'd want to be saying to HIW, 'Right, okay, you've got all of these people; if a complainant is not happy, then where are they going and what's happening?' If we can actually have an agreement with the ombudsman to contact between ISCAS and his office if there is an issue, particularly if there is an issue when the patient transgresses—they have some of their treatment in the NHS—

11:15

[331] **Nick Ramsay:** But, at a point where that's seen to be beneficial rather than just simply saying at the start, 'This is something that the ombudsman would deal with'. From the patient's point of view, the question is: is it beneficial enough to put that on a statutory footing as the basis? You're saying it's not.

[332] **Ms Taber:** I don't think so. What I'm saying is: I don't think so at the moment. There are other steps to put in place: information sharing is a long way there and ensuring that all of your organisations that are under HIW in Wales have got good complaints mechanisms and you're not going to get patients who have treatment and nothing's done about their complaint.

[333] **Jocelyn Davies:** What we heard from the ombudsman was that, if the NHS was funding—

[334] **Ms Taber:** The treatment.

[335] **Jocelyn Davies:** Then, he can look at it.

[336] **Ms Taber:** Yes—

[337] **Jocelyn Davies:** But, if somebody is having treatment in the NHS, then they purchase in the private sector and then they come back to the NHS, he can't look at that bit. That was the anomaly that he was trying to overcome.

[338] **Ms Taber:** But, if there's information sharing—

[339] **Jocelyn Davies:** So, have you had any discussions with the ombudsman in relation to developing a protocol?

[340] **Ms Taber:** No, we haven't.

[341] **Mr Rogers:** Not formally.

[342] **Ms Taber:** Not formally. We've obviously been developing it with HIW. I think the Scottish ombudsman mentioned the Keogh review, where this all first started. In recommendations 34 and 35, Sir Bruce Keogh said that all private sector complaints should come under the ombudsman. I sat around the table with the Minister, Dr Dan Poulter, who chaired four meetings—and, really, at the onset it wasn't really clear what we were talking about. Are we talking about organisations that are regulated or non-regulated? How are we going to get these small high-street clinics to pay a levy? The conclusion of the four meetings was that they would keep in touch and check how things were going. I think the system regulators have complaints high on their agenda and every inspection should be checking that the organisation has got a complaints mechanism that's fit for purpose and an independent review stage.

[343] **Jocelyn Davies:** The example that you gave earlier about hair transplants; it's unlikely, is it, that somebody would have started their journey off in the NHS and gone to the private sector—

[344] **Ms Taber:** No, that's done in the independent sector.

[345] **Jocelyn Davies:** So, that wouldn't even apply to the proposal that the ombudsman is putting forward, from what I—

[346] **Ms Taber:** Yes it would, because he's asking for all private sector complaints, as far as we understand, isn't he?

[347] **Jocelyn Davies:** Certainly, when he gave evidence to us, it was about the patient journey, should they move between the NHS and private for a specific—

[348] **Ms Taber:** Fine, okay. I don't think that evidence is in the public domain yet. We've got his written evidence that he put to you.

[349] **Jocelyn Davies:** Sorry, okay. Well, certainly, when he came and gave oral evidence to us—. We can clarify that. Okay, Ffred, shall we come to your questions?

[350] **Alun Ffred Jones:** Iawn. Byddaf i'n gofyn yn Gymraeg. Rydych wedi esbonio bod darparwyr gofal iechyd preifat, y rhai mwyaf, yn talu ardoll i'r rheoleiddwyr. A allwch chi roi syniad inni o faint y taliadau yma?
Alun Ffred Jones: Fine. I'll be asking in Welsh. You've explained that private healthcare providers, that is the larger ones, pay a levy to the regulators. Can you give us an idea of the size of these payments?

[351] **Mr Rogers:** I apologise, I didn't—

[352] **Jocelyn Davies:** Can you check the translation? Perhaps it's not on the right channel.

[353] **Ms Taber:** From what I understood, you asked the size of the levy that private providers paid. We have a fee that's proportionate to their turnover. The lowest fee to belong to ISCAS is £300 per annum. Then, it rises according to the number of organisations. For instance, Nuffield Health will obviously pay according to its turnover and according to the number of hospitals it's got, and it's got them throughout Wales, England and Scotland, but not in Northern Ireland. So, they would obviously pay a fee that's more proportionate to that. But the smallest fee, and we continually look at it, is £300. But, for that £300, we don't just provide a service for a complainant that's not happy. We will check their complaints process, we work with them to make sure their complaints process is fit for purpose to ensure—. In the independent sector, it's absolutely crucial for the staff that come in to perform the procedure, who are perhaps under a practising privileges arrangement, to adhere to the complaints

process. So, we ensure that smaller provider understands, if they've got people that aren't employed by them, that there are mechanisms to ensure that they are covered by the complaints procedure.

[354] Certainly, when I first started ISCAS, you would find providers sending letters saying, 'Well, this was a physio that came in; it's nothing to do with us'. Well, of course it's to do with them, because they've allowed that physio in to do the work. So, this is the kind of service we provide, and the ISCAS seminar teaches them how to investigate complaints and some of the things that the Scottish ombudsman was talking about, the investigative powers that you as a provider have got, and the importance of actually writing things down. This is the other thing we've found in handling complaints, in that people are very good at claiming, 'I had a face-to-face meeting with the patient on 6 December 19-whatever', but, unless you write that down, your memory's gone. So, it's all of these kinds of things that we provide for that minimum fee of £300. I hope that answers your question.

[355] **Alun Ffred Jones:** Ydy, ydy. **Alun Ffred Jones:** Yes, it does.

[356] **Jocelyn Davies:** Okay, then. Mike.

[357] **Mike Hedges:** If a levy was introduced or a payment was introduced, do you think it should be a levy on everyone or should people only pay when the ombudsman service is being used?

[358] **Ms Taber:** Well, if they only paid when the ombudsman service is being used, then you wouldn't get very much, so—. I mean, it would have to be a levy on everybody, I think, otherwise there wouldn't be the resources there to deal with a process. Because one of the things that we've looked at is—. I mean, if you don't mind if I just refer to England and the number of complaints the ombudsman gets, and they have obviously somebody that answers that telephone—. Private healthcare is slightly different. So, you've got to have somebody that's actually got some training in understanding practising privileges, for instance—understanding if a patient says, 'Well, it was a private doctor, but he went into this clinic, and whatever'. So, I think if it was introduced it would have to be charged to everybody.

[359] **Mike Hedges:** Okay, thank you.

[360] **Jocelyn Davies:** Okay. Chris.

[361] **Mr Rogers:** Can I—

[362] **Jocelyn Davies:** Oh yes, sure.

[363] **Mr Rogers:** It was just to say that I think it would kind of depend on how it's structured, really. You could envisage a system whereby the ombudsman was a final point of appeal if they weren't happy with what ISCAS had done, so you'd have almost like a four-stage process. We've got local resolution, head office resolution, and ISCAS. You could put a system in place whereby you said, 'Well, actually, there's a final point of appeal to the ombudsman', if they weren't content with how ISCAS handled it. That would seem a common-sense kind of approach. It's not something that we've submitted in the evidence, but, as you asked the question—. And that would be a much reduced impact on the ombudsman, from the point of view of what any levy might or might not be, because, obviously, as you can see from the data, that would very, very rarely happen. But it might give you a safety-belt kind of assurance from a public body point of view.

[364] **Ms Taber:** If that was the case, then you'd have to have a very clear policy, which we have got, for vexatious complainants, because, as you know, some complainants take this

on as their hobby, and you've got to have a mechanism of closing it.

[365] **Jocelyn Davies:** Yes.

[366] **Mike Hedges:** The ombudsman has exactly the same problem of people who it becomes their life's job to try and complain about something.

[367] **Ms Taber:** Yes.

[368] **Jocelyn Davies:** Other sorts of complainants are available, as well as vexatious ones. [*Laughter.*] Chris.

[369] **Christine Chapman:** Okay, just some other issues: in the paper, you talk about the issue of patients in some NHS units in England who are not covered by either a public ombudsman or a private sector scheme. I wonder whether you could tell us a little bit more about this and whether this happens in Wales.

[370] **Ms Taber:** Are you talking about the NHS private patients?

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

[372] **Ms Taber:** Certainly—

[373] **Jocelyn Davies:** Can you tell us what sort of patients would they normally be?

[374] **Mr Rogers:** In NHS PP units?

[375] **Ms Taber:** The private patient units.

[376] **Mr Rogers:** It could be a range, really. It's usually elective surgery. It could be urology, it could be orthopaedics; it could be even cardiac. I mean, there are NHS private patient units in Wales—not many of them—and there are also NHS private beds. It is a little bit of an anomaly on the face of it. Having been in the NHS myself, I would expect as an NHS manager that, if a complaint came in about anything within the confines of the hospital, you would seek to deal with it, pick it up and resolve it, but, according to the legislation and the guidance, it is an apparent anomaly.

[377] **Jocelyn Davies:** Sorry, Sally, I interrupted you.

[378] **Ms Taber:** I mean, we have had a lot of problems in England, particularly as now the NHS is allowed to have 50% of private patients. What we've had is patients coming to us where they've had a letter from the NHS saying, 'No, we can't deal with your complaint; you paid for your treatment', and they don't belong to ISCAS. I mean, certainly, I can send you a paper that we've done in conjunction with the Department of Health, if you'd like to see that, because if the trust or the board—let's say the trust in England—is managing the facilities and they're employing the staff, then they're responsible, but, if the consultant is coming in outside his normal hours, then he is part of the complaints process, but the NHS can't deal with that. But one of the issues we've had is that the NHS is on a two-stage process and we're on a three-stage process. The chair of our governance group is Baroness Fiona Hodgson, who actually came to us as a patient representative, and she's just excellent at making sure everything we do is for the patient. She has written to Jeremy Hunt, and she's had a meeting with Earl Howe on this whole episode, and the department at the moment are meant to be doing a briefing note on the responsibilities. So, I'm very happy to share some of that work, because it's not fair to a patient if they suddenly then get a letter from the NHS saying, 'You paid for your treatment; we can't deal with this'.

[379] **Jocelyn Davies:** So, their complaint would go directly to the person who carried out the treatment.

[380] **Ms Taber:** No. I mean, we've got to solve this situation. We have suggested that they belong to ISCAS, but that would be—. It would have to be sorted out that the NHS understood that we only looked at the service that they weren't responsible for.

[381] **Jocelyn Davies:** Okay. Chris.

[382] **Christine Chapman:** I just wondered, I mean, just thinking, with those sorts of units, if, for example, the patient—. You have the consultant who's coming in separately, but if, say, the patient got into difficulties, who would then support them? Would there be NHS staff coming in and, if anything went wrong, would they be liable—if they went into cardiac arrest or something?

[383] **Ms Taber:** Well, I think that's—. Certainly, we're currently dealing with, and have been for the last four years, the civil servant at the Department of Health to get this right. I mean, I got so frustrated I, two years ago, took it to *The Telegraph* over Christmas, and they did put it in *The Telegraph*, but still nothing's done. It is an anomaly that we need to sort out, but I guess we need to see after the election—to really take it up then.

[384] **Jocelyn Davies:** The NHS is reimbursed for that facility, isn't it?

[385] **Ms Taber:** Yes.

[386] **Jocelyn Davies:** I suppose the consultant purchases the use of that bed for a period of time.

[387] **Mr Rogers:** For use, yes.

[388] **Ms Taber:** Yes.

[389] **Jocelyn Davies:** It is transparent in relation to the reimbursement to the NHS, isn't it?

[390] **Ms Taber:** Yes, it is.

[391] **Jocelyn Davies:** Okay.

[392] **Christine Chapman:** Just another question: the ISCAS submission supports the ombudsman's other proposals on oral complaints, complaints handling and removing the statutory bar. Would any of these other proposals impact on the private healthcare sector?

11:30

[393] **Ms Taber:** I think we've just given our opinion on the others. I mean, one of the things is complaints sent by e-mail and verbal complaints. I think we all need to look at that, because we've certainly had patients where we've said, 'Put it in writing' and they've said, 'Absolutely no way; I'm using the e-mail'. So, I think we've all got to look at the impact that social media is having, as people don't put things in writing, they send it by e-mail. So, that would impact on us. I'm sorry; I just need to remind myself—.

[394] **Mr Rogers:** I think the major concern that I have is about patient confidentiality, when you're using means of communication that can sometimes be insecure. And I know, in the NHS, even between GPs and NHS hospitals, the actual secure route for communicating is

very, very carefully regulated and an enormous amount of time and effort goes into making sure that patient confidentiality is not breached. Therefore, whilst understanding the way that people are changing the way they communicate, it's important that we don't allow patients' confidential details to be shared inadvertently, and it's incredibly easy for that to happen these days. That doesn't mean—

[395] **Jocelyn Davies:** I think the ombudsman has got a long track record of being able to keep people's information private and secure. I mean this is about people who aren't able to make an e-mail complaint even, for them to be able to just ring the office and not—. Because the legislation currently says that it has to be in writing. Do you ever find that people—. You've said that people have said, 'No, I'm not writing to you; I'm going to e-mail you'. Do you ever find that you have complaints that come to you from people who can't e-mail or write, and they want to tell you verbally?

[396] **Ms Taber:** Yes.

[397] **Jocelyn Davies:** You do have that.

[398] **Ms Taber:** Yes, we do.

[399] **Jocelyn Davies:** Do you exclude those complaints or do you take those complaints anyway?

[400] **Ms Taber:** We take them.

[401] **Jocelyn Davies:** You take them anyway.

[402] **Ms Taber:** Two years ago, I would have probably said, 'No, we don't do it that way', but we are certainly now looking at how we can cope with this using encryption, and using a password for anything we send out, and using what's called huddle, like a dropbox, so we're looking at all kinds of security measures. I was actually on the National Information Governance Board for Health and Social Care with Dame Fiona Caldicott, so I think it's been drummed into me. WIHA have a place on the Wales Information Governance Board as well, so we're very aware of ensuring patient confidentiality.

[403] **Jocelyn Davies:** Does that cover yours?

[404] **Christine Chapman:** Yes, that's fine.

[405] **Jocelyn Davies:** Anybody else? No. Well, there you are, we've run out questions for you. Thanks for your evidence today. We'll send you a transcript. The clerks will send you a transcript. If you'd check that, just to make sure it's accurate before we publish it, we'd be very grateful.

[406] **Mr Rogers:** Thank you.

**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**

Cynnig:

Motion:

bod y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod yn unol â *that the committee resolves to exclude the public from the remainder of the meeting in*

Rheolau Sefydlog 17.42(vi) ac (ix).

accordance with Standing Orders 17.42(vi) and (ix).

Cynigiwyd y cynnig.

Motion moved.

[407] **Jocelyn Davies:** I move the 17.42 that we go into private session now. Are all of you happy? Lovely; thank you.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 11:34.

The public part of the meeting ended at 11:34.