



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

Y Pwyllgor Cyllid **The Finance Committee**

Dydd Mercher, 25 Mawrth 2015
Wednesday, 25 March 2015

Cynnwys **Contents**

[Cyflwyniadau, Ymddiheuriadau a Dirprwyon](#)
[Introductions, Apologies and Substitutions](#)

[Papurau i'w Nodi](#)
[Papers to Note](#)

[Bil Llywodraeth Leol \(Cymru\): Sesiwn Dystiolaeth 1](#)
[Local Government \(Wales\) Bill: Evidence Session 1](#)

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

[Ystyried Pwerau: Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn Dystiolaeth 12](#)
[Consideration of Powers: Public Services Ombudsman for Wales: Evidence Session 12](#)

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

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi 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

Leighton Andrews	Aelod Cynulliad, Llafur, (Y Gweinidog Gwasanaethau Cyhoeddus) Assembly Member, Labour, (The Minister for Public Services)
Nick Bennett	Ombwdsmon Gwasanaethau Cyhoeddus Cymru Public Services Ombudsman for Wales
Susan Hudson	Rheolwr Polisi a Chyfathrebu, Ombwdsmon Gwasanaethau Cyhoeddus Cymru Policy and Communications Manager, Public Services Ombudsman for Wales
Katrin Shaw	Rheolwr a Chynghorydd Cyfreithiol, Ombwdsmon Gwasanaethau Cyhoeddus Cymru Investigations Manager and Legal Adviser, Public Services Ombudsman for Wales
Clare Smith	Arweinydd Asesiad Effaith Rheoleiddiol ar gyfer y Bil, Llywodraeth Cymru Regulatory Impact Assessment Lead for the Bill, Welsh Government
Gareth Thomas	Cynghorydd Polisi, Diwygio Llywodraeth Leol, Llywodraeth Cymru Policy Adviser, Local Government Reform, Welsh Government

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

Richard Bettley	Ymchwilydd Researcher
Bethan Davies	Clerc Clerk
Leanne Hatcher	Ail Glerc Second Clerk

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

*Dechreuodd rhan gyhoeddus y cyfarfod am 10:02.
The public part of the meeting began at 10:02.*

Cyflwyniadau, Ymddiheuriadau a Dirprwyon Introductions, Apologies and Substitutions

[1] **Jocelyn Davies:** Welcome everybody to a meeting of the Finance Committee.

Papurau i'w Nodi Papers to Note

[2] **Jocelyn Davies:** Before we move to our first substantive item on the agenda today, will Members note the minutes of 11 March meeting and the letter from Sally Taber?

Bil Llywodraeth Leol (Cymru): Sesiwn Dystiolaeth 1 Local Government (Wales) Bill: Evidence Session 1

[3] **Jocelyn Davies:** Okay, well that allows us, then, to move to our first substantive item, which is the Local Government (Wales) Bill. This is our first evidence session and we have a number of supporting papers. We wrote, if you remember, to local authorities about costs that fell on them. You've got those in your pack, and we have with us the Minister. Minister, would you like to introduce yourself and your officials for the record, and then we'll go straight to questions?

[4] **The Minister for Public Services (Leighton Andrews):** Okay. I'm Leighton Andrews, Minister for Public Services. I'll let my officials to introduce themselves.

[5] **Mr Thomas:** I'm Gareth Thomas, from the local government and communities department. I'm the policy lead for the content of the Bill.

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

[7] **Ms Smith:** Clare Smith, local government and communities department. I worked on the regulatory impact assessment for this Bill.

[8] **Jocelyn Davies:** Thank you, and we're very pleased that you can be with us. Obviously, our committee is interested in the financial aspects, but, in setting the context for that, and following your rejection of the proposed voluntary mergers, can you just briefly outline your plans now for mergers of local authorities as we go forward?

[9] **Leighton Andrews:** Yes, this is a preparatory Bill, which sets the framework, if you like, for further mergers. It extends the possibility of further voluntary merger proposals being brought forward. It also puts into legislation the necessary arrangements for transition committees and for statutory authorities and for any controls that we would need to have in respect of authorities that were merging. Our timetable remains the timetable in the Bill; there is a closing date of 30 November for further voluntary merger proposals, though that could be varied, and, clearly, our expectation is that we will publish a map by the summer recess indicating our preferred view going forward. Our preferred view at the moment remains Williams option 1. We would also publish, in the autumn, a draft Bill, which would set out

the legislative framework for the remaining mergers to complete the map, which of course would not be a matter for this Assembly but would be for legislation in the fifth Assembly.

[10] **Jocelyn Davies:** Lovely. Thank you, Minister. Julie, shall we come to your questions?

[11] **Julie Morgan:** Just on that, the Government's preferences are still for Williams 1. Is that for the 12 local authorities?

[12] **Leighton Andrews:** Yes.

[13] **Julie Morgan:** So, that's still the Government's preference.

[14] **Leighton Andrews:** Yes.

[15] **Julie Morgan:** Thank you. The Bill provides the Welsh Government with the power to implement voluntary mergers, but I don't think there's any costings as to how much that would be. So, have you made any cost estimates of the voluntary mergers?

[16] **Leighton Andrews:** Well, the point of the Bill is to put the preparatory work in place for further voluntary mergers suggestions to be brought forward. If a voluntary merger proposal were brought forward and accepted by the Government, it would then be subject to regulations, which would be put through the Assembly. There would be a further regulatory impact assessment then, which would include costings of any specific merger, and that would give the Assembly the opportunity to comment on that. So, this Bill itself doesn't include costings for specific voluntary mergers, but that's not the purpose of the Bill.

[17] **Julie Morgan:** So, the costings would be related to specific proposals when they arose.

[18] **Leighton Andrews:** That's right.

[19] **Julie Morgan:** So, by not having any costings at this stage, does that mean you're not able to really look at the overall implications of this legislation?

[20] **Leighton Andrews:** No, I don't think that's the case. As I say, this is a paving Bill. This is a Bill which puts in place the preparatory work for any propositions that are brought forward for voluntary mergers. Clearly, there will need to be a specific scrutiny process around each of those mergers.

[21] **Julie Morgan:** So, when would you anticipate that the actual costs of these mergers would, you know, come out in terms of time? You've explained how, but what will be the time frame for that?

[22] **Leighton Andrews:** Well, at the moment, there is a timetable in the Bill in the sense that there is a 30 November cut-off point for the submission of voluntary merger proposals, although, as I say, that can be varied. So, we would expect to receive any further voluntary merger proposals by that date. We would then need to deliberate on those and then subsequently to submit proposals for further scrutiny arrangements, and it would be at that stage. So, it will be sometime in 2016 or beyond, I would assume, that we would do that.

[23] **Julie Morgan:** So, this could be after the next election.

[24] **Leighton Andrews:** It could be. It could equally be in early 2016.

- [25] **Julie Morgan:** Right. Thank you.
- [26] **Jocelyn Davies:** Okay. Peter, shall we come to your questions?
- [27] **Peter Black:** Yes. What consideration have you given to the costs already incurred by local authorities in preparing proposals for voluntary mergers?
- [28] **Leighton Andrews:** Well, these are matters for the local authorities concerned.
- [29] **Peter Black:** So, do you believe that local authorities should incur further costs in preparing new cases for voluntary mergers?
- [30] **Leighton Andrews:** That's a matter for local authorities to determine.
- [31] **Peter Black:** Okay. Will you be able to produce better business cases for mergers than those that have previously been submitted voluntarily by local authorities?
- [32] **Leighton Andrews:** No business cases were submitted before.
- [33] **Peter Black:** But would the Welsh Government be able to do better?
- [34] **Leighton Andrews:** It's not for us to submit business cases in respect of voluntary mergers. Let's be clear about the language here: we had a voluntary merger prospectus, which asked for expressions of interest to be submitted to the Welsh Government. We received expressions of interest from a number of authorities. It was then for the Welsh Government to determine whether or not those expressions of interest were of sufficient value for us to allow them to proceed to the stage of making a business case. Clearly, we made a judgment at that point, which rejected those expressions of interest. Business cases were not, at that stage, prepared.
- [35] **Jocelyn Davies:** Because they were just expressions of interest.
- [36] **Leighton Andrews:** Indeed.
- [37] **Peter Black:** So, there were no costings attached to those expressions of interest at all by the local authorities?
- [38] **Leighton Andrews:** In terms of the cost—. I'm sorry, what are you talking about now?
- [39] **Peter Black:** The local authorities—
- [40] **Leighton Andrews:** Sorry, can I just be clear, because you started a procedure of questions in relation to whether we had costed the making of cases, as I understood it, for voluntary mergers—
- [41] **Peter Black:** Yes.
- [42] **Leighton Andrews:**—and now you're asking about the actual costs of the mergers themselves. Is that right?
- [43] **Peter Black:** No; I'm following on from the answer that you've just given. When you had the cases submitted to you by the six local authorities for voluntary mergers, did they contain any estimates of costs?

[44] **Leighton Andrews:** Well, we were certainly aware of costs that were given to us and we've made it clear that we're happy to put everything into the public domain. So, I mean, these things can be interrogated.

[45] **Peter Black:** So, you can make those costings available to us, which were made available to you.

[46] **Leighton Andrews:** I have no—. I might want to check just on the detail with the individual authorities, but I have no in-principle objection to doing that.

[47] **Peter Black:** Okay. Eight local authorities in Wales also manage multibillion-pound pension funds. What assessment has been made on the costs to these funds of local authority mergers?

[48] **Leighton Andrews:** Well, I've asked the auditor general to look at the situation with regard to local authority pension funds and, when I receive evidence from him, I'll happily look at that.

[49] **Peter Black:** Are you anticipating that there will need to be a new pension fund set up, or are you considering that the existing pensions fund will be able to carry forward?

[50] **Leighton Andrews:** Well, I think I'll wait until I've received the advice from the auditor general before I reach that conclusion. Obviously, you know, there have been a variety of arrangements adopted for pension funds in the past, not just with local authorities but also with other statutory bodies in the period of the last 20 years.

[51] **Peter Black:** Presumably you'll take account of recent pension legislation in terms of making this decision.

[52] **Leighton Andrews:** Well, any decisions that we have to make that have an impact on pension funds we will obviously make in the context of existing legislation.

[53] **Peter Black:** Okay.

[54] **Jocelyn Davies:** Mike, is it on this particular point?

[55] **Mike Hedges:** Yes. Does the Welsh Government have the power to merge pension funds?

[56] **Leighton Andrews:** That's a good question. I suspect the answer to that is that we ourselves do not have the power, but there are powers that might be available to pension trustees to make such arrangements. However, I would rather get a precise answer for you. I'm thinking back to the experience of what happened with Careers Wales, where new arrangements were put in place. I'm not certain that we have the power to make those arrangements ourselves, but I will take advice and come back to you on that one.

[57] **Jocelyn Davies:** Yes, perhaps you would let us have a note on that, Minister. But, certainly, I imagine that you'd be able to cite a number of examples where organisations have merged with Welsh Government or new organisations have been—

[58] **Leighton Andrews:** There has been a series of mergers, obviously, both of former Assembly-sponsored public bodies and parts of the Welsh Government. There's been experience, as I said, in Careers Wales, and there has been the creation of other bodies, and there is a lot of experience around the management of transitional arrangements for pensions. To what extent those are within the purview of the Welsh Government, I'm not certain.

[59] **Jocelyn Davies:** I mean, we don't expect you to provide us with the legal advice you're given, but if you could just let us have a note of clarification on that. Are there any further questions?

[60] **Mike Hedges:** Are there not specific rules regarding local government pension funds? You talked about other pension funds, but are Welsh local government pension funds covered by the local government pension funds regulations?

[61] **Leighton Andrews:** Well, I'll give you a detailed note on all of this.

[62] **Jocelyn Davies:** Yes, I wouldn't challenge Mike's knowledge on local government; he is quite—. I have to say that there are members of this committee who are pension fund trustees of the Assembly. That doesn't give us a conflict, but it does give us some experience.

[63] Peter, did you want to come back on your questions, or are you concluded?

[64] **Peter Black:** That's fine.

[65] **Jocelyn Davies:** Mike, shall we come to your questions, then?

[66] **Mike Hedges:** Can I just confirm that the methodology is that a merger is proposed, transition committees are formed, then we have shadow authorities, then we have the final authorities?

[67] **Leighton Andrews:** Yes, in practice.

[68] **Mike Hedges:** The transition committees are formed; who will fund any costs of running those transition committees? I wouldn't expect them to be very large, but there will be certain costs and they'll need to take advice, especially if you're merging two authorities where the existing chief executives are interested in the subsequent job. They would have to go to a third party to get advice.

[69] **Leighton Andrews:** Well, we would expect, in the case of voluntary mergers, clearly, the bulk of that to be borne by the authorities themselves. As you can see from the summary table we've provided to you, we've put in an estimate for this financial year of a sum of £9,000 for the establishment of joint transition committees, which would fall to us.

[70] **Mike Hedges:** I'm happy.

[71] **Jocelyn Davies:** Okay. Nick, shall we come to yours?

[72] **Nick Ramsay:** Yes, thanks, Chair. Following on, Minister, from Mike Hedges's questions and the operation of the transition committees, how were the thresholds for transactions requiring approval by the transition committees decided?

[73] **Leighton Andrews:** Well, we looked at similar arrangements that had operated at the time of the last local government reorganisation in the mid 1990s, and we made inflation-related adjustments to those.

[74] **Nick Ramsay:** I was going to ask you about the experience of the previous mergers. Can you give us any specific examples of actions and their financial consequences in those previous mergers?

10:15

[75] **Leighton Andrews:** I'm very happy, Chair, to make available the report of the previous staff commission, which was published, if I remember rightly, in September 1996, which I think will give Members some insight into the way in which that operated. I think that might well be helpful to Members. But Mr Thomas was there at the time, so it's probably wiser that I defer to him in this instance.

[76] **Jocelyn Davies:** Mr Thomas?

[77] **Mr Thomas:** Thank you. I think the auditor general himself gave evidence to the Communities, Equality and Local Government Committee a couple of weeks ago and he referred to his own experience following a reorganisation. He became chief executive of Denbighshire, and I think he mentioned in his presentation to the committee that he inherited a negative balance and he commented that he hoped that no chief executive in the future would experience what he had in 1994 and 1996. So, I think that was one of the circumstances that informed our thinking in coming up with these provisions.

[78] **Jocelyn Davies:** As you say, you were around at that time, so do you know whether there were a number of local authority chief executives that came into post with negative balances, or was his experience a one-off?

[79] **Mr Thomas:** I honestly can't remember. I recall that the issues of Denbighshire were considered within the Welsh Office for a good while after. I can't remember—

[80] **Jocelyn Davies:** But the potential is that there could have been others.

[81] **Mr Thomas:** Yes.

[82] **Jocelyn Davies:** Ffred, did you want to come in on this point?

[83] **Alun Ffred Jones:** Beth yw'r **Alun Ffred Jones:** What are the provisions darpariaethau yn y Bil yma sydd yn mynd i in this Bill that will prevent a similar rwystro sefyllfa debyg i un sir Ddinbych rhag situation to Denbighshire from arising again? codi eto? Nid wyf yn gwybod pa mor I don't know how common the Denbighshire gyffredin oedd sefyllfa sir Ddinbych, ond situation was, but what in this Bill will beth sydd yn y Bil sy'n mynd i rwystro prevent that from happening? hynny rhag digwydd?

[84] **Leighton Andrews:** Well, there are specific provisions in the Bill in respect of the roles of both transition committees and shadow authorities, and, clearly, Ministers will be able to ensure that both transition committees and shadow authorities have due regard to what we have to say in terms of our observations in respect of specific transactions.

[85] **Jocelyn Davies:** Peter, did you want to come in on this point?

[86] **Peter Black:** Yes, I will just come back, because I think that the experience of the Auditor General for Wales is actually quite important. When he gave evidence, I think to the communities committee, he said that the financial values applied through relevant land acquisition and disposal provisions appeared to be low, and that applying these thresholds could impair on existing councils' ability to run the day-to-day business of the authority. I'm just wondering what advice was taken from the auditor general when you set the limits in the Bill, and would you reconsider those in the light of the evidence that he's given?

[87] **Leighton Andrews:** I'm certainly open to looking at the limits. This is the right stage, in a sense, for that kind of scrutiny to contribute to our own thinking on these issues,

and I welcome the input we've had from the auditor general, just as I'd welcome input from this committee on the basis of the evidence that you receive. It's a difficult balance, though, I think you'll appreciate, because you've got to strike a balance between, on the one hand, not wanting, as Peter Black suggests, to inhibit day-to-day performance of local authorities, but, at the same time, you do want to ensure that your limits are set at such a level as to capture any necessary inappropriate spending, shall we say.

[88] **Jocelyn Davies:** Well, yes, based on previous experience, you want to stop a certain mischief. Mike, do you want to come in on this point?

[89] **Mike Hedges:** Would you not agree that? [*Laughter.*] The transition committee should not actually hold up any transactions if it met weekly, which is the way it met previously in the old creation of Swansea? It would just be given a whole list of actions that would be taken and it would then approve nearly every single one of them. Would you agree that it's not this catching thing, but it's the fact that it is stopping people from doing things because they know they'll get caught that is the key?

[90] **Leighton Andrews:** The deterrent effect is often a very powerful mechanism. The reality is that there will be flexibility for transition committees, so they could determine that there are certain classes of spending that they want to give specific attention to, for example. So, I think we've given consideration to that in what we've suggested.

[91] **Jocelyn Davies:** Yes, and I think we've covered the point—

[92] **Ann Jones:** I thought we had, but Mike just tells me we haven't. I think Mike has a supplementary.

[93] **Jocelyn Davies:** Okay, but Nick, did you complete your questions? Right, okay. Ann, shall we come on to yours?

[94] **Ann Jones:** Yes. I thought you said that the transition committees will have some flexibility to approve transactions, but that part of it is around the pension fund management—some local authorities manage pension funds or do the treasury management. So will they be expected to approve every transaction above a relevant threshold, carried out by a merging authority?

[95] **Leighton Andrews:** They'll have the opportunity to comment on transactions, but they're not obliged to do so and they can establish specific criteria for transactions above the stipulated threshold.

[96] **Ann Jones:** Now Mike can ask his supplementary.

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

[98] **Mike Hedges:** Won't the pension fund be excluded from that because they're acting as trustees, and they're acting in an entirely different manner to running the authority?

[99] **Leighton Andrews:** I would have assumed myself that pension funds would not be treated in the same way as basic day-to-day land contracts and other kind of negotiations by local authorities.

[100] **Jocelyn Davies:** Yes, because of the fiduciary duty of the pension trustees.

[101] **Peter Black:** You said—[*Inaudible.*]—if they have a concern about a particular transaction. What paths are available to them to take that concern forward, if, for example, the

authority that is being merged, doesn't listen to them?

[102] **Leighton Andrews:** I think it would be very unwise for an authority that is merging with another authority to ignore the input of a transition committee, and I think that there would be very considerable public scrutiny of decisions taken in that context.

[103] **Mike Hedges:** Surely, Minister, you would have the opportunity to intervene at that stage. I remember Lliw valley's idea of building a large number of bowls halls during the last local government reorganisation—only one got built; the second one was stopped by the transition committee.

[104] **Leighton Andrews:** I would certainly expect to intervene if I saw inappropriate activity being undertaken. If the committee feels that I need stronger powers in the context of this Bill, I'd be very pleased to hear from the committee.

[105] **Jocelyn Davies:** You don't want to be the Minister for preventing bowls halls from being erected. Mr Thomas, did you have an additional point in answer to that?

[106] **Mr Thomas:** Yes. In the provisions about transition committees, if you look at section 29(6), if an emerging authority decides to proceed with a transaction, ignoring the opinion of the transition committee, then the merging authority would be obliged to publish the reasons for them taking that decision despite the advice they'd received. So, that does then throw it out to the public arena for scrutiny.

[107] **Jocelyn Davies:** And, of course, the Minister would be aware of that anyway. Okay, Ffred, shall we come to your questions?

[108] **Alun Ffred Jones:** Ar gyflogau prif swyddogion, mae'r memorandwm esboniadol yn cyfeirio at dystiolaeth o brosesau ad-drefnu yn y gorffennol, sy'n dangos bod uwch reolwyr wedi cael codiadau cyflog amhriodol a bod eu swyddi wedi'u hailraddio. A oes gennych chi dystiolaeth o hynny?
Alun Ffred Jones: On chief officer salaries, the explanatory memorandum refers to evidence from previous reorganisations, showing that senior managers had inappropriate pay rises and that their jobs were re-graded. Do you have any evidence of that?

[109] **Leighton Andrews:** Yes. I'm not going to go into specific examples—anyway, I wasn't there at the time—but if you were to look at the report of the staff commission from September 1996, paragraph 24 specifically refers to the Welsh Office at an early stage raising with its staff commission the need for regulations in certain areas to prevent local authorities from giving advantages to their existing staff over the staff of the authorities with which they may merge, for example. So, I think there is experience. We obviously want to start this whole process in the light of having learned from the experience of previous mergers and I think the previous mergers give us that context that we need to be very careful in this area.

[110] **Alun Ffred Jones:** I mi gael deall hynny'n iawn, ai cyfeirio maen nhw at gyfnod cyn yr ad-drefnu ynteu gyfeirio at yr hyn a ddigwyddodd ar ôl ad-drefnu?
Alun Ffred Jones: For me to understand that correctly, are they referring to the period before reorganisation or are they referring to what happened after reorganisation?

[111] **Leighton Andrews:** I think the concerns emerged in the period before reorganisation, but clearly, therefore, there was a need then to act to take account of those concerns as the process proceeded.

[112] **Alun Ffred Jones:** A oes tystiolaeth
Alun Ffred Jones: Is there evidence that

fod cyflogau uwch reolwyr, yn gyffredinol, yn rhy uchel yng Nghymru? Mae yna enghreifftiau diweddar, rwy'n gwybod, o arfer gwael, ond, yn gyffredinol, a ydy hynny'n wir am uwch reolwyr mewn llywodraeth leol yng Nghymru? senior manager salaries are, in general, too high in Wales? There are recent examples, I know, of bad practice, but, in general, is that true in the context of senior managers in local government in Wales?

[113] **Leighton Andrews:** I think, if you looked at the salaries of chief executives in Wales and compared them to the salaries of chief executives in authorities in England, you might conclude that some of those salaries in Wales are disproportionately high.

[114] **Jocelyn Davies:** Of similar-sized local authorities in England—

[115] **Leighton Andrews:** Indeed.

[116] **Jocelyn Davies:** I understand, if you make that comparison.

[117] **Jocelyn Davies:** Okay. Mike, did you want to come in on this point?

[118] **Mike Hedges:** I was just going to say, wasn't one of the problems last time that a lot of people were looking to take early retirement, and they were on final salary schemes? Now that they're on career average revalued earnings schemes, some of the incentive will not be there.

[119] **Leighton Andrews:** Well, that might be one of the factors, I suppose, that was there to influence people at the time, but I think the other factors that people were concerned about were about comparative gradings of officials when authorities were merged, about the relative levels of seniority of officers between authorities as merger procedures took place. So, I don't think it's just a question of people wishing to exit.

[120] **Jocelyn Davies:** That's a good point.

[121] **Mike Hedges:** I'm trying to say that, as Peter Black and I saw with the Swansea merger, there were an awful lot of exits and an awful lot of vacancies occurred, not with people slotting in, but with nobody available at all.

[122] **Leighton Andrews:** Well, that is clearly something one would hope could be avoided, but I don't think we want to base our entire experience on what happened in Swansea.

[123] **Mike Hedges:** I could say Neath Port Talbot.

[124] **Jocelyn Davies:** If there was a prize for the number of times somebody mentioned Swansea, I think Mike definitely does have that. Yes, Peter.

[125] **Peter Black:** Obviously, we're talking about senior salaries here, but in terms of salaries further down the scale, local authorities are still at different stages in terms of implementing equal pay provisions. I'm just wondering how that's going to pan out, in terms of merging local authorities. Would you expect them all to be at a similar level by that time?

[126] **Leighton Andrews:** Well, I think that's why we've put in place the proposals that we have for a statutory staff commission; you'll be aware of the statement I issued yesterday. We've been out to consultation on that, we've had a lot of evidence on that. Clearly, these are issues that, I think, the staff commission will need to consider.

[127] **Jocelyn Davies:** And, as you say Minister, the public are much more aware, now, of these issues, because of recent publicity. You have to be fair to people, without penalising individuals, but fair to the taxpayer as well. Chris, shall we come to your questions?

[128] **Christine Chapman:** Minister, the WLGA have said that the Bill puts a disproportionate emphasis on cost cutting by reducing senior staff and members, or councillors—would you agree with that? I mean, there is a concern that the lower grades would be affected. Could you comment on that?

[129] **Leighton Andrews:** Well, I don't think the Bill does that. I think we have drawn attention in the White Paper, which is obviously separate, to the cost of senior salaries within local authorities, and by that we mean salaries above £60,000 and the number of officers holding those. If you are speaking specifically about the issue of redundancies among council staff, then it is certainly true to say—you know, I read the evidence of the unions to the Communities, Equality and Local Government Committee—that they would say, already, there have been a significant number of redundancies affecting staff in lower grades across authorities. So, I'm not sure that the situation is made any different by this Bill.

[130] **Christine Chapman:** Right. Okay.

[131] **Jocelyn Davies:** So, coming to council tax, now, we'll just finish on this one: what is current Welsh Government policy in relation to council tax and mergers?

[132] **Leighton Andrews:** Well, I think these are issues that will need to be explored as we go through the merger process. From where I start, I don't see that, simply because we are going through a process of merger, council tax levels have to be harmonised between merging authorities on day one of any merger process.

[133] **Jocelyn Davies:** Okay. It's certainly something that the public—individuals—will be interested in, and it's one of the first things that they, certainly if you go into a conversation with somebody about mergers, raise.

[134] **Leighton Andrews:** I certainly accept that. But I would say this: if authority A has a level of council tax and is providing a level of service to its residents, and council B has a level of council tax that is different and is providing a different level of service to its residents, they don't, on the day of merger, necessarily expect to receive different levels of council tax or new levels of service. So, I think these are things that we can accommodate within the merger process, and we have the powers to allow authorities to vary council tax levels within their authorities.

[135] **Jocelyn Davies:** Okay. Are there any further questions from Members? Okay. Thank you, Minister. Was there anything that we haven't covered that you would like to put on the record today?

[136] **Leighton Andrews:** No; I'm very happy.

[137] **Jocelyn Davies:** Okay. We'll send you a transcript as normal.

[138] **Leighton Andrews:** Thank you very much, indeed.

10:30

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

Cynnig:

bod y pwyllgor yn penderfynu gwahardd y cyhoedd o'r cyfarfod yn unol â Rheol Sefydlog 17.42(vi).

Motion:

[139] that the committee resolves to exclude the public from the meeting in accordance with Standing Order 17.42(vi).

*Cynigiwyd y cynnig.
Motion moved.*

[140] **Jocelyn Davies:** I now suggest that we go into private session, so I move Standing Order 17.42 so that we can discuss the evidence before we move on to our next item.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 10:30.
The public part of the meeting ended at 10:30.*

*Ailymgynullodd y pwyllgor yn gyhoeddus am 10:49
The committee reconvened in public at 10:49*

**Ystyried Pwerau: Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn
Dystiolaeth 12**
**Consideration of Powers: Public Services Ombudsman for Wales: Evidence
Session 12**

[141] **Jocelyn Davies:** Welcome back, everybody, to a meeting of the Finance Committee. We're now on item 6, which is consideration of the powers of the Public Services Ombudsman for Wales. Mike, we're on evidence session 12—thank you—and we have with us the ombudsman. Would you like to introduce yourself and the officials for the record and then we'll go straight to questions, if that's okay.

[142] **Mr Bennett:** Yes, thank you, Chair. My name's Nick Bennett, I'm Public Services Ombudsman for Wales, and I'm joined by my colleagues Susan Hudson and Katrin Shaw today.

[143] **Jocelyn Davies:** I'm sure that you've been watching and listening to the evidence that we have taken over the last few weeks. Are there any of your original proposals that you think need amending now that you've heard some of that evidence?

[144] **Mr Bennett:** Well, I've got to say that, in general, 'no' for the reason that I've been very, very pleased to see the way in which you've taken evidence and some of the evidence that's been forthcoming. I think, you know, early on, there were legitimate concerns that perhaps own-initiative powers would duplicate, for example, the auditor general's work. So, I was very pleased to see that the auditor general was able to come here and demonstrate that that wasn't the case. I think it was really pleasing to see my colleagues from Scotland and Northern Ireland come to demonstrate what could be done, certainly in terms of open data for Scotland. What a challenge for us to be able to have the same level of open data here in Wales. I think also, in terms of the voluntary sector, some of the evidence that you received

from the Wales Council for Voluntary Action and from Citizens Advice, you've heard it from them in terms of the fact that we feel these proposals very much err on the side of promoting social justice in Wales and making sure that we can assist those who need good-quality public services the most.

[145] **Jocelyn Davies:** Okay then. During listening to that evidence, was there anything that you think that you would have added in?

[146] **Mr Bennett:** I think, during the course of the evidence, I would hope that things have become clearer. Apologies from me personally if I wasn't clear enough in terms of what we were looking for in terms of private health care. We're not looking for jurisdiction for the whole of private healthcare, but we need to retain our independence, which is different, of course, to the role of the Independent Sector Complaints Adjudication Service, given that it's a trade body. So, there is a continuity of care issue there for people who might have dipped from the public to the private and then perhaps back into the public sector. I guess perhaps there's still some nervousness in some quarters when it comes to links with the courts, given the fact that that is an England and Wales area of jurisdiction.

[147] **Jocelyn Davies:** Yes. Do you still believe that a Bill is required, or do you think that some of this stuff could be implemented by alternative methods?

[148] **Mr Bennett:** I think that an amending Bill would be the best way forward. I hope as well that it would be the quickest way forward. I know that if this is to move forward in terms of an explanatory memorandum and so forth, particularly given where we are in terms of public service austerity, we have to have an eye on costs. I think that one of the issues that's come over most strongly to me is that, certainly in terms of what happened in Scotland—the issues there of open data and complaints standards—is that, actually, there is a huge saving through proceeding with this work now, before we see a reorganisation of local government. On reorganisation of local government, obviously, going back to the Williams commission and all the rest of it, there was a lack of agreement there on how much of a saving could be made and what the costs would be, but I certainly feel that, to go through a reorganisation of complaints handling or new investment in IT or anything else following a reorganisation of local government in Wales would be a huge mistake. It would save millions of pounds perhaps to the Welsh taxpayer if we could go down that route before rather than after reorganisation.

[149] **Jocelyn Davies:** Okay then. Peter, shall we come to your questions?

[150] **Peter Black:** Yes, thanks, Chair. Nick, some witnesses have referred to uncertainty over how ombudsmen will be affected by the new EU alternative dispute resolution directive. Can you explain your understanding of the regulation and what work you've done to assess the impact of the regulation on your role?

[151] **Mr Bennett:** I'm very happy to answer that. I'm going to call on my colleague Katrin Shaw, but we are very much in the process of assessing how this impacts upon us right now.

[152] **Ms Shaw:** Thanks, Nick. As members of the committee will be aware, the European directive deals with disputes between consumers in the private sector. Now, as far as the ombudsman's jurisdiction is concerned, the area that we feel that impacts upon is the area of private social care. Again, as Members will be aware, in November last year, the ombudsman's jurisdiction was extended to cover complaints about private social care. So, that's the area that we've been looking at. It is very much a dilemma for the ombudsman, I have to say, because, as you know, the ombudsman is seen as one of the pillars of administrative justice in Wales. The independence of the ombudsman's service is so important, in the sense that complainants need to know that the ombudsman is independent of

any interference from any other party.

[153] Now, what is proposed, as I understand it, is that the UK Government is issuing regulations to deal with this system of alternative dispute resolution. The system they proposed is that each ADR provider applies for certification, and will be answerable to a competent authority. Now, the Department for Business, Innovation and Skills has nominated the Trading Standards Institute to be the competent authority in this field. So, the dilemma the ombudsman has at this stage is the fact that the Assembly has given the ombudsman the powers to deal with these complaints and that's his statutory role. As far as I am concerned, as the ombudsman's legal adviser, that ADR directive and UK regulation can't impact upon the ombudsman's role that you have given him, and I do have concerns about the independence of his role, if you were to go down the route of certification. The dilemma is: would it create confusion if we don't apply for certification for complainants and consumers? Because if we don't apply, then somebody else will be nominated as the ADR provider in that sector.

[154] So, you know, that is the situation we're in. There are a lot of cons in relation to the advice I'm able to give the ombudsman in this area and, obviously, if the committee has any suggestions on how, perhaps, a statutory solution could be reached to deal with this issue, then that would be very welcome. But that's the scenario.

[155] **Jocelyn Davies:** So, if you don't apply for certification, somebody else will be nominated as the alternative dispute resolver in private social care in Wales. So, people would have two options: they could come to you or they could go to the—. Well, in fact, they would be pointed towards somebody else, I guess, would they?

[156] **Mr Bennett:** That's the risk.

[157] **Ms Shaw:** Yes.

[158] **Jocelyn Davies:** But, even if they were pointed towards somebody else, that doesn't stop you carrying out your duties if somebody comes to you.

[159] **Mr Bennett:** No.

[160] **Ms Shaw:** No.

[161] **Mr Bennett:** The dilemma is very much, you know, what's best for the Welsh citizen. On the one hand, we want to sustain our independence. The powers that I have in this regard have been given by the Assembly. Why go applying for certification to the TSI?

[162] **Jocelyn Davies:** What does certification include? Would there be checks on you? Would there be—?

[163] **Ms Shaw:** As I understand it, the system that is proposed is a system for annual reporting and possibly auditing. Again, that's the reason I have concerns about the independence of the ombudsman's role being answerable to a body that is nominated by the Department for Business, Innovation and Skills in the UK Government, whereas the whole system of the Public Services Ombudsman (Wales) Act 2005 is obviously enshrined in law and enshrined in the principle that he is completely independent and answerable only to the Assembly, which is where his annual report should lie every year. So, that's the concern that I have in this area.

[164] **Jocelyn Davies:** And are the other ombudsmen facing a similar dilemma?

[165] **Mr Bennett:** The Local Government Ombudsman in England faces a similar

dilemma when it comes to private social care. I have discussed this with other jurisdictions and I don't think it affects Scotland or Northern Ireland in the same way currently.

[166] **Ms Shaw:** No, not in the same way.

[167] **Jocelyn Davies:** Do you know how the English ombudsman intends to deal with it? Although, it is a UK—

[168] **Mr Bennett:** We're still discussing it, but I think they might apply.

[169] **Jocelyn Davies:** But, of course, they are in England and that is the Government policy there, isn't it, but it's not the policy here, where you operate, in Wales? Okay. All right, this is something that we need to consider. Peter—sorry.

[170] **Peter Black:** I don't recall this coming to the Assembly in terms of Welsh Government consent for this legislation. I think it clearly has an impact on the devolved powers of the Welsh Government, doesn't it? But that's another matter.

[171] So, in terms of the impact on you—and it's private social care that it's really going to impact—what about the proposals you're bringing forward in terms of private healthcare? Will it have an impact on that as well?

[172] **Mr Bennett:** No. Healthcare is exempt from the ADR regulations. There is an additional issue here in terms of cost, so I think there's a registration fee for becoming an ADR provider. There is a revenue potential if you're actually handling complaints as an ADR provider. But, again, we need to look at those figures in terms of cost and benefit. Is the cost of becoming a provider equal or greater to the revenue that could be generated from having that status? So, again, it's still unclear at the moment.

11:00

[173] **Peter Black:** Okay. The committee has identified that own-initiative investigations would require co-ordination between various public bodies. Do you believe that the need for co-operation should be defined in legislation, or can it be left to existing informal arrangements?

[174] **Mr Bennett:** I think there's a hybrid approach there that's really needed in that, currently, the PSOW Act does require co-operation with some organisations, but funnily enough, not the auditor general. So, I think inclusion of the auditor general would be useful. I think we've also alluded to the fact that, whilst the children's commissioner is mentioned in the Act, it's not in the same section as some of the other commissioners, so I think we could tidy that up. What we have to be careful of, though, is stipulating too much process within the Act. I think it's the outcome here that is really important, and we have to be in a position where we can put the complainant first.

[175] So, if aspects of own-initiative, such as looking at certain themes during the course of the forthcoming year were to be considered, then, absolutely, that has to be through co-operation with other commissioners, and perhaps the third sector as well—I think they would have a very clear view in terms of what we could be looking at there. However, if we were using it in other ways, for example, an individual complainant comes to us saying that there'd been a service failure by a GP, and actually we find that it's from a health board, a pharmacist or another provider, then I wouldn't want us to have to face legal challenge because somebody would claim, 'You didn't co-operate in a certain way with the auditor general before you pursued that individual's complaint'. So, I think we've got to be sensitive to the way in which we frame that legislation.

[176] It could be a fantastic opportunity, though, and I think, for those Members who've also been on the Public Accounts Committee, you'll be aware that there's been an issue there in terms of shared services and co-operation between the ombudsmen and the other commissioners. I just think the scope for savings on that side is very narrow, but on this side, in terms of having a real impact on public service improvement and looking at, you know, the 95 per cent of our budgets that are not devoted to back-office costs, we could do an awful lot more to drive public service improvement through better co-operation.

[177] **Peter Black:** I think one of the issues that we've encountered when we've come to look at services is actually understanding the full breadth of the sort of complaints that you might be dealing with under this, from both perspectives, really. Will it be feasible to publish a list of potential studies in advance that would then be used as a basis for consultation with relevant organisations and the public, on how these own-initiative investigations might work and what sorts of things we could be dealing with?

[178] **Mr Bennett:** Again, I think, for the themes, definitely. It goes back to the issue on ADR: my accountability to the Assembly. It would not be a very wise ombudsman who would wish to ignore other commissioners, other colleagues, or other views and commission or spend public money on something that looked like it was duplicating the work of the auditor general or one of the commissioners, and then be invited to appear in front of the Public Accounts Committee to explain why you spent taxpayers' resources, particularly during a period of austerity, on something that is similar or very close to something that's been undertaken by others.

[179] Over the past few years, if I'd have had those powers, I would have been very interested in doing, perhaps, joint studies with the auditor general, so that, where he's investigated areas of value for money, we could've looked, in conjunction, at service failure, because I think the two do go hand in hand. I think the recent review of residential care, which the older person's commissioner undertook, was very interesting. Again, one of the things that, if you like, makes me wonder is this extension of jurisdiction that we've had in this area; we haven't had the same level of complaints come forward that mirror some of the descriptions of care standards that the older person's commissioner described there.

[180] I think there would be further work that we might want to undertake in terms of disadvantaged children. But, again, there is no way that I'd want to look at any of those service areas without consulting fully with the children's commissioner. And then, I think, looking at those complaints—the voices that we never hear. Who complains for the homeless? Isn't there a job of work to be done there in terms of consulting with the likes of the Wales Council for Voluntary Action, Shelter and others to make sure that we really are using those powers to dig deeper. If Tom Frawley were here, he'd say that his post bag is always growing, but there are some voices you simply don't hear, but you know that they need to be heard.

[181] **Jocelyn Davies:** So, we can't have a commissioner for every disadvantaged group, can we?

[182] **Mr Bennett:** Absolutely.

[183] **Jocelyn Davies:** Have you got any further questions? So, you see the own-initiative powers acting on two levels: the thematic examinations that you might do, but also in individual cases if, when you start an investigation, as you said, it's the GP, but actually it's the local health board, so you don't have to go back to the complainant and say, 'Well, you now complain about the local health board so that we can go in there'. You could just say, 'I'm following this complaint'.

[184] **Mr Bennett:** Yes.

[185] **Jocelyn Davies:** I see. What about issues, say, for example, around whistleblowing?

[186] **Mr Bennett:** Own-initiative powers would make it more possible for us to look at issues around whistleblowing, which we can't do currently because we have to be driven by the individual complainant, and they have to suffer an individual injustice. So, the fact that somebody's blowing a whistle has been a restriction on us getting involved in certain complaints or concerns in the past. I think that we'd still have to have safeguards there, and I think people, in terms of natural justice, would have concerns in that, if somebody was perhaps being vindictive and anonymous and casting aspersions, well, you can't simply go responding to every single accusation that's thrown around. I think there would have to be some test there in terms of evidence.

[187] **Jocelyn Davies:** I'll bring Mike in now, but there is potential, then, that the whistleblowers whom you may very well have been in contact with, and your office certainly would have over the years, and which you would have liked to explore, you haven't been able to because of the bar on that. Mike, did you want to come in?

[188] **Mike Hedges:** Wouldn't the solution be to keep their name anonymous when you were taking it up, the complaint, but to let them know that, if their complaint was vexatious, you would publish their name?

[189] **Mr Bennett:** Well, I think that's something we could certainly look at, but none of that is currently available to us the way the current legislation is scoped.

[190] **Mike Hedges:** Wouldn't that be a method forward that would allow whistleblowers, but would stop people being vexatious?

[191] **Jocelyn Davies:** You haven't thought about it.

[192] **Mr Bennett:** There's a danger here that we get dragged in to too much of the detail. In principle, I think whistleblowing is a serious issue, and I think you have to have policies in place that are sensitive, and which give people who have genuine concerns a level of reassurance that they can pursue this without being hung out to dry. But, you know, equally, there are cases where, perhaps—

[193] **Jocelyn Davies:** You might find you're publishing the same name over and over again. That is a possibility. I think what you're saying is that, in framing any power for own-initiative investigations, and putting caveats in, it would have to take into account the different levels in which the own-initiative powers might operate. Okay. Chris, shall we come to your questions?

[194] **Christine Chapman:** Further to the groups you talk about who are perhaps not complaining, do you think it's possible to provide any details on the number and groups of people who've not pursued a complaint due to the need to make a complaint in writing?

[195] **Mr Bennett:** Certainly we've got some feel for that because of the numbers, which are relatively small, that come through to the office every year. We know that roughly 50 per cent of those to whom we've sent a written record don't send it back. All you have to do is sign and send that back. We don't receive 50 per cent of those, so that is a real concern. More broadly, there is evidence there—I think *Which?* recently published a report—that for every person who does complain there's another one who doesn't. I think there's some evidence as well, when it comes to health complaints, that a similar ratio applies, and certainly there's

been some evidence that people—. I've had this personally: people who've approached me on an individual basis saying that they're very unhappy with the treatment they've received and are afraid of formally doing anything because they are still under the care of the particular provider, and they're scared of repercussions—which I'm sure would not, in many cases, emerge, but there's still this perception, this fear of putting your head on the block, for want of better language. Certainly this appears to be an issue, often, in rural areas more so than more metropolitan places, where people tend to know each other much more on a one-to-one basis. Is there anything you'd like to add there? No?

[196] **Jocelyn Davies:** Is there a danger, though? I mean, if there are no controls at all on how people can make a complaint to you, well, maybe on Twitter tomorrow evening I'll send you a little message and there you are, you've got a complaint. Would you be accepting complaints on Twitter, and Facebook?

[197] **Mr Bennett:** Certainly, we're trying to do as much as we can to be more in tune with social media, and we certainly think electronics—

[198] **Jocelyn Davies:** What I'm saying is, how do you know that anything is sort of—

[199] **Mr Bennett:** Well, there's a measure, isn't there? Every time somebody tweets something that could be vexatious, you don't respond. However, going back to the issue that I mentioned in terms of the homeless, for those people who don't have a fixed abode they might still be able to do something electronically, which wouldn't be possible. I think Susan's rather keen to make a contribution here.

[200] **Ms Hudson:** I was just going to say we have had enquiries over Twitter, and obviously, with the nature of the sort of open dialogue it's not possible to deal with a complaint over the Twitter feed, but what it allows people to do is to actually contact us in that way, and then we can then arrange to discuss offline, if you like, the complaints that they have. So, we have had a couple in via that method. But again, it's that issue then. Once we've made contact, we're back to this situation of having to write that complaint down for them, and so on and so forth.

[201] **Jocelyn Davies:** Yes, because obviously, we wouldn't want to be in a position where somebody thinks they've made a complaint to you but it was a message on Twitter and you didn't take it as a complaint.

[202] **Mr Bennett:** Sure, but currently the only exchange that I've had on Twitter has been in the course of you taking evidence here. I think it was a case to do with Carmarthenshire. I think we did have a Twitter-based conversation to explain, 'Look, without own-initiative powers, we could not look at the issue of whistleblowing', which was raised in that area.

[203] **Jocelyn Davies:** Oh, I see. Okay. Other social media are available, I should say, other than Twitter. Chris, did you want to come back?

[204] **Christine Chapman:** Yes. Again, following on from that, do you think that the ability to investigate oral complaints, if you went down that road, would actually increase the workload of your office?

[205] **Mr Bennett:** Certainly, the number of complaints would increase, but to go back to this frustration right now in terms of assisting those citizens in Wales who cannot, for whatever reason, provide us with a written complaint, that can take staff within our complaints advice team three or four hours. That's in terms of going through all the issues that a particular complainant has, recording it, making sure that it's as accurate as possible, then sending it to the complainant's address, and 50 per cent of that activity currently is

wasted. It is waste. I've had to give some reassurance in raising this issue with you to our own complaints advice team, that we are not simply going to be advertising, 'Ring us any time' or tweet or do whatever else, because I'm sure that there would be a huge amount of increased traffic. The issues are here that we are there for those people who have, more often than not, exhausted the complaints procedures that are available from public service providers. I don't want to be giving them a signal that, if you have an issue around literacy, we're not going to help you or, you know, I might do under my discretion. I'm not comfortable with that for the simple fact that I think that anyone in Wales who's exhausted a complaints procedure, a tax-paid procedure, I want them to come to the office. They should have the same rights regardless of their literacy and how confident they feel, or any stigma that might be associated with that.

[206] **Christine Chapman:** Okay. We also heard evidence and recommendations that a trusted intermediary should be included. How do you feel about that?

[207] **Mr Bennett:** Certainly, I think there is scope for advocacy and trusted intermediaries, but I worry sometimes that perhaps there'll be people who are unaware of the support that they could get in that direction. I also worry that, you know, we need to keep complaints systems and processes as simple as possible. The more stages that we have in place, the greater the danger that the complainant slips through the system. So, I think that's a real issue.

[208] Of course, in terms of more national issues, when it comes to systemic failures, some of those commissioner-type organisations that champion the needs of specific groups—certainly the older persons' commissioner and the previous children's commissioner—supported my seeking own-initiative powers, because they did feel that that would make issues for the groups that they champion much easier. Keith Towler is certainly concerned about the number of children who didn't complain who needed to complain. How could you look at children's services? Then, for Sarah Rochira, there was a real concern around sensory loss and the fact that some older people physically will not be able to complain in the next few years. Again, in terms of the timeliness of this report more generally, this idea that a 30 per cent increase in the proportion of people over 65 over the next decade does mean that the nature of health complaints will change.

11:15

[209] It's not simply a trip to the GP on a single issue; it's going to be a range of different issues, and that means asking somebody under those circumstances with complex health needs to keep resubmitting an additional complaint, because actually, you know, it wasn't the osteopath, it was—. You know, it's just—. This is about futureproofing.

[210] **Jocelyn Davies:** I guess that with the desire to deliver equality of opportunity to everybody, you are perfectly happy to tolerate the potential downside that you might have from a rising number of complaints from elsewhere.

[211] **Mr Bennett:** Given that the office have dealt very well with the doubling in volumes over the last eight or nine years, we are not actively seeking more complaints, but I think we do have that responsibility when it comes to equality, so that where we feel perhaps that disadvantaged groups are not getting the same access, for whatever reason, we remove those barriers.

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

[213] **Nick Ramsay:** I'm just going to tweet my questions to you, if that's all right, to see how long it takes before I get a response. [*Laughter.*] Would a new role over complaints handling require a cultural change to the ombudsman, given that it may involve enforcement?

[214] **Mr Bennett:** I don't think it would involve a huge culture change, to be honest. I think this is one of the issues that's been raised with me—in terms of both a complaints standards authority and own initiative—that, in some ways, you no longer want to be as independent, and that you want some kind of enforcer role, some kind of *The Equalizer* role. It's not about that at all. I think it's really in keeping with the broader European tradition of what an ombudsman should be. It's a Scandinavian term. I think the first one was created in Sweden at the beginning of the nineteenth century. There are 50 of them within the Council of Europe members. Forty-five of them have own-initiative powers. The four that don't are all—or the five. Sorry. Certainly, the United Kingdom doesn't have that tradition currently.

[215] The one that's most likely to have those powers will be Northern Ireland's. Northern Ireland have framed their legislation on what they've seen as good practice in Wales. There is a danger that we go from being in the vanguard, from having the best legislation, to being second fiddle to Northern Ireland. I say this with respect to Northern Ireland—I was in Belfast yesterday as a member of their audit committee—but if they proceed now with a committee-supported Bill in Northern Ireland, they will get own-initiative powers in April 2016. We have the opportunity to be in line with Northern Ireland if we proceed now, so I don't think that changes the culture at all. It's in step with reforms that are being carried through in another part of the United Kingdom.

[216] One of the reasons I think own initiative is within the legislation proposed for Northern Ireland—and you'll have met Dr Tom Frawley, and you'll be aware of his health background—is that 66 per cent of complaints going to Northern Ireland are health based. So, when it comes to this increasing complexity and the need to ensure that there's futureproofing, they see that as an absolutely essential part of their role moving forward.

[217] I think, again, in terms of the complaints standards and open data provisions in Scotland, I don't think that anyone would claim that Jim Martin is out of step with what mainstream ombudsmen look like, but clearly having those powers—. I think he gave a very good case here in terms of the way in which parliamentary sovereignty had been used to ensure that there was greater openness, transparency and scrutiny in Scotland, and I think it would be a fantastic opportunity to do that in Wales. But that will be very much about using the powers bestowed by a Welsh Parliament, rather than doing anything to change the fundamental role of the ombudsman.

[218] **Nick Ramsay:** Some of the evidence we've received—well, a lot of the evidence we've received—said that, although things are patchy, there is improvement, albeit at a slow pace, but that could improve. Do you think legislation's absolutely necessary, or could the current approach get us somewhere without the need for complicating things with legislation?

[219] **Mr Bennett:** It would be a bit tongue-in-cheek of me as a former member of the Williams commission to say that the voluntary approach works all the time, wouldn't it, 18 months on? So, clearly, there is a view that perhaps one has to be more directive. We've seen some improvements in terms of the adoption of better complaints handling in Wales, but there's still a long way to go. I don't think there's any scope for complacency in this regard either. We're talking about a public service economy of some £15 billion or £16 billion, to invest a very, very small amount of time and money and legislation to make sure that we're absolutely top of our game. I think some of the challenges—. Some of the messages that I heard in terms of the White Paper, which certainly took on some of the themes of Williams, were about things like ensuring that we're not just satisfied with being mediocre but that we're going to pursue excellence. We don't just want to be the best in terms of the Welsh average; we want to be adopting the best that's available internationally. The best practice internationally is own initiative and the best practice in terms of open data is Scotland. So, you've had those examples over the last few weeks and months and, I think, there's an

opportunity there to enshrine that best practice in legislation.

[220] **Nick Ramsay:** You just touched on the data issue. Should the legislation restrict itself to just the collection of the data or should it specify how the data should be published and how you should deal with it?

[221] **Mr Bennett:** I think there's got to be scope to be sufficiently flexible by sector to make sure that one isn't over centralising, particularly when it comes to local authorities. One cannot be in a position where you're simply treating them as agents of one central agency. But it's important to have that balance there so that you really can compare apples with apples and pears with pears, and ask, to quote Jim Martin, why, if you were a resident of Edinburgh, you had a 97 per cent chance of getting satisfaction on your complaint within five days, while it was significantly lower—about 50 per cent—if one was a resident of Dundee. I think that more transparency there would drive improvements. I think that's another fundamental issue here, if we're talking about having a non-market-based approach to public services. There has to be an aspect of openness, transparency and also contestability. Own initiative gives you some level of contestability, but the open data ensures that there's transparency there in what is, if I can say the word, monopolistic provision.

[222] **Nick Ramsay:** And then, given that 'ombudsman' is a Scandinavian term, as a lot of the evidence has said, you're definitely an ombudsman and not an ombudsperson.

[223] **Mr Bennett:** I can assure you that the Scandinavian use of the term is not gender-specific. Many female colleagues, who've done a very good job—including my predecessor, the acting ombudsman, Margaret Griffiths—I'm sure would confirm that it's not a gender-specific term.

[224] **Nick Ramsay:** On the issue of flexibilities—you've pretty much covered this—it needs to be flexible enough so that the complaints policies can be localised. Can you give us any examples of how that flexibility would work in practice?

[225] **Mr Bennett:** Certainly in terms of what was done in Scotland, I think Jim Martin made this point when he came to committee as well, and he was very clear: he wasn't the regulator; he was the facilitator. So, it's about sharing that best practice and making sure that it's available—perhaps insisting on certain aspects so that you would have a two-stage approach, of five days and 20 days. But I'm sure that there would be scope within that to allow certain flexibilities, but there is evidence there of good practice. We've had a discussion already, and I'm very grateful to one of my colleagues who cannot be here today, Carl Gehler, who recently spoke to the 22 complaints handlers within local government in Wales and thought, 'Is this a hospital pass?' in terms of going up to Llandrindod and asking them, 'How do you feel about us having a complaints standards authority adopting what they do in Scotland?', and probably getting the rebuff, but it was welcomed because it gives scope to make that cultural change. It's not just about counting numbers. These are service-based organisations. So, hearing the voice of the complainant is essential, particularly in that monopolistic situation, to make sure you can adopt a system of continuous improvement. So, where is the complaints department located? What influence do they have? What part do they play in terms of good governance? Is there somebody challenging the executive in terms of the way in which they respond to citizens' concerns. It's those issues that I think can be adopted flexibly across different organisations within jurisdiction. We'd all know if bad practice was also present.

[226] **Nick Ramsay:** Thanks.

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

[228] **Julie Morgan:** I was going to ask you about the code of conduct on complaints, but before I go on to that, following up the previous discussion, I wonder whether you could perhaps rethink ‘man’ not being gender-specific.

[229] **Mr Bennett:** Well, I do appreciate that ‘man’ is gender-specific, but I can assure you, because this was discussed yesterday and it’s one of the issues that emerged in terms of proposals in another jurisdiction, that ‘ombudsman’ is absolutely a non-gender-specific term. You may not appreciate me saying this. I have female colleagues who perhaps could give you that assurance—not just those with me today. Emily O’Reilly, the recently appointed European Ombudsman retains the term ‘ombudsman’. She was previously the Irish ombudsman. My predecessor Margaret Griffiths was also an ombudsman. Ann Abraham was the Parliamentary and Health Service Ombudsman for a number of years in England, and currently I have another colleague who is the Local Government Ombudsman, Jane Martin. So, within the community of ombudsmanry across Europe, I can assure you that it is seen as a non-gender-specific term.

[230] **Julie Morgan:** Well, I don’t want to make this too long, but—

[231] **Jocelyn Davies:** I know, but Chris is dying to come in on this, and you did open the door. Chris.

[232] **Christine Chapman:** Yes, just to say that the language does evolve, and I think language actually creates meaning. There are lots of other terms that have actually promoted the idea that it is gender-specific, so I will throw that in.

[233] **Julie Morgan:** And I would say it’s what the people think of it, maybe, rather than the individuals who are taking this view. So, I hope you’ll rethink.

[234] **Mike Hedges:** Very few people in Wales speak Swedish.

[235] **Jocelyn Davies:** You’ve started something now. [*Laughter.*] Anyway, the code of conflict, while we all ponder that.

[236] **Julie Morgan:** Do you feel that the ombudsman’s role in considering the ethical behaviour of politicians sits alongside your primary role, which is to help the public receive better public services?

[237] **Mr Bennett:** Well, certainly, it’s a function that I’m happy to continue with. I did note that there was a view, I think particularly from Nick O’Brien, that this didn’t sit with mainstream ombudsmanry, but it certainly hasn’t been a problem for the office or for my predecessors. Going back to one of your comments earlier, it would be pretty difficult if you were to have a commissioner for every individual function. So, certainly, I’m happy to continue with it. I think, in terms of the housekeeping issues around the code of conduct, I think some of the statutory provisions here are from the Local Government Act 2000, which has now been repealed in England, so there might be some scope for us to actually do some tidying up in that regard, if we are to look at the legislation.

[238] **Julie Morgan:** So, most public services ombudsmen don’t have this role, as I understand it, but you think there is a specific reason to have it in Wales.

[239] **Mr Bennett:** Well, as I said earlier, it would be something that I’m happy to continue with. To some extent, I think that role’s no longer available in quite the same way in England because of other structural changes when it comes to standards provision there. Actually, the trend is different—. The new Northern Irish legislation will actually give powers in this regard to the Northern Ireland Ombudsman, and Katrin and other colleagues have helped

advise the Northern Ireland Ombudsman on how to frame that legislation. I don't know whether there is anything else you'd like to add, Katrin?

[240] **Ms Shaw:** Yes. What we've tried, as you know, I think, to work at over the last couple of years with monitoring officers of councils is to ensure that we are not bogged down with low-level complaints and that we refer them back for local resolution within the county councils. What Nick is doing now, which I think will assist in this as well to ensure that we only look at the serious cases, is introducing and launching his new revised guidance, bringing in a public interest test to ensure that the cases that we pursue to investigation and referral for adjudication, either by local standards committees or the adjudication panel, are the really serious ones that do tick that public interest box. So, for example, misusing positions in the planning sector has led to a lot of concern over the years for the public in terms of openness and fairness in the planning system. So, I think there is still a need for that, and we do still get some of those serious cases. But, as I say, we're trying to work to ensure that our resources are focusing on those only, and the other piece of work really is to try and develop a system within community councils. That's not proving to be as easy, because, in terms of One Voice Wales, which you've heard from, not all community councils are members of that organisation, but I think there could be an opportunity for further scope in that area, in terms of developing the local resolution processes, to ensure that we just look at the very serious cases that come to us.

11:30

[241] **Julie Morgan:** So, basically, it's your view that you should retain this, but it should be for serious cases.

[242] **Mr Bennett:** Yes. I think, certainly in terms of some of the changes that we've made, the public interest test, I think, sits with public services. It was inspired by a previous committee appearance, when we were tested in terms of what we were going to do when it comes to dealing with vexatiousness—and Katrin was witnessing the committee at the time, I think. You know, that has come forward as an innovation that we think will help and assist in terms of increasing flows and means that we're better placed to deal with the broader increase in volumes that we've seen in terms of public service complaints, which aren't to do with code of conduct.

[243] **Julie Morgan:** And then, finally, do you think there ought to be a requirement on councillors to have training on the code of conduct?

[244] **Mr Bennett:** Yes, and that's something that we've been happy to assist with through providing a revised code and guidance.

[245] **Julie Morgan:** How will you ensure that they will have this training?

[246] **Ms Shaw:** Nick's predecessor and the former director of legal services did a training package that monitoring officers use. I think there is scope for possible change to make it an actual requirement in the code for training to be undertaken. I know monitoring officers do think that would be helpful, because there are always some members who maybe don't try to avoid it, but somehow slip through the net. It's certainly an issue that we try and highlight when we do investigate, and we always ask the monitoring officers, 'Has this member attended training?' And although Nick doesn't have a specific power of recommendation in his reports, he does often raise it as an issue, where, perhaps, we find a community council where there is just a complete lack of knowledge on interests, for example, which are important to give public confidence in the whole system. Then, we will recommend that the monitoring officer goes in and undertakes training. I do think it might be an option for when the model code is revised for it to be mandatory for training to be undertaken.

[247] **Jocelyn Davies:** Within a certain period of time of winning an election, or—

[248] **Ms Shaw:** Yes. That would be ideal—in the first six months, for example, or something like that.

[249] **Mr Bennett:** Katrin's team has very much revised the guidance based upon feedback as well, where, perhaps, some of the guidance hasn't been clear enough, or where there's been confusion, for example, between personal and prejudicial interests, and using other feedback and the inclusion of case studies. So, we're trying to make this as training-friendly as possible, if you like.

[250] **Jocelyn Davies:** Mike, on this point?

[251] **Mike Hedges:** On this point, it wouldn't be unusual, though, would it, because, in terms of licensing and planning, before you could either sit on either a licensing committee or a planning committee, you have to undergo that training? It would just mean that you would add that they would have to undergo that before they could sit on the council.

[252] **Mr Bennett:** Certainly, we meet regularly with the monitoring officers and are there to make sure that we do respond to any concerns they have that we could make guidance as up-to-date and as user-friendly as possible.

[253] **Jocelyn Davies:** Yes, people who've been councillors a long time sometimes need a little refresher, for certain. Ann, shall we come to your questions?

[254] **Ann Jones:** Yes, thanks. I'm going to go to your desire to have powers over private health. The Independent Sector Complaints Adjudication Service have told those that they would like to co-operate more with you, or your office, and Healthcare Inspectorate Wales. Is that a suitable alternative to widening the powers of your office?

[255] **Mr Bennett:** I don't think it is. I think what's important here is this term 'independence'. I think for any complainant to come forward, and they've got an issue with, perhaps, provision that's been made for them within the NHS and then anything they've sought in the private sector—. The problem with me collaborating too closely with ISCAS is the fact that they are, in effect, a trade body and the perception that they would be not independent, because, fundamentally, they draw their income from their members, which are the private providers.

[256] **Ann Jones:** Okay. So, you've just said that you couldn't, but, if we were to alter the existing legislation and change that, how would we then encompass the fact that ISCAS would have to have a role to play, or would ISCAS have a role to play?

[257] **Mr Bennett:** Well, I wouldn't imagine the legislation making any provision for ISCAS themselves, but I do welcome aspects of the evidence that they gave. Certainly, we only refer to private healthcare, and only ever intended to refer to private healthcare, where it involved continuity of care, so where perhaps somebody has sought to commission their own private care rather than anything being commissioned by the NHS. So, we think that it's possible to frame legislation to keep that definition sufficiently tight so that we can follow the interests of the citizen rather than be defined by the sector. However, they did, in their evidence, refer to people who are currently treated in private patient units, which was an issue that we hadn't sought any improvements over. I think that, if there were scope to include their concerns there in the legislation, that would be very welcome as well.

[258] **Ann Jones:** Okay, thanks. You've discussed that there may be a levy raised to

accommodate this additional work. We've heard evidence from various people, but they've noted some practical difficulties in collecting a levy on healthcare providers. Does this route still remain an issue worthy of consideration for you?

[259] **Mr Bennett:** Well, rather than create a levy—and I think, you know, any levy can be quite complex—the pragmatic response here would be perhaps to look at costs on a case-by-case basis. They are still rare, the number of complaints that do come up, but, when they do come, they are very serious to the individuals who are involved. So, I think we could make sure that any cost to the public purse was recovered from the private provider without having a one-size-fits-all levy system, particularly given the small volume of complaints that mix the public and private.

[260] **Ann Jones:** Okay, thanks. Thank you, Chair.

[261] **Jocelyn Davies:** Okay. Ffred.

[262] **Alun Ffred Jones:** O ran y cysylltiadau efo'r llysoedd, mae nifer o dystion wedi cytuno â'ch cais chi i wneud i ffwrdd â'r gwaharddiad yma rydych chi'n gofyn amdano. Ond mae Comisiwn y Gyfraith yn dweud bod hwn yn fater lle bydd angen newid deddfwriaeth y Deyrnas Unedig ac mae'r ffordd orau o fynd i'r afael â hynny yw gweithredu ar lefel y Deyrnas Unedig. Rwy'n credu bod y Gweinidog, hefyd, wedi bwrw amheuaeth ynglŷn â gwneud i ffwrdd â'r gwaharddiad presennol. Felly, a ydych chi'n meddwl mai ar lefel Llywodraeth y Deyrnas Unedig y dylid trin y mater yma, neu a ydych chi'n dal i feddwl bod lle i ni ddeddfu yma?

Alun Ffred Jones: In terms of the links with the courts, a number of witnesses have agreed with your request to do away with this bar that you're asking for. But the Law Commission says that this is an issue where UK law will have to be changed and that the best way to tackle this is to act at a UK level. I think that the Minister has also cast doubt on doing away with the current bar. So, do you think that it is at a UK Government level that we should deal with this issue, or do you still think that we can legislate here?

[263] **Mr Bennett:** Rwy'n meddwl bod y potensial yna i'w wneud o. Roeddwn i'n synnu bod yr adborth mor bositif, yn enwedig gan y rheini sy'n delio â chyfiawnder gweinyddol yng Nghymru. Mae yna nifer o gyrff sydd wedi bod yn bositif iawn ac, yn sicr, maen nhw'n dallt y maes yn iawn ac yn ffafrio llwybr ar gyfer dinesydd, sydd yn anodd iawn, iawn i anghytuno arno. Ond, rwy'n meddwl, o safbwynt *realpolitik*, efallai ei bod o'n haws ac yn fwy twt i ni edrych ar y mater yma ar lefel Lloegr a Chymru, oherwydd mae pobl yn poeni, rwy'n meddwl, bod o'n cymysgu rhywbeth sydd wedi cael ei ddatganoli, hynny yw, fy mhwerau i, gyda maes sydd yn ymwneud ag awdurdodaeth Lloegr a Chymru.

Mr Bennett: I think the potential is there to do that. I was surprised that the feedback was so positive, especially from those who deal with administrative justice in Wales. There are a number of bodies that have been very positive and, certainly, they understand this field and favour the path for the citizen, which is very, very difficult to disagree with. But, I think, from the perspective of *realpolitik*, maybe it's easier and tidier for us to look at this matter on an England-and-Wales level, because people are concerned, I think, that it mixes something that's been devolved, namely my powers, with an area that relates to jurisdiction in England and Wales.

[264] **Alun Ffred Jones:** Ocê. Diolch. Os caf i symud i gyfeiriad arall, fe glywodd y pwyllgor am yr anawsterau sy'n gallu codi pan fydd problemau unigolyn yn ymwneud â

Alun Ffred Jones: Okay. Thank you. If I can move on to another direction, the committee heard about the difficulties that can arise when the problems of an individual are to do

gwasanaethau cyhoeddus sydd wedi datganoli a rhai heb eu datganoli. Sut y gallwch chi weithio'n agosach gydag ombwdsymyn y Deyrnas Unedig i ddod dros y broblem hynny?

with public services that are devolved and others that are non-devolved. How can you work more closely with UK ombudsmen to overcome this problem?

[265] **Mr Bennett:** Mae yna adolygiad wedi bod yn ystod y flwyddyn neu ddwy ddiwethaf, ac rwy'n meddwl ei fod yn Swyddfa'r Cabinet ar hyn o bryd. Mae tystiolaeth wedi cael ei rhoi o flaen pwyllgor yn y Senedd. Roedd hynny cyn i mi gychwyn yn y swydd. Yn sicr, rydym ni'n cyfarfod â'r ombwdsymyn ledled Prydain yn aml iawn. Lle mae yna broblemau yn codi, mae'n bwysig ein bod ni'n gallu ystyried y rheini. Ac, wrth gwrs, mae'n ddiddorol iawn gweld rŵan sut fydd awdurdodaeth yr ombwdsymyn yn tyfu fel mae awdurdodaeth y Cynulliad yn tyfu gyda mwy a mwy o rym yn dod o Lundain i Gymru.

Mr Bennett: A review has been undertaken during the last year or so, and I think that is in the Cabinet Office at the moment. Evidence has been presented before a parliamentary committee. That was before I began in this post. Certainly, we meet with the ombudsmen across Britain on a regular basis. Where problems arise, it's important that we can consider those. And, of course, it's very interesting to see now how the jurisdiction of the ombudsmen will grow as the Assembly's jurisdiction is growing with more and more power coming from London to Wales.

[266] **Alun Ffred Jones:** Iawn. A ydych chi'n credu y dylai Atodlenni 2 a 3 Deddf 2005 gael eu hadolygu i weld a oes angen eu diwygio, naill ai drwy ychwanegu at y naill Atodlen neu'r llall, neu'r ddwy, neu ddileu rhywbeth ohonynt nhw?

Alun Ffred Jones: Okay. Do you believe that Schedules 2 and 3 of the 2005 Act should be reviewed to ascertain whether they require any amendment, either by adding to either Schedule, or both, or by removing something from them?

[267] **Mr Bennett:** Rwy'n hapus iawn i ystyried hynny ac rwy'n meddwl ei fod yn bwysig i gadw'r adain yna yn amserol. Nid wyf yn gwybod a yw Katrin eisiau ychwanegu rhywbeth i hynny.

Mr Bennett: I'm very happy to consider that and I think that it's important to keep that aspect timely. I'm not sure whether Katrin would like to add anything to that.

[268] **Ms Shaw:** Yes, I think a few suggestions were made previously about possibly some public bodies who deliver public services were not within Schedule 2 as listed authorities, so we'd certainly be open to having that amended. As far as the excluded matters are concerned, Nick hasn't suggested any amendments to that, but I think, obviously, we'd be open to any suggestions. All of the things that the ombudsman is absolutely excluded from considering, are, obviously, in Schedule 3 to the Act: personnel matters, a lot of the education provisions, are out, but they haven't formed any part of the suggestions. But certainly we'd be open to any comments on that.

[269] **Alun Ffred Jones:** Yn y dystiolaeth hefyd, fe nodwyd nad ydy'r tribiwnlys eiddo preswyl ar y rhestr o awdurdodau y mae gan yr ombwdsmon awdurdodaeth drostyn nhw. A ydy hynny'n eithriad neu a oes yna dribiwnlysoedd eraill?

Alun Ffred Jones: In the evidence also, it is noted that the residential property tribunal is not on the list of authorities over which the ombudsman has jurisdiction. Is that an exception or are there any other tribunals?

[270] **Mr Bennett:** Oes, mae yna.

Mr Bennett: Yes, there are.

[271] **Ms Shaw:** Yes. The situation at the moment in the 2005 Act is that the administrative function of devolved tribunals are within, but, as I understand with that example, there are

some that are still not completely devolved, so there is certainly an area of work to look at generally, I think, in relation to those kind of tribunals, because they are sitting in Wales and they are, you know, delivering decisions in Wales, so, I think there's scope there for us to consider.

[272] **Jocelyn Davies:** Okay. Mike.

[273] **Mike Hedges:** Do you believe that your recommendations should be binding on private bodies within your remit? And more specifically, do you include arm's-length local authority companies and not-for-profit companies in that?

[274] **Mr Bennett:** I think, first of all, it's important that we remember here that, increasingly, it's about public service rather than public sector. The Act already, of course, includes registered social landlords, which, certainly for public accounting purposes, would be outside the public sector borrowing requirement, but do provide public services that were previously well within the public sector, so I think that we need to sustain that definition and that approach to not-for-profits that are carrying out what were or are public services, so I've no problem with that at all.

[275] **Mike Hedges:** The term 'ombudsman'—I think that we probably haven't got the power to do it, but do you think that we should be lobbying Westminster to actually reserve the term 'ombudsman' to those that are regulated in positions like yourself, rather than—? As far as I understand it at the moment, I can set myself up as the ombudsman for Swansea East and I would not be breaking any rules.

[276] **Mr Bennett:** Having sat and listened to the evidence, I was concerned at the proposal for the formation of the ombudsman for Swansea East—or any other part of Wales. [*Laughter.*] But I think the term—and, certainly, given some of the concerns of my predecessor and others, I think that it is important that it can be protected. I didn't want to include this in any priority list because I think what's really important, certainly for the next few years, if we consider the pressures that there'll be on public services, is not the title of my office but its functions, and also the impact that it can have on, you know, that £15 billion public service economy. So, that's my priority, but I hadn't anticipated—other than the bid for the ombudsman for Swansea East—other concerns about the title, so I'm very happy to prepare you a note to explain the title and some of its history if you feel that that might be helpful.

[277] **Mike Hedges:** I think that perhaps, if I could ask you to do something, would you like to discuss with your other colleagues who are ombudsmen within the British jurisdiction whether you could collectively speak to the Westminster Government about protecting it? There is a serious danger: mine was semi-humorous about setting myself up, but there's no reason why any private sector organisation that deals with complaints couldn't put the term 'ombudsman' at the end of their title, which would give an incorrect viewpoint to many people.

[278] **Mr Bennett:** Absolutely. I'm happy to undertake that task and I've got a meeting on Friday with colleagues in Scotland and Northern Ireland. There is a meeting—there is an association of British ombudsmen, we meet in May, and I'll give an undertaking to you that I'll raise that issue there.

[279] **Mike Hedges:** And my final question is: the time limit at the moment is one year; would it be helpful to extend that time limit or to change the point at which that time limit starts?

11:45

[280] **Mr Bennett:** I think that's in terms of our own key performance indicators. It's a demanding target to try and complete investigations within 12 months. Our target currently is 100 per cent, which means it's a target you can only fail, although the office has done a wonderful job in terms of fulfilling it on a year-by-year basis. I don't think it's an issue that really requires any legislative action.

[281] **Jocelyn Davies:** I think the point was in lodging a complaint. We heard from—I think it was health complaints. If they go through the health complaints procedure, that might take a long time, and then by the time they decide to complain to you, they could be out of compliance of the year since the event happened, not the length of time that you have—

[282] **Mr Bennett:** Oh, sorry. I'm sorry. Well, certainly we have discretion there, so we would look at that very much in terms of how serious the complaint was, and what could be done in terms of redress and other issues, so we would take a very flexible view there in terms of the actual issue.

[283] **Jocelyn Davies:** So, somebody wouldn't necessarily—. Although, if they looked at the rules beforehand, they wouldn't know about that discretion, probably, would they?

[284] **Ms Shaw:** No. I can't remember the actual wording off the top of my head, but we look at when the complaint response was given. So, if somebody has obviously been waiting for a long time—. I have to say that my experience is that the ombudsman's discretion is exercised regularly on that point so that it doesn't penalise people who are waiting for responses.

[285] **Mike Hedges:** I think it's another example, like the taking of oral complaints, et cetera, that, if it's exercised regularly, shouldn't it be in there that your time starts when you've been rejected by whoever you've appealed to first, rather than starting at the point of complaint?

[286] **Mr Bennett:** You're absolutely right. The problem, I think, is that if we have legislation that is too specific in terms of process, it'll take too long and it'll also be subject to constant challenge. What's important here, I think, is ensuring that we have legislation that is outcome-based. So, currently, the discretion that's allowed within the jurisdiction does mean that we can look at those outcomes for complainants, and that's really my concern here. And the reason why we've tried to highlight certain specific issues and functions that could be looked at in terms of legislation is to make us more outcome-based rather than process-based, so that we can do more to respond to the citizen complainant.

[287] **Mike Hedges:** How would a complainant know they could? They'd look at the rules, which say, 'You must complain within one year', and it's taken them 15 months to get their response from the health board. How would they know they could actually put it in, rather than saying, 'I'm past the 12 months; I can't'?

[288] **Ms Shaw:** The Act actually places a requirement on the bodies that are in jurisdiction to tell complainants that they can go to the ombudsman, and that's regardless—you know, when they are responding to complaints. So, we do look to see that they do point people in the direction of the ombudsman. We do have the front-line team, who can advise, and will advise, about discretion in that regard as well.

[289] **Mike Hedges:** Yes, but—. I'm sorry to push this, but I've got my complaint now, I've waited 15 months, the health board has said that I can go to the ombudsman, I go and look at the rules and it says, 'You must complain within 12 months.' How do I know that you can show discretion on that? How do I know that I haven't missed it?

[290] **Mr Bennett:** Because that happens now. And I'm pretty sure that those people that do come forward, and we do provide the discretion for, and do deal with the complaint despite the fact that it's over 12 months, haven't read that part of the Act before they asked us to exercise that discretion, and probably weren't aware of the discretion either, and were probably quite fuzzy generally, I think, around the rules. So, I don't think there's much public benefit from us trying to be too specific on the process, but I'm happy to give you the assurance that, in terms of us ensuring that nobody suffers an injustice as a result of being on the wrong side of a specific line in that regard, there is no problem there as far as we're concerned.

[291] **Jocelyn Davies:** In terms of protecting the title, if you used an internet search engine, and there are a number available, for 'ombudsman', would you be the first that comes up—'ombudsmen in Wales'—because your title isn't 'ombudsman', is it?

[292] **Mr Bennett:** I've never tried it. [*Laughter.*]

[293] **Jocelyn Davies:** Well, it is of interest, because many people will try to find you through the internet and it would be interesting to maybe do a little exercise on that. While Nick is using some IT—

[294] **Mr Bennett:** I think Susan has tried it.

[295] **Ms Hudson:** There is a danger—

[296] **Nick Ramsay:** 'Ombudsman' or—[*Inaudible.*]

[297] **Jocelyn Davies:** Well, whatever.

[298] **Nick Ramsay:** Okay.

[299] **Ms Hudson:** There is a danger, because we operate from our own computer systems, but our tests have shown that when you put 'ombudsman' and 'Wales' in, we're there on the top of the front page.

[300] **Jocelyn Davies:** I see; okay.

[301] **Mr Bennett:** We've also secured the domain name as well.

[302] **Nick Ramsay:** The British Parking Association—.

[303] **Jocelyn Davies:** There you are; the British Parking Association is the top—[*Inaudible.*]

[304] **Mr Bennett:** I'll have a look at your search engine.

[305] **Jocelyn Davies:** That is of some interest, I suppose. Now, the Welsh Language Commissioner noted that the ombudsman does not come under her remit and currently has no Welsh language scheme. Do you think that the ombudsman should come under her remit?

[306] **Mr Bennett:** No, although I can assure you, in terms of bilingualism, it's something that we take very seriously. We employ a very high number of first-language Welsh speakers. We do operate—. I think the commissioner might be concerned that we don't operate a Welsh language scheme that comes under her jurisdiction, but I can assure you that we do operate a Welsh language policy—.

[307] **Jocelyn Davies:** Putting that to one side, why shouldn't you come under her remit? The fact that you have one or not is—. You can't justify not coming under her scheme because you've got your own scheme. Why shouldn't you come under her remit?

[308] **Mr Bennett:** Because she comes under our jurisdiction.

[309] **Jocelyn Davies:** So, you can't be subject to somebody who comes under your jurisdiction. There you are. Whether you've got a scheme or not is not the—. But you've given us an assurance on the record that, despite not coming under her remit, you operate bilingually.

[310] **Mr Bennett:** Ydym, bob tro. **Mr Bennett:** Yes, every time.

[311] **Jocelyn Davies:** Okay. Are there any other questions? Yes.

[312] **Nick Ramsay:** We took evidence that although these improvements are welcome, perhaps there could be more. These complaints by consumers, or citizens—smaller scale complaints—are one aspect of the ombudsman's role, but there's the other larger role in terms of maladministration of a much larger scale, which has always traditionally been part of the ombudsman's role. There was a concern as to whether that is being, I wouldn't say dumbed down, but is that losing some its resonance? Do you think those concerns are right?

[313] **Mr Bennett:** No; we're not short of work or cases of maladministration. My concern is, and it's one of the reasons I'd like us to look at Scottish best practice in particular, that there comes a point where, if your volumes have doubled over eight or nine years and they're continuing to increase, then one has to look at the citizen's experience here. So, there'll be plenty of work around maladministration for my office to continue with over the next decade. My concern is that, if we have another doubling in volumes, (a) how do we cope with that, but (b) what is the citizen's experience of those public services over the next 10 years, when there's less money and there's more demand upon them? So, I don't think a concern about maladministration being dumbed down should be on the list of anyone who is concerned about good-quality public services in Wales. What should be their concern is how we cope with the more for less agenda, given that the demography will be much more challenging and resources will be less.

[314] **Nick Ramsay:** I paraphrased that, and I probably didn't do it very well, either. That wasn't what the original evidence said, but that's what I took it to mean.

[315] **Jocelyn Davies:** Okay, then. Well, we've run out of questions. Obviously, we'll be preparing a transcript, as normal, and we'd be grateful if you could check that before we publish it.

11:53

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o'r
Cyfarfod**

**Motion under Standing Order 17.42 to Resolve to Exclude the Public from the
Meeting**

Cynnig:

Motion:

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

Sefydlog 17.42(vi).

accordance with Standing Order 17.42(vi).

*Cynigiwyd y cynnig.
Motion moved.*

[316] **Jocelyn Davies:** Shall we now move into private session under Standing Order 17.42? Yes.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11:53.
The public part of the meeting ended at 11:53.*