



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

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[The Children, Young People and Education
Committee](#)

22/03/2017

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle y mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

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. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Michelle Brown Bywgraffiad Biography	UKIP Cymru UKIP Wales
Angela Burns Bywgraffiad Biography	Ceidwadwyr Cymreig (yn dirprwyo ar ran Mohammad Asghar) Welsh Conservatives (substitute for Mohammad Asghar)
Hefin David Bywgraffiad Biography	Llafur Labour
John Griffiths Bywgraffiad Biography	Llafur Labour
Llyr Gruffydd Bywgraffiad Biography	Plaid Cymru The Party of Wales
Darren Millar Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives
Julie Morgan Bywgraffiad Biography	Llafur Labour
Lynne Neagle Bywgraffiad Biography	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)

Eraill yn bresennol
Others in attendance

Dr Stephen Beyer	Uwch-ddarlithydd, Prifysgol Caerdydd Senior Lecturer, Cardiff University
Alun Davies Bywgraffiad Biography	Aelod Cynulliad, Llafur (Gweinidog y Gymraeg a Dysgu Gydol Oes) Assembly Member, Labour (The Minister for Lifelong Learning and Welsh Language)
Denise Inger	Prif Weithredwr, SNAP Cymru Chief Executive, SNAP Cymru
Cath Lewis	Swyddog Datblygu, Plant yng Nghymru Development Officer, Children in Wales
Catherine Lloyd	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
Tania Nicholson	Pennaeth Rhaglen Ddeddfwriaethol Anghenion Dysgu Ychwanegol, Llywodraeth Cymru Head of Additional Learning Needs Legislative Programme, Welsh Government

Rhian Nowell–Phillips	Swyddog Polisi ac Ymgyrchoedd, RNIB Cymru Policy and Campaigns Officer, RNIB Wales
Mair Roberts	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
Debbie Thomas	Swyddog Polisi ac Ymgyrchoedd, Y Gymdeithas Genedlaethol i Blant Byddar Policy and Campaigns Officer, National Deaf Children’s Society
Emma Williams	Dirprwy Gyfarwyddwr, Cymorth i Ddysgwyr, Llywodraeth Cymru Deputy Director, Support for Learners, Welsh Government

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

Sarah Bartlett	Dirprwy Glerc Deputy Clerk
Michael Dauncey	Y Gwasanaeth Ymchwil Research Service
Sam Mason	Cynghorydd Cyfreithiol Legal Adviser
Gareth Rogers	Ail Glerc Second Clerk
Lisa Salkeld	Cynghorydd Cyfreithiol Legal Adviser

Dechreuodd y cyfarfod am 09:31.

The meeting began at 09:31.

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

[1] **Lynne Neagle:** Good morning, everyone. Can I welcome you all to the Children, Young People and Education Committee? We have received apologies from Mohammad Asghar, and I’m very pleased to welcome Angela Burns, who is substituting for him this morning.

09:32

**Y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru):
Sesiwn Dystiolaeth 16
Additional Learning Needs and Education Tribunal (Wales) Bill:
Evidence Session 16**

[2] **Lynne Neagle:** Item 2 today is a further evidence session on the ALN Bill with the third sector additional needs alliance. I'm delighted to welcome you back to the committee at the tail end of our Stage 1 scrutiny. Thank you very much for coming. I'd particularly like to welcome Denise Inger from SNAP Cymru, Cath Lewis from Children in Wales, Debbie Thomas from the National Deaf Children's Society, Dr Stephen Beyer from Cardiff University, and Rhian Nowell-Phillips from the RNIB. So, thank you all for coming. If you're happy, we'll go straight into questions. I've got Angela first.

[3] **Angela Burns:** Hi, good morning, nice to see you all. Obviously, when you last gave evidence, we didn't have the draft additional learning needs code, and I'm quite certain you'll have all ploughed through it in quite a lot of detail. I'd just like to take your views on whether or not, having seen the draft code, it has reassured you in terms of some of the concerns that you raised in your earlier evidence, and also, again, having looked at the draft code, if there are items within it that you still feel should be on the face of the Bill.

[4] **Lynne Neagle:** Who'd like to start?

[5] **Ms Lewis:** Shall I start? Thank you very much for the question. I must say, I have ploughed through the code, and I do welcome the code itself; it's quite user-friendly, it's written in a very clear way, and it's really good in terms of ensuring that professionals and, indeed, parents as well are able to sort of pick up on the issues to do with children's additional learning needs. So, from that point of view, it's very user-friendly.

[6] The main issue for me is in terms of transition to adulthood. I really think it is lacking, both in terms of the code and the Bill itself, and that's something that I'd like to pick up on later in the evidence. But in terms of the code itself, there are some issues that I know Debbie has highlighted. Could I just hand over to Debbie?

[7] **Ms Thomas:** Yes. Thank you again for your question. I mean, we've

gone through the code on a first reading, but, obviously, because it's only recently come out, we will be wanting to look at it in greater detail. So, we've gone through it on a brief look to start with. And what I would say is that it's clear that elements of points that we've been raising have been worked upon, but I think a lot of work is still needed. So, for example, we've raised the issue of transport and a need for transport to be covered if a child is given a specialist placement. The code mentions transport, but it doesn't put a 'must' in; it puts it down as a 'should'. So, it's still not going to address this problem, and that's what I feel about the code generally. A lot of the issues that we've raised that have been put into the code have been put in in a way where it's good practice guidance and therefore isn't going to address the concerns that we've raised, because they are really important concerns that we've brought to you. I think there's still quite a lot of work to do in terms of amending the code and we'd really welcome the opportunity to work with the Welsh Government to do that to make it work.

[8] I think there needs to be more prescription within the code. Transition is an area that is in there as good practice and the advocacy details in there are still really slim on the ground. I think there's a fair bit of work needed and I think consultation on the final version of the code would be absolutely imperative. That's what I'd say.

[9] **Ms Inger:** If I can just add to that—we have some concerns around the information, advice, support and advocacy for children and families and believe that those services should be readily available from the outset, rather than from when a disagreement has become deep-rooted. I think the avoidance of disagreement is absolutely essential, particularly at a time of change. I would say that, for 30 years, we've been successful in that service on the avoidance of disagreement.

[10] In the new code, we don't believe that we will have a duty to have an independent source, whether or not that is a mixture of inside and outside, but we do believe that it should be arm's length. Also, as a point, whoever provides that service, for the external provider, I've noted that they would need to be quality assured and monitored. But the same standards are not set for the inside, if they were to do that with the local authority in particular. I'd like to note that point.

[11] The other issues are around section 57, and there should be a duty on health bodies to inform. We need this to happen much more consistently than it does now, in as much as this is where we fall down on planning for

emerging needs, and because we already have waiting lists for special schools now, because we're not getting this information through. I'm talking about the 2 to 3 per cent here, not the 20 per cent. We need information about all children with ALN below compulsory school age in particular and a much more co-ordinated approach to ALN following an illness or accident. There needs to be a clear duty for health to pass that information on in a timely manner.

[12] **Angela Burns:** Sorry, can I just clarify, though, are you talking about putting this in the code or are you saying that this is what you'd like to see on the face of the Bill?

[13] **Ms Inger:** I think it needs to be on the face of the Bill.

[14] **Ms Thomas:** I think it's worth saying as well that, in answer to your first question, too, a lot of the points that we've raised we consider to be of such great importance that they should be on both the face of the Bill and within the code, because the two are supposed to complement each other. I'm very conscious that, obviously, the code is something that could be revised in the future. So, having those really important things on the face of the Bill is important, but replicating them and making sure they're clear in the code is also important because that's what professionals tend to use on a day-to-day basis. Most people don't tend to have a copy of the Bill on their bedside table. Some sad people, perhaps like me, have a copy of the code—*[Laughter.]* So, I think it's really important to have those issues in both.

[15] **Angela Burns:** Just again on the code, do you think that it is too much to do with non-statutory guidance? Would you like to see it be a bit more prescriptive?

[16] **Ms Thomas:** Definitely.

[17] **Angela Burns:** Because, of course, prescription can also be confining, so it's not necessarily a win-win.

[18] **Ms Nowell-Phillips:** I think it's a case of welcoming that it's a mandatory code, but there are things in there, and I think Debbie alluded to this—the 'musts' need to be there as well. So, there needs to be a statutory basis to a lot of it, and it can have guidance as well, but some of the things need to be on the face of the Bill as well, because, otherwise, they tend to get lost in translation.

[19] **Ms Inger:** And also it seems to be very school focused and we are talking from birth to 25—that's just another comment.

[20] **Dr Beyer:** Sorry, that would be the—. One of the things that we would also like to draw attention to is strengthening employment—you know, strengthening the idea of the shift to adult employment. Now we've got FEIs involved in individual development plans within the legislation and also the code of practice, we will be seeing people definitely transitioning into employment from there, if not taking the option to transition in school. I think we can definitely strengthen the code of practice in relation to that, to bring more partners into discussions. I think we'd also like to see that transition plan element of the IDP strengthened.

[21] The other issue is the role of apprenticeships. It's not really brought out in the legislation or the code of practice, and we would like to see more attention paid to that very important route into employment for young people with ALN.

[22] **Lynne Neagle:** Okay, thank you. Just quickly, can I just ask you? At the moment in the Bill, the code would be done under the negative procedure. Would you like to see it done under either the affirmative or the superaffirmative, so there is a higher level of scrutiny?

[23] **Ms Lewis:** Definitely. Yes, we would very much welcome that.

[24] **Lynne Neagle:** Okay. Thank you very much.

[25] **Ms Thomas:** I think the explanatory memorandum actually listed the different types of people that would need to be consulted. We think it's really important that the third sector is consulted. At the moment, it is very professional-focused. So, yes, definitely.

[26] **Lynne Neagle:** Okay. Thank you very much. Okay. Great, thank you. You have made it quite clear about your wish that health should have a statutory duty to refer. Have you got any comments on the other routes of referral under the Bill? I know that some of you have concerns about the lack of provision for a local authority to refer a child not yet in school to a health body. Any comments on that?

[27] **Ms Nowell-Phillips:** The first thing I would like to say is that, you

know, we welcome the fact that the designated education clinical lead officers will be in place, and that gives a strategic view from a health point of view. But, RNIB Cymru, in particular, generally would like to see that same strategic level view from the social services side. To us, social services are extremely important for being involved with the needs of the child. If you have a triangle with the child in the middle, that needs the social services element to have some sort of strategic input.

[28] **Ms Lewis:** I would certainly agree with that point. On reading the Bill and the code, it is almost as if social services have been put in as an afterthought. I previously worked as a social worker, and I couldn't actually do my job without working with education and with health and any agencies that the child would have any contact with. So, I would certainly welcome Rhian's proposal there for social services to be given a greater role, and we like the idea of an equivalent of a DECLO in social services as well.

[29] **Ms Thomas:** In terms of comments on referral, the three points that I wanted to raise are, obviously, section 57, which we have already mentioned: we need that to be stronger. It's worth noting that it is stronger in the English equivalent, the Children and Families Act 2014; it's a 'must' on health boards there, so I don't see why it can't be in Wales. The other two points that I wanted to raise are section 18, which outlines actions that must be taken prior to the referral being made. I can understand all of those actions. They are all perfectly fine, but with the caveat that it doesn't cause substantial delays. Obviously, we need to make sure that these children and young people are getting the support that they need in a timely manner. Then, the third point that I wanted to raise is the absolute imperative importance of training if these referrals are going to happen. If GPs and health visitors don't know about these changes, they are not going to refer into the system. So, I think we really need to make sure that training extends not just to education professionals, but that there is awareness-raising among GPs, health visitors, other childcare providers and parents generally.

[30] **Ms Lewis:** Just to come in on the back of that, I think that, at the end of the day, in terms of health, there's a children's rights and entitlement issue. If children aren't going to get support around their health needs, they are not going to be able to learn. So, you do totally need health as a key partner within this provision.

09:45

[31] **Ms Inger:** There is a huge lessening of entitlement here around health, and it is of great concern, really. We are not imagining that health professionals can participate in the whole process, but we do know that families are going to be disappointed where there is a significant need for health input into the person-centred planning process, in that sense. But we know that within health that it's really scarce, so we know what the issues are here. But we do need to see, at least for the 2 per cent or 3 per cent that we have now, that we could actually rely on health. And there does need to be a very transparent referral process. I'm not really seeing that, and we've said with the DECLO there, one in each health authority, we understand there will have to be—. And it could be back to medical officers or community officers designated to schools. But really we're not seeing what will happen and how this will work. And, clearly, what will happen is that, where the health provision is not going to be made available, families will have another line of complaint to be able to do that, where they're unhappy. So, then we'll have to have a system going through putting—I can't remember what it's called now—patients first or putting it right, in that sense. But there needs to be some disagreement resolution, then access to the point of health as well. And, again, what we would see is that, really, we need health and education and social services to be involved in that. And I do believe that the Special Educational Needs Tribunal Wales should be the place where that should happen, as a process.

[32] **Lynne Neagle:** Yes. Okay. We're going to talk a little bit about the tribunal in a bit. Julie.

[33] **Julie Morgan:** Thank you very much, Chair. I wanted to ask you about the process of assessment and preparing an IDP. I know that concern has been expressed about the extent to which schools will have the understanding of certain needs, such as deafness, for example, in order to seek the intervention of appropriate specialists. So, I wondered if you could comment on that, because I know you've expressed concern about that.

[34] **Ms Thomas:** Yes, definitely. And it's a concern that remains standing as I'm sure it does for other disabilities, visual impairment being one of others. I think it needs to be absolutely clear within the code and the Bill that, with low-incidence needs, you need to go local authorities. But we mentioned last time about also disability-specific referral pathways as being one way of making sure that schools are able to identify when someone needed to be passed up and what assessments are needed for different disabilities. I'm aware that the Welsh Government has put a tender out for

that piece of work. And, really, we want to—TSANA wants to work with the successful contractee to make it sure it will work for our disabilities. And we also need to see those referral pathways on a statutory basis as well to make sure that they're adhered to. But the other thing that I wanted to pick up on, in response to your question, was the importance of FEIs as well. Because the code at the moment starts—it could be further tweaked, but it does start to highlight the importance of passing high incidence to local authorities. But the situation with FEIs is more confusing and sketchy. And there's a bit in the code that made me a little bit nervous, about FEIs, because it seemed to imply that deaf children need to go to specialist colleges. Some will, but a lot more will be within mainstream schools. So, I think we've still got some work to do in terms of making sure that those specialisms are accessed in FEI assessments as well.

[35] **Ms Lewis:** I think the key issue, really, is training. It's ensuring that people have the relevant training in terms of workforce planning and development to actually know and be able to identify what the conditions are, and, also, if the school is unable to actually meet the child's needs, that there is a referral route up. Also, in terms of specialist teachers as well—Rhian and I were talking earlier that there are huge issues in terms of some of the teachers of the blind, teachers of hearing-impaired children. They are now coming up to retirement age, and there's not the workforce succession planning in place to ensure that these skills are passed on and the needs of these children are dealt with appropriately.

[36] **Lynne Neagle:** Okay, thank you. Denise.

[37] **Ms Inger:** Just to add to that, there's no simple way of identifying a child's special educational needs. It's complex, and it requires expertise, which can and does exist in some educational establishments and schools, for instance where they've employed an ALN teacher with experience and skills, but by no means are they going to know it all—particularly on the low incidence in that way. And it's not feasible for every school in Wales to establish that. We understand there is a lot of work planned with the transformation agenda, which is exciting. You know what I mean; we're actually trying to play catch up. At the moment, currently, parents are told they have to wait months for an educational psychology assessment, and that's what's happening now. Just thinking that we can do away with assessments and that schools, teachers, will be able to assess and identify needs all by themselves—that's not going to solve the problem. The additional learning needs are there. Children have a right to have their needs

identified, and parents and teachers need the expertise of experts such as educational psychologists and specialist teachers to identify the strengths of these young people, so that they can use those strengths to help meet the needs in that way. And I think we are missing something of this within the whole process. I do not believe that we can do without the assessment of children, regardless of the process. We can get better at everything at a school level, but we're a long, long way from that, and we will never, ever be able to do without those specialists being readily available for every school in Wales in a very timely manner.

[38] **Ms Nowell-Phillips:** And it is really important, as Cath highlighted, that the workplace planning takes place now, because a lot of our qualified teachers are coming up to retirement age and there doesn't seem to be any strategic planning on trying to recruit people, and also with some of the courses that are being run—you know, the mandatory qualifications for vision impairment. There's one course, which is actually in Birmingham in England, that has limited reference to the Welsh curriculum, for example, and so there is a need to look a bit strategically at this (a) to get people in, and (b) to ensure that the training they get actually reflects the needs of Wales.

[39] **Lynne Neagle:** Okay, thank you. Just on the workforce planning, if I can just bring Llyr in on that.

[40] **Llyr Gruffydd:** Yes. You say that planning needs to happen now; well, planning should have been happening years ago, because we shouldn't be where we are now. But I just want to get a feel of the extent of the pressure on the workforce at the moment, in your experience, and do you see anything in the Bill or the code that will actually address that? Because the Minister tells us that it's a wider suite of initiatives, of which the legislation is one. So, are you actually seeing a concerted effort to address this problem?

[41] **Ms Thomas:** We know the Welsh Government has set up specific groups to look at workforce planning. They've commissioned a workforce review. There was one specifically focused on specialist teachers, and that did, from our perspective, highlight the problem with teachers of the deaf—that loads of them are due to retire. It didn't so much look at communication support workers, which was a little bit disappointing because we do have difficulties in terms of accessing communication support workers with an appropriate level of sign language—that was in the media, actually, last week. I think more needs to be done. It's a problem that the Welsh Government is aware of. I know they set up these groups, and we're keen to

work with them on them, but we just really want to stress that we need to really start working on it concertedly, and put in a lot of effort at this stage.

[42] **Ms Lewis:** Yes. Workforce development is obviously quite key, and the Welsh Government quite proudly produced the additional needs transformation programme, which does go some way to addressing some of our concerns, but I think there's still a long way to go. I think, at the end of the day, it's going to come down to funding, in terms of what money's available to ensure that all professionals who work with children with additional needs have got the skills to actually recognise the needs and be able to support them to achieve their full potential. Because, at the end of the day, it's a children's rights issue, and just because a child has got additional needs doesn't mean to say they haven't got as much right as any other child to achieve. Just picking up on the children's rights issue: one of the things that Children in Wales, in particular, is very concerned about is that the Bill does not make any reference to the United Nations Convention on the Rights of the Child. It's nowhere near referenced on the face of the Bill, and this is a real missed opportunity. We would also like to see reference to the United Nations convention on the rights of disabled people as well, but it just isn't there at all. Even in terms of the code, there's very little information about the United Nations Convention on the Rights of the Child, and it's really surprising, given the Welsh Government talks about ensuring that the child has a say and is at the centre of the process, which all hints at the United Nations Convention on the Rights of the Child, particularly article 12—the importance of children having their say—that it's not actually referenced on the face of the Bill. So, I think that's a real missed opportunity.

[43] **Lynne Neagle:** Thank you, Cath.

[44] **Ms Thomas:** Just to come back to what Cath was saying with regard to workforce planning, I think it's worth highlighting that, as you said, this issue should have been addressed years ago, and it hasn't been. Up until now, local authorities have been responsible for arranging specialist support, like sensory support services. Clearly, the forward planning is not working. So, we need to look at a fresh approach, whether that will be through education, regional consortia, or whether it will be right from the top—the Welsh Government. I think, with low-incidence needs, it's helpful to forward plan on a wider basis, because clearly, from a local authority basis, it's not happening. Certainly, from a teacher of the deaf point of view, we're seeing a lot of robbing Peter to pay Paul. So, there's only a certain amount of teachers of the deaf in Wales and rather than training some up, sometimes what's

happening is that a teacher of the deaf has been taken from one local authority. It's great for this local authority, but then we've got a problem over here. So, we need to look at the issue wider than just local authority.

[45] **Lynne Neagle:** Okay. Did you have a comment on workforce planning, Denise, or something else? Because I was going to bring Julie back in, if that's okay.

[46] **Ms Inger:** Yes, yes; that's fine.

[47] **Julie Morgan:** I just wanted to pick up, actually, what Cath said about it not being on the face of the Bill about the rights of the child—the UNCRC. We're told that that's not necessary because everything that the Welsh Government does is fundamentally rooted under the rights of the child. What's your comment about that?

[48] **Ms Lewis:** Well, I would agree that that certainly is the case. It isn't necessary, but I think, in terms of focusing people's minds on the United Nations Convention on the Rights of the Child and to have it at the forefront of people's minds, it would really help to reinforce that in terms of professionals and just in terms of awareness raising. Rather than having sort of abstract comments within the Bill about having the child at the centre of the process, it's focusing the minds of professionals on why that is the case. So, I really think it is lacking that that is not there.

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

[50] **Lynne Neagle:** Thanks. Darren.

[51] **Darren Millar:** I just wanted to ask a brief question on this assessment process. At the moment, of course, referrals can be made and decisions can be made by schools and local education authorities in terms of assessment, but there's no right to an assessment for children or their parents. One of the big frustrations that I come across in my own casework is young people who have some sort of special educational need, and the local authority is point blank refusing to assess those needs because they are concerned potentially about the resource implications for them in being able to meet them. Do you think that the Bill ought to have some right to an assessment built within it for children and young people where the parents suspect, or indeed the NHS suspects, that they may be able to benefit?

[52] **Ms Lewis:** Yes, I think that should certainly be the case. It would actually replicate the duty within the Social Services and Well-being (Wales) Act 2014 of a right to an assessment. At the end of the day, the right to an assessment doesn't mean that services must be provided.

[53] **Darren Millar:** Absolutely.

[54] **Ms Lewis:** It just means you're actually going through the process and determining whether the child has additional needs or not. So, I certainly would support that.

[55] **Ms Thomas:** To me, it comes back to an awareness of advocacy because parents have got the right to request an assessment, but they need to be informed of what to do if it's declined and how best to fight their corner. Advocacy is seriously, seriously lacking. You mentioned the frustration of parents. Under this Bill, there's no reference to advocacy services for parents. So, I think, for me, the issue is more than—. If they ask for an assessment and they get refused, they might not necessarily know what to do to fight that. So, in some respects, the right is there, theoretically, because you have the right to go to a tribunal if the assessment is refused.

[56] **Darren Millar:** That's a big sledgehammer, isn't it, to crack a nut?

10:00

[57] **Ms Thomas:** Yes, it is. Exactly. I mean, if you're not aware of your rights or—. The idea of a tribunal is scary for people; it puts people off.

[58] **Ms Inger:** Can I just add that some authorities are very proactive at providing information to parents to go to SNAP Cymru if they're dissatisfied? Parents have to be at the point of anxiety and stress at this point. Indeed, I will say that some schools also are very proactive at sending parents, but not all schools because there is no duty to do that. There is no duty to tell people their rights, in that sense, or send them somewhere so that they can understand that. If you don't know your rights in the first place, there is already an unequal playing field. Also, I'm more concerned about a system that protects the rights of children who do not have parents who are articulate enough to ask and take forward those rights. So, it's really important that we use this to get it as tight as possible so that we get a level playing field for all children. Besides that, we do have these concerns about the level that schools, nurseries, FEIs are going to have to do. They're going

to have to identify, assess and make provision because all this is being put down to schools. Presently, in parts 2 and 3 of a statement, the local authority can delegate someone else to do the job that's been identified as needed, but they cannot absolve themselves of any duty, whereas here I see a lot of absolution of duty in that sense, unless we can get clear pathways, and a right to assessment would be a beginning.

[59] **Darren Millar:** So, a clear right to assessment, not just the right to request an assessment.

[60] **Ms Inger:** I think, to be fair, it could be just a right to request, because you would have to see whether that was going anywhere and you would have to have evidence. I'm not suggesting for every parent who requests an assessment that their child needs one, because in my experience that is not the case. But at least it's a starting point, and there is a point of communication and transparency then, for that to happen.

[61] **Darren Millar:** Okay.

[62] **Ms Thomas:** And I think you can say, as I said earlier, that there are certain disabilities that will always require an assessment because by their nature they just will fit the description of additional learning needs—deafness being one of them. If you have a hearing loss, you are automatically going to fit the definition of ALN.

[63] **Darren Millar:** So, some sort of right to an assessment, which shouldn't be unreasonably withheld, or something like that.

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

[65] **Darren Millar:** Okay, thank you.

[66] **Lynne Neagle:** Thank you very much. We're going to move on then, to disagreement avoidance and resolution. Michelle.

[67] **Michelle Brown:** Thank you, Chair. When the new Bill comes into force, and the code comes into force, there's obviously going to be a period when people are implementing the new code and the new Bill. Do you foresee any increase in disagreements and disputes, and are there any problems that you foresee?

[68] **Ms Thomas:** I think that the big problem is—. Theoretically, I don't see that there would be an increase in the numbers of appeals if the process is working as it should, and if things are truly person centred and focused, et cetera. But, I think in order to make sure that happens, what we need to do is make sure that we get the Bill improved upon. We need to make sure that person-centred practice is right, that advocacy is right, because if local authorities and bodies know that parents have this access to advocacy then that kind of helps to police things itself. Similarly, if they know that there are mechanisms in place to monitor the appeals that are going through, and that there's some kind of redress on them if they do things wrong, then they're going to do things right in the first instance. So, we need to make sure that appropriate monitoring mechanisms are built in, but also we need to nail the code down to make sure that we get proper advocacy, proper information and advice to families, because if local authorities know that that's in place, then they're going to do things right, early on, first.

[69] **Ms Lewis:** Just to pick up on the issue of advocacy, and Denise mentioned this earlier that, in terms of independent advocacy for a child, it's only in place in terms of going to the tribunal currently. And we all know that it's really important to get advocacy in place at an earlier stage to stop you getting to a tribunal. So, I think that's a really missed point. Also, going back to the Social Services and Well-being (Wales) Act as well, advocacy was initially talked about just for complaints only, but lots of organisations—Children in Wales included—highlighted the importance of advocacy to anticipate and have a consensus in terms of a discussion at an early stage in the process and to stop things escalating. So, I think it's a really missed opportunity in terms of advocacy not being available at an earlier stage, but also, advocacy for parents.

[70] **Ms Thomas:** Yes. And making sure that that advocacy service is free for families, because there's confusion with the way the Bill is worded at the moment as to whether or not that is going to be the case. I should hope that it is and that it's just a confusion with the way things are worded in the Bill, but that really needs to be clarified.

[71] **Lynne Neagle:** Do you have any concerns, given the issues we've had with advocacy delivering for looked-after children? Do you have any concerns about our ability to actually deliver on that advocacy offer anyway?

[72] **Ms Lewis:** Yes. I think there is an issue, really. As you say, the committee has actually done lots of work in terms of advocacy and there is

difficulty in terms of advocacy for looked-after children currently, which is the main eligible group. I think we need to look at different types of advocacy available. Ideally, the advocate needs to be an independent professional advocate, but advocacy could be used in other ways in terms of peer advocacy or in terms of informal advocacy. So, there are different routes available.

[73] **Ms Inger:** Can I say that, presently, advocacy is one of the tools within a family partnership service in that sense? If I could explain, if you were working with a family, there will be—not often, but on occasions—within the family, a difference of opinion between child and parent. So, the importance of having someone outside of that is clear. So, our practice has been that we would bring someone in from another region to work with the child and then you would continue working with the family. Because you cannot isolate one issue from the other. This is a family we're talking about and you need to look at the whole issue holistically. So, within that, advocacy is only one of the tools.

[74] But can I say, I can't stress how important it is to understand that, unless we work on the avoidance of disagreement at a much earlier stage and give that the status that it requires, then it could be very costly. If I could say to you that within 3,000 referrals a year, when I was asked about formal disagreement resolution—this is when an appeal is lodged and you're in a formal disagreement resolution—those numbers with SNAP Cymru are extremely low—I'm talking 20 to 30 over a couple of years—because the actual work is much better if you hold it at an informal stage. The skills required for the informal stage are far greater than they are for a formal stage, shall I say that? Because, when you're providing formal disagreement resolution, you're in charge of the meeting. When you're in a meeting with multi-agency professionals and a family, you can imagine: you're not in charge, you have to wait your turn and be very skilful to manage to pull all the little pieces together. It's a very skilful job, but it's very much needed and it works.

[75] I think, within the whole process that I've been reading, it's really disappointing to me that, after all this time, too much emphasis is being put on formal disagreement resolution and formal advocacy, instead of looking at things in a very holistic way and taking early intervention. There doesn't have to be something wrong. Where there is a parental concern or a young person is unhappy, you need to be in there resolving issues, before they become deep rooted and require costly forms of advocacy, tribunals and

formal disagreement resolution.

[76] **Ms Thomas:** I think a part of that is—TSANA has been calling, collectively, for national statutory guidelines on advocacy services, and I think that's a key part of that, because that will make sure that advocacy services are operating to a minimum and good standard that will, going forward, hopefully, avoid more appeals to tribunal. But, taking it one step back even further, another way of ensuring that we keep appeals and disagreements to a minimum is to go back and look at the IDP, because, after all, this is what this is all about. This is the integral document.

[77] At the moment, not having a statutory template for an IDP is one of my biggest fears, and I really think that this legislation will fail without it, on so many counts. Without a statutory template, it's not clear—it's not transparent for families what they can expect to see, which is automatically going to increase the number of disagreements. It also makes it more difficult to be legally accountable, again increasing the number of disagreements. It is absolutely imperative that we get that national statutory template.

[78] **Dr Beyer:** There are also lots of boundary issues. You've got health authorities that'll be working with IDPs from different providers, there are people moving across boundaries with different forms of IDP; there are almost endless problems without having a standardised format.

[79] **Lynne Neagle:** Okay, thank you—

[80] **Ms Nowell-Phillips:** We really felt that this was the golden opportunity to introduce a template—or even more than one template, because there will be children who have different levels of needs—but that, whatever it is, it's portable and clear, and gives that transparency to the whole system.

[81] **Ms Thomas:** Because it's worth noting that a lot of local authorities have started working on IDPs, even though the legislation hasn't come in. When you look at the IDPs that are coming out across the nation, they're really different and some of them are really poor in quality, and they are going to lead to disagreements, because they're not going to give clear information on what the child is entitled to.

[82] **Lynne Neagle:** Okay. Thank you. We have got quite a lot still to cover, so I am going to have to ask for brief questions and brief answers. Are you

going to ask about the tribunal, Michelle?

[83] **Michelle Brown:** I was, yes.

[84] **Lynne Neagle:** Go on, then.

[85] **Michelle Brown:** Coming to the more formal part of the process, the Bill is kind of setting up a parallel appeals system. You have the education tribunal and then you have the NHS appeals process in respect of medical care and NHS services. Do you see any problems being caused for families that way and do you have any ideas about how we could resolve that for families?

[86] **Ms Thomas:** Thank you so much for—

[87] **Lynne Neagle:** I think we're keen, really, to get your views on whether you think health should come within the remit of the tribunal.

[88] **Ms Inger:** Absolutely, yes.

[89] **Ms Thomas:** Thanks for raising that question. I think this is a massive issue. Having the two separate systems is going to cause confusion for parents and, therefore, a barrier. Putting Things Right is nowhere near as robust as a tribunal, it doesn't offer any independent viewpoint, because it's all done within the local health board and, if you're unhappy with what your local health board says, then your recourse after that is to go to the ombudsman. Well, they can't comment on the decision; they can only look at the process. So, it's nowhere near as robust as a tribunal. We'd strongly urge the Welsh Government to look again at whether the tribunal could consider health.

[90] If, for any reason, it's decided that it cannot, then we must, again, look at section 19 of the Bill, because, if health is not covered by tribunal, section 19 of the Bill represents a huge step backwards and will affect loads of children. It'd be a big issue for us because of our access to speech and language therapy. Section 19 of the Bill changes things so that, if provision is put into an IDP and labelled as health, the local authority loses responsibility for that provision, and health have no statutory backing for their item in the IDP.

[91] **Ms Lewis:** It's also worth noting that the current tribunal—you could

take claims of disability discrimination to the current tribunal, and I really don't see what the big issue is in terms of not being able to take health issues as well, because, in terms of disability discrimination, you probably are talking about health needs, as well, by the very nature of disability discrimination. So, I can't see that expanding it to health would be that big a deal, really.

[92] **Lynne Neagle:** Any other comments? Everybody in agreement or—.

[93] **Ms Inger:** We agree.

[94] **Ms Nowell-Phillips:** Yes, supporting.

[95] 10:15

[96] **Lynne Neagle:** Thank you. We'll move on now then to look generally at the provision for health. John, brief questions, please.

[97] **John Griffiths:** Yes, absolutely, Chair. You touched earlier on some duties that the health boards might have—the duty to inform. Would you like to see any other duties imposed on health boards that are not currently proposed?

[98] **Ms Lewis:** I think at the end of the day it is a duty to work in a multi-agency way. Currently that duty isn't there. It's a duty to share information, but not a duty to work with the other agencies. I think health is still seen as quite separate in some ways. Also, in terms of the Bill, it talks about, if there's a medical intervention that might be needed, or treatments, or access to a service, that health has to provide, but only if they actually identify that need in the first place. So, I think it is a bit questionable in terms of health's responsibilities, really.

[99] **Ms Thomas:** I think definitely we need to—. I'm glad you asked that question. Within our TSANA response, our written response, we have bullet-pointed a number of things that we would like to see firmed up. I know we're short on time, so I'll just draw on a couple of key examples. So, for example, the duty—section 58(2)—on health professionals being able to decline a request to provide information, it's so weak. It's so easy for health professionals to be able to say, 'Actually, I'm not going to provide any information, because I don't have very much time'. There's a really easy get-out clause there for health. Similarly, section 19(6) states that, if the NHS

request a removal for the provision then

[100] 'the governing body or local authority must comply with the request.'

[101] But, again, this is a no-questions-asked. If local health boards suddenly decide, 'Actually, we haven't got that much money. We're going to withdraw speech and language therapy,' there's no need for any discussion moving forward. It's just, 'Okay, you don't want it anymore, take it out. That's fine,' and it's not fine. We really, really, need to look at health and firm things up on a number of counts.

[102] **Lynne Neagle:** Denise.

[103] **Ms Inger:** I do think as well we're putting an awful lot of pressure on schools. The pressure should be given to health as well. We're not even now having enough cover on school nurses, not even for special schools. Despite some reconfiguration, it's still not happening properly. We have children, staff, worrying about catheterisation in schools, and it's different, very much a postcode lottery around trusts as well, and local community workers, about access to school around epilepsy, diabetes—all of those. Schools are not having enough support from health and the actual turnaround on request or referral is abysmal.

[104] **Dr Beyer:** One very quick point: one of the biggest issues that families have is at transition to adulthood—the transition of their health services from children-focused services to adult. Quite often we have a problem of information or planning about how people will transfer between teams within health, and some provision that would actually bring them to the table to discuss that in a sensible way would be a great step forward.

[105] **Lynne Neagle:** Okay. Thank you.

[106] **John Griffiths:** Could I ask them about the DECLO role as well—your views on the proposed DECLO role?

[107] **Ms Inger:** I do think it's a step forward, and it's very welcome, but I'd like to see more detail about how that is going to work, and how it will support each maintained school in Wales, FE, and nursery provision. How is that going to work? Having one person—. We have a route, we have a name—that's something that's a step forward—but I'm a little sceptical that that would be enough.

[108] **Ms Thomas:** I would agree. I think we really need a clear, detailed person specification and job description and dedicated time for the role to make sure that it works properly. We don't want to see it becoming the case that the DECLO is the go-to person at the expense of front-line staff being involved in the assessments and decisions. Relying on one person would cause significant delays, and also lose that element of specialism that is so important. So, we need to be fairly clear in the job description and person spec that this is a high, strategic-level role.

[109] The other thing that I wanted to point out on the DECLO is that the code of practice says that there's going to be the equivalent of a one-day DECLO per 40,000 children, and that that works out as the equivalent of three full-time DECLOs across Wales. We'd really question whether that's enough time to do this really important role justice.

[110] **Lynne Neagle:** Okay, thank you.

[111] **Ms Lewis:** I understand that there are some pilots taking place on the DECLO role, and we very much look forward to finding out how that's actually working in practice.

[112] **Lynne Neagle:** So, do we, yes. [*Laughter.*] Darren.

[113] **Darren Millar:** Just a very brief follow up. We've had a letter as a committee from the Minister just talking about the DECLO role, and I think there's some acknowledgement from the Government that there needs to be more clarity, particularly in the code around the role. But also in the letter he reveals that there is currently some consideration about health co-ordinators also being in place in health boards, so that the DECLO role is a sort of more senior role, and then there are these more localised health co-ordinators. Have you got any thoughts on that sort of approach, and whether that needs to be something embedded in the Bill or—?

[114] **Ms Thomas:** I think it's something that we'd need further information on. So, really, just a plea to consult with us on that, because, again, what we really need to make sure is that the specialists are involved in the front-line assessments. So, potentially, they could be helpful, but again we don't want health co-ordinators to take away from the actual specialists. Because, if there's a deaf kid with a speech and language problem, I want a speech and language therapist in there doing the assessment, and that's what's really

important. Sorry, that doesn't refer to your question but, really, I think the further consultation is the key—

[115] **Darren Millar:** No, no. We will obviously raise this with the Minister later on in terms of a bit more information, because those costs, of course, haven't been factored into the potential savings that the Minister has identified as a result.

[116] **Ms Nowell-Phillips:** Potentially, it could bring a new strategic look at things, and, as we said earlier, I think it's important to look at social services having similar. So, on paper, it looks great but, as Debbie said, it's going to be that detail of what they do, how much time they have to do it and what's being taken away from those guys doing that job.

[117] **Lynne Neagle:** And we will explore that in detail with the Minister shortly. Llyr.

[118] **Llyr Gruffydd:** Thank you, Chair. I just wanted to ask your views, really, about the definitions used in the Bill of additional learning needs in section 2 and additional learning provision in section 3. We've had some evidence expressing concern that it's too narrowly focused on school-age learning, and doesn't take broad enough account of the way children develop and learn outside of that particular age group and also setting, really. So, I was just wondering whether you had any views on the definitions used.

[119] **Ms Thomas:** I think, broadly, that the definition works. I would share that point of view, and I do find that the definition provided for early years, which refers to any aspect of learning, would be more helpful. If that just applied across the board—I don't see why it couldn't—that would be my preferred option. In the lines of questioning that we were provided with before today, there was a suggestion put forward about whether to change it to 'aspects of learning'. And I just wanted to pick up on that, because I'm concerned that changing it—. You have to be careful of the way you change the wording, because changing to 'aspects of learning' could imply all aspects of learning as opposed to some, so I think you'd need to be clear that you're referring to any aspects of learning.

[120] **Ms Inger:** I think it's helpful and we'd support that but, again, I would say that it would be 'some or all aspects of learning' so that it clearly shows it doesn't have to be all aspects. So, 'some or all' might do it.

[121] **Ms Lewis:** Just to pick up on your point, obviously children learn in different ways and they develop in different ways as well, and it's important not just to focus on the academic aspects; you need to look at the wider aspects of social and emotional development—particularly with children with additional learning needs, it's even more important, I would suggest. So, looking at some of the issues that other people have just said, it's just concentrated on the academic side only.

[122] **Ms Nowell-Phillips:** Yes, I think it's really important—. It's easy to deal with school-age kids as far as ALN—you put things in place because they're in school. It will be the 0 to school age that needs consideration, and then also what happens when they leave school up to 25. For children with visual impairment, you have the qualified teachers for visual impairment, which are allocated to the child on diagnosis. So, they work with children from 0. And I think there's a huge opportunity here for committee, and the work you've done on First 1,000 Days, to actually start looking at how you can incorporate some of the stuff you've been considering there with the children until they get to school age, and into school, when it becomes 'easier' for the different systems to be put in place. And then also, when they leave, we as RNIB Cymru specifically do a lot of work on employing people and working with employers to get people with vision impairment into the workplace. So, to us, it's extremely important that things like work-based learning and apprenticeships, for example, are dealt with as part of the ALN process, which covers the child or young person then to 25.

[123] **Dr Beyer:** If I could just add to that, consider the situation of a young person who's got an underlying ALN who tries to go into an apprenticeship through, let's say, a college, as their training provider. Under the Bill at the moment, that would be picked up. There would be an additional learning provision identified, an ALN would be described, and there would be an IDP raised for that young person. If they went into the same apprenticeship with an outside training provider that wasn't an FEI, they wouldn't have recourse to that support. And that seems inequitable to us, and something that probably needs to be addressed.

[124] **Ms Lewis:** TSANA and Children in Wales in particular have got a lot of concerns about the pre-compulsory-school-age and post-compulsory-school-age element of the Bill. It's talked about it being a 0 to 25 Bill, but, in fact, it appears to be just the compulsory school age, with the two other bits sort of bolted on. But the Welsh Government, in the last eight years or so, have actually done quite a lot of work in terms of looking at the 0 to five age

range, in terms of the Welsh Government-funded early support programme, which actually looked at putting the child and the parent at the centre of the process and learning from that programme. But, unfortunately, it's not picked up, or appears to be lost. And the initial discussions we had with Welsh Government was that the early support programme would form the 0 to five age range, to link into compulsory school age. So, we're really concerned that this Welsh Government-funded programme is not being replicated within the Bill. The learning is actually there.

[125] And, also, at the other end of the age spectrum as well, again, the Welsh Government funded a transition key worker programme, which ran from 2008 to 2013, and that was positively evaluated. And there was also the convergence funding for regional SEN transition to employment initiative, which Steve Beyer was involved in, in terms of looking at the evaluation of the programme.

[126] **Dr Beyer:** Key workers, again, came out as tremendously helpful in the transition process for families, but there's no mention of it here.

[127] **Ms Lewis:** No. And just picking up on my comment earlier about transition to adulthood, there's very little information in the code of practice on transition to adulthood, and none within the Bill itself.

[128] **Dr Beyer:** The lack of information and access to information about options is a huge issue for families at that point. We get some very broad mention of 'We want that to happen.' But, under the current arrangements, local authorities are asked to try and provide an overview of what opportunities are out there. Now that goes to either the FEI or to the school to do, and they're in a worse place. We've worked with a lot of schools over the years, and they're very poorly placed to understand what the adult—particularly employment and training—opportunities are. And careers is necessary, but not sufficient to do that either. And they're not even really pinned into the transition process very much. I think we'd certainly like to see more prescription in the code of practice at least about that—what's in that transition planning element of the IDP, and also, more thought given to examples of what can help, like key worker arrangements at local authority level, and also, what are the good arrangements we have for providing people with information.

[129] **Ms Thomas:** I think it's worth noting, coming on to that, that the information that's in this draft of the code around transition planning is just,

'It might be nice to have good guidance', and that's not appropriate. We need more detail and more prescription, but we need more duties placed on FEIs to make sure this happens as well, and clear systems and structures in place.

10:30

[130] **Ms Lewis:** Also, in terms of FEIs, at the end of the day, there might be some children and young people with additional learning needs who might not choose to go on to further education colleges and they need to be given support to transition to adulthood in the same way as any other young person.

[131] **Lynne Neagle:** Okay. Thanks, Llyr. The final question then from Darren on the money.

[132] **Darren Millar:** It's just in relation to some of the comments made by Snap, if I can. Obviously, you referred to the information in relation to finances in the regulatory impact assessment in the explanatory memorandum and you have suggested that the Welsh Government has over-egged the potential savings from the Bill because it's overestimated the funding, or the costs, if you like, of dispute resolution by local authorities. Do you want to just elaborate on that? You suggested that the actual costs and the amounts being paid out by local authorities are much less than the Government has suggested.

[133] **Ms Inger:** Certainly the amounts attributed to SNAP Cymru are much less and perhaps they might be better put to what we might have saved at local authorities over the 30-month period rather than what it had costed. Information is public in our accounts, but just to put it clearly: within Wales, we provide parent partnership services for 19, at the moment, local authorities. We work with Wrexham and Flintshire around disagreement resolution, but CAB provide the service for parent partnership. We provide training for the CAB people when they have new people into post and we work alongside them. In Pembrokeshire, more recently, they've taken their service completely in-house.

[134] Of those, if I were just to average the cost of the 20, it's £27,000 a year, but we're talking very much more for Cardiff down to very much less, say, for Bridgend or Neath Port Talbot, as you would expect. So, if you equate £27,000 as an average for a local authority, I don't see where those figures came from. Therefore, if they haven't paid it out, they can't save it.

It's as simple as that.

[135] **Darren Millar:** Right. You get income from all sorts of different streams, don't you?

[136] **Ms Inger:** We do, and our total income over the last few years is just about touching less than £1 million.

[137] **Darren Millar:** So, the suggestion that there's going to be over two-point-whatever million pounds saved is not a figure that you recognise.

[138] **Ms Inger:** Not from me. I wish we had it, but we didn't and we don't. I would say that if I were to put a price on it—. I think the misunderstanding has come from, as I've said, the avoidance of disagreement and the much less work on formal disagreement resolution and tribunal hearings, which we are very successful at avoiding and at still having children's needs met, which is important. We do not need to be at tribunal. If the evidence is there, then the local authority should sit up and listen, but parents sometimes—often—will need independent support to make sure that that happens in a timely manner. We do save millions of pounds by not going to tribunal and by giving families their rights without recourse to a high-level court.

[139] **Darren Millar:** But you still accept that there ought to be a saving to the public purse, as a result of avoiding even more disputes, even at a less formal stage, as a result of a new Bill that has a different sort of approach to additional learning needs.

[140] **Ms Inger:** I think we could get it better over the years with person-centred planning, but, for now, I think it's problematic and I do think that we can hold down the need for families to go to a very traumatic, as much as a very nice, centre—it's still not a good place for a family to be and to have to wait months to get there. Besides that, it's not a level playing field. Local authorities have access to millions of pounds of public funding that they are using—wasting—in trying to challenge parents. The larger percentage of them find for parents. I would say that, sometimes, even when they are withdrawn and won, we find ourselves back there with the same issue. You know, we could be saving a lot more money, but I'm afraid we're looking at the wrong place. We shouldn't be trying to save money on taking away rights and support and advocacy for families. That's not where the savings should come from.

[141] **Lynne Neagle:** Okay, thank you. Well, we've run out of time, but can I thank you for coming this morning? I know the committee has found your answers extremely helpful, so thank you very much for your time. You will be sent a transcript to check for accuracy in due course. Thank you again for coming in.

10:35

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

Cynnig:

Motion:

*bod y pwyllgor yn penderfynu that the committee resolves to
gwahardd y cyhoedd o'r cyfarfod yn exclude the public in accordance with
unol â Rheol Sefydlog 17.42(ix). Standing Order 17.42(ix).*

Cynigiwyd y cynnig.

Motion moved.

[142] **Lynne Neagle:** Item 3, then, is a motion under Standing Order 17.42 to resolve to exclude the public. Is everybody content with that? Thank you.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 10:36.

The public part of the meeting ended at 10:36.

Ailymgynullodd y pwyllgor yn gyhoeddus am 11:00.

The committee reconvened in public at 11:00.

**Y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru):
Sesiwn Dystiolaeth 17
Additional Learning Needs and Education Tribunal (Wales) Bill:
Evidence Session 17**

[143] **Lynne Neagle:** Can I welcome everyone back for our final evidence

session for Stage 1 of this Bill, with the Minister for Lifelong Learning and the Welsh Language? Welcome, Minister, and thank you for coming. Can I just ask you to introduce your officials for the record, please?

[144] **The Minister for Lifelong Learning and the Welsh Language (Alun Davies):** As ever, I will ask officials to introduce themselves, because I can never remember job titles in this place.

[145] **Ms Williams:** Emma Williams, senior responsible officer for this Bill.

[146] **Ms Roberts:** Mair Roberts, legal services.

[147] **Ms Nicholson:** Tania Nicholson, head of the reform team.

[148] **Ms Lloyd:** Catherine Lloyd, legal services.

[149] **Lynne Neagle:** Welcome to all of you as well. If you are happy, we'll go straight to questions, Minister. We've got a lot to cover, so I'm going to make an appeal now for brief questions but also answers that are as concise as possible. Angela.

[150] **Angela Burns:** Good morning. I'm just going to leap straight forward. We've just been listening to a very interesting evidence session from some of the third sector organisations. In all the evidence that we've taken, there is a concern that the definition of ALN is too narrowly focused within the Bill. I would like to have your comments on that, particularly in terms of moving forward post-school age and also preschool age, and that there's too much focus on school-aged children within it.

[151] **Alun Davies:** Thank you very much. Can I just first of all say that we've been following the conversations that you've been having and the evidence that you've taken as a committee? We've also been consulting ourselves, since the Bill was published, and I think the process that's been followed over the last few months has been one of the most comprehensive I've seen from a Bill committee, and Bill committees I've sat on myself. I think that has been to the great advantage, both of the committee and of the legislative process.

[152] In watching and listening to the comments that have been made to the committee, I've been thinking again about a number of different aspects of the legislation that we introduced in December. The definition is fundamental to our ability to deliver on our ambitions for the Bill. I'm happy, if the

committee has a different form of words, to consider that form of words. However, I think that the current definition is sufficiently broad to capture learning in its wider sense and not just strict, formal learning. I'm absolutely sure that the definition also covers informal learning—learning through play, for example, for the younger children that you've described, Angela.

[153] So, if you believe that we need to amend that, then I'm happy to have that conversation with you, but I would want to see—. I'll say this repeatedly through the session, Chair, if the committee wishes to have a conversation about detailed amendments to the Bill, I would want to see what those amendments are and I would want to engage in a conversation and test some of those amendments as well. At the moment, I'm content with the definition. I've heard what's been said. I think it covers the areas that you've particularly highlighted. But if you have a form of words that may help us in the legislation, then we're happy to consider them.

[154] **Angela Burns:** I appreciate your willingness to discuss this further. I think, from a committee point of view, one of the things that we're trying to ensure is that, once this is out and about and in practice, there's no wriggle room, to be blunt—that there's no ability for it to be misinterpreted or for different authorities or different health boards to take a different view on it, which is why we think that getting some of these fundamental descriptives in place and making them really crystal clear is so important.

[155] In fact, that leads me neatly on to the comments that Estyn made about—and I'm going to just quote them. They think it should be reworded as an individual has 'a significantly greater difficulty in aspects of learning' whereas at the moment it's 'a significantly greater difficulty in learning'. The point that they make is that children, as we all know, are so incredibly varied that some will be able to cope with a significant amount of learning, but will just have issues with certain types—it could just be numeracy issues, or it could be something connected with some form of dyspraxia that shuts down or sees their brain operate in a completely different way in just one key area.

[156] **Alun Davies:** Yes, I did see the Estyn comments. I'm not persuaded or convinced by those arguments, I must say. Why qualify something? Learning is learning, and any aspect of learning should be covered by it. I don't understand why we would want to qualify that by aspects of learning. I don't understand why that would actually improve the definition. But, you know, as I said, we will reflect further on this. But what I would want to see is a form of words—if the committee is persuaded that we do need to change this—that

would actually enhance the definition and would ensure that it doesn't increase complexity; that it maintains the broad approach that we are taking; but also that it aids understanding. Now, there will, of course, be an opportunity to discuss this further when we come to consider the statutory code that underpins the legislation, but I'm not at the moment convinced by Estyn's suggestion, because I think that it could potentially narrow the definition as well.

[157] **Angela Burns:** So, their argument—. They posit the theory that additional learning needs is a much more inclusive and comprehensively used word, rather than, for example, special educational needs, because it is seen to include things such as people with difficulties to access learning because of social and emotional issues, anger management, perhaps or medical disabilities. Are you content, then, that additional learning needs should encompass those kinds of spheres as well?

[158] **Alun Davies:** I want it to be broad, but I want it to be flexible. At the moment, I'm content that the current wording achieves those ambitions. But, as I repeat, if the committee has additional words that it believes might enhance that definition, I'm happy to have that conversation. But let me say this: let's not narrow or take away that flexibility, and let's not introduce complexity. If we are able to do that, we can have that conversation. What I want to be able to do is have that definition that stands the test of time, that is robust in law, and that is also flexible enough to enable practitioners to interpret it in a broad way, and in a way that aids the work that they are undertaking.

[159] **Angela Burns:** So, can I just be absolutely clear? I am going to ask you the same question in a different way. You are content that the definition of 'additional learning needs' does include young people and children with, for example, medical needs. So, you are intending that this Bill should encompass them, because, of course, we have a lot of pressure to put certain things on the face of the Bill, and I just want to be really clear. That definition of 'additional learning needs', unless we enshrine it somewhere, when you are promoted to First Minister, or whatever you may go to next—

[160] **Alun Davies:** I don't think we need to worry about that at this point.
[Laughter.]

[161] **Angela Burns:** We need the next Minister, and all of those authorities out there, and all of those health boards out there, to really realise what they

are being signed up to.

[162] **Alun Davies:** Yes, I understand that. The medical needs, where they impact on a child's learning—that is the key test, because this is an education Bill about additional learning needs. So, what I am saying is, what I don't want a definition to do is to introduce complexity, to remove flexibility, but also to narrow the definition down. The conversation that I'm having with you this morning is all based on learning and learning needs. It's not simply saying, 'You have an additional learning need'. If you have a long-standing medical condition or a short-lived medical condition that has no impact on your everyday learning, then, clearly, that wouldn't be encompassed within this piece of legislation. This is about additional learning needs and how we define that.

[163] **Lynne Neagle:** And does the same go for mental health? I think we would want to be clear. Children with mental health issues may well have difficulty fully accessing the curriculum. Are you absolutely certain that the definition you've specified will ensure that children with mental health problems will be covered?

[164] **Angela Burns:** And social and emotional needs, which aren't perhaps quite in the mental health bracket.

[165] **Alun Davies:** I'm absolutely certain that all mental health needs should be and must be covered by this, in terms of additional learning needs.

[166] **Darren Millar:** Can I just ask something, in terms of this issue? This has been one of the most discussed issues, if you like, around the table, as you will have seen if you've been monitoring the committee's proceedings. Clearly, a young child with diabetes, for example, may have perfectly adequate capacity to learn in the classroom, but they have a condition that may impair their ability to stay in that classroom without the necessary medical interventions during the course of the day. At the moment, most of the support, we are told by Diabetes UK, that's given to young people is as a result of statements, but the Bill here, we are told, may exclude that provision through the new arrangements of the ALN Bill. Is that the case? And if it's not the case, why on earth do we need the draft ethical guidance that you've kindly shared with the committee in advance of today's meeting?

[167] **Alun Davies:** In advance of its publication next week?

[168] **Darren Millar:** Yes, in advance of its publication next week.

[169] **Alun Davies:** I shared it with you because you asked for it, Darren.

[170] **Darren Millar:** Yes, of course, but I'm just wondering why there would be a need if you're saying healthcare needs are perfectly encompassed within the Bill. Why would there be a need for any separate guidance?

[171] **Alun Davies:** There's clearly a need for guidance. Take, for example, a child in a school, perhaps in my constituency, or perhaps in yours, who has a peanut allergy. Now, there needs to be a plan in place to deal with that. That doesn't mean that child has additional learning needs: it means they have a particular healthcare need, but, obviously, it needs to be dealt with. Or a child—you've given diabetes as an example, and we can accept that as another example—. It doesn't mean that they've got an additional learning need, but it does mean that they've got a medical requirement that needs to be supported, and a plan needs to be in place to deal with that within the school environment. We understand that, but that guidance is statutory guidance. It will be published next week on 30 March; I'll make a written statement publicising that. I thought it would be useful for the committee to have early sight of that and to be able to make comments on it, and I'm very happy to take comments from the committee on it. But we did have a conversation at my last appearance here on the interplay between these two issues, about healthcare needs and additional learning needs.

[172] My intention is that we have a Bill with a definition of additional learning needs that is broad, that encompasses a wide range of potential issues that might lead to additional learning needs. It doesn't refer specifically to healthcare needs that do not lead to additional learning needs. But I recognise that there are concerns—and you raised these concerns with me at our last meeting—that the current regime for providing guidance for healthcare needs was not sufficiently robust. The committee seemed to me to be in agreement that this guidance shouldn't be in the form of advice, but it should be in the form of statutory guidance. So I've taken that on board and will be publishing it next week. I've given the committee early sight of that to take a view on that. The requirement to provide this guidance already exists in statute. I think it's the Education Act 2002—from memory.

[173] **Ms Lloyd:** Yes, there's a power to give the guidance in the 2002 Education Act, section 175.

[174] **Alun Davies:** So, we've already got the powers available to us to do that. We've done that, we've made them statutory, and the committee will have an opportunity to look at that whilst it is considering the ALN Bill in its entirety. So, you will have an opportunity to see how these matters interplay and whether there's a need fill any gaps.

[175] **Darren Millar:** As we've been told by a range of organisations, most of the support that's given for learners with healthcare needs is arranged under the current provisions for special educational needs. Now, given that that is the case in practice, why would it not be possible to incorporate the two within a single piece of legislation, such as the one before us, without the need for a separate set of guidelines for medical needs? That's what all the evidence is pushing us towards.

[176] **Alun Davies:** The requirement of a power to provide these guidelines already exists in law. It's already a part of the statute book. If you're asking us to put it back on the statute book again, then, clearly, I could consider that. But I would ask you to consider something as well: it is, I would argue, poor legislative practice to make repeated provisions in different pieces of legislation, and, certainly, as somebody who's spent however many years on the Constitutional and Legislative Affairs Committee, one of the very, very clear conclusions of all of our reviews of legislation was that the statute book has to be clear, and has to be understandable, and has to be accessible—and that means accessible in terms of its structure as well as its contents. My concern is to ensure that we have guidelines in place to meet the healthcare needs of pupils in the school environment, and that is their healthcare needs, not their additional learning needs. Now, I understand what you're saying in terms of a previous regime. We now have a regime that is changing, that is being broadened, that is being extended, but we already have the powers to do what you're suggesting we do and we're already doing it. And we're doing it in the way that you suggested would be useful to do at our last meeting.

11:15

[177] **Darren Millar:** Is it not possible—

[178] **Lynne Neagle:** Very briefly, Darren, because I've got other Members on this too.

[179] **Darren Millar:** I appreciate that. It's also poor practice, is it not, to have two regimes that are very separate? Some healthcare needs will clearly

be met under the new Bill, should it become law; others will be met under a completely different arrangement, which is difficult for schools, difficult for parents, difficult for agencies to navigate. Wouldn't it be better, and isn't it better practice, from a legislation point of view, to have a common set of procedures? And this Bill gives us the opportunity to deliver that.

[180] **Alun Davies:** I'm not sure the situation is as you describe it, and I don't accept the assumptions that you've made there about some of the difficulties involved. I don't accept that. My experience is that people who navigate these matters understand these matters as well, and, you know, the issues around healthcare are dealt with by one piece of guidance and statutory guidance, and advice on additional learning needs by a different piece. People understand and appreciate that. I don't accept your assumption, but I do accept that there is a relationship, an interplay, between some of these things at some times, at some points in time, and where there are those interplays, and where there are those points of contact, if you like, between different regimes—healthcare and additional learning needs—it needs to be seamless and it needs to dovetail in, and not jar and create conflict. I hope that we are achieving this.

[181] By publishing the statutory guidance on meeting healthcare needs within the school environment in March, next week, we're enabling people to take time to look at this guidance at a time when we can amend this Bill if we believe that there is that conflict there, and we can make changes, and we can make changes at Stage 3 in September, when we've had an opportunity to allow these things to bed down a bit. So, we will have that opportunity to do so, if we believe, and if we are convinced, and if we see that there are those conflicts within the system. I'm not convinced by that today, but I am open to be convinced by that when we've had the opportunity to study these things.

[182] **Darren Millar:** Okay.

[183] **Lynne Neagle:** Julie.

[184] **Julie Morgan:** I think it's welcome that this guidance is statutory and, as Darren has said, we did have many examples of how health needs were not being addressed in the schools in a way that was beneficial to the children. Their lives were being very restricted and we heard very powerful evidence, so I welcome the fact that you have made this guidance statutory. But I just wanted to confirm—which, in fact, Darren was reaching, towards

the end of his questions—that this has been published now to give an opportunity to see how this is received, or how it operates, in order to consider if it doesn't appear to be the most appropriate way of going ahead, that there could then be amendments to the Bill we're considering, and to put it all together. I'd just like to confirm if that's what you've just said, Minister.

[185] **Alun Davies:** It's been published in order to provide the guidance, and not simply as a means of aiding the scrutiny of this Bill. It's there to provide the statutory guidance for schools. That's why it's—. That's the driver for publication. However, we recognise that by doing so now, at this point, as we're coming to the conclusion of Stage 1 scrutiny of this Bill, we will then have an opportunity, through the summer term, to consider this in more detail and whether we wish to make amendments at Stage 2 in the summer or Stage 3 in the autumn. We will have the opportunity to do so. My concern would be, and this is why—. I say very, very clearly that I'm very open to further amendments to this Bill if we believe that they are required. However, what I would say—the criterion I would use in order to consider these matters—would be: does this aid understanding? Does this enable us to remove sharp corners, sharp edges, where they exist, and does this aid transparency and understanding of where the law stands? I would expect this committee or others to be able to answer all of those questions, as well as to simply propose an amendment. But certainly, Julie, to directly answer your question, the opportunity to provide further amendments is there as a consequence of the publication of the statutory guidance, where and if we believe that is necessary.

[186] **Julie Morgan:** And you think the summer term is a long enough period to assess that.

[187] **Alun Davies:** We have until Stage 3 in the autumn as well, if we believe we need additional time. I would give an undertaking to the committee that I will approach this with an open mind and that I would be very happy to accept amendments if the case is made.

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

[189] **Lynne Neagle:** Okay. We'll move on, then, to talk about the IDPs. Llyr.

[190] **Llyr Gruffydd:** Diolch yn fawr. **Llyr Gruffydd:** Thank you very much. Rydw i jest eisiau gofyn i chi: i ba I'd just like to ask you: to what

raddau ŷch chi'n fodlon bod y Bil a'r cod drafft yn rhoi digon o eglurder ynglŷn â'r amgylchiadau lle fydd yr IDP yn gyfrifoldeb awdurdod lleol yn hytrach nag ysgol neu goleg addysg bellach? Achos rŷm ni wedi cael tystiolaeth, wrth gwrs, fod pobl yn poeni bod yna bach o ddryswch ynglŷn ag ar ba adegau mae un yn gyfrifol ac ar ba adegau y mae'r llall yn gyfrifol.

[191] **Alun Davies:** Ie, rydw i wedi gweld y dystiolaeth, felly. Nid yw wedi dod ataf i fel rhan o'r trafodaethau yr ydw i wedi'u cael, mae'n rhaid dweud. Nid yw e wedi bod yn *issue* lle mae'r system yma yn cael ei gweithredu—yn sir Gâr, er enghraifft. Rydych chi'n ymwybodol bod y system yma wedi cael ei threialu fanna, ac nid ydw i wedi'i weld e fel *issue*. Rydw i'n gwybod ei fod e wedi cael ei godi felly.

[192] Rydw i'n fodlon gyda'r sefyllfa bresennol, fod gan ysgolion y cyfrifoldeb o gynllunio darpariaeth. Rydw i yn meddwl mai dyna'r ffordd gorau i'w wneud ef. Nid ydw i eisiau gweld yr awdurdodau lleol yn cymryd yr holl gyfrifoldeb i ffwrdd o'r ysgolion. Rydw i'n credu y buasai hynny yn newid y cydbwysedd sydd gyda ni ar hyn o bryd rhwng athrawon, ysgolion, llywodraethwyr, awdurdodau lleol ac eraill sydd eu hangen. Ond eto, os oes yna achos i'w wneud, fe wnawn ni wrando ar beth sy'n cael ei ddweud.

extent are you happy that the Bill and the draft code provide enough clarity on the circumstances where an IDP would be the responsibility of the local authority rather than the school or further education college? Because we have had evidence that people are very concerned that there's a little confusion as to when one would be responsible and when the other will be.

Alun Davies: Well, I have seen that evidence. It hasn't been provided to me as part of the discussions that I've had, I have to say. It hasn't been an issue where the system is in operation—in Carmarthenshire, for example. You will be aware that this system has been trialled there, and it hasn't been raised as an issue. But I know that it's been raised with you.

Now, I'm content with the current situation, that schools have the responsibility for planning provision. I do think that's the best approach. I don't want to see local authorities taking all responsibility away from schools. I think that would alter the balance that we currently have between teachers, schools, governors, local authorities and those other agencies involved. But again, if there is a case to be made, then we will listen to that.

[193] **Llyr Gruffydd:** Felly, ni fyddech chi'n cytuno gydag awgrym y comisiynydd plant, er enghraifft, y dylai'r prif ddyletswydd fod ar yr awdurdodau lleol, ac wedyn mai rôl byrddau llywodraethol yr ysgolion a'r colegau addysg bellach fyddai cydlynu'r ddarpariaeth yn sgil hynny—hynny yw, bod y *primary duty* ar—

Llyr Gruffydd: So you wouldn't agree, then, with the children's commissioner's suggestion, for example, that the main responsibility should be on local authorities, and the role of governing bodies of schools and further education colleges would be to co-ordinate provision—that is, that the primary duty—

[194] **Alun Davies:** Nid ydw i'n cytuno â hynny. Rydw i'n credu y buasai hynny'n newid y cydbwysedd yn ormodol i ffwrdd o ysgolion ac nid ydw i'n meddwl bod angen gwneud hynny. Nid ydw i'n gweld tystiolaeth bod angen symud y cydbwysedd felly.

Alun Davies: I don't agree with that. I think that would alter the balance too much and take too much away from schools, and I don't think that that's necessary. I haven't seen evidence that we need to alter the balance in that way.

[195] **Llyr Gruffydd:** Ond mae Estyn wedi mynegi gofid ynglŷn ag *ambiguity*. Mae'r WLGA hefyd wedi rhybuddio y byddai *ambiguity* o'r fath yn arwain at fwy o densiynau posibl rhwng ysgolion ac awdurdodau lleol. Rydw i'n credu fy mod i'n iawn i ddweud, yn Lloegr, maen nhw'n defnyddio rhyw *threshold* ariannol lle mae'r cyfrifoldeb yn newid dwylo. Ni fyddwn i o reidrwydd yn dadlau o blaid hynny, ond yn sicr mae'n rhoi eglurder llwyr ar y mater. Onid ych chi'n credu y byddai rhywbeth tipyn mwy concrit fel yna yn help?

Llyr Gruffydd: But Estyn have expressed a concern regarding ambiguity in this issue. The WLGA have also warned that ambiguity of this type would lead to more possible tensions between schools and local authorities. I think I'm right in saying that, in England, they use a financial threshold where the responsibility changes hands. I wouldn't necessarily argue in favour of that, but it certainly does give clarity on the issue. Don't you think something rather more concrete like that would be of help?

[196] **Alun Davies:** Nid ydw i ddim. Mae'n well gen i ddibynnu ar farn broffesiynol arbenigwyr ac athrawon sy'n delio â phlant yn lle Gweinidog

Alun Davies: I don't, no. I would prefer to rely on the professional views of experts and teachers dealing with children rather than a Minister

neu weision sifil neu wleidyddion yn or civil servants or politicians
 mynnu bod yna ryw fath o *threshold* insisting on an arbitrary threshold
 sy'n gwbl *arbitrary* sy'n cael ei orfodi being put in place.
 ar bobl.

[197] Beth rydw i eisiau gwneud fan Now, what I want to do here, Llyr, is
 hyn, Llyr, yw creu math o to create a partnership between the
 bartneriaeth rhwng darparwyr y providers of education services in
 gwasanaethau addysgu i sicrhau bod order to ensure that people can
 pobl yn gallu cydweithio tu mewn i collaborate within a system that is
 system sy'n ganolog ar y plentyn, ar pupil focused—that is focused on the
 y person sydd angen y cymorth a'r individual who needs the assistance
 gefnogaeth yr ydym ni'n sôn and support we're talking about.
 amdanynt. Dyna beth rydw i eisiau That's what I want to see. Do we, as
 gweld. A ydym ni, fel gwleidyddion, politicians, want to make these
 eisiau gwneud y penderfyniadau yma, decisions, or do we want to create a
 neu greu fframwaith lle rydym ni'n framework where we actually remove
 cymryd i ffwrdd yr hawl a'r gallu i the ability for experts to implement
 arbenigwyr weithredu eu barn their professional views? I don't want
 broffesiynol? Nid ydw i ddim eisiau to do that.
 gwneud hynny.

[198] **Llyr Gruffydd:** Océ. Mae'r Bil **Llyr Gruffydd:** Okay. The Bill also
 hefyd wrth gwrs yn rhoi hawl i gives rights to local authorities to tell
 awdurdodau lleol i ddweud wrth schools what they need to do, to
 ysgolion beth maen nhw angen ei direct schools in terms of holding
 wneud, i *direct-io* ysgolion o ran these IDPs, but they don't have the
 cynnal yr IDP, ond nid ydyn nhw'n same power when it comes to further
 gallu cael yr un pŵer o safbwynt education institutions. Now, I do
 sefydliadau addysg bellach. Rydw i'n understand that governance, of
 deall bod y llywodraethiant yn course, is different in that context,
 wahanol yn y cyd-destun yna, ond but there is a risk, is there not, if an
 mae yna risg, onid oes yna, wedyn, FEI doesn't agree, that there could be
 os ydy sefydliadau addysg bellach yn a tension developing there? So, why
 anghytuno, y bydd tensiwn yn haven't you, perhaps, put more
 datblygu? Felly, pam nad ydych chi emphasis on giving local authorities
 wedi, efallai, gosod mwy o bwyslais rights to tell them what to do?
 ar roi hawl i awdurdodau lleol i
 ddweud wrthynt beth i'w wneud?

[199] **Alun Davies:** Y rheswm am **Alun Davies:** The reason for that is

hynny yw'r newid mewn llywodraethiant yr ydych wedi ei awgrymu. Mae colegau addysg bellach yn sefydliadau annibynnol mewn ffordd nad yw ysgolion. Mae'n bosibl i wneud rheoliadau o dan adran 34 i alluogi hynny i ddigwydd pan fod angen iddo ddigwydd, ond buasai'n well gen i fod gennym ffordd o weithredu ar draws y sectorau sydd yn berthnasol ac yn briodol ar gyfer y gwahanol sectorau a sefydliadau. Wrth gwrs, ble mae pobl yn meddwl nad ydynt yn cael y fath o degwch sydd ei angen arnyn nhw, mae ganddyn nhw yr hawl i fynd i dribiwnlys, a hefyd os nad yw'r system ei hun yn gweithio— a dyma rwy'n credu yw craidd eich cwestiwn—mae gen i wrth gwrs, fel Gweinidog, y grym i ymyrryd.

[200] **Llyr Gruffydd:** Rydych wedi clywed yn gyson, wrth gwrs, gyfeiriadau at gael dempled safonol ar gyfer cynlluniau datblygu unigol, ac rwyf yn gweld yn y llythyr rydym wedi ei dderbyn gennych ddoe fod y grŵp arbenigol yn edrych ar arfer da a'r achos dros gael rhyw fath o dempled safonol. Mae yna sôn wedi bod, efallai—. Hynny yw, nid oes rhaid iddo fod yn un dempled wrth gwrs, mi fyddai'n bosibl edrych ar amrywiaeth o dempledi. A fyddai'r rheini wedyn yn dempledi statudol ydych chi'n meddwl? A fyddai'n rhaid defnyddio'r rheini?

[201] **Alun Davies:** Os ydym yn ei osod yn y cod mi fydd yn amlwg yn

the difference in governance that you alluded to. FE colleges are independent institutions in a way that schools aren't. It is possible to make regulations under section 34 to enable that to happen when it needs to happen, but I would prefer us to have a modus operandi across sectors that would be relevant and appropriate for those different sectors and institutions. Of course, where people think that they aren't getting the fairness they deserve, they have a right to go to tribunal, and if the system itself isn't working—and I think that this is at the heart of your question—I, of course, as Minister, do have the power to intervene.

Llyr Gruffydd: You have heard, of course, many references to having a standard template for these IDPs, and I see in the letter that we have received from you yesterday that the expert group is looking at good practice and the case for having some sort of standard template. There has been talk, perhaps—. Of course, it doesn't have to be just one template, I suppose we could look at having a variety of templates. Would those then be statutory templates, do you think? Would those have to be used?

Alun Davies: If we place it within the code, clearly, it will force people to

gorfodi pobl i'w wneud. Eto, dyma rywle lle rwy'n awyddus i glywed beth sy'n cael ei ddweud. Mae'r ddeddfwriaeth bresennol a'r Bil, fel y mae, yn mynnu bod rhywfaint o wybodaeth gyffredin ym mhob un o'r IDPs yma. So, mae templed, os ydych yn leicio, yno i ryw raddau. Beth rwyf yn meddwl yr ŷch chi'n sôn amdano yw datblygu'r syniad, felly, yn y cod i sicrhau bod yna dempled clir yn fanna. Rwyf yn agored i ystyried hynny. Nid wyf yn meddwl ei fod yn syniad gwael. Beth rwyf yn awyddus i sicrhau yw bod yna ddigon o hyblygrwydd mewn unrhyw fath o dempled rydym yn ei ddewis i alluogi'r arbenigwyr yma, neu bwy bynnag sy'n delio â hynny, i sicrhau ei fod yn canolbwyntio ar y plentyn ei hun ac nad ydym yn mynd drwy ryw broses o dicio bocsys. Rwyf yn awyddus iawn i sicrhau bod gennym yr hyblygrwydd, ond nid wyf yn anghytuno â beth sydd wedi cael ei ddweud wrth y pwyllgor aboutu cael dempled.

use it. Again, this is an area where I'm eager to hear the comments made. The current legislation and the Bill, as it stands, do insist that there should be some common information within all of these IDPs. So, the template, if you like, is there to a certain extent. What I think you're talking about is developing that idea, therefore, within the code in order to ensure that there is a clear template set out there. I am open to considering that. I don't think it's a bad idea necessarily. What I'm eager to ensure is that there is sufficient flexibility in any template that we may choose in order to enable these specialists, or whoever's dealing with that, to ensure that it is child-focused and that we don't go through some box-ticking exercise as part of this process. I am very eager to ensure that we do have that flexibility, but I wouldn't disagree with the comments heard by the committee in terms of having a template.

[202] **Lynne Neagle:** Thank you. If we can move on to the role of the ALNCOs then, is it still the Welsh Government's intention for all the ALNCOs to have a Master's qualification?

[203] **Alun Davies:** Yes, it is. We don't expect that to be overnight, of course. We don't anticipate that the Bill receives Royal Assent on Monday and all ALNCOs will have a Master's on Tuesday. That's not our intention. Clearly, we would need to implement this in a way that is sensible and which takes account of the time needs of the workforce and we will need to plan it. We are currently consulting, as you know, on implementation matters and, again, this is somewhere where we are willing to look at ensuring that we have a reasonable and viable period to move from where we are to date to where we want to be in the future.

[204] **Lynne Neagle:** Will that process that you're going through take account of the fact that there are people who are performing these similar roles with lots and lots of experience—who are very effective at it—but who are not, in a million years, going to be in a position to study for a Master's? How will you ensure that we don't lose that valuable expertise from the system?

[205] **Alun Davies:** I think it would be an appalling arrogance for me to assume that that experience doesn't exist because somebody doesn't have a Master's degree. I think that would be an appalling assumption to make. We value the experience and the knowledge of the workforce. We are working with the workforce, I hope, sufficiently well to ensure that we do have a graduated approach that recognises and respects the expertise and the experience that already exists in the workforce, and that we move over a reasonable period of time to a situation whereby we have these qualifications and this qualification structure in place. But it's not something that's going to happen overnight; it's something that will happen with the workforce and not to the workforce. It is something that we will ensure respects, appreciates and values the knowledge and expertise that already exists.

[206] **Lynne Neagle:** Okay, thank you. Just finally, have you considered having an ALNCO-type role within local authorities to fulfil the role of co-ordinating the assessment and provision for preschool children?

11:30

[207] **Alun Davies:** Yes, and it goes back to Angela's earlier question about some of the definitions and the role played in the early years. I think it's something that we do need to continue to consider. Conversations have taken place between my officials and with practitioners and stakeholders, and I think there is a general welcome for the concept, but we do need to look harder at how we would actually deliver that in terms of funding it and where it would fit into the overall structure. So, yes, it is something that we're actively considering at the moment.

[208] **Lynne Neagle:** Okay. We're going to explore early years a bit further now with Julie.

[209] **Julie Morgan:** Thanks very much, Chair. Why does the Bill give health boards discretionary powers rather than place them under a duty to bring to

the attention of the local authority any concerns that a child under compulsory school age may have ALN?

[210] **Alun Davies:** This is where I seek help from lawyers.

[211] **Ms Lloyd:** Yes. You're talking about section 57 of the Bill here, I understand. So, it might help if I start with the purpose of the provision. This provision is aimed at providing the trigger for local authority involvement for children who are not yet in school, or in the system. When a child does start compulsory education, the school is likely to be best placed then to identify whether or not the child has ALN. And the background is also that early intervention is critical for improving overall educational progress and outcomes, and, if it's identified before they start compulsory schooling, then provision can be in place immediately upon day one of compulsory schooling. So, ultimately, we're trying to protect children's right to education here.

[212] A referral from a health body would involve disclosure of sensitive personal information, which is confidential—that's medical information—and a high degree of privacy attaches to doctor–patient confidentiality. So, as a result, we have sought to build in protections into this section so that any interference with article 8—right to respect for privacy—are justified and proportionate. So, the safeguards are the health body must discuss its view with the parent, which gives an opportunity to seek the parent's consent to disclosing the referral to the local authority and can also help the health body take a view on the best interests of the child. Secondly, the health body needs to be satisfied that referral is in the best interest of the child. Finally, the referral is a power, not a duty. So, the onus is on the health body to be satisfied that referral is proportionate and justified, and, in cases where the parent doesn't consent, it's not automatic and it will need to take a view. So, together, those safeguards are aimed at ensuring the referral, as it's likely to involve an interference to the respect of a private life, is justified and proportionate.

[213] **Julie Morgan:** But, currently, I understand health boards must inform the local authority.

[214] **Ms Lloyd:** That is the position under the—

[215] **Julie Morgan:** So, you're changing the position.

[216] **Ms Lloyd:** Yes, yes.

[217] **Julie Morgan:** Right. And I can't really see what circumstances there would be when it was not in the child's best interest.

[218] **Ms Lloyd:** Yes, we recognise that they're probably going to be very rare and unlikely circumstances, and it may be that in almost every, if not every, case, an assessment will mean that the best interests would involve a referral. A possible case where it may not, that we thought of, would be if a child is terminally ill. There may not be any benefits to be derived from a referral in that case. But the important point is that that assessment has to take place, and if it isn't considered to be in the child's best interests, then that power is available, whereas it would be odd if a referral could be made if it weren't in the child's best interests.

[219] **Julie Morgan:** Yes, and I just wonder, by changing this, whether in fact it may mean it's less likely that children may be referred, which is very important—that they should be referred.

[220] **Ms Lloyd:** We don't think it would be less likely. No doubt we can look at the code and doing things in the code to add flesh to the bones of the functions here, but those safeguards were considered to be necessary and appropriate.

[221] **Lynne Neagle:** But, yet, we haven't got those safeguards now in the current legislation, and the NHS Confederation told us they could see no circumstances where it would not be in the best interests of the child. But do you recognise that the Bill, as it's currently framed, does give the opportunity for a bit of a get-out for health boards? Do you not think it would be better to have provision that says that referral must be made unless it is not in the best interests of the child?

[222] **Alun Davies:** I wouldn't agree that it's a get-out.

[223] **Lynne Neagle:** Well, yes—you understand what I'm saying.

[224] **Alun Davies:** Yes. I wouldn't accept that. What I would seek to say is that you have an opportunity for a health board to reach a different conclusion in some exceptional circumstances, which Catherine has outlined this morning. It is not an option that we would expect or anticipate to be used on a regular basis, and it might well be that, if there are serious

concerns on this matter, we'll refer to additional guidance in the code. But, at the moment, we see this as being an ability to provide health boards with the legal basis upon which to reach a different conclusion in those exceptional circumstances.

[225] **Ms Lloyd:** May I also add that there is that discussion with parents? As I understand it, in practice, almost always that's likely to result in the parent agreeing to the referral.

[226] **Alun Davies:** In terms of the changes that we've made to the legislation here, from the existing regime to the new regime, I think Mair could possibly help the committee.

[227] **Ms Roberts:** Yes, we're in a different position now to when the 1996 Act was being made, due to the Human Rights Act coming into force subsequently. So, we have additional considerations, which Catherine has outlined.

[228] **Lynne Neagle:** Okay.

[229] **Julie Morgan:** But wouldn't it be better to do it in the way that the Chair has said—that it must be done unless there are exceptional circumstances, where the human rights, obviously, issue could come in?

[230] **Ms Roberts:** Well, we think the best-interests test covers it appropriately.

[231] **Alun Davies:** But that's a matter we can consider further if the committee wishes to report on these matters.

[232] **Lynne Neagle:** Did you have any other questions, Julie?

[233] **Julie Morgan:** Some witnesses have said that the early years and the post 16 are almost add-ons to the main bit, and that the main focus is on statutory school age times. I think, Minister, earlier on, you did say that you felt that this did cover early years play and activities like that. So, I think we felt that there should be perhaps a bit more focus on early years and post 16.

[234] **Alun Davies:** I'm not convinced by that evidence. This is a zero-to-25 Bill, and all its different sections should apply equally, but appropriately, to

the entirety of that age range. If there are areas, parts or clauses of this Bill that the committee does not believe sufficiently address the needs of learners in those settings, I would be interested to hear. I've heard the comment made, but I haven't seen any evidence that substantiates that comment.

[235] **Julie Morgan:** Okay.

[236] **Lynne Neagle:** Okay, thank you. Moving on then to post 16, the Bill is meant to be child-centred, yet we've got a potential division there, with post 16 only being available in a further education setting rather than work-based training. The committee has taken a lot of evidence that suggests that work-based training should be included. What is your view on that?

[237] **Alun Davies:** The reason it isn't included in the Bill, of course, is that work-based training takes place, almost by definition, within a private business, and the provisions of this Bill have not been extended outside of the education sector in that way. So, that's why we haven't extended it in the same way. However, I must say that we have spoken to work-based learning providers over the period of time since the publication of the Bill, and I would hope and anticipate that, whilst those providers will not have statutory duties to perform and to deliver upon, there will be an ability for work-based learners to support apprentices or other people with the needs that they have in order to continue their learning. So, I hope that we will be able, by creating a new framework—a statutory framework—for the statutory sector, to also lead to a culture change. One of the points I tried to make to the committee during my last appearance here was that the Bill is a part of a wider transformational programme that is about changing the culture of provision as much as it is about the structure of provision. I hope that this is one area where work-based learning will be seen as an area that, if not under the scope of the Bill, will be impacted by the fact of the Bill.

[238] **Lynne Neagle:** Angela

[239] **Angela Burns:** Apologies, I only just recently got the statutory health guidance. Going back to the post-16 issue, if you're saying that the ALN Bill is there to ensure that, post 16, all learners are given support no matter what their issue is in terms of being able to access learning or to access the curriculum or their further development, their apprenticeship, whatever it might be, in FE or in a specialist school, this guidance—I can't remember the name of it; the guidance that came out this morning on the health needs—

from what I can see, only talks about up to the age of 19 as a maximum. So, does that mean that, when the ALN Bill finally hits the statute book, will you be reissuing this to tie it all in so that if somebody's got a disability that impacts on their ability to learn, they will still get the support up to the age of 25 once they've left school?

[240] **Alun Davies:** The ALN Bill actually does do that already, and, of course, that's the nature of the zero to 25 approach, but the piece of advice or guidance you're looking at covers healthcare needs, which is—this is a conversation I had with Darren earlier—somewhat different. Our current framework goes up to 19, and so if there is a need to extend that, I'm very open to extending it, but they are two different pieces of guidance that do seek to do slightly different things, and it is the connection and the inter-relationship between them that I think is something we need to explore. If we do need to issue amended guidance in the future, which will be closely linked with the ALN code that we'll be publishing in due course, then I'm very content to do that. I've no objection. I wouldn't seek not to do that, but I would counsel you not to see them as the same pieces of legislation, because they do seek to do slightly different things.

[241] **Angela Burns:** Yes, and I did take on board your argument to Darren about that, but I think that one of the things that I'm really keen to see, and one of the objectives of this piece of legislation, is to take the heat out of what are very emotive issues. One of the big areas where our support for people with learning disabilities falls down is post 16. There's a lot of conflict then between local authorities, between health boards, between parents about who's got the job of trying to support those people going forward. So, I would be very grateful if you would look at where these two sit side by side, and if you could reassure us at some point in the future that, for somebody who sits astride both bits of legislation, when this one falls away, because they're 19, that the other will still pick them up even in terms of their health needs if—and I understand the 'if'—it affects their ability to learn until they're 25. Because this conflict resolution has got to be one of the prime objectives of this Bill, because that's what's, to be frank, crucifying so many families at present.

[242] **Alun Davies:** I agree with you on that final point. I absolutely do agree with you. I also agree that we do need to have that dovetailing of different pieces of legislation. I think you're absolutely right on that. Where I would say there is an issue that we do need to consider is, when you're talking about healthcare needs, of course, at 18, children become adults and there is

therefore a very, very different legal setting for prior to and post 18 in terms of people's rights. So, there is a different legal situation there, but the overall point that you make, Angela, about bringing these pieces of legislation together to provide a seamless approach is one that is well made, and certainly where there are additional learning needs up to the age of 26, this Bill, as presented, should be addressing those needs.

[243] **Angela Burns:** On a slightly different topic, but still to do with post 16, have you had many discussions, and how are your discussions going, with the WLGA in terms of the funding for post 16, and in terms of the funding for post 16 being transferred from the Welsh Minister to the responsibility of the local authority, because that's my read as to what's going to go ahead, and will that be protected within the RSG?

11:45

[244] **Alun Davies continues:** You constantly tempt me into an indiscretion that will cause me terrible pain when I leave this committee. These conversations are ongoing. They are a matter for the distribution sub-group, which is where Ministers always refer these matters when they try to avoid answering a question.

[245] **Angela Burns:** Isn't your get-out-of-jail card to say they're 'constructive dialogues'?

[246] **Alun Davies:** Constructive dialogues—what an excellent way of putting it. It's a complex matter and it's one where conversations are taking place. On this matter, it might be better for me to take a leaf out of your Prime Minister's book and not provide a running commentary.

[247] **Angela Burns:** Fair enough.

[248] **Llyr Gruffydd:** Liciwn i ddod nôl at y cwestiwn ynglŷn â phrentisiaethau. Un o'r egwyddorion rŷch chi'n eu hyrwyddo yn y Bil yma yw eich bod yn dweud eich bod chi eisiau gweld cyfundrefn decach a chyfundrefn fwy cyfartal. Ond, wrth gwrs, mi allem ni, felly, gael sefyllfa, yn anffodus, lle mae yna bobl ifanc

Llyr Gruffydd: Can we go back to the apprenticeships question? One of the principles that you promote in this Bill is that you'd like to see a fairer, more equitable system. But, of course, we could have a situation, unfortunately, where young people have the same additional learning needs, perhaps, one following an

â'r un anghenion dysgu ychwanegol, efallai, ac mae un yn gwneud prentisiaeth drwy goleg addysg bellach gyda chyflogwr yn cael y gefnogaeth sydd ei hangen, a pherson arall yn gwneud prentisiaeth drwy ddysgu'n seiliedig ar waith a ddim yn cael yr un gefnogaeth. Felly, mae'n swnio i fi fel eich bod chi, bron iawn, yn tanseilio un or pethau rŷch chi'n trio'i hyrwyddo.

[249] **Alun Davies:** Os oes yna *element* o'r dysgu sy'n cael ei gynnig trwy golegau addysg bellach sy'n cynnwys dysgu yn y gweithle, mi fuasai hynny'n *covered* o dan y ddeddfwriaeth yma.

[250] **Llyr Gruffydd:** Ond, os nac oes, ni fyddai.

[251] **Alun Davies:** Os nad yw'r ddarpariaeth yn mynd trwy golegau addysg bellach, ni fydd e'n rhan o hynny—rydych chi'n hollol iawn.

[252] **Llyr Gruffydd:** Ond, rydych chi'n gweld sut fyddai hynny'n gallu edrych fel sefyllfa anghyfartal lle, dim ond achos bod y cysylltiad gydag addysg bellach—. Gallen nhw fod gyda'r un cyflogwr, gallen nhw fod â'r un anghenion dysgu, ond ddim yn cael yr un gefnogaeth.

[253] **Alun Davies:** Rydw i yn gweld hynny, ac rydw i'n gweld y pwynt rydych chi'n ei wneud, ond beth liciwn i ddadlau fan hyn yw bod hwn yn Fil addysg ar gyfer darparwyr addysgol. Os yw'r person rydych

apprenticeship through a further education college with an employer having the support required, and another person doing an apprenticeship through work-based learning and perhaps not having the same support. So, it sounds to me as if you're almost undermining one of the things you're trying to promote.

Alun Davies: If an element of the learning is provided through an FE college that includes work-based learning, then that would be covered through this legislation.

Llyr Gruffydd: But if not, it wouldn't be.

Alun Davies: If the provision isn't done through the FE colleges, then it won't be included—you're quite right.

Llyr Gruffydd: But, you can see how that might seem to be unequitable, because they could be with the same employer, they could have the same learning needs, but not having the same support.

Alun Davies: I do acknowledge that point, and I understand the point that you make, but the case I'd want to make here is that this is an education Bill for education providers. If the individual that you talk about—and I

chi'n sôn amdano—ac rwy'n derbyn y pwynt— yn mynd trwy goleg addysg bellach, dylai'r IDP ddelio gyda hynny. Ac, os oes yna fodiwl i gael sy'n meddwl eu bod nhw'n mynd o'r coleg i'r gweithle i weithio fel rhan o'r cwrs, mae hynny'n rhan o ddyletswyddau'r coleg o dan yr IDP ac o dan y Bil yma. Os nad ydyn nhw—rŷch chi'n iawn—os nad ydyn nhw'n mynd trwy broses coleg addysg bellach, wedyn, nid yw'n rhan o'r dyletswyddau yn y Bil yma, oherwydd mi fuasai hynny, wedyn, yn meddwl ehangu'r Bil i symud i ffwrdd o'r system addysg ac ymyrryd yn yr economi ehangach, ac nid yw'r Bil amboutu hynny.

[254] **Llyr Gruffydd:** Felly, nid ydych chi'n derbyn bod pob darparwr yn seiliedig ar waith yn rhan o'r gyfundrefn addysg.

[255] **Alun Davies:** Rydw i yn derbyn bod addysg yn digwydd y tu fas i'r sector ffurfiol—rydw i yn derbyn hynny—a dyna'r pwynt yr oeddwn i'n trio'i wneud wrth ateb y cwestiwn blaenorol amboutu newid y diwylliant ynghylch sut rŷm ni'n cynnig addysg i bobl a sut rydym ni'n sicrhau bod pobl yn cael cyfleoedd cyfoethog o'r dewisiadau addysgol sydd ganddyn nhw, a bod pobl ifanc sydd ag anghenion arbennig yn cael yr un fath o ddewis cyfoethog. Mae hynny'n meddwl, ambell waith, ein bod yn trio newid y diwylliant ac nid jest newid y gyfraith.

do accept your point—is going through the FE system, then the IDP should deal with that. And if there is a module available that would mean that they would leave college and enter the workplace as part of their course, then that is part of the responsibilities of the college under the IDP and captured in this Bill. If they're not—you're quite right—if they're not going through the FE system, then it isn't part of the duties contained within this Bill, because that would require broadening the Bill to move away from the education system and to enter the broader economy, and the Bill doesn't do that.

Llyr Gruffydd: So, you don't accept that every work-based provider is part of the education system.

Alun Davies: I do accept that education does happen outwith the formal sector—I accept that—and that's the point I was trying to make in responding to a previous question on a culture change in terms of how we provide education to people and how we ensure that people have a wide range of educational options, and that young people with additional learning needs do have that same wealth of options available to them. That can mean, on occasion, that we try and change the culture and not just try and change the law.

[256] **Llyr Gruffydd:** Ond, nid **Llyr Gruffydd:** But, you don't think oeddech chi'n credu bod jest newid y that just changing the culture is diwylliant yn ddigonol o safbwynt sufficient in relation to FE sefydliadau addysg bellach, felly. institutions.

[257] **Alun Davies:** Mae gennym ni'r **Alun Davies:** We have the powers grym y tu fewn i'r system i newid y within the system to change the sefyllfa yn y sector cyhoeddus sydd situation in the public sector, which ddim yno ar gyfer y sector preifat. doesn't exist for the private sector.

[258] **Lynne Neagle:** Angela, did you want to come back in on post-16?

[259] **Angela Burns:** Our understanding, as a committee, is that only Coleg Gwent has trialled IDPs, so I just wondered if you might be able to give us an update on any of the discussions as to how an IDP might work in a further education setting. Would you see that a learner would have an IDP even for a very short-term course of just, perhaps, a few hours, or a day a week for six or eight weeks, or do you think the IDP should sit in an FE only if it's a long-term course like a two-year course in something?

[260] **Alun Davies:** I think Tania's—

[261] **Ms Nicholson:** There are two points there, I think. The first one is that, yes, Coleg Gwent has been directly involved in the work that we're doing. They sit on our strategic implementation group, for example, but also ColegauCymru do, as well, so there is a broader range of FEIs involved as well now. In terms of the original pilots that we ran a few years ago, FEIs weren't involved in those, but they are now much more involved in the engagement that we're doing. As I said, there's the strategic implementation group, but also the range of expert groups that we've got sitting under that group—in particular, there's one specifically focused on the role of FE and post-16 within the new system, so I think most of the colleges are represented on that group. So, they are very much involved in the shaping of how this is going to roll out.

[262] In terms of your second question, then, if the Minister's happy for me to go on, on part-time courses, I think the key point is that if a learner is enrolled with an FEI, then they will fall within the Bill, and they will be entitled to an IDP if they have ALN, regardless of how long they're in that setting for. I guess there is an element of proportionality there, and most learners who

arrive at an FEI will probably arrive with their IDP, which the FEI will then review and take on. So, there's some operational detail to work through there, but the basic principle is that they will fall within the scope of the Bill.

[263] **Angela Burns:** When you say 'review', can I just check, is that to review in terms of reviewing what the IDP says and therefore going to match it, or is that a review in terms of whether or not they think the IDP is suitable?

[264] **Ms Nicholson:** I think it's a bit of both. It's a review of the needs of the learner and the provision that they need in the new context that they're now in, so it is reviewing what that IDP says and what support the learner needs in the context of them being in a new setting. There might be different needs and a different way of providing for those needs. So, it is the FEI satisfying themselves that the right provision is in place in the particular new context.

[265] **Angela Burns:** Who do you see in an FEI actually undertaking that role?

[266] **Ms Nicholson:** Well, in Coleg Gwent, for example, they have an additional learning needs co-ordinator, and I think that this is practice that is supported and is going to grow. That's not necessarily the case—that there's one person who will review all of the plans. I think the idea is that FEIs will develop their—they have teams already, looking at support for learners with learning difficulties, and it will be the role of that team, working with, for example, tutors and the lecturers who—

[267] **Angela Burns:** But the Bill doesn't actually prescribe that, at all.

[268] **Ms Nicholson:** No, and that's very much the sort of operational detail that the post-16 expert group is working through.

[269] **Angela Burns:** So, might they consider that as being an access requirement of funding, et cetera?

[270] **Ms Nicholson:** I think funding is very much part of the discussion that those professionals are having on that group, so it's something that they're working through.

[271] **Angela Burns:** Because that's surely the place to get them, through the access route.

[272] **Lynne Neagle:** Thank you. John, on health duties.

[273] **John Griffiths:** Thank you very much. Could I ask about section 18 in terms of some of the evidence that we've received in terms of its adequacy? For example, there's a view that 'likely to be of benefit' is insufficiently precise.

[274] **Alun Davies:** One of the areas that I've been following with the greatest interest, actually, has been this area of the committee's evidence. I know you've had some conflicting evidence on this matter. I'll be interested in the conclusions of the committee. When I last appeared before you, I suggested that we'd made significant changes to the duties on health and that I felt that this struck the right balance between clinical needs and delivering the seamless approach. I recognise that there have been criticisms and suggestions for change, which you have heard over the last few months.

[275] So, let me say this: I think it's my view that there needs to be a focus on the clinical needs of the child or the young person concerned, and that is what must drive the decisions taken by medical staff in the national health service—what the clinical needs of that child are. Now, I don't believe that the current test is too high or too low. It talks about 'of benefit' to the individual child or young person concerned. I'm yet to hear a strong argument for a different set of words. I understand what is said around them in terms of the commentary around them, but I'm yet to hear a strong argument for a different set of words. I hope that saying

[276] 'any relevant treatment or service that is likely to be of benefit in addressing the additional learning needs of a child or young person'

[277] in 18(1) is a significant and stronger duty than has appeared in previous iterations of the Bill, and reflects the changes that have been made as a consequence of previous conversations and consultations on this Bill. And I think what I would really emphasise to the committee is that it is not 'will be of benefit'; it is 'likely to be of benefit'. So, the test is not one that would be overwhelmingly difficult to prove; 'likely to be of benefit' sets the bar probably at where it needs to be in terms of likely to be of benefit.

[278] **John Griffiths:** Just in terms of alternative wording, then, Minister, one suggestion has been the addition of the words 'based on clinical need'. Is that something that you would be sympathetic to?

[279] **Alun Davies:** I don't understand on what other basis those decisions

would be taken. I can understand people who are saying, 'On what other basis or alternative basis would a decision be taken by a member of medical staff, except clinical need?' That is what they're employed to do. That is what they have a duty and a responsibility to do. They look at a child or a young person and ask, 'What is the clinical need of the person appearing in front of me?' We employ some fantastic people in the national health service who take these decisions day in, day out, and I'm not clear on what other basis those decisions would be taken. So, on what basis would you do that? On what basis would you start to qualify or define decisions? And, of course, when you start qualifying things, what do you do? You don't just qualify in; you qualify out. I would say, 'Be careful for what you wish' to some people making these arguments.

[280] **John Griffiths:** Okay, if we could move on to the role of the DECLO, then, Minister. How would you describe that role in terms of its strategic nature, as opposed to also including some operational aspects? We've heard in evidence that it's going to be very important to be very clear as to what that role is going to involve in those terms.

[281] **Alun Davies:** I hope that the letter to the committee has clarified some of these matters. The role of the DECLO, or the designated lead—it would be easier to avoid some of these acronyms—will provide a strategic role. I think it's 55(1) in the Bill that I think describes the role as being a strategic co-ordination role, and not a practitioner hands-on delivery role. I think that's right and proper, because we're talking here about how a health board organises its resources, organises its people and organises its services in order to deliver what is required to that individual child or young person. So, we're not looking at somebody who actually does that delivery. We're looking for someone who's qualified to do that delivery, but we are looking at a person then, or a designated lead, who would be able to ensure that those services are provided where and how they should be provided. So, I see it very much as a strategic planning role. We know that's missing at the moment, and I hope that this will fill the gap.

[282] **John Griffiths:** Okay, and in terms of the two pilots that are currently ongoing, do you see those pilots as informing this legislation and the code? Will the time involved in evaluating those pilots allow that to happen?

[283] **Alun Davies:** 'Yes', I think, is the answer, which has just been written down in front of me. Yes, it should and it must. Let me say this: we published a code to enable better scrutiny of the Bill, not to provide scrutiny of the

code, and I accept that the temptation has been too great for some, and who can blame people for that? But we are looking here at a code that will deliver a piece of primary legislation, and that means that we need to learn lessons and we need to be able to have a code that enables delivery, but also a code that you as a committee are able to scrutinise to ensure that you're comfortable with what is being said in it. It's obviously a matter for the committee and the Assembly, not a matter for me, but I hope the committee would choose to take some time to look at that code at the appropriate time. And I hope that the pilots that we are running at the moment will inform both the scrutiny and the drafting of that code. We will, I expect and anticipate—I'm sure this is useful, Chair; I'm not sure it's directly answering the question—. But I hope that we will be in a position, if, for example, the Assembly accepts this legislation and passes it in the autumn, after Royal Assent, to then draft or to redraft, and to publish a new draft code, which I would certainly make available to the committee for scrutiny as a part of enacting that code. And then we will have an opportunity to look and see how the pilots are being run at the moment, and have informed, and will inform, the execution of the implementation of the primary legislation.

12:00

[284] **Lynne Neagle:** Okay. I've got a few Members who've indicated on this. I've got Darren, then Angela, then Hefin.

[285] **Angela Burns:** [*Inaudible.*]

[286] **Lynne Neagle:** Okay, Darren then Hefin.

[287] **Darren Millar:** It's just a brief follow up. You referred to the letter that you sent us about the DECLO role, or which touched on the DECLO role, and the fact that further clarity was going to emerge within any amendments to the code. One of the other things that that letter referred to was—if I can just get it right here—recommendations that health boards should ensure that health co-ordinators are also in place at the appropriate local level, so that there's local engagement, which seems a perfectly reasonable recommendation. Can I just ask—? In terms of the costs of those co-ordinator roles, they're obviously not factored in to the explanatory memorandum and the regulatory impact assessment information. Where do you expect those costs to be met, and what do you estimate those to be?

[288] **Alun Davies:** Some of those roles already exist and are being

performed within health boards at the moment. So, it won't be involving additional costs. We will be looking towards reviewing the regulatory information, impact assessments, that we've given the committee during the course of the legislative process of this Bill, and, where we believe there will be significant changes to make, we will both make those changes to the assessments, and we will also write to the committee to inform you of the changes.

[289] **Darren Millar:** And those health co-ordinator roles, they will include a description of the function that they're expected to perform, the liaison duties that they're expected to have, with both the DECLOs and with the wider education community.

[290] **Alun Davies:** The expert groups are looking at that at the moment, and when we have a conclusion from those expert groups, we will clearly be publishing that information.

[291] **Darren Millar:** Okay. Thank you.

[292] **Lynne Neagle:** Hefin on this, briefly.

[293] **Hefin David:** Yes, just with regard to an answer you gave to John Griffiths. When he raised the issues of the two pilots, 'Will there be sufficient time?', your answer was 'yes'.

[294] **Alun Davies:** Yes.

[295] **Hefin David:** Can you expand on that, and the timescale that will be implemented?

[296] **Alun Davies:** I'm not sure I can expand on a timescale this morning. I would expect and anticipate—if any of my officials can help me, I'd be very grateful—us being able to provide further information to the committee—. When?

[297] **Ms Williams:** The pilots are in a scoping phase at the moment, and we would hope to see practical piloting on the ground in the next financial year. We'll be monitoring that very closely. It will be a feedback group rather than an extended pilot with an evaluation at the end. So, it will be an ongoing process of people exploring how the DECLO role might actually work on the ground, feeding back into the expert group, and developing the plan and

what's been termed a 'pathway' that brings together the work of the different co-ordinators in the different parts of the health service under the strategic leadership of the DECLOs. So, it's a fluid pilot that will help us to develop the role. The expert group is telling us at the moment that our original thinking may not have been quite right, and that they see the role as being a two-way linkage between the health boards and the co-ordinators across the different parts of the health system. Does that help?

[298] **Hefin David:** What's the precise intention of the pilot, then?

[299] **Ms Williams:** The precise intention of the pilot is to establish the boundaries of the role of the DECLO and how it can have the most practical impact on ensuring the strategic co-ordination of all partners within health working at a strategic level in partnership with local authorities and education providers.

[300] **Hefin Davies:** And, therefore, provide clarity for the code.

[301] **Ms Williams:** Yes. The code will help to set out what the requirements of the DECLO role will be. It won't be a job description as such, but it will set out what our expectations for that role will be within each health board, yes.

[302] **Hefin David:** So, that will be developed after the pilot reports to the expert group.

[303] **Ms Williams:** Yes.

[304] **Lynne Neagle:** I think the committee was quite surprised to learn, in our last session, that the pilots had only started discussing them a month ago. Do you not think it would have been better to have done this preliminary work quite a while ago, before it was put into the Bill?

[305] **Ms Williams:** I think it's fair to say that it has taken us longer than we had hoped to get the pilots up and running on a practical level, but the groundwork that we we've done on a policy basis in getting to this point has been very constructive and very helpful in terms of clarifying both our thinking, but, more importantly, the thinking across Government departments—so, with colleagues in health—on what we want to achieve and how we can best achieve the shared outcome that we have.

[306] **Alun Davies:** I think it's fair to say, Chair, that I accept the criticism

that you make. The conversations actually started back in the autumn and not about a month ago—I need to put that on the record. But we have made some significant changes to this Bill since the original drafts and since it's been considered by previous Assemblies. So, I think it's right and proper that we conduct pilots on the basis of what we're proposing today and not on the basis of poorly formed or unformed policy. Given that we've had an evolving policy environment, where we've made changes that previous committees have asked for and that we then pilot on the basis of having made those changes—that in itself then reduces the time available. Had we started this some time ago, then we would have been running pilots on a different policy objective.

[307] **Lynne Neagle:** Okay, thank you. Llyr.

[308] **Llyr Gruffydd:** Rwyf eisiau gofyn cwestiynau ynglŷn â'r ddarpariaeth o gwmpas yr iaith Gymraeg yn y Bil. Mae ambell i sylw wedi cael ei wneud—nid wyf yn mynd i redeg trwy restr benodol, ond mi wnaeth Comisiynydd y Gymraeg dynnu ein sylw ni at adran 10, cymal 5(a), lle mae'n dweud y dylid penderfynu a ddylai ddarpariaeth dysgu ychwanegol cael ei ddarparu i blentyn neu berson ifanc yn Gymraeg. Rwy'n siŵr mai camgymeriad yw hwnnw oherwydd mae yna dybiaeth ymhlyg yn hynny mai trwy gyfrwng y Saesneg y bydd darpariaeth oni bai bod yna benderfyniad bod ei angen trwy gyfrwng y Gymraeg. Un cais yw eich bod chi'n ystyried ei newid ef i ddweud bod yna benderfyniad a ddylai'r ddarpariaeth fod trwy gyfrwng y Gymraeg neu'r Saesneg ar wyneb y Bil. Rwy'n siŵr y byddech chi'n agored eich meddwl i hynny.

Llyr Gruffydd: I have just a couple of questions about the Welsh-medium provision in the Bill. Some comments have been made—I won't run through a specific list, but the Welsh Language Commissioner drew our attention to section 10, clause 5(a) where it says that a decision should be made as to whether the additional learning provision should be provided in Welsh to a young person. I'm sure that's a mistake, because surely there's an assumption there that it'll be available in English unless it's decided that it's provided through the medium of Welsh. You possibly change it to say that there should be a decision as to whether it should be provided in Welsh or English on the face of the Bill. I'm sure that you'd be open to that.

[309] **Alun Davies:** Rwyf yn agored fy **Alun Davies:** I am certainly open-

meddwl aboutu hynny, ond a gaf fi ddweud hyn? Nid ydw i ac ni ddylai neb ddod i'r casgliad mai'r iaith yw'r iaith Saesneg ar wahân i'r iaith Gymraeg. Nid yw hynny yn y Bil. Nid yw'n dweud hynny yn y Bil. Rwy'n gwadu fod y dadansoddiad hynny'n bosibl, *frankly*—rwy'n gwadu'r posibilad o hynny. I mi, mae'n rhaid i ni sicrhau, a chymryd pob cam posibl i sicrhau, fod yna argaeledd trwy gyfrwng y Gymraeg, ble bynnag mae'n bosibl gwneud hynny. Rwy'n credu ein bod ni wedi gwneud newidiadau sylfaenol i'r Bil i sicrhau bod hynny'n rhan o'r ddeddfwriaeth. Felly, rwy'n deall beth yr wyt ti'n ei ddweud, ond mi fuaswn i'n gwadu'r dadansoddiad.

[310] **Llyr Gruffydd:** Ocê, efallai byddwn i—. Roeddwn i'n cyfeirio yn nhermau'r cymal penodol yma oherwydd mae yna dybiaeth felly, os oes angen darpariaeth trwy gyfrwng y Gymraeg, mai trwy gyfrwng y Saesneg y bydd ef oni bai eich bod chi'n penderfynu'n wahanol. Nid wyf yn mynd i gwmpo mas gyda chi ar hwn achos roeddwn i'n meddwl mai hwn oedd yr un rhwyddhaf, ond rŷch chi'n cydnabod, efallai, bod yna le i gydnabod yn fanna mai penderfynu ai darparu trwy gyfrwng y Gymraeg neu'r Saesneg y dylai chi ei wneud.

[311] **Alun Davies:** Mi fuaswn i'n meddwl hynny, ond, wedi dweud hynny, rydw i'n gallu meddwl am achosion ble efallai yr ydych chi'n gwneud hynny trwy iaith arall hefyd.

minded on the issue, but may I say this? I do not and nor should anyone else come to the conclusion that the default language is English. That's not what's contained within the Bill. I deny that that analysis is a possibility, frankly. For me, we must ensure, and take all steps possible to ensure, that there is Welsh-language provision available wherever possible. I believe that we have made fundamental changes to the Bill to ensure that that is contained within the legislation. So, I understand your comment, but I would reject your analysis.

Llyr Gruffydd: Okay, perhaps I would—. I was referring specifically to the terms of this clause because there is an assumption, if a decision is to be made as to whether Welsh-medium provision is required, then it'll be through the medium of English unless you decide otherwise. I won't fall out with you on this because actually I thought that was the easiest one to look at, but you do perhaps recognise that there is room there to acknowledge you should be deciding on provision through the medium of Welsh or English.

Alun Davies: I would have thought so, yes, but, having said that, I can think of cases where that would be required through the medium of another language too.

[312] **Llyr Gruffydd:** Ie, digon teg.

Llyr Gruffydd: Yes, fair enough.

[313] **Alun Davies:** Felly, buaswn i'n teimlo'n anghyfforddus wrth ddweud 'Dim ond y Gymraeg neu'r Saesneg'. Mae yna botensial am ieithoedd gwahanol hefyd. Mae BSL yn enghraifft amlwg o hynny. Felly, mi fuaswn i'n camu yn ôl o ddweud hynny. Ond mi fuaswn i'n dweud yn glir mai fy nisgwyliaidau i yw bod darparwyr yn sicrhau bod darpariaeth ar gael i'r plentyn yn yr iaith y mae'r plentyn ei angen ac ei eisiau. *Obviously*, rydym ni'n sôn yn fan hyn aboutu'r Gymraeg a'r Saesneg—dyna lle mae'r drafodaeth wedi bod—ond mi fuaswn i'n disgwyl i'r ddarpariaeth fod ar gael trwy gyfrwng y Gymraeg lle bynnag mae hynny'n bosibl ei wneud.

Alun Davies: So, I would be uncomfortable saying, 'Only Welsh or English'. There is potential for requirements in other languages. BSL is a clear example of that. So, I would take a step back from saying that. But I would say clearly that my expectation is that providers should ensure that the provision is available to the child in the language required and wanted by that particular child. Obviously, we are talking here about Welsh and English—that's what the discussions have been around—but I would expect that provision to be available through the medium of Welsh wherever possible.

[314] **Llyr Gruffydd:** Ac mi fyddwn i'n cefnogi hynny i'r carn wrth gwrs, ond mae capasiti'n *issue* wedyn o safbwynt argaeledd arbenigwyr sydd yn medru darparu mewn gwahanol ieithoedd. Sut mae'r capasiti yna, o safbwynt y gweithlu, o safbwynt adnoddau, wedi lliwio sut yr ydych chi wedi dod at y Bil hyn yn y ffordd rŷch chi yn cyflwyno'r hawl yna i gael y ddarpariaeth?

Llyr Gruffydd: And I would certainly fully support that, but, of course, capacity is then an issue in relation to the availability of specialists who are able to provide in different languages. How has that capacity, when it comes to the workforce and the resources, affected how you have approached this Bill in how you have introduced that right to have the provision?

[315] **Alun Davies:** Sut y mae wedi lliwio fy meddwl?

Alun Davies: How has it steered my thinking in terms of the Bill?

[316] **Llyr Gruffydd:** Wel, rŷch chi'n dweud pethau fel 'lle mae'n bosibl' a phethau fel yna.

Llyr Gruffydd: Well, you say 'where possible' and so on, don't you?

[317] **Alun Davies:** Achos mae pob un ohonom ni'n gwybod nad yw pob dim yn bosibl drwy'r amser ym mhob man. Ond rydw i'n credu y buasai pob un ohonom ni'n cytuno ein bod ni eisiau i bob dim fod ar gael lle bynnag maen nhw yn y dyfodol, ac rydw i'n meddwl bod angen inni ystyried yn bellach sut yr ydym ni'n cynllunio'r gweithlu i sicrhau bod hynny ar gael. Nawr, rŷm ni'n gwybod bod argaeledd yn mynd i fod yn wahanol yng Ngwynedd nag ym Mlaenau Gwent—rŷm ni'n deall hynny, ac rŷm ni'n deall y wlad yr ydym ni'n byw ynddi. So, beth yr ydw i'n awyddus iawn i'w wneud yw gosod amcanion clir ar gyfer gweithlu'r dyfodol. Byddaf i'n gwneud hynny trwy strategaeth y Gymraeg nes ymlaen yn y flwyddyn, ac rwy'n gobeithio y bydd y statws sydd gan y Gymraeg yn y Bil yma yn ddigon i sicrhau bod y plant sydd angen darpariaeth arbennig drwy gyfrwng y Gymraeg yn cael hynny.

[318] **Llyr Gruffydd:** Byddwn i'n cytuno â chi pan fyddech chi'n dweud bod pawb eisiau i'r gwasanaethau fod ar gael yn y dyfodol a bod yn rhaid inni gael amcanion clir ynglŷn â chyflawni'r gweithlu sydd ei angen i ddarparu'r gwasanaethau sydd eu hangen. Gyda hynny mewn golwg, mae yna gyfeiriadau yn y Bil—er enghraifft, adran 18(5)(c); mae'n dweud am gymryd pob cam rhesymol i sicrhau triniaeth neu wasanaeth drwy gyfrwng y Gymraeg, ac mae

Alun Davies: Well, yes, because each and every one of us knows that not everything is possible on all occasions everywhere. But I do think we would all agree that we want everything to be available in future regardless of where they are, and I do think that we need to further consider how we plan the workforce to ensure that that is possible. We know that availability will be different in Gwynedd compared to the situation in Blaenau Gwent, and we understand that; we understand the nation in which we live. So, what I'm very eager to do is to set very clear objectives for the future workforce. I will do that through the Welsh language strategy later this year, and I hope that the status of the Welsh language in this Bill will be sufficient to ensure that the children who do need provision through the medium of Welsh receive that provision.

Llyr Gruffydd: I would certainly agree with you when you say that everyone wants those services to be available in future and that we do have to have clear objectives in relation to achieving the workforce we need to provide the services needed. With that in mind, there are references in the Bill—for example, section 18(5)(c); it says that all reasonable steps have to be taken to ensure provision of a treatment or service through the medium of Welsh, and

hynny yn ddealladwy yn y cyd-destun sydd ohoni. A fydddech chi'n barod i ystyried edrych ar, efallai, greu rhyw fath o gymalau machlud yn y Bil sydd efallai'n awgrymu cymryd pob cam rhesymol i ddarparu gwasanaethau trwy gyfrwng y Gymraeg lle mae'n bosibl, ond, erbyn 2025, neu ba mor uchelgeisiol bynnag ym ni, ei bod yn ofynnol i'r ddarpariaeth fod ar gael? Oherwydd rŷch chi wedi sôn nawr am gael amcanion clir a beth rŷm ni eisiau ei weld yn y dyfodol. Rŷch chi'n sôn am gynllun datblygu'r gweithlu. Oni fyddai hwn yn gymorth i wireddu'r uchelgais yna a'r uchelgais o filiwn o siaradwyr ar yr un pryd?

[319] **Alun Davies:** Rwyf wedi ystyried *sunrise clauses* yn lle *sunset clauses*, fel mae'n digwydd—

[320] **Llyr Gruffydd:** Ie, ocê, iawn.

[321] **Alun Davies:**—i newid y sefyllfa yn y Bil yma. Rydw i wedi dod i'r casgliad. So, rydym ni'n trio gwneud yr un peth mewn ffyrdd gwahanol—rydw i'n cydnabod hynny, ac rydw i'n rhannu eich gweledigaeth chi, Llyr, ac rydw i'n credu na ddylai plentyn fod mewn sefyllfa anodd oherwydd yr iaith y mae'n siarad, yn Gymraeg neu'n Saesneg. Gyda finnau ar hyn o bryd, fy amcan i yw sicrhau bod gyda ni'r gweithlu i alluogi gwneud hynny. Rydym ni'n trafod hynny fel rhan o'r drafodaeth ar y strategaeth iaith yn ehangach. Ar hyn o bryd, rydw i'n meddwl bod beth

that is understandable in the context we're looking at. Would you be willing to consider perhaps creating some sort of sunset clauses in the Bill that perhaps suggest taking all reasonable steps to provide services through the medium of Welsh where possible, but that, by 2025, or however ambitious we are in terms of the timescale, the provision has to be available? You've talked about having very specific objectives and what we're looking to see in the future, and you mentioned workforce development plans. Wouldn't that be helpful to achieve those ambitions and the ambition of having 1 million Welsh speakers at the same time?

Alun Davies: I have considered sunrise clauses instead of sunset clauses, as it happens—

Llyr Gruffydd: Yes, okay.

Alun Davies:—to alter the situation in the Bill. I've come to the conclusion. So, we're trying to achieve the same thing in different ways—I recognise that, and I do share your vision, Llyr, and I don't think any child should be disadvantaged because of the language they speak, be it English or Welsh. For me at the moment, my objective is to ensure that we do have the workforce in place to allow that to happen. We are discussing that as part of our discussions on the broader language strategy, and I think that, at the moment, what is contained within the Bill is sufficient

sydd gyda ni yn y Bil yn ddigon i sicrhau bod y ddarpariaeth ar gael. A chofia hwn: mae hwn yn gryfach nag y mae rhai pobl wedi awgrymu. Mae'n lot cryfach nag y mae pobl wedi awgrymu—rwy'n trio ffeindio ble mae fe fan hyn—

to ensure that the provision is available. And do bear this in mind: this is much stronger than some people have suggested. It is much, much stronger than has been suggested—I'm trying to find the relevant section here—

[322] 'must take all reasonable steps'.

[323] 'All reasonable steps'. Not 'most reasonable steps', 'some reasonable steps'—'all reasonable steps'.

[324] Pob un cam sydd yn rhesymol i sicrhau bod yna ddarpariaeth ar gael yn y Gymraeg—pob un cam, a dyna beth y buaswn i'n disgwyl i'r darparwyr ei wneud.

All reasonable steps to ensure that there is provision available through the medium of Welsh—all reasonable steps, and that's what I would expect providers to take.

[325] **Llyr Gruffydd:** Y pwynt olaf gen i, felly, jest yn glou iawn: yn adran 56, mi wnaeth Comisiynydd y Gymraeg dynnu fy sylw fi at y cymal sy'n dweud i ystyried pa mor ddymunol yw sicrhau darpariaeth trwy gyfrwng y Gymraeg—'*to have regard to the desirability*'. Mae hwnnw'n swnio tipyn gwanach na beth rŷch chi wedi ei ddweud oedd yn y cymal blaenorol ynaglŷn â '*take all reasonable steps*'. Hynny yw, mi allai awdurdod lleol ystyried y byddai fe'n ddymunol ond, oherwydd pwysau ariannu neu rywbeth, maen nhw'n penderfynu nad ydyn nhw'n ei wneud e. Nid yw ystyried rhywbeth wastad yn rhoi'r sicrwydd a'r eglurder rŷm ni'n ei angen. A oes modd cryfhau hynny, a ŷch chi'n meddwl?

Llyr Gruffydd: The final point from me, then, just briefly: in section 56, the Welsh Language Commissioner drew our attention to the clause that states consideration with regard to the desirability of ensuring provision through the medium of Welsh—'*to have regard to the desirability*'. Now, that sounds rather weaker than what you've mentioned in the previous clause with regard to taking '*all reasonable steps*'. That is, local authorities might consider it to be desirable, but, because of financial pressures or something, they decide that they're not going to do it. Considering something doesn't always give us the assurance and the clarity we want. Can that be strengthened, do you think?

[326] **Alun Davies:** Rwy'n siŵr bod

Alun Davies: Well, I'm sure it could

yna fodd ei gryfhau fe. [*Chwerthin.*] be strengthened. [*Laughter.*]

[327] **Llyr Gruffydd:** Wel, a fyddech chi'n barod ystyried ei gryfhau e, te? **Llyr Gruffydd:** Well, would you consider strengthening it, then?

[328] **Alun Davies:** Rwy'n siŵr y byddai modd gwneud hynny. Os ydych chi'n darllen hyn gyda'r Bil yn ei gyfanrwydd, rwy'n credu ein bod ni mewn sefyllfa lle rydym ni'n mynnu bod awdurdodau lleol a darparwyr eraill yn sicrhau bod yna argaeledd o ddarpariaeth trwy gyfrwng y Gymraeg. Os oes gan y pwyllgor eiriad i wella'r cymal yma, i sicrhau ei fod yn gryfach, rwy'n fodlon ystyried hynny. **Alun Davies:** I'm sure it would be possible to do that. If you read this in the context of the wider Bill, then I do think that we are in a situation where we are insisting that local authorities and other providers do ensure the availability of provision through the medium of Welsh. If the committee has any suggestions on a form of words to strengthen this section, then I would be willing to consider that.

12:15

[329] **Llyr Gruffydd:** Diolch. **Llyr Gruffydd:** Thank you.

[330] **Lynne Neagle:** Thank you. Right, I'm going to go to Michelle next. I am going to absolutely make a very firm plea now for pithy, short questions. There's no need for preambles or anything, or we're not going to cover what we need to. Michelle.

[331] **Michelle Brown:** Okay, thank you, Chair. The Special Educational Needs Tribunal for Wales commented that the tribunal's lack of enforcement power over NHS bodies is a fundamental weakness of the present system, which is likely to recur under the new system, given the fact that the educational tribunal has no power to direct an NHS body. Can you comment on that, please?

[332] **Alun Davies:** I disagree with that conclusion. I disagree with that analysis. The tribunal exists to determine what educational or training provision should be provided. I've seen no evidence at all, either to this committee or elsewhere, that it is in any way restricted in its ability to do that. If the evidence exists, I would like to see it. I haven't seen it yet. The tribunal has quite significant powers to be able to make orders that require local authorities or FEIs to make whatever additional learning provision is

appropriate to meet the need of the individual. I don't think that any of us want to start down the road of providing for one or two, or more complexity of appeals to deal with healthcare matters. I don't think that's where anybody wants to go.

[333] **Michelle Brown:** Well, I mean—can I?

[334] **Lynne Neagle:** Yes, of course.

[335] **Michelle Brown:** The system that seems to be appearing in the Bill is that, if parents have a disagreement or the young person has a disagreement with the educational side, they have to go to the educational tribunal. However, if they have a problem with NHS provision, they have to use the NHS appeals system. Now, the concern has been raised that the NHS system isn't robust enough and certainly isn't—. You do have a robust appeals system to the educational tribunal, but that robustness isn't matched by the NHS process.

[336] **Alun Davies:** Again, I haven't seen the evidence of that. The first legislation committee I sat on in this place, actually, back in 2007, was the NHS Redress (Wales) Measure 2008. I believe that we do have a robust mechanism in terms of putting things right in the national health service. I can see Darren shaking his head, but I didn't expect to agree with Darren on these matters. But, you know, we have tribunals and we have systems that do different things for different purposes.

[337] I believe that it would be introducing far too much complexity into the system if you have two means of appeal. At the moment, we have a very clear redress system. We can have disagreements about the robustness of it, I accept that—there will be political disagreements—but we have a very clear system of redress within the national health service, and we will have a very clear system of redress within the education service. And I think trying to pretend that they're both the same thing, doing the same job in the same place, I think would create unnecessary complexity in the system.

[338] **Lynne Neagle:** You said that we haven't had evidence to support this, but, actually, most of the evidence that we've received has supported the tribunal taking responsibility for health, and that includes the NHS Confederation last week, who were happy for that to happen, provided that key health professionals could be part of that tribunal to make sure that it was robust. I just wanted to ask: do you not think that we risk, in a Bill that is

meant to be child-centred, creating a real risk that we are going to undermine that by sending children and families off in two different directions with two different timescales for resolution?

[339] **Alun Davies:** No, I don't. I saw the evidence you received last week. That's a matter for them and not a matter for me, of course. However, my view is that once we start trying to second guess or create a new system for appeal over the clinical judgments of the national health service, we are introducing a more cumbersome and clunky system, and not a system that will be of benefit to the individual at the end of the day.

[340] At the end of the day, we need to have a tribunal that has a clear focus, a clear responsibility, a clear role, and one that is able to provide redress for those individuals and families who are concerned that they're not receiving the educational support that they need, or deserve or have in place under the individual development plan. As soon as that system is used in order to second guess the redress system that already exists within the national health service, I think we're creating conflict for the future. I don't believe that we would wish to go down that route.

[341] **Lynne Neagle:** Darren on this.

[342] **Darren Millar:** We may be creating conflict between you and Cabinet colleagues, or you and the NHS, but, of course, it would go a long way to resolving the intractable problems that many children and many parents have in getting the NHS to deliver what is deemed to be appropriate, even by the education tribunals, which, of course, do not have powers to direct healthcare providers to make the provisions that everybody sometimes agrees are completely necessary.

[343] The Putting Things Right process is a wholly owned subsidiary, effectively, of each individual local health board. There's no independence to that process in any way, shape or form. It's a complaints process with timescales that are rarely adhered to, and there are very often—I mean, I've got cases going back two years and no doubt you and other Assembly Members will as well. Two years' worth of a gap trying to resolve a problem for a young person is a huge impact on their education. Don't you agree, Minister, with all of the evidence? I don't think there's been a single person who has not said to this committee that the best way to resolve this problem is making the NHS accountable to the tribunal, and giving powers to that tribunal to direct the NHS to provide services if they are deemed to be

appropriate and necessary to deliver a decent education to those children and young people.

[344] **Alun Davies:** I disagree with your caricature of the process as being a wholly owned subsidiary. I think that's—

[345] **Darren Millar:** It's not independent.

[346] **Alun Davies:** It's your view—

[347] **Darren Millar:** It's not—*[Inaudible.]*

[348] **Alun Davies:** It's your view; I don't accept it. I don't accept it. I don't accept the description; I don't accept the fact of it. Okay? In terms of what we're seeking to do here, we are seeking to put in place an appeals system that ensures that redress is delivered as quickly and as cleanly and as seamlessly as possible. That's what we want to do here. What I do not want to do is to increase complexity, and you've really told us what your objective here is: it's not to deliver redress in education; it's an attempt to undermine the complaints system in the national health service. If that is your purpose, Darren, you are able to make that argument, but I don't accept that argument, and I don't accept that this Bill is the correct vehicle for doing that either. This Bill is about delivering the additional learning needs for children and young people who need those needs met to enjoy the same rich educational experience as others. Now, sometimes—. Clearly, there's a relationship there with the health service, and John asked questions about that earlier, and Hefin sought to understand how that is going to be delivered in reality, and I accept that. I don't disagree with that. However, and this is the key thing, Darren—what we cannot do is to introduce a cumbersome system of second guessing the existing and robust systems we have in the national health service. That will lead to chaos, and it's not something that I'm prepared at the moment to discuss.

[349] **Darren Millar:** I mean, you suggested that this introduces complexity. It actually removes complexity from the existing system because there's one form of redress for all of the support that a young person might have.

[350] **Alun Davies:** But now you're talking about significant interventions into the national health service—

[351] **Darren Millar:** Not significant interventions—

[352] **Alun Davies:** Well, you just said one system.

[353] **Lynne Neagle:** We can't have a dialogue across the table—I mean, not like that anyway. I think that the Minister's made his position clear, and obviously the committee will have to consider this. I want to move on to some questions from Julie Morgan now on children's rights.

[354] **Julie Morgan:** Yes, we had very compelling evidence from the children's commissioner, I thought, that there should be a duty on the face of the Bill on relevant bodies to have due regard to the UNCRC, and I wondered what your view was of that.

[355] **Alun Davies:** I'm afraid I didn't consider that compelling. I sat on that legislation committee as well, as it happens; I must've been busy in that Assembly. And I remember the Minister very clearly—Huw Lewis, who was the Minister for children at the time—being very, very clear: 'We put this on the statute book and then all Government bodies have to have due regard to this in whatever duties they carry out.' And it was very clear to me, as a Member of that committee, that once it is on the face of one piece of legislation, putting an enduring duty on Ministers and the delivery of public services, we will not have to go through this process of slavishly placing the same duty into every piece of legislation subsequent to it. It was very, very clear to me, as a member of that committee, that we wanted to move away from that box-ticking exercise and have a piece of legislation that was broad, all-encompassing and enduring, and that would deliver on the ambitions of the UNCRC, both in terms of subsequent legislation but also in terms of the delivery of services.

[356] I thought it was an excellent piece of legislation then. I think it's an excellent piece of legislation today. And I feel that sometimes—and we've had this conversation to some extent this morning—we put one piece of legislation on the statute book, and then, subsequently, when seeking to legislate again, we try to put other pieces of legislation again on the statute book, and we repeat it. I think that leads to confusion. I don't think it's a good way of legislating. I think we need to be very clear about having a statute book that is robust, that is transparent, that is accessible, and that means ensuring that when we do pass Bills—or Measures, as we did in those days—we respect them and that we work on the basis of them, rather than trying to repeat them in subsequent Bills and pieces of legislation.

[357] **Julie Morgan:** Certainly, I think there are quite a lot of arguments that can be put against what you've just said. To begin with, in terms of trying to make our legislation meaningful to people, including children, having something there at the beginning of the Bill is very powerful, and does reinforce what the Government is doing. So, I can't see that there can be any harm in putting it there, and there certainly are some good things. And the other issue is bringing it home to all the agencies that are involved in making decisions that they are responsible, as well, for the duties of the UNCRC.

[358] **Alun Davies:** I think meaningful legislation is the key to this, Julie, and you don't make meaningful legislation by saying you're doing one thing one year and then repeating it in subsequent years—really, forgetting the commitments that were made when that initial piece of legislation was made.

[359] I remember listening to the Minister at the time and thinking that he was making a compelling case for enacting this piece of legislation. It was enacted—I think it was done on a cross-party consensus; I don't remember any disagreement with it at all. And then we seek to almost say that we disregard that—disregard what we did in that Assembly, and we're going to keep doing it differently now. So, I would take entirely the opposite view of that. If we talk about meaningful legislation, we legislate today, we deliver it tomorrow, and we live by not just the word of it but by the spirit of it, and by what we meant by it, and the philosophy that underpins it, and we don't just do it by sticking amendments in every piece of legislation. We do it in the way we live and deliver our services, and I think that's a far more powerful argument.

[360] **Julie Morgan:** Certainly, I think what you say about living and delivering the services is absolutely crucial, and I think we may be attempting to do that, and I'm sure we are, but that's not always the easiest thing to do. But what I was saying about being meaningful: what's meaningful to the people, and to the children in particular, who we are legislating for. And this is a very important piece of legislation, as we all acknowledge—very important in dealing with children with additional learning needs, and I think this is a good opportunity to make it meaningful to them.

[361] **Alun Davies:** Do you know what really matters? It's what we do in terms of a transformational programme that sits alongside the legislation—that people's lives are transformed and changed. The issues that are being raised, Darren—. I don't disagree with you when you talk about some of the issues that are raised in terms of the difficulties that people have faced, and

we have, all of us, as constituency Members, had to deal with issues around statementing, and sometimes with really difficult issues that families have had to face in getting the services delivered for a child or young person—services that should have been delivered as a matter of course. I think that is the test that I would set for this legislation, Julie, and not a declaratory phrase at the beginning of a piece of legislation, but what it means in a primary school class in Llanishen, or in Tredegar or elsewhere. Delivering that service for that child, I think, demonstrates that we care about that child, that that child is at the centre of what we seek to do, and not only will we legislate to deliver a programme that will transform their lives, but we will fund it, we will support it and we will teach their teachers to enable them to do it as well. I think that's—*[Inaudible.]*

12:30

[362] **Julie Morgan:** I absolutely agree with you, but I don't think one cancels out the other.

[363] **Lynne Neagle:** Darren, briefly on this.

[364] **Darren Millar:** I just wonder if I can understand why the Government, then, did table amendments to the Social Services and Well-being (Wales) Act, for example, in order to put children's rights onto that piece of legislation. Why has the Government taken one approach there and another one here?

[365] **Alun Davies:** I can't answer that question. I wasn't responsible for that legislation.

[366] **Darren Millar:** You would agree, though, that if there is inconsistency—well, you would agree that there needs to be consistency in the way that you approach re-declaring or restating the importance of children's rights, and perhaps other UN rights on the face of Welsh legislation, though, would you not?

[367] **Alun Davies:** I've got no recollection of the examples you're quoting to me, but, obviously, that's just me; that's my recollection. But perhaps I'm a victim of too many years on the Constitutional and Legislative Affairs Committee.

[368] **Julie Morgan:** Section 7 of the Social Services and Well-being (Wales)

Act.

[369] **Darren Millar:** Yes.

[370] **Alun Davies:** I'm perhaps a victim of too many years' concern about—
[*Inaudible.*]

[371] **Darren Millar:** I'm pretty sure there was a Government amendment.

[372] **Lynne Neagle:** Okay.

[373] **Alun Davies:** I'm not sure about that, Darren.

[374] **Lynne Neagle:** Just one final question, then. We've had quite a bit of evidence to say that the code should be decided in its final form by affirmative or superaffirmative rather than the negative procedure as set out in the Bill at the moment. Would you be amenable as a Government to agreeing to that?

[375] **Alun Davies:** I think, considering what I've just said, it would be difficult for me to answer in anything except the affirmative. [*Laughter.*]

[376] **Lynne Neagle:** Thank you very much. Okay, well, we've run out of time. I'd like to thank you for coming, and also your officials. We haven't been able, because of the number of questions that we've had, to ask all the questions that we wanted to this morning. So, we will write to you, Minister, and we would like, if possible, to have a response by the middle of April so that it can inform our Stage 1 report on the Bill. But, thank you again for coming. You will receive a transcript to check for accuracy in due course. Thank you very much, all of you.

12:33

Papurau i'w Nodi Papers to Note

[377] **Lynne Neagle:** Okay. Item 6, then, is papers to note. We've got paper to note 6—a letter from the Cabinet Secretary for Education, following up on the issues we raised after the scrutiny of Estyn's annual report. Paper to note 7 is additional information from Estyn following that session. Are Members happy to note those?

[378] The next formal meeting is going to be on Thursday 30 March, when we'll be taking further evidence on our inquiry into teachers' professional learning and education, and we've got Estyn, the Education Workforce Council and Professor Furlong attending. We'll also have a private session to look at the terms of reference for the next inquiry.

[379] Before I close the meeting, I know it's been a long meeting, but if Members could just stay for a very quick wash-up, that would be much appreciated. Thank you very much, and can I close the formal meeting? Thank you.

Daeth y cyfarfod i ben am 12:33.

The meeting ended at 12:33.