



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

## **Y Pwyllgor Iechyd a Gofal Cymdeithasol** **The Health and Social Care Committee**

**Dydd Mercher, 20 Mehefin 2012**  
**Wednesday, 20 June 2012**

### **Cynnwys** **Contents**

Cyflwyniad, Ymddiheuriadau a Dirprwyon  
Introduction, Apologies and Substitutions

Blaenraglen Waith—Hydref 2012  
Forward Work Programme—Autumn 2012

Papurau i'w Nodi  
Papers to Note

Ymchwiliad i Ofal Preswyl ar gyfer Pobl Hŷn—Tystiolaeth gan y Dirprwy Weinidog Plant a  
Gwasanaethau Cymdeithasol  
Inquiry into Residential Care for Older People—Evidence from the Deputy Minister for  
Children and Social Services

Bil Sgorio Hylendid Bwyd (Cymru): Cyfnod 1—Sesiwn Dystiolaeth 1 Food Hygiene Rating  
(Wales) Bill: Stage 1—Evidence Session 1

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

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

**Aelodau'r pwyllgor yn bresennol**  
**Committee members in attendance**

Mick Antoniw	Llafur Labour
Mark Drakeford	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Rebecca Evans	Llafur Labour
Vaughan Gething	Llafur Labour
William Graham	Ceidwadwyr Cymreig Welsh Conservatives
Elin Jones	Plaid Cymru The Party of Wales
Lynne Neagle	Llafur Labour
Kirsty Williams	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

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

Christopher Humphreys	Yr Adran Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services Department, Welsh Government
Gareth Griffiths	Pennaeth Cangen Codi Ffioedd a Rheoleiddio, Is-adran Polisi Gwasanaethau Cymdeithasol Oedolion, Llywodraeth Cymru Head of the Charging and Regulation Branch, Adult Social Services Policy Division, Welsh Government
Lesley Griffiths	Aelod Cynulliad, Llafur (y Gweinidog Iechyd a Gwasanaethau Cymdeithasol Assembly Member, Labour (the Minister for Health and Social Services)
Steve Milsom,	Dirprwy Gyfarwyddwr, Is-adran Polisi Gwasanaethau Cymdeithasol Oedolion, Llywodraeth Cymru Deputy Director, Adult Social Services Policy Division, Welsh Government
Gwenda Thomas	Aelod Cynulliad, Llafur (y Dirprwy Weinidog Plant a Gwasanaethau Cymdeithasol) Assembly Member, Labour (the Deputy Minister for Children and Social Services)
David Worthington	Pennaeth yr Is-adran Diogelu Iechyd, Llywodraeth Cymru Head of Health Protection Division, Welsh Government

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

Stephen Boyce	Y Gwasanaeth Ymchwil Research Service
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Fay Buckle	Clerc Clerc
Llinos Dafydd	Clerc Clerc
Claire Griffiths	Dirprwy Glerc Deputy Clerk
Catherine Hunt	Dirprwy Glerc Deputy Clerk
Meriel Singleton	Clerc Clerc
Phillipa Watkins	Y Gwasanaeth Ymchwil Research Service

*Dechreuodd y cyfarfod am 10.01 a.m.  
The meeting began at 10.01 a.m.*

### **Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions**

[1] **Mark Drakeford:** Bore da a chroeso i'r Pwyllgor Iechyd a Gofal Cymdeithasol. Dechreuwn, yn ôl yr arfer, gyda'r ymddiheuriadau. Rydym wedi derbyn ymddiheuriadau oddi wrth Darren Millar. Mae popeth arall yr un peth ag arfer. Mae croeso i bawb siarad yn Gymraeg neu yn Saesneg.

**Mark Drakeford:** Good morning and welcome to the Health and Social Care Committee. We will begin, as usual, with the apologies. We have received apologies from Darren Millar. Everything else is the same as usual. Everyone is welcome to speak in Welsh or in English.

### **Blaenraglen Waith—Hydref 2012 Forward Work Programme—Autumn 2012**

[2] **Mark Drakeford:** Members will have on the table in front of them a list of the issues that we know have already been signalled as potential policy inquiries. I will very briefly explain what else we have to fit in in the autumn and why we are, in the end, down to about three and a half days at most for any policy work.

[3] We have a lot of legislation coming in the autumn. We know from the Business Committee that Stage 2 of the Food Hygiene Rating (Wales) Bill has to be completed by 23 November, so that will be waiting for us almost as soon as we come back. We are likely to have the asbestos Bill, dealing with the recovery of medical costs, coming our way before Christmas as well. So, in the second half of the term, that is likely to be part of what we do. That is without the social services Bill and the organ donation Bill, which we will at least need to keep in touch with, even if we do not have to start doing Stage 1 before Christmas. We then have to fit in the scrutiny of the budget. We have to reinstate the general scrutiny session with the Deputy Minister, which we have postponed in order to take more evidence from witnesses at Stage 1 of the Food Hygiene Rating (Wales) Bill before the summer.

[4] We have agreed already that we will put some time aside for the scrutiny of local health board plans, so that has been factored in to the timetable. When you take all of that into account, we are down to three half-day slots—I am sorry, it is not three and a half days, but three half-day slots—to do a piece of policy work.

[5] **Mick Antoniw:** That is not a lot of time.

[6] **Mark Drakeford:** No, it is not a lot at all. There is an element of guesswork in it all. If some parts of the legislative work were to slip around a bit, some bits of extra time might emerge. However, the best guess that we can make at this stage is that we have three half days to do some policy work in the autumn. Some of the things on the list, therefore, as we talked about before, will fall off the list because they simply cannot be done in that time. You cannot do health inequalities, and I guess that you cannot do mental health services in three half days. However, what we need to do today, because we need to alert those who would have an interest in the topic, is to identify the topic that we are most interested in. So, I am open to anyone who wants to make any suggestions from the list.

[7] **Rebecca Evans:** Obviously, they are all very worthy things that we would like to turn our attention to at some point, but I think that we should do something that is very timely. For that reason, I would like to propose the piece of work on diabetes. We are coming to the end of a 10-year strategy, so perhaps we could look at whether the strategy achieved what it set out to achieve, whether the standards set out have been met and what steps should be taken for the future. It seems that we could possibly do that in the time that we have, and it is a timely piece of work.

[8] **Mark Drakeford:** That is the pitch that Diabetes Cymru made in its correspondence to us: the 10-year strategy is in its ninth year, about to go into its tenth year, the Welsh Government is gearing itself up to plan its replacement and this would be a good time for the committee to take a look at what has happened so far and to provide some sort of impetus for whatever work the Welsh Government would be doing next. That is what it said when it wrote to us suggesting that we spend some time on the topic.

[9] **William Graham:** Access to medicines and treatments in Wales is an issue that makes up quite a bit of Members' post bags, is it not?

[10] **Mark Drakeford:** It is indeed. The advice that I have on that one is that the Minister has recently established work of her own on the individual patient treatment issue. Some of us attended the seminar on the all-Wales medicines strategy group and how patients access non-standard drugs. That bit of the discussion on individual patient funding requests seemed to me the part that we were most interested in and looked the most tricky on the ground. However, the Minister has just set up some work on that, which we will be able to ask her about when we see her in a few weeks' time. Perhaps we ought to wait to see the outcome of that work before we do our own. That was the suggestion.

[11] **Kirsty Williams:** Do you know whether that work covers more than just pharmaceuticals? The issue is that, whatever we think of the system—and there are differing views on whether the system is robust and transparent and whether it delivers—there is a system. There is no system for the introduction of technology. Therefore, while we have a system, flawed or not, for new pharmaceuticals, for new technology, such as new methods of radiology and so on, there is no system at all. It might be useful to know whether the Minister's work covers that. It is a very small, discrete piece of work that we could do quite quickly.

[12] **Mark Drakeford:** Yes, and, if I have this right, that is not simply about whether individual patients get access to those treatments but how those treatments are appraised in the first place.

[13] **Kirsty Williams:** Yes.

[14] **Mark Drakeford:** The all-Wales medicines strategy group works on pharmaceuticals, but there is no parallel group looking at new technologies in other areas to consider whether it is something that Wales should be putting money into.

[15] **Kirsty Williams:** No, there is no process for doing that, which I think is more worrying than individual patient prescribing. I have my views on that, but at least there is a system, whereas there is no system for new technology.

[16] **Mark Drakeford:** That is a good point.

[17] **Vaughan Gething:** Medical technology is an interesting area. I want to have that debate. I also want to understand what the balance is between pharmaceutical and technological spend and outcome, in terms of where we might see the greater benefit. That would be a really interesting piece of work, which I would like to do. The issue is whether we do it now as a one-day inquiry or a one-and-a-half-day inquiry. I would like to give it a bit more time than that. I definitely want to do it, because I think that it is well worth doing. We get lobbied so much by different people on the drugs issue, with pharmaceuticals, but we never really look at the balance of benefit with regard to whether we are better off focusing more expenditure on pharmaceuticals. We have to look at the outcome and consider whether we should look at the balance between that and medical technology. Kirsty makes a fair point about whether there is a system and, if there is not, whether there should be one. We might want to take a bit more time to deal with that. I am not suggesting that we take six months, but, with a couple of sessions more, we could do a really useful piece of work.

[18] **William Graham:** I am tending towards taking longer over that, because one thing that came out of that seminar that astounded me was that there is no mechanism for looking at how new technology may perhaps completely supersede a highly expensive new wing of a hospital, for example. It is pretty astounding that there is no mechanism for dealing with those advances, flagging up that we do not need certain expenditure because it will all be solved by the advances in surgery.

[19] **Vaughan Gething:** Partly because—[*Inaudible.*]—justice in a day and a half, but I do not want that to be a long-running, overflowing inquiry.

[20] **Mick Antoniw:** I suspect that some of the evidence is slightly—[*Inaudible.*]—particularly those who are concerned with respiratory diseases and respiratory cancers and so on. Can that be fitted in? The same is probably true when we look at the neurorehabilitation issue as well. The key factor is that if we have a maximum of one and a half days, it must have a clearly defined outcome that will make some impact or evaluation. That tends to take me towards something like the diabetes strategy. The post-traumatic stress disorder one is also of interest, but I think that that is inappropriate, bearing in mind what we decided earlier with regard to the work that is going on in Westminster.

[21] **Mark Drakeford:** Yes, the Westminster inquiry is not concluded; it is still ongoing. We said that we would wait to see what the inquiry would come up with and then decide what we would want to do as a result.

[22] **Elin Jones:** When do we have our next space for a slightly longer inquiry—not a big residential-care-type inquiry, but something more focused—on technology and medicine?

[23] **Mark Drakeford:** Here is one way that we could think about doing this: given that the amount of time and space that we have in the autumn is very dependent on legislative things working out in the way that we think they will—and that does not always happen; things do not always turn out as planned—one possibility would be to agree that we do diabetes in the sessions that we are sure that we have, and announce our intention to do a medical technologies one next. We could alert the people out there in the sector who would have an interest in that to do some work for us on terms of reference and stuff like that. If the time was to emerge in the autumn, we would be able to do it, because we would have done

the preparatory work already. If the time did not emerge in the autumn, we would be ready to do that after Christmas, when some time would become available; that will probably be closer to Easter—I know from the Welsh Government that it starts in February and ends in about August or late spring. Would that be a way of keeping both in play?

[24] **Kirsty Williams:** Let us do that.

[25] **Mark Drakeford:** If you are happy with that, we will ask for some work to be done on both. We will come back with some terms of reference that will allow us to do what we can in three half days on diabetes; that will have to be pretty tightly drawn, because it could take a lot longer than that. We will need to be clear about what we are doing. At the same time, we will publicly announce that the next thing that we will do will be to look at an appraisal of medical technologies. We will draw up some terms of reference that we can all look at, and alert people out there to that. However, if we need to bring it forward, we will be able to do it at relatively short notice.

[26] There is one more thing about the programme in the autumn. I had assumed in our work programme that we would want to invite the Older People's Commissioner for Wales to discuss her annual report, as we did last year. I assumed that we would particularly want to do it because there is a new commissioner, and it would seem right that we have an early opportunity to meet her and for her to talk to us about the annual report and her plans. If anyone thought differently, it would free up another session if we did not do that. That is why I am putting it to you as a choice that we have to make. In the three half days, I assume that we will do that. Are you happy that we do it? I see that you are. It is probably a courtesy to a new commissioner that we offer that.

10.15 a.m.

### **Papurau i'w Nodi Papers to Note**

[27] **Mark Drakeford:** Mae gennym un **Mark Drakeford:** We have one paper to papur i'w nodi gan y Pwyllgor Deisebau. note from the Petitions Committee.

[28] So, the first paper to note is a petition in relation to paediatric neurorehabilitation, which the Petitions Committee has been looking at. It did a bit of work on it and has now written to us, saying that it thinks that there is a case for us to look at neurorehabilitation services more generally. It was on the list of topics that we have just looked at, and my feeling is that we will have to reply to the committee saying that, while it is an important topic and on our list of potential inquiries, we do not see time for it in the immediate programme. However, you have the papers from the Petitions Committee, which are almost all about paediatric neurorehabilitation. In the way that things are working out, if it was just paediatric stuff, the Children and Young People Committee might be better placed to look at that. Are there any views on that, other than what I have just suggested, namely that we reply saying that we will keep it on our list of potential pieces of work, but that we are not able to allocate time for it immediately?

[29] **Mick Antoniw:** That is all that we can do. There are many things that we want to do. It is an area that, potentially, leads into a lot of other complex areas, where it is difficult to isolate one from another. The time is not there; I cannot see how we can do it.

[30] **Mark Drakeford:** Dyna fe, felly. **Mark Drakeford:** There we go, then.

[31] Yr ail bapur yw llythyr gan The second paper is a letter from the Gomisiynydd Pobl Hŷn Pobl Cymru. Commissioner for Older People in Wales.

[32] You will remember that when the commissioner was with us at the start of our inquiry into residential care, she told us that the commission was keen that the UK should adopt the United Nations convention on the rights of older persons. We agreed that we would write to the Secretary of State for Wales advocating that course of action. We had a reply from the Secretary of State saying that the Government was not minded to do that, because it thought that action around the Madrid international plan of action on ageing was a preferable way of advancing that agenda. We discussed that reply at an earlier meeting, and I think that it was Darren who suggested that we should write again to the commissioner, asking her to set out in a bit more detail why she believed that the UN convention route was the better of the two routes to pursue. We have now had a reply from the acting commissioner and you have a copy of that. I suppose that the question is whether we want to pursue it further with the Secretary of State, saying that we have had further and better information that we think continues to support the UN convention route, or whether we should allow it to lie on the table for now and take it up with the commissioner directly when we see her early in the autumn.

[33] **Kirsty Williams:** I think that we should take it up with the commissioner so that we are able to test and investigate it. This is potentially a significant change in the law that will have significant consequences, and I do not think that something as significant as that can be done by correspondence. I, for one, would not feel confident advocating what would be a significant change in the law without having explored the issue more fully, tested the arguments and had the opportunity to fully satisfy myself that that was the right thing to do. I can only do that if we have the opportunity to test the evidence that has been put forward by the commissioner's office.

[34] **Vaughan Gething:** I agree; otherwise—[*Inaudible.*]

[35] **Mark Drakeford:** We will do that. We have agreed that we will see the commissioner and we will pursue this with her. We will be able to let her know that in advance and we will make sure that that is part of our considerations with her.

[36] We may have to break for five minutes or so, because the Deputy Minister is not due until 10.30 a.m., so she is probably not outside the committee room yet. I also ask whether Members are content that a note is circulated on the approach that we might take to local health board service reconfiguration plans, what we know already about the timetables, and what we might aim to do in a session when we have the health boards in front of us. We need to be clear in our minds about what we hope to achieve in such a scrutiny session. So, I will ask for a note to be circulated outlining a potential approach to that, and we will have an opportunity, either in correspondence or orally here, to shape that up.

[37] **Kirsty Williams:** I think that there is a real issue of timing there, because my understanding is that at least two of the plans will be consulted on over the summer recess, when we are not here, and the LHBs have stated their intention to start implementing those plans in October. We are therefore really up against it in being able to look at two, if not three, depending on how quickly the south is able to come forward with its plans. Two of them will primarily be consulting on their plans over the summer recess.

[38] **Mark Drakeford:** As part of any note, shall we try to get as good an idea of the timetables as we can? When we know as best we are able what their plans are, we can look to see where we have slots and where we can best put the two things together. So, we will include that as part of a note.

[39] We will now take a short break.

*Gohiriwyd y cyfarfod rhwng 10.21 a.m. a 10.27 a.m.  
The meeting adjourned between 10.21 a.m. and 10.27 a.m.*

**Ymchwiliad i Ofal Preswyl ar gyfer Pobl Hŷn—Tystiolaeth gan y Dirprwy  
Weinidog Plant a Gwasanaethau Cymdeithasol  
Inquiry into Residential Care for Older People—Evidence from the Deputy  
Minister for Children and Social Services**

[40] **Mark Drakeford:** Croeso yn ôl. Diolch yn fawr i bawb am ddod yn ôl yn brydlon. Rydym ni'n bwrw ymlaen ag eitem 3 ar yr agenda. Croeso, wrth gwrs, i'r Dirprwy Weinidog. Bore da a chroeso i chi, y Dirprwy Weinidog Plant a Gwasanaethau Cymdeithasol, i'r Pwyllgor Iechyd a Gofal Cymdeithasol. Gyda chi y bore yma y mae Steve Milsom, dirprwy gyfarwyddwr is-adran polisi gwasanaethau cymdeithasol oedolion, a Gareth Griffiths, sy'n bennaeth y gangen codi ffioedd a rheoleiddio yn yr is-adran polisi gwasanaethau cymdeithasol oedolion. Croeso i chi hefyd.

**Mark Drakeford:** Welcome back. Thank you, everybody, for coming back punctually. We move on to item 3 on the agenda, and I welcome the Deputy Minister. Good morning and I welcome you, the Deputy Minister for Children and Social Services, to the Health and Social Care Committee. Joining you this morning are Steve Milsom, the deputy director of the adult social services policy division, and Gareth Griffiths, the head of the charging and regulation branch of the adult social services policy division. Welcome to you, too.

[41] Ddirprwy Weinidog, a ydych chi eisiau agor gydag unrhyw sylwadau byr cyn imi droi at aelodau'r pwyllgor i holi cwestiynau?

Deputy Minister, would you like to open with any brief comments before I turn to members of the committee to ask questions?

[42] **Y Dirprwy Weinidog Plant a Gwasanaethau Cymdeithasol (Gwenda Thomas):** Diolch yn fawr, Gadeirydd. Hoffwn i wneud hynny yn fyr.

**The Deputy Minister for Children and Social Services (Gwenda Thomas):** Thank you very much, Chair. I would like to do that briefly.

[43] I start by thanking you for the opportunity today to contribute to your inquiry, which I believe rightly recognises the need to ensure that residential care for older people is provided in the most effective way possible. The nature of residential care for older people today is far removed from that which existed a decade ago or will need to exist in 10 years' time. The increasing demography of older people in Wales makes this a necessity, but the changing needs and expectations of older people also make this a priority, if we are to rise to the challenge of providing services that meet older people's needs in a way and at a time that they require them. What we hear from older people is that they wish to live independently for as long as possible, but there will always come a time when, for some individuals, that is no longer possible and a form of residential care will be required. What we as a Government are doing is to encourage and support commissioners of services and service providers so that the sector is flexible, diverse and responsive to meet the need.

10.30 a.m.

[44] From my evidence paper, you will have seen the strategic actions we are taking in support of that aim of supporting more older people to live in the community through initiatives around reablement, telecare and community equipment in order to reduce the reliance on residential care. You will also have seen the work that has been done on the commissioning of services to encourage smarter and more forward-looking commissioning and therefore provision of residential care with a key focus on a partnership approach across



health and social services and with providers themselves. This is coupled with the investment occurring across Wales in alternative forms of residential care, such as extra-care housing and the drive to diversify the sector with alternative models of service provision, such as with social enterprises.

[45] What all this does is challenge the traditional concept of residential care so that we take full advantage of the varying ways in which this can be provided both in the nature of the care provided itself and in the way it is organised and run. Future residential care will need to reflect increased expectations in terms of physical design and facilities, of new and more novel models of care and support and of a more responsive approach to meeting older people's needs. Our social services White Paper, coupled with our social services Bill, provides the once-in-a-generation opportunity to refresh the framework of social services in Wales so as to deliver on that agenda and facilitate the modernisation of residential care for the benefit of service users.

[46] **Mark Drakeford:** Diolch yn fawr. We will go to Lynne for the first question.

[47] **Lynne Neagle:** Thank you for coming here this morning, Deputy Minister. I want to pick up on some of the issues we have heard in relation to staffing ratios in residential care. We took evidence from trade union representatives who expressed the view that a great deal of residential care homes are understaffed. They also expressed concern about the fact that, at some point, the legal requirement to have a set ratio for numbers of staff to residents was removed. Can you comment on that?

[48] **Gwenda Thomas:** Thank you for the question. There is not a staffing ratio in residential care on the basis of one size fitting all. Instead, it is very much an issue for each independent home. The registration process provides the inspectorate with the requirement to ensure that the staffing ratio in any particular home reflects the need in that home. The physical layout of the home is an issue, as is the nature of the care provided to each individual resident and the overall requirement to deliver safe services in that particular home. Therefore, you might well see a different staffing ratio, in accordance with the registration process, in one home to that of a neighbouring home. However, there is a requirement to staff a home properly and safely.

[49] **Lynne Neagle:** Thank you for that answer. To explore that a little bit further, one of the concerns the trade union representatives had was that there are some residential homes where there might be only one person on duty at night. When the inspectorate came to give evidence, I queried how it was monitoring that. It said that inspectors go into homes at strange times, including during the night. However, it is presumably quite a time-consuming process to check that the number of staff matches the needs of the residents at any one time. How satisfied are you that the current inspection process is sufficiently robust in that regard?

[50] **Gwenda Thomas:** I know that the inspection process takes place outside the nine-to-five day and that there are ways to check this. However, if the trade unions or anyone else have evidence of any unsafe practice, they need to talk to us about it so that we can investigate any individual issues that might arise. I would expect the home to be staffed safely at all times, particularly at night, given that we know that that is very often the time when people need more help and support. So, I would be concerned if there were any evidence of that.

[51] **Mick Antoniw:** I formed a concern from the evidence about the robustness of the investigatory regime. Aspects of it did not inspire me with confidence. For example, with regard to the area where you would expect to get information on the ground, the evidence from the inspectorate was that it has never consulted with trade unions. That seems absolutely bizarre, and it seems to be more of an indicator of how they are conducting the investigations

and how robust and effective they are. Is that something that you think might be a cause for concern?

[52] **Gwenda Thomas:** I would be concerned if any person—a member of a trade union or otherwise—had something to say and felt that that issue could not be raised when it needed to be raised. I do not think that it is good to sit on any knowledge that needs to be shared. Having said that, I know that the chief inspector is intent on modernising the registration and regulation process. I know that she is absolutely committed to listening to residents, staff and relatives of people in residential care. Having said that, I am not aware of formal structures where we discuss the registration with trade unions, but I will look to get a more specific response to that. I think that Steve wants to add something to that.

[53] **Mr Milsom:** Trade union representatives are involved in the wider debate on regulation and workforce in particular, and in one of the streams of work that led to the White Paper on the future direction for workforce policy, a couple of trade union representatives played a very full part in formulating the policy that eventually led to the proposals set out in the draft social services Bill. So, there has been a contribution at a higher level from the trade unions, as well as from users and the private sector.

[54] **Elin Jones:** Mae gennyf dri chwestiwn ar dri maes gwahanol, Gadeirydd. Bore da, Ddirprwy Weinidog. Rydym wedi clywed bod tipyn o gonsensws ynglŷn â'r ffaith bod pawb yn credu na ddylai fod yn arfer rhyddhau pobl yn syth o'r ysbyty i ofal preswyl parhaol ac, felly, fod model *intermediate care* a *reablement* yn dod yn gynyddol bwysig. Y consyrn sydd gennyf yw bod y gwasanaeth hwnnw yn gallu amrywio yn sylweddol iawn ar hyd a lled Cymru, a bod patrymau lleol yn datblygu heb gysondeb cenedlaethol. Rydych yn sôn yn eich tystiolaeth fod £37.5 miliwn yn mynd i gefnogi amrywiaeth o brosiectau lleol. Felly, a ydych yn credu y dylem fod yn datblygu model cenedlaethol o ofal *intermediate* sydd yn rhoi'r gallu i rywun ddod dros y cyfnod yn yr ysbyty a'u hailalluogi i fynd yn ôl i fyw yn eu cartref ar ryw bwynt?

**Elin Jones:** I have three questions on three different areas, Chair. Good morning, Deputy Minister. We have heard quite a lot of consensus about the fact that everyone believes that it should not be common practice to release people immediately from hospital to permanent residential care, and therefore that the intermediate care and reablement model is becoming increasingly important. The concern I have is that that service can vary considerably across Wales, and that local patterns can develop without there being national consistency. You mention in your evidence that £37.5 million goes into supporting various local projects. Do you therefore believe that we should be developing a national intermediate care model that enables someone to recover from their hospital stay and enable them to return to live in their homes again at some point?

[55] Yng nghyd-destun arolygu a rheoleiddio, rydym wedi clywed o safbwynt y modelau gofal newydd, megis tai *extra-care* ac yn y blaen, fod rhywfaint o gonsyrn wedi codi ynglŷn â'r ffaith nad Arolygiaeth Gofal a Gwasanaethau Cymdeithasol Cymru sy'n gyfrifol am arolygu'r gofal neu'r gwasanaeth mewn tai *extra-care* ond ei fod dan arolygaeth y sector tai ac yn cael ei reoleiddio gan y sector hwnnw. A ydych yn credu y dylai gael ei arolygu gan yr arolygiaeth gofal?

On inspection and regulation, we have heard that there is some concern regarding the new models of care, such as extra-care housing, and so on, about the fact that Care and Social Services Inspectorate Wales is not responsible for inspecting the care or service in extra-care housing but that it is under the care of the housing sector and is regulated by this sector. Do you believe that it should be inspected by CSSIW?

[56] Yn olaf, o ran hyblygrwydd o fewn rheoleiddio ac arolygiaeth, mewn rhai

Finally, in terms of flexibility within regulation and supervision, there is a lack of

mannau mae diffyg hyblygrwydd yn y gofal sydd ar gael, yn enwedig os yw'r asesiadau ar gyfer unigolion yn newid, er enghraifft, o ofal preswyl i ofal nyrsio am ddementia, a bod yn rhaid, efallai, i'r unigolyn symud cartref—ac mae'n bosibl y bydd pellter mawr rhwng y cartrefi hynny—dim ond am fod yr asesiad wedi newid. A oes modd edrych ar fwy o hyblygrwydd yn y broses gofrestru i alluogi'r unigolyn i gael gofal o fewn un cartref?

[57] **Gwenda Thomas:** O ran pobl yn mynd yn syth o'r ysbyty i ofal preswyl, credaf fod angen gofal ar rai pobl yn syth ar ôl iddynt adael yr ysbyty, ond credaf mai canran fach iawn yw'r rheini. Petai'r sefyllfa'n codi, byddai'n rhaid i'r system allu delio â hyn a bod symud i ofal parhaol ar ôl bod yn yr ysbyty yn fater sy'n ddigon llyfn er mwyn ymateb i anghenion y bobl sy'n gwneud hynny. Rwy'n meddwl mai'r hyn sy'n hollbwysig yw ein bod yn ailalluogi pobl pan maent yn barod i adael yr ysbyty. Fel rydych wedi ei ddweud, mae £37.5 miliwn wedi cael ei fuddsoddi yn y maes hwn. Ychydig o flynyddoedd yn ôl, bu inni gyflwyno chwe wythnos o ofal cartref yn rhad i bobl sy'n gadael yr ysbyty. Mae'r buddsoddiad hwnnw nawr wedi cael ei gynnwys yn y grant cynnal refeniw. Felly, mae rhai awdurdodau yn parhau i gynnig y chwe wythnos yn rhad, ac mae eraill wedi datblygu gwasanaethau fel gwasanaethau ailalluogi, sy'n golygu bod pobl yn cael y cymorth sydd ei angen arnynt wedi iddynt ddod allan o'r ysbyty.

[58] Ar ôl y chwe wythnos hynny, mae canran fawr o bobl yn gallu mynd yn ôl i fyw yn annibynnol, ac rwy'n credu bod hynny'n bwysig. Mae'r Bil gwasanaethau cymdeithasol yn sicrhau ein bod yn edrych ar ailalluogi. Mae'n thema bwysig iawn yn y Bil, a bu inni ymgynghori ar hynny. Mae'r gwasanaeth ailalluogi yn un y gallwn ei drosglwyddo yn rhanbarthol, a gwneud hynny yn effeithiol iawn. Credaf hefyd fod angen mwy na hynny weithiau, a bod gofal interim mewn ysbyty nad yw'n ysbyty aciwt yn gallu helpu pobl. Yn aml, mae'r ysbytai hynny yn agosach at gartrefi pobl. Gall hynny fod yn effeithiol, a gall y bobl sy'n gadael yr ysbytai hynny elwa ar y chwe wythnos rad

flexibility in some areas in the care that is available, particularly if the assessments for individuals change from, for example, residential care to nursing care for dementia, and, perhaps, the individual would have to move home—and there may be a great distance between those homes—only because their assessment has changed. Would it be possible to look at having more flexibility in the registration process to enable the individual to receive care within one residential home?

**Gwenda Thomas:** In terms of people going straight from hospital to residential care, I think that some people will need care immediately after leaving hospital, but I think that they would constitute a very low percentage. If that situation arose, the system would have to be able to deal with this and moving into care after being in hospital should be a sufficiently smooth process in order to respond to the needs of those who do that. What is crucial is that we reable people when they are ready to leave hospital. As you have said, £37.5 million has been invested in this area. A few years ago, we introduced six weeks' free home care for people who leave hospital. That investment has now been included in the revenue support grant. Therefore, some authorities continue to offer the six weeks of free care, while others have developed services such as reablement services, which means that people get the support that they need when they leave hospital.

After those six weeks, a high percentage of people can go back to live independently, and I think that that is important. The social services Bill will ensure that we are looking at reablement. That is a very important theme in the Bill, and we consulted on that. The reablement service is one that we can transfer on a regional basis, and do so very effectively. I also believe that more is sometimes needed, and that interim care in a non-acute hospital can help people. Often, those hospitals are closer to people's homes. This can be effective, and the people who are leaving those hospitals can benefit from six weeks of free care or a reablement service. Therefore, I think that there are policies in

neu wasanaeth ailalluogi. Felly, credaf fod polisiau yn eu lle a bod gwasanaethau cymdeithasol cynaliadwy. Rwyf wedi bod yn eglur iawn ar hynny. Mae'r syniadau hyn wedi'u datblygu yn y Bil.

[59] O ran asesiadau yn newid, mae'n hollbwysig bod asesiad oherwydd, rhai blynyddoedd yn ôl—ac efallai fod hyn yn digwydd weithiau yn awr—cafodd pobl eu hasesu unwaith yn unig. Fodd bynnag, nid wyf yn credu bod hynny'n dderbyniol ac mae angen ailasesu'r gofynion am ofal sydd gan bobl wrth iddynt fynd yn hŷn ac, efallai, wrth i'w cyflwr fynd yn waeth. Mae'r prif arolygwraig wedi sôn am hyn a gwn ei bod yn awr yn meddwl am ffyrdd y gall y broses gofrestru fod yn fwy hyblyg. Bydd hyn yn golygu na fydd yn rhaid i bobl symud o'r naill gartref i'r llall os oes newid yn eu cyflwr.

10.45 a.m.

[60] **Elin Jones:** Roedd cwestiwn arall. Ar hyn o bryd, mae'r tai *extra-care* yn dod o dan yr arolygiaeth tai yn hytrach na'r arolygiaeth gwasanaethau cymdeithasol. Mae rhywfaint o'r dystiolaeth yr ydym wedi'i chael yn dweud bod rhai o'r bobl sydd wedi mynd i dai *extra-care* yn meddwl eu bod yn dod o dan y gyfundrefn gwasanaethau cymdeithasol yn hytrach na'r gyfundrefn dai.

[61] **Gwenda Thomas:** Nid wyf yn mynd i esgus fy mod yn siŵr o ran sut yr ydym yn arolygu y tai lle maent yn byw, ond, yn bendant, lle mae pobl yn cael gofal cymdeithasol, bydd asesiad wedi cael ei gwneud o hynny, a byddai hynny yn cael ei wneud gan y gwasanaethau cymdeithasol lleol ac, wrth gwrs, mae perfformiad gwasanaethau cymdeithasol awdurdodau lleol yn rhan o arolygiaeth CSSIW hefyd.

[62] Mae'r Bil hefyd yn sôn bod eisiau cysondeb cenedlaethol mewn asesu. Rwy'n siŵr y bydd hynny'n helpu sicrhau bod asesu anghenion pobl, lle bynnag maent yn byw, yn gyson drwy Gymru gyfan. Credaf fod hynny'n rhan bwysig o'r ffordd yr ydym yn gallu ddeddfwriaethu drwy'r Bil.

[63] **William Graham:** Thank you for your evidence today, Deputy Minister. You will be aware, as we are, of the evidence that dementia will become more of a problem as the

place and that there are sustainable social services. I have been very clear on that. These ideas have been developed in the Bill.

In terms of changes to assessments, it is vital that there is assessment because, some years ago—and this may sometimes happen now—people were assessed only once. However, I do not think that that is acceptable and it is necessary to reassess someone's care requirements as they get older and, perhaps, as their condition worsens. The chief inspector has mentioned this and I know that she is now thinking about how the registration process can be more flexible. This will mean that people do not have to move from one home to another if there is a change in their condition.

**Elin Jones:** There was another question. At present, extra-care homes come under the housing inspectorate instead of the social services inspectorate. Some of the evidence that we have had states that some of the people who have gone into extra-care homes think that they come under the social services system rather than the housing system.

**Gwenda Thomas:** I will not pretend that I am certain as to how we inspect the homes where they live, but, certainly, where people receive social care, an assessment will have been made of that, and that would be done by the local social services, and, of course, the performance of local authorities' social services is also part of a CSSIW inspection.

The Bill also refers to the need for national consistency in assessment. That will help to ensure that the assessment of people's needs, wherever they live, will be consistent throughout Wales. I think that that is an important part of how we can legislate through the Bill.

population lives longer. Are you confident that the domiciliary care sector has the necessary resources to react properly to those needs, particularly as we greatly welcome more people being able to live in their own homes for as long as possible?

[64] **Gwenda Thomas:** Thank you for that very important question. We know and, I am sure, celebrate the fact that we are living longer and with more active and healthier lives. The Bill is absolutely clear on this: services have to be developed and have to be citizen-centred. There will be a requirement on local authorities to assess the need in their areas and be able to meet that need as best they can. The issue of the domiciliary care sector is tied to the development of good community care services, and that has to be done in partnership between local authorities, the health service, the third sector and the independent sector.

[65] There are excellent examples of these services developing. I visited one in Wrexham not long ago that was developed by Care Forum Wales. Partners working together is crucial; we have to develop that.

[66] I believe—and the Bill is very strong on this—that, fundamentally, we have moved too far away from the little things. The preventive services that we need to put in place are very important. We need to do the little things: we need to do that little bit of cleaning, decorating or gardening. We need to be there as a companion and to look at the little things that can be done to prevent people's needs from becoming more acute and to support people to live independently for longer. That is an issue that we can look at through social enterprise, perhaps, but developing that is absolutely key. I have met some people from Canada who are doing this, and we will talk about that again. However, getting that in place is important, and I see no reason why it cannot be done quickly. We will look at those things and intervene early as a preventive measure. I know from experience with my family that, if you have always done the garden and then find that the weeds are up to the window, it makes you feel worse in yourself. The Bill will require local authorities to put those services in place, and, indeed, the response from the WLGA to the consultation on the Bill has been positive about that.

[67] **Mark Drakeford:** William, are you going to follow that up at all?

[68] **William Graham:** I think Steve wants to make a comment.

[69] **Mr Milsom:** I will just add a little to what was said, particularly in terms of dementia. The dementia action plan that is in place and is being implemented provides a clear focus to tackle some of the difficult issues around the growing numbers. That is a clear part of our social services White Paper implementation, namely that dementia support in the community is necessary. There is some very interesting research and material that the committee might want to look at about dementia-friendly communities that we are working on with organisations as part of the strategy for older people. That is about normalising the community for people who have early-stage dementia by, for example, working with shopkeepers to help them understand what they might expect when someone with dementia is out and about in the community. It is a very positive agenda to be working on.

[70] **Gwenda Thomas:** Perhaps the committee would want to consider what it thinks about the concept of a team around the family with regard to dementia care. It is an idea that I think could work. We have seen the establishment of integrated family support teams in children's services, and, in principle, I see no difference. If there are ideas about how we could care for the whole family caring for a person with dementia, or even two people in some cases, then I think that could be a way forward as well.

[71] **William Graham:** Thank you for that. In terms of achieving those very laudable aims, can you help the committee with regard to raising the profile and the recognition of the vital service that social care workers actually provide? How do you improve training and

recognition?

[72] **Gwenda Thomas:** The national dementia plan is quite clear about that. We have invested £250,000 in specific training for people who work with people with dementia. Developing that training is key to success, and I would like to pay tribute to the workforce, which does an exemplary job across the social care sector. The Care Council for Wales is involved with the development of training, so positive steps are being taken to develop and sustain that training.

[73] **Mark Drakeford:** Deputy Minister, you relaunched the College of Social Care here in the Assembly just a few weeks ago and we met some people who are providing training through the college and also receiving training from the college when we were in Wrexham last week. I imagine that you would see the college as having a part to play in raising the profile and the standing of the workforce as well.

[74] **Gwenda Thomas:** Indeed. We sponsor the Dignity in Care Award, for example, and we have a National Care Award to recognise good practice out there. We need to do that and to encourage more of it. Care Forum Wales has a dignity charter, and that points us in the same direction. We all realise that training is particularly important. We also have the workforce development plan, whereby training and qualifications are offered to front-line staff. We fund 70% of the cost of that and local authorities contribute 30%. That comes to a total of £12 million a year invested in workforce development and training. Insofar as social workers are concerned, a clear career pathway has been established, as well as the post of consultant social worker, and we need to spread that across the social care sector.

[75] **Rebecca Evans:** I want to pick up on William's question about dementia care and ask about the availability of care in the appropriate language for people whose first language is not English.

[76] **Gwenda Thomas:** That is very important indeed and an issue that is very close to my heart. You will know that we have a taskforce looking at this issue. It was refreshed during the time of the previous Minister for health, and this Minister has carried it on. I chair the taskforce. With regard to the Welsh language, we have looked at the evidence, and there is very strong evidence that, with regard to Welsh, it is not a choice but an actual care need to be able to receive your services through the medium of Welsh. We have had a steering group chaired by Graham Williams, the previous director of social services for Wales. The steering group has gone out and looked at the evidence, and it has come back and brought health services into this. So, we now are developing joint strategies between health and social services in order to develop these services in Welsh, to look at what is out there, to encourage people to use Welsh and to realise the importance of this. Sometimes, people will lose the ability to speak in English with the onset of dementia. There is evidence of that.

[77] Therefore, we are at the point where the strategy has been drawn up and there will be individual development plans for health and social care. The good thing is that this has been developed jointly between health and social services. We will have strong evaluating and monitoring processes to ensure that it is effective. We need to recognise that there is this need with regard to other languages as well. There are excellent projects developing this. Language is important, and we cannot dismiss the need to consider it.

[78] **Vaughan Gething:** I want to ask a couple of questions about planning for the future of the sector and commissioning. I also want to ask a bit about cost. At the outset, we heard evidence from Professor John Bolton as well as some quite interesting evidence from the Welsh Local Government Association on what it referred to as market position statements, in which commissioners plan and state what they expect to need in the sector. Therefore, I am interested in what the Welsh Government is doing to support that, to ensure that those

statements are available so that commissioners can plan what they need and so that providers can plan and gear up to provide the appropriate capacity, as it were. The reference group has raised the issue of whether there is a need or whether it is desirable to map the future care needs of people who are middle-aged—I am taking more of an interest in this now, as I am getting a bit older—so that we look at their future health care needs and plan for the sort of services they will need. We have had discussion in this and many other meetings about the likely increase in people living longer with dementia and other conditions.

[79] On the second issue, of cost, in your paper, you talk about the memorandum of understanding and the undesirability of commissioners and providers going to court to resolve differences over the cost of care. I am interested in where that work is at the moment in the Welsh context and whether people are coming back to the table and talking again about the sort of fee payments made for residential care. The final point about paying for care is that I am interested in where we are with regard to Dilnot. We have had a number of people coming to us saying that the fees that they get from local authorities are not adequate. However, we know that there is a wider debate about how we choose to pay for care or to not pay for care, and what that means in terms of the quality of care provision in future.

[80] **Gwenda Thomas:** Thank you, Vaughan. I will start with the point you made about planning for the future. I have already mentioned that the Bill will be very strong on the requirement for local authorities to identify need, now and anticipated, as best they can in their areas. I believe that, practically, that needs to come down to a ward level in order to understand the need now and the need that is likely to occur. I was very pleased with the response we received from the WLGA. It was very heartening that we got one unified response from the 22 local authorities through the WLGA to the consultation on the Bill. I am very grateful that that was achieved. However, within that, the WLGA is committing to making several position statements, and one of those is on residential care specifically and on care more generally. It shows that the WLGA and local authorities, through the WLGA, are thinking and planning, and are seeking to ensure that it will be possible to provide that care into the future.

11.00 a.m.

[81] As regards the cost, I am not going to beat about the bush, other than to say that I have made it absolutely clear that we are facing difficult times. There will not be huge amounts of additional resources. We have to achieve change through the social services Bill and we have to do that by doing things differently. We have to stop doing things 22 times and we have to look at innovative and preventative services to take the agenda forward. Having said that, we have ensured that the social services budget is protected from 2011-12 to 2013-14. We have put in £35 million more to cover the needs of local authorities, and that has been made available through the revenue support grant to protect services. So, we are doing what we can to protect the budget. During the four-year planning process, I believe that the revenue to local authorities in Wales will increase by 0.7%. That is different to what will happen in England, where it will reduce by 0.6%. However, these are very small percentages in any case. I want to be absolutely clear today that we have to work knowing that we are restricted by the level of resources available to us.

[82] How do we look at people's needs into the future, and does that affect middle-aged and younger people? Yes, it does, without a doubt. The strategy for older people is in place and looks at issues for the future. We are committed through the social services Bill and the programme for government to launch the third phase of our strategy for older people, and we will focus our attention on that. I am glad that we are working with Swansea University and the Economic and Social Research Council to develop knowledge transfer partnerships—and I hope that that is accurate—and to make this research available. That work, which is currently being undertaken, is very interesting and the committee may want to look at that.

There will be pilot schemes in Bridgend and Neath Port Talbot. We need reliable research into future needs, and that group will facilitate that work. Therefore, if you have not heard of that group, perhaps it would be a good thing to look at.

[83] I now turn to the memorandum of understanding. I was delighted by the development of the memorandum of understanding when it was first established, and I gave my strong encouragement to it. It did a lot of good work, bringing together domiciliary and residential providers, local government and others. For a while it worked really well, and then it went off track a bit. That might have happened because of disputes in some authorities, even judicial reviews—and when you think how much such processes cost us, when that money could go to front-line services, you realise that it is incumbent on us to do as much as we can to avoid those situations arising. I am encouraged that the WLGA is now leading on the process of refreshing the memorandum of understanding, so I hope that we get it back on track. The important difference is that we are bringing health into it. This is an issue for health and social services and their integration.

[84] Fee payments are a matter for local authorities to negotiate with providers. We have issued strengthened statutory commissioning guidance on this issue. It is a requirement that local authorities and health boards work with the providers to establish the fee structure and that that process be completely transparent. So, I hope that we can move to a better place with regard to fee setting.

[85] On paying for care, you will recollect that we published a Green Paper in Wales to look at the future of paying for care, with key stakeholders. There was nationwide consultation in Wales on that, and we have the findings. Although it goes back two or more years, I do not think that anything has fundamentally changed from that evidence. We have had the Dilnot commission since then, and we know its recommendations on the future of paying for care. We know that this part of provision is based in law, on an England-and-Wales basis, so some of the issues that Dilnot brings up, including welfare reform, which we know about, but also taxation, national insurance and benefits, will be just as important in Wales as they are in England.

[86] I have had a meeting with Paul Burstow and tried to impress on him the urgency of this. I tried to get information on the timetable, but I did not get the clarity that I wanted. We are in the position of having to wait for the White Paper in England, although I believe that it is imminent. However, the cost of implementing the Dilnot recommendations, for Wales alone, would be in the region of £100 million per annum, I think, off the top of my head. So, there is no way we could introduce this without the same being introduced in England, with consequentials. I impressed on Paul Burstow my wish for the White Paper to reflect the principles that we have developed in Wales with a strong all-party consensus, I believe, on the way forward for social services, and I said that we would stick by them. I have now re-established the stakeholder group to advise me on the way forward, and when we know the contents of the White Paper, we will have to move forward and develop our own policies in Wales. I intend for them to be sustainable and fair and for them to answer needs as they arise in Wales. That is a fair reflection of where we are with regard to the future of paying for care.

[87] **Mark Drakeford:** Rwy'n awyddus, **Mark Drakeford:** I am eager, as ever, for all fel arfer, i bob aelod o'r pwyllgor gael cyfle i members of the committee to get the holi cwestiynau, felly trof at Kirsty gyntaf, opportunity to ask questions, so I turn to yna Rebecca a Mick ar y diwedd. Kirsty first, then Rebecca and finally Mick.

[88] **Kirsty Williams:** Deputy Minister, one thing that prompted the committee to look at this issue was the collapse of a well-known residential care provider and the question of whether there are sustainable models of residential care, or alternative models that would provide greater security. Does the Government have a target for extra-care housing?



[89] **Gwenda Thomas:** Extra-care housing is not in my portfolio, but there are targets, I believe, within individual authorities to develop extra care to meet the needs within those authorities. I am sure that the principle of establishing that need is just the same as looking for needs into the future. However, I am not able to tell you absolutely this morning that I know of targets.

[90] **Kirsty Williams:** How then is the Government able to prioritise spending in this area? Your paper notes that the budget for this particular area will rise to £12 million, but how can you link up the provision of resources if the Government does or does not have a target and if it is being left to individual local authorities? How do you make an assessment of whether that is enough money or not if it is being left to local authorities? How does that process work in identifying a budget to deliver what is obviously, according to your paper, an important way forward?

[91] **Gwenda Thomas:** I am not saying that there are no targets but that I am not aware of any. Any targets set on building extra-care housing would come within the housing portfolio. I am sure that we can get you an answer from the Minister, Huw Lewis, on that specific issue.

[92] **Kirsty Williams:** Paragraph 17 of your paper says that you have also sought to promote and encourage other forms of accommodation, and it then goes on to give the example of extra-care housing. Could you provide the committee with other examples of where the Government has been successful in promoting and encouraging alternative models?

[93] **Gwenda Thomas:** There are examples, and I want to be clear that it is not a matter for Government to develop the provision, but for local authorities.

[94] **Kirsty Williams:** Your paper says that you have sought to promote and encourage, and I am asking for examples of that activity.

[95] **Gwenda Thomas:** Forgive me for giving an example from my own authority, but I know that it is happening there. We are seeing in Neath Port Talbot the outsourcing of residential care through the not-for-profit sector with Gwalia Housing. I have followed that process with interest, right through from the tendering to where we are now with the development of this provision. It is provision that we need to take seriously, and perhaps it is an example of the development of not-for-profit provision that the committee might want to look at. You mentioned the collapse of big providers, and I really think that this is a UK issue. It is a wider issue as well, but we are seeing big providers that are UK-wide. It is very important that the devolved nations, and England, work together to take an overview of the market, because we know that company law and financial services are not devolved. So, some very important aspects of this are UK-wide, and any country would be unwise not to look at the significance of this in the UK. We have seen the development of big providers and big homes with perhaps 100 people in them. We have learned from the lesson of Southern Cross, and it is very sad when you see a provider collapsing, because of the effects on residents. I am encouraged by the joint working between officials of the devolved nations and England on understanding this overview. I have asked for a meeting with Paul Burstow on this very issue, because we need to explore it further and ensure that we play our part in understanding how we move to the future given the complexity, sometimes, of the funding of providers.

[96] **Kirsty Williams:** I am aware that the previous administration had a commitment to developing residential care in the not-for-profit and social enterprise sector, yet I also note from your paper, in paragraph 19, that you are currently conducting an internal review of how social enterprises could be used to deliver social care. As this is a long-standing aspiration of both the previous administration and now this one, could you give us the timescales for when that review will report? Given that you have been looking at this for a long time, and that civil

servants will have been looking at this for at least five years now, what do you perceive to be the barriers to the not-for-profit sector and the social enterprise sector? This was a commitment of the previous Government, as well.

[97] **Gwenda Thomas:** I think that this review is due in the summer.

[98] **Mr Milsom:** Yes, we have more or less completed the internal review. There is a danger in taking the term ‘social enterprise’ because it means different things to different people, and we need to be careful about that. There is the not-for-profit care home, and we have some examples of those in Wales, but probably not as many, proportionally, as in England.

11.15 a.m.

[99] There is the social enterprise venture of the type that the Deputy Minister talked about in Neath Port Talbot, and there is also the co-operative model of social enterprise—the democratic model, if you like—with users being members of the care co-operative. That is what we are looking at in terms of best practice from Québec; the Minister has met one expert on this and another is coming over next week to talk about it.

[100] All of this is informing our internal review. I will not call it a strategy, because it is not quite that, but we have done a very thorough internal review, and we are now preparing advice on the next steps for the Deputy Minister. So, we are making progress.

[101] This is a longer term issue. You have to look at the percentage of independent sector ownership of care in Wales—it is over 85%, I think. So, making inroads with new social enterprise models will not happen overnight. We are working very closely with a range of people in the co-operative world to look at how Government can facilitate it, but it really has to be a bottom-up approach. Co-operatives and social enterprises are not something that a Government would dictate on; it has to be the partnership route that the Deputy Minister talked about.

[102] **Kirsty Williams:** What percentage share would you regard as the target that you are working to? If the successor to this committee, in five years’ time, was to do all this again, what percentage do you think would be a reasonable target to have achieved in the space of four or five years?

[103] **Gwenda Thomas:** We need to understand the sector as it is, and consider that the vacancy rates in residential care are increasing. If you are going to develop community care services, then looking at the need for residential care has to go hand-in-hand with that. You cannot increase one sector and expect there to be no effect on the other. This goes back to the National Health Service and Community Care Act 1990 that developed the residential sector that we have now. Steve has mentioned that 86% of the provision of residential care is in the private sector, and I will say clearly that there are excellent examples of very good practice in the private sector and excellent provision. The other 14% is in the public sector. With regard to people, that is 23,234 people. The split for that is quite interesting: 11,577 of them are in residential care and 11,655 are in nursing care, which is about a 50:50 split. I think that that split will change as we live to be older and perhaps there will be a need for more nursing care.

[104] We need to understand that there are 694 homes providing this care in Wales at the moment. What I am saying is that the projections for future need have to come first, along with the way in which we provide for that and what the need will be. I cannot therefore specifically say that I would target such and such a percentage through the not-for-profit sector. The question that we want to answer is whether it is wise to have all our eggs in one basket when we see what happened with Southern Cross.

[105] **Mick Antoniw:** Following on from the point that Kirsty raised about models, the figures that we were given were of an 80:20 split, although it is a bit more complicated as to how that is made up. There are a lot of interesting developments going on in the not-for-profit sector, and one of the points that the sector raises is about the stability that it introduces through the fact that it does not aim to pay returns on investments and so on. However, the point that has come out from a number of witnesses in evidence as we have been going around the homes is that they need a particular voice themselves in their interaction with Government, and that they are at a stage where they think that their ethos and identity is such that they should have a direct voice, rather than being thrown within a broader sector. Is that something that you would encourage? Are you interested in developing that specific focus?

[106] **Gwenda Thomas:** We have a mixed market, and it is not predominantly a public service, but it is funded by Government and it is regulated and inspected by Government. So, I would like to think of it in future as being a sector for social good. We have seen an example of that in Neath Port Talbot, and I say that again because it is there for us to see how that has developed. That is moving from the public sector to the not-for-profit sector. That is what we have seen there: it has not been a move from the private sector to the not-for-profit sector. It is about the concept of looking at the resource available, the resources that Gwalia had available to take forward that alternative provision, and to look at what all of this means. Underlying all of this has to be what will provide a quality service that is citizen-centred and that has the interests of current and future residents at heart. That is what we have to aim for.

[107] **Rebecca Evans:** I would like to raise two separate issues with you, Deputy Minister. The first is that local government witnesses have told this committee that the introduction of the £50-a-week cap on charges for non-residential care services has created a perverse incentive to keep people in residential care, when their needs could be better served at home. What is your response to that?

[108] **Gwenda Thomas:** Absolute surprise. I am thinking about that for a minute. I really cannot think what incentive there would be for local authorities to move to residential care because of the £50 limit, because we are recouping their loss. Simply on that point, it does not make sense to me. We have had the review that I said we would have at the end of the year. I am getting the results of that at the moment, so we will look at what we have to learn and how that has worked out. One thing that I am sure about it that has benefited people in Wales who are paying for non-residential care provided or commissioned by local authorities. I cannot see how that perverse incentive would work. In any case, speaking off the top of my head, to the best of my understanding, local authorities are required to assess the needs of people in terms of care and to provide it. Not to provide non-residential care, if that is the assessed need, but to provide residential instead, could put a local authority in a position of not carrying out its statutory responsibilities. Seriously, if anyone has any evidence of that happening, I need to know about it and it needs to be passed on to CSSIW to look at it.

[109] The concept of the cap was taken up very strongly by Dilnot; it was one of the things that he recommended on residential care. It is about letting people be sure about the amount that they will pay for services and building within that, like the policy did, a charging policy, an appeals process and an information process. I honestly do not think that there would be a perverse incentive, simply, as I say, because we make up the loss to local authorities and the loss that we have made up is on their own assessment in any case.

[110] **Rebecca Evans:** Thank you. The other issue I want to raise is on the provision of independent advocacy for people in residential care. What is the state of provision?

[111] **Gwenda Thomas:** The Bill commits us to developing a business case for advocacy. It is important, and we need to be absolutely clear about advocacy information, assistance and

everything else across the board. There are excellent examples of advocacy being provided, but it is patchy and I am not happy with it. Therefore, the development of a more coherent structure is pressing. We work with the third sector and the excellent provision it makes. However, that is not to say that we have it absolutely right; we do not. Within the social services Bill, we are committed to developing the business case. The previous older persons' commissioner did a review of advocacy in residential care. As soon as we have that review to hand and we have responded to it, we will use the lessons learned from that as well to develop the business case.

[112] **Mark Drakeford:** Deputy Minister, I want to take you back quickly to the very first question you were asked. The reference group that is working alongside us has emphasised many times, from its own experience, the lack of advice and guidance that is available for someone faced with making a decision about residential care to draw on. It is a decision you make very rarely in any one individual set of circumstances, and the group's suggestion to us is that there is a need for a strengthened advice capacity at the very beginning to help people to know the sort of questions they might need to ask and where they might go to get that information. They need to be guided in making what is a very difficult and sometimes very pressurised decision. Does that ring true with you at all? Do you think that there is a need for some extra help for people at that point in the process?

[113] **Gwenda Thomas:** I certainly do. I know that some benefit from advocacy on this issue, but we have produced a good, clear booklet—it is thicker than a leaflet—called 'Thinking About a Care Home? a guide to what you need to know'. It sets out issues relating to choosing care homes and financial provisions. I think that it is a very good booklet. I do not know whether the reference group knows of its existence. Perhaps it does not think it is good enough, but I think it is very useful. As far as I know, it is widely distributed. Perhaps we need to raise awareness of that. Obviously, if the reference group is not aware of it, there is an issue of raising awareness about the availability of that information. It is also important that we develop an information hub, if you like, with regard to what people need so that the information is there when people need it. That is a provision in the Bill as well. We will look to develop that.

[114] With regard to carers, we have seen the development of the strategies. I am delighted that those regulations have been introduced. With regard to non-residential care in particular and the role of carers, we have developed a very strong set of regulations relating to the development of the strategies that will make it a requirement of health authorities, local authorities and the third sector, working in partnership, to make available the information to carers and service users and, perhaps even more importantly, to become involved in the development of any care plans and any policies we develop. The strategies will be with me in October, and we hope to move forward with their implementation in December.

[115] **Mark Drakeford:** Diolch yn fawr iawn i chi, Ddirprwy Weinidog, ac i'r swyddogion sydd gyda chi y bore yma am yr help yr ydych wedi ei roi i ni yn yr ymchwiliad. Gallwn godi'r pwynt am y daflen gyda'r *reference group* i weld beth yw barn y grŵp ar hynny. Mae dau bwynt arall wedi codi y bore yma. Gallwn edrych am yr hyn a wneir ym mhrifysgol Abertawe, a byddwch chi yn ceisio darganfod, drwy'r Gweinidog, Huw Lewis, y ffigurau ar gyfer cynllunio gofal ychwanegol a gweld sut mae'r Llywodraeth yn gwneud hynny. Diolch yn fawr iawn i chi gyd.

**Mark Drakeford:** Thank you very much, Deputy Minister, and to the officials who are with you this morning for the assistance that you have provided us in our inquiry. We can raise the point about the leaflet with the reference group to see what it thinks about that. Two further points have arisen this morning. We can look into what is being done at Swansea university, and you will try to find out, from the Minister, Huw Lewis, the figures regarding planning extra care, to see how the Government is doing that. Thank you all very much.

[116] **Gwenda Thomas:** Diolch i chi, fel **Gwenda Thomas:** Thank you, as a pwyllgor. committee.

11.30 a.m.

**Bil Sgorio Hylendid Bwyd (Cymru): Cyfnod 1—Sesiwn Dystiolaeth 1**  
**Food Hygiene Rating (Wales) Bill: Stage 1—Evidence Session 1**

[117] **Mark Drakeford:** One Minister leaves and the next arrives.

[118] **Mick Antoniw:** They are like buses, really. [*Laughter.*]

[119] **Mark Drakeford:** Estynnaf groeso i **Mark Drakeford:** I welcome Lesley Lesley Griffiths, y Gweinidog Iechyd a Griffiths, the Minister for Health and Social Gwasanaethau Cymdeithasol. A yw popeth Services. Is everything working with the yn gweithio gyda'r system gyfieithu? interpretation system?

[120] **The Minister for Health and Social Services (Lesley Griffiths):** Yes; thank you.

[121] **Mark Drakeford:** Croeso hefyd i **Mark Drakeford:** I also welcome David David Worthington, pennaeth Is-adran Worthington, head of the Welsh Diogelu Iechyd Llywodraeth Cymru, a Government's Health Protection Division, Christopher Humphreys o Wasanaethau and Christopher Humphreys from the Welsh Cyfreithiol Llywodraeth Cymru. Government's Legal Services department.

[122] Yr wyf am ofyn i chi, Weinidog, Minister, I will ask you to explain to the esbonio i'r pwyllgor yr achos dros y Bil. Mae committee the case for the Bill. We already gennym system wirfoddol yn barod, felly have a voluntary system, so why has the pam mae'r Llywodraeth wedi penderfynu Government decided to bring forward a Bil to create a new system? cyflwyno Bil i greu system newydd?

[123] **Lesley Griffiths:** The intention of the Bill—as you say—is to introduce a mandatory requirement for food businesses to display information about their food hygiene compliance. You mentioned that there has been a voluntary scheme in place in Wales for 18 months. I think that around 30% of food businesses are displaying their stickers; you tend to find that it is those with ratings of 4 or 5 that do so. You do not tend to see stickers for anything below that being displayed. This will force businesses to display their ratings. That is really the main weakness of the voluntary scheme: it is the lack of the lower-numbered stickers being displayed. The scheme will then give consumers the information that I think that they need in order to make informed choices about where they eat out or buy their food. I think that it is a very effective way of improving food hygiene standards. I expect to see a huge improvement in that.

[124] In terms of the voluntary scheme, all 22 local authorities across Wales are now complying with that, but to make it as effective as possible we need to have that mandatory requirement brought in.

[125] **William Graham:** Thank you, Minister, for providing us with information over the last few days, particularly about your policy intentions. I am sure that we can endorse those as we go through. My question is about exemptions. You have said that there will be certain exemptions, but my concern is for those voluntary groups that depend on coffee mornings, lunches and various things, for a large part of their activities. I am referring to charities, political parties and British organisations. Is it your intention not to include those, even

though they are—or could be described as being—regular?

[126] **Lesley Griffiths:** In referring to charities, are you referring to situations in which they are just baking cakes for a coffee morning?

[127] **William Graham:** Yes, or providing lunches.

[128] **Lesley Griffiths:** In that case, no, they will not be required to—

[129] **William Graham:** They sell tickets, do they not?

[130] **Lesley Griffiths:** Yes, they do. They will be covered by food hygiene standards, but they will not be required to display a sticker. Their hygiene will still be looked at.

[131] **William Graham:** I accept that. So, there will not be any mandatory requirements on them.

[132] **Lesley Griffiths:** No.

[133] **William Graham:** You have answered my question. That was very easy to answer.

[134] **Mr Worthington:** The scheme is based on requiring the provision of a sticker for businesses that are currently registered. Your question comes back to the issue of whether the business, as it operates in its existing state, is registered or not. At the very small end of the scale, such as someone baking a cake for a church hall, they would not be required to register, so the scheme would not apply to them. When you go up the scale, and a business achieves a sufficient size to become registered, the scheme would apply. The scheme itself does not alter food hygiene requirements in relation to the scheme. It is simply about the provision of the sticker. As to whether the scheme applies to an organisation or not, that stands or falls on the question of whether the business is registered, which is a matter of its size. That situation already exists, so we are not changing anything.

[135] **Lesley Griffiths:** For example, if you had a catering company that worked out of someone's house, it would be registered, so it would have to display a sticker.

[136] **William Graham:** However, if a church hall provided a lunch, as long as it complied with hygiene regulations, there would be no need for it to display a sticker. Is that right?

[137] **Lesley Griffiths:** Yes, that is right.

[138] **Kirsty Williams:** Is it the Government's intention to exempt any registered businesses that would be required to register?

[139] **Mr Worthington:** Yes; exemptions would apply for registered businesses—predominantly child minders, probably. Again, this is a question of degree. A child minder registered as a food business, predominantly because the child minder would provide food for children in their care, would not be required to display a sticker, because they are potentially identifiable as vulnerable people. They would not be required to display a sticker, they would not be identified under the scheme and they would not appear on the Food Standards Agency website. However, some businesses for which this exemption currently applies request the provision of a sticker on a voluntary basis, because it helps their business and it shows the families who use it the business' standards of compliance. That would be an exemption from the requirement for a registered business. They would be registered, but they would be exempt from this scheme.

[140] **Lesley Griffiths:** The other exemptions would be sensitive establishments, such as those related to the armed forces. They would not be required to display a sticker. They would still be awarded a rating for local display, but they would not have to be on the FSA website, for security reasons.

[141] **Kirsty Williams:** Exemptions will be a matter for regulations after the Bill has completed its passage. That brings us to the perennial issue of what is included on the face of the Bill and what comes afterwards. Could you explain your Government's approach to leaving exemptions off the face of the Bill, to be dealt with by regulations at a later date, which potentially will not have the same level of scrutiny as the Bill itself?

[142] **Lesley Griffiths:** During the consultation on the draft Bill, we asked for comments on whether any food business establishments that provide food directly to consumers should be exempt from the scheme, for instance, and 50% of respondents thought that all businesses should be included in the scheme. My intention is to consult on regulations that will provide details of exemptions after Stage 2 of the Bill. Perhaps David could expand on that.

[143] **Mr Worthington:** On the question of whether something should appear on the face of the Bill or in regulations, our advice to the Minister has been based on advice from enforcement agencies and the Food Standards Agency. Essentially, we have taken the line that, where something may require amendment, perhaps frequently, those matters would probably be better dealt with in the regulations rather than in the Bill. In terms of where we are with the regulations, it would be entirely wrong for us to pre-empt the decisions of the National Assembly in relation to the Bill. What we are hoping for is that, by the end of Stage 2, we will have some regulations and we will go out to consultation, anticipating that at the end of Stage 2. However, coming back to your question, the rationale was that, if it could change frequently, it is probably better in regulations than in the Bill, because a Bill is not a very easy mechanism for delivering change speedily.

[144] **Kirsty Williams:** The Government is asking Assembly Members to pass a piece of legislation without knowing to whom that legislation will apply. I have a problem with that; I am being asked to pass a piece of legislation when I simply do not know who is going to be caught by it. Will it be possible to see the regulations before a final decision is made by Assembly Members?

[145] **Lesley Griffiths:** I was very sympathetic to the committee's request to bring forward the publication of the formal consultation on the regulations, but I was concerned that it could cause duplication. I do not want any confusion to arise for stakeholders, and my advice is that this is the best way forward. However, I see the point that you are raising. I have sent a policy intention document—has that been circulated, Chair?

[146] **Mr Humphreys:** On this point about scrutiny, the regulations deal with two different types of issue, if you like. There are fairly standard things, such as forms and information that has to be sent out, which are dealt with by negative procedure regulations, but the more fundamental things, which you could say effectively change the scope of the scheme or the Bill, are subject to affirmative procedure.

[147] **Mark Drakeford:** I have a couple of questions on this. Will the results of the consultation that you mentioned, David, be available to the National Assembly before Stage 3 consideration?

[148] **Mr Worthington:** A summary of the consultation responses has already been published, Chair. We were not anticipating publishing the full consultation. Are you talking about the Bill or the regulations?

[149] **Mark Drakeford:** I am talking about the regulations.

[150] **Mr Worthington:** I apologise for misleading you, Chair. In that case, the answer would be ‘yes’: the intention is to publish those so that people can see the results.

[151] **Mark Drakeford:** The timetable is quite tight on that, but that is helpful. Thank you, Minister, for your policy intention letter, which was helpful. It is helpful to us today, because it is a genuine issue for the committee in scrutinising a Bill when we are not completely clear to whom the Bill will apply. It is helpful that you have indicated that the Bill would not apply to child minders. Low-risk establishments are referred to in your document as well. It would be helpful for us to know what is in and what is out; Lynne also has a point on this.

[152] **Lesley Griffiths:** Low-risk establishments would be places like leisure centres, where you only have food in vending machines, or newsagents, where you have pre-packed sweets and chocolates. Those would be the low-risk establishments.

[153] **Mark Drakeford:** They are not to be captured.

[154] **Lesley Griffiths:** No.

[155] **Lynne Neagle:** Officials did indicate that child minders would be included within the scope of the Bill. What is the rationale for not including child minders, when, of course, places like day nurseries will be covered by the Bill?

[156] **Lesley Griffiths:** David talked about child minders in his previous answer. They are exempt from rating under the voluntary scheme, because we have to ensure that the protection of children is at the fore. As you stated, it is our intention that exemption will continue under the mandatory scheme. That is the main reason why we are exempting them—for the protection of children.

[157] **Mark Drakeford:** That is because you could not put a sign up in someone’s front window saying ‘There are lots of children being looked after here’.

[158] **Lesley Griffiths:** No, we have to look at the safeguarding aspect of it.

[159] **Mr Worthington:** If I may add to that, Chair, the issue is the difference between a child minder and a nursery. The issue for child minders is that they are not necessarily, as you walk down a street, readily identifiable; a nursery, generally, has a large sign saying that it is a nursery. While child minders are covered by food hygiene regulations, and they would have to be registered, this issue of identifying them specifically is one that the current voluntary scheme has taken on board.

11.45 a.m.

[160] The decision that we are currently following, and the advice from enforcement interests is that we would not seek to identify these premises that are currently not identifiable otherwise, by either the provision of a sticker, which you could see from the street, or identification on the FSA website. We have to protect children, so the line that we have recommended to the Minister and the one that is currently accepted in the Bill is to follow the current scheme as it seems to be working quite well. The exemption is about not identifying premises where children are cared for and trying to keep their security intact.

[161] **Lesley Griffiths:** The important point is that this is about displaying a sticker; it is not about the hygiene standards. As David said, they will be registered in that respect.



[162] **Vaughan Gething:** I have a question about the low-risk establishment point. I note what is outlined in the policy on page 6, which is helpful, but I want to understand the nature of pre-packed food. You have talked about pre-packed confectionary or wrapped or tinned goods, but I am interested in where the balance lies. You talk about it not being the main element of the business, but, for example, many newsagents and chemists now sell other items of food such as pre-packed sandwiches and pasties and so on for lunch. Are those businesses going to be caught by these regulations?

[163] **Lesley Griffiths:** Yes. The two examples I gave you of low-risk establishments are specific.

[164] **Mick Antoniw:** Minister, I would like to follow a theme that we started in the discussion that we had in Plenary on all of those establishments that operate within Wales, but because they are cross-border based will not be covered or the intention seems for them not to be covered. This did not seem to feature in the consultation process. Has any assessment been carried out on the extent of that level of provision, particularly mobile food provision, so that we have an idea about how extensive it is and what proportion of mobile food provision it might represent?

[165] **Lesley Griffiths:** The original proposals were too wide because they would have captured food businesses operating outside of Wales, in the rest of the UK and Europe. I am encouraged that the FSA is pursuing a mandatory approach in the other UK administrations and it would be helpful if that happened.

[166] I was at the Racecourse ground in Wrexham on Saturday and there was a burger van outside from England, so I went over and asked him about this and he was proud to display his sticker under a voluntary scheme. It is the consumer that will drive this. You must remember that mobile traders who come into Wales are not unregulated. Again, just like the child minders, they are regulated according to food hygiene standards—they have got their own hygiene standards. This is just about displaying a sticker, but it is something that we can look at as we go forward. Mobile traders registered in Wales will be captured under the scheme, but those outside of Wales will not.

[167] **Mick Antoniw:** One area that concerned me was that, because of the costs and so on that go with this—and I understand the point that you made on whether the existing regulation creates an unfair economic advantage, particularly in what is a fairly cut-throat business—is it the Government's view that it could not do it legally or that administratively it would cause difficulties and problems?

[168] **Mr Humphreys:** Legally it would be possible, but the difficulty is that the ratings to work under this scheme would need to be awarded by an authority in Wales. There are difficulties in doing that in relation to cross-border traders because a lot of the elements that might affect the calculation of their rating might possibly relate back to their base, which is outside Wales, where the food authority would not have any jurisdiction. You could probably create some sort of mechanism in the Bill, but one of the concerns is that it would greatly complicate the Bill and, dare I say it, possibly not distort the balance, but given the relatively small number of traders that we are talking about, though I do not have the numbers at my fingertips, it could change the balance of the Bill or overcomplicate what is a relatively straightforward, self-contained Bill.

[169] **Mick Antoniw:** One of the bases of the legislation's success or effectiveness will be the extent to which the public is educated about what the ratings mean and how important they are. Could you outline in more detail what your thinking is as to how that might be done? What might the educational and promotional campaign be and what might it aim to achieve?

[170] **Lesley Griffiths:** That is an important point. The public is much more aware now. I was in a restaurant down the bay a couple weeks ago and someone on the next table was asking what the rating was. You would not have heard that two years ago. It is already getting into people's minds. I launched the Bill in a tea room in Llandudno, which is located in a row of food establishments. There was one well-known sandwich franchise—I will not say which one—that not only had its sticker in the window but also had a big swing-board outside with its rating on it. It is getting much more visible for the public but it is important that we should do far more work to educate people. Getting that information out is going to be an important part of the duties of Food Standards Agency. The consumer is the person who will drive this forward. The more consumers ask about it, the more it will get to be a part of people's mindset.

[171] **Rebecca Evans:** How meaningful will the sticker be in allowing consumers to make a choice? Will consumers know what the ratings mean and what they do not mean? They could include things such as record keeping, which will not really concern the consumer when they are making choices about where to eat.

[172] **Lesley Griffiths:** You are right. There are several elements to how they get the rating. We will have to ensure that people understand. It is a question of how you do that. It is the duty of the FSA and the food authorities to ensure that people understand the ratings. For instance, would they think that 1 or 5 is top? It is important that we convey that message. However, because of the voluntary scheme, I think that people understand it much more than they did.

[173] **Mark Drakeford:** Some witnesses have suggested, Minister, that the report that lies behind the figure should be available to the public, so that if people want to know what a rating of 3 means, they would be able to find out. Does the Government have any thoughts on that?

[174] **Lesley Griffiths:** Yes. We are not minded to do so at the moment but I have not closed my mind to that completely. There are two difficulties. Those reports are carried out using public money, so why should the public not have them? However, there are great inconsistencies in the way that reports are written, so we need to look at that first. Also, the FSA is undertaking some work around that. I would rather see how the law embeds and works before deciding against it completely but, at the moment, it would place a burden on businesses that, perhaps, is not right at this time. I would be happy to take the committee's views on that. Consumer Focus Wales is keen on the idea, and I have had discussions with that body on that issue but, at the moment, I would say 'no'.

[175] **Mark Drakeford:** Elin, was your question related to that issue?

[176] **Elin Jones:** Yes; I will follow on from Rebecca's point. My view is that the inspection reports should be publically available and not just subject to freedom of information requests on each report individually, especially given the interest that there will be in looking at the reasons behind the rating. The rating can be based on how food is prepared or on record keeping, but it can also be based on the structural condition of premises. Have you come across any evidence that there are food establishments out there that would never be able to get a rating of 5, simply because they are in a town centre where there is not much space for their kitchen and they cannot redesign it because of the size of the establishment? Are there any cases of people who will never get a rating of 5? If so, those businesses are going to want people to know why they cannot get a score of 5.

[177] **Lesley Griffiths:** I personally have not. I will ask David to come in on that and I am sure that Kirsty is going to tell us her story about the chip shop in Brecon—and I hope that she does because it is a good example of how everybody should be able to get a rating of 5. I

have visited hospitals where I have asked about it and they have said, ‘Oh, well, it’s difficult to get that because we’ve got an old kitchen’. I do not agree with that at all. So, I certainly have not seen any evidence of that. I do not know whether you have, David.

[178] **Mr Worthington:** No, there are various schemes around the world at the moment. There is a hoary old chestnut going around that there will be categories of premises that cannot achieve a rating of 5. I can tell the committee categorically today that, as far as the Food Standards Agency is concerned, there are no premises in Wales that could not achieve a 5 either because of size or because of anything else. So, theoretically, they could get there. Everything could get there, from an operation run by a single person to a large establishment. Whether they get there or not is a separate issue. However, there is nothing in the scheme that would prevent anybody from getting a rating of 5.

[179] **Kirsty Williams:** I shall resist talking about Mrs Lally’s fish shop in Brecon and Radnor—other fish and chip shops are available in town and also have a rating of 5, but if Mrs Lally can do it, everybody can.

[180] I would like to ask a question, however, about section 20. I was interested, Mr Worthington, that you said that the advice that you had given to the Minister about the inclusion of exemptions on the face of the Bill was based on whether the information was likely to change. I am interested, therefore, that exemptions are not on the face of the Bill, but the size of the penalty is. I would have thought that if anything was potentially going to change on at least a semi-regular basis, or perhaps more often than the premises that are caught, it would be the fines associated with failure to comply with the law. I am interested in hearing your explanation about why exemptions of premises are not included, but the levels of fines are.

[181] **Mr Humphreys:** There is a mechanism in the Schedule to the Bill for varying the penalties—

[182] **Kirsty Williams:** I can see that. As a layperson, I would have thought that the scope to change things on a regular basis, which I accept is a good reason for not putting things on the face of the Bill, would apply more to the levels of fines than to the types of people who are caught by the law. I would be interested to hear an explanation as to why it was felt that it was necessary to avoid putting the exemptions in, but to put the figures in. I am not saying that I am against it; I am just asking what the rationale is.

[183] **Mr Worthington:** I am looking at this at the moment, Chair.

[184] **Mark Drakeford:** Mr Humphreys, I do not have the Schedule in front of me—

[185] **Kirsty Williams:** You can change it by regulation, and the Minister—

[186] **Mark Drakeford:** Is it a formula or a mechanism that you are suggesting?

[187] **Mr Humphreys:** I presume that it was felt that it would be helpful to have the starting point or the baseline articulated in the Bill.

[188] **Mick Antoniw:** It is normal that in legislation where a fine is applicable that you have to know the immediate start point of the fine, but you then have to have a mechanism for updating and reviewing that, and that is why it is a bit different.

[189] **Vaughan Gething:** It has always been done that way.

[190] **Kirsty Williams:** I just think that it is an interesting point. Whom the law applies to

is not known from the starting point, but the fine is, and it seems to me that it is not unreasonable to ask Assembly Members to pass a piece of legislation knowing to whom the law applies, who enforces the law and the penalties for not complying with the law. I would have thought that Assembly Members would want to know and have confidence in those three basic tenets. I am a great supporter of this. I am playing devil's advocate here, because I support the principles of this Bill, as you know, Minister. I am just interested in how the legislation is drafted and framed and whether that is the right way to do it.

[191] **Mr Worthington:** The question was addressed to me, Chair, and I apologise to Members that I am not 100% immediately cognisant of the conventions on this. We simply followed convention. Members are quite right that we can vary the penalty, and I would surmise that it is reasonable to put the penalty in the Bill so that people can see what we are doing, but, as I say, I cannot give you the answer with the absolute reason as to why that convention is there.

[192] **Mark Drakeford:** It would be useful, if anything lies behind it, for us to have that as a note.

[193] **Lesley Griffiths:** We will send you a note.

[194] **Mark Drakeford:** Is there anything further, Kirsty? If not, we will go to Elin.

[195] **Kirsty Williams:** No.

12.00 p.m.

[196] **Elin Jones:** I wanted to get on to the point about how food is bought by consumers in Wales. A lot of food is bought without ever visiting the premises where it is sold or made. That includes take-away food that is delivered to the house and promoted by menus that are distributed directly to houses, or, increasingly, food that is bought on the internet, where businesses sell their cupcakes, or whatever, directly to consumers. You have taken the decision that this is about the premises, and I wanted to ask you why that is the case when food is sold to consumers not directly from the premises. Following on from that, as you have taken this decision in the legislation as it stands, how do you ensure that information on the rating is available to consumers? I know that there is a clause in the legislation that places a duty on the food producer to provide that information if it is requested, but I wanted to ask whether the rating system will still be available on the FSA's website following the introduction of the mandatory scheme, and, if not, whether it will be available anywhere else on the internet at that point.

[197] **Lesley Griffiths:** It will still be available on the FSA website. In relation to take-away menus, the decision not to compel businesses to put their ratings on the menus was because of the cost involved in reprinting the menus. If the rating changed, the business would have to re-do their menus, so that was the reason for that. Such businesses are required to give them verbally when a member of the public rings up, and, if they fail to do so, then the food authorities would have to take action against them.

[198] **Elin Jones:** I have a concern about that, and I think that including that information on menus or in promotional literature or websites could have been looked at. Some of those take-away places are also premises where food is sold, so they may be covered that way, but, increasingly, food is being processed in domestic houses or in commercial settings to sell directly over the internet. I am concerned that those businesses may not be caught with regard to the consumer information.

[199] **Lesley Griffiths:** I spoke earlier about catering businesses that are run from a house.

They will be caught. The premises of companies that sell over the internet, if they are registered, will be caught.

[200] **Elin Jones:** Yes, I know that they will be rated, but what is the mechanism for consumers to know what the rating is, other than ringing the business directly?

[201] **Lesley Griffiths:** It would be the verbal mechanism. If a consumer was looking at a website—you mentioned cupcakes earlier—and buying cupcakes, they would have to ask the person.

[202] **Elin Jones:** Given that the duty is in the legislation to provide that information if somebody rings up, what is the means of monitoring whether that is done? What is the means of complaint if an individual is not given that information over the phone?

[203] **Mr Worthington:** This is actually a very complicated issue. We have gone through this in detail—[*Inaudible.*]—and the recommendation that we came to was to stick to a requirement for publication in two places: on the premises, and on the FSA website. The reason we recommended against publication in promotional material was twofold: first, as the Minister says, there is the cost of changing promotional material if the rating changed, which is potentially several thousand pounds, and, secondly, and the main reason, was that, if you receive promotional material—I do not know whether you do, but I do—from the local take-away, you might still use it when it is years old. I do not need to change it; I have the menu and the phone number. So given that people could be using the same promotional material over a period of, potentially, several years, our view was that such a requirement could promote confusion.

[204] On the issue of websites, the advice was based on the simple premise that, if you go on the internet and look for a website, the chances are that you will not get the website of the premises; the business will appear on somebody else's website, in which case the rating does not have to appear in any case. Internet access would imply that you have access to the FSA website. So, if you are looking up the website for a food business, the rating would be available on the Food Standards Agency's website. So, again, the information is there.

[205] I am quite happy to take advice from the committee on this particular point, but that is the reason we have decided to recommend that policy.

[206] **Mark Drakeford:** Several Members want to ask follow-up questions on this, so we will take them all now.

[207] **Elin Jones:** On the issue of compliance with the duty to provide the rating information over the phone or in person, how would that be monitored and enforced?

[208] **Lesley Griffiths:** It would be up to the food authorities, the local authorities, to monitor that. We would be reliant on people informing the food authorities, if, having rung up and asked for a verbal confirmation of the food hygiene rating, they did not get it. It would be monitored by the food authorities and the FSA.

[209] **Mark Drakeford:** Kirsty has a point to make on this, and then we have Mick and Lynne. I want to make sure that everybody has a chance to follow up on this interesting point.

[210] **Kirsty Williams:** Forgive me if it is in here somewhere and I have missed it, but I want to ask about food suppliers who may be selling at a number of locations away from the premises in which the food is produced or made, such as at farmers' markets. The producer may be selling produce at a number of farmers' markets, and they would be registered as a food producer, but where would they have to display their ratings? Are they required to

display their ratings only at the premises where the food is made, or would they be required to have their ratings on their table at the farmers' market where customers purchase the food?

[211] **Lesley Griffiths:** At the premises.

[212] **Mr Worthington:** It is the same for mobile traders. The premises that are rated are the places where they are registered. So, we are back to the home authority. The mobile trader, however, would have to have stickers on their mobile trading premises, so stickers will be provided there also.

[213] **Kirsty Williams:** There is a difference, though, between someone in a mobile burger van that they own and someone at a farmers' market where they simply have a table that has been provided to them on the day by the organisers of that market. Would you be required to have your food hygiene rating pinned to the front of your table, so that people buying, say, poultry or other meat products, would know what your rating was?

[214] **Mr Worthington:** It was very much the intention that that would be so. Whether the regulations actually say that, now that you have raised the issue, is something that we will go back and look at in detail and respond to you on. That was the intention, however.

[215] **Kirsty Williams:** Okay.

[216] **Mick Antoniw:** In response to an earlier question, when we were talking about providers and so on from outside Wales, you placed great emphasis on the fact that this is all about being consumer driven. It is all about what the consumer would and would not pick and so on. That comes back to the point about promotional material. If promotional material is the main vehicle through which someone accesses a food business, then excluding such material seems to undermine the whole purpose of the legislation. It seems to me that it is not asking a lot of a supplier that works in that way to ensure that what they put out complies with the law and tells people what it is they are selling and at what standard.

[217] **Lesley Griffiths:** I do not want the Bill to place a huge financial burden on food establishments. When getting a take-away, many people visit the premises to get it; it is not all about home delivery. However, for the reasons that David and I have stated, it was decided that food establishments would not have to put the food hygiene rating on their promotional material.

[218] **Mark Drakeford:** Is it possible to think, within the law, that the premises would be required to do this as new material is printed? There are stocks of such material, inevitably, and companies might want to run those stocks out, but there will come a point when they will need new promotional material. Why should they not be required to do it then?

[219] **Lesley Griffiths:** They can certainly do it voluntarily.

[220] **Mark Drakeford:** Yes, they can do it voluntarily, but why should they not be required to do it then, when there is no extra cost involved? It is simply another piece of information on top of the information they would already be paying for. You do not have to answer that question now.

[221] **Lesley Griffiths:** We can certainly look at that issue.

[222] **Mark Drakeford:** Thank you.

[223] **Lynne Neagle:** Your answer to Elin earlier included a presumption that people are going to tell the truth about their food standards rating. What is to stop people, when someone

phones them up, saying that they have a rating of 4 and just hoping that people do not check? This is similar to Mark's point, but to what extent has there been a comprehensive analysis of the costs? It is not just a question of reprinting, is it? There might be ways of adding to leaflets, such as overprinting and so on. Did you look at that in your evaluation of the costs?

[224] **Mr Worthington:** We have considered it, Chair, and that was our advice to the Minister. We are quite happy to look at this again. Overprinting or using a stamp, for example, might be a means that we could consider.

[225] **Mark Drakeford:** Elin, I think that this set of questions started with you, so I will come back to you now in case there is anything final you want to ask on this issue of how people get to know what the rating is.

[226] **Elin Jones:** Yes, I would like to go back to the issue of a situation where the person on the phone does not tell the truth or has not even answered the person requesting the information and there is then a complaint made to the local authority on that basis. That is a very difficult issue for a local authority to deal with because it is relying on information from two individuals. Therefore, I am concerned that, although this is in the legislation, there is no clear process for how local authorities would be able to deal with those issues. It could be vexatious or there could be genuine issues.

[227] **Lesley Griffiths:** The Bill requires food authorities to make arrangements to enforce the obligations it imposes, including the requirement of food businesses to verbally inform anyone who asks for the food hygiene rating. Obviously, food authorities have a number of enforcement tools at their disposal. Therefore, should a food business operator fail to verbally inform someone or, as has been suggested, lie, they are likely to have committed an offence. Therefore, they could receive a fixed penalty fine or be prosecuted. It is up to the food authorities to monitor this.

[228] **Mr Worthington:** In practical terms, this sort of work is something enforcement authorities come across in many fields. One of the most obvious ways in which food authorities become aware of it is by people complaining. With regard to enforcement action, many authorities conduct blind trials, including by ringing up anonymously and asking the question themselves. This has certainly happened with regard to sunbeds. Authorities have sent in someone who is clearly underage to ask to use the sunbeds. That is a good way for local authorities to assess compliance. Therefore, it is not just an issue with this; it runs across many other areas of enforcement activity.

[229] **Mark Drakeford:** I want to move on to some other important topics in a moment. Elin will take the very last bite at this.

[230] **Elin Jones:** The legislation requires the person who runs the premises or the business to provide that information verbally. I wonder whether you have considered making that a requirement to provide the information verbally or in writing so that, if someone calls an establishment and is not given the information, they can request it in writing so that the consumer is given something that is challengeable or usable in some way if they choose to make a complaint.

[231] **Mr Worthington:** Again, we considered this, but we were mindful of the potential for businesses to be bombarded. I do not know how realistic that is, but that was the attitude we took to the idea of expecting businesses to send out letters to people, potentially following vexatious interrogation. We took the line that a telephone call, a verbal response, would be adequate in this instance. Again, we are quite happy to see how that works out. The Food Standards Agency is charged with reviewing the scheme after three years. However, from the voluntary scheme, the way that things operate at the moment seems to be reasonably

satisfactory.

12.15 p.m.

[232] **Kirsty Williams:** I have some sympathy with the Government regarding some of the practicalities, but I just wonder whether we are making a bit of a mountain out of a molehill, or is that reflecting my prejudices as someone who represents an area where, believe it or not, deliveries are few and far between, and you have to go and get your own take-away? So, this is a whole new world to me, of your chicken tikka masala being brought to your door. Perhaps there is a business opportunity for me there. [*Laughter.*] However, has any analysis been done of whether home deliveries represent a big part of the market? Are we perhaps being overly cautious?

[233] **Lesley Griffiths:** That is an important point.

[234] **Kirsty Williams:** What is—that I cannot have chicken tikka masala delivered to my door?

[235] **Mark Drakeford:** You have chickens at your door, Kirsty. [*Laughter.*]

[236] **Lesley Griffiths:** In answer to your question of whether we are making a mountain out of a molehill, I can see where the concerns are coming from. There is also the question about the scooter on which the food is delivered—should that be looked at? These are all questions that I have asked officials. The focus is on the premises.

[237] **Mark Drakeford:** Minister, I want to move on to another core issue to do with the construction of the Bill that came up a lot in the consultation on the draft Bill, namely the issue of consistency. You will be relying on 22 different local authorities to deliver this scheme. What are you building into the Bill to give people the confidence that the ratings that are given in Caernarfon, for example, will be broadly comparable to those in Caerphilly, and that premises will not be inspected three times a year in one part of Wales and once a decade somewhere else? How will the scheme be delivered on the ground in a way that is fair and consistent across Wales?

[238] **Lesley Griffiths:** The provisions in the Bill and the guidance that is issued will help to ensure a consistent and fair approach in carrying out the scheme by food authorities. Under the Bill, we will require food authorities to prepare and review a programme of inspections. They will have to have regard to matters specified by the Food Standards Agency and approved by the Welsh Ministers. That will ensure that we have a consistent approach.

[239] David has just mentioned that the FSA will monitor and audit the implementation of the scheme. There will be three-yearly evaluations, so that they can each report to the relevant Welsh Minister for health. I expect the FSA, as part of its duties, to ensure that we have a fair and consistent approach. Food authorities have to review the operation of the scheme in the area. They need to ensure, as you said, that the criteria that are used to give a food establishment a specific rating are fair and consistent across Wales. Welsh Ministers will provide guidance to promote the importance of a consistent approach in operating the mandatory scheme. The FSA will be required to meet regularly with local authorities to ensure that that is happening. There is a joint steering group, of which local authority officers are members, to ensure that we have that consistent approach. Obviously, as part of its audit function, the FSA will have to monitor enforcement actions.

[240] **Lynne Neagle:** I just want to ask about costs. What analysis has there been of the costs to local authorities of taking forward a mandatory as opposed to a voluntary scheme? I realise that re-inspection will be chargeable to the businesses, but, presumably, in some areas



where the take-up of the scheme has not been very good, local authorities will see a significant increase in workload. We know from the work that previous Assembly health committees have done that there is a lot of pressure on the local authority departments expected to deliver this.

[241] **Lesley Griffiths:** The costs are set out in detail in the explanatory memorandum. A great deal of analysis has been done. In the first year of the scheme, the estimated cost is £475,350. That includes £225,000 for food businesses requesting re-rating inspections, £101,000 for the FSA to cover marketing and the provision of stickers, £10,000 for the training of local authority enforcement officers, and £139,350 for local authorities' communication with food businesses, the consideration of appeals, and the enforcement of the scheme. One thing that we have also anticipated is that, as you mentioned, if someone wants a re-inspection, they will have to realise that cost. One thing that we have thought about is that, in the period of time before the mandatory scheme comes in, some food establishments will want to be re-inspected. The figure was about £166,000, for which we, as a Welsh Government, will foot the bill.

[242] **Mark Drakeford:** May I ask you about the appeals system? The Bill seems noticeably short on detail about how an appeal against a rating is to be carried out. Paragraph 14 of the explanatory notes says that Ministers anticipate including guidance on appeals in guidance issued by them. Do you have a sense of the timing of all that, and are you confident that the balance is right with regard to the appeals system as contained in the Bill and the advice that follows?

[243] **Lesley Griffiths:** Yes. I am confident that the Bill's provisions give an adequate voice to food business operators, both for appeals and the right to reply. It is our intention to issue guidance to food authorities on the exercise of their functions. There will be a duty on food authorities to review the operation of the food hygiene ratings scheme. Food businesses will have the right of appeal and the right to reply, so they can comment on their establishment's rating and explain what action has been taken to rectify non-compliance, or to explain if they think that there is mitigating evidence in relation to the circumstances at the time of inspection. So, yes, I am confident that their voice will be heard.

[244] **Mark Drakeford:** On the right to reply, where will that be made available to members of the public?

[245] **Lesley Griffiths:** On the FSA website.

[246] **Mark Drakeford:** Okay. Do Members have any final questions at this stage?

[247] **Elin Jones:** I just want to ask about the costs to the business of re-rating, following on from the points made about a consistency of approach throughout Wales. In the legislation, it is the food authority that will decide what a reasonable cost is, but I am concerned about what the advice would be from Government to the various food authorities on what 'reasonable' would be in that context. This is a national scheme and we want to get to a point at which all local authorities are charging something similar throughout Wales. That seems reasonable to me.

[248] **Lesley Griffiths:** I agree. The FSA, as part of its duties, will have to ensure that we have that consistency. However, it is up to local authorities to set the charges. Have you done any further work, David?

[249] **Mr Worthington:** Again, this is a very difficult issue that we tried to address, Chair. We thought about a standing charge, so that everybody would be charged the same, but, unfortunately, that would mean that a single-handed business would be charged the same as a

massive supermarket or manufacturing premises. Re-rating may not necessitate a full inspection of premises: it could be short or it could be long. We took the view that the charge should reflect the actual work. Since most enforcement officers are broadly paid pretty much the same, and an inspection takes the same length of time, we thought it best that the local authorities themselves assess this. On the consistency, we have asked the Food Standards Agency to look at this and it is also an issue that the food safety technical panel of the Directors of Public Protection Wales will look at. So, we are satisfied not only that there is a mechanism to charge what it is actually going to cost the local authorities, but that there is a degree of consistency and a way of monitoring that consistency right from day one.

[250] **Elin Jones:** So, the food business would know in advance what the charge would be.

[251] **Mr Worthington:** Absolutely, yes.

[252] **Elin Jones:** Depending on the size of their establishments, there could be a range of various costs. However, the food business would be able to make the judgment of whether it is worth going for the re-rating knowing exactly what the cost would be, balanced against the cost of possibly losing some customers if it did not get the rating that it wanted.

[253] **Mr Worthington:** The business would request a re-rating, and it would be incumbent on the enforcement authority to explain what the re-rating consisted of, what it would cost and how it made those costs up. It would then be up to the business to decide whether the re-rating was worth while on the basis of that cost. The costs would all be upfront, so there is no hidden charge to the business in this.

[254] **Mr Humphreys:** It is covered in section 12.

[255] **Kirsty Williams:** What role would the Government or the FSA have in monitoring those charges? I can foresee a circumstance in which some businesses would accuse a local authority of using this as a money-making exercise, that is, of deliberately giving businesses a low grade to be able to charge for a re-examination. I can just imagine the letters that I will get now, about the council using this as a revenue raiser. Will there be a role for the Government and/or the FSA to satisfy people that the charges imposed by the local authority are a fair reflection of the costs? Those costs could be different, of course, depending on whether you are an urban authority or a rural authority, because it sometimes costs more to deliver a service depending on the nature of an authority. Would there be a role for the Government or the FSA there? A local authority could then evidence that its charging regime had been looked at and was a fair reflection of the costs and that it had charged a fair price for the service?

[256] **Mr Worthington:** Do not forget that this is a piece of legislation that adds to an existing portfolio of food hygiene legislation. The Food Standards Agency is charged not just with monitoring this scheme throughout but, in line with other legislation, with auditing local government in Wales, which it already does on a routine basis. So, on the monitoring of the scheme, we are convinced that there is a system in place. We have deliberately tried to ensure that no accusation could be made of using the scheme for money-raising, which is why we want local authorities to say upfront what their charges are, so that one local authority cannot charge £5 and another £500, say, which would be transparently inequitable. Businesses will also talk to each other about it. So, it is not a hidden charge. This is about charging what it costs and being able to justify that to the business before the business accepts it.

[257] **Mark Drakeford:** I thank the Minister and her officials. You have agreed this morning to keep a number of issues alive in your mind, to think about them, and to provide a note if there is anything useful to add to the point that Kirsty rehearsed with you earlier. In order to comply with the timetable laid down by the Business Committee, we have to take all

our oral evidence for Stage 1 this side of the summer, and we are very grateful to you for agreeing to come back on 18 July, which is only a few weeks away. By that time, we will have heard from almost everyone that we will be hearing from orally, and we will have a chance to go back over some of these points with you in the light of what we have been told by then. Thank you very much for your attendance today and for that.

[258] Dyna ddiwedd y sesiwn am heddiw. That brings us to the end of today's session.

*Daeth y cyfarfod i ben am 12.28 p.m.*  
*The meeting ended at 12.28 p.m.*