



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

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

**Dydd Iau, 18 Ebrill 2013  
Thursday, 18 April 2013**

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

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

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

|                 |                                                           |
|-----------------|-----------------------------------------------------------|
| Mick Antoni     | Llafur<br>Labour                                          |
| Vaughan Gething | Llafur (Cadeirydd y Pwyllgor)<br>Labour (Committee Chair) |
| Rebecca Evans   | Llafur<br>Labour                                          |
| Gwyn R. Price   | Llafur<br>Labour                                          |
| William Graham  | Ceidwadwyr Cymreig<br>Welsh Conservatives                 |
| Elin Jones      | Plaid Cymru<br>The Party of Wales                         |
| Darren Millar   | Ceidwadwyr Cymreig<br>Welsh Conservatives                 |
| Lynne Neagle    | Llafur<br>Labour                                          |
| Lindsay Whittle | Plaid Cymru<br>The Party of Wales                         |
| Kirsty Williams | Democratiaid Rhyddfrydol Cymru<br>Welsh Liberal Democrats |

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

|                  |                                                                                                                                                                                                                                             |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Constance Adams  | Uwch-swyddog Polisi, Cyngor Gweithredu Gwirfoddol Cymru<br>Senior Policy Officer, Wales Council for Voluntary Action                                                                                                                        |
| Gwen Carrington  | Cyfarwyddwr Gwasanaethau Cymdeithasol, Cyngor Sir Ynys Môn<br>Director of Social Services, Isle of Anglesey County Council                                                                                                                  |
| Phil Evans       | Cyfarwyddwr Gwasanaethau Cymdeithasol, Bro Morgannwg a Llywydd Cymdeithas Cyfarwyddwyr Gwasanaethau Cymdeithasol Cymru<br>Director of Social Services, Vale of Glamorgan and President of Association of Directors of Social Services Cymru |
| Mario Kreft      | Cadeirydd, Fforwm Gofal Cymru<br>Chairman, Care Forum Wales                                                                                                                                                                                 |
| Mike Lubinski    | Uwch-gyfreithiwr Tîm Gofal Cymdeithasol, Llywodreth Cymru<br>Senior Lawyer Social Care Team, Welsh Government                                                                                                                               |
| Steve Milsom     | Dirprwy Gyfarwyddwr Polisi a Strategaethau, Llywodraeth Cymru<br>Deputy Director Policy and Strategies, Welsh Government                                                                                                                    |
| Martyn Palfreman | Pennaeth y Gyfarwyddiaeth, Cymdeithas Llywodraeth Leol Cymru<br>Head of Directorate, Welsh Local Government Association                                                                                                                     |

|                  |                                                                                                                                                                                             |
|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Malcolm Perrett  | Perchennog Cartref Gofal<br>Care Home Owner                                                                                                                                                 |
| Julie Rogers     | Dirprwy Gyfarwyddwr Is-adran Deddfwriaeth a Pholisi<br>Gwasanaethau Cymdeithasol, Llywodraeth Cymru<br>Deputy Director Social Services Legislation and Policy<br>Division, Welsh Government |
| Elizabeth Thomas | Cyfarwyddwr Ymchwiliadau a Chynghorydd Cyfreithiol,<br>Ombwdsmon Gwasanaethau Cyhoeddus Cymru<br>Director of Investigations and Legal Adviser, Public Services<br>Ombudsman for Wales       |
| Gwenda Thomas    | Aelod Cynulliad, Llafur (y Dirprwy Weinidog Gwasanaethau<br>Cymdeithasol)<br>Assembly Member, Labour (the Deputy Minister for Social<br>Services)                                           |
| Peter Tyndall    | Ombwdsmon Gwasanaethau Cyhoeddus Cymru<br>Public Services Ombudsman for Wales                                                                                                               |
| Emily Warren     | Arweinydd Polisi Gwasanaethau Cymdeithasol, Cymdeithas<br>Llywodraeth Leol Cymru<br>Social Services Policy Lead, Welsh Local Government<br>Association                                      |
| Mary Wimbury     | Cynghorydd Polisi, Fforwm Gofal Cymru<br>Policy Adviser, Care Forum Wales                                                                                                                   |

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

|                  |                                                     |
|------------------|-----------------------------------------------------|
| Fay Buckle       | Clerc<br>Clerk                                      |
| Claire Griffiths | Dirprwy Glerc<br>Deputy Clerk                       |
| Joanest Jackson  | Uwch-gynghorydd Cyfreithiol<br>Senior Legal Adviser |
| Lisa Salkeld     | Cynghorydd Cyfreithiol<br>Legal Adviser             |

*Dechreuodd y cyfarfod am 9.00 a.m.*  
*The meeting began at 9.00 a.m.*

**Cyflwyniad, Ymddiheuriadau a Dirprwyon**  
**Introductions, Apologies and Substitutions**

[1] **Vaughan Gething:** Welcome and good morning to members of the committee. This is a public meeting of the Health and Social Care Committee. I would like to start by welcoming our newest permanent member of the committee, Gwyn Price AM. Welcome and we look forward to having many contributions from you in the coming months.

[2] **Gwyn R. Price:** Thank you.

[3] **Vaughan Gething:** The meeting is of course bilingual and headphones are provided with simultaneous translation on channel 1. If you have not done so already, please turn off your mobile phones and other electronic equipment. You do not need to touch the microphones, as usual, and there are no planned fire alarms, so, if the alarm does go off, please follow the ushers' instructions. No apologies have been received, but I am aware that the Public Accounts Committee is meeting this morning, so comrade Millar will not be

joining us for at least some of today's meeting.

9.02 a.m.

## **Y Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 1** **Social Services and Well-being (Wales) Bill: Evidence Session 1**

[4] **Vaughan Gething:** Today's meeting is to consider the Social Services and Well-being (Wales) Bill. We are pleased to have the Deputy Minister for Social Services, Gwenda Thomas, with us. This is the start of the evidence-taking process as part of Stage 1 scrutiny. We will have plenty of time to ask a range of questions. We will have a brief opening statement from the Deputy Minister and then we will go on to start with questions. Deputy Minister, do you want to start and introduce your officials?

[5] **The Deputy Minister for Social Services (Gwenda Thomas):** Yes. Would you like to introduce yourselves?

[6] **Mr Lubienski:** I am Mike Lubienski. I am the senior lawyer in the social care team in the Welsh Government's Legal Services.

[7] **Mr Milsom:** Good morning. I am Steve Milsom. I am the deputy director for policy and strategy for social services.

[8] **Ms Rogers:** Good morning. I am Julie Rogers and I am the senior responsible officer for the Bill and deputy director in legislation and policy.

[9] **Vaughan Gething:** Deputy Minister, would you like to make a brief statement? We will then start with questions.

[10] **Gwenda Thomas:** Yes, thank you. I am pleased to be here today and I welcome the committee's scrutiny of this very important Bill. It is a Bill that will test the Assembly's primary legislation-making powers and that marks an important step in the story of devolution. It is through the process of scrutiny that we will together ensure the foundations for social care in Wales and ensure that they are fit for purpose. It is only through solid foundations that we can build something that will last. Scrutiny will also provide the people of Wales with assurances that we are trying to build a fairer country through a Bill aimed at providing the voice and control necessary for some of those most at risk in our society to live fulfilled lives. The Bill is built on a broad consensus and I am grateful for the contribution made by stakeholders and Assembly Members of all parties in articulating a vision on finding a way forward. I would like to place on record my sincere thanks for the assistance and support in getting us to where we are now.

[11] **Vaughan Gething:** I will start with the opening question and we will then go around Members. One of the suggestions that has been made to us about the Bill and the understanding of it is that perhaps it could benefit from having a statement of statutory principles, as suggested in the Law Commission's report, which I know that you drew upon in the drafting of the Bill. Have you considered having that statement of statutory principles on the face of the Bill? If so, are you prepared to reconsider whether it would be appropriate or explain why you think that it is not needed?

[12] **Gwenda Thomas:** We have considered this and I am aware of what the Law Commission said, but I believe that these principles are permeating their way right through the Bill. I believe that it is better to have that, and to have that thematically right through the consideration and development of the Bill, rather than confining ourselves to a list of services. That is the reason behind that.

[13] **Vaughan Gething:** Have you considered a statement of principles that might be more than just a list of services: a list of the themes at the start of the Bill, which are then still set out in the different sections, as they are at present with the different themes that run through?

[14] **Gwenda Thomas:** I believe that they are thematic right through the Bill. The Bill is built on a set of principles—wellbeing, voice and control and citizen-centred services—and it would confine the futureproofing of the Bill if we were to limit ourselves to just a list of services. It is my view that this is a better way of approaching what we want to see, which is a Bill that will stand us in good stead for generations.

[15] **William Graham:** On section 6 regarding preventative services, given that you intend to make services more available and to a much wider section of the population than those who had an assessment just for care and support, would you like to amplify that for us?

[16] **Gwenda Thomas:** Can you say that middle bit again? Sorry, William.

[17] **William Graham:** On the preventative services, could you amplify on that, on how you intend they should operate, particularly as they are now going to be wider?

[18] **Gwenda Thomas:** I believe that developing preventative services is extremely important. Examples of preventative services are community reablement services and parenting support services. The important thing with preventative services is that they are there to prevent and delay the need for more intense services. We have moved too far away from that principle, in my view, and we have stopped doing the simple things that, very often, are what people need. We need to listen to people and assess their needs proportionately. We have moved away from services such as cleaning the house, shopping, befriending and gardening, and that has not been a good move. I view some preventative services as being of that nature and some that could be provided through social enterprises.

[19] **William Graham:** Do you think that it might have been better to describe in the Bill the actual preventative services that you have in mind?

[20] **Gwenda Thomas:** To use the word ‘preventative’ and to look to the development of the code of practice, which will develop the thinking and set out a clear legislative framework, I think that to list all those things, it could be endless, really. In my view, it is the simple things that would keep people independent for longer and are the things that people tell me are important to them.

[21] **Rebecca Evans:** Have you made any assessment of the resource implications that would be involved with increasing preventative services?

[22] **Gwenda Thomas:** The regulatory impact assessment was as clear as it could have been at the point of the introduction of the Bill and was decreed by the Presiding Officer to be compliant with Standing Orders. I know that some committee members have raised concern—Kirsty Williams talked about it yesterday—but I think that resource implications will become clearer as we develop the regulations. At that point, I am quite prepared, Chair, to come back to committee and develop the information that is included in the RIA at the moment. However, there are already examples of local authorities going down this path. They are identifying that by investing in simple services they can bring their own savings to their own budgets, and analysis from authorities would be useful as well. There will be resource implications, but this is really about doing different things—we have to do different things and we cannot keep on doing the same things in different ways because, as I said yesterday, we cannot buy our way out of what is facing us. We know that we are restricted in the

resources that are available to us. However, I am prepared to work with the Association of Directors of Social Services Cymru, the Welsh Local Government Association and other partners and certainly with this committee to develop the thinking around the RIA.

[23] **Vaughan Gething:** Gwyn, did you want to come in on this point?

[24] **Gwyn R. Price:** Yes. On the consultation on existing legislation, what information is available or will be provided on existing legislation that would be repealed when it is replaced by provisions in the Bill? Are you confident that, where existing legislation is to be repealed, important provisions will not be lost through that procedure?

[25] **Gwenda Thomas:** They have to look at existing legislation and some new legislation that will come on stream. However, there is ongoing dialogue with Whitehall counterparts with regard to existing legislation—we saw the legislative consent motion this week that arose from the Children and Families Bill, which is a new Bill. However, some things in existing legislation will have to stay, for example, the Children Act 1989, where part of that Act relates to court proceedings. So, it will not do away with all existing legislation and we will need to ensure that we are very aware of the link with existing legislation. I have been briefed by lawyers on that. So, there will be some things that we will repeal and there will be some aspects of existing legislation that will remain.

[26] **Vaughan Gething:** Before we move on to Kirsty Williams—

[27] **Kirsty Williams:** I want to go back to where you started.

[28] **Vaughan Gething:** No problem. I just want to go back to preventative services because, during a previous inquiry on residential care, one of the points that was made to us was that, potentially, things that we may see as being preventative, such as gardening or shopping provision, may actually lead to the citizen becoming reliant on those services. So, rather than such services being preventative, people could end up being more dependent rather than less so. Is that a matter that you have considered and are you confident that providing the full range of preventative services that you have described will not lead to a greater level of dependence on different services?

[29] **Gwenda Thomas:** I do not agree with that because I think that developing these preventative services is very important and, although you would look forward to these happening in your life and being there for you, I think that people's life course might mean that their own situation and health might deteriorate, so I do not think that that would create a dependency culture on simple services. People tell me that they have missed these services and I certainly think that it is isolating to see your garden becoming overgrown, to have to worry about shopping and not being able to go online easily to shop at Tesco, for example, or not have anyone call to see and befriend you. I believe that preventative services would prevent people from becoming more dependent sooner; I know that they would not do away with that dependency forever, but it would mean that people could retain their independence for longer and that is how I would look at preventative services.

[30] **Vaughan Gething:** Kirsty, you can go back to the start on statutory principles now and then we will come back to you on a different area.

9.15 a.m.

[31] **Kirsty Williams:** Deputy Minister, may I go back to where the Chair started? The Government's stated intention in this legislation is to consolidate and clarify social care law. I would not disagree with that aim. Given that that is your aim, and given that good law is law that is understandable and accessible to practitioners and to the public, who will be affected

by it, I am not convinced by your answer to the Chair in relation to why the statutory principles are not on the face of the Bill. If it is true that those themes are written throughout the Bill, why have you decided not to consolidate them in a list at the very front of the Bill, and instead expect practitioners and the public to go through it all and pick them out? There is precedent for this in previous legislation, is there not? You have already mentioned the Children Act 1989. The statutory principles are laid out quite clearly in a list at the front of the legislation. This gives people a guide as to how actions and services should be planned. Why have you not done this, and why do you continue to resist it? If it is all there anyway, why not have it in a consolidated list at the front?

[32] **Gwenda Thomas:** I will ask Mike to elaborate on what I have said.

[33] **Mr Lubienski:** Considerable thought was given to the issue of whether there should be a set of statutory principles. We read very carefully the Law Commission's thoughts about why there should be one, and its recommendations and reasoning in relation to that. It is a difficult issue. There are two possible approaches. There are some statutes that have some objectives clauses or purpose clauses. There are some statutes that have principles clauses. Those two things are subtly different. There are merits, advantages and disadvantages with each of those. In the end, part of the reasoning for not having a full set of principles clauses was that we felt that, in the two particular statutes that are prayed in aid by the Law Commission in developing its reasoning—the Children Act and the Mental Capacity Act 2005—the function of the clauses in question is quite different. In the Children Act, for example, the principle clause cited in section 1 of the Act is not a principle that affects the functions of all public authorities. It is a principle regarding how courts should deal with the cases of individual children. It says that they should treat the child's welfare as their paramount consideration, because, within proceedings to do with children where there are families involved, there may be conflicting interests between parents, children and others. So, in the case of the Children Act, even though one might say that the principle of section 1 is influential, in fact it is a principle that applies to court proceedings.

[34] Similarly, the Mental Capacity Act is focused on how the cases of individuals who lack capacity are dealt with, and on the approach that should be taken by professionals and various others in dealing with those cases. Our Bill is different in that it deals not only with how individuals' cases are approached, but with how local government—as the primary provider of services—has to provide services and ensure that it treats the whole population fairly. There is a potential conflict between having principles that strive to put the rights of the individual at the highest point versus the need for a local authority to ensure that it meets the needs of all citizens who are eligible or who may need services in a fair way. That is a far more difficult thing to do in this sort of Bill, which is doing both of those things. So, for that reason, the idea of principles versus purpose clauses has not been abandoned entirely. What this has been reduced to is the content of section 4, expressed as overarching wellbeing duties, which are like principles. We feel that this is the best way to strike a balance between the issues I have mentioned without causing potential conflict with how the law is interpreted in the future. I am sorry for the long answer.

[35] **Kirsty Williams:** Are you saying that the principles by which local government would set about providing services for the general population would be mutually exclusive to how we would deal with an individual? For instance, in requiring a local authority to treat everybody equitably and to involve the individual in the planning of services, I cannot see how those two things are mutually exclusive, and how you cannot have a broad set of principles according to which you would expect local government and other organisations to plan their services. I appreciate that you might have a situation where an individual requires a high level of input that might jeopardise the ability of a local authority to provide services to somebody else. However, the basic principles by which that local authority would go about planning and engaging with the population are not mutually exclusive.

[36] It might be hard, but we are legislators now; we are in the business of hard work, are we not? Otherwise, people would not have given us the powers to be here and do it. If, two years after the referendum, we are now saying, ‘Well, it’s all a bit too hard’, I do not think that that is good enough. It is not good enough for me or good enough for my constituents. I do not expect you to respond to this point, but I am not convinced that it cannot be within the wit of the drafters to find a way of expressing on the face of the Bill the basic principles of how we want public services delivered in this area. It is not just me saying that; the Older People’s Commissioner for Wales, the Law Society and academics who work in this field are all saying it. So, we are not a lone voice in the wilderness.

[37] To come back to another point—

[38] **Gwenda Thomas:** May I come in on that, first?

[39] **Kirsty Williams:** Yes, of course.

[40] **Gwenda Thomas:** We need to focus on the fact that we are legislating for a clear new direction here for social services in Wales. My feeling is that embedding the core changes to services—because these are core changes—throughout the whole of the Bill is better than producing a list on the face of the Bill that might confine us in the future and our ability to change regulations, or subordinate legislation, as the need arises, rather than having to go back to change primary legislation on the face of the Bill. That is my thinking.

[41] **Kirsty Williams:** Absolutely. However, I would hope that the principles by which we treat people would not be subject to such change, whereas individual details will.

[42] That brings me nicely on to the point about the balance between what is on the face of the Bill and regulation. The reality is, if I vote for this as it stands, I do not have a clue how this will affect individuals in Wales, because all of that will be decided by regulation. What steps are you taking to ensure that Assembly Members will have a clearer idea of the impact of this legislation before we have to vote at Stage 3? Why do you feel that this is the appropriate balance? In the end, we do not know to whom this law will apply, who will be responsible for enforcing it, or what the consequences will be if they do not enforce it. That is before we go on to the issue of how it will be paid for. So, could you explain to us how you have come to the decision of what is on the face of the Bill and what is left to regulation?

[43] **Gwenda Thomas:** As I have already said, I have explained the need to futureproof the Bill. Officials are working very hard now to develop these regulations and subordinate legislation, and, of course, the detail will be in the regulations. I give a commitment to committee—and I have asked officials, who are working very hard—that we will have at least priority regulations in place by December. I intend to work with the committee in order to make available to it, on an ongoing basis, the developments, and to consult with it. I also want public consultation on the regulations, where necessary, but I want the committee to have a good idea of the contents of the regulations before you are asked to vote on the Bill. I would not want to proceed in any other way.

[44] **Vaughan Gething:** I call on Lindsay Whittle, and then we will go over to Mick Antoniwi on a different subject.

[45] **Lindsay Whittle:** Good morning, Deputy Minister. This legislation is a golden opportunity. We are talking about social services and wellbeing in Wales, looking after the most vulnerable people in Wales. In my opinion, there are none more vulnerable than young children. As far as I am concerned, this is a golden opportunity to include a provision in the Bill that will ban the smacking of children. In the consultation, consultee after consultee has



said to us, 'Please include this in the Bill'. On two occasions, in two separate Governments' terms of office, the Assembly has agreed on this, but it keeps getting pushed back, and possibly to the next Government term of office in the next Assembly. Why can we not do it now? This is a golden opportunity. I urge you, Deputy Minister, to please not miss it. I am sure that I will put in amendments, and I believe that other Members will join me.

[46] **Gwenda Thomas:** I am aware of what has been said on this serious topic. I am thinking about it and reflecting on where we are as a Government at the moment. Our programme for government commits us to working to make the physical punishment of children and young people unacceptable through the promotion of positive alternatives. This option is not available in the Bill at the moment, and we all know how the passage of a Bill can develop. As Lindsay Whittle said, while the current and previous Welsh Governments have shown a commitment to legal reform on this issue, I want to see a positive, deep-seated change in Welsh culture that leads to physical punishment, as I have said, being seen as unacceptable. I do not think that we have developed those parenting strategies adequately, and we need an awareness-raising programme on that. You will know that I committed to that when I was Deputy Minister for Social Services and Children. This issue has moved out of my portfolio now, but we have developed and seconded help from Children in Wales to look at the development of parenting, and we have to reach the hearts and souls of people and bring people with us. However, it is not for me to anticipate what will happen during the passage of the Bill. I am strongly of the view that serious thought needs to be given to this.

[47] I am advised that, if there were to be an amendment, there could be a serious challenge to our competence, although there will be opinions on both sides. I do not think that it is going too far to say that that would end up seeking resolution in the courts. The provisions in the Bill are urgent. We need this legislation as soon as possible, because contained in the Bill are provisions that could lead to so much improvement that could happen in the lives of vulnerable children that I see my business, at the moment, as ensuring the swift passage of the Bill so that the regulations can be brought into law. I am not able to be more open than that with the committee on this issue this morning.

[48] **Lindsay Whittle:** May I quickly come back on that? I appreciate your honesty and sincerity, and I do not doubt them for a moment, but from whom do you envisage a challenge in the courts?

[49] **Gwenda Thomas:** I believe that that would come from the coalition Government, and the indications are that that would happen. The question arises of whether it is a welfare issue or a criminal justice issue. I anticipate that that would not be easily resolved, with firm views here in the Assembly and equally firm views in the Government at Westminster. That is what I would anticipate.

9.30 a.m.

[50] **Lindsay Whittle:** It is interesting that we have these law-making powers and yet we are continually being tied to the Westminster Government. I throw my hands up in despair at times, but there you go.

[51] **Vaughan Gething:** I will take that as a comment rather than a question. William, did you have a question on this issue? No? Then Mick Antoniw is next and then Rebecca Evans, on different subjects.

[52] **Mick Antoniw:** One of the comments that has been made about the Bill is that it is quite woolly—that is, it contains a lot of aspirational objectives. It is, as you say, consolidatory and enabling in the way of legislation, and the key at the end is what comes in practice. There is an enormous overlap between the responsibilities of local health boards and

local authorities, and some of that is addressed in the Bill in the obligations to participate and co-operate, and in some amendments to the 2006 Act. My concern on this is how will that work in practice, because it seems to me that there is an enormous area for conflict, so that, even if the same or similar objectives are imposed on both to co-operate and work together for a common objective, of course there are issues as to what happens in practice—who is responsible, who pays, and so on. How do you envisage that being resolved and becoming an area of advancement rather than an area of conflict?

[53] **Gwenda Thomas:** A lot of hard work is going on at the moment by officials with local authorities and local health boards, and very encouraging signs are emerging as to the commitment and the willingness to work together. This is not new, is it? If you look at integrated family support services, that is exactly what we did: we legislated for interaction between local government and local health boards with the involvement of the third sector, the independent sector, and I think the development of IFSS is a good example for us to follow. We did legislate, and I have gone around talking to front-line workers who are working hard to develop that service, and they welcome the clarity that the legislation brought to them. They welcome the clarity of knowing how this would work. The LHBs are developing their thinking with local authorities. The other example that comes to mind is carers strategies, where we did just that again: we legislated for joint working between local authorities and local health boards, and we gave the money to the health boards, and the health boards are distributing that money in the way required by the legislation. So, there are good examples of where legislation has worked, and has helped and facilitated the development of services for people.

[54] **Mick Antoniw:** Taking that one step further, of course a substantial portion of the Welsh population lives in close proximity to the border with England, and, whereas we can legislate in respect of the framework for Wales, the services know no boundaries, to some extent. How do you envisage that relationships across the border will work and develop?

[55] **Gwenda Thomas:** That is an issue that is being worked on and developed. To give an example of that, I think we are just about to introduce or to agree to a legislative consent motion on the placement of people in residential care—a cross-border issue that is very important indeed. Somehow or other, this was never legislated upon, so what has happened recently is that England, Wales, Scotland and Northern Ireland have come together to look at this gap in the law, and we are now developing policies. At the moment, a person cannot be placed in England from Wales, or vice versa, and that is a nonsense for people who live on the border. That is an example of how we develop cross-party working and move to regulation that helps the service. Very shortly, I hope to be able to issue a statement on that and to agree to a legislative competence motion.

[56] **Mick Antoniw:** Is it your view, then, Deputy Minister, that what is happening across the border is very much in line with the general objectives in the legislation itself, and that we are actually all moving, although we may have our own specific legislation, co-operatively in a common direction?

[57] **Gwenda Thomas:** Yes, indeed, and that forms part of the work on the Bill—a very important part that is gaining a lot of success with regard to the interaction between officials here and officials in Whitehall.

[58] **Mr Lubienski:** The Deputy Minister mentioned the discussions going on at the moment with the UK Government about provision for cross-border placement. I think that the Deputy Minister said that placements between England and Wales are not currently possible. Placements between England and Wales are currently possible; the work that is going on will ensure that there can be placements from Wales to Scotland and Northern Ireland, and vice versa, which are not possible under the law as it currently stands.

[59] **Gwenda Thomas:** Sorry about that.

[60] **Vaughan Gething:** While we are on the general area of co-operation, partnership and integration, Deputy Minister, the scheme of the Bill appears to be one that enables greater co-operation, partnership and integration, rather than one that requires it—certainly on the face of the Bill. Interestingly, the WLGA suggests that there should be greater emphasis on requiring that, and on mandating that level of integration. Are you happy that the Bill, as it is drafted, will, on the face of it, deliver the levels of co-operation, partnership and integration that you clearly seek to see in practice?

[61] **Gwenda Thomas:** Yes, I am. It is section 146, I think, that will ensure that we do have the powers in regulation to ensure that there is this integration. There is a willingness to integrate already, and we need to build upon that. This is not a new concept for local government and local health boards. I know that we have heard a lot about the Gwent frailty project, but I would like to give more examples like that. We have the Wyn project in Cardiff and Vale and an excellent project in Hywel Dda, which is showing very encouraging signs. In Cwm Taf, in Anglesey, and in Wrexham, we have the integrated family support teams, and we have the carers strategies, as I have already mentioned. So, the concept of integration, I think, is well accepted. It is a nonsense to seek to continue delivering services without the principle of integration at their heart. There is a willingness out there to become involved, and, within the Bill, there is also a provision to develop partnership arrangements that can be further developed through regulations. We will do that, and, of course, keep the committee informed of that development.

[62] **Vaughan Gething:** We have Elin Jones on this point, and I will come back to Mick, again on this point.

[63] **Elin Jones:** Bore da, Ddirprwy Weinidog. Am y maes hwn yr oeddwn am ofyn rhai cwestiynau i chi hefyd. Rwy'n derbyn eich ateb i'r Cadeirydd ynglŷn â'r ewyllys da sydd at integreiddio. Felly, nid wyf yn hollol glir pam nad ydych yn edrych i roi rhywbeth â mwy o orfodaeth ar wyneb y Bil am integreiddio. Mae pwerau sylweddol yn y Bil i Weinidogion Cymru i greu rheoliadau a fyddai'n cyfuno gwaith partneriaeth rhwng bwrdd iechyd ac awdurdod lleol, neu efallai fwy nag un awdurdod lleol, a'r hyn nad yw'n glir yw fel yr ydych yn rhagweld y pwerau hynny'n cael eu datblygu drwy reoliadau. A ydych yn rhagweld y byddwch chi fel Llywodraeth yn datblygu polisi a fydd yn edrych i ddefnyddio rheoliadau Cymru gyfan a hyrwyddo partneriaeth ac integreiddio rhwng pob bwrdd iechyd a phob awdurdod lleol, neu a oes posibilrwydd taw yn *patchy* y bydd hyn yn datblygu? Hynny yw, a yw'n bosibl y bydd rheoliad yn ardal Hywel Dda rhwng y tri awdurdod lleol a'r bwrdd iechyd yn yr achos hwnnw? Byddwn am eich annog i edrych ar rywbeth sy'n creu model gyffredin ledled Cymru yn hytrach na rywbeth sy'n *patchy*, os

**Elin Jones:** Good morning, Deputy Minister. It is about this area that I, too, wanted to ask you a few questions. I accept the answer that you gave the Chair about the goodwill that exists towards integration. Therefore, I am not entirely clear about why you are not looking to include something with a greater degree of compulsion on the face of the Bill about integration. There are substantial powers in the Bill for Welsh Ministers to create regulations that would combine partnership working between a health board and a local authority, or perhaps more than one local authority, and what is not clear is how you envisage these powers being developed through regulations. Do you envisage that you as a Government will develop policy that will look to use all-Wales regulations and promote partnership and integration between every health board and every local authority, or is there any possibility that the development of this will be patchy? That is, is it possible that there would be a regulation in the Hywel Dda area between the three local authorities and health board in that case? I would want to urge you to look at something that creates a common

gallaf ddefnyddio'r term hwnnw.

model across Wales rather than something that is patchy, if I can use that term.

[64] Hoffwn ofyn am faes sy'n gysylltiedig â hwn hefyd. Mae'r pwerau yn yr adran hon yn rhoi pwerau i gyfuno cyllidebau. Mae hynny'n faes sydd o ddiddordeb i nifer o bobl, oherwydd ei bod yn effeithio ar y ffordd y mae unigolion yn cael mynediad at wasanaethau. Rydym yn ymwybodol o'r *turf wars* sy'n gallu datblygu rhwng bwrdd iechyd ac awdurdod lleol ambell waith ynglŷn â phwy sy'n ariannu'r rhain. Felly, hoffwn ddeall, fel Llywodraeth, beth yw eich polisi ar gyfuno cyllideb rhwng awdurdod lleol a bwrdd iechyd—hynny yw, y NHS a'r awdurdod lleol. Beth yw eich polisi a'ch gweledigaeth? A ydych am weld hwn yn digwydd? Os felly, pam nad yw'n orfodol ar wyneb y Bil?

I also want to ask about an associated area. The powers in this section give powers to pool budgets. That is an area that is of interest to many people, because it affects the way in which individuals have access to services. We know about the turf wars that can develop between a health board and a local authority sometimes with regard to who funds these. I want to understand what, as a Government, is your policy on combining budgets between a local authority and a health board—that is, the NHS and the local authority. What is your policy and your vision? Do you want to see this happen? If so, why is it not being made compulsory on the face of the Bill?

[65] **Gwenda Thomas:** I ddechrau yn y dechrau, credaf y gallai'r egwyddor hon fod yn genedlaethol. Hoffwn weld cysondeb yn y dull o integreiddio hwn drwy Gymru gyfan. Fodd bynnag, gall hynny hefyd fod yn fater o ddatblygu polisiau yn lleol, o fewn y fframwaith cenedlaethol. Gwyddom y bydd fframwaith cenedlaethol ar ganlyniadau, a dyna fydd yn egwyddor flaengar o ran y ddeddfwriaeth hon. Felly, gall y ddau bodoli a gallai bod yn ofynnol i gael fframwaith cenedlaethol a hyblygrwydd yn lleol hefyd i ddatblygu hynny. Credaf fod cyfuno'r gyllideb yn bwysig iawn. Mae hynny yn digwydd, wrth gwrs.

**Gwenda Thomas:** To begin at the beginning, I think that this principle could be a national one. I would like to see consistency in the method of integration throughout Wales. However, that could also be a matter of developing policies locally, within the national framework. We know that there will be a national framework on outcomes, and that will be a prominent principle of this legislation. Therefore, both can exist and it could be compulsory to have a national framework and there would be flexibility on a local level to develop that as well. I think that combining budgets is very important and that is, of course, happening.

[66] Efallai y byddai o help i'r pwyllgor i wybod y byddaf yn gwneud datganiad heb fod yn hir ar integreiddio gwasanaethau i bobl hŷn ag anghenion cymhleth. Bydd y datganiad hwnnw yn cael ei wneud o fewn ychydig wythnosau, rwy'n credu, ac efallai y bydd hynny'n helpu'r pwyllgor i ddeall sut yr ydym wedi datblygu'r egwyddor o integreiddio. Credaf ei fod yn nonsens pan rydym yn gweld pobl yn becho pan fydd angen gwasanaeth arnynt a'u bod yn gorfod meddwl am bwy fydd yn talu am un peth a phwy fydd yn talu am ryw beth arall, a'u bod yn gorfod edrych a cheisio datrys y cymhlethdod hwn. Mae'n rhaid i ni gael gwared â hynny. Credaf y bydd y rheoliadau yn rhoi ffordd i ni wneud hynny a byddwn yn datblygu hynny wrth i ni fynd ymlaen gyda'r

It might be helpful to the committee to know that I will be making a statement before long on integrating services for older people with complex needs. The statement will be made within a few weeks, I believe, and it may help the committee to understand how we have developed the principle of integration. I think that it is a nonsense when we see people worrying when they need services and they have to think about who will pay for this and who will pay for that, and they have to look to try to resolve this complexity. We have to get rid of that situation. I think that the regulations will offer a way for us to do that and we will be developing that as we progress with the work on the Bill.

gwaith ar y Bil.

[67] **Elin Jones:** Hoffwn ymateb yn gyflym i hynny. Hoffwn ichi ystyried rhoi hynny ar wyneb y Bil yn hytrach na'i fod yn fater i reoliadau. Hynny yw, bod ymrwymiad i hynny ar wyneb y Bil. Yn yr adran hon, mae llawer yn cael ei roi fel pwerau i Weinidogion greu rheoliadau. Efallai nad yw'n gwbl glir yn yr adran sut yr ydych yn bwriadu defnyddio'r rheoliadau hynny wedyn. Credaf, yn y maes hwn o gyfuno cyllidebau—ac rwy'n edrych ymlaen at glywed beth fydd cynnwys eich datganiad—bod rhywbeth pwysig iawn y gellir rhoi ar wyneb y Bil fyddai'n rhoi sicrwydd i'r unigolion hynny yr ydym i gyd yn ymwybodol ohonynt yn ein hetholaethau ac yn cael gwared ar y nonsens yma, fel y bu ichi ei alw.

[68] **Gwenda Thomas:** Mae cyfuno cyllidebau yn digwydd ar y foment, wrth gwrs, ac mae esiamplau gwych o hynny'n digwydd. Fodd bynnag, credaf fod yn rhaid i ni bod yn ofalus faint rydym yn rhoi ar wyneb y Bil oherwydd, fel y bu imi ddweud, mae'n rhaid ein bod yn gallu newid rheoliadau os oes angen gwneud hynny yn y dyfodol. Mae'r egwyddor o integreiddio yn rhywbeth a dderbyniwyd yn helaeth gan awdurdodau lleol a byrddau iechyd. Rydym yn gweithio'n galed gyda Chymdeithas Llywodraeth Leol Cymru ac ADSS Cymru, ac maent yn rhan o'r gwaith i ddatblygu'r union beth rydym yn siarad amdano.

9.45 a.m.

[69] **Elin Jones:** Mae gennnyf gwestiwn byr ar hyn hefyd. Pan rydym yn sôn am gyfuno cyllideb rhwng yr NHS ac awdurdod lleol, yn bennaf, a oes problem i'r Llywodraeth wrth wneud hynny oherwydd y ffaith bod yr NHS am ddim ar y pwynt galw ac nad yw gwasanaethau llywodraeth lleol wastad am ddim i unigolion? A oes unrhyw broblem ariannol gyfreithiol ynglŷn â chyfuno cyllidebau o'r math hwnnw?

[70] **Gwenda Thomas:** Nid wyf yn ymwybodol bod problem. Nid yw'r Bil yn newid y ffaith bod y gwasanaeth iechyd am ddim ac nad yw gwasanaethau cymdeithasol yn un peth. Nid wyf yn gweld problem. Nid

**Elin Jones:** I wish to respond to that quickly. I would like you to consider including that on the face of the Bill rather than it being a matter for regulations. That is, that there is a commitment to that on the face of the Bill. In this section, a lot of power is given to Ministers to make regulations. Perhaps it is not entirely clear in the section how you then intend to use those regulations. I think that, in this area of combining budgets—and I look forward to hearing the content of your statement—there is something very important that could be put on the face of the Bill that would provide certainty to those individuals whom we all know about in our constituencies and would get rid of this nonsense, as you called it.

**Gwenda Thomas:** The combining of budgets takes place at the moment, of course, and there are excellent examples of that happening. However, I think that we must be careful how much we put on the face of the Bill because, as I said, we must be able to change regulations if we need to do so in the future. The principle of integration is something that has been broadly welcomed by local authorities and health boards. We are working hard with the the Welsh Local Government Association and ADSS Cymru, and they are part of developing exactly what we are talking about.

**Elin Jones:** I have a brief question on this as well. When we are talking primarily of combining budgets between the NHS and the local authority, is there a problem for the Government in doing so due to the fact that the NHS is free at the point of delivery, and that local government services are not always free of charge to individuals? Is there any legal financial problem regarding combining budgets of that kind?

**Gwenda Thomas:** I am not aware that there is a problem. The Bill does not change the fact that the health service is free of charge and that social services are not the same. I do not see a problem. The Bill is not limited to

yw'r Bil yn gyfyngedig i wasanaethau cymdeithasol—mae'n ymestyn i'r gwasanaeth iechyd hefyd, ac mae hynny yn bendant yn y Bil. Er ein bod yn ei alw yn Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru), mae'n ymestyn mewn cyfraith i'r gwasanaeth iechyd hefyd. social services—it also extends to the health service, and that is clear in the Bill. Although it is called Social Services and Well-being (Wales) Bill, it also extends in law to the health service.

[71] **Mick Antoniw:** To follow on from something that I forgot to ask in my earlier point, do you envisage that the nature of relationships with local authorities and health boards cross border will be the responsibility of the local authorities and health boards in Wales to do their bit, or will it be the responsibility of Welsh Government to secure a common protocol?

[72] **Gwenda Thomas:** The safeguarding proposals are an example of that, where we have clearly defined six geographic footprints. We have made it clear that we will develop the safeguarding policies on the six footprints. That is an example of how the Bill gives us the power to develop regulations that will allow us to define the development of partnership working between local health boards and constituent authorities. I believe that there is a power to direct, if that is needed, but we are not there. The indications are that there is a willingness to work in this way and to develop services on that premise. We have seen some attempts at merging on different geographic footprints as well. I gave the example of the safeguarding issue, but we also saw the Caerphilly and Blaenau Gwent co-operative attempt, which, sadly, has not been as successful. We need to develop our thinking as experience teaches us; Julie is indicating that she would like to say something here.

[73] **Ms Rogers:** To add to that, by the time that the Deputy Minister comes back to the committee on 6 June, we should be in a position to give you more information about the cross-border negotiations that we have had with Whitehall. There have been extensive discussions, as the Deputy Minister mentioned earlier, and we are at a point where we have reached agreement on those key areas at official level, so that now needs to be discussed at a ministerial level. However, I remind the committee that the draft Care and Support Bill and the Children and Families Bill in England and the relevant UK Government departments need our agreement for cross-border purposes as much as we need it for this Bill. So, there is a willingness on everyone's part to join this up. There are some technical complications, because we do not know which of the three pieces of legislation will be made first. We and lawyers have been looking very carefully to see which provides the best solution but we should be able to say more about that when we come back to the committee on 6 June.

[74] **William Graham:** Deputy Minister, you must agree that the point about the shared budget is crucial for the whole future of this Bill. Time after time, we have heard in this committee—and you will know from your own experience—that the difficulties in sharing the budget between those communities are resolved at great cost in a scarce budget. So, the money is not used for the people who really need it. It is absolutely crucial to this Bill. Can you give us your assurance that you are determined that those budgets should be adequately shared and that there should be no longer these terrible silos between the two departments?

[75] **Gwenda Thomas:** Yes. I agree that the shared budget is an integral part of integration. The regulations will allow us to develop that. We will work with the committee during the development of those regulations.

[76] **Kirsty Williams:** However, the evidence from the WLGA and the Association of Directors of Social Services, which this committee will hear from later today, says that there is nothing in this legislation that will make a difference to the ability to share budgets. That ability has been there since I have been an Assembly Member, but it does not happen; we all know that. The evidence that we will have later today will say that there is nothing in this Bill

that will make it happen more regularly than it does at the moment. What, in this legislation, makes you confident that budgets will be shared between local authorities and the NHS in a way that has not been done in the last 11 years? What, in the Bill, makes that more likely to happen?

[77] **Gwenda Thomas:** Powers in section 147 of the Bill will enable us to make regulations, direct particular service models and achieve greater consistency across Wales. If there is any contention there between our understanding and the understanding of the WLGA and the ADSS, I am sure that we would want to approach that.

[78] **Kirsty Williams:** Of course, we have not seen the regulations and neither have they, so we are working in the dark, are we not?

[79] **Gwenda Thomas:** No, but section 147 of the Bill is the section of the Bill that allows this.

[80] **Mr Milsom:** Deputy Minister, if I may clarify that point a little. There has been a lot of intensive work around integration with the WLGA, the ADSS, LHB representatives and the third sector over the last four months and more. When the Ministers make their statement on this shortly, you will see some of the detail of that come forward. This is very much evidence based. There is evidence from across Europe about integration. We have been working in particular with the King's Fund, which has recently published a very helpful paper around that. The message there is that nobody, nowhere has found the solution to integration. So, in Wales, we have to forge our own. On pooled budgets, there is a list of critical factors that evidence and evaluation has identified and pooled budgets and joint appointments are on that list, importantly. We need to build on that. When the written statement is made, that will herald consultation on this issue. Then there will be even more clarity. Perhaps that is something that could be followed up on 6 June as well.

[81] **Kirsty Williams:** For the record, section 147 says that authorities 'may' make arrangements for pooled budgets. They have been able to make those arrangements for the last 11, 12 or 13 years.

[82] **Gwenda Thomas:** I will read from section 148, Chair, to seek to bring clarity. Section 148 is headed 'Resources for partnership arrangements'. Section 148(3) states that

[83] 'Regulations may make further provision'—

[84] so it does give us the power to do it—

[85] 'about the funding of partnership arrangements, including...(a) requiring a local authority or a Local Health Board to establish and maintain a pooled fund'.

[86] So, the provision is there and the power is there. I am sure that we will want to work with our partners and friends in the ADSS and the WLGA to develop this and clear up anything that needs to be cleared up.

[87] **Vaughan Gething:** I think that we go now to Rebecca Evans on a different topic.

[88] **Rebecca Evans:** We have heard from a number of organisations that independent advocacy is the key to the Bill achieving its aims. How do you respond to suggestions that the failure to include a requirement to provide independent advocacy is a missed opportunity?

[89] **Gwenda Thomas:** I am very aware of observations on that. I want to listen to what is being said about advocacy, which has been said by so many people, so many times. We have

to have due regard for what is being said. I recognise the importance and value of advocacy. As I have said, this has been raised a lot by stakeholders. I have, therefore, asked officials to explore the scope of the provision within the Bill in this area. I hope to be able to say something more on this before the end of this stage of scrutiny. I would not rule out a Government amendment being brought forward in this area if that would allow for the extension of advocacy for further groups and in further circumstances. So, I am thinking about that.

[90] **Rebecca Evans:** That is very welcome news, Deputy Minister; thank you. Why have you included the definition of disability that is in the Equality Act 2010 in the Bill? Even though that definition was a step forward at the time, it reinforces the medical model of disability, whereas the Welsh Government has signed up to the social model of disability. Is there a danger that, by including the definition of the Equality Act, you will be narrowing down the number of people and the type of people who will be able to access services?

[91] **Gwenda Thomas:** We have used the Equality Act because that is the most recent Act that we have. I fully support and understand what is being said about the social model: I have always supported the social model. However, we have to be clear that the social model is a concept; it has no basis law. With regard to the requirement of the Bill, we need to have a legal basis for the definition, but I am prepared to consider further whether we could add to the definition in the Equality Act. We need to listen to what people are saying. I am concerned, however, that we have a legislative base for the definition and there being no gap in the law that could raise its head at a later time.

[92] **Rebecca Evans:** Finally, I want to ask you about some terms that have not been defined in the Bill. We have had some concerns raised with us that things like ‘assistance’, ‘abuse and neglect’, ‘care and support need’ and ‘disabled child’ have not been clearly defined in the Bill, and that that could lead to some unwelcome consequences.

[93] **Gwenda Thomas:** I think that we can take the view of the committee on that. On the development of the definitions, we have definitions of some things such as ‘adult at risk’. If the committee is not clear as to what we are saying, section 166, on the general interpretation and index of defined expressions, defines ‘abuse’. ‘Adult at risk’ is also defined, as is ‘care home’, ‘children’s home’ and a whole list of terms. If the committee is concerned and thinks that there are definitions that it wants us to consider, I would be glad to hear from you.

[94] **Lindsay Whittle:** I think that independent advocacy is absolutely essential and I am heartened by what you have just said—it is very encouraging. Who are these independent advocates? Should they be regulated or inspected? There is a grave danger of ne’er-do-well individuals setting themselves up as wonderful advocates, when, in fact, they are not very nice people. So, if we are going to have regulation for advocates, they should at least have some social services inspections as well.

10.00 a.m.

[95] **Gwenda Thomas:** I agree. Thought has been given to this, but you will know that, at the outset, regulation and inspection were included in the remit of the Bill. The responses to the consultation convinced me that we needed to take out regulation and inspection because we needed to think a lot more about them. It is my view that advocacy services should become part of the regulated services and come under the auspices of the White Paper that I will be producing in the summer on regulation and inspection.

[96] **Lindsay Whittle:** That is great news. Thank you.

[97] **Lynne Neagle:** I have three questions on different areas. The first thing I want to



raise is the national eligibility framework and whether you are able to clarify why there is not more detail on the operation of the national framework on the face of the Bill. Are you able to give any more information as to whether it is likely to operate along the lines of the current policy on the basis of low, moderate, substantial and critical access to care?

[98] **Gwenda Thomas:** No. On those four levels, it is time for them to go. There has been inconsistency with the low, moderate, significant and critical levels and sometimes they served to lock people out of services rather than to bring them in. I believe that the inconsistency that has developed between one authority and the other in the interpretation of the four levels is not sustainable. The wellbeing statement that was published on Tuesday—I hope you have had time to look at that—gives the basis of our thinking. I was very encouraged by Sarah Rochira’s reference to it in the Alzheimer’s reception on Tuesday night, where she welcomed the clarity, simplicity and easily understandable one-page definition of wellbeing. It will underpin the national outcomes framework and will help to develop the eligibility criteria.

[99] Assessments should be proportionate and eligibility should respond to the level of need that people themselves say that they have. An adult knows best what that adult needs, but, very often, we impose thinking on people. We need to have the citizen at the centre of the development of the policies and we need to develop assessments that will be portable in accordance with those needs. For example, do we need a ream of forms to decide whether a person needs meals on wheels? Do we need complicated forms for that? I do not think so. That is something that could be done on one page. On the other hand, if a person is severely restricted and has severe difficulties in living day-to-day life, then we need a comprehensive assessment, do we not? That assessment needs to involve all professionals. It needs to be cross-agency and needs to develop a holistic approach to the needs of those individuals. That is my vision for eligibility, to ensure that we do not complicate things that do not need to be complicated. Within that, we have to bring in thinking as to how we deliver the service and we have to raise awareness of direct payments and people’s choice in relation to direct payments. I am working with Mark Isherwood on that, as you know, and we have developed an overview group to look at that as part of eligibility and assessment. I hope to keep you informed of the work of that group. Of course, there is the requirement to develop information, assistance and advocacy around eligibility. We have to move away from the four levels; they are traditional, you might say, but I think that they are past their sell-by date.

[100] **Vaughan Gething:** Do you have more questions on this point, Lynne, before you go to your other questions, because Mick Antoniw wants to come in?

[101] **Lynne Neagle:** No.

[102] **Mick Antoniw:** In some ways, the comments that you just made have got to the nub of one area of concern about the legislation because, although the legislation is a self-funding piece of legislation in that it gives opportunities to release funds at a time of increasing demand and transition, what arises out of what you said is that there may well be quite considerable additional cost because we are talking about a more integrated, Rolls-Royce-type service, tailored to the needs of the individual. I do not think that it is unfair to say that, to some extent, one key factor in the fragmentation of existing provision is the payment element: who pays and how much they pay. To some extent, that affects provision. If we are taking all of that away, one big concern that has been expressed by other bodies, local authorities and the WLGA is that effectively it is not self-funding and that it is actually imposing potential additional costs and that if those are not addressed, the implication is that the legislation may undermine the ultimate implementation. How confident are you about the costings in the Bill?

[103] **Gwenda Thomas:** I think that we touched on this earlier. As you know, there is a

requirement to produce the regulatory impact assessment, which was done within the explanatory memorandum when the Bill was introduced. At that point, and I believe that I said this earlier, we used as much information as we had. I recognise that there will be kick-off costs and we accept that. We are talking to the WLGA and the ADSS with regard to that, but what we need from them is an analysis of that. At the moment, it is rhetoric. We certainly have to weigh the costs against the benefits. I accept that the benefits will not happen overnight, but neither will the costs because we have a choice on the timing of the introduction of the regulations and a choice as to what will be contained within them. By working with the ADSS and the WLGA to develop that, I am sure that we will have a better understanding by the autumn. As I said earlier, I will be happy to put more information in the RIA for the committee to consider and certainly, as I said to Kirsty Williams, before you are asked to vote on the Bill.

[104] **Vaughan Gething:** Kirsty Williams wants to come in on this and then I will go back to Lynne Neagle for the rest of her questions.

[105] **Kirsty Williams:** I welcome very much, Gwenda, what you have said about bringing more information forward before we have to vote on the Bill, but it does make a bit of a laughing stock of this piece of paper. The Government has put forward this piece of paper that tells me how much all of this is going to cost. It says that it will be cost-neutral and there are lots of zeros in it, but today you have come to the committee and said, 'Don't worry about it because we are doing some more work on it and by the time you come to vote, we will have changed it.' Why was that work not done before the actual piece of legislation, the RIA and the explanatory memorandum were published? It is not as if this Bill suddenly jumped up and appeared overnight; it has taken us two years to get to this stage and you are now saying, 'Well, actually, we're still working on it and the evidence for the figures is still not there'. I am wondering how the Government has ended up in a position where, two years in, we are still waiting for a definitive set of costings. I am a bit concerned about the reputation of the process that we are going through, if the Government comes and says, 'Don't worry about what we have given you so far; by June we will have something else'.

[106] **Gwenda Thomas:** I do not think that we are saying that. However, if I have not been clear enough, I will ask Steve to come in on that.

[107] **Mr Milsom:** I can understand how that thought might have come about, but that is not the case. The explanatory memorandum says that it was not possible to cost the subordinate legislation at the time for the reasons that the Deputy Minister has set out, in relation to choices. Within those regulations there will be choices that will have fairly substantial cost options. You are right to say that this has a history of development. When going through that process, we could not go out to local authorities or health boards with definitive proposals and ask, 'Will you cost this please?', before we had introduced the Bill, before we had consulted on it or before we had brought it to this committee. I am sure that you would not have wanted us to be going around Wales, asking people to produce detailed costings for things that we had not presented to the Assembly first. That is a bit of a catch-22 situation, is it not?

[108] **Kirsty Williams:** It is. I would quite like to have a—[Inaudible.]—on it.

[109] **Vaughan Gething:** Mick, you may come in, but I know that Lynne has at least two more questions.

[110] **Mick Antoniw:** What that tells me is that, based on what you are saying, there may well be things that you are not certain about and, in actual fact, despite your assertions as to what this is all going to cost, it may not be quite as you actually said. It is probably something that we cannot take further. I was going to raise the issue that, in order to ensure that we have

seamless implementation once the legislation goes through, you do not want a situation where funding begins to undermine it. There was a question as to whether there was a contingency. I do not think that we can explore this further until we get to October. However, it does seem to be a particularly important area that we need to review when we have a further session in October.

[111] **Gwenda Thomas:** Regarding that point, the development of the regulations will be project managed. That is an important thing to remember. There will also be an implementation plan that develops this thinking. I cannot understand the writing on the note that I am reading, but I think that it says that I will write to the committee to clarify—

[112] **Kirsty Williams:** What will be available and when. [*Laughter.*]

[113] **Gwenda Thomas:** We will write to the committee and clarify some of the issues on this.

[114] **Mick Antoniw:** We would appreciate that, Deputy Minister.

[115] **Vaughan Gething:** I think that that would be very helpful. Lynne, you have been very patient, and I know that you have some more questions.

[116] **Lynne Neagle:** I want to ask about charging. Section 54 of the Bill gives the power to make regulations permitting charges for preventative services and the provision of information and advice. That seems to be a significant departure from the system that we have at the moment. We could effectively see a situation where basic access to social work is charged for. Do you have any comment on why there is a provision in the Bill to allow local authorities to make that charge?

[117] **Gwenda Thomas:** The provision is in the Bill to bring together arrangements that are out there already. It will set a clear set of arrangements on charging, where local authorities want to use their discretion to charge. Underpinning that, in my mind, is the fairness of charging. We need to ensure that, and we need to look at protecting people who will be unable to pay or who will have difficulty in paying. We certainly do not want situations where people are excluded from services or have services of less quality; that would go against the whole ethos of the Bill. There are examples of where it would be fair for local authorities to charge for preventative services and, perhaps, for brokering a deal between some people and care homes. There are issues of that nature where that might be reasonable. We will develop this thinking and it will be progressed in the way in which we draft the regulation on this issue.

10.15 a.m.

[118] **Lynne Neagle:** So, it is not your intention that social service departments would charge for information and advice to members of the public who might be going to them for the first time.

[119] **Gwenda Thomas:** The provision of information, advice and assistance will have a statutory base in accordance with the Bill. I do not envisage somebody popping into a local authority office to ask for advice being charged for that advice; certainly not. We need to bring clarity to this in the development of the regulation. There will be other examples where it would be reasonable to charge, and the regulation will seek to clarify and define that.

[120] **Vaughan Gething:** Gwyn has a question on this area as well.

[121] **Gwyn R. Price:** For local authorities, there is currently a cap of £50 on social care

charges and provisions. Do you intend to replace that in the Bill?

[122] **Gwenda Thomas:** The Bill does not require that we replace that. We can bring it into the legislative base, but there is no reason why the Bill would change the thinking on the cap of £50. We might want to review it in the future, but with regard to the principle of a cap on the cost of residential care, the Bill does not change that.

[123] **Lynne Neagle:** A number of the children's charities are concerned about the power in the Bill to merge adult and children safeguarding boards. Do you have any comments to make on their concerns? They are worried that, because of the number of older people whom we are now having to support, children's needs will be squeezed in that process. Can you offer any assurances in that regard?

[124] **Gwenda Thomas:** The concept of this being a people's Bill gives it its strength. We are not talking about doing that now; we are talking about setting up strengthened safeguarding children boards on the footprint of six, and adult boards. If it became apparent that it would strengthen the process to merge them, we would consider it at that time, but only at that time.

[125] You will know that I have set up an expert panel to advise me, under the chairmanship of Phil Hodgson, who chaired the former safeguarding group. I will rely heavily on the advice of that expert group to advise us on the best way forward for strengthening the safeguarding of children, because we need to do that. We know that existing local safeguarding children boards did not perform as well as we needed them to. For the first time, and uniquely, Wales is going to legislate for the protection of vulnerable adults. I am grateful to the previous safeguarding group for its advice and for other advice that we have had in bringing us to where we are now. I think it is right to say that three of the six intended footprints for the development of the LSCBs are already in shadow form, which is encouraging. I am sure that we will be able to iron out any issues regarding the geographical requirements of the other three and bring them successfully to a conclusion.

[126] **Lindsay Whittle:** This is one of my two questions, Chair. I am grateful, because the Bill really needs to address the issue of transition services, particularly for disabled young people, from children to adult services. I am aware that the Welsh Government has plans to extend the entitlements for disabled children with complex needs up to the age of 21, but there is no universal definition of 'complex needs' in the Bill. I think that you need to look at that as well. I am not happy with the number '21'; those of us with children will know that all children need looking after, whatever their age. Disabled young people need to be carefully looked at.

[127] **Gwenda Thomas:** The provisions in the Bill secure the wellbeing of disabled people, and, of course, that includes disabled children. I think that you mentioned transition.

[128] **Lindsay Whittle:** Yes.

[129] **Gwenda Thomas:** I feel very strongly about this. We know that the commission on the Green Paper, under its chair, Professor Geoffrey Pearson—I am sure that we were sad to hear of his passing recently—produced an emphasis on transition. I am sure that we all know of examples, perhaps through friends—I do within my family—where the transition of children to adulthood and further phases in life is of essential importance when it comes to service delivery. The Bill will strengthen the provision for disabled children and, when we come to the development of the code of practice, that is where we can be absolutely clear and bring in a legislative framework to ensure that we take due regard of disabled children. The strength of the code of practice is that it will have to come forward for discussion by Assembly Members. That is a huge step forward from having one Minister issuing statutory

advice or requirements. So, the development of the thinking and of the code of practice will add strength to the Bill and this provision.

[130] **Lindsay Whittle:** What about the definition, Deputy Minister, of ‘complex needs’?

[131] **Gwenda Thomas:** I talked about definitions earlier. I believe that this will protect the disabled—I do not think that there is anything in the Bill that means that it will not. We can bring in a clear legislative framework with the code of practice.

[132] **Rebecca Evans:** On a different point, I wanted to ask you for more information about the duty on local authorities to promote social enterprises, co-operatives and so on. What do you envisage ‘promoting’ meaning? Could it be just a leaflet or is it something much more substantial in terms of organising the way that services are delivered?

[133] **Gwenda Thomas:** I am keen on this development. It is not for the Welsh Government to develop the agencies or whatever; it is for us to develop the environment where it can happen. This is where I would like to ask for the committee’s assistance and say that if you have any ideas with regard to this development, I would be glad to hear from you. This is something that we can work on together, bringing co-production to mind as well, which I might have brought into my answer on preventative services, Chair, but it did not strike me at the time. Co-production is important in the development of preventative services, namely that they are co-produced by the service user and that that is an input into their development. I know that a lot of work is going on at the moment in developing the thinking. Social care is ripe for the development of social enterprises or co-operatives, and preventative services would be a good way for that to happen. So, I am open to any suggestions from the committee with regard to that.

[134] **Vaughan Gething:** I have Elin Jones on this point, and then I will come back to Lindsay Whittle.

[135] **Elin Jones:** We heard as a committee a few months ago about the experience in Quebec of co-operatives in domiciliary social care. What the person from Quebec told us in that session was that it would not have started if there had not been—I cannot recall if it was legislation—a national policy of the Quebec Government to drive this and to make it a requirement for the co-operative in social care to be developed. You have said in your opening remarks that you did not see it as the role of Welsh Government to provide that impetus, framework or push. So, how do you believe it can work for all of Wales if it is not driven by the Welsh Government?

[136] **Gwenda Thomas:** I am sorry if I was not clear about that. What I was intending to say was that it was not for the Welsh Government to directly develop the individual enterprises or co-operatives. It is for us—and the Bill makes this clear—to provide the environment where that can happen, and to facilitate it. We do need more thinking with regard to that, but I have studied the Quebec model and met with—I cannot remember his name; it started with ‘R’. I met with him to discuss it, and I think that we need to take strong leadership as a Government on this, and the Bill is about us taking stronger leadership as a Government. We need to develop this thinking in order to facilitate this, and, of course, there is the group chaired by Edwina Hart, and we are working with that group in the development of this thinking.

[137] **Mick Antoniw:** This is an important point, as it is an area that is not only open to considerable abuse—and we already see this happening with organisations that are moving into this field—but has an opportunity to undermine people’s confidence in the whole direct payment system. Perhaps we are being too pernickety over the terminology. It is the Welsh Government’s responsibility to ensure that it happens, or to make it happen. If we leave it at

that, that is perhaps where I think you are talking about ideas, and thinking about how that happens.

[138] **Lindsay Whittle:** Section 105 states that an authorised officer may apply to a justice of the peace for an order to gain access to premises where an adult is thought to be at risk, and to speak in private to that adult, but the legislation does not include the power to remove that vulnerable adult, and I am wondering why not.

[139] **Gwenda Thomas:** There is an important balance here in regard to how we approach the issue of possible abuse of an adult. We have to respect an adult's right to take a risk, especially where there is competence, and that issue is exceedingly important. On the other hand, we need the wherewithal to be able to speak to an adult in private if there is a suspicion of abuse, and without a third party present. We have come to a decision that the best way to do that is to be able to apply to the court for an adult protection order. I do not know how a person with competence would always look at the power of entry if that person has the right to his or her own decision as to how they protect themselves. Certainly, we need to be able to respond to any suspicion, and the application to the court is the way that we decided to do that.

[140] **Lindsay Whittle:** I appreciate that, but what happens if the authorised officer discovers that the adult is vulnerable, and it will take time to apply to a court, I assume, even if it is only 24 hours? Who knows what can happen in that 24-hour period.

[141] **Gwenda Thomas:** On the issue of applying to the court, I think these things happen very quickly with regard to the need for an order. It will probably turn out to be the quickest way to do it and to be able to protect that individual.

10.30 a.m.

[142] **Vaughan Gething:** Deputy Minister, the adult protection and support orders that have just been discussed provide for conversation, but they do not provide for a power of removal if there is a vulnerable adult involved. Have you considered that? The older people's commissioner suggested that she would like to see that power being made available, with the safeguard of an application to the courts.

[143] **Gwenda Thomas:** We have worked with the RCN with regard to this, and we are very grateful to the RCN and to Jonathan Morgan, who facilitated that work. However, the power of removal, I think, would develop. If I were to think—this is me speaking off the top of my head—after talking to a person individually, that there was evidence of abuse, then there are already procedures in being to deal with that. Abuse is not tolerated; it would probably be a criminal offence and would be dealt with within the provisions of the criminal justice system. That is my answer, but if it is wrong, I will write to the committee further on the matter.

[144] **Ms Rogers:** It is not wrong, but I would just clarify a little about the discussions that we are having with the Ministry of Justice at the moment about exactly how the Orders will work in practice. As the Deputy Minister said earlier on, it is about striking the right balance with the principals in the Bill, in which the adult is the best determinant of their needs, wishes and feelings. It is recognising their human rights and the duty to protect. So, it is a fine balance. We have not included the duty to remove somebody against their will, but as the Deputy Minister said, there are provisions in other legislation that could lead to somebody who is at significant risk being either persuaded or faced with action taken on a criminal basis.

[145] **Vaughan Gething:** Thank you. We are now at the end of our time. I am sure that

there are still plenty more questions around the table, but of course, we do have the opportunity to speak to you again, Deputy Minister, in June. You have undertaken today to write to us with some further information and to provide us with more information through the process of the Bill, and we may well be in touch with you, through the process of the Bill, with further questions, if and when they arise, as I am sure they will.

[146] You will of course get a transcript of today's evidence. If there are points that you want to clarify, then please let us know. I thank you and your officials for attending this morning; we look forward to seeing you again in about six or seven weeks.

[147] **Gwenda Thomas:** My thanks, also, to the committee. I look forward to continuing to work with you on this Bill. We need to get it right, do we not?

[148] **Vaughan Gething:** We do.

[149] We will now take a short break and come back at 10.40 a.m. for the next set of witnesses.

*Gohiriwyd y cyfarfod rhwng 10.33 a.m. a 10.43 a.m.  
The meeting adjourned between 10.33 a.m. and 10.43 a.m.*

### **Y Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 1 Social Services and Well-being (Wales) Bill: Evidence Session 1**

[150] **Vaughan Gething:** Good morning to our next panel of witnesses from the Welsh Local Government Association and the Association of Directors of Social Services Cymru. Welcome to the second evidence session on the Social Services and Well-being (Wales) Bill. Please introduce yourselves and which part of the organisation that you represent and then we can start with some questions.

[151] **Ms Warren:** I am Emily Warren, policy lead for health and social services at the WLGA.

[152] **Mr Palfreman:** Good morning. I am Martyn Palfreman, head of social services at the WLGA.

[153] **Mr Evans:** I am Phil Evans, director of social services at the Vale of Glamorgan Council and president of ADSS Cymru. I should probably declare that I am also a director of a community interest company.

[154] **Ms Carrington:** I am Gwen Carrington, corporate director at the Isle of Anglesey County Council. As director, I have responsibility for social services.

[155] **Vaughan Gething:** Thank you. I should also thank you for your written evidence, including the recent paper that you provided with a state of the nation summary, if you like, of different projects around the country. That was very helpful.

10.45 a.m.

[156] I will start with a question that I asked the Deputy Minister in her evidence session at the outset. The Bill has a number of themes through it, but it does not have a statement of principles at the start. We know that the Children Act 1989 has one and we know that the Law Commission report on the reform of adult social care suggested that it might be a useful tool. Is that something that you have considered? If it is, do you think that it would be helpful for

you and your organisations in implementing the Bill in practice?

[157] **Mr Evans:** With you permission, Chair, would it be useful if I just made a brief introduction to set the tone of our evidence? It will take just a couple of minutes.

[158] **Vaughan Gething:** It would have to be brief, because we have an enormous amount of questions and subjects to cover.

[159] **Mr Evans:** I understand that. I would first like to express thanks for allowing us to come to present a unified voice of local government, both in terms of political and professional leadership. We are grateful for that. We are also grateful for the opportunity to present an additional briefing to you in our grandly titled document, 'State of the Nation'. The key message that emerges from that, which we would ask you to consider, is this: how far does this Bill contribute to the development of new service models and new models of care and support? We think that they are essential in terms of ensuring that we can meet needs in a much more responsive way and that we can develop further integrated services, but, primarily, that we can create services that are sustainable in the longer term in the face of increased demand and diminishing resources. The key element for us—I want to make this clear from our perspective—is that this is not tomorrow's crisis, although it is sometimes portrayed in that way. I think that social services currently can match the national health service in terms of the levels of increased demand that are coming through the systems. They are now placing in jeopardy the services that we have available. The paper demonstrates how we are trying to tackle that situation, both on a local and a regional level in terms of creating new service models.

[160] We would like the Bill to provide considerable additional momentum to that programme of change and, hopefully, tackle some of the obstacles that we are already experiencing in terms of trying to deliver it. We understand that the Bill will require local government to make considerable further improvement. We do not question the need for that, certainly in terms of increased evidence of consistency. For that to happen, the Bill will have to embed these new service models in a coherent legislative framework that deals with issues around redefining eligibility and defines the role of the public sector as a whole, and each element within it, in terms of promoting wellbeing. I think that it would be useful if our evidence is given in that context, Chair.

[161] **Vaughan Gething:** What about the question about statutory principles? You will have heard the Deputy Minister saying that her view, and her team's view, is that statutory principles would be potentially restrictive and unhelpful. Of course, the Law Commission took a different view. What is your view?

[162] **Mr Palfreman:** I will echo, but will not repeat, given the time constraints, a lot of the things that Phil has said about what we want the Bill to do. Our concern from the outset is that the provisions in the Bill help us in local government, and in public services generally, to drive the change that is already under way, as evidenced in the papers that we have provided to you previously. That assists us in achieving what I think is our common aim. We are certainly unconvinced at this stage about the added value of statutory principles in helping us to do that. What is more important—certainly, what we want some of the discussion today to be about—is ensuring that the provisions in the Bill and the supporting regulations help us to achieve what is a common aim. We have concerns that statutory principles would place unnecessary restrictions on us and introduce risks of increased litigation. We recognise that some of our partner stakeholders have a very strong view on this and we are in dialogue with them about how we might be able to find a way of achieving what the broad aims of the statutory principles are without putting them on the face of the Bill.

[163] **Mr Evans:** Just to elaborate on that, the older people's commissioner makes quite a



compelling case for statutory principles. We are not saying that they are not helpful, because decision making in social services is problematic and contested. It is sometimes useful to establish the basis on which conclusions have been reached by practitioners so we can refer back to that and say, 'These are the aspects that we have taken into account in reaching those conclusions'. So, I do not think that we would rule out the need for agreed principles. What we would want to see is something that is co-produced across social care and that everybody signs up to that, not just local authority social services.

[164] **Vaughan Gething:** Gwyn Price is next, then William Graham and then we will move round to some other Members on other questions.

[165] **Gwyn R. Price:** Good morning. You say that you have concerns about the wellbeing duties. What do you see as the value of including the overarching wellbeing duty in the Bill, where should responsibility for promoting wellbeing lie, and how should the application of the wellbeing duty be set out in the Bill?

[166] **Ms Carrington:** Rydym yn croesawu'r egwyddor bod lle i edrych ar les y boblogaeth, ond rydym yn teimlo'n gryf y dylai'r egwyddor hwnnw gwmpasu'r holl wasanaethau cyhoeddus. Tra rydym hefyd yn croesawu'r uchelgais yn y Bil hwn ar gyfer maes gofal, mae angen bod yn glir o ran y gofynion hynny, y disgwyliadau o'r gwasanaethau cymdeithasol yn benodol a gwasanaethau cyhoeddus yn eu cyfanrwydd. Oni bai ein bod ni'n glir ynglŷn â hynny, a bod hynny yn dryloyw a hollol glir yn y Bil hwn, yr ydym yr un fath o ran ein hymateb i'r egwyddorion. Mae risgiau sylweddol o ran gweithredu. Yn sicr yn y cyd-destun yr ydym yn gweithredu ynddo ar hyn o bryd, o ran cynyddu disgwyliadau am wasanaethau, rydym wedi ymrwymo'n llwyr i'r angen o ddatblygu gwasanaethau arbedol, ond mae angen sicrhau bod hynny hefyd mewn cyd-destun ehangach o gyfrifoldebau ehangach. Felly, rydym yn croesawu hynny, ond rhaid bod cyfrifoldeb i'r gymdeithas yn ei gyfanrwydd. Mae angen gweithredu'n ofalus iawn ynglŷn â hynny.

**Ms Carrington:** We welcome the principle that there is room to look at the wellbeing of the population, but we also feel strongly that that principle should encompass all public services. While we also welcome the ambition that is in this Bill for the care sector, there needs to be clarity about those requirements, the expectations of the social services in particular and public services as a whole. Unless we are clear about that, and that is transparent and totally clear in this Bill, our response is the same as that to the principles. There are considerable risks in terms of implementation. In the context of implementation at present, in terms of raising expectations for services, we are totally committed to the need for developing preventive services, but there is a need to ensure that that is in a wider context of wider responsibilities. Therefore, we welcome that, but there has to be a responsibility for society as a whole. We need to be very careful about that.

[167] Rydym yn teimlo ei fod yn rhy eang fel ag y mae ar hyn o bryd. Mae pethau yn plethu ac yn rhedeg drwy'r Bil fel y mae wedi'i ysgrifennu ar hyn o bryd. Rydym yn sôn am *citizen-directed support* o ran gweithredu ar ran unigolyn. Rhaid i'r pethau hyn fod yn glir, gyda rhediad clir drwy'r Bil, ac nid ydym yn hollol glir bod hynny wedi'i gyflawni ar y pwynt hwn. I grynhoi a chrisialu,

We feel that it might be a bit too wide-ranging as it stands. There are other things running through the Bill as it is written at present. We are talking about citizen-directed support in terms of working for the individual. These things need to be clear, running clearly through the Bill, and we are not completely sure that that has been fulfilled at this point. To summarise and crystallise,

[168] we welcome the principle, but it needs further refinement and clearly the expectation is for all public service not just for social services, because otherwise it will become

unsustainable and lead to confusion of expectation.

[169] **Gwyn R. Price:** So it is clarity, really.

[170] **Ms Carrington:** Yes.

[171] **Mr Evans:** I think it is a very appropriate theme to include within this Bill; there is no question about that. The concern that we have is that it is a very plastic term. It could be expanded in all sorts of different directions and people are already talking about whether you interpret that in terms of loneliness and social connectedness. It becomes very hard to measure. We have the benefit now of the ministerial statement that was made yesterday, and, having looked at it again, I am still struggling to make sense of it. I think citizens will struggle to make sense of what it means for them and it will not help in terms of the dialogue with staff within social services. People do not come to us and say, 'I have problems with wellbeing'. It makes the start of the dialogue, which is really important, problematic. It has to be a mutually understood term and I think it would require a lot of explaining to our service users and carers exactly what it means in practice.

[172] **Ms Carrington:** I will just give an illustration of that. I was reading manifestos recently and there was an expression in terms of loneliness for older people. How do we interpret that into the service expectation—and whose service expectation? If you apply that to social services specifically, how is that going to be sustainable? There are real concerns, but it is an aspiration.

[173] **Ms Warren:** There are two key things on this. The first is that local government, through the Local Government Act 2000, already has a power to improve the wellbeing of its population. We would ask for clarity on how that definition and power is being superseded. Secondly, this places a duty on local authorities and we would want an assurance that we could meet that duty. The definition, as currently drafted, is incredibly broad and wide and we would have concerns about meeting it.

[174] Finally, when we wrote our initial consultation response to the principles of the Bill, we did not know that there was an intention to bring wellbeing duties forward in additional pieces of legislation. For example, we have a proposed public health Bill, a proposed sustainable development Bill and parts of the domestic violence Bill that also include wellbeing. We would ask the committee whether it is right that it sits in this Bill, that the definition is aligned across the three, how the three will work together, if, indeed, you want provisions around wellbeing in all three pieces of legislation. We would welcome clarity on that.

[175] **Vaughan Gething:** Gwyn, did you have a follow-up question?

[176] **Gwyn R. Price:** No, that is fine, thank you.

[177] **Vaughan Gething:** Okay. William Graham is next.

[178] **William Graham:** Thank you, Chair. Thank you for your evidence. I do not wish to attempt to lead you in any way, but the impression I get from your evidence is that you have serious concerns as to whether the Bill is deliverable. Could you outline to the committee how that could be improved by drafting or is it the old story of a lack of funding?

[179] **Mr Palfreman:** If I could start on that, from the outset, we welcome the fact that social services and wellbeing are prominent in your early legislative programme and that we have a Bill the genuine intention of which, in our view, is to enable us and to facilitate the transformation in social services that we have already demonstrated is under way, but needs

to accelerate and continue. Our concern is around the fact that the scope of the Bill is incredibly wide. There is so much in there and so much to debate, and we welcome this opportunity to be part of that debate today and through the remainder of the scrutiny process, but we think that it is absolutely paramount and fundamental that we pin down what the key provisions in this Bill need to be to facilitate the change that we all want to see. We have an additional concern about the balance between what is on the face of the Bill, in terms of provisions, and what will subsequently go into regulations. We recognise that that gives us some opportunities in terms of co-producing some of the details so that we can get clarity and a shared understanding of what the Bill's requirements are and what its impacts and implications are. However, we have concerns that that, just in logistical terms, will be a very time-intensive and resource-intensive process. We are not convinced that having around 30 pages in the explanatory memorandum of secondary legislation is the right balance. We would certainly like to focus our activity on pinning down the things that absolutely need to be provisions on the face of the Bill.

[180] **Ms Carrington:** We echo that and we welcome the Bill's intention and its aspirations along with the need to provide greater coherence to family-based work in Wales. There is a very real opportunity for doing that, but it is a big ask; it is a big piece of legislation and we question whether, in its current form, it is sufficiently sophisticated to address all of those needs without unintended consequences. So, we welcome it in terms of its aspiration and its emphasis on family and that, I think, is reflected in practice. It will also help to shape and provide a platform for such things as a citizen's right of support and greater empowerment and wellbeing and, again, we welcome that. It is how those issues are worked through that gives us some concern. So, we would not want to lose it; it is about how we deliver on it.

[181] **Vaughan Gething:** William, do you have a follow-up question?

[182] **William Graham:** No, that is fine; I will just wait to hear all their answers and after that I may have one.

[183] **Mr Evans:** There are three specific issues that we would like to raise. One is that I think that there has been a collective agreement around sustainable social services as a 10-year strategy. I think that that is because it appeared to be meeting the need for urgent action on reform. I think that theme has got lost within the legislation to some extent. I cannot pick it out readily in terms of allowing us to make decisions around sustainability. There are risks involved in that, especially when I do not think that it defines well enough the responsibilities of other partners who can also contribute to how demand is managed. Demand is not generated by social services alone; it comes from a large number of agencies and we need to have a collective responsibility for managing that demand.

11.00 a.m.

[184] One of our major concerns is that this is a very comprehensive Bill, and it is very hard to give enough attention to each element within it. One of the areas that we feel is at risk of getting lost, in terms of the need for a national debate, is safeguarding. It almost feels as though people wanted to deal with all social services in one go. We are mindful of the experience in Scotland, where it was felt that there was a need for adult safeguarding to be in one Bill and for integrated services to be in another Bill, in order to enable the debate and dialogue necessary to come up with a coherent approach to addressing those sorts of issues. We are concerned that, in terms of implementation, this will have an immense impact on everyone associated with social services, plus their partners. Therefore, it is about how you determine what the priorities are within that. If the scale of change that is needed is that great, how do you determine the priorities for implementation?

[185] **William Graham:** I wish to ask specifically about your reservations regarding the

safeguarding boards. That is a major part of the Bill. I think that we have a broad consensus, but how do you feel that this system can reasonably operate effectively?

[186] **Mr Evans:** We understand that there will be another opportunity to look at safeguarding in more detail. Social services have two fundamental responsibilities: one is meeting need, and the other is safeguarding vulnerable people. They are equally important. This Bill tends very much to focus on how we meet need. I am not sure that it necessarily deals well enough with whether we have a coherent approach to safeguarding. The children's services debate around safeguarding is moving on. If we look at the English experience—the Munro report, and so on—we see that we are introducing a very major change on adult safeguarding, in terms of embedding it in legislation. We need to have a very considerable debate on whether the resources are available to do this and whether we are going in the right direction. I am not sure, because this is being subsumed within a far more comprehensive Bill, whether there will be opportunities to have that scale of dialogue.

[187] **Vaughan Gething:** A couple of issues have been raised in questions. Safeguarding has been raised, along with what is on the face of the Bill. You are obviously concerned about whether sustainable social services are identifiable. As we are talking about safeguarding, if anyone has some follow-up questions on that issue, we will take them now. We will then go back to the balance between primary and secondary legislation. I know that Emily Warren indicated that she wishes to speak. Would you like to talk about safeguarding now, Emily? We will then discuss the face of the Bill versus secondary legislation.

[188] **Ms Warren:** Without going into too much detail, because that would be a different session, we wanted to flag safeguarding up as an example. This Bill is largely about improving the wellbeing of the population. The moves to place the adult safeguarding framework on a similar statutory footing to children's safeguarding are really important. However, that is almost a separate piece of legislation. We felt quite strongly that, in Scotland, there was an entire Bill around this issue, which gave us sufficient time for scrutiny, lobbying and consideration. Given the sheer scope of this Bill, I do not know whether we would have sufficient time to be assured that we would have that opportunity in relation to adult safeguarding here.

[189] **Ms Carrington:** From a practitioner perspective, and, on the theme of what we said earlier, we welcome coherence for families and communities, and looking at safeguarding from that approach. Currently, there are major changes for adult protection. There are developments and changes for children's services, and we are trying here to bring those things together. That needs very careful consideration, to ensure that we do not have unintended consequences. We need to take the opportunity to get the best of what is possible and is needed for the next generation. So, I think that the issue is about the process, not the ambition. In its current form, the Bill needs further work to ensure that it delivers. We question whether this can best be achieved by taking through one Bill rather than concurrent pieces of work. We are not saying that this issue is less important and that it does not need to be addressed. We are saying that it is important and that it needs to be addressed. We therefore question whether this is the best way of delivering and getting the outcome that we want and need.

[190] **Vaughan Gething:** Do Members wish to raise any other points on safeguarding?

[191] **Lindsay Whittle:** Yes, or at least I think that this point is on safeguarding, although you can tell me otherwise. This Bill is full of the words 'may' and 'can'. I do not see the word 'possibly' there, but I am sure that it must be there somewhere. What are your feelings on the codes of practice for social services, and their impact on these services? Also, do you think that the Bill strikes the right balance between the powers of the Welsh Government to direct local authorities and the flexibility of local authorities to depart from the codes issued here?

[192] **Vaughan Gething:** Sorry, but I want to try to stick to the theme. I think that that is a different subject; we will come back to that. We have started the point about what is on the face of the Bill and what is in regulation. I am pretty sure that Kirsty's follow-up question is on this. Then, we will come on to the point about the codes and departing from them.

[193] **Lindsay Whittle:** I thought that they were linked, but I accept your ruling, Chair, of course.

[194] **Kirsty Williams:** Having listened carefully to what you have said so far, I have three questions. Is this piece of legislation necessary to enact the Government's stated policy in its White Paper of reforming and modernising social services, and are you currently constrained by a lack of legislation to make that happen? If the legislation that was before us is necessary to enact the Government's stated policy objectives, is the Bill as currently drafted fit for purpose? Finally, if the balance is wrong between what is on the face of the Bill and what is left to regulation, could you give some specific examples of what you feel is not on the face of the Bill and should be?

[195] **Mr Palfreman:** We would say that the Bill is necessary and we welcome it. If we get the provisions and the balance right, this is probably a once-in-a-generation opportunity to give local authorities and partners the powers—and in some cases, the duties—to do what they need to do to deliver truly sustainable social services. An example that I give and then come in with a bit of a reservation—I suspect that we will talk about it later in the discussion today—is around collaboration and co-operation between agencies. We feel that that is absolutely key. We are aware of obstacles—I will not go into the detail now, because we will probably do it later—that stand in the way of us achieving what I think is a genuine aspiration to work with health and other partners in delivering this agenda. Our concern is that the Bill, as it stands, does not necessarily clarify our duties and powers with regard to things like that, particularly in relation to collaboration—it might even water down what is in existing statutes—so, we have some concerns over that. The Bill is a useful vehicle, but we are not convinced that, as it stands in all those areas, it strengthens the expectations on local government. In some cases, it probably confuses those expectations.

[196] The other point that I would make—I am sure that colleagues would also like to come in—is that, in terms of making sure that the Bill does what it has to do, we would seriously advocate looking at particular provisions within the Bill that we would question whether they need to be there. I will take information and advice as an example. Again, we will probably get an opportunity later to talk about some of the things that are already going on, with authorities, health boards and other partners coming together to provide citizen advice, which is absolutely key to the preventative agenda. We are not convinced that that needs to be prescribed on the face of the Bill.

[197] **Ms Carrington:** Another example that we would give, while we are committed to the provision and development of services, is whether the Bill needs to be as specific about direct payments. We think that some of these developments are emerging now and it might be counterproductive to pin them down in the legislative framework when we are in a co-production mode with our communities about the best way of delivering for the future. That comes back to our earlier point. This is a Bill for the future and we need to be working towards making sure that we have the right practices in place that are locally responsive, but within a national framework

[198] **Mr Evans:** It is a fascinating Bill, is it not, in many respects? It tries to embed within social services some very clear principles and values. I think that that is entirely proper. They are: wellbeing, outcomes focus, stronger voice and control, consistency and equity for service users. They are all quite difficult to define in their own right. We are mindful that, in the Bill, there is not a great deal of attempt to define any of those things. There is always a risk of

legislation by slogan, which makes it sound as though we change things considerably, but because of the resource implications and the boundaries that are then drawn, we do not change them. So, I think that they are welcome principles and values that we would collectively subscribe to. However, it is very difficult to translate those principles into direct action on the basis of what you read in the Bill.

[199] **Ms Warren:** One of the reasons why we support the intention to bring forward the Bill is to simplify the legal framework in Wales, which is a recommendation in the Law Commission's report. As it stands, we share the view of a number of colleagues who have written in and provided evidence that it is not fit for purpose in that sense at the moment. There are real issues about what elements of existing law it repeals and where the primacy of the new law stands. We would very much welcome further consideration of that and further clarity from the Minister about the explanatory memorandum with regard to repeals.

[200] **Mick Antoniw:** I did not quite catch the last bit—it seemed to be quite important.

[201] **Ms Warren:** We had concerns, and shared the concerns of others, that the Bill, as it stands, does not deal with the issue of repeals appropriately and that there would be confusion. We would like that to be addressed in the explanatory memorandum.

[202] **Kirsty Williams:** It would be quite useful to have a more comprehensive attempt to set all of this down. You give specific examples about what is not on the face of the Bill that should be there. It would be helpful to the committee's consideration—if not at this stage, then at a later stage—to have something written down plainly from your organisations regarding how you feel about that. While the odd example is useful, it would be more useful—for me, at least—to have something written down stating exactly what those big concerns are.

[203] **Lindsay Whittle:** My question is about what the witnesses see as the value of codes of practice for social services authorities, and their impact. Does the Bill provide the right balance with regard to the powers of the Welsh Government to direct local authorities? I think that good government is strong government that provides direction. It should direct with consensus, of course. For me, there are too many words like 'may' and 'maybe'. There are people in this world who like the direct approach, and I happen to be one of them.

[204] **Mr Palfreman:** Before I hand over to ADSS colleagues to talk about some of the possible implications for practice, I will say that we are not averse to codes of practice in principle. We would have concerns, from a local government point of view, about the significant powers of prescription that the Bill suggests for Ministers. Alongside that, we welcome that there are clear messages about our ability to depart from those codes, but until we have further detail on that, we would want to put on record a degree of caution about the use of codes.

[205] **Ms Warren:** In our written evidence, we raised section 125, specifically, which provides Ministers with extensive powers to direct authorities in any way that they see fit to meet those policy aspirations. While we welcome a level of national direction, in order to improve consistency, there are quite serious impacts on the autonomy of local authorities if such provisions are included in the Bill.

[206] **Lindsay Whittle:** Is that in legislation?

[207] **Ms Warren:** Yes, on the face of the Bill. Section 125 was a particular concern for us.

[208] **Lindsay Whittle:** I am interested in the autonomy of local government. You say that you are not happy with legislation. There is no autonomy for local government on legislation.

If it is legislation, it is legislation.

[209] **Ms Warren:** Absolutely, but on how that is delivered, we can probably put that in a bit of context in terms of our concern around the codes of practice stymying professional practice at a local level.

[210] **Mr Evans:** To elaborate on that, codes of practice are more inflexible and rigid than guidance. That often tends to be the case. Our experience of professional practice is often of it being in advance of prescription. It develops faster than the prescription. In the sustainable social services framework for action, one of the key themes is around professional development. Many gains have already been made in that regard. We now have, in most places, a stable workforce. We have invested considerably in that workforce to make sure that it has opportunities for training and development. We are on the point of introducing a career pathway for social workers. We now have a continuing professional development framework as well, which defines what is expected of social workers in the first year of practice, the consolidation period, when they become experienced social workers and when they move on to become consultant social workers. So, it is very much about taking that path. Professional development is the best way of ensuring consistency and good practice. We have invested considerably in that professional development.

11.15 a.m.

[211] The risk of codes of practice is that they become immensely bureaucratic. Often, they are checklists; you have to have done this, this and this. What we are really worried about is that there is clear evidence in the Munro report that says that, if you make things too prescriptive and bureaucratic, the time for direct work suffers as a consequence. That would be our concern about codes of practice, which generate a tick-box mentality to try to deal with some complex problems.

[212] **Lindsay Whittle:** That is very useful for me, Chair. I thank Mr Evans for that. I am on record in the Chamber saying that I fully support consultant social workers. Obviously, I recognise the professionalism of social workers. I am even on record somewhere saying that we should have a 'hug a social worker' week, because of the difficulty of their jobs. It is good for you to tell me, so that we can tell the Minister your thoughts on that. I am very appreciative; thank you.

[213] **Rebecca Evans:** I have one question on the balance between primary and subordinate legislation. The WLGA evidence says that you have concerns that there is a considerable imbalance between the use of the negative procedure and the affirmative procedure for agreeing regulations that will result from the Act. Could you expand on which provisions in the Bill should be subject to the affirmative procedure?

[214] **Ms Warren:** It would be a general comment. As Martyn stated, there are over 30 pages of regulations and very little detail as to what those regulations look like. At first glance, the majority are to be used through the negative procedure. For example, we spoke about safeguarding earlier, and all of the regulations relating to the operation of safeguarding boards would go through on the negative procedure. We would argue that it is of sufficient importance that Assembly Members have a chance to look at those regulations. We can write to you if you want specific and further examples on that.

[215] **Rebecca Evans:** Yes; that would be helpful.

[216] **Vaughan Gething:** The Constitutional and Legislative Affairs Committee will look specifically at the balance and at the procedure used. However, having a proper commentary on which ones you think should be negative or affirmative would be especially helpful. This

committee would like to see that, but the report on that will probably come primarily from the other committee. What would help us and the other committee is those bits that you think should and should not be on the face of the Bill, along with an explanation for why, so that we can try to understand the logic behind it and the extent of it. We know that there is greater flexibility in regulation and greater rigidity on the face of the Bill; that is a point that you made earlier about having something in a code.

[217] **Ms Warren:** I have a word of caution on that. We can do it. In terms of the regulations, it is a point that colleagues and we have repeatedly made, there is so little detail at the moment that it is very hard to get a feel for the extent of the regulations and what they will do. We will endeavour to do our best, but, as a point to be aware of, the detail is very limited at the moment.

[218] **Kirsty Williams:** I am concerned that you should say that, because in the earlier session, the Deputy Minister said that she and her officials are in a very productive dialogue with the WLGA and professional groups about developing those regulations, and that she would be in a position to let us see the details of those regulations before we have to vote at Stage 3 on the legislation. Could you give us a flavour of how those discussions about the detail of the regulations are going? What you have just said is completely the opposite of the impression that the Deputy Minister gave us earlier.

[219] **Ms Warren:** Going back to the scope of the Bill; it is vast. To give a really positive example, endorsing what the Deputy Minister said this morning, there is a very productive and active group looking at the integration framework, including colleagues from ADSS, WLGA, the third sector and the Welsh NHS Confederation. That group meets regularly and we are starting to consider how the regulations will look. On other areas, such as safeguarding, we certainly have not had any discussions about what regulations will look like.

[220] **Mr Evans:** I want to reinforce that point. The dilemma is about capacity. There is not a huge amount of capacity to work on detail across all of our organisations, and I include civil servants within that. Where we are able to engage in that dialogue, it is very productive. We often come to agreed solutions in relation to that, but we can only focus on one issue at a time. This requires us to focus on many issues at the same time.

[221] The word of caution that we would introduce from a professional point of view is that social services invite considerable external scrutiny and considerable legal challenge. If there are gaps between what the primary legislation sets out and the secondary legislation, they will lead to an increased number of judicial reviews, which inevitably consume time, effort and resources. That has to be a caveat about not having things expressed at the same time, but doing them consecutively.

[222] **Vaughan Gething:** We will go to Martyn, Elin and then Mick, then I will look for more Members.

[223] **Mr Palfreman:** I will be brief, because I am at risk of repeating what colleagues have said, but, as Emily said, there are some clear examples, notably around integration, where we are co-producing what will be in the regulations. Our concern is just in terms of time and that the speed of the passage of this Bill means that we are at risk of finding ourselves doing that subsequently and, maybe, finding ourselves trapped into something that is on the face of the Bill, in statute, that limits what we can do around regulations. That is a key concern of ours.

[224] **Elin Jones:** My question is on the integration of services and the possible pooling of budgets, and on what is on the face of the Bill and what is in regulation. I think that you said earlier, Mr Evans, that you felt that the integration of services is such a big area that it



requires a big national debate—in Scotland, for example, it has its own legislation and its own debate—and it is in danger of just being in Part 9 of this Bill and being looked at in passing, almost. It is not clear to us as a committee yet, although you may be privy to some discussions with the Welsh Government on the regulations, what the Government’s policy intent is with this section. We do not know whether the regulations will be geographically specific, where a particular health board and the local authorities in that area are willing to work further on integration and to pool budgets, or whether national regulations will be developed that will make it happen for everybody in Wales. In light of that lack of clarity at this point, do you think that there should be something that ratchets up this area in the Bill and that is more prescriptive on what the Welsh Government should do as a result of this Bill—indeed, making it a duty or a requirement to integrate services or to pool budgets?

[225] **Mr Palfreman:** I would say a few things in immediate response to that. The work that we are doing with Welsh Government officials around a framework for integration that will inform the regulations is very much about a shared national intent that would be articulated at a more regional level. So, there will be an expectation that local authorities and health boards, for example, will produce some statement of intent that says, ‘This is how we are seeking to integrate services into the future’.

[226] Something to state clearly is that we are on a journey, but there is a clear commitment to integrate, certainly in local government and, increasingly, we are seeing evidence of this from our health partners. We see integration as absolutely fundamental; it is not always the way forward, but in a number of key cases, such as prevention and complex services, integration is fundamental to achieving the outcomes that we want to achieve. So, that commitment is there.

[227] As the Bill stands, and I alluded to this earlier, there is a danger in just saying, ‘We will have a duty to promote collaboration’, as it does not place that duty on us and, in fact, it seems to be even less clear than the current requirements that we have under the National Health Service Act 2006, which requires us to co-operate. That is an example of what Emily was saying earlier, that we are not clear about where this fits with existing legislation and, if anything, it seems to water it down. So, we would value some more clarity in relation to that. If it did nothing else, it would force partners to the table to overcome some of the very real obstacles that stand in the way of integration. The intent is there, the commitment is there, and our experience to date very clearly shows us that there are governance issues and practical issues around bringing services together that need to be overcome. Having within the Bill some clear impetus and duty to do it would certainly bring health and others around the table to make sure that we overcome some of those issues.

[228] Finally, and again it may come up later, there is the issue of flexibility of budgets. For example, if you are looking to shift the balance from acute to community-based services by integrating services and having a more preventive approach, the experience to date is that the burden of that comes very much into social services and there is no requirement or mechanism to automatically shift resources from health into social services to support that reconfiguration.

[229] **Vaughan Gething:** Next is Emily, briefly, then Phil or Gwen on this point. Obviously, if Members wish to add anything on this point, it can be dealt with as well.

[230] **Ms Warren:** Just to address the point that you opened the question with, we reflected in our evidence that we are unclear what the Welsh Government’s vision around integration is. It can mean different things. The discussions that we are having with it are about older people and very specific service areas, such as mental health and learning disabilities, and they are very good discussions. However, in terms of articulating its vision about integration between health and social care, I think that we put that back to the Welsh Government and

said that we remain unclear as to how it sees that happening, and how it wants to use legislation to make that happen at a quicker pace than it already is.

[231] **Mr Evans:** The problem is that, in many respects, the Bill talks about co-operation and partnership, and what we would say is that there are limits to co-operation and partnership when the partners start from such fundamentally different statutory responsibilities and funding regimes. It is really hard to bring those things together. What we really want to talk about is the creation of genuinely integrated services that have one manager, one budget, one framework within which they work, and equal responsibilities. That is beginning to emerge in practice, certainly in terms of mental health services, learning disability services, and so on. We are on that journey. The obstacles to going any further are very great, given the current framework within which we work. I do not think that this Bill as it is set out will necessarily overcome those barriers.

[232] **Ms Carrington:** The other issue in terms of introducing this Bill is the endgame that we are trying to get to: what is the ultimate vision? Also, in terms of the transition, we have very good examples of collegiate and co-operative working with health and other agencies, including services within local authorities and the third sector, but the money that is needed at the front end is quite considerable. I am aware of examples in Ynys Môn where we have evidence of that ability to prevent people going into hospital, and a ward in the community, but there has been a tremendous amount of goodwill, stretching beyond and going over-budget to achieve that. It is not deliverable to mainstream it without significant change, because we have to continue doing those other things. It is not about the will and the ambition; there are some practical challenges in the current climate that make that a very difficult and challenging debate. We need to be honest and realistic. It is not about the people: it is a genuine challenge that we all have to meet together.

[233] On the original point, prevention is something that has to have collective ownership because I am sure that our health colleagues—and I am not being disparaging—would see prevention as preventing the use of acute services, whereas other people might think of prevention as not needing to come to social services at all. Where do you put that on the scale of how you define prevention?

[234] **Mr Evans:** May I give you a very specific example about reablement services? A number of local authorities have worked with their local health boards on invest-to-save bids. We have been given additional moneys from the Welsh Government in order to produce integrated reablement services, and they are functioning very well. The improvement in the service user experience is vast, so, clearly, they are delivering. The problem that we have with them is that they are invest-to-save, which means that the money has to be repaid. Normally that is predicated on a reduction in hospital beds. There is no evidence that that is feasible in the current environment.

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[235] Reablement services are increasingly given over to dealing with demand within hospitals, so our reablement services are now primarily dealing with hospital referrals, because we have an integrated discharge service, and with GP referrals. They take up all of that capacity. The additional capacity that we have created in reablement is not going into the community. I think that our real dilemma is that integration is taking place in secondary and primary care in a way that it is not in acute care, and I think that the new, integrated health boards struggle to shift resources within their overall envelope. It is very hard to move resources from the acute sector into primary and secondary care. They are struggling to deliver on that and that makes our dialogue with them problematic.

[236] **Vaughan Gething:** Elin, do you have more on this?

[237] **Elin Jones:** No.

[238] **Vaughan Gething:** Okay. Mick, do you have something on this?

[239] **Mick Antoniw:** It is on this, but it comes into the finance issue as well.

[240] **Vaughan Gething:** Okay. Just before I move on to Mick, we discussed in the earlier session, and now, integration, partnership and collaborative working in the statutory sector. What we still have not really heard from you is how you envisage the partnership, co-operation and collaboration arrangements with the non-statutory sector. There is a section 7 duty to promote social enterprises, co-operatives and others, and then, within the partnership section—I think that it is in section 140-ish onwards—you then have potential partnership arrangements with statutory and non-statutory partners. How do you see those working? Does the Bill set out a clear enough path for you to understand what your responsibilities would be and how that would work in practice? After that, we will move to Mick, and then we will hear from Lynne and William Graham.

[241] **Mr Palfreman:** There are a couple of things on that. Our concern about the Bill as it stands in relation to integration with health and local government also applies to our partnership working and co-operation with the independent sector and others, and certainly the third sector. The work that we are doing on integration framework certainly engages with the third sector as well and is predicated on the view that this is not just about health and local government integration; it needs to be far wider. This needs to be a genuine, mixed provision and partnership approach. However, our comments on the need for the intention and the Bill to be clearer on this apply equally to those sectors and to the rest of the statutory sector.

[242] **Ms Warren:** We have set out in our local government implementation plan how we would take forward some more of the policy intentions, in a range of actions and in the transformation of services, in which the third sector is a key partner. So, they are cited in each of the columns that tell you what we are doing, who we are doing it with and who has the lead.

[243] **Mick Antoniw:** Your submission suggests, very diplomatically, that there are potential resource issues—I suppose that it would not be a WLGA submission if it did not have that within it. The Deputy Minister says that the legislation creates an environment in which this effectively self-funds. That is, by the process of change, there are savings, and therefore, apart from the training provision, it is not something that you need to worry about. How credible do you think that position is?

[244] **Ms Warren:** I appreciate you noticing that we put it in a diplomatic fashion in our response. We did not want to get dragged into arguing over resources, but we have said that we fundamentally challenge the assumption that it is cost-neutral. I think that there is probably a lot of evidence that we could send to you, as you take forward your scrutiny, about work that we are doing with the ADSS resources group. The Society of Welsh Treasurers has also commissioned an independent study that will look to put a bit of evidence around those assumptions and enable us to challenge them from an evidence-based perspective.

[245] **Mr Palfreman:** If I may, I would just follow that up. We note some of the evidence and objections that the Deputy Minister gave to the Finance Committee recently, in which she said that a lot of this is unquantifiable. We appreciate that, as things stand, that is the case and that more work needs to be done. Emily has alluded to some of the work that we are doing to help to inform the debate, to get a realistic idea of what the resource implications are for something that we certainly do not believe is resource-neutral. Obviously, there is a massive risk in that; if we are going to be committed to new duties that have a significant resource

impact on us without knowing exactly what they are or where the resources are going to come from, then that is something that, at the first stage, we have very severe concerns about. It is also worth putting on the record that we have been calling for an open and honest debate with Welsh Government officials about this since the beginning of sustainable social services—so, from the White Paper and the inference that through efficiency savings and other means, we will get the resources to carry out this transformation that we all want to see happen. That is, at best, not evidenced, and we would say that it is pretty inaccurate. So, we certainly have concerns about that.

[246] We have talked a bit about prevention and there is a currency to the kind of view that if we get prevention right, then we will completely reduce demand and costs further down the system. We are particularly drawn on the evidence provided by John Bolton; he did work for us two and a half years ago in Wales, and has done similar work across the UK. He states that the evidence from across the UK clearly shows that remodelling services to focus more on prevention will certainly not get immediate budget savings. On top of that, if you think that, in doing that, you will forever-and-a-day stem the need for more acute services at the other end, then you are also mistaken.

[247] We are encouraged by what is stated, I think, in the explanatory memorandum, which is that the Bill recognises that, in some cases—probably a significant number of cases—prevention services are going to delay and stem demand rather than eradicate it. Phil has already alluded to some of the issues that local authorities and health colleagues already face, where people are presenting at the acute end with complex needs. If we do what the Bill wants us to do and continue with what we are already doing, those people may, in the future, be coming into the system later—maybe 15 years later—than they may previously have done, but they will still be there. So, we have to run in parallel those more intensive services along with prevention. So, thinking that prevention is the magic bullet that gives us the finance that we need to make all of this happen is clearly unfounded and we have concerns about that.

[248] **Ms Carrington:** The other context is the need to understand that we have reducing budgets. Many of the changes that are being introduced now are going directly into the savings agenda. As local authority officials, and directors of social services, we are very mindful that we are one of the biggest spenders in local authorities. So, if I do not reduce my spend very quickly, it will have an immediate impact on libraries and leisure centres, which are part of the platform for wellbeing and prevention. So, we are faced with a complex context in that the savings agenda does not reflect our experience of trying to deliver on care. As Martyn said, safeguarding and prevention does not always work. That is why our concern in terms of the definitions of wellbeing and prevention is about expectation, given our experience to date. So, while we welcome the aspiration, it is increasing expectation and demand, which will be additional to current resources—it is not a reconfiguration or an ‘instead of’. The Bill also introduces new expectations for assessment and information and advice, which have costs.

[249] **Vaughan Gething:** I will go to Mick next, followed by Elin and William on this point on finance and then I will go to Lynne.

[250] **Mick Antoniw:** I do not know whether you heard the Deputy Minister’s evidence, but further work is going on and we will have the opportunity to further review that. It seems to me that it is equally important that any further information that we have is specific because to us, it seems that there are two aspects to legislation: one is having good legislation and the other is to be sure that we can afford to implement that legislation. I do not think that there has ever been a case of someone saying that they do not have enough money, but we need to be able to analyse what the views are on the front line.

[251] **Mr Evans:** We are introducing new service models and have been for some time, so

we can talk with the benefit of experience about what impact that has in terms of how demand is generated and managed. We are investing in information and advice services. We are beginning to get citizen portals that enable people to contact one number in order to get a range of information about the sort of services that are available. We are investing considerably in preventative services. I mentioned reablement to you, but there is also the children's agenda with the development of Flying Start and Families First. The dilemma that we have is that a lot of those developments are currently grant-funded; they are not part of the core budget of local authorities and their investment is on the basis that the funding will come to an end in due course, whether that is in two years' or three years' time. The grant money available for these purposes from the Welsh Government will also dry up. In my experience, we are improving the experience of the service user considerably by adopting these new models, and they have clear benefits in that regard. We are trying to take out issues such as complex assessment, which we are doing away with. We are also doing away with financial assessment before those services are made available. Reablement services are a good example of that, which are provided without complex assessment and without charging for a period of time. It is a worthwhile investment for us, because the evidence says that it reduces the demand for long-term care.

[252] Where targeted preventative services with skilled intervention are available, they make a difference. There is no evidence that general prevention has a great impact on the levels of demand. It might delay it marginally, but probably not a great deal. It introduces some people into the statutory services at an earlier stage than they otherwise would. It is about asking what the purpose of prevention is and where the money comes from. At the moment, the money to finance prevention comes from Welsh Government grants or from local government.

[253] **Vaughan Gething:** I want to get some questions in from Elin and William on this point. We have 20 minutes left and there is still a lot that we have not covered. We will have Elin and William's questions, then answers, and then we will go to Lynne.

[254] **Elin Jones:** Mine is a comment, really. Just to make you aware, you may have been very diplomatic in how you framed your views on finance, but the Deputy Minister was not quite as diplomatic earlier this morning. She clearly put the ball in your court and said that the WLGA and ADSS Cymru need to provide a detailed analysis of costs. She described your views on this as 'rhetoric'. So, the ball is in your court in her view on costs. It would be useful and informative for us, as well as the Finance Committee, to be aware of your analysis as you develop it.

[255] **Vaughan Gething:** I agree. Could we have William's question, and then we will have the responses?

[256] **William Graham:** Paragraph 160 of the explanatory memorandum suggests an administrative saving of £2 million. I would be very grateful for your comment on that.

[257] **Ms Warren:** To respond to Elin's point, what we have really pushed for that is completely missing from the debate about resources is the context. At the time that the Bill will be implemented, we and the Welsh Government will be facing huge cuts to budgets—cuts that we have never experienced before. On top of that, we are going to be feeling the severe impact of welfare reform in Wales. So, new legislation will be introduced at a time when we will probably have less money than ever before.

[258] In terms of the Deputy Minister's statement, I can understand why she is saying that. As you know, we are doing work through the ADSS Cymru resources group to commission an independent economist via the Society of Welsh Treasurers. It is hard to quantify the costs because we are not clear on many aspects. This is also not our legislation; the Government

wants to bring this legislation forward. We want an open dialogue and an assurance that we will be in a position to deliver those provisions. Not to overstate our case, we have called for that on numerous occasions, but that debate has not been forthcoming.

[259] **Mr Evans:** This is an important point because—

[260] **Vaughan Gething:** You will need to be brief, because we only have 15 minutes left.

[261] **Mr Evans:** How do you quantify unknowns when we do not know what the eligibility criteria are going to be? Changes to the eligibility criteria have immense consequences for the budget that needs to be made available. If the responsibility is passed to us, do we say, ‘If you have this eligibility framework, these will be the costs; if you have a different eligibility framework, these will be the costs’? It would just be speculation, I suspect.

[262] **Kirsty Williams:** It would be nice to know what the eligibility framework is.

[263] **Vaughan Gething:** Yes. We would welcome further commentary from you on the resources, but we have covered quite a lot of the ground on resources and I want to move on to other subjects that we have not yet reached.

[264] **Lynne Neagle:** I want to raise the issue of eligibility criteria, because it is something that I put to the Deputy Minister earlier this morning. It seems as if the national eligibility framework is something of a work in progress; I can be diplomatic too. [*Laughter.*]

11.45 a.m.

[265] **Mr Evans:** We are impressed. All this tact around the table today. [*Laughter.*]

[266] **Lynne Neagle:** I do not know whether you watched the previous session, but what is your understanding of what is going on with the national eligibility framework? Do you have any further comments on the implications of that framework in resourcing this?

[267] **Mr Palfreman:** We will be diplomatic on that, because that is obviously the flavour of the day. [*Laughter.*] We are not completely convinced that we have seen a lot of evidence that it is a work in progress. [*Laughter.*]

[268] **Mr Evans:** That was not very diplomatic.

[269] **Mr Palfreman:** Maybe that was not diplomatic. We have yet to see what a national eligibility framework would look like. We are not alone in our concerns. Certainly, our colleagues in the third sector and elsewhere have raised questions about this. It is obviously put there as a very clear principle within the Bill, but we do not know what it looks like. There is no precedent, to our knowledge, in the rest of the UK in relation to a national eligibility framework. Again, I would say this from a local government perspective, but we have some very clear concerns first of all in terms of what its impact might be, when we do see what it is, on the local sovereignty of local authorities, and, indeed, going back to the resources issue, on the resource demands in individual authorities. My understanding is that even the funding formula for social services is based on the existing eligibility criteria, so all of that would be thrown into question and would give us some real concerns.

[270] In a wider context, we are still to be convinced that having a national eligibility framework is the golden bullet in terms of providing all the things that we want to provide, namely a consistent level of service, services to people in need and wellbeing services at the right time. We think that the wider service remodelling that we have talked about already in

today's session is every bit as important a contributor as having a national eligibility framework, about which we have those concerns. So, we remain to be convinced about its value as the key plank to sustainable social services, and we are not at all clear as to what is meant or envisaged in terms of that framework.

[271] **Ms Carrington:** Just to reiterate, this ties in partly with portability and with what it is trying to achieve. We would sign up wholeheartedly to the intention that people should have the confidence of accessing the services that they need wherever they live. Whether that is achieved through eligibility is questionable unless it is worked through very carefully, and we have no evidence that that has been achieved to date. So, we can sign up to the intention and what we want to achieve for people, but the issue is the mechanism for delivering on that.

[272] **Lynne Neagle:** Something that is related to that is the provision in the Bill to enable the power to make regulations permitting charges for new services that local government currently do not charge for. In the light of the discussion that we have had about the resource pressures that may fall on local government, how confident are you that we are not going to see a situation where we will be charging for a whole new raft of local authority services, such as the provision of information and advice?

[273] **Ms Warren:** The honest answer is that local government feels that it is right that we have those powers. We would want to avoid charging, particularly around information and advice, but the truth is that we very much feel at this point in time that unless we have the debate about resources, or identify where they are going to come from, the vision from Welsh Government that local authorities will have the power to charge will stem the resource gap in the new statutory duties that the Bill will introduce. We have some very real concerns about that concept.

[274] **Mr Palfreman:** I would reiterate that, philosophically, local government would certainly not be looking to widely increase the range of charges for services, but we do have that concern that charging may be seen as one of the ways of plugging a gap in resources that we have already talked about. We may need that power, but we certainly do not want to use it extensively.

[275] **Ms Warren:** There is a concern that if we do, it will decrease and prevent access. That will mean a greater cost to social services in the long run, because people will not access preventative services but come in when they have a more critical and acute need.

[276] **Mr Evans:** We have been, as I said, trying to move towards the provision of services without financial assessment to make sure that they are delivered in a timely way and that they are not delayed by having to undertake that assessment and making those sorts of decisions. The record of national Government intervention around the issue of charging is a bit problematic. The example that we have is the cap of £50. We were given strong assurances by the Government that that would not increase demand, because self-funders would not want to come to social services, even when they knew that it would limit their expenditure. The analysis of the consequences was very flawed; it seriously underestimated the cost to local government. The commitment to reimburse local government for that expenditure has still not been honoured to the extent that it needs to be. So, it is a very difficult area to prescribe nationally. I do not think that, ideologically, we are saying that we would want to increase the range or the scale of charges, but we have to be mindful of the resource constraints within local government.

[277] **Vaughan Gething:** One of the areas that we have not covered is the portability arrangements and whether they are a good, bad or indifferent thing and whether that is something that you welcome.

[278] **Kirsty Williams:** Or whether portability achieves—[*Inaudible.*]

[279] **Vaughan Gething:** That is a separate question.

[280] **Ms Carrington:** Rwyf am ateb hwn yn Gymraeg. Rwy'n meddwl ein bod wedi cyffwrdd ar hyn yn rhannol yn barod. Fel cymdeithas ac fel gweithwyr, rydym yn barod yn trio cadw at yr egwyddor o ddarparu gwasanaethau. Rydym yn deall pam mae pobl eisiau cysondeb o ran eu darpariaeth gofal ac yn y blaen, wrth iddynt symud o le i le. Wedi dweud hynny, nid ydym yn siŵr bod y ffordd y mae hyn yn cael ei gyflwyno yn y Bil ar hyn o bryd yn ymarferol ac yn cyflawni hynny. Roedd Phil a minnau yn siarad yn gynharach am y gwahaniaeth rhwng y gwasanaethau mewn ardaloedd dinesig a gwledig. Pan fydd rhywun yn symud o ardal ddinesig i ardal wledig, efallai byddai lle i ddisgwyl tebygrwydd yn y math o wasanaethau sydd ar gael. Fodd bynnag, fy mhrofiad i o weithio yn y gogledd yw bod gan bobl sy'n symud o rywle dinesig yn Lloegr i ardal wledig ddisgwyliadau am y ffordd o ddarparu gwasanaethau sy'n anodd iawn i ni eu bodloni oherwydd trwch y boblogaeth. Er enghraifft, mewn ardal wledig iawn yng Ngwynedd, pan roeddwn yn gweithio yno, roedd disgwyl inni allu darparu newid sifft am 2 a.m. a 4 a.m.. Nid oedd gennym y trwch poblogaeth na'r gweithlu i'n galluogi i gynnal y gwasanaeth yn y ffordd honno. Roedd hynny'n arwain at dyndra go iawn gyda'r teulu. Rydym o'r farn y byddwn wedi gallu osgoi hynny drwy reoli disgwyliadau. Felly, rhaid inni fod yn ystyriol iawn o'r cyd-destun lle'r ydym yn gweithio.

[281] Y pwynt arall y byddwn yn ei wneud ynglŷn â *portability* yw fy mod yn deall yr egwyddor bod teuluoedd eisiau cysondeb ac na ddylai'r gwasanaethau amrywio'n sylweddol o'r naill ardal i'r llall pan fydd pobl yn symud a phan maent o dan bwysau. Fodd bynnag, o ran diogelu, mae symud gyda theuluoedd bregus ynddo'i hun yn cynnig pwysau ychwanegol ac yn arwain at yr angen i ailasesu. Yn sicr, rwyf wedi bod mewn sefyllfa ym maes plant bregus lle'r oedd angen mynd yn gyflym iawn i ailasesu o ran risgiau ac i weld a oedd y pecyn a'r cysylltiadau yn addas ar ôl symud. Felly, er

**Ms Carrington:** I will answer this in Welsh. I think that we have touched on this issue to a certain extent already. As an association and as workers, we try to adhere to this principle of providing services. We understand why people want consistency in their care provision and so on, when they move from place to place. Having said that, we are not sure that the way in which this is being introduced in the Bill as drafted is practical and fulfils that aim. Phil and I talked earlier about the difference between services in urban and rural areas. When people move from urban to rural areas, they expect similar services. However, my experience of working in north Wales is that, when people move from an urban area in England to a rural area, their expectations of how services are provided is very difficult to fulfil due to the population density. For example, when I worked in a deeply rural area in Gwynedd, there was an expectation to provide a change of shifts at 2 a.m. and 4 a.m.. We did not have the population density or the workforce to be able to provide a service in that way. That led to a great deal of tension with the family in question. We think that we could have avoided that by managing expectations. So, we have to be aware of the context in which we are working.

The other point that I would make in relation to portability is that I understand the principle that families want consistency and that people, when they move and perhaps feel under pressure, should not find that services vary from one area to the next. However, when you are looking at safeguarding, moving vulnerable families brings additional pressures and leads to the need to reassess. I have certainly been in a position of having to undertake reassessment very quickly with vulnerable children, in order to look at the risks and assess whether the package and the links are adequate after the move. So, I think



ein bod yn deall yr egwyddor, nid wyf yn credu bod y *mechanism* a'r ffordd o'i gyflwyno yn ddigon aeddfed yn y Bil fel y mae ar hyn o bryd ac y bydd nifer fawr o *unintended consequences* o ran heriau, cwyno a *litigation*. Felly, rydym yn deall yr egwyddor, ond nid wyf yn credu ei fod yn ymarferol yn ôl yr angen fel y mae ar hyn o bryd.

that the mechanism and the way that it is introduced is not yet mature enough in the Bill as it is currently drafted, and there will be unintended consequences in terms of complaints, challenge and litigation. So, we understand the principle, but I do not think that, as drafted, it is practical in relation to need.

[282] **Vaughan Gething:** How would you suggest redrawing the portability for this?

[283] **Ms Carrington:** We question whether it is needed. In our principles on the way we deliver care, we have already committed to doing this; we do it anyway. We exchange information, collaborate and share documentation. There is also the ease of IT and portability of assessment electronically between authorities. The challenges are not in the intent, but in the practical challenges that we have as social care agencies.

[284] **Ms Warren:** We did a bit of scoping of this as part of the work of the resources group, to see how many people would be covered by the portability duty, and it was very limited. When we looked into some of those cases, following their move, they had often got very complex care needs or had moved for very different reasons. So, as regards Gwen's point about the principle that we support, how you put it on the face of the Bill and what it means in practice needs further consideration.

[285] **Vaughan Gething:** If you have further thoughts on how to improve the Bill, that would be very helpful for us, given the statement that you made. I have done this a bit back to front, but the linked issue is assessment. I note that, in your paper, you did not talk about portability, but you did talk about assessment—at least, ADSS Cymru certainly did. This is about the way in which the Bill sets out the single right of assessment and whether that makes sense. ADSS Cymru suggested that there was a view that the Bill is too focused on adults as opposed to children, and that there are questions regarding whether it is proportionate. I am interested in whether you could expand on how and why this is the case.

[286] **Mr Evans:** I would first like to say that, on a professional basis, we would strongly advocate unified social services directorates within local authorities. This is for obvious reasons. Adults' and children's social services deal with the same sorts of processes and deal with risk in the same way. There is a real synergy, in terms of ensuring that they are managed collectively. So, I think that that is exactly right. Gwen made the point earlier about the need for services to be family-centred, and I think that we have moved away from that somewhat, in terms of always talking about individual assessment. It is seeing individuals within the context of their families that is absolutely crucial. The degree of care that you receive from relatives makes an immense difference in terms of what you are able to achieve.

[287] We were strongly convinced by the evidence from the British Association for Adoption and Fostering and the Children's Commissioner for Wales that the Bill needs to focus on the rights of children. One thing that we would want to see running through it as a theme is a distinction between children's and adults' services. Adults' services are very much predicated on issues around competence and the ability to make decisions in your own right. Children's services are strongly predicated on issues of development and parental responsibility. It is really hard to think about applying overall themes in a way that does justice to either of those service user groups. It is hard to identify consistent themes and how they are applied across all service user groups. That would be my point.

[288] **Ms Carrington:** I feel very strongly about this, which is why I made my earlier

comments about welcoming the approach, about the need for the Bill to focus on family, and about the work that has been done on assessment with the Social Services Improvement Agency. In my position as social services director, I work with the families of adults and children, and generally this might be to do with complaints, but, given that an assessment may be transactional, looking at learning disability or dementia or disability, the person may not have hit the threshold of eligibility for individual assessment. However, when you look at the family dynamic, you might have a grandfather with dementia, a mother who has mental health difficulties and a child with disabilities. How do you consider that family's needs collectively and its members' ability to support each other? I feel that we really need to go back to the basics and look at how we assess things as a collective and recognise those individual needs. The Bill gives us the opportunity to do that, and it is important that we do it properly. At the moment, this is a bit of a jigsaw, rather than taking the real opportunity to look at what we want to achieve.

[289] **Vaughan Gething:** This relates to points that the children's commissioner raised in evidence, particularly in relation to assessment. The commissioner's view appears to be that parents should not be able to refuse a needs assessment for a child. There are some fairly strong comments in the commissioner's evidence on that. I am interested in your view on that. We will obviously have to raise this with the children's commissioner. As professionals in the field, what is your view?

[290] **Mr Evans:** The dilemma that you have is always around the degree to which it is right to intervene in family life. There are competing discourses around that, are there not? People take very different ideological stances about the extent to which that is permissible. Currently, it is defined on the evidence of risk—the risk of significant harm. That gives us a proper right of intervention in order to safeguard children. It is more problematic when you apply that right of intervention to issues around development and need. These are almost an agreed construct, are they not? Opinions will differ considerably and opinions change over time about what is and is not right in terms of helping children to meet their developmental needs. It would lead to considerable confusion among families and professionals about whether it is proper to intervene if you are doing so in order to promote developmental needs.

12.00 p.m.

[291] **Ms Carrington:** This is the bread-and-butter work of the staff that we have working around us every day in terms of how you define that need; it is a very difficult and challenging question. From experience, I have found that one of the big issues is the access that these families have to preventive services. It is not only about the fact that the services are in place, but about how accessible they are in terms of the families' ability to engage with them and the targeted prevention work. That is an issue. We may have a great many preventive services, but I question at times how much targeted prevention we have for some of these more challenging families. The question of how we do that is something that we work with daily. It is a question of walking through this Bill from a child's perspective and that of a family, and really working out whether the Bill supports or hinders the end outcome of getting the right kind of support to those families in those tricky situations.

[292] **Vaughan Gething:** I have a final brief question from Elin, then a response, and then we will need to finish—but just for this evidence session, as we know that we will hear from the WLGA on a few more occasions over the course of the Bill.

[293] **Elin Jones:** Mae gennyf gwestiwn byr, manwl ar hygludedd. Dim ond nawr on portability. I am only now reading this rwy'n darllen yr adran hon am y tro cyntaf. O section for the first time. In terms of the ran cyfrifoldeb yr awdurdod sy'n anfon, a responsibility of the authority that sends, do

ydych yn gwybod a yw hynny'n berthnasol i awdurdodau yng Nghymru yn unig, neu a yw'r Bil yn cyfrif ar gyfer awdurdodau sy'n anfon o Loegr i mewn i Gymru? Gallai'r polisi a'r gwasanaethau fod yn hollol wahanol yn Lloegr, felly gallai hygludedd i mewn i Gymru fod yn fater o gonsŷrn neu'n ddiddorol.

you know whether this is relevant only to authorities within Wales, or whether the Bill takes into account authorities that send from England into Wales? The policy and services could be completely different in England, so portability into Wales could then be a matter of concern or interest.

[294] **Ms Carrington:** Credaf fod y Bil yn ymwneud â Chymru'n unig, felly nid oes awdurdod na modd i weithredu ar draws y ffin. Yn ymarferol, rydym bob amser yn ceisio negodi'r un fath gydag awdurdodau, boed yn Lloegr neu dramor, pan fyddwn yn rhoi pecynnau gofal at ei gilydd. Fodd bynnag, rydym yn credu bod hyn yn ymwneud â Chymru'n unig.

**Ms Carrington:** I think that the Bill relates to Wales only, so there is no authority or means to work across the border. However, practically, we always try to negotiate in the same way with authorities, whether they are in England or overseas, when we put care packages together. However, we believe that this relates only to Wales.

[295] **Vaughan Gething:** Thank you very much, and thank you to all of the witnesses for coming in today. As I said, we will hear more from the WLGA and ADSS throughout the progress of the Bill. You will, as usual, get a transcript of today's proceedings, and if there are any points that you want to clarify, please do so. As we have said, we are interested not only in where you disagree with policy or parts of the Bill, but in any suggestions from you about how to improve or change the Bill. We would be very interested in that. You will know that we have the Deputy Minister coming back to us on 6 June. So, thank you very much for your written evidence and for your time this morning.

[296] **Mr Evans:** Thank you, Chair, and thank you to the Members. It has been a very helpful opportunity. Thank you for your questions; they were properly searching.

[297] **Vaughan Gething:** As they should be.

[298] **Mr Evans:** We hope that we assisted.

12.03 p.m.

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

#### **Motion under Standing Order No. 17.42 to Resolve to Exclude the Public from the Meeting**

[299] **Vaughan Gething:** I move that

*the committee resolves to exclude the public from the meeting for the next item in accordance with Standing Order No. 17.42(vi).*

[300] I see that the committee is in agreement.

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 12.03 p.m.  
The public part of the meeting ended at 12.03 p.m.*

*Ailymgynullodd y pwyllgor yn gyhoeddus am 2 p.m.  
The committee reconvened in public at 2 p.m.*

## **Y Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 1 Social Services and Well-being (Wales) Bill: Evidence Session 1**

[301] **Vaughan Gething:** Good afternoon and welcome back, Members, to this afternoon's session of the Stage 1 scrutiny of the Social Services and Well-being (Wales) Bill. Our witnesses for this afternoon are from the Wales Council for Voluntary Action and Care Forum Wales. I will allow you to introduce yourselves, state which organisation you are from and the role you have. Then we will go into some questions.

[302] **Ms Adams:** Hello. I am Constance Adams and I am a senior policy officer with Wales Council for Voluntary Action.

[303] **Mr Kreft:** I am Mario Kreft, chair of Care Forum Wales.

[304] **Ms Wimbury:** I am Mary Wimbury, senior policy adviser at Care Forum Wales.

[305] **Mr Perrett:** I am Malcolm Perrett and I am the director of Carewatch Care Services Ltd in Newport and the chair of the Cardiff Domiciliary Care Providers Association.

[306] **Vaughan Gething:** Thank you. As you know, this is a bilingual meeting, so if Members or witnesses speak in Welsh, there will be simultaneous translation on channel 1. The microphones come on automatically, so when you speak there should be a light in front of you. You do not need to worry about turning them on and off. We have received your written evidence; thank you very much for it. There is plenty for us to do. We know from our session this morning that there are lots of questions to ask. We suspect that we will not get through all of them that we would like to raise with you in oral evidence. So, as with the witnesses this morning, whom we may well write to, I suspect that we may end up writing to you with questions that we do not reach. I wanted to say that upfront at the start.

[307] The first question, which I have asked to all the other witnesses this morning, is about interpretation and purpose in the Bill. The Bill has a range of themes, but one suggestion that has been made to us is that the Bill could benefit from having a statement of statutory principles at the start of it, similar to the way in which the Children Act 1989 has a statement of principles about the scheme and how the legislation is to be interpreted. The Deputy Minister and the WLGA were of the view that that might be restrictive, but other witnesses think that it could be helpful. How would you feel about that, as people who work in this area and deal with some of the practical consequences? Shall we start with Constance Adams?

[308] **Ms Adams:** I think that it is an interesting proposal. That is how we were interpreting the wellbeing part of the Bill, in that it sets that context and principles. You have seen my written response; one of the things that we were pulling out was around the wellbeing outcomes and the citizen's voice. For me, maybe the commitment that the Welsh Government is stating at the moment to citizens' voices is missing from the Bill. So, I would concur, if the principles at the beginning underwrote that citizen's voice and control element.

[309] **Ms Wimbury:** From our point of view, we would see it as an interesting proposal. It obviously depends on the content; it could be restrictive if the content is not wide enough. One of the things that we might like to see in it is a recognition of the whole sector in terms of the provision that is currently there. We see quite a lot of reference to building the role of the third sector, co-operatives and social enterprises, but definitions of those might not be clear. It

may well be that the majority of provision currently could define itself as a social enterprise, but it may also be that, if the definition were more restrictive, that would not be the case. We would want to see a valuing of the current good provision, in particular the number of SMEs providing social care in Wales and how that joins in with the Welsh Government's economic agenda.

[310] **Mick Antoniw:** So, you see the legislation as needing to fit in within your membership and the third sector structure, rather than adapting a co-operative structure, almost, to make that provision. Is that how you see it?

[311] **Ms Wimbury:** No, I do not think that that is what I was saying. What we are looking at is what the models are for the future and how we can have greater user voice et cetera. What we also have to recognise is that currently 90% of provision in Wales is within the private sector. Most of that is within SMEs. A lot of those are very rooted in their communities, but how can we bring that together to deliver the new agenda effectively and make sure that those providers feel part of that? It may be that there are some providers that do not have models that work for the future, but equally we need a continuation of care and to make sure that everybody is involved in that process.

[312] **Mick Antoniw:** The expansion of direct payments is going to have a massive impact. We have already seen a lot of corporate interest beginning to develop in that field. It seems that one of the reasons that this has come through in this particular way is partly based on looking at the Quebec model, but it is also about an alternative way of providing something that gives a standard and security to people who might be coming within that for the first time. From what you are saying, a lot of the third sector is not really geared up for that. There are examples of places that do that, such as the Shaw Trust and others. Do you think that there is a need for more work on your side in relation to how you as organisations or how thought processes come together to look at a new way of delivering what might be a lot more work being provided through increased direct payments?

[313] **Ms Wimbury:** I think what we would see is that there needs to be a focus on what is provided and the care that is provided for the citizen, rather than the structure that provides that. There will be different types of structures that contribute to that, but I know that Malcolm wants to talk about direct payments.

[314] **Mr Perrett:** I can assure you that there are examples of independent providers supporting the direct payment process, of which we are very supportive. If it increases choice, the majority of providers are very supportive of that. That brings me on to another point on the Bill: I had difficulty reconciling the direction of direct payments with the safeguarding agenda in the Bill. That needs to be looked at quite seriously. I know that we do not have much time, so, briefly, there are organisations such as the Shaw Trust and Diverse Cymru that are managing the direct payment process for local authorities. Their remit is to help someone who wants to access direct payments—you probably know what their remit is, so I will not go on about that. I feel that we need to consider seriously the amount of training and safeguarding around the management and supervision of personal assistants, because if they are unregulated and unmanaged, there is an opportunity for safeguarding issues to arise around the direct payment process.

[315] **Vaughan Gething:** I have questions from Lindsay Whittle, then William Graham, and then I will come back to the other side to see whether there are more questions. Sorry, Constance, you did indicate that you wanted to respond.

[316] **Ms Adams:** I want to come back on the co-operative model, because I think that it is important that the Bill enables the development of those new models. It is very much about service users working in different ways and co-operatives certainly provide a very good way

of people coming together and pooling their money to get a service in a different way. We must not lose that. On the point of direct payments, beyond personal assistants, you are going to have some people who are using their families and friends to deliver services. Work is already beginning on how to develop those skills. We must not be afraid to be adventurous in what we do.

[317] **Lindsay Whittle:** The Bill says that there is a duty on local authorities to promote social enterprise, co-operatives, user-led services and the third sector. Do you think that ‘a duty’ is strong enough? Do you even perhaps see that as a barrier?

[318] **Ms Adams:** ‘A duty’ is the common term used in the legislation and, from the third sector point of view, it means that we can look to our local authorities and statutory partners to work with us to develop this. From our point of view, it has been welcome. I am interested in how you might strengthen it. You asked whether it is strong enough. How would you strengthen it?

[319] **Lindsay Whittle:** I would not use the word ‘promote’. I have to say that I do not know what the right word is, but ‘promote’ is not strong enough for me. I would need a thesaurus next to me to find you a stronger word, as I cannot think of one off the top of my head.

[320] **Ms Adams:** I guess the danger is that if you use ‘establish’ or ‘develop’, you start to put the onus on the local authority to take the lead. We are keen that communities and service users are empowered to develop these approaches within the third sector. So, yes, it is difficult to find the right wording.

[321] **Rebecca Evans:** I asked the Deputy Minister about this this morning and she was very keen to open up the discussion in terms of what promoting social enterprises and so on would mean and she was keen to hear ideas. What sort of frameworks need to be put in place for the third sector and others to be able to take advantage of this new duty to promote?

[322] **Ms Adams:** In our written response, we said that we need to be very careful with definitions and not get hooked on social enterprise in particular. That can be seen as one model, and it can be seen as quite a restricting model, in a way, in that you have a threshold of income generation, which then almost defines you as a social enterprise.

[323] We said that, within the third sector, the modern profile is that quite a high percentage is on that continuum of trading and income generation, but not all will meet the threshold of say, 80% of income generation, which people might say is a pure social enterprise. That has been the danger with social enterprise development to date. We have had internal debates about whether or not you are a social enterprise. That is the danger. The focus needs to be, as I have said, on putting citizens and communities at the centre and looking at new ways of enabling the delivery of services. Whatever that mix is—co-operatives or whatever—it has to have a trading element, because we know that financial resources are getting tighter and tighter, so any way of resourcing something in a different way is welcome. However, we also have to look at the co-production element, which looks at communities as a whole, and at people themselves as assets. So, it is that rich mixture. I think that the danger in simply focusing on social enterprises is that we are going to see spin-outs from local authorities and not much else.

[324] **Ms Wimbury:** We also need to recognise what is being done by people across the sector. For example, the people either side of me, through their training, offer training to unpaid family carers as well. That sort of thing can come from providers in any sector and it comes back to this being about what people do and what we want to see in terms of provision, rather than exactly how we define it. Equally, I think Constance is right: if we get two types

of definitions of social enterprise, we then get into who is it and who is not it. That can stop people from just getting on and doing positive things.

[325] **William Graham:** May I ask you a bit about commission? In your evidence you raise some concerns about that and you rightly remark that responsible commission does not always mean the lowest-cost provision. Would you like to expand on that a bit?

[326] **Mr Perrett:** My experience, particularly within the last two or three years, is that commissioning is currently being driven by how much it will cost, not necessarily by providing the right level of service from the right provider for that cost. I am sure that I am not alone in that. I am based in Cardiff and Newport and that is my experience. I can give you a personal example. We are a provider, under a framework in Cardiff, for children; this contract has been running for four years and we were commissioned, initially at quite a high price, because we were providing support for challenging children with complex needs. We have not had a referral from the Cardiff child and disability team for nine months, purely because of our cost. We train our staff in those areas to handle those complex and challenging behaviours, but that is being ignored now, because of the cost imperative.

[327] **William Graham:** On a slightly different subject, Care Forum Wales has always been anxious to promote training. I am wondering about your concern about personal assistants being unregulated. How could those be brought in to any part of the regulation?

2.15 p.m.

[328] **Mr Kreft:** It is possible for people to meet a certain standard. I do not see any reason why we cannot introduce registration for all social care workers. This is an aspirational Bill. We are not talking about it happening in the next 12 or 18 months. This is a Bill that brings together some complex legislation for, possibly, a generation. The aspiration surely has to be that people will be safeguarded. There has to be a degree of regulation. It has always been difficult to understand why people working in care homes needed to be regulated before people working in domiciliary care, and I speak—like Malcolm—as a domiciliary care provider as well as a care home provider. If you are thinking about the level of risk with unsupervised people, that is exactly the position with personal assistants. Of course, we want to empower individuals, and I very much agree with what Constance said about needing a definition that is not too tight, but surely what we need above all is innovation, and not to stifle it, in a sector that will have far more need coming through over the next 10, 20 or 30 years than the resources to pay for them. On the point about training, you will have heard me and others in the care forum talk about the shortage of high-quality managers, the difficulty of retaining the top quality and attracting social care workers. This will not go away. As the recession comes to an end, finally, we will find that there will be even more pressure on people.

[329] If I may pick up on the point from Mr Whittle about the duty, surely the biggest duty on local authorities is to galvanise what they currently have in their community, whatever that is, to see how we can get that fit for the future. If the future is a co-operative movement of social care 20 or 30 years from now, so be it, if that is what people want, but we need to be careful how we manage where we are and where we are going. In particular, it is disappointing, and you heard me saying this in the private session recently, that the language is not clear. So, if someone reads the Bill, it is the voluntary or third sector and then it is the independent sector. It would be a lot clearer for everyone if it was the third or voluntary sector and the private sector. Let us know it. Most small and medium-sized enterprises in Wales that provide social care are having the most challenging times that they have ever had. Often, if you look at the definition of a social enterprise, you could read across every single one of them.

[330] **Vaughan Gething:** Lindsay, is your question on this point?

[331] **Lindsay Whittle:** It is. I am pleased that Bill Graham has asked the question on training, because it is important. In times of austerity, one of the first budgets cut is the training budget. I wanted to ask you about the advocacy service and the training of independent advocates, because that is important. What do you think about the registration of independent advocates?

[332] **Mr Kreft:** We would favour that, because of the notion that there is a clear understanding of who is able to undertake that important role. Advocacy is, sadly, one area that has not been given enough attention—by all of us, if we are honest. Sometimes, it has been unnecessary in the past, mostly because it has been very much about the families, but as we are becoming a lot sharper on these matters, we have to promote it a lot more. Anybody dealing with vulnerable people should have the necessary training and qualifications and, possibly, there should even be registration.

[333] **Lindsay Whittle:** That is music to my ears, thank you.

[334] **Vaughan Gething:** Do you have any more questions on this point, William?

[335] **William Graham:** No.

[336] **Vaughan Gething:** I have Gwyn Price and then Kirsty Williams.

[337] **Gwyn R. Price:** Good afternoon, everybody. You have raised some concerns about the consolidation of existing legislation. What needs to be put into the Bill to take out the confusion?

[338] **Ms Wimbury:** I am not sure that we are entirely sure what the confusion is. It is just that, in looking at it and how it interacts with the National Assistance Act 1948, without going through it with a lawyer, which I am afraid that we have not have the resources to do effectively, it leaves open a possibility, which we wanted to put on the table, that should be shut down.

[339] **Gwyn R. Price:** You want it looked at and explained in more detail.

[340] **Ms Wimbury:** Yes.

[341] **Kirsty Williams:** Question 2 in the consultation letter that the committee sent out asked whether the Bill as drafted delivered the stated objectives, as set out in chapter 3 of the explanatory memorandum. This is key for me: does the Bill do what the Government intends it to do? You say that you are unable to comment on whether the Bill works or not, yet you go on in your evidence to make lots of comments about its suitability. If you are not able to make a comment on whether the Bill works, on what basis should we treat the rest of your evidence?

[342] **Ms Winbury:** The bottom line is that the nature of the Bill is that it is setting out a very broad-brush approach in the hope that the legislation will stand. A lot of the detail, in terms of how that works, will be left to secondary legislation, which we would expect to be consulted on. All that we can do is comment on the broad-brush approach at this stage.

[343] **Kirsty Williams:** Like you, I think that it is nigh-on impossible to actually say whether the Bill will work or not, because of the nature of the drafting, as you have just explained it. Having said that, you go on to say in your evidence that you feel that the balance of what is on the face of the Bill and what is left for regulation is not unreasonable. The



powers of the Minister to make subordinate legislation are huge in the way that it is currently drafted, but again, you do not think that that is ‘unreasonable’; I think that that is the word you used. Is that still your view? The evidence that we have had this morning from a variety of witnesses is very much that, actually, it is not a reasonable balance, and in voting this through we would be voting for a piece of social services legislation without having any real idea of what the end product may be. Surely, as people who are going to have to deal with the consequences of this, you must be concerned that you might end up working in a regime that, at this stage, we have no idea what it will look like in reality. Are you seriously saying that you are not concerned?

[344] **Ms Winbury:** What we have also said—

[345] **Kirsty Williams:** I am concerned for you.

[346] **Ms Winbury:** What we have also said in our evidence is that we would expect the extensive consultation process that we have been involved in so far, and continue to be involved in through various other processes, to take into account our views at that point. So, providing that that continues to be a full and open consultation process in which we can participate, and in which our views are taken into account, it is not something that we feel should stop the Bill moving forward at this stage.

[347] **Mr Kreft:** If I could add to that, Kirsty, we have the experience of nigh-on 20 years of working with 22 local authorities. We do not see the position that you outline as being a lesser place than where we currently are, because we have 22 variations of a theme. We have a lot of services that are being denied when there are clearly resources from this place being put through to local government, and we see that as one of the main issues for a lot of the challenges that we face. A great deal more social care could be provided in Wales if local authorities were really prepared to engage with the people who are already delivering and working. If you look at the workforce, you have a sector with nearly 6% of the Welsh workforce. Who is consulting that workforce? Who is really getting to grips with that, in an economic sense? Social care is not a negative aspect to this country; it is actually a very positive stimulus to this country economically, and in defining who we are as a nation. Care Forum Wales is not being schizophrenic on this; it is just that we know what it has felt like day on day working with the situation that we have. We have seen the changes, many of them not good changes, and there is nothing that anybody in the independent sector—particular the for-profit sector—despises more than waste of taxpayers’ money when there is such a need at the coalface for services.

[348] **Kirsty Williams:** You said that you feel happy to let this proceed as it is currently drafted because you will be consulted on what the Minister may or may not decide to do in terms of regulation, and that you have been party to consultation. The Deputy Minister this morning said that she was consulting widely, and drawing up the eligibility criteria, which of course will be absolutely key to your businesses, as to who will be deemed eligible. The Welsh Local Government Association said—I cannot quite remember the very polite phrase that it used—that it was, I think, less than a work in progress to date. Have you had any opportunity so far to work with Welsh Government officials on what the national eligibility criteria will look like?

[349] **Ms Wimbury:** No. I think that we are in the same position.

[350] **Vaughan Gething:** Do any of the Members on the other side wish to follow any of that up?

[351] **Rebecca Evans:** On the same kind of theme, I asked the WLGA representatives this morning which provisions of the Bill—which future pieces of work—they thought should be

subject to the affirmative procedure in the Assembly, as opposed to being subject to a ministerial decision. Do you have any views on that at the moment?

[352] **Ms Wimbury:** No; I am not sure that we do at this stage.

[353] **Ms Adams:** I do not think that the outcomes framework differs hugely from ours in that section particularly, nor the section on co-operation and partnership working. I think that those two sections would really underpin the whole working of it. So, that wider consideration of the progress would be good.

[354] **Rebecca Evans:** May I move on to a different topic?

[355] **Vaughan Gething:** Of course.

[356] **Rebecca Evans:** We discussed at some length the possible financial implications for the Welsh Government and for local government, but do you see any financial implications in the Bill for the third sector?

[357] **Ms Adams:** There are two aspects to it. I guess that the first one is that, towards the end of the Bill, you have the section on co-operation and partnership, and it obviously leads to discussions already happening about pooled budgets, and that is seen very much as local authority and health board funding. The danger there is in thinking purely about a statutory flow of money. I have talked about looking at communities as wholes—at resources in communities and people resources—and thinking about resources in a different way. We need to be very careful to see that that comes through. At the same point, we know that funding to the third sector at the moment is quite poor, in a way. For local authorities, it has stayed more or less at 2.6% of their whole budget; for health boards, it is a paltry 0.4%. The Bill leads towards integrated services, but is the third sector still going to be very much the poor relation at the table?

[358] If we are talking about changes and putting people and communities very much first, we have to be looser about where the resources and the funding go. We would hope that more funding would come to the third sector, not because we are the third sector, but because of the contribution that we can make with it in working with communities and people.

[359] **Rebecca Evans:** With the renewed focus on increased preventative services, the third sector has a huge role to play in befriending, just to give one example. Are you concerned that the funding will not follow?

[360] **Ms Adams:** I am concerned about how the funding flows. It is interesting; we recently had a meeting of the social service leadership group, where we have the WLGA, SSIA and local authority colleagues, and they were agreeing that there needs to be an aspect in which communities have access to resources in order to develop these on-the-ground local activities and services. That is going to be a major change. It is about how we do that, where the flow comes from—whether it is direct from central Government—and how it flows down to communities. However, there does need to be some community resource, and that, I think, is a major change.

[361] **Vaughan Gething:** One of the points that we rehearsed at some length with the WLGA, the ADSS and the Deputy Minister was about partnership, co-operation and integration. Most of that discussion, though, focused on partnership, co-operation and integration between statutory partners. We did not have a huge discussion about partnership between the statutory and the non-statutory sector. The Bill sets out a scheme that encourages and enables, but on the face of the Bill, there is not a harder requirement, if you like, for that partnership to take place among people from the statutory sector. In the later sections of the

Bill, there is this point about having a partnership board. Do you think that the way the Bill is currently drafted would deliver the partnership among the statutory sector that we understand the Bill wishes to see achieved?

2.30 p.m.

[362] Secondly, do you think that the way that the partnership element of the Bill, as drafted with the non-statutory sector will provide the level of consistency that we seek? Both the WLGA and the Deputy Minister have talked about a range of partnership projects across Wales that exist and they say that they have seen some success. The other message is that that is not a consistent picture. So, will the Bill deliver on providing more consistency?

[363] **Ms Adams:** I do not think so at the moment. In our written submission, we picked up on that and said that there has to be a duty on the Welsh Government to include the third sector in those partnerships. Interestingly, the first time we gave evidence to this committee, the work on the integrated health and social services work was just starting. The WCVA has been involved in that and the documents that are coming out at the moment write in the third sector very strongly and we feel that we are suitably a partner in that. A visit to Scotland to look at how the Scottish Government has done it was very interesting, because it drew a very clear line between the statutory accountability role and the third sector contribution, which is an influencing role. Both are equally important and both are necessary for the success of that joint integrated working. So, there does need to be a change in the legislation to make sure that that is underpinned legally. In terms of consistency, obviously, that would follow from the legislation.

[364] **Mr Kreft:** In terms of the first part of your question on the statutory bodies and partnership working, it is hard to see, other than the point that was made earlier about almost the nuclear option, what within the Bill will make them work more closely than they are currently doing. We have seen, through the various reconfigurations, at best very poor partnership working.

[365] With regard to the second part of your question, which is very relevant to the independent sector—whether the third sector or the for-profit sector—is that we very definitely, and we have made it very clear in our submission, would not see the Bill in its current state as being strong enough to ensure that, across Wales, we had that level of integration. To evidence that, the memorandum of understanding that we signed with the WLGA and ADSS four or five years ago basically went nowhere, for whatever reason, and we have been trying for the last couple of years to get that back on the table with the support of the Deputy Minister. Even today, in 2013, we see a myriad of small and medium-sized enterprises across Wales not fully integrated into the local community system. Where you have public money going into, essentially, public services that are provided by independent organisations, surely there is a prerequisite that those are involved in a real and meaningful way in the planning and delivery of services. That is where innovation will come from and that is where some services, as they need to close, evolve, or grow, will come through the system. That currently does not exist anywhere in Wales that is worthy of that named partnership. Care Forum Wales certainly believes that if the Bill is to go through, as it will, then at best you will have one or two examples of reasonable practice and quite a lot of very poor practice as far as partnership is concerned.

[366] **Vaughan Gething:** So, how would you wish to see the Bill changed to deliver the cultural and practical changes that you are clearly looking for?

[367] **Mr Kreft:** If you track this all back to ‘Fulfilled lives, supportive communities’, which I think was published in February 2007, there was a very clear model in there that was basically bringing in independent sector providers—from the third sector and the for-profit

sector—under a local, regional and national umbrella to try to bring people together, just as we are here today to give evidence to support your decision making. So how, without bringing in that skill and expertise in local communities, are we going to get the very best in those settings? So, there is a model. Despite the fact that the memorandum of understanding did not go anywhere, it was a good basis on which to start. If we could have a clear statement in the Bill that if the legal responsibility is with local authorities to ensure co-operation at a local level, then there surely has to be an agreed mechanism on a national basis that ensures that every SME and organisation that is using a lot of public money to provide these vital services is fully integrated. There is also a responsibility on those organisations: it is not a one-way street; it is very much about partnership in its fullest sense. I would defy anyone to show you anywhere in Wales where that partnership is where it should be, even after all the years of working at it. Due to the fact that it is not where it should be, people are not getting the services that they should. There are also not as many services as there should be, which is not acceptable.

[368] **Vaughan Gething:** Lindsay, did you have a question on this point? Okay. I will call Gwyn Price and then Lindsay Whittle.

[369] **Gwyn R. Price:** Moving on to direct payments, you say that you have concerns over the way in which direct payments are issued. What would you like to see in the Bill to address the direct payment issue on your behalf?

[370] **Lindsay Whittle:** That was my question.

[371] **Gwyn R. Price:** It is not yours; it is mine. [*Laughter.*]

[372] **Lindsay Whittle:** It is yours, sorry; that was mine as well, I should have said. I would like you to explain the second paragraph of your submission, as I do not quite understand that, and how you see a way ahead.

[373] **Mr Perrett:** The people that I have spoken to in the independent sector are very supportive and we do provide care that is funded by direct payments. However, the system may not necessarily be being used for its primary objective, namely to create choice and to give people flexibility as to how they receive their care. We still have a situation where local authorities provide an assessment and then direct payments apply. That assessment is totally intransigent; it is as written. For example, if someone says, 'I have four hours of care a day and what I'd like to do, because I've got some friends staying with me for a couple of days, is that I don't want those eight hours of care, so I'd like to have them the day after when I'd like to go shopping', the answer is, 'No, you can't; it says in your care plan that you have a breakfast call, a lunch call, and so on'. So, the choice and flexibility does not exist at the moment. Hopefully, the Bill will be able to put that right.

[374] Members in Cardiff have come to me and said, 'We've been providing support to this individual for six years, and they have decided that they would like to access direct payments. They have now come back to us and the level of fees that we will see for the same amount of care is 25% less than we were charging previously'. I am not saying that that is right or wrong, but what I am saying is that the direct payments may have been manipulated recently to drive down the cost of care. If you drive down the cost of care, there are other implications regarding training, supervision, reviews and so on. A cost is attached to providing all those functions.

[375] The other point that I was going to make—sorry, I have lost my train of thought.

[376] **Ms Wimbury:** The original purpose of direct payments was to give people who were able to take a great deal of control over their own affairs the flexibility to do that. We are now

seeing the widening out of direct payments. People may sometimes have more difficulty in managing those themselves, and there are two key things in terms of protecting those people. As Malcolm said earlier, one is the regulation of an appropriate safeguarding system within personal assistance, and ensuring that they have access to appropriate training to do their job properly. The second issue is that we are now seeing significant numbers of brokers brokering arrangements between care providers, be they a mixture of personal assistants or domiciliary care agencies, and the person receiving the direct payments. What we are seeing there are issues in terms of flexibility, and whether that controls people's choice. For example, someone has been using a domiciliary care agency, and they went to continue to use the domiciliary care agency for part of their care, but to employ a personal assistant for another part of their care. However, to be able to access the direct payment, they need to go through a brokerage system. The brokerage system then starts to impose conditions contractually in terms of what can be provided and what is necessary, which do not fit in with the domiciliary care agency's contracts and there seems to be no room for negotiation around that. The person who is caught in the middle feels that they cannot have the care from the two sources that they want and that, in exactly the same way as before, they are just told who they are getting it from, effectively. They feel in the same situation. I think that things need to be smoothed out in that area if we are serious about giving people real choice.

[377] **Ms Adams:** I just want to paint a more positive picture of direct payments. In Wales, we have been developing citizen-directed support. There is a cross-sector alliance and certain local authorities—I am thinking of Monmouthshire, Flintshire and Denbighshire—are doing some very good work with that. Again, we must not take fright and curtail the Bill and the opportunity to develop citizen-directed support for Wales. Scotland has a specific self-directed support Bill. We have included it in one piece of legislation and it is very important there. Again, in WCVA's written response to this committee, we included on the wellbeing outcomes framework that there really needed to be a piece in the primary legislation to bring citizens' voices and control back into that, to take it full circle to make sure that people's voices are followed through and that they are given the funding to enable them to be adventurous, take risks and fulfil their lives, aspirations and goals in terms of the support and the way in which they live their lives. The whole thing has to flow. I urge you to look at good examples of citizen-directed support in Wales.

[378] **Mick Antoniw:** We seem to be talking at cross-purposes and I wonder whether there is a certain degree of confusion. Section 7 of the legislation is about creating an opportunity for new models and approaches of coming together, and so on, for what is going to be an area that, if it continues to grow as we anticipate it will, may result in a lot of people potentially being very distressed, exploited or not getting what they require—that is, the intention of the direct payments will not be delivered. Direct payments are a way of providing a mechanism that actually gives people security, but also a degree of control as well. Is that how you see it?

[379] **Ms Adams:** No. As I said, I have been involved with colleagues in the third sector, particularly around learning disabilities, who have been spearheading this work around developing citizen-directed support in Wales. This is not sectoral; local authorities in particular are looking at developing very good practice. We have a summit next week and a report that is coming out from the effective services for vulnerable people board. We are not fully developed, but thinking and good practice is certainly developing. It is about enabling and supporting service users to get the best support to fulfil their lives in the best way. Citizen-directed support does that; it puts the person at the centre, as it says. They are in the driving seat and they have the support and the enabling structure around them so that they do not feel all the negative things that you said.

[380] **Kirsty Williams:** I have been a huge fan of direct payments for a long time and it has been like pushing the Government up a hill to try to get it to engage in this particular agenda. The argument for not doing it is always, as Mick has just said, that it will end in disaster,

people will not get what they want, will be abused and will be bereft of services. Yet, my experience is the absolute opposite. In fact, I do not recall a single complaint to me about services delivered under a direct payment, whereas I get quite a few complaints from people who are receiving care in a more traditional fashion from the local authority. Is there any evidence to back this up, that direct payments will end up in disaster and must therefore be resisted at all costs, or at least very highly regulated and overseen? I have not seen that evidence.

2.45 p.m.

[381] **Ms Adams:** The piece of work that the WCVA has led on, under the effective services board, has looked at this; it has done desktop research and also looked at practice in Wales. What we picked up on was that the problem with the English model and the problem there was that they had gone down the road of having an individual budget and individual spend and, therefore, they had done it without this co-production element around it, and that was the failing. They had also done it in local authorities as an add-on rather than doing the whole system change and that, I am afraid, is what co-production demands—you need to look at the whole support structure and do things in a different way. So, they had done it as an add-on and very much as just providing money for an individual to buy support and that is obviously going to lead to problems. Whereas with the Welsh way, we have been much more cautious in that we have developed Welsh thinking, have used expertise and, as I say, there is a learning group from the local authorities looking at practice, which has been developing very slowly, quite rightly, and quite cautiously. All of the people involved are very committed. We believe that it is the best way of doing things. The WCVA is 100% behind it because we really believe that it is co-production in practice and it really enables better lives and better services, and it shows that it is a better use of money. Quite often, that approach is more cost-effective.

[382] **Mr Perrett:** I must say that I agree with what you are saying, but I do not think that citizen-focused care is necessarily applicable only to direct payment. We have person-centred active support and outcome-based care in the independent sector. We are committed and capable of delivering citizen outcomes.

[383] **Ms Adams:** It is not suggested as being the only way, but I think that it is a very important and growing way. It is interesting that, as Kirsty said, initially, younger people in the disability field were 100% behind it, whereas, for a long time, the received wisdom was that it was not suitable for older people because they would not be able to cope with managing their own budgets. That brings us back to the idea of co-operatives, where people could pool their budgets and get services that way. So, there are all sorts of imaginative ways of using it.

[384] **Mr Perrett:** Allowing access to direct payments to everyone has been handled by the Shaw Trust and Diverse Cymru, where they set up direct banking arrangements. Perhaps you might be familiar with it, but the local authority pays the money to the Shaw Trust and Diverse Cymru and they handle the financial arrangements for those people who have accessed direct payments. So, to a degree, that is helping to open up the process and give people more choice.

[385] **Vaughan Gething:** Lindsay Whittle, you are next; you have been very patient.

[386] **Lindsay Whittle:** That is okay, Chair. My question could probably elicit a one-word answer from you. I fully support direct payments 100%, but I am concerned about vulnerable individuals out there purchasing the cheapest option. Do you think that we should also ask the Minister to include quality in the Bill? I am hoping for four 'yesses'; it will sound like a television competition programme.

[387] **Mr Perrett:** You asked a question earlier about protecting the quality around personal assistants and it could be that, in relation to the registration we referred to, they need to meet national minimum standards, which is a horrible term.

[388] **Lindsay Whittle:** Yes, it is vital, is it not?

[389] **Ms Wimbury:** Whoever is commissioning the care, whether it is an individual through direct payment or whether it is a local authority or a health board, there needs to be a balance between quality and cost, and that is the only way to deliver appropriate care.

[390] **Mr Kreft:** I was just going to add that there is a nice way of defining social care; it is hardly a sophisticated way, but it is ‘people caring about people’. If we are going to have a direct payment system that works, it has to be about the people that are discharging the care and the quality of those people, along with the support and training that they are given, and the supervision—and I mean supervision in the broader sense, because it is a very challenging job. As we are only at the beginning of this process or quite early on in it, we all have a lot to learn, but we certainly support choice for people and the voice of the people.

[391] **Ms Adams:** I have a reservation in a way, in that I know that, in the learning disability field, people would like to use, and do use, direct payments to employ family members. If you start to subject family members or ordinary people to regulation and heavy training, you will create a very different scenario. There is a real caution there. We obviously want good quality, and we want to encourage people to do the best things, but there is a real caution about what is put in.

[392] **Lindsay Whittle:** I will take that as three and a half ‘yesses’.

[393] **Ms Adams:** It is a very important issue.

[394] **Lindsay Whittle:** Yes, I appreciate the point. It is important. I am sorry to be so flippant.

[395] **Vaughan Gething:** [*Inaudible.*] but I appreciate the caveat. This may or may not be the last question; I will look to Members after asking it. One of the things that we got around to rehearsing this morning was the issue of wellbeing, and how people understand the wellbeing duties. While you could look at the wellbeing duty and say, ‘That is primarily imposed on the statutory partner, who has the budget,’ ultimately some of the services that will be provided will be done so through yourselves. As drafted, is the wellbeing duty something that you understand sufficiently, in terms of how it would impact on the services that you are providing? Also, we had a statement yesterday from the Deputy Minister, who gave some more detail on wellbeing. Is the process that is set out in the Bill for updating and providing a wellbeing statement sufficiently clear and helpful from your point of view, as people who would be either involved in a partnership or directly providing a form of service? Maybe Constance would like to start.

[396] **Ms Adams:** The third sector has welcomed the wellbeing element, and the impact on our services, in terms of co-production and where we are coming from in terms of community. I know that our WLGA colleagues have been more cautious about this, but we hope that the Bill keeps its nerve and keeps that wide definition of wellbeing. In terms of powers in the Bill, I would again refer to our written submission in respect of the wellbeing outcomes framework. There is nothing in the Bill—and I fundamentally think that there has to be—about committing the Welsh Government to including the citizen’s voice in the outcomes framework process. We have the Deputy Minister running a citizens panel, and we have had her support for the third sector I Matter—We Matter campaign. However, that has not been

within any legislative framework. It is absolutely fundamental to this Bill that that element is written into the outcomes framework in order to link up the wellbeing elements and to ensure that they are measured against what people are experiencing.

[397] **Mr Kreft:** In terms of wellbeing, I would add that there are two aspects that are very relevant here. Returning to what I said earlier about engagement, it is important to ensure that that is updated and that people fully understand it. I am talking about people with very small organisations, possibly in very isolated communities. There needs to be engagement with them. Also, 'wellbeing' is a term that is very well understood in the independent sector. There is a stage almost beyond that, in terms of enrichment, from trying to promote services and making them as readily accessible as possible, to promoting independence, whether that is in someone's own home, in some extra-care setting or in a residential home. The whole notion of wellbeing has to be right at the forefront of all our minds. It has to be stated very strongly in the Bill to ensure that there is a system that can be fed out to all providers. We are talking about a couple of thousand providers at present; with co-operatives and so on, that might be 4,000 or 5,000 providers in 10 years' time. It is about how that will flow through to all of those people.

[398] **Mr Perrett:** I was pleased to see early intervention mentioned in the Bill. I feel that that is a definite way forward, along with outcome-based care and reablement. I feel that that is the way forward; it is a win-win situation. We reable people as quickly as we can and get them out of the system, thereby allowing us to support other people. I feel that the focus of the Bill needs to continue to be on wellbeing, coupled with outcomes and reablement.

[399] **Vaughan Gething:** That is very helpful. I think that that has drawn our session to a close. I cannot see any further questions from Members. We are going to have a short break before our next witnesses arrive. However, to our current witnesses, I will make the usual announcement that you will be sent a transcript of today's evidence. If there are any points that you wish to clarify, you are welcome to do so. Also, if there any questions that we think we have not covered properly, we may write to you to give you an extra opportunity to provide some feedback to us during the scrutiny process. Thank you for your time and for your oral and written evidence.

*Gohiriwyd y cyfarfod rhwng 2.55 p.m. a 2.57 p.m.  
The meeting adjourned between 2.55 p.m. and 2.57 p.m.*

## **Y Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 1 Social Services and Well-being (Wales) Bill: Evidence Session 1**

[400] **Vaughan Gething:** Good afternoon. Welcome to our Stage 1 evidence session on the Social Services and Well-being (Wales) Bill. We are joined by the Public Services Ombudsman for Wales. Please introduce yourselves, providing your formal titles. We will then start with some questions on your evidence.

[401] **Mr Tyndall:** I am Peter Tyndall, the Public Services Ombudsman for Wales.

[402] **Ms Thomas:** I am Elizabeth Thomas, the ombudsman's director of investigations and legal adviser.

[403] **Vaughan Gething:** We have received your written evidence. Thank you very much for that. Members have a series of questions for you. It may be that we cannot get to every question in the allotted time, or questions may arise afterwards, so we may write to you. We will start with a question from Mick Antoniw.



[404] **Mick Antoniw:** I have a fairly general question. The Bill creates a broad range of specific responsibilities and obligations in a fairly ill-defined way sometimes—that is, in attempting to define things like ‘wellbeing’ and so on. It seems to me that there is potential within that for a lot of conflict and misunderstanding and for a lot of legal complaint, challenge and so on. Therefore, focusing on your specific responsibilities and concerns, what impact do you think the legislation is going to have? What are the potential pitfalls that it might present?

[405] **Mr Tyndall:** The evidence that we can give is always going to be based on evidence from the cases that we investigate and issues about how complaint-handling mechanisms work. One of the great difficulties that you face as an ombudsman, or anyone dealing with complaints, is that if there is not a precision about what somebody’s entitlement is, then there is always a great possibility of misunderstanding. Therefore, the provider, on the one hand, can take a view that they are meeting the requirements, whereas the recipient could have read the legislation in an entirely different way. A lot of the time, the way to address any problems of that kind is through guidance—particularly statutory guidance—that lays out in much more detail precisely what an entitlement might be. As well as that, you get a build-up of casework over time. From our perspective, this is very widely-drawn legislation and we will come to some of the areas where that mode might pose particular issues for us in understanding what the intentions of the legislation are.

3.00 p.m.

[406] So, when somebody comes to us and says, ‘This legislation entitles me to something’, we will have to look long and hard to see whether that interpretation is correct. There is nothing with which you can quarrel in the aspirations that underpin the legislation, but you are right to identify that, unless the guidance is sharp and the regulations are carefully drawn, there could well be ambivalence in the way in which people respond to it.

[407] **Mick Antoniw:** In her evidence to us, the Deputy Minister indicated that there will, of course, be a further stage, which is that the regulations will have to be scrutinised. I suppose that that is where the substance will come in and we will consider that as it arises. Do you have any particular recommendations or views on the regulation-making process, and whether there is a newer, better way for us to look at that than we have done in the past?

[408] **Mr Tyndall:** If you take a parallel area, the field of continuing NHS healthcare, which has certain parallels in common with this, we have seen, over time, that the lack of clarity in the regulations and, in fact, in the legislation, has led to a slew of court cases, precedents having to be set, differences in the way in which regulations are interpreted, and that continues to this day. So, I suppose that my personal plea would be to stick to using plain English or Welsh. Sometimes, the attempts to draw things in a very legislative way do not actually help people to understand what the intention is.

[409] We would want to be engaged in the process, and others, who will also be affected in different ways, need to be engaged in the process. I would certainly want to continue to be very engaged in the process of regulation regarding complaints, because, fundamentally, people who have to deal day-to-day with the issues presented by legislation are best placed to identify areas where there might be pitfalls.

[410] **Vaughan Gething:** In your evidence, you say that you think that the complaints procedure should, effectively, mirror the current process for the health service. Are you happy for the detail of the complaints-handling process to be dealt with in regulation, or would you prefer to see it on the face of the Bill?

[411] **Mr Tyndall:** I do not have a strong view as to which way it is done. I do have a

strong view that it needs to be done promptly. We have developed a model complaints process, which is gradually being adopted—the Welsh Government itself has adopted it, as have most local authorities in Wales and elsewhere within the public sector—and so, our greatest concern, with regard to putting things right in the health service, is that those two processes are based upon each other, so they are entirely compatible.

[412] In other jurisdictions in the United Kingdom and Ireland, health and social care complaints processes are the same; there is not a separate process for both. Increasingly—and you, as a committee, will know this—people with ongoing health complaints and those with social care needs tend to be the same group of people and, quite often, they will move from one situation to the other. They are often getting care from a multiplicity of providers. It seems to me that there is no reason why you should not have either a single complaints process that covers all of it, or a set of complaints processes that are so compatible with each other that, from the perspective of the person making the complaint, it feels like a single, joined-up response.

[413] So, in a sense, I am answering another question, but it does not seem to me to matter which way you do it, but we have taken a very long time to get to where we are. I understand that there is a very pressing legislative timetable and that you are very pressed in terms of the time you have to scrutinise legislation, but I think that people have been waiting a long time for this, so whichever way is quickest, is probably my view.

[414] **Vaughan Gething:** I will try to clarify what I think that you are saying, at least in one aspect. Part of the Bill's policy objective is to promote greater integration, co-operation and partnership between different bodies, including the statutory sector, health and local government. So, rather than having two different processes, depending on which element of an integrated service is the commissioner or the provider, it would not make much difference if there was a common procedure that could cover both and so, regardless of whoever the integrated commissioner or provider is, that would still make sense to you, and that is what you are looking for as part of it.

[415] **Mr Tyndall:** Absolutely. Thank you, Chair. At the end of the day, the question that we have consistently asked is, 'What value is added by having different processes?' We have not been able to find a persuasive answer to that question.

[416] **William Graham:** There is a general welcome for the extension of your jurisdiction. You make the valid point that you should have the power to make your recommendations enforceable. Would you like to enlarge on that?

[417] **Mr Tyndall:** Yes. The process of making recommendations as a public service ombudsman is absolutely commonplace. My office has never had a recommendation that has not been implemented. What underpins that is democratic scrutiny, so if a body chose not to implement a recommendation, I would be required to bring a report to you as an Assembly and you, in turn, would bring pressure to bear on that body to change its approach. That does not apply in the same way to private providers, and the question mark for me is that I suspect that, in the world of registered care providers, whether care homes or domiciliary care, the reputational damage that would come about because of criticism in a public report from my office would probably be sufficient to persuade most people that it was better to comply. Legislation currently requires me to issue a public report if a body says that it will not comply with my recommendations. That probably would suffice.

[418] However, for all of that, it seems to me that, if they decide not to do it in the first place, the fact that I had told them and that you then had told them—I am not persuaded that they have the same democratic accountability as a local authority or health board. Therefore, that is why I feel that there is an argument here. I also have to say that public services are

increasingly provided by bodies other than democratically accountable ones. I am not talking about the large-scale privatisation that we have seen, but, for example, bins can be collected by a private company. Provision of public services is increasingly diverse and it seems to me that, when you are making a formal decision for the first time to extend my jurisdiction to cover wholly privately-funded services, that may be the time to say that the recommendations—but only in respect of privately funded care provided by private organisations; the democratic provisions work perfectly well in respect of public bodies, and there is no reason to change them—have binding powers.

[419] **Vaughan Gething:** Lindsay Whittle is next and then Rebecca Evans.

[420] **Lindsay Whittle:** I fully support that idea. There is no point, with respect, in coming to you if the recommendation that you have independently arrived at is not enforced on the organisation being complained about. I was interested to read, because I did not know this, that a resident in care who has his or her care paid for by the state can complain, but that a person who is paying cannot. That was the first time that I had ever heard of that. I am delighted that this Bill will recognise that. However, the new powers in the Bill, if it is enacted, will lead to an enormous rise, I would have thought, in complaints to your organisation. Will you be in a position to cope with that, because I guess—I do not know—that you will not have any additional funding?

[421] **Mr Tyndall:** Well, actually the news is better than that. If we look at it as a package, so there is the extension to jurisdiction and changes to the complaint process in social care, which I am sure that we that will get around to talking about, we would expect that savings would arise for the Government from the abolition of the independent review stage, if that goes ahead, as currently appears likely. What happened when we looked at the situation in England, where there was an extension of jurisdiction, was not what you would have expected, in that there was not a large increase—although there was some increase—in the numbers of complaints from people who paid for their own care. What there was was a large increase from people whose care was funded by local authorities, because people had assumed that, because they were in a private residential care home, they could not complain to the ombudsman's office. So, that is what we are anticipating in Wales. We have modelled that, and we have made provision in budgets for one additional investigator's post to cover all of the changes in the first year, with the potential for a second in the following year. I have to say that we have done that against a background where we have seen a massive increase in complaints and enquiries to my office, and we have been coping with that within resources that, as with everyone else in the public sector, have not been growing. We did not think that, realistically, you could continue to expand, but, as we say, there will be consequential savings elsewhere so that the net cost, we think, assuming all the changes go ahead as we foresee them, will probably be lower. By having a more efficient and streamlined complaints process, you can cope with a greater volume of complaints with a lower level of resource.

[422] **Lindsay Whittle:** Well, it is all paid for out of the public purse. It is a refreshing change to hear that, is it not, Chair?

[423] **Vaughan Gething:** Mick, did you have a question on this point?

[424] **Mick Antoniw:** Yes, Chair. Briefly, one of the implications of increased advocacy—and, of course, while it is about advocacy, it is about accessing what is right for you, so it is not necessarily a matter that comes before you, but, quite often, the end result, when people feel that they do not have that, is that it ultimately ends up before you, so do you have any views on that? That could, potentially, significantly increase the number of cases that come before you. Do you have any views as to how that might operate, and how the complaints procedure should operate in terms of almost being like a dispute resolution rather than some of the formal procedures that take place at the moment?

[425] **Mr Tyndall:** First, we are very strong supporters of an expansion of advocacy. A lot of the people we are talking about here are potentially very vulnerable—people with learning disabilities and mental health problems, as well as older people with dementia, so there are a lot of people who are not best placed to argue their own case. It should not just be those whose families are well placed to advocate for them who benefit—it needs to be available to everyone. Often, with advocacy it becomes easier to deal with complaints. An advocate will do a lot of the detailed work in presenting a complaint and so the work for my office is more manageable than it is with somebody who is having difficulty presenting their own complaint. So, there is again an offset against volume. We are strong believers in resolving as much as possible without going to a formal investigation, so, if it is obvious to us that the result of a formal investigation is almost certainly going to be that we will find against the body concerned, and we can predict what the decision is likely to be, then we will put to both parties the suggestion for resolution, and that has been a growing part of our work in recent years. If you can settle a complaint without needing an investigation, then clearly that is to everyone's advantage. We assumed that it would typically be in cases where the housing association was supposed to send somebody round to fix the window, and they never turned up—quite often we will ring them and somebody will come round and fix the window, so that works fine. However, we have actually found that we have been resolving health cases and others more and more as it becomes obvious that, with some of the things that people are complaining about—let us say that they were due to have had an appointment and have not had it—they are not looking for an investigation report; they are looking for an outcome. Against that, some cases are so serious that you feel that, even if you can resolve it to the satisfaction of the individual, you still need to produce a report because there are lessons that need to be learned from that case.

[426] On balance, we have been strong advocates of advocates, and we have felt that there has been patchy access to advocacy in Wales for many groups, and we would very much like to see more.

3.15 p.m.

[427] **Mick Antoniw:** Do you think that there should be something in there specifically with regard to public interest? That is, in short, an element of public interest responsibility. I think that you have it already in some ways, but in terms of the Bill, we are moving into whole new areas arranged between and across structures and organisations—there is a lot of that sort of thing developing. It is a very new sort of ball game, and there are quite a lot of lessons to be learned, often, to benefit from that sort of public interest element.

[428] **Mr Tyndall:** Yes. It is interesting, because we have been looking at this particular issue in health. We produce the digest of cases, which we have sent each of you a link to. Increasingly, now, health boards are starting to produce their own for the ones that they resolve, and the best learning of all is when you learn from somebody else's mistake and do not make it yourself. I absolutely agree with the point that, if you have an entirely new system, people need to be sharing the experience of that. Now, I think that that will come about by bringing together a network of complaints handlers—that is important. We engage with the network of health complaints handlers, and we also engage with the newly established network of local authority complaints handlers, but they are generic. There is also a network of social care complaints handlers. However, I also think that, whether it is in the Bill or, as is more likely, in the guidance, the idea of local authorities producing their own digests of the complaints that they investigate and resolve and sharing them throughout Wales is quite important. It is important that local authority members should have access to the outcomes of complaints. That is, the relevant scrutiny committee should be able to see what is happening. Also, however, there is this issue of sharing learning across a diverse range of providers in Wales—that is very important.

[429] **Mick Antoniw:** Thank you.

[430] **Vaughan Gething:** We have Rebecca Evans and then Gwyn Price.

[431] **Rebecca Evans:** I would like to look particularly at the parts of the Bill that look at co-operation, partnership and integrated working. You say this in your paper:

[432] ‘All too often I see examples of non-collaboration. Complex care packages are not joined up and far from seamless.’

[433] Do you feel that the Bill deals sufficiently with the kind of issues that you have identified in your paper?

[434] **Mr Tyndall:** The Bill certainly addresses them. As with all of these things, the test will be in the practice. Some signals need to be sent—in particular, we talk about separate complaints mechanisms; that does not set the right tone from the outset, it seems to me. You need to set the tone for these things, certainly with the resource sharing—you know, having joined-up budgets. If you have a group of agencies working to care for somebody, it is the notion of having joined-up budgets for that. So, the provision is within the Bill; the question will inevitably be in the practice, and I guess that you will have a big role as a committee in scrutinising how that is working once it is in place.

[435] Again, the Bill is fine; the regulations and guidance need to be right, and then there needs to be sufficient scrutiny and holding to account of the practice to deliver on the aspirations.

[436] **Rebecca Evans:** So, looking ahead, perhaps, to those regulations, you referred, again in your paper, to the gaps that young people experience in transition from children’s services to adult services. Perhaps you could talk to us a bit about what those gaps are, whether the Bill addresses the issue and how, in regulations, those gaps could be closed.

[437] **Mr Tyndall:** Okay. A particular example that we have had is a young man with severe learning disabilities who was cared for at home by his parents and received continuing care funding. At the point when he went from school to day services, everybody agreed on what service he ought to get, but, for various reasons, it was not delivered for a number of years. So, what can you deduce from it? First of all, you can deduce that planning is something that needs to start sooner than it often does, so the regulations need to be very prescriptive about the stage at which planning starts. You then start to look at the different cultures in organisations. So, if you are a young person, a child, receiving care from the health service, you get a joined-up service from a paediatrician. Once you become an adult, you receive a range of specialist services from different parts of the NHS, but nobody within the NHS has any overview of the care that you are receiving. Therefore, at that point, whoever is appointed as your key worker, who is responsible for your overall package of care, has to take over the social care side but they are also the only person who can help you to steer a path through the NHS.

[438] Many of these young people have complex physical disabilities as well as learning disabilities and access a range of services across health and social care. The issue, when things start to go wrong, is that nobody has the authority to require somebody working in another agency to deliver something that they have promised to deliver. So, it comes down to negotiation. I would want to see those regulations being very prescriptive indeed so that people are required to deliver on what they say they are going to deliver. From the family’s point of view or that of the individual, they do not much mind who is delivering a service; they just want to know that they can talk to somebody to get any problems sorted out. At the

moment, we do not see that that always works, because aspiration is not the same thing as putting a framework in place that requires people to collaborate. That is what is needed in terms of the outcome of this legislative process.

[439] **Rebecca Evans:** Given the importance of regulations, do you have a view on which aspect should be subject to the affirmative procedure in the Assembly or could just be determined by the Minister?

[440] **Mr Tyndall:** We would obviously hope that the complaints legislation would be properly scrutinised. To be fair, we have not given thought to that particular point.

[441] **Gwyn R. Price:** Good afternoon. With regard to the adult protection arrangements, could you take us through your concerns? You have said that you want powers to be confidential and not public in certain areas; could you expand on that?

[442] **Mr Tyndall:** It applies equally to vulnerable children and adults. At the moment, I have the power to issue an instruction to a body in my jurisdiction not to publicise; that is, to treat my report as confidential. However, that power does not bind any other parties in the case. So, potentially—and we have seen this happen—a complainant can decide to go to the press, even though, in doing so, information about vulnerable individuals can be revealed. Liz can talk about the mechanism, because there is probably a fairly simple mechanism to achieve it. However, on some occasions, if we are investigating an adult protection or child protection issue with vulnerable adults involved, there will be very few occasions where it is required, but nonetheless, we should be in a position to say, ‘You must treat this report as confidential’.

[443] **Ms Thomas:** We found in a case recently that, although we had written to the complainant to explain that the ombudsman was issuing the direction that this particular report was not to be publicised because, as he has mentioned, there was a vulnerable adult involved as well as a teenage young girl, he ignored that. So, it would be helpful if we had some provision to extend a confidentiality clause, if you like, to the complainant and to any third parties that would enable this sort of requirement to be enforced, so that it might be on a par with certain other provisions in our legislation. In effect, if someone disobeys that instruction, the ombudsman has the powers to certify it as contempt of court, which exists in relation to, for example, someone who obstructs one of our investigations. It happens very rarely, because the ombudsman does not use this particular power that he has very often. He uses it sparingly, because, more often than not, as we have said, there is a public interest in people getting to know about what has happened. However, occasionally, this would be very helpful to us.

[444] **Mr Tyndall:** It is worth saying that our reports are anonymised, but if the complainant goes to the press that anonymity is lost. What Liz is describing is that it would be possible to use this Bill to amend the Public Services Ombudsman (Wales) Act 2005 to extend the elements that are already in it, so it would not be a major legislative change.

[445] **Gwyn R. Price:** So, you think that there is a loophole in law that you would like to tighten up?

[446] **Mr Tyndall:** Yes, exactly.

[447] **Lindsay Whittle:** That is interesting, because I did not know that all of the ombudsman’s reports are anonymised; you are never too old to learn that, I suppose.

[448] I was going to ask, just before Gwyn Price came in again—it is the second time he has done it to me today—‘What is the problem; all these reports are anonymised?’ I had no

idea that the complainant would consider—if they were perhaps a victim of violence or had been sacked—releasing these details. That is appalling. Now that the ombudsman and Elizabeth Thomas have fully explained that, I think that we and the ombudsman should seriously look at that.

[449] **Ms Thomas:** This recent case took us completely by surprise because we had not expected it.

[450] **Lindsay Whittle:** You are never too old to learn in politics.

[451] **Vaughan Gething:** Are there any other questions from Members? I see not. Is there anything that you want to say in closing?

[452] **Mr Tyndall:** The issue of complaints within social care is important. We have seen complaints about healthcare rise very sharply in recent years. We are now beginning to see a similar rise in social care complaints. You are talking about vulnerable individuals and the huge impacts on their lives. We want to see a simple, joined-up approach to complaints. We want to see that being joined-up, preferably across all of the services within the devolved powers, whether they relate to special needs education or end-of-life care. There should be a joining up and a simple, seamless process for people receiving services to be able to express their complaints.

[453] We have a slight anxiety about some provisions in the Bill that seem to allow for establishing panels to look at complaints, which would not be compatible. We understand that these powers are permissive rather than a requirement, but it seems that there are elements in here that, if implemented, would prevent that single joined-up approach from going ahead. The devil will be in the detail of the regulations, because the approach taken at the moment has not been dealt with on the face of the Bill. It is just that issue of seeing whether in Wales we can build on the work that we have done towards a unified approach to excellent complaint handling, by incorporating these provisions into what is already in place, and doing it soon rather than allowing it to drift, which is sometimes the impression that has been given.

[454] **Vaughan Gething:** Thank you very much for your written evidence and for attending today to answer questions. As usual, you will receive a transcript of the meeting. If there is anything that you want to finalise or correct, please do so. You are released, and thank you ever so much—I am sure that we will be in touch again.

[455] **Mr Tyndall:** Thank you very much. We are very pleased to have had the opportunity to contribute.

3.25 p.m.

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

[456] **Vaughan Gething:** The papers to note are the minutes of our previous meetings through March. There are no other papers to note.

[457] Finally, thank you for your contributions today—it is the start of a long process for us all, but it should be worthwhile if we can have an improved piece of legislation. Stage 2 of the Human Transplantation (Wales) Bill has started. Amendments can be tabled up until 6 p.m. on Wednesday, 15 May. The first meeting scheduled to consider the amendments is on 22 May. We also have a second meeting planned, because it is possible that we will not get through all of the amendments on that piece of legislation in one meeting.

[458] We formally meet next on 24 April, when the committee will consider Stage 2 of the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill. Obviously, Mick Antoniw and I will not take part in that meeting.

[459] That is the close of formal business. We will now have a very short private meeting, but that concludes all of the public business. Thank you.

*Daeth y cyfarfod i ben am 3.30 p.m.*  
*The meeting ended at 3.30 p.m.*