



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

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

**Dydd Iau, 2 Mai 2013
Thursday, 2 May 2013**

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Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd
Motion under Standing Order No. 17.42 to Resolve to Exclude the Public

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

Rebecca Evans	Llafur Labour
Vaughan Gething	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
William Graham	Ceidwadwyr Cymreig Welsh Conservatives
Elin Jones	Plaid Cymru The Party of Wales
Darren Millar	Ceidwadwyr Cymreig Welsh Conservatives
Lynne Neagle	Llafur Labour
Gwyn R. Price	Llafur Labour
Kenneth Skates	Llafur Labour
Lindsay Whittle	Plaid Cymru The Party of Wales

Eraill yn bresennol

Others in attendance

Ian Barrow	Cyfarwyddwr Gweithrediadau, Ymddiriedolaeth Prawf Cymru Director of Operations, Probation Trust Wales
Simon Birch	Prif Swyddog Gofal Cymdeithasol, Iechyd a Thai, Cyngor Sir Fynwy Chief Officer Social Care, Health and Housing, Monmouthshire County Council
Richard Booty	Llywodraethwr Carchar EM Caerdydd Governing Governor HMP Cardiff
Keith Bowen	Cyfarwyddwr Cynhalwyr Cymru a Chadeirydd Cynghrair Cynhalwyr Cymru Director of Carers Wales and Chair of the Wales Carers Alliance
Anna Buchanan	Cyfarwyddwr Amddiffyn, Craffu a Hawliau Dynol, Comisiynydd Pobl Hŷn Cymru Director of Protection, Scrutiny and Human Rights. Older People's Commissioner for Wales
Dr Sam Clutton	Comisiynydd Plant Cymru, Swyddfa Comisiynydd Plant Cymru Policy Officer, Office of the Children's Commissioner for Wales
Ruth Coombs	Cynghrair Iechyd Meddwl Cymru Wales Alliance for Mental Health
Sue Cooper	Pennaeth Gofal Cymdeithasol i Oedolion, Cyngor Bwrdeistref Sirol Pen-y-bont ar Ogwr Head of Adult Social Care, Bridgend County Borough Council
Parry Davies	Cyfarwyddwr Gwasanaethau Cymdeithasol, Cyngor Sir Ceredigion ac Aelod o Gymdeithas Cyfarwyddwyr Gwasanaethau Cymdeithasol

Rhian Davies	Director of Social Services, Ceredigion County Council and Member of Association of Directors of Social Services Prif Weithredwr, Anabledd Cymru
Michelle Denwood	Chief Executive, Disability Wales Dirprwy Gyfarwyddwr Nyrsio a Diogelu, Bwrdd Iechyd Lleol Prifysgol Betsi Cadwaladr
Sally Ellis	Assistant Director for Safeguarding Children & Vulnerable Adult, Betsi Cadwaladr Universtiy Local Health Board Cyfarwyddwr Corfforaethol Gwasanaethau Cymdeithasol a Thai, Cyngor Sir Ddinbych ac Aelod o Cymdeithas Cyfarwyddwyr Gwasanaethau Cymdeithasol
Jeff Farrar	Corporate Director of Social Services and Housing, Denbighshire County Council and Member of Association of Directors of Social Services
Ewan Hilton	Dirprwy Brif Gwnstabl Heddlu Gwent Deputy Chief Constable Gwent Police
Victoria Lloyd	Cynghrair Iechyd Meddwl Cymru Wales Alliance for Mental Health
Jake Morgan	Cyfarwyddwr Dylanwadu a Datblygu Rhaglenni, Age Cymru Director of Influencing and Programme Development, Age Cymru
Robin Moulster	Cyfarwyddwr Gofal Cymdeithasol a Thai, Cyngor Sir Penfro Director of Social Care and Housing, Pembrokeshire County Council
Martyn Palfreman	Rheolwr, Cymdeithas Gweithwyr Cymdeithasol Prydain Cymru Manager, British Association of Social Workers Cymru
Paul Swann	Pennaeth y Gyfarwyddiaeth, Cymdeithas Llywodraeth Leol Cymru Head of Directorate, Welsh Local Government Association
Keith Towler	Swyddog Polisi, Anabledd Cymru Policy Officer, Disability Wales
Emily Warren	Comisiynydd Plant Cymru Children's Commissioner for Wales
Catriona Williams	Arweinydd Polisi Gwasanaethau Cymdeithasol, CLILC Social Services Policy Lead, WLGA
Jenny Williams	Prif Weithredwr, Plant yng Nghymru Chief Executive, Children in Wales
	Cyfarwyddwr Gwasanaethau Cymdeithasol, Cyngor Bwrdeistref Sirol Conwy Director of Social Services, Conwy County Borough Council

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

Stephen Boyce	Y Gwasanaeth Ymchwil Research Service
Fay Buckle	Clerc Clerk
Claire Griffiths	Dirprwy Glerc Deputy Clerk
Joanest Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser

Dechreuodd y cyfarfod am 9.03 a.m.
The meeting began at 9.03 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions

[1] **Vaughan Gething:** Good morning. Welcome to members of the committee, our first panel of witnesses and the public, who may be watching remotely. We have received apologies today from Kirsty Williams, and I appreciate that comrade Millar may be late but will be joining us as well. I also welcome Ken Skates in his first meeting as a new member of the Health and Social Care Committee. The meeting is bilingual. You do not need to touch the microphones to turn them on. Translation comes through channel 1 on the headset if you require it.

Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 2 Social Services and Well-being (Wales) Bill: Evidence Session 2

[2] **Vaughan Gething:** We will go straight into questions; we do not have time for opening statements. You all know why we are here—to scrutinise in our second very long session the Social Services and Well-being (Wales) Bill. I will start by asking a question about part of the Bill. It is a social services and wellbeing bill, and ‘wellbeing’ is defined on the face of the Bill. I am interested to know whether you as witnesses think that the definition of wellbeing is helpful, or whether you would like to see it being narrowed or drawn more widely on or off the face of the Bill? Do you think that the Deputy Minister for Social Services’s recent statement on wellbeing has been helpful in determining what you can expect from the people who have a duty to implement the wellbeing duty in the statutory and non-statutory sector? Rhian, do you want to start? We will then go to Ruth, because I know that Mind Cymru had things to say about wellbeing in its evidence.

[3] **Ms Davies:** Thank you for the opportunity to be here. There are a couple of things from Disability Wales’s point of view. Our hope for the Bill is that it would come from the perspective of a social model of disability, which recognises the barriers that prevent disabled people from fully participating in society. We want to see the whole of the Bill reflecting that, including the wellbeing definition.

[4] We were particularly hoping to see reference being made to independent living. Following our Independent Living NOW! campaign, the Welsh Government introduced the framework for action on independent living, which takes a systematic approach to addressing the barriers that prevent disabled people from living independently. We feel that it is an omission that there is no reference to the right to independent living, namely the ability to live in your own home in your community and to fully participate. Those would be the key issues from our perspective.

[5] **Vaughan Gething:** Ruth Coombs from Mind Cymru, you made specific comments on wellbeing in your evidence—

[6] **Ms Coombs:** Yes. We see the Bill as an ideal opportunity to look at the wider social and community partnership work across local health boards and the third sector. In looking at the wider determinants of health and wellbeing, we consider that a useful model for the committee to consider might be the New Economics Foundation’s ‘Five Ways to Wellbeing’ model. It is quite a good model on which to base those partnerships, and we have done a little exploratory work on how that might work. There is evidence from across Wales of the ‘Five Ways to Wellbeing’ model being used, the mantras of which are ‘notice’, ‘get connected’, ‘be active’, ‘keep learning’ and ‘give’. Work is happening in pockets across Wales to develop those approaches to collaborative working. We think that it would be a useful model for the committee to consider in moving work forward on wellbeing.

[7] **Vaughan Gething:** In terms of your suggestion about the ‘Five Ways to Wellbeing’ model, you suggest in your evidence that that should be on the face of the Bill. Do you still think that that is the right place for that additional information, or would you like to see an alternative method for that to happen, whether it is on the face of the Bill or not?

[8] **Ms Coombs:** It is about trying to embed a principle that gets reflected in practice. If the code of practice that is to go alongside the Bill is robust enough, evidence and examples of how it could work could sit in there. However, if there is some reference to it in the Bill at some point that is hooked into more detail in the code of practice, that would be sufficient provided that the code of practice has similar robustness to the code of practice for Wales in terms of the Mental Health Act 1983, for example. So, if people deviate from the code, they have to give a very robust reason as to why they deviate. If it is just guidance, it is not strong enough, but if it is a really strong code, the detail could go in there. It would also be useful to have some examples of how it is working in different parts of Wales, so that people can see that it is not that difficult to do if you get your heads together around a table and work collaboratively to a co-produced model.

[9] **Vaughan Gething:** Keith, from a carer’s perspective, does the Bill as drafted meet its policy aspirations on wellbeing, or is there a change that you would like to see?

[10] **Mr Bowen:** From the perspective of Carers Wales, we are broadly supportive of the wellbeing areas within the Bill, and the aspiration to refocus services is a positive one. We are generally fairly happy with the definition of wellbeing. Our concerns come in a little further in the Bill, on which there might be questions later, on the definitions of ‘prevention’ and ‘preventative services’, particularly in terms of the wellbeing and prevention agenda and how the Bill facilitates individual access to those services from the point of view of the carer and the cared-for person. At the moment, the sections of the Bill on wellbeing and prevention are quite general, and do not clarify how individuals would access and find their way into those types of services.

[11] **Vaughan Gething:** Okay, we have William Graham, Gwyn Price, Rebecca Evans, and then I will look around for other Members after that.

[12] **William Graham:** Thank you for your evidence. With regard to assessment, are you satisfied that the Bill enables people to be fully involved in their own assessment? It is not a question for anyone in particular, but I know that it is in Keith’s evidence.

[13] **Mr Bowen:** There seems to be a gap with regard to assessment in the explanatory memorandum and what is set out there in respect of greater voice and control for adults, children and carers, and then to the actual language on the face of the Bill. It seems that the language for increased voice and control in the memorandum is not really matched in the sections on assessment. Therefore, it is not really clear how adults, children and carers will be fully involved as equal partners in drawing up the assessments. The current Bill, as drafted, seems to drift back to a narrower, service-led approach, rather than a more fully inclusive, co-productive approach to assessments.

[14] **Mr Hilton:** I think that that could be useful in strengthening the principles of the Bill. We feel quite strongly that there needs to be a really robust set of principles at the head of this Bill. Equality of input, control and co-production—principles that are talked about throughout the Bill—are important to be sat strongly there, and to be followed through.

[15] Just to go back to the definition of wellbeing, some of the things that are missing are accommodation and housing. That kind of links with what Rhian was saying. Another point, just very quickly, is that we already have a wellbeing definition enshrined in Welsh legislation in the Mental Health (Wales) Measure 2010. There are eight life areas, which are

similar to these, but the intention with this Bill is to integrate assessment, care plans and co-ordination of care and support services. If we do not mirror these two definitions, they could end up working against the fundamental principles of this Bill. That was just to go back to your first question.

[16] **Mr Swann:** I have a couple of points to make. We would like to see what we call citizen-directed, outcomes-focused and supported self-assessment. It is an awful mouthful, but it states what we are looking for. The first part of that, ‘citizen-directed’, is just to highlight the difference between something that is citizen-directed and something that is citizen-centred. A lot of what happens at the moment is citizen-centred or service user-centred, where the person is at the centre of a lot of professionals’ attention. However, we want to see that reversed so that citizens are actually directing the process themselves. The rest kind of falls out of that. There is no problem with ‘outcomes-focused’; there is a very strong element in the Bill about that. There is also ‘supported self-assessment’, which, again, implies a shift from social workers doing the assessment process for people to supporting the citizen to do it for themselves. So, there is a clear distinction there.

[17] Also, just to go back again to the definition of wellbeing, my colleague Rhian Davies and I gave evidence to the Joint Committee on Human Rights in the House of Commons two years ago, in an inquiry into the implementation of the right to independent living under article 19 of the United Nations Convention on the Rights of Persons with Disabilities. The joint committee’s report proposed that future social care legislation should include independent living. I think that we are being quite reasonable in what we are putting forward, which is that we are looking for the definition of wellbeing to incorporate the enjoyment of the right to independent living as a way of addressing that recommendation from the Joint Committee on Human Rights.

[18] **William Graham:** I will move on to eligibility and your views on that. It has now changed in the Bill—the four existing levels are not going to be used. So, what are your views on that? Will you welcome that change, or would you prefer for that to have been kept?

[19] **Ms Coombs:** We would say that, as it currently stands, there is a lack of clarity about where the bar will be set. Our concern would be that setting the bar too high in terms of eligibility is counterintuitive to having a wellbeing and early intervention and prevention approach. So, there does need to be some sort of clarity around what is meant by that, either in the Bill or in secondary legislation. However, it must absolutely take account of the importance of the wellbeing of the whole population, early intervention and preventive services, so that it does not become, by default, a secondary-type care piece of legislation. That is, it should encompass all of the needs of the diverse population of Wales.

9.15 a.m.

[20] **Vaughan Gething:** Keith, I know that Carers Wales has a particular point of view on this.

[21] **Mr Bowen:** Yes. First, we are quite concerned about the lack of clarity regarding exactly what will be contained in the eligibility criteria framework. It is quite hard to say exactly what we support or do not support when we have not quite seen it yet. So, first, we are concerned that we do not quite know what is being proposed. Generally, and tying this back in with the initial stage assessment, we are quite concerned at the moment about the way that the Bill reads and, perhaps, with the drift back to a more narrow, service-led approach. It looks like there will be a three-stage assessment: the initial assessment, the eligibility criteria stage, and then a subsequent financial test. We would be quite concerned that this would lead to an increased gate-keeping approach by local authorities. Things are difficult enough under the current legal system, so we would be quite concerned that, if we were not careful, we

would be continuing that type of gate-keeping approach by authorities, rather than having a fully inclusive equal footing assessment process, where adults and children who are carers are fully involved in the whole process.

[22] **Ms Davies:** While we would welcome national eligibility criteria, inevitably, eligibility criteria are affected by the available resources. The issue that we need to embrace here is the impact of welfare reform. For example, the loss of the independent living fund will affect some 2,500 people in Wales who have very high support needs. The anticipation is that local authorities might have to pick up the costs of that support. That will have a domino effect on other people who receive services. Then, at the other end of the scale, there are the people who are likely to lose their disability living allowance. It is estimated that 40,000 people in Wales will lose their disability living allowance as they will not be eligible for the personal independence payment. My guess is that those will be people who would be seen as having lower levels of need. The DLA acts as a preventive measure, because it means that people have some cash in order to pay people to do the gardening, get shopping for them and so on. So, there will be a squeeze, and that will have an impact on the eligibility criteria. Even if it is set out, will that shift when the impact of welfare reform starts to take effect in two or three years' time?

[23] **Vaughan Gething:** I call on Gwyn Price, Rebecca Evans, Lindsay and then Ken.

[24] **Gwyn R. Price:** Good morning, everybody. Could you touch on the part of the Bill that relates to direct payments? I would like to get your view on that and what you see as the advantages and disadvantages. I note that there are concerns about people being left behind—people with mental health problems who do not take these up. Could you explain that?

[25] **Ms Davies:** Disability Wales is a great supporter of direct payments. We see it as a real way in which individuals can be empowered to take control of their own lives, and we have seen the transformative effect that having a direct payment can have in terms of people's family life, opportunities for education work and participating fully in society. So, we have regretted the lack of take-up in Wales compared with other parts of the UK.

[26] We recognise that, for some people, the responsibility of managing the fund, doing payroll and being an employer, can seem quite a major thing to take on, and not everyone is in a place to be able to do that. We have done a piece of work with the Wales Co-operative Centre in which we commissioned research into the role of co-operatives in supporting people on direct payments. There is a real opportunity in Wales to forge ahead with this, because there are not many models. We looked across Europe, as well as the UK. There are things like user-led models and multistakeholder models, but it seems to marry the ability of the person to remain in control with the co-operative acting as the employer, so that they can benefit from direct payments without having the responsibility. We feel that there is a real opportunity in Wales to look at other models of providing direct payments that do not put the onus on the individual.

[27] **Mr Hilton:** I absolutely concur with Rhian. There is a reason why people with mental health problems have not taken up direct payments as much as any other group, and it is because of fluctuating mental health and capacity, and the extra burden that that brings. There is a lot of evidence that putting the individual in control of their care and support is beneficial to their moving on to enjoying a greater sense of wellbeing, even with a serious and enduring mental illness. The Bill gives an opportunity to look at social enterprise and the third sector and at ways of delivering services differently and administering direct payments and citizen-directed support in other ways to support individuals with varying needs. It is a great opportunity and it probably needs greater clarity.

[28] **Ms Coombs:** I would like to add to that that we absolutely agree that it should be the

default situation that there is direct payment. However, those people who choose not to go down the direct payment route—we believe that there should still be a choice for people who do not want to do it—should not end up with a poorer service because they have chosen another route. So, there will be people who do not take up direct payments, and, while we are in the stages of developing co-operative approaches and co-production approaches, this will take time and, in the meantime, people who do not have a direct payment must still have the same element of choice about how things work for them. They must be at the centre, directing where that spend goes with the proper package set around the eight domains of life, so that they feel that it is a holistic approach. They must not be left behind, because it will take time to develop these approaches, and some people will not want to get involved in the first stages and will want to wait a bit, particularly people who are isolated. Quite often, people with mental health problems are more isolated and perhaps do not have carer support or a family network, so they do not have other people with whom they can test things out or talk things through. Until those structures are in place, they need to have good-quality services in place.

[29] **Mr Bowen:** That was broadly the point that I was going to make as well. For many carers of adults, disabled children and others, direct payments have been a positive way of increasing flexibility and their control over how they receive their care and support. It is just that it is not for everybody. While we very much support the direction in the Bill in encouraging greater use of direct payments, it is important, first, that people get the right support to administer the complexities, but also that they have a choice of different options—very much the same point as Ruth made.

[30] **Vaughan Gething:** Gwyn, do you want to follow that up?

[31] **Gwyn R. Price:** No, I am happy with that.

[32] **Vaughan Gething:** In this area, you know that the Bill does not propose direct payments as the default model—that is not what the Bill says. So, I am interested that your pitch has been quite clear, namely that you want that as the default model. If that were not to be the case, what else would you like to see happen? Where would that be—on the face of the Bill or in regulations—to achieve the objective? The other point is that you have talked about co-production a couple of times, but that means different things to different people. How and where do you get a definition that works? Is that on the face of the Bill, is it in regulation, or is it in the code?

[33] **Ms Davies:** In our submission, we refer to the Scottish model of self-directed support. Perhaps you could expand on that, Paul.

[34] **Mr Swann:** That is the point that I was keen to make. The social care self-directed support legislation in Scotland sets out a specific process by which local authorities are required to offer a direct payment to citizens. That is a clear and welcome approach that has been adopted there. We have to ask ourselves in Wales why, despite the Welsh Government's long-term commitment to advancing direct payments, we still have less than 5% who are eligible for a direct payment actually receiving one. Implicit in that is the need for culture change within local authorities. The concern would be that this gets worse as time goes on, as the economic recession, or whatever we want to call it, continues to bite. Resource allocation has to be the primary concern and, of course, that has to be balanced with the individual's right to have choice and control over the services that they were assessed as being entitled to. There is a real need to look at how we change culture in local authorities, and a step in the right direction would be to have some very specific principles and guidance on the face of the Bill, reinforcing regulation and the code of practice, but with a much stronger message coming from the Welsh Government to local authorities.

[35] **Rebecca Evans:** It seems that getting definitions right is the key to getting the Bill

right. I would like to ask you about the definition of disability in the Bill. In the Children and Young People Committee recently, I asked the Deputy Minister whether she was concerned that the current definition reinforced the medical model of disability, but while reaffirming her commitment to the social model, she said that they used the Equality Act 2010 because the Bill needed legal underpinning. She said that she was prepared to consider further whether we could add to the definition in the Equality Act. Are you satisfied with that approach, and, if so, how would you recommend that the definition could be added to to encompass the social model?

[36] **Ms Davies:** Again, this could be an opportunity for the Welsh Government to really take a lead. I can understand what they have done—they have taken a definition off the shelf. Many people would assume that the definition of disability in the Equality Act would have it sussed. However, it still is a medical-model definition, and what we would like to see is the Welsh Government developing a social-model definition of ‘disabled person’ that would then be the core guiding principle running throughout the Bill. From that, a lot of the issues that we have been talking about around citizen-directed support and self-assessment and the right to take up direct payments would follow.

[37] **Mr Swann:** Just a quick comment, if I may. In our paper, we propose a definition of a social-model version of disability as the loss or limitation of opportunities to take part in society on an equal basis with others due to institutional, environmental and attitudinal barriers. That is a very different model to what the Bill is currently based on. If we were to introduce that—and it would be fantastic if the Welsh Government was to pioneer provision of a legal definition of a social model of disability—it would radically alter the way that we do social services in Wales.

[38] **Ms Coombs:** We would add, from the Wales Alliance for Mental Health, that adopting the social model of disability should be one of the principles set at the beginning of the Bill, so that wherever that development sits, if it is in the principles, the detail can come elsewhere. However, it will not be something that people choose to do or choose to ignore pragmatically, because there is a principle that permeates the whole of the legislation and the secondary legislation that sits underneath it.

[39] **Mr Bowen:** Slightly separate to that, Carers Wales would like to welcome the definition of carers, and certainly the prominence of the status of carers throughout the Bill. In particular, there was an issue in the previous draft of the definition of ‘carer’, so I would like to have it on record that we very much support the current definition. There is a slight issue there with regard to a clause that says that local authorities have some flexibility in whom they can define as a carer. We can see the benefit of a bit of flexibility there, but it is important to maintain the distinction between unpaid carers and paid-for carers, which was the issue previously.

9.30 a.m.

[40] On a slightly different point around definitions, there is a key point as well not just around definitions of disability, as such, but a read-across from a number of different pieces of legislation. For instance, the current definition of a disabled child under section 17 of the Children Act 1989 will be going. I know that a number of families of disabled children will be quite concerned that that could weaken their ability to access services, because, by definition under current legislation, disabled children, if you pass that definition, are classed as children in need and therefore have access to services by that route. So, we are quite concerned about definitions there. There are similar issues with regard to the read-across from other pieces of legislation; for example, under the existing Chronically Sick and Disabled Persons Act 1970 with regard to access to the provision of aids and adaptations. There are quite a few pieces of current legislation, and it is about quite how those definitions read across

into the eventual Act. I think that we need to look at some of these Acts carefully, to make sure that things do not fall off the edge.

[41] **Rebecca Evans:** It was the definition of disabled children that I wanted to come on to, but you have already expanded on that. Does anyone else want to add anything? I see that they do not.

[42] **Vaughan Gething:** Lindsay Whittle is next, then Ken Skates and Elin Jones.

[43] **Lindsay Whittle:** Lots of organisations have made the case for independent advocacy. I support that fully. What are your views on ensuring that those independent advocates are registered and inspected? That is the first question. Perhaps they would like to answer that first, Chair, through you.

[44] **Ms Coombs:** There has been quite a lot of work in Wales around advocacy standards over the last few years and, certainly in the case of independent mental health advocates and independent mental capacity advocates, some rigorous standards apply. One of the things that we would want to see provided for, however, is that whatever is put in place does not inadvertently—it is one of those unintended consequence things—impact on peer advocates. Some people in particular circumstances have access to peer advocates who are extremely supportive, because they have lived a similar experience and can therefore give very good advocacy support. To put that in a specialist context of people being held in secure accommodation, if they have access to peer advocates, the person providing the peer advocacy would be unlikely to meet any criteria that would then be in place for the wider population. I think that there are some specialist areas that would need careful consideration. To be a peer advocate in a secure unit, you will have experienced a secure unit, so your history is likely to mean that you will not tick the boxes that you need to tick. Having said that, as a general principle, we would want to see people supported, to be trained—we know that there is a lack of training opportunities in Wales.

[45] The other thing that we would want to see as a consideration is that advocacy provision across Wales should come from people who understand the context of Wales. There is recent evidence of contracts being let on the basis of cost alone to organisations that are coming into Wales to provide the advocacy support. If a values-based commissioning or procurement approach were taken that included having an understanding of the context of Wales, it would give people seeking the support of an advocate greater assurance that the providers understand the context in which we are working, particularly as devolution develops and matures—we are getting more legislation, and context, that is different from England. So, we would want to see that included as a safeguard in there somewhere as well.

[46] **Mr Swann:** I would agree; it would be an excellent idea—if we had a sufficient number of independent advocates to start with. There is a UK-wide organisation called Action for Advocacy, and it has done a tremendous amount of work on this. It covers Wales as well, in theory. It has developed professional training programmes and it has quality standards in place. All of that information can be drawn upon. I do not think that it exists now, but Advocacy Wales was the third-tier networking organisation for advocacy providers in Wales. However, it never had any support to maintain itself, so I think that it has fallen into a heap.

[47] A final comment would be that independent advocacy is cost-effective; there is evidence to demonstrate that. It is cost-effective by being a preventative service, so it prevents issues from escalating, up to and including the involvement of police, courts and what have you. If we get services right at the start, it saves us from a whole lot of problems further down the track.

[48] **Lindsay Whittle:** I have a second question—I have a lot of questions, but time is

against us. What are your views on pooling budgets between health and social services and on the accountability of those budgets, because that is critical? Could you link that in—tenuously, because this could otherwise be a third question—to prevention? The Deputy Minister for Social Services has addressed the committee, and she cited a case where a person needed meals on wheels. A huge amount of bureaucracy was involved, with visits and lots of form filling; that is not really necessary, is it? If someone needs meals on wheels, you can tell almost immediately that they need that service; let us just sort it out and do it.

[49] **Mr Hilton:** I think that that is what we should do—just do it. [*Laughter.*]

[50] **Lindsay Whittle:** That is my motto on Facebook, Chair. [*Laughter.*]

[51] **Mr Hilton:** This is a personal view rather than a Wales Alliance for Mental Health view, I guess, but whether you force pooled budgets or not is a difficult question. I wonder whether we should be keeping an eye on the outcomes. What we are expecting health and social care providers to do is to deliver outcomes that are focused on improving people's lives. That bit in the middle—whether that is done through a pooled budget or not—then becomes less important. That is a personal view on pooled budgets. Having seen people trying to negotiate them, it seems that you can spend as much time arguing about how the budget is pooled and how it works as you can doing good with it. I would rather that we focused on measuring outcomes and measuring people enjoying more fulfilled lives.

[52] Coming on to the prevention stuff, it is a fundamental part of this Bill. I can understand why some people are quite concerned about it, in terms of the diversion of resources away from people who really need higher levels of social care. However, I think that it is fundamental to improving the health and wellbeing of the whole population. One point is that we think that the definition of prevention in section 6 of the Bill should be extended to include improving the overall wellbeing of the population of Wales. I think that now is an opportunity to look at how we finance prevention. There is something around how social care is funded in block annual grants, which have in-year savings built in, that is a barrier to pursuing a prevention agenda. The benefits that you reap from prevention are in the future, so I think that longer term financing models need to be thought about for supporting the prevention and early intervention agenda. The success of that needs to be measured according to the benefit to the individual and the economic benefit.

[53] The Mental Health (Wales) Measure 2010 has gone a long way in supporting that early intervention and prevention agenda, and that is now enshrined in Welsh legislation. The mental health strategy has made a commitment to measuring the economic benefit of taking that approach. I think that we should be taking the same opportunity with this Bill. The New Economics Foundation has brought out a set of papers called 'The Prevention Papers', which talks about how you could model long-term financing for prevention and how you could start to measure the benefits. I think that this is an opportunity to do that.

[54] **Vaughan Gething:** How does that affect what is in the Bill?

[55] **Mr Hilton:** I am not sure.

[56] **Lindsay Whittle:** The reason that I asked my question is that I have a vision that pooled budgets will give us better outcomes. I am fully in favour of your reply. Thank you for wanting better outcomes—I think that we all want that. I was hoping that we could make a strong case for pooled budgets, but with accountability. Health boards are not very accountable, whereas local authorities and social services are accountable, at least to the elected members; that is important.

[57] **Ms Coombs:** There are examples in Wales where pooled budgets are working quite

well; there are examples in the Conwy area, particularly in mental health, where there are joint posts that straddle health and social care. If you look at the mental health Measure and the secondary legislation around that, which talks about regional boards and the duties of health boards and local authorities to work together, you will see that there is a lot of learning that could be brought in from that existing legislation. I know that we are saying this again and that we keep referring to the Measure, but that is because it has some good examples of lots of different ways of doing things.

[58] It is about cultural shift, as Paul has said throughout his evidence. It is not just about putting it in a piece of legislation; it is about making it a reality. There is an opportunity to have a reference, either in the Bill or in the regulations that sit around it, that takes on board what has happened in the Measure around how local authorities and local health boards work together and include the pooling of budgets. It should be noted that, in the context of the mental health Measure, it is included in secondary legislation because local health boards and local authorities said that they wanted to work together, so there was an appetite there for coming together. On whether it should be on the face of the Bill or in secondary legislation, I am not sure whether putting it in the Bill means that it is stronger, but there could also be the argument that it seems to be working okay sitting in secondary legislation in the context of the mental health Measure, so why not have parity across the two sets of legislation?

[59] **Vaughan Gething:** I know that Keith wants to come in. I will then see whether Lindsay has anything more before I move on to Ken.

[60] **Mr Bowen:** On the relationship between health and local government, as far as I can see, the Bill does not do anything to substantially move things any further. If anything, it reiterates the existing legislation—some of the existing mechanisms to facilitate joint working, but also some of the existing legal barriers between the two. In our view, it does not move the agenda much further from a legal point of view.

[61] However, with regard to prevention, it is important to come back to this, because it is a potentially positive and exciting element of the Bill, where the wellbeing and preventative sections can refocus the way that we provide care and support to the population. The two key issues around prevention would be that the definition needs tightening up, because it is not clear what is meant. It is not entirely clear exactly what services would be provided—housing was mentioned earlier with regard to the services that Care and Repair is able to provide, which are often small and simple inputs, but ones that make a huge difference. So, the Bill is not clear on exactly what activities and services are to be provided. That needs greater clarification.

[62] The other bit that we are not sure about is that those sections tend to involve broad population sections, but they do not explain how, as an individual adult, child or carer, you are going to access those services, and how you flow between accessing something that may well be a preventative service through to a more complex care and support service, and back through. It does not explain how that will work. We are concerned that if we are not careful, it will lead back to even more gatekeeping, so that you have to have an assessment, as you said, in order to access something fairly minor.

[63] **Vaughan Gething:** I call Ken Skates, Elin Jones and then Lynne Neagle.

[64] **Kenneth Skates:** I have two questions. Staying with preventative services, I note, from Mind Cymru's evidence that you have concerns about section 6(6)(c). Can you elaborate on your concerns? Am I right in thinking that your worry is that the element of disproportionate expenditure in the Bill could be counterintuitive?

9.45 a.m.

[65] **Ms Coombs:** Yes. It is almost like a get-out-of-jail clause, in effect, if services are considered in isolation in terms of cost, and not seen in the context that we have discussed of looking at investing to save, that is, that investing some small amount of money in prevention now can save a huge amount further down the line. I can quote an example that comes out of the Friedli and Parsonage report from 2009; that research was done for the all-Wales mental health promotion network. It is a specific example with regard to conduct disorder in children. It says that the estimated saving in lifetime costs of prevention is about £150,000 per case, or potential benefits to Wales of £247.5 million. So, if you were to look at section 6(6)(c) and think, 'It's going to cost me £150,000 to do that', you would just not do it, but if you look at that in wider context, it could save millions. It is about not having the opportunity to think short-term and to be blinkered. So, we would want to see that removed, so that there is not that sense of, 'Yes, it will all be really wonderful; we want to do prevention, but on an individual case-by-case basis, it is always too expensive, so, we don't have to do it'.

[66] **Kenneth Skates:** So, 'disproportionate' is probably misplaced, in your view.

[67] **Ms Coombs:** Yes.

[68] **Kenneth Skates:** Could it be replaced with anything more appropriate? How about 'unreasonable' expenditure? But, then, who defines that?

[69] **Ms Coombs:** Yes, possibly. If something needs to be in there, I think something more like 'unreasonable' would be a better reflection.

[70] **Kenneth Skates:** Ideally, you would just remove that.

[71] **Ms Coombs:** Ideally, yes; just remove it.

[72] **Kenneth Skates:** Okay. I want to go back to the meaning of 'wellbeing' again. It is absolutely crucial that we have general agreement on what the definition should be. You have offered alternatives today. Would it be fair to assume that you would all be content with defining 'wellbeing' to reflect the definition in the mental health Measure and perhaps giving regard to, or being compliant with, the UN convention on human rights? Would that be desirable?

[73] **Mr Hilton:** It would; yes.

[74] **Kenneth Skates:** Would that be preferable over the definition in the Bill?

[75] **Mr Hilton:** From the Wales Alliance perspective, it would, partly because I think it would also support the desire of single assessment, single care plans—the wider aspirations.

[76] **Kenneth Skates:** As far as the other witnesses are concerned, would that be a desirable alternative?

[77] **Ms Davies:** When you said 'the UN convention on human rights', did you mean the UNCPRD—

[78] **Kenneth Skates:** The right to the enjoyment of independent living.

[79] **Ms Davies:** Right. So, that is the UN Convention on the Rights of Persons with Disabilities. Okay; yes.

[80] **Kenneth Skates:** So, you would be content with the definition taken from the mental

health Measure, would you?

[81] **Mr Swann:** At a quick glance, there are eight dimensions and that looks encompassing, but as I have said, we would really want to see enjoying the right to independent living added as a ninth dimension.

[82] **Kenneth Skates:** Or, compliant with that?

[83] **Mr Swann:** Yes.

[84] **Kenneth Skates:** Yes; okay.

[85] **Mr Swann:** There clearly needs to be read-across from the Social Services and Well-being (Wales) Bill to the framework for action on independent living.

[86] **Ms Coombs:** If I may add to that, if the principles embrace the UN convention on the rights of disabled people, then the definition of ‘wellbeing’ would sit underneath that. It would make sure that those concerns were addressed right on page 1, so that everybody knows that it is in the context of these UN conventions, and that Wales is looking to ensure compliance with that, as well as the UN Convention on the Rights of the Child.

[87] **Kenneth Skates:** Carers Wales, would you be content with that?

[88] **Mr Bowen:** It sounds like a reasonable approach. To be honest, I am not entirely familiar enough with that to give a full positive response, but it does sound like a reasonable approach.

[89] **Kenneth Skates:** Okay, thank you.

[90] **Elin Jones:** Given that this Bill, as you said, Mr Bowen, does not move us any further forward on the integration of services and the pooling of budgets between local health boards and social services, other than allowing Ministers to put in regulation, in some places in Wales where there is good work—Conwy and Gwent have been mentioned—it does not make it happen in every part of Wales. I therefore take you back to the section on preventative services because the Bill, as it stands, places a duty on local authorities to arrange for the provision of preventative services, but does not put such a duty on local health boards. It just states that the local health board must have regard to the importance of preventative services. Would any of you have a view on whether such a duty should also be placed on local health boards?

[91] Finally, in terms of making preventative services happen, there is a duty again on local authorities to promote social enterprises and the third sector to undertake that work. I welcome that. Do you welcome—as the third sector—that duty being placed on local authorities to specifically promote your work in preventative services?

[92] **Mr Hilton:** Going back to what Ruth said earlier about pooled budgets, and going back to the mental health Measure, local authorities and health boards came together and said that they wanted to have the duty placed on both of them. In terms of the prevention agenda in Part 1 of the Measure, there is a duty on the local health board and the local authority to develop primary mental health care schemes. It would make sense that the same duty existed in terms of the early intervention and prevention services within this Bill. Yes—social enterprise and the third sector supporting the delivery of health and social care services is more than welcomed, but there is an interesting journey for us all to take in rolling up our sleeves and developing a different kind of relationship and different ways of working that are more compatible that can make that happen.

[93] **Mr Bowen:** That is a good point about the health duty around prevention. Broadly, that sounds like a good idea. From what I have picked up from some colleagues, there are some issues around the Bill about how health could fund some things because of the issue around being free at the point of delivery. So, I think that there are some complications there that might need to be ironed out. However, broadly speaking, that is a positive idea. The fundamental thing at the moment around preventative services is that it is not quite clear exactly what they would be, such as reablement services. There are a lot of very positive activities, but it is still not that clear, exactly, what—

[94] **Elin Jones:** Do you think that it needs to be clear on the face of the Bill, or is it okay to be quite general? For example, section 6(2)(a) reads in quite a general way, encompassing the development of people's needs for care and support. Is it sufficient to have it as general as that, with everything hopefully fitting within that general statement, or do you want specific examples and a list?

[95] **Mr Bowen:** I think that it would most probably be useful to consider having a bit more detail there with regard to what is meant by preventative services, and to make sure that we can incorporate and that it will end up facilitating all of the positive types of activities, such as reablement, care and repair, and so forth.

[96] **Elin Jones:** In terms of financing and the charging aspect of this work, there is a section on charging. As the third sector, and thinking about your possible involvement in developing services around preventative care, are you comfortable with the way that the ability to charge in order to fund some of these services is laid out in the Bill?

[97] **Ms Davies:** No. The Coalition on Charging Cymru submitted a response, and we have some serious concerns around what appears to be the introduction of charging for preventative services. There is reference to information, advice and assistance. It is not clear—certainly in the information that we have had—what that means. So, if people download leaflets from the website or get a pack of information from the local authority or an advice centre, is that charged for? There is a real lack of clarity. We are aware, from our previous involvement with the Social Care Charges (Wales) Measure 2010 and the research that was done on that, that local authorities find all sorts of ways to charge for things, and our worry is that this could creep back in in a new area. It would particularly disadvantage people who have to go to a third party for support, who do not have access to the internet and cannot find out things for themselves or negotiate their own support. So, we are very concerned about the way that charging is addressed in the Bill.

[98] **Lynne Neagle:** I want to ask about the national eligibility criteria. These will be a key plank of the Bill, yet there is no detail in the Bill as to what they will look like. In previous sessions that the committee has held, it became clear that this is very much work in progress. How do you feel about that being work in progress at this stage and what kind of safeguards would you like to see so that we know what we will be getting when we pass this Bill?

[99] **Ms Coombs:** Once again, we would want to ensure that the bar is not set too high so that preventative and whole-population wellbeing approaches end up in legislation, but in a way that makes them very disconnected from reality and where there is a disconnect between people with high-level support needs and that prevention agenda, which is for people along all aspects of the continuum—people with severe and enduring mental health needs have needs relating to early intervention and preventative services. It is not one or the other. Where that eligibility sits is important. From a personal perspective, it seems slightly uncomfortable to set something in legal motion without knowing what that means. There needs to be clarity, and there needs to be clarity quite early on, because, depending on what the eligibility criteria

end up being, something that is aspirational and looks to be moving in the right direction can suddenly look like something quite different.

[100] **Lynne Neagle:** On a point of clarity, the Minister has said that it cannot be on the face of the Bill, which I can understand because needs change and you want flexibility, but what would clarity look like for you as we pass this Bill? At which stage would you like to see these eligibility criteria come forward?

[101] **Mr Bowen:** As far as I am aware, although I might be mistaken, there has been a comment to suggest that there will be more detail on the eligibility criteria just before Christmas—around December. I have heard that somewhere. The unfortunate point about that is that this committee will have moved on to the next stage of scrutiny by then. So, there is a mismatch; we will have missed the boat. If there was an opportunity to get clarification on the eligibility criteria before the next stage, when we start to look in much more detail at the wording, that would be helpful. However, as far as I am aware, the timetables are out of sync with the legislative process.

[102] **Vaughan Gething:** Before we finish, we will discuss the portability provisions, both for individual users and carers, as we have not yet done so. I will start with the Carers Alliance, because the portability element does not extend to carers in terms of the assessment.

[103] **Mr Bowen:** Generally speaking, the sections on portability are a fairly modest but helpful area to try to improve flexibility with regard to people moving home and also to improve the postcode lottery issues. So, generally, the section on portability is positive, if fairly modest, because the time is limited and then there is a reassessment and everything is up for grabs again. However, there is certainly an anomaly with regard to carers. One quite clearly stated aim of the Bill is that carers are treated in the same way as the person cared for—this is the case throughout the Bill—but then carers are explicitly exempted from the portability section. I am not entirely sure of the rationale for that, but I do not really see why it needs to be there. I think there are obviously complications, such as carers living in different counties from the cared-for person et cetera, but that really should not hold us back. We would recommend that carers are fully included in that section.

10.00 a.m.

[104] **Vaughan Gething:** Okay. Are there any other brief comments from each of the other organisations?

[105] **Ms Coombs:** What Wales Alliance for Mental Health would say is that the portability at the moment, as it is worded, is local authority to local authority. It does not take account of partnerships, and if we are going to look at duties around partnerships with health boards, then it would need to be amended to reflect that. Although it might be the duty of the local authority to spearhead that, there should be something on the face of the Bill that says that it must take into account the agents that are working across the eight domains of life, so that it is not just in isolation, or one person talking to another individual; it needs to be more holistic than that.

[106] **Mr Swann:** Very briefly, Disability Wales has been advocating for portability for a long time, so we are absolutely delighted to see that the Welsh Government is taking this forward. I am mindful that we are already overrunning, but to answer one of your earlier questions, which we failed to do at the time and which was about co-production being on the face of the Bill, I think it should be ideally, along with a definition and a duty on local authorities and all public bodies to work in a co-productive manner, so that everyone is working together on an equal basis for culture change and improved outcomes.

[107] **Vaughan Gething:** Thank you for your evidence this morning; it has been very interesting. We will send you a transcript for you to make sure that it is accurate. As with almost all of our witnesses, we will write to you with any follow-up questions we have not reached, or on any points of clarification, because we appreciate that, with a Bill of this length, we probably did not get through all elements that you may want to discuss or that we may want to ask you about, in the hour you have had this morning. Many thanks for your time this morning, and I know that you will continue to pay attention to our scrutiny as we continue for several weeks more yet.

10.03 a.m.

Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 2 **Social Services and Well-being (Wales) Bill: Evidence Session 2**

[108] **Vaughan Gething:** Good morning and welcome to the Health and Social Care Committee. We are continuing with our scrutiny of the Social Services and Well-being (Wales) Bill. Thank you for your written evidence, which we have had an opportunity to read. Will you please state your name and which organisation you are from? We will not have time for opening statements because that will eat into the time for questions that Members have. After everyone has introduced themselves, we will move to the questions. As to how meeting runs, the microphones in front of you will come on automatically so you do not have to touch them, and translation will be available through your headsets on channel 1 if any questions are asked in Welsh and you are not a Welsh speaker. We will start from the left.

[109] **Mr Davies:** I am Parry Davies, director of social services for Ceredigion, representing the Association of Directors of Social Services Cymru.

[110] **Ms Ellis:** I am Sally Ellis, the director of social services in Denbighshire, also representing ADSS Cymru.

[111] **Ms Lloyd:** I am Vicky Lloyd. I am director of influencing at Age Cymru, and I am also representing Age Alliance Wales.

[112] **Mr Palfreman:** Good morning. I am Martyn Palfreman, head of social services at the Welsh Local Government Association.

[113] **Ms C. Williams:** I am Catriona Williams, chief executive of Children in Wales, the umbrella body for children's organisations.

[114] **Mr Moulster:** I am Robin Moulster, manager of the British Association of Social Workers in Wales.

[115] **Vaughan Gething:** As I did with the previous session, I will start with a question on wellbeing. This is the Social Services and Well-being (Wales) Bill, and I am interested in your perception of the wellbeing duty, as drafted, and how it affects access to services in particular. Bearing in mind some of the evidence that we have already heard this morning, is that duty sufficiently wide, or is it too wide? Equally, how do you see that duty impacting on services as they are provided and on those that the duty is imposed upon? We will start with ADSS and move along the line. I do not know which one of you wants to answer first.

[116] **Ms Ellis:** I will start, although it will take time for me to get used to the microphone. We welcome the principle of the wellbeing duty, as drafted. There are some issues for us, in terms of how it will work alongside duties on a range of people to deliver wellbeing. We are, obviously, aware that the same sort of duty is now appearing in a range of different

legislation. We are somewhat concerned that the interpretation of it will mean an assumption that social services will take on a wide range of additional responsibilities that they have not, perhaps, hitherto taken on. An example would be including the economic wellbeing responsibility, which has not, hitherto, been core business for us. That is a key issue; there is a risk of the duty being drawn too widely, in the context of this legislation, for us, realistically, to be able to deliver.

[117] **Mr Palfreman:** To echo what Sally has already said, we think that, as a principle, wellbeing needs to be in there. It gives us the opportunity to encompass within the range of social care and wellbeing services the range of preventative services that we will probably talk about later. The concerns that Sally raised are very real concerns for us as well. First of all, we have the power to promote wellbeing in the existing Local Government Act 2000. We have various Bills on the stocks as we speak that have wellbeing in them. We will certainly be calling for a clear definition in this Bill of what is meant by wellbeing, and an assurance that that definition would align with the definitions in other Bills that are either going through the legislative process or are about to do so.

[118] Finally, the other thing, to reiterate what Sally said, is that we recognise that there are duties in the Bill on local government corporately—it is not just about social services—but our fear is that this is a social services and wellbeing Bill. The very strong implication is that the burden of those duties, and all of the resource implications that go with that, will fall predominantly on social services. That is, obviously, of concern to us.

[119] **Ms C. Williams:** We very much welcome wellbeing as the concept. In fact, we responded to the consultation that if the whole ethos of this Bill is to turn services into a service-user-led set of services, from that point of view, the person is in the middle and the services would have to be reconfigured around them. Having said that, in terms of the actual legislation, as drafted, I think that there are two points. I believe that it was built on what was in the Children Act 2004 originally, and it has been developed for other client groups; it is not new for children, in many ways. However, the key is the national outcomes framework—we might want to talk about that later. I fully appreciate that colleagues in social services may be concerned that it might all land on their doorstep, when it is the responsibility of everybody. For me, the key is where other bits of legislation are cross-referenced and go back into the wellbeing pot.

[120] In the children's field, we have the child wellbeing monitor, which is very useful in trying to measure exactly where children's wellbeing in Wales is, and that is internationally comparable. We are, therefore, very strong advocates for wellbeing, but there is a lot of work to get Government guidance and legislation to go in the same direction so that everybody knows their place.

[121] **Mr Moulster:** BASW Cymru would like to support the points already made. More specifically, to go into a bit more detail, issues like how local authorities work with partner organisations, be they third sector or other statutory organisations in the health sector, are about how those can be taken on board as part of the whole seamless process. In this day and age, placing that on local authorities alone is not sufficient, so the implications of how that is spread and addressed more widely needs to be thought through. We support the general principle, but like the other witnesses here today, there are still some issues to be addressed.

[122] **Ms Lloyd:** Like everybody else, we welcome the fact that wellbeing is at the heart of the Bill. We have similar concerns around the consistency of having definitions of wellbeing in many different places, so we would like to see those broadly aligned. I know that colleagues of mine are concerned that, as currently drafted, there is no mention of housing, so we would like to see some mention of housing in the definition. We are also concerned about the outcomes. We welcome the fact that wellbeing is at the heart of it, but, like everybody

else, how you translate that principle into outcomes for the client groups is crucial to successful implementation.

[123] **William Graham:** I want to ask about the definition of carer. The current law excludes employed and voluntary workers, but local authorities will have discretion to treat, when appropriate, a person as a carer. Could you inform the committee what you think about that definition? Does it have resource implications for local authorities?

[124] **Ms C. Williams:** From the children sector, we welcome it, because children who are young carers would benefit from this. It probably would have resource implications, but that is all that I want to say on that.

[125] **Ms Lloyd:** From Age Cymru and Age Alliance Wales's perspective, we welcome the broadening of the definition. Our key concern is resources and ensuring that carers get what they need through having the expanded definition, and that is a resource issue.

[126] **Ms Ellis:** From our perspective, the principle is unarguable; the problem comes with the resource implication, in terms of extending the definition. There is also a risk that we would be assessing increasing numbers of carers but that, when it came to the point of potential service provision, we would be in difficulty, because there are resource implications at two points.

[127] **William Graham:** Could you enlarge on the potential problems that you would have with resources, because that will undermine the whole Bill?

[128] **Ms Ellis:** That is the difficulty. In a number of places, we are broadening the potential access of people to resources of different sorts, but with no assurance that those implications will either be offset as a result of preventative activity or by additional resources. Some working through needs to be done.

[129] **Mr Palfreman:** In our previous evidence to the committee, we raised this as one of the areas in which we think, as the rest of the panel has said, there are inevitably going to be increased resource needs to meet what is on the face of the Bill. We also mentioned that the WLGA is commissioning work to provide financial modelling around particular aspects of the Bill, and we have agreed to share that with the committee when it becomes available. I would echo the concerns of my colleagues here that, inevitably, there will be an increased resource demand and, in common with a few of the other elements of the Bill, increased expectations. We all want to extend the provision of services, but you have to manage general expectations within the community.

[130] **Rebecca Evans:** Carers are excluded from the portability of care and support plans, but we have heard evidence that carers should be able to have their plans made portable too. What is your response to that, and do you see any particular implications for the services that you provide?

[131] **Ms Lloyd:** We would welcome the portability of carers' assessments and services. There should not be a barrier. It should be the same for service users—there should be no barriers to their portability.

10.15 a.m.

[132] **Rebecca Evans:** Is that the same across the board?

[133] **Mr Moulster:** In response to that, from BASW Cymru's point of view, while we would definitely support that, it comes back again to the resource implications, in terms of

how that will be addressed. I guess—not to cut across what might be future questions in this session—that there is an issue about whether that has been costed in to the resource implications of the implementation of the Bill. For example, if you are talking about more and more assessments and resources coming in to support carers, who will do those assessments? How will they be done? What will be provided? How will that be funded?

[134] **Vaughan Gething:** On this, I can see that Catriona wants to answer, and then I will go to ADSS or WLGA, because I know that you two have different perspectives on resources.

[135] **Ms C. Williams:** Basically, we would like children to have portability if they are young carers. That comes in to the early intervention remit of services. There are not that many. The numbers are not as large, in terms of resources, as for other populations, but it is very important that they continue to get continuity of service.

[136] **Mr Davies:** Portability of assessment, which we would support for carers and service users, does not, of necessity, mean the replication of services. The assessment itself, to some extent, is affected by the context. So, if there is a set of circumstances for a carer or a service user in one context, it does not, of necessity, mean that the assessment is simply duplicated in another.

[137] **Lindsay Whittle:** On the issue of carers, do you think that the Bill should reflect and legislate for the protection of carers and, in particular, children who are carers?

[138] **Ms C. Williams:** I think that that would come under the safeguarding banner. There is a lot of children's legislation around protection. The child is the child, whatever job they are doing. The key issues that young carers have had are: access to support, identification of their needs and recognition of them as carers. To draw in the services to them, there needs to be an adequate assessment and a duty to provide services to support them. The protection and safeguarding issues could be dealt with well in the other set of legislation.

[139] **Gwyn R. Price:** Good morning, everybody. What are your views on the provision in the Bill for direct payments—the advantages, disadvantages and financial implications for local authorities et cetera? Could you broaden that out for me, please?

[140] **Vaughan Gething:** Shall we start with Martyn, then ADSS, and I am sure that others will have views on this area as well.

[141] **Mr Palfreman:** I just want to make a general point. We welcome the emphasis in the Bill on direct payments as one of a number of different opportunities or ways that local authorities can increase voice and control for the service user in terms of what their service looks like, how it is shaped and who they engage in providing that service. Before handing over to Sally or Parry to go through more of the service detail, the point that I would make—as we have previously made in written evidence to this committee—is that direct payments are one of a range of potential opportunities for increasing that voice and control. One of the things on which we would be looking for more clarity from the Welsh Government is exactly what is its vision for voice and control, which we think are absolutely key and should underpin the Bill. We feel that the emphasis on direct payments solely narrows the spectrum down unnecessarily.

[142] **Ms Ellis:** I have a similar point. We would not like to think that the menu around citizen-directed support would be restricted to direct payments. It needs to be broader than that. We are currently engaged in work to try to contribute towards what the model for Wales might look like, to ensure that there is consistency. We would welcome greater clarity from the Welsh Government about its vision for citizen-directed support. Certainly, it should not just be limited to direct payments.

[143] **Ms Lloyd:** We welcome the extension of direct payments as a model of citizen self-directed support, but for older people take-up is particularly low. We think that that is because there are probably some ageist assumptions when it comes to providing services for older people. So, we are looking for a future system to iron out that ageism, so that older people are offered the same level of information, so that if a direct payment is right for them, they are in a position to take that up. We want to be clear that we would not want direct payments to become some sort of mandatory system, because it is not going to be right for everybody and people need to have that choice.

[144] **Mr Moulster:** On behalf of BASW Cymru, I echo the points that others have made. To reiterate again, direct payments is one of a range of options for people. But, for direct payments alone, we would say that there need to be improved support mechanisms to enable people to take those up, and improved accessibility and information about direct payments and what they actually mean for people.

[145] **Ms C. Williams:** In terms of the children's sector, this issue is one of the reasons why we feel that this is a more adult-focused Bill. Children in child protection systems or looked-after children may or may not wish to have direct payments, but work has not been done to look at that in detail yet.

[146] **Vaughan Gething:** This point was raised in some of the answers earlier this morning. It is about whether direct payments have too much focus when we talk about citizen-centred services, and citizen voice and control. The evidence we heard this morning from the Wales Alliance for Mental Health and Disability Wales was that they want direct payments as a default position. We hear different views here. I am interested in why you think that there is a difference in view about whether they should or should not be a default position. I am also interested in whether you think that the Bill does not translate the vision in the explanatory memorandum and previous policy statements, or that when ADSS and the WLGA say, 'We want to be clear about what the Welsh Government vision is', you are still waiting for more than that to understand what you are expected to deliver. I think that there is a difference between the two positions.

[147] **Mr Palfreman:** I will start with your last point. We were engaged, about 18 months ago, with a number of other stakeholders, Welsh Government officials, the third sector and others in drawing together a collective vision of what citizen-directed support might look like. Direct payments are one of the instruments for that. However, it was all about what Sally mentioned: giving genuine choice to people and not starting from the position that something like direct payments, which may instantly be argued to give more control to the user, is always the starting point and that that is what people get automatically, because that would take away the very thing that we are trying to achieve, which is choice for people. People are different; they have different needs and circumstances.

[148] So, we all took part in that and there was a very early draft of that strategy. We have not seen it and we find ourselves now in a position where we are recalling some of that. Sally mentioned that we are doing work in local government. There was a summit last week or the week before at which we brought together partners and local government to see what was going on across Wales with direct payments and other options for service users, and how we could pull that into a cohesive framework, support each other and roll out learning from best practice. I suppose that the gap that is still there, or the assurance that we do not have yet, is whether that would fit within the broader vision of the Welsh Government. So, it is almost as though we have not stopped doing it, but we still feel that what we did towards this draft strategy never quite concluded.

[149] **Vaughan Gething:** Victoria, you said that you would not want to see this as a

mandatory choice, and yet we know that direct payments are at about 5%. So, I am interested in your view on what is in the Bill and whether that is adequate to see greater choice being made or not, and, in particular, whether you agree with the earlier evidence that we heard that the starting point to this should be that direct payments are the default position.

[150] **Ms Lloyd:** We welcome what is in the Bill at the moment. I think that with the fact that we are talking about choice and control, and the default either way, we are going back to the choice of the individual on the day and making sure that they have enough information on the various models that are available to them and that there is genuine choice within that. From that position you could argue the default either way. If it is genuine choice, that is okay. If it is not genuine choice, the default becomes more important.

[151] **Vaughan Gething:** I have some questions from Lindsay Whittle and then Elin Jones. Then I will look to my geographic left on the table.

[152] **Lindsay Whittle:** Under the wellbeing agenda, if the Bill was to include an anti-smacking of children policy, what would your reaction be to that?

[153] **Vaughan Gething:** We will start with Catriona.

[154] **Ms C. Williams:** We would be delighted. It is a basic human right for children. I have been at this job for many years and the Assembly has voted twice. We are really behind many countries now in Europe and the world. I understand all the difficulties that the Welsh Government might have in terms of colleagues over the border possibly not wanting this, which I think is the case, but we are very keen on it and we are involved as a lead agency in the Children are Unbeatable! campaign.

[155] **Vaughan Gething:** I now call on Robin.

[156] **Mr Moulster:** Again, to echo what Catriona from Children in Wales has just said, BASW Cymru is a supporter of Children are Unbeatable! Our view is that we would want to see that included to ensure that children and young people are afforded the same rights as adults in terms of protection.

[157] **Vaughan Gething:** Do ADSS or the WLGA have a view on whether there should be a change in the law, and then whether the Bill is the vehicle to do it?

[158] **Mr Palfreman:** Perhaps I could start by saying categorically that this is not something that we have engaged with our leaders on, and the WLGA does not have a line one way or another on the principle. I think that our concerns would be around wider points that we made to the committee previously: that the scope of this Bill is already extremely wide. I know that, in some of the evidence that the Deputy Minister has given to the committee, there were questions over legislative competence and everything relating to that and the potential passing of the Bill. On those grounds, we would have some concerns. However, to reiterate, in terms of the principle itself, the WLGA would not have a line at this point.

[159] **Vaughan Gething:** Is there anything that you wish to add? You do not have to comment.

[160] **Ms Ellis:** No. It is obviously the same point for us. However, as a child protection agency, you would expect us absolutely to support the principle of what is being argued for.

[161] **Vaughan Gething:** Okay. I now call on Lindsay.

[162] **Lindsay Whittle:** That is fine. They were interesting answers.

[163] **Vaughan Gething:** Okay. Elin has some questions.

[164] **Elin Jones:** I want to ask about co-operation and partnership between adult social care and healthcare. The Bill provides the ability for Ministers to make regulations that could make the integration of work and the pooling of budgets happen in some places in Wales if some local authorities or some local health boards particularly wanted to do it. Do any of you have views on whether there should be clearer direction and whether there should be a requirement in this Bill to make this happen in every part of Wales? We know that, in Scotland, they are looking to legislate on the integration of services between health and adult social care. I will start with that, but I have a follow-on question on preventative services.

[165] **Vaughan Gething:** We will start with Catriona, and then move to Robin. I can also see the WLGA motioning.

[166] **Ms C. Williams:** This particular area frustrates me. When Win Griffiths was the first UK Minister for Children in the old Welsh Office, you could pool budgets at that time. So, I think that there are many issues about the implementation of whatever is in the legislation. From the children's perspective—and I have alluded to this in our written evidence—we feel that the Bill originated from an adult perspective; therefore, health and social care naturally were the agencies. However, other colleagues have talked about housing and other areas. For children, education is absolutely critical to be well integrated into the Bill. The ability to work together and to pool budgets has been there. What has not happened is the implementation. With the models of the Northern Ireland joint health boards, where health and social services are together, the worry there, quite rightly, is whether social services would be a sort of second-class citizen to health, which has major budgets.

10.30 a.m.

[167] I basically feel that the answer is a national outcomes framework, where everybody is heading in the same direction, because if you have different strategies and different objectives going through in guidance to different organisations—in the children's case, non-devolved organisations as well, such as the police, youth justice and the courts—that means that everybody is going in different directions. If the direction was set with a clear national outcomes framework, all the agencies would naturally work closer together. I will leave it to colleagues to comment about whether it should be on the face of the Bill, but there have always been possibilities, it just does not happen that easily.

[168] **Mr Moulster:** BASW Cymru—surprise, surprise—has a strong view on it. We feel that budgets need to be pooled. The question was about health pooling its budgets, I think. BASW Cymru believes that there is too much bureaucracy between the different hoops and hurdles that people have to go through. There are lots of examples across Wales of people having to go to one board and panel and fill out numerous forms to get one part of their care package sorted from one agency and then going through a similar process with another organisation. If we are about being person-centred and person-focused, it is about making sure that the services and the systems fit around the individuals to meet their needs, rather than the individual fitting around the systems. So, we would totally support that. We would need to make sure that that is done properly. There are ways of doing that to some degree at the moment, but it does not happen across Wales. It is sporadic in different places; there is evidence of good practice in some areas, but it needs to be broadened out and become a duty.

[169] **Vaughan Gething:** We will go to Age Alliance before we go to the statutory partners who are here.

[170] **Ms Lloyd:** From our perspective, we are concerned at the lack of explicit duties on

health. We think that there should be clearer duties on health to pool budgets and on joint working.

[171] **Vaughan Gething:** That is helpful.

[172] **Mr Palfreman:** To pick up on some of the points that have already been made, it is happening across Wales and the supplementary evidence that we provided to our previous oral evidence session with the committee highlights some of those examples. So, being self-critical, I would say that it is not happening universally and there are barriers around governance, financial management and all those kinds of things that we have talked about that are stopping it from happening. We are committed to learning and we have learned from the things that have not been quite as successful as they could have been as well as those that have, and, through that, we aim to support local authorities and partners in overcoming some of the barriers that remain.

[173] This is something that we want to see in the Bill and, again, as in the evidence that we gave previously to the committee, our view is that the Bill needs to strengthen the duties on local authorities and on health. We are not convinced that it does that as it currently stands, and referring back to the Local Government Act, we are not sure that this strengthens it and maybe it even makes the provision weaker. We would like to see something that genuinely gets health and local government, but also other partners, around the table to work through some of these issues that we all know are there—one of them being finance. Pooled budgets, as we said about direct payments, are one mechanism. Maybe there could be more comprehensive discussion about how we move resources between health and social services to support whole-systems change. We would look for something in the Bill that almost requires those key partners to at least have that discussion.

[174] To finish, briefly, what has happened since I last sat before this committee is the announcement of the public services commission, and we would ask that Members and the Welsh Government are mindful of ensuring that whatever eventually goes into this Bill accommodates what might come out further down the line as a result of that commission. Again, I have no simple answers to that, but it is something that I would like to flag up at the current time.

[175] **Vaughan Gething:** I have ADSS and Catriona to speak and then we will go back to Elin.

[176] **Mr Davies:** Our position is reflected in what Martyn has said. Our interest is in ensuring an integrated experience for the people who use our services. We see social services within local government, as a unified service within local government, and recognise the interdependence on delivering on our wellbeing duties. That is dependent on good relationships with other local government agencies as well as others, including health. We would reiterate the need for the Bill to ensure that we and health can sit around the table to look at these issues properly.

[177] **Ms C. Williams:** To use the example of a disabled child, the children's sector is very much for the integration of services around that child, and those services include health, education, social services, transport, leisure and others. There is a whole range of issues for a disabled child. The implementation angle, which was in the Children Act 2004, about the requirement for a wide range of agencies to work together, was significant. In terms of implementation, we have lost in Wales all the structures that have brought partners together at a local level by the mass demolition of partnerships. I fully understand that as a member of a range of partnerships, but, actually, the children and young people's partnerships were beginning to address some of this working together with the third sector. The Bill includes the statutory-sector health and social services, but the other partners are critical for the interface

with the service user. So, a disabled young person and their family would need an integrated service around them. The ability to pool budgets is there, and is being used in some places, but we need to think beyond the Bill, and looking at the guidance will be very significant for a lot of the children's work.

[178] **Elin Jones:** Thank you for those responses. You have all said roughly the same things. The powers have been there already to do some of this integration work—the pooling of budgets has happened in some places, but it has not happened in every place. This Bill is an opportunity to make it happen in every place, but not as it is currently drafted. Just for information, the Welsh Government accepted the Plaid Cymru motion yesterday to make sure that the commission on public service governance will look at the issue of integration of adult social care and NHS work. However, it is important that this Bill works in tandem with that.

[179] I wanted to take you to the preventative services, because the duties in that section just outline how, maybe, local authorities and health boards are treated differently. There is a specific duty on local authorities in this Bill to provide for preventative work, but there is not a similar duty on local health boards to do that. It just says that local health boards should have regard to the importance of preventative services, and I was wondering whether any of you have a view on whether that should be strengthened, irrespective of the other discussion that we had specifically giving local health boards the same duty to provide preventative services.

[180] Then, just on local authorities promoting preventative services, there is a specific duty on local authorities to promote social enterprises and co-operatives to undertake this work, and I wanted to hear from those of you who are in the local authority sector whether you are content with that specific duty being as explicit as that in the Bill.

[181] **Vaughan Gething:** Shall we start with the ADSS?

[182] **Ms Ellis:** I just wanted to make a comment on integration and budget pooling. One thing it is easy to forget is that, in terms of the power issue that you referred to, and the scale of health in comparison with local authorities, it is particularly important to look at community health services and local authority services. We tend to get lost a bit in terms of all the debates and issues around acute services, but if we could get community health services—it links with Catriona's point, really—working with local authority services and that, somehow, could be captured on the face of the Bill, that would be really positive. In terms of the points that you have made around preventative services and the equality of responsibility on local authorities and health, ADSS agrees entirely: it should be a duty on health boards, as well as on local authorities, to do that. As for other bodies, Public Health Wales has a really important role to play in the range of preventative services that are available.

[183] Turning to social enterprises and some of the things that we may come to later on around assessments—and we have already talked about citizen-directed support—there is clearly a good opportunity for new forms of organisation to play a significant role in the delivery of social enterprises, with co-operatives and third sector organisations being good examples. Our difficulty with it is that the Bill appears to select particular forms of organisation as having priority over others. That is the difficulty, because, at the moment, we have all sorts of providers playing roles in social care provision, and that is a healthy thing. The Bill appears to favour one particular kind of organisation over those others.

[184] **Elin Jones:** Would those others be in the private sector or the statutory sector? Is that what you mean by 'others'?

[185] **Ms Ellis:** Yes. The independent sector is clearly very significant in social care

provision.

[186] **Ms Lloyd:** We would also welcome the broadening of that duty around prevention to include others, as Sally says. From the perspective of the Bill, however, we need a lot more clarity on what we are talking about when we are talking about prevention, because much of it depends on what we mean by ‘prevention’ and what it is we are trying to prevent. I do not think that we get that clarity from the Bill as it is currently drafted. We are not clear about what we are trying to prevent and how you would access those preventative services.

[187] We also think that section 6 is very process-driven, rather than looking at the individual in need. So, there is quite a lot of work that we need to be doing to identify the outcomes that we are looking for from prevention—probably even before we get to who delivers those preventative services. There is probably quite a big piece of work to do on prevention.

[188] **Ms C. Williams:** I would certainly welcome the reference to the third sector, because I think it has been a poor relation in having a right to be at the table in developing services. The philosophy that we really like in this Bill is a rights-based approach to services. A lot of third sector organisations are very close to the individuals on a day-to-day basis, and they could therefore begin to identify the services that are used.

[189] I agree that being too specific about the models could be restrictive. I cannot think what other models there would be, but, whenever you have a list in a Bill, it becomes problematic, because there is often some sort of organisation that is not on the list.

[190] Attention needs to be developed in terms of the resource issue. If you are involving service users, and these sorts of providers have a job not only to provide services, but to consult and involve users, attention has to be paid to the resourcing of adequate involvement. The lessons that we have learned from disabled children are that it takes a lot of resource to involve them properly in decisions that affect them. I think that the quality of the organisations is important as well. Perhaps that will come through in the code of practice afterwards.

[191] **Vaughan Gething:** Okay. There are three Members who have not asked questions yet. We are going to Ken Skates, then Rebecca Evans and then we will be with Lynne Neagle.

[192] **Kenneth Skates:** I would like to move to Part 7 of the Bill, on safeguarding adults and children. This is a question primarily for Victoria Lloyd, but other witnesses may also have an opinion on the issue. It concerns the definition of an adult at risk, which is limited to adults who need care and support. Do you believe that it should be extended? Does it need clarity, as well?

[193] **Ms Lloyd:** We very much think that it should be extended, because the definition of an adult at risk is quite a narrow definition. We feel that adults at risk are sometimes at risk because of the abuse itself, and that needs to be brought into the equation. Without the abuse, they may have no care and support needs. We also think that the issue of coercive control is one that needs to be included in the definition.

10.45 a.m.

[194] **Ms C. Williams:** I cannot comment on the adult at risk definition—I am thinking in relation to safeguarding generally. We are not at all keen on the joint adult and children safeguarding board, mainly because there is a whole range of different skills and different personnel involved, and we think that it will probably end up with two sub-committees anyway. We are concerned that, because the safeguarding of children is way ahead of the

protection of adults in terms of legislation, it might hold back some of the discussions regarding children. We can understand that the police and the health service are worried about sending representatives to lots of different meetings, but, although this has been announced, we are of the view that we should not have the joint board. If it is to go ahead, we should review it after a year to see whether children have been disadvantaged.

[195] **Kenneth Skates:** On that very point of the joint board, is there a risk that, if there was not a joint board, you would potentially miss out on that key transition point from childhood to adulthood?

[196] **Ms C. Williams:** Yes, absolutely. The concern we have is that transition is losing the rest of the children's agenda. The transition from children's services to adult services is very important, and that has to be addressed, but there could be other mechanisms that could be used, such as a transition sub-group, perhaps. There are other ways of doing it. However, the bulk of children's safeguarding is about babies; the largest number of children who are injured or killed are injured or killed when babies. If we head towards a different model, they will be the vulnerable ones. It is not that people are unwilling to look at it, but all of the different services have specialisms, such as child development and child psychiatry, as well as all of the others. Children are very different from adults, as you know.

[197] **Mr Moulster:** May I be permitted to give a brief answer to the last question, before I answer this one?

[198] **Vaughan Gething:** Yes, and then Ken will ask a follow-up question.

[199] **Mr Moulster:** To go back to preventive services, BASW Cymru believes that there needs to be a change in the wording from 'care and support' to 'care and/or support' in the Bill. In a sense, if people do not have care needs, it may be interpreted that people without care needs as well may not be offered preventive services. That is a concern. It depends how it is read and interpreted. So, one needs to be careful of that.

[200] Secondly, in terms of the range, of course we support all of the comments that have already been made. I would just like to add that section 20 contains a bit of an old-hat list, really. While we welcome social work being on that list, we need to recognise that other partners and players provide services, not least in terms of options. I would probably be shot down if I did not say this, but I am a member of the Welsh reablement alliance, and reablement is a key factor. It is not a panacea for everyone, but it is for some people and it is an option. With regard to that, we need to be clear about the charging of services between health and social services, because people could end up getting the same service from different agencies, being charged for one but not the other.

[201] In answer to the question on safeguarding, I support Catriona's point on that in terms of the different skills. So, I do not think that we would be in favour of joining the two different safeguarding boards at this stage. There are plenty of issues still to resolve in Wales with regard to safeguarding—probably for children and adults, actually—with regard to the way in which partners work together. There are a lot of issues about how different local authorities and different agencies work together on existing boards, let alone trying to merge that together in one humongous new board that covers both.

[202] **Vaughan Gething:** I think that Parry would like to comment on that.

[203] **Mr Davies:** I would just like to make a point in relation to the term 'adult at risk'. I think it is an attempt to be more specific in relation to what we are dealing with. In one sense, I suppose it is an attempt to be a bit clearer in terms of the terminology. Currently, we have the term 'vulnerable adults', which has proven to be quite problematic in many ways. I am

not convinced that changing the terminology has helped us to understand the concept. So, it needs greater clarification.

[204] **Kenneth Skates:** Thank you. When an adult is considered to be at risk, do you think that the intervention powers are sufficient?

[205] **Ms Lloyd:** We have some concerns about the way in which the powers are currently drafted. At the moment, there is a power of entry to speak with the adult at risk. Beyond that, unless there is a criminal offence, there are no powers. We think that that needs to be strengthened. We would support a power of removal so that the adult at risk could be removed from the situation for their own safety. We recognise that you need to balance that with choice and control, and that it very much has to be the individual's decision. We think that the Adult Support and Protection (Scotland) Act 2007 has some quite useful legislative principles on its face, which would be useful specifically in the context of the safeguarding section of the Bill.

[206] **Ms Ellis:** I would make a similar point, really. I would support what has been said by Age Cymru that the problem at the moment is that it goes so far and then leaves open the question of what would happen at that point.

[207] **Vaughan Gething:** That is helpful.

[208] **Mr Moulster:** I would support the views already expressed by ADSS Cymru and Victoria in terms of looking at the model that exists in Scotland to broaden the powers.

[209] **Rebecca Evans:** Staying on this subject, do you have a view as to whether the legislation should dictate that the boards should have independent chairs?

[210] **Vaughan Gething:** Catriona, I think that you are smiling as if you are going to have a view.

[211] **Ms C. Williams:** Yes, we have given evidence to various committees on this matter over the years. The previous chair of Children in Wales was one of the few independent chairs in Rhondda Cynon Taf County Borough Council in the past. It is one of those issues that have pros and cons to it. There is something very valuable in having someone independent as long as they are experienced. One of the dilemmas is how much access they may have to the day-to-day work of the authority to gain an understanding of the current hot topics and issues. One of our members, NSPCC Cymru, is very keen on having independent chairs of safeguarding boards, so we would say that, on balance, we believe that it is possible. Over the years, there have been rotating chairs in different authorities; some have worked well and some have worked badly. If big issues have to be dealt with about the lack of working together by agencies, then that independence is very important.

[212] **Ms Lloyd:** I would like to support Catriona on those points. We would support independent chairs on that basis.

[213] **Vaughan Gething:** Before I go on to the WLGA or ADSS Cymru, as well as the principle of independent chairs, how much of a resourcing question does it or does not produce?

[214] **Mr Palfreman:** This is very much a point that I wanted to make. In principle, we think that there would be potential advantages in having independent chairs. We have not done any calculations on this, but if you have a chair that has to chair meetings, but also build local links in-between meetings and network with all the relevant agencies over time, that would be a considerable resource implication. That links with our continued disappointment

that we have not sorted out the funding formula for safeguarding boards, despite indications from a range of agencies that forming a voluntary arrangement is not impossible. So, in principle, fine, but we would need to be very cautious about the cost implications.

[215] **Ms Ellis:** Experience would show that either model can work, namely having an independent chair or not having an independent chair, which raises the question about why there might be any particular prescription. I have looked at a different area such as adoption and foster panels and I have seen an independent chair working really well. However, I have equally seen chairs of local safeguarding children boards and chairs from statutory agencies work really well. So, I am not sure that prescription is necessary. Cost is an issue, I guess. It is not necessarily a massive issue in the scheme of things, but it is an issue that raises questions about whether we need to prescribe on that particular point.

[216] **Mr Davies:** If we were to move towards independent chairs, the role and remit of the chair would need to be very clear. It is not just a matter of chairing a meeting. It is about the point that was made earlier around the importance of the chair being able to do work in-between those meetings and engaging with agencies and stakeholders effectively. That is key.

[217] **Rebecca Evans:** I would like to hear your views on the proposals for the six regional boards. Do you have any views as to which boundaries they should be coterminous with? It seems sometimes that we have different layers of responsibility and different layers of administration, which do not fit together in a coherent way. I have just given my view there. *[Laughter.]*

[218] **Mr Moulster:** I will start because I will be brief. I have already covered this in a sense, in that it is very difficult to determine that. Sometimes, there are geographical groupings, but they are not easy. For example, I know there have been changes in terms of the adoption boards and boundaries recently. So, you have what was west Wales—with Carmarthenshire, Pembrokeshire and Ceredigion—and Powys is now part of that, which is a huge geographical area, with a huge range of people and a huge, diverse range of places, as there would be in other parts of Wales as well. What we probably need to look at is to make sure that whatever is decided works effectively and well and consistently across Wales. That will be key.

[219] **Ms C. Williams:** I am living in the past a bit, in the sense that it was great when we had eight authorities and eight coterminous organisations and the police; it worked really well. Coterminosity is absolutely essential. It is difficult to say specifically today because things change, but I think that it is the Welsh Government's responsibility to make groupings that make sense and are cost-effective in terms of coterminosity. That helps with the forward planning for the non-devolved elements as well as the devolved.

[220] **Mr Palfreman:** I will refrain from commenting on Catriona's views on a number of authorities.

[221] **Ms C. Williams:** That was a personal view.

[222] **Vaughan Gething:** Do you support the principle of coterminosity?

[223] **Mr Palfreman:** In principle, but our common line that Members will be aware of is that any kind of groupings on a regional basis need to be on a case-by-case rationale—whether they are in terms of service area or particular local circumstances. We are not opposed fundamentally to the principle of regionalisation, but there is an issue, particularly in certain areas of Wales, such as north Wales and mid and west Wales, regarding the viability in terms of the core role, which is around safeguarding and protection, and being able to deliver it on that basis. In other areas, such as Gwent, it has more logic to it, so I suppose our

view is that the boundaries that are ultimately drawn and decided have to be founded on the principle that safeguarding and protection is absolutely paramount.

[224] **Vaughan Gething:** We will go to Sally first and then Catriona. You will have to be very brief afterwards, Catriona, so that we can get to Lynne.

[225] **Ms Ellis:** I am from north Wales, and, as a public service footprint, as far as safeguarding is concerned, that is stonkingly large. So, the message from me would be to proceed with caution. The form does need to follow the function, rather than the form being everything.

[226] **Ms C. Williams:** When it is a case-by-case basis, it makes it very difficult for the third sector to interact as well. Its strategy of developing its services, and early intervention being part of safeguarding, also needs to be considered.

[227] **Lynne Neagle:** We do not know yet what the national eligibility framework is going to look like. Do you have any comments on that and any general comments on whether the Bill strikes the right balance between provisions on the face of the Bill and the things that are going to be dealt with through secondary legislation?

[228] 11.00 a.m.

[229] **Ms Lloyd:** We welcome the national eligibility framework. At the moment, our difficulty is that we are unclear about what that will look like. That strikes at the heart of the issue: it is very difficult to comment when we do not know what the levels will be, or even if they are going to be near existing levels. So, it is very difficult to comment at this point. Our underlying principle is that we think that nobody should be worse off as a result of these reforms. We think that there is a lot of difficulty in bringing in the prevention element, and whether the eligibility levels will be the same for preventative services as they are for other care and support needs. We need more information on the face of the Bill than we have as it is currently drafted.

[230] **Ms C. Williams:** We have concerns, particularly as it seems to us that this erodes the Children Act 1989. I know that the Deputy Minister who is responsible for this Bill is a tremendous advocate for children and children's rights. However, we need to look carefully at the definition in the Bill, which reduces the wider definition of children in need in the Children Act. It also undermines the best-interest principles of the UN Convention on the Rights of the Child. Incidentally, we would have liked to have seen that on the face of the Bill, alongside the UN Convention on the Rights of Persons with Disabilities. So, we have concerns there. We also have concerns that, because of the widening of the definition of wellbeing, which we are very keen on, we may find that there are a lot of extra demands on resources, and that children in most need may not receive what they are currently receiving.

[231] **Vaughan Gething:** I just wish to address one thing. There is an important point in your evidence about whether the best-interest principles are being eroded. Are you saying that the Bill, as drafted, will provide poorer outcomes for children?

[232] **Ms C. Williams:** We are saying that it has a narrowing effect, and that it basically focuses the eligibility criteria more around abuse and neglect. The best-interest principles are about promoting the wellbeing and welfare of children. There is more of an emphasis on early support for families. As drafted, the eligibility criteria states that

[233] '(b) the local authority considers it necessary to meet the needs in order to protect the child from—

[234] '(i) abuse or neglect or a risk of abuse or neglect, or

[235] '(ii) other harm or a risk of such harm.'

[236] This is all on the 'harm' end, as opposed to promoting the wellbeing and development of children. It depends how authorities interpret this, but it is a risk, if it is not amended.

[237] **Vaughan Gething:** I can see that Robin and the ADSS want to come in on this.

[238] **Mr Moulster:** I will be brief. I just wish to say that we are a little confused regarding at what point the eligibility criteria will apply. Will that be at the point where people seek an assessment, thereby screening them out of an assessment, or will that be following an assessment about their level of need? That is something that needs to be teased out and made a bit clearer. In making my second point, I bear in mind all of the comments that have been made about the charging issues and the financial impact of the Bill on local authorities. At whatever point the eligibility criteria apply, they could be used as a further method of gate keeping. They could work in reverse to the preventative direction and could push people more towards the higher level end of critical need before accessing services, thereby forcing people into crisis and away from preventative services.

[239] **Vaughan Gething:** Victoria, could you address the issue of eligibility criteria? Then, before we finish this session, I would be interested in the ADSS view on the best interests of children and whether they are being eroded.

[240] **Ms Lloyd:** Regarding the eligibility criteria, we need more information on where those levels are set.

[241] **Ms Ellis:** Clearly, it is problematic that we have not seen anything on the eligibility criteria yet, as this will have such a major impact on resources. It is also an area on which we have lots of views, because the system that we have at the moment does not work well. So, we want to see something that is different from that, which enables a lot more fluidity and flow between information and advice and between access to preventative services and access to services to meet high-level, complex needs. There is work going on at the moment between ourselves and SSIA, which should be helpful in terms of shaping this around eligibility criteria and assessment, so we would want that to feed into the process.

[242] **Vaughan Gething:** Do you share the view that the best interests of the child are potentially eroded in the way that the legislation is drafted at present?

[243] **Ms Ellis:** That is a risk, and the drafting probably needs to be much more careful about the existing legislative framework that we have for children to make sure that we do not lose anything in the process of transcription from where we are to the new Bill.

[244] **Ms C. Williams:** Section 17(1)(b) of the Children Act 1989 says:

[245] 'so far as is consistent with that duty, to promote the upbringing of such children by their families'.

[246] That is very different to the references to abuse, neglect and protection in the Bill as drafted.

[247] **Vaughan Gething:** Thank you all for your evidence this morning. We will, as usual, send you a transcript of the evidence, so that you can make sure that any necessary corrections are made. As normal, and given the scope of this Bill, we may well write to you with any questions that we have not got to for your responses. However, thank you all for

your time and patience this morning. We will now take a short break before our next panel.

*Gohiriwyd y cyfarfod rhwng 11.06 a.m. a 11.17 a.m.
The meeting adjourned between 11.06 a.m. and 11.17 a.m.*

**Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 2
Social Services and Well-being (Wales) Bill: Evidence Session 2**

[248] **Vaughan Gething:** Good morning once again. We shall move on with our scrutiny of the Social Services and Well-being (Wales) Bill. We have a new panel of witnesses. I shall ask them to introduce themselves, and then we will move straight into questions. We shall start on my geographic left, with Emily Warren. Do you want to introduce yourself, and then the panel?

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

[250] **Ms Cooper:** Good morning. I am Sue Cooper, the head of adult social care at Bridgend, and I am here with ADSS.

[251] **Mr Birch:** Hello. I am Simon Birch, director of social services in Monmouthshire.

[252] **Ms J. Williams:** Hello. I am Jenny Williams, director of social services in Conwy.

[253] **Mr Morgan:** I am Jake Morgan, the director for children in schools and statutory director of social services in Pembrokeshire.

[254] **Vaughan Gething:** Thank you. I have a brief, yet general, opening question. The explanatory memorandum sets out a series of objectives for improving safeguarding in Wales, both for children and adults. How confident are you that, as drafted, the Bill delivers on its desire to improve safeguarding? Shall we start with Emily? No; Simon, you indicated first, so let us start with you.

[255] **Mr Birch:** I would just make a couple of comments. We do broadly welcome the Bill, but as you would expect, there are some areas in which we feel a lot more clarity is required as we move forward. An issue like national leadership is clearly a positive, but understanding exactly how that will play out is a theme that I think you will hear from us as we go through the questions and answers. As social services, we are very concerned that issues such as resources are fully played out in the conversation, and that, at all times, the issue of outcomes and how we make sure that the people who deliver safeguarding on the front line are fully engaged in this process. I will let other colleagues come in, but there is much to be positive about here. Equally, however, there is a lot that we can explore during this hour.

[256] **Vaughan Gething:** Okay. We will let Jenny come in, and then we will go to some specific questions from Gwyn.

[257] **Ms J. Williams:** I would just add that we welcome the opportunity to try to shape adult safeguarding. It is something that we have been lobbying for for some time. In terms of meeting the holistic approach around safeguarding for children and adults, I am sure that you have heard this said previously, but the devil really is in the detail. While we welcome the broad principles, as we go through our evidence I think that we will pick up on some of the detail that we would like to see.

[258] **Gwyn R. Price:** Good morning to you all. Could you give me your views on the independent chairs of the boards and whether it should be specified that they should have a social care and a health background?

[259] **Mr Morgan:** Essentially, our view would be that it is an unproven case. It is essential to have clear leadership and clear ownership by the constituent bodies of any safeguarding board. As to whether an independent chair is the way to deliver that, I do not think that we are convinced that it is absolutely proven, although, clearly, strong leadership is the most important thing. On the relationship between resources, whether the most important commitment of resources would be to that, I am not entirely sure—in terms of getting the maximum bang for the buck.

[260] **Gwyn R. Price:** Do you think that they should have experience of social care and a health background?

[261] **Mr Morgan:** They should certainly have experience of safeguarding.

[262] **Ms Warren:** My colleague previously stated that, in principle, we are not against it. We would advocate that it is a matter for local determination as to whether a board wanted an independent chair. The key issue is the resourcing and the support for that chair to be effective. In the absence of a national funding formula, we are concerned that that would not happen. Secondly, we would caution against prescribing their background. For example, as Jake said, having experience of safeguarding is fundamental; you would not necessarily want to exclude a former chief of police by prescribing a health and social care background.

[263] **Ms Cooper:** There are a number of other issues that we also need to consider. There is a point about the competency. In terms of leadership skills, there is a whole range of knowledge that people need in the task of being a chairperson. There are a number of other competencies that would be important in relation to that. Let us not forget that the whole issue of safeguarding, social care and health services is hugely complex. There would very much be an issue around training, so that relates to how boards and chairs would be resourced. So, there are huge training issues associated with all of this.

[264] **William Graham:** May I ask for your views on finance? We have had quite a bit of evidence expressing concern about the lack of a prescriptive formula. What are your views on that?

[265] **Ms Warren:** Since 2007, we have strongly advocated the need for a national funding formula, notwithstanding the fact that the Assembly cannot prescribe that the police and probation will contribute. We have advocated that a voluntary funding formula be established. It was recommended in a ministerial advisory group in 2007, by the national safeguarding children forum in 2010 and by the committee report published in 2010-11. We are very concerned that, although agencies, including the police, have committed to doing that, no substantive action has been taken forward by the Welsh Government on the matter. Until a funding formula is established at a voluntary level, it is very difficult to determine the functions and the effectiveness of safeguarding boards.

[266] **Mr Birch:** This has a disproportionate set of problems attached to it. I think that we need to get it sorted, because we spend too much time talking about what are not massive amounts of money and we need to be getting on with the quality of safeguarding. So, I welcome that question.

[267] **Vaughan Gething:** Would this be in the Bill, in regulations, or in a code of practice?

[268] **Mr Morgan:** I think that it could be easily achieved through a voluntary process.

Almost all statutory agencies that I deal with would be very content. Their main issue is about consistency. It is a source of significant frustration, because we are talking about the critical issue of having that support for a chair to be effective, and, if they go on a regional basis, it becomes even more critical. However, it is something with which I have certainly been involved in work in the past on formulas. It is really not a particularly difficult nut to crack. All that we need is something so that there is a formula.

[269] **Ms Cooper:** For me, there are real issues around resources. We need to be careful about getting the balance between resources for boards and the impact of implementation on the ground in relation to the safeguarding element of the Bill, because we would also anticipate a lot of increased demand. There are infrastructure costs and training issues right across the piece. So, a balance needs to be struck in terms of financing and supporting boards, but also not forgetting the impact on the ground for the practitioners and the professionals in terms of implementing this.

[270] **William Graham:** So, I presume that you would view it with some alarm if the suggestion was that it was included in the code of practice. The code of practice will not be published until after the regulation. We are talking about years in advance. So, your clear evidence to us is that there should be at least an indication of how the formula should be produced, as soon as possible?

[271] **Ms Warren:** Absolutely. To respond to that, existing regulations state that partners may contribute. There are existing provisions in statute. The issue for us is that it does not prescribe the amount that they may contribute, hence the discussions, and it does not extend to the non-devolved agencies. However, that, really, is our concern. We could have that in place within a month or two if the appropriate mechanisms were set up to have those discussions.

[272] **Lynne Neagle:** One of the major concerns expressed by children's charities has been the power in the Bill to merge adult and children safeguarding boards. The Deputy Minister has said that there are no plans to do that at the moment; nevertheless, it is included in the Bill. What is your view on the inclusion of that in the Bill?

[273] **Ms J. Williams:** I think that we would echo that. We are certainly not at a time where we would consider that merging the two agendas would be beneficial to children or vulnerable adults. We need to recognise and embrace the differences in safeguarding for those client groups. There may be some commonalities around business support mechanisms, but in terms of outcomes around keeping people safe, we need to recognise difference. We would certainly not be advocating the merging of those agendas at this stage.

[274] **Mr Morgan:** I would just echo that. As someone who chairs both at the moment, I can confirm that they have very different agendas. There is different emphasis, and they are at a very different point in development. That merging would, in my view, put the agendas of both at considerable risk of not progressing in the way that they need to progress.

[275] **Lynne Neagle:** So, if it stays in the Bill as it is, are there any safeguards—please excuse that use of the word—that you would like to see in the legislative process before the Deputy Minister could use that power?

[276] **Ms Warren:** I think that, in our evidence to the Children and Young People Committee, we were clear, certainly from the WLGA point of view, that we would advocate that it is removed from the Bill at present, as we and other agencies have said that we do not see the evidence or rationale for it. By leaving it in, it will enable confusion and concern to prevail at a local level. We want to avoid that.

[277] **Rebecca Evans:** The practitioner alliance for safeguarding adults has told us that there is more common ground and joint working between adult protection and domestic abuse practitioners than adult and child protection workers, and it suggests that, if there is one board, it should encompass domestic abuse as well as adult and child protection. Do you have a view on that?

[278] **Ms Cooper:** It is difficult to comment on that, in one way, because we do not yet know what is in the violence against women Bill. We have not seen that, so it is difficult to comment on it. However, one thing is for sure: this Bill needs to take account of that, which comes out later in the year.

[279] The whole area is very complex, and you can see that there are connections between domestic violence and adult safeguarding. It is a huge area and there are a number of different aspects. When you look at adult protection and adult safeguarding issues, whether it is from someone with a moderate learning disability, right through to someone in the late stages of dementia, you will see that it is a huge range; whereas, when we think about domestic violence, we have a stereotypical image of what that is. It requires quite a lot of unpicking to be able to properly answer that and marry the two.

11.30 a.m.

[280] **Vaughan Gething:** Over to you, comrade Millar.

[281] **Darren Millar:** I just wanted to take a look at this issue of the independent chair again. You have said that you, Emily, and the WLGA, do not have any fixed view, but it seems to me that there is mixed opinion around the table from other witnesses. Given that there is a need for that board, and particularly the chair, to hold to account the partner agencies at the table, is it not wise to have a chair who is not a member of one of the partner agencies, and may be perceived to be biased towards protecting one more than others, for example?

[282] **Ms J. Williams:** The evidence is quite mixed about independent chairs. Certainly, over the border, they have tried to have that independent element. I suppose that, from ADSS's perspective, it is really about having that ownership and demonstrating leadership as a lead partner, and having that role as chair has been beneficial. Most of us in our roles as directors do chair, and are quite comfortable with holding other agencies to account and demonstrating that we can do that. It is about the motivation to move the agenda on, and owning that whole range of safeguarding responsibilities and duties. As you pointed out, it is interesting—I am sure that we will come on to it—to note the issue about accountability, and how we have to ensure accountability, but with the move to regional boards and, indeed, the national board, we really need to understand where the buck stops, and who is accountable.

[283] **Darren Millar:** You say that there is interesting evidence from England. What is that evidence? Does it seem to suggest that the situation is worse in terms of safeguarding when you have an independent chair?

[284] **Ms J. Williams:** I am not sure whether it is worse, but certainly the boards can tend to become more of a watchdog, so they are looking in at the processes rather than owning them, and changing and taking control of actions that we might need to carry out. As chairs, if we own that agenda as lead partners we can sometimes make a difference in a different way to an independent chair, who perhaps has not got that investment and authority.

[285] **Darren Millar:** However, you accept that there is a potential risk for the chairs to do a better job of holding other agencies to account, rather than holding their own organisations to account in that capacity.

[286] **Ms J. Williams:** We are able to do that, and we do that already. We can demonstrate our effectiveness around that. It is a mixed view, and I am sure that others might disagree, but I personally would see that an investment from a lead partner as chair would be better, and would be beneficial.

[287] **Mr Morgan:** There is no question that there are effective safeguarding boards with independent chairs. I would regret it if effectiveness becomes solely related to structure. That would be a mistake—to spend too much time thinking that structural solutions will solve the issues. Clearly, there is an argument that one can make for and against independent chairs. There is a unique picture in Wales, with the strengthening of the statutory director of social services role. There are specific accountabilities there that do not exist in the same way in England, which could muddy the waters in terms of the relationship with an independent chair. The experience of independent chairs is that they often become facilitators rather than having a robust view and ownership of the agenda. A facilitator can have a role, but if we want to effect change in areas, you need the people around the table who have the power, organisational ownership and, frankly, the resources to do that. I would say that, having tracked and been part of the agenda moving from what were the old area child protection committees through to LSCBs, there is a story—and these are very complex areas—of continuing improvement and effectiveness in being able to do that. The ADSS view is that it is unproven. Let us not have too much of a distraction on the structure, because I am sure that, if people decide to go down that route, they could do it. Prescription is certainly not what we want in that area.

[288] **Ms Cooper:** Just to add one small point in terms of what has already been said, a debate is required to understand what we mean by ‘accountability’ and the layers of that accountability between a national board and a regional board, and the expectations on boards in relation to protection and prevention, and the expectations in relation to accountability. Quite a lot of work still needs to be done to unpick that.

[289] **Mr Birch:** I am expressing the same view, so I will be very brief. The issue of leadership and the quality of the leader is by far the most important thing. The nature of the relationship, which includes how we hold each other to account and, more broadly, how we drive forward the strategic agenda, is the other thing that is crucial. So, it could be a distraction if the issue becomes independent versus not independent. The issue is how we evaluate the effectiveness of the processes that we put in place.

[290] **Darren Millar:** In terms of all of the key partners with the decision-making powers, they will still be around the table anyway, will they not, whether there is an independent chair or not? In terms of the relationship with the national board, which the Bill seeks to establish, how should that relationship be provided for on the face of the Bill? Do you think that the provisions in the Bill are adequate?

[291] **Ms J. Williams:** Once again, there is perhaps a little too much emphasis on process and structure as opposed to the outcomes of a national board. There could be some real merit if the national board was about demonstrating leadership and good practice examples, looking at how we deliver good outcomes across Wales. However, if it is more about who is around the table—there is a bit of an issue with regard to the way in which the Bill is currently written—it brings us back a little bit to the process and administration of the board as opposed to function and purpose. So, if we could enhance some of those outcome areas for a national board, there could be some merits to that.

[292] **Vaughan Gething:** How would you expect to see this impact either on the Bill or in secondary legislation or the codes, if you want the focus to be on outcomes?

[293] **Ms J. Williams:** It would be helpful to see it as the broad principle within the Bill, so that it shows what we are trying to achieve by having a national board, as opposed to it being prescriptive about how we might do that. Certainly, the broad principles should be in the Bill.

[294] **Vaughan Gething:** Lindsay Whittle is next, and then Rebecca Evans. We will then move to some other Members around the table.

[295] **Lindsay Whittle:** My question is about the impact of the regionalisation of these six boards. We have heard evidence and we have had lots of written evidence about their effectiveness and the loss of local links. What are your thoughts on that? I do not yet know the boundaries that have been proposed—nor do you, I guess—but do you have any thoughts on that? It is vital because, in the past, we have lost children who have moved from west Wales to east Wales; nothing has followed them and then a disaster has occurred. That is very important.

[296] **Ms J. Williams:** Perhaps I can start, and I am sure that my colleagues will add to my response. Across Wales, we are already looking at how we can work regionally. Speaking from my experience in north Wales, we are currently looking at an arrangement of a regional board, but with a two-tier process that still has three local boards across the six authorities. Certainly, that is something that I would ask to be considered in researching and evaluating the different models that we could have and not being too prescriptive. North Wales is a large area. We need to take account of that local accountability, and I worry that, with one strategic board across that vast area, we will miss out on the safeguarding of children, which is what we are trying to achieve. However, we are certainly working to try to understand what works for different areas in Wales. I am sure that my colleagues would like to add to what I have said.

[297] **Ms Warren:** We have significant concerns that, in terms of children's safeguarding, the Bill seems to focus on prescribing structures. We do not have 22 LSCBs in Wales; we have 10 or 11, which collaborate on a case-by-case basis where it is deemed appropriate to do so. We have questioned why six is the magic number. We understand the public service footprint, but we see no evidence base for safeguarding boards. Having said that, as Jenny said, we have tried to demonstrate leadership to move towards greater collaboration. We have commissioned quite a significant piece of research from Professor Jan Horwath, who is a world leader in child protection. She is looking at what an effective model would look like in Wales for a region. So, she will look at the benefits and the risks and report back to us, and we will share that evidence with the committee. We expect that evidence to inform the regulations, and if that evidence tells us that there are particular risks in areas such as north Wales or the Hywel Dda area, we would expect that to be taken into account in terms of what the Bill prescribes.

[298] **Mr Birch:** I will pick up on what you ended up touching on there. The question really is: what are the best footprints on which to do each bit of the service? The issue about losing local effectiveness and accountability is fundamental, and all of us who are setting up regional boards as we speak are acutely aware of how we make it work effectively locally, how those different local experiences get fed in, and how we manage issues like how you get shared direction and shared outcomes in an area. It is also worth remembering that some aspects of safeguarding are not limited by local boundaries. In relation to aspects such as trafficking and some of the operations around sexual abuse, and so on, you need to work on a broader palate.

[299] **Lindsay Whittle:** It is national and international.

[300] **Mr Birch:** Indeed, and the question as always in Wales is what is local, regional and national, and that depends on the nature of the problem that you are trying to resolve.

[301] **Mr Morgan:** Building on that in some ways, it is important that we reflect the diversity in Wales. Speaking from experience, you need to bear in mind the sheer geography of Wales. We are trying to work through the regionalisation agenda in mid and west Wales, where we are going from the tip of Powys right down to the tip of Pembrokeshire, which means that we are dealing with a very different cultural and geographical spread. There are also the practical difficulties of getting people together, where you have officers travelling two hours each way to go to a meeting. It is a real practical challenge in terms of managing what we see as definite potential benefits for greater critical mass, for best practice sharing and even for holding each other to account. There are some real potential advantages there.

[302] Alongside this, and this is what we are grappling with, is the need to make sure that, within the agenda, some of the nitty-gritty aspects of the day-to-day work take place, such as talking about how individual teams work in an area and the interface with police. The risk there is that we could lose that problem-solving function that LSCBs currently do a very good job of in my experience, which is nipping those communication channels. You may have a new police sergeant in an area who seems to be applying a different threshold and, therefore, some people need to get together at a middle management level to resolve that.

[303] So, whatever structure we have, I feel that we have to make sure that we get the balance of the two right, so that we do not lose them in big strategic plans, with people such as directors sitting around talking about the big process and the big picture when there is a job of work on the ground to do. That is the tension, and that is why we feel that we are already going in this direction. We are embracing it as a potential benefit, but it is really important that, before we prescribe, we have a decent evaluation of it so that it is evidence-based and we are certain that we will get those gains and that we will not lose that local nature that you rightly identify as being important.

[304] **Lindsay Whittle:** I thank Jake Morgan for mentioning that, because that is vital. We know that we have a transient population in Wales, but we also have transient professionals in Wales, and there are advantages and disadvantages to that. With respect to the police authorities, it is the most transient professional group in Wales, without a shadow of a doubt; wherever you are in Wales, you are never quite sure who your constable, sergeant, inspector, chief superintendent, or, with respect, even your chief constable will be today. I am worried about the loss of local knowledge in that regard, because that is vital as far as this block of evidence is concerned.

[305] **Vaughan Gething:** If you are going to respond, could you relate it directly to how the Bill is structured and how the Bill could change or improve safeguarding practice, bearing in mind the differences in the partner organisations?

[306] **Lindsay Whittle:** I was not really expecting an answer.

[307] **Vaughan Gething:** I appreciate that it was more of a comment than a question.

[308] **Ms Warren:** It goes back to the Government. We need to see the evidence base as to why it wants to prescribe regional areas for safeguarding boards on the face of the Bill. The existing regulations allow us to merge one or more safeguarding boards, which is what we are doing on the basis of the tests that Jake has just set out.

11.45 a.m.

[309] **Rebecca Evans:** The Bill does not currently contain a definition of neglect. Do you think that it should and, if so, should it cover self-neglect, as is the case in the Adult Support and Protection (Scotland) Act 2007?

[310] **Ms Cooper:** I will start. Neglect is a complicated one, is it not? Once again, it is probably the most difficult part of abuse to be able to put a definition next to it. It is a difficult one for us to look at. There is a whole issue around risk and being able to determine and define risk as well, so once again, it is important to be able to have the opportunity to debate that and look at it in a lot more detail than perhaps we have been able to at present.

[311] **Ms J. Williams:** I am not sure whether your question was in relation to neglect in terms of vulnerable adults or children. We are quite comfortable with definitions of neglect when we are talking about children within the current legislation, but as Sue said, there is a real opportunity to begin to talk about what we mean around the various definitions of abuse in relation to vulnerable adults.

[312] **Rebecca Evans:** It was with regard to adults. If you have not had a chance to have these discussions yet, perhaps you could write to us, Chair, in due course.

[313] **Ms Cooper:** You also asked a question about self-neglect in relation to adults. What is really complex with adults is the issue of capacity and human rights issues. So, there is a whole issue there that requires quite a lot of detailed discussion, thought and unpicking. It is very difficult because people have the right to self-determination. It is also about the view of a professional, and someone who has capacity, of what neglect is, what they would accept or not and how we are able to intervene. In terms of the social work profession, and the skills that the social work profession has in terms of managing and looking at that, there is a whole range of issues around developing relationships and around communication, negotiation, influence and being able to have those discussions. There are lots of issues around family dynamics and communities, so there are all these areas that make the whole bit around adults and risk, and what is acceptable and what is not, quite multilayered.

[314] **Mr Morgan:** I draw the link with previous questions about the significant difference between adults and children in this area. With children, we have a very clear view of the tests that we use in legislation and the definition of significant harm, which is well tested in the courts, well understood and does a very good job of protecting children. It is a good illustration of the developing complex debate in relation to adult protection and the comparatively advanced consensus around neglect and the test of significant harm in relation to children.

[315] **Rebecca Evans:** I also want to ask whether you agree that access to independent advocacy is vital for safeguarding. If so, do you think that it should feature on the face of the Bill?

[316] **Ms Warren:** We have reflected in previous evidence sessions that we certainly see a place for independent advocacy, but we have reiterated that we see it very much as part of a citizens' rights package. The explanatory memorandum says that, through the spine of the Bill, there is a lot of focus on voice and control for the citizen. We would say that we would expect to see that strengthened. We have lobbied for a long time for a Welsh Government strategy around citizen-directed support, focusing on the rights and the voice of the citizen. In terms of this Bill, we would not advocate the inclusion of independent advocacy alone, but for it to be seen as part of a core package of wider measures that authorities may provide to citizens.

[317] **Darren Millar:** I wanted to support the need for independent advocacy. How should that be funded? We know that there are costs associated with the provision of those sorts of services. Do you have any views on that?

[318] **Ms Warren:** Our honest view is that that would be a matter for Government. If it

chose to introduce that on the face of the Bill, it would have to determine how it would be funded. It would be a very clear new burden and service, and it would have cost implications.

[319] **Darren Millar:** You would expect there to be direct funding from the centre. You do not think that it would be met from existing resources, or the resources allocated currently.

[320] **Ms Warren:** As part of our discussions on the Bill, we have been very clear that we understand the pressures on the public purse. This is not about lobbying for huge amounts of resources. There are things that we can do as local government to free up resources and remodel our services. That is demonstrated in our implementation plan. In cases where there are clear new statutory provisions, like the adult safeguarding framework that the Bill proposes, and if independent advocacy were to be prescribed on the face of the Bill, those are very clearly new services that would need funding from the centre to be delivered.

[321] **Ms Cooper:** To add to that, the reality is that we now find it very difficult to fund advocacy—and independent advocacy—appropriately. Without the introduction of the Bill, this is already something that we probably do not do enough of. It is hugely needed across a whole variety of groups, in terms of adults. The safeguarding element of the Bill is clearly something that will again increase demand, so there will clearly be resource implications that will need to be supported.

[322] **Mr Birch:** To capture the point about resourcing, there is a narrative in the wider Bill about things being cost-neutral because of the impact of early intervention and all that sort of thing. We have to understand that, in relation to what we are discussing today on safeguarding, that is not the case. This is about a high-risk and crucial area, and one in which welcome developments, such as new legislation on adults, do not just have a cost-neutral effect. We have seen that in Scotland and elsewhere. So, we need to have that discussion. As has been said, we are not here just to lobby for money. However, we need to understand that doing some of these things right will require money for new burdens.

[323] **Kenneth Skates:** With regard to powers of intervention, section 105 of the Bill enables applications to be made to the court for adult protection and support orders, to give officers powers to access to properties where there is concern that an adult may be at risk, but not powers of removal to a safe place. Do you believe that this is sufficient?

[324] **Mr Birch:** The first thing to say is that this is a very complex area, so I am not going to give a ‘yes’ or ‘no’ answer to whether that is sufficient. The real issue is to build on what is in the Bill, which genuinely is welcomed as an opportunity to have a conversation with someone who may or may not require further support. We need to have more opportunity to re-engage on this. Speaking on behalf of ADSS, there is a lot more scope for us to have further conversations and to be sitting alongside some of the people who are drafting the Bill. The devil is very much in the detail, and it would be very helpful for us to work through some detailed case studies and understand how this could work. This is an area where unintended consequences could be very serious, if we were to get it wrong; we could take powers from people and that could be a challenge to their human rights or, equally, we could walk away and not have powers and they would both have some really high-cost outcomes.

[325] **Ms Cooper:** It is important to bear in mind that if there are such powers, you would only want to use them in very exceptional circumstances. At the moment, we have section 47 of the National Assistance Act 1948. In 25 years of my practice, there have only been two occasions when I have been involved in detailed discussions about that. In the first case, after considerable discussion and after monitoring the situation for a long time, it was not appropriate to do it. The other case is a current situation. It takes a long time to make that decision. That is because there are other things that we will do. It is very much a last resort. We would always want to be able to engage with families and people in a different way. At

the point where you are looking at those kinds of powers, that is a situation of very serious concern. It is useful for us to consider some case scenarios and ‘what if’ scenarios, and to look at the issue in a lot more detail. This comes back to what I said earlier in relation to adults: this is about capacity, human rights and people making informed decisions about themselves. It is important that we are able to make that distinction, and a proper assessment as to when somebody does not have the capacity to do that and how we act. So, it is a very complicated area.

[326] **Kenneth Skates:** I think the Deputy Minister alluded to that, but a balance has to be struck with an individual’s right to take a risk. From what you are saying, it sounds like you are not ruling out an additional power to enable an adult at risk to be removed, but it would be only in exceptional circumstances.

[327] **Ms Warren:** The message from us on this one is quite clear. This is an addition to the Bill. It was not in the initial consultation, and we have had few discussions about it. In principle, it could add great value, but, from a professional and political perspective, we would need to have those discussions to determine that unintended consequences would be avoided and that what the Bill prescribes is absolutely fit for purpose.

[328] **Vaughan Gething:** We will have one slightly different question, going back to the national board, from me, and then I will see whether Members have final questions. The children’s commissioner makes a pretty clear recommendation that there should be a separate national independent board for adults and a separate national independent board for children, because, in his view, a new national board covering both adults and children is bound to be tied up in vulnerable adult issues when it is set up, because children’s safeguarding boards are further advanced. Is that a view that you endorse or support or want to comment on?

[329] **Mr Morgan:** It is clearly a risk that, when you merge the adult and children’s agendas, one could obscure the other. There are clear benefits in having a holistic view on families and safeguarding, and there is no question that we are all signed up to that. As to whether it can be delivered, I guess that it could be, but it comes with some risks, as it would at a more local level. The two agendas are diverse, and although, of course, there are crossovers, inevitably, getting the right experts around the table in the two areas would make it a very large board with double the remit. One could make the argument that it would be quite a challenge to cover both agendas sufficiently, given their diversity, and either one could obscure the other.

[330] **Ms J. Williams:** The point that I was alluding to earlier is about the outcome and the purpose of that national board. The two agendas could be put together if it was more about demonstrating leadership and good practice and being inspirational in relation to the regional boards, but, when we talk about being accountable, holding to account and getting into a more regulatory role, that is when it would be very difficult to have those two issues merged. Equally, you could see the children’s agenda or the adults’ agenda getting lost. It works both ways. Our concern is having a clear definition of the outcome, with regard to what the national board is there to deliver, and then we can perhaps debate who needs to be there.

[331] **Vaughan Gething:** As drafted, in section 109(2), there is a range of duties:

[332] ‘(a) to provide support and advice to Safeguarding Boards with a view to ensuring that they are effective,

[333] ‘(b) to report on the adequacy and effectiveness of arrangements to safeguard children and adults in Wales, and

[334] ‘(c) to make recommendations to the Welsh Ministers’,

[335] So, it is part support-and-advice lead and it is part watchdog or regulator, in that it will make recommendations to the Welsh Ministers, who have the ultimate responsibility, because the buck always ends up stopping with someone at that end, when things go wrong, which is mostly when people are interested in it. Do you think that remit is coherent and works or would you suggest that we need to consider changing it for it to be effective?

[336] **Ms Warren:** The important point here is clarity for the people delivering the services and the people accessing them. If the Deputy Minister is saying that she is minded to retain safeguarding children's boards and safeguarding adults' boards, there is an argument for two separate national boards. If you merge them into one national board, that would leave us with some concern that the direction of travel is eventually to merge children and adults' boards, and we have set out today our concerns as to why we do not think that that would be a viable idea at this point.

12.00 p.m.

[337] **Ms Cooper:** There is something in this in relation to the timing and the issues that the board would be taken up with. I would assume that, initially, because legislation around adult safeguarding would be new, it would dominate the agenda for a national board. That might not be the case in two or three years' time, when things have bedded in. So, there will always be those types of things to consider as well. As I think we have said already, the agenda across the two areas is very big. It would be important not to lose the things that can be joined up, where there is commonality—because they are things that are common to both—but there are also things that are very different, and it is about having the appropriate time to explore those, really.

[338] **Mr Morgan:** It is possibly one of those cases, going back to the beginning, of the devil being in the detail, and partly in the 'how'. We are not entirely clear how the board would carry out those responsibilities. How do you own the accountability element? How would it do that? What would it do? Would it call witnesses in? Would it go out and do field visits? I think that there is a bit of a lack of clarity for us as to how that function would be carried out, and maybe some of that needs to be teased out for people to be able to give you a definitive view on where we stand on this, because, at the moment, I do not think that it is quite clear enough as to how those intentions would be carried out by a national board. Potentially, it is an absolutely enormous agenda.

[339] **Vaughan Gething:** There is a regulation-making power about the national board. Are you saying that you would want to see the draft regulations before the end of the Bill's scrutiny process? I do not want to put words into your mouth. That is what I think you are saying, but I want to be clear about it.

[340] **Mr Morgan:** Yes. I think that, in much of the Bill, the substance really needs to be bottomed out. Our overall feeling is that this is such an important area, it is so sensitive, and there are such inherent risks in it, we need to make sure that we have the time to debate some of that detail properly. It is certainly not that we are against the principles there, but they do need to be teased out and really thought through, because some of this is very new.

[341] **Ms Warren:** We would welcome seeing the regulations, as you mentioned. Jake alluded earlier to the fact that, in Wales, we have statutory directors of social services, which is quite different. As the title indicates, they have particular prescribed statutory responsibilities, and we would want clarity as to how the statutory responsibilities of a national board would interface with the directors' role and accountability. Until we see some of the detail, it is very hard for us to unpick what that would look like in practice.

[342] **Vaughan Gething:** That is very helpful. Okay, is this the final question, Darren?

[343] **Darren Millar:** It is just a question that we have not covered so far. It seems to be a pattern, when there is a failing in safeguarding, that information has not been shared, for whatever reason, between one partner agency and another, or has been shared but has not been flagged up as being of sufficient risk to take immediate action. Whatever it might be, information seems to be a big problem. I wonder whether you are content with the sections that relate to the duties to report between partner agencies. Indeed, section 114 deals with the supply of information requested by safeguarding boards. Do you think that they are sufficiently robust to help to close some of the holes in the net that information sometimes falls through? Is this safeguarding-friendly?

[344] **Mr Morgan:** The common theme that runs alongside that theme of communication where things go wrong is having an effective, well-supported workforce, and an effective, well-supported workforce is one that communicates well. So, in an adequate workforce, working well on the front line, a good practitioner shares the right information effectively. So, I do not think that there is anything in those sections that anyone would disagree with. However, with regard to that focus on responsibility in the process, people are required to share information, and basic professional practice is about sharing information, and so it is important not to get lost in a prescription of process, when, actually, I think that most gains in safeguarding practice will be achieved through having an effective, highly-skilled workforce in all the professional disciplines.

[345] **Darren Millar:** That said, do you recognise the need to lay out the parameters for information sharing and to reaffirm the duties for information sharing in order to promote good communication between practitioners?

[346] **Mr Morgan:** Yes, but one is not the other.

[347] **Darren Millar:** I understand that, but I am asking you whether you think that the provisions on the face of the Bill will help to promote that good communication that you expect to see.

[348] **Ms Cooper:** It is absolutely crucial, is it not? On a daily basis, it is something in which we are involved all the time. As we work more with other agencies and more collaboratively, the bit about sharing information is something that constantly comes up. So, it is absolutely crucial and it is good practice, but there are also difficulties if you start to look at the complexities of IT systems and how you can share those systems. Again, this is an area that will require some considerable resourcing if we are to get that right. So, again, I think that the whole bit about sharing information is multi-layered. There is sharing information in a meeting, sharing information electronically and sharing information in papers; there are lots of different ways of doing it. We cannot move forward, however, unless every agency is totally committed to that. We are, already, in terms of our practice, but then there are different laws around data protection and information sharing, which are a constant challenge to us. So, it is something that is very evident in the work that we are already doing.

[349] **Vaughan Gething:** Before Simon comes in with a final comment, in the wording of the section to which Darren is referring, a qualifying person ‘must’—not ‘may’—comply with a request for information from a safeguarding board. I am interested in whether you are saying that, regardless of what the law says, there may be a problem in complying with that if this very clear legislative requirement is introduced, or whether you still think that a cultural change, rather than the point that Darren is making, is more important.

[350] **Ms Warren:** We would welcome it in some areas, and I can see the value of having it on the face of the Bill; it helps to draw attention to it and to clarify roles and

responsibilities. We have information-sharing protocols that exist, such as the Wales accord on the sharing of personal information. We would probably advocate for some renewed and focused policy guidance from Welsh Government, co-produced with the ADSS, around information sharing. Legislation already exists, but you will see from serious case reviews that there remain problems, and, often, they are down to either an over-stretched workforce, or an ineffective interface between outdated IT systems. Until we deal with those issues, which can be dealt with in policy, the legislation will exist, but the extent to which it is effective could be called into question.

[351] **Darren Millar:** Okay, but, as a framework for good practice, you are content with the provisions on the face of the Bill around this issue.

[352] **Ms Warren:** As long as that is taken in the context of what we have said: that the legislation is not an end in itself and that the bits underneath need to be sorted out.

[353] **Mr Morgan:** The use of the word ‘must’ clearly gives a strong statement of intent, which, on the face of it, subsequent to all the other things that you obviously need, could be helpful.

[354] **Vaughan Gething:** That is very helpful; thank you. I do not think that there are any further questions. Thank you for your evidence and time this morning. We will send you a transcript of today’s evidence for accuracy purposes. There might be further questions that we feel that we have not explored with you, so we may write to you with some follow-up questions from today, but thank you very much for your time.

[355] **Ms Cooper:** Thank you very much.

[356] **Vaughan Gething:** We will now have a break until about 1.00 p.m. when we will return for our next panel session.

*Gohiriwyd y cyfarfod rhwng 12.08 p.m. ac 1.01 p.m.
The meeting adjourned between 12.08 p.m. and 1.01 p.m.*

Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 2 Social Services and Well-being (Wales) Bill: Evidence Session 2

[357] **Vaughan Gething:** Good afternoon and welcome to Members and our next panel of witnesses for the next stage 1 scrutiny session of the Social Services and Well-being (Wales) Bill. I ask members of the panel to briefly introduce themselves and the organisations they represent, and we will move straight into questions from Members. Ian, do you want to start?

[358] **Mr Barrow:** Good afternoon. My name is Ian Barrow and I am the director of operations at the Wales Probation Trust.

[359] **Mr Booty:** I am Richard Booty, and I am governor of HMP Cardiff, but I am representing the deputy director of custody for Wales for public sector prisons.

[360] **Mr Farrar:** I am Jeff Farrar, and I am the deputy chief constable of Gwent Police, but I lead the Association of Chief Police Officers in Wales on protecting vulnerable people, so I am representing the views of the four forces in Wales.

[361] **Vaughan Gething:** Okay, thank you. We had some evidence from Gwent Police in the initial consultation on the Bill. The session today is largely going to focus on safeguarding. The first question that I would like to ask is this: bearing in mind that you

represent bodies where powers and responsibility are largely not devolved, how do you see the structure that the Bill sets out for safeguarding and your obvious role within that as partners that are, as I say, largely undertaking non-devolved functions? Jeff, do you want to start, and then we will move along?

[362] **Mr Farrar:** I have been involved in the national board for the last 18 months. What is critical here, as I said in my submission back in May 2012, is that the police have a huge part to play in social care and safeguarding young people. One of the things I would say is that being a non-devolved function does have its problems. I have commented that reference to the police in the Bill is probably limited, when, in fact, we play a very big part in the whole of this process. The suggestion of a national set-up would be a really positive step forward. It gives us a chance to be strategic across Wales and proactive in the way that we direct things, and even as a non-devolved function, that would be hugely valuable. The suggestion around the amalgamation of boards is a welcome step because we will get more consistency across areas and there is an opportunity to make significant funding changes, which will reduce costs but improve the service. However, in drafting the Bill, I am not sure how much conversation there has been with Jo Hopkins's Home Office crime team around the wider issues that might affect the police in safeguarding.

[363] I will finish by saying that we are absolutely 100% behind the approach that is being taken. We have a real opportunity in Wales to do things differently. We are small enough and know each other well enough to ensure that we safeguard children effectively. However, I think—and I am sure that my colleagues will have a view on this—that we need to be considered right upfront in designing the process, not some way down the line.

[364] **Mr Booty:** My thoughts flow from the prison service perspective. They are about operational effectiveness and how the prisons, and what we cover, can contribute to effective safeguarding. Two of our prison services, learning and skills and health services, are devolved, and they are critical to this. So, we have engagement through devolved services, and through our health boards commissioning and providing health services. We have an 'in' there, despite the rest of our services not being devolved. I wish to repeat some of what Jeff said. I recently stopped chairing the south Wales MAPPA board. Some of the work that we did there was about ensuring that some of the more distant partners were involved in MAPPA issues, such as private sector landlords' associations.

[365] **Vaughan Gething:** Would you like to explain what MAPPA is? We need to remember that the public will be watching this.

[366] **Mr Booty:** Sorry; yes, I will do that. MAPPA stands for multi-agency public protection arrangements. It deals with people who have a history of offending. We have had lots of discussions about trying to make that approach comprehensive and involving people such as private sector landlords, who have a critical role in placing people with difficult offending histories in some high-risk areas. Likewise, in respect of the safeguarding element, in terms of operational effectiveness, from the prison service's point of view, as a non-devolved service, we are interested in assisting operational effectiveness as far as possible. This is about us being keyed in as effectively as possible. At the moment, our engagement with safeguarding boards is random. That is what I would say on that. There is a role to play—operationally, effectively and practically—so that prisons are remembered more, which is to repeat some of what Jeff has said. There is a little bit of good news in that two of the key services in this area are already devolved, so we get some of the Welsh Government's agenda from day to day. That is good, and it works very well.

[367] **Mr Barrow:** I wish to make some similar points, picking up on what Richard and Jeff have already said. We very much welcome the approach on promoting further partnership among some of the statutory bodies in Wales. We think that the Bill will strengthen the

national direction, so a consistent approach throughout Wales would be very much welcomed. We are concerned that probation and, to some extent, youth offending representatives are not being mentioned as potential core members of safeguarding bodies, and we think that that is a potential mistake. That could undermine the holistic approach to working with offenders and their families, in terms of the safeguarding agenda. We are worried about the potential disconnect, in terms of influencing agencies on a day-to-day basis on that element of work. There are significant links to other arrangements, such as the multi-agency public protection arrangements, which Richard mentioned. We would be keen to ensure that they are appropriately reflected as well.

[368] **Vaughan Gething:** Okay, that is a helpful start. We have questions from Lindsay Whittle and then Gwyn Price.

[369] **Lindsay Whittle:** Good afternoon. We know that section 11 of the Children Act 2004 places a duty on the police, probation and prisons to ensure that their functions are discharged with regard to the need to safeguard and promote the welfare of children. I would be interested in your views on whether this Bill strengthens, or could strengthen, existing statutory arrangements. We should bear in mind that we received a report yesterday from the YoungMinds organisation and the Prison Reform Trust, which showed that there was a 17% rise in the use of restraint on children, that there was an increase of 21% in self-harm, that three children died while in prison and that 20 more died while being supervised by youth offending teams. To me, that sounds real alarm bells. How can we strengthen this Bill to ensure that those numbers are reduced, if not eradicated?

[370] **Mr Barrow:** I will start, and perhaps Richard can take over. In relation to what I said earlier about what the Bill will do to strengthen the national direction, it could bring some consistency to what is happening. In my operational experience of safeguarding boards—I do not think that there are 22 of them, but rather 18, 19 or 20 of them—I have occasionally seen different approaches used in different boards, in terms of the move from child protection through to safeguarding. Some of the issues that you just mentioned—people’s experiences in custody and of youth offending teams—may have been restricted, in terms of the influence of partners, because of a child protection approach rather than a wider safeguarding approach. There is definite potential for the Bill, in terms of embedding the safeguarding approach and ensuring that there is a consistent approach throughout the country.

[371] **Mr Booty:** Building on what I said before, from the prison perspective, by our very nature we have a captured population—I do not have the statistics, but I would make a reasonable guesstimate that they are disproportionately represented on safeguarding issues. So, it is critical and we have an opportunity. We have recently done a lot of work in relation to domestic violence and flagging up cases, so we relate better to outside partners so that we do not make stupid mistakes in terms of information sharing and so forth. There is a real opportunity in terms of the national perspective and the coherence of this that we can play our part more effectively with a more consistent relationship with local authorities across the board. So, we can provide an effective service, if you like, for vulnerable adults or people who are impacting on vulnerable children. That is how I see it.

[372] **Mr Farrar:** I think that the Bill demonstrates the Welsh Government’s commitment to protecting vulnerable people. That can only be a positive thing. If I ask myself, ‘Is that necessary?’, then my answer would be, ‘Yes, I think it is’. The drive towards being more citizen-centred and getting more consistency across public services has to be a good thing. If you look at what is drafted in the Bill, you will see that it pushes it all towards the right areas, where we have a consistent strategic direction for a national board, and we have more consistency around our local safeguarding children boards. So, from that respect, we would be fully supportive of it. However, accepting the point that I made earlier, we also have to comply with current existing legislative arrangements that are set in Westminster.

[373] **Lindsay Whittle:** I have just a quick follow-up question, Chair. Thank you for your answers. Obviously, you are aware of the safeguarding children boards and the safeguarding adult boards, but I am particularly concerned about that transition from childhood to adulthood. People are falling down the middle and we are missing them. Section 117 states that safeguarding children boards and adult safeguarding boards could be merged. Would you be in favour of that or not?

[374] **Mr Barrow:** At the moment, we are involved in a range of work in terms of that transition to adulthood experience. It is probably fair to say that it is not just in the safeguarding arena that some work is needed in terms of developing that. That has certainly been recognised by the Ministry of Justice and by other associated bodies. While merging adult and children boards would bring some clarity in terms of safeguarding as a whole, I think that there is a danger, potentially, if that is not managed appropriately. The focus, perhaps, on certain groups may diminish within that approach. I have sat on both adult and children safeguarding boards. Being able to focus on one segment of the population is certainly an advantage; so I think that the members sitting on the boards would need to be very clear and understand absolutely the remit in terms of covering everyone. The Bill certainly gives enough emphasis in terms of ensuring that, but I think that that would need to be monitored, in practice, to ensure that the focus on either adults or children is not lost.

[375] **Mr Farrar:** To add to that, what we have seen over a number of years is procedures and practices around children starting to grow and develop in a different way to vulnerable adults. Getting that consistency on what we do in terms of vulnerable children across to vulnerable adults is a must. For us to be operating in different ways for two different groups of vulnerable people just does not make any sense for us at all. However, I do share some of the concerns that have been voiced, and I think that Ian has made a very good point on that, which is that if you group everyone together, do you start to lose focus on particular areas of vulnerability? How much time do you have in that board to focus on it? Unless there is some element of sub-grouping, which might be counterintuitive—I think that we have to mirror the direction of our policies and procedures. However, if we are talking together within the Welsh Government, is there a need to bring them both together? Maybe not.

[376] **Gwyn R. Price:** Good afternoon. Do you have a view on having independent chairs on the boards and whether it should be specified that they should have a social care or health background, or is it, as we have heard from other witnesses, a bit wider than that? Do you have a view on that?

1.15 p.m.

[377] **Mr Farrar:** It might be helpful for me to start on that question. Having operated in both, as a divisional commander in Rhondda Cynon Taf and Merthyr Tydfil, I know that we had an independent chair in the local safeguarding children board there, and I have worked on safeguarding boards that have not had an independent chair. I do not think that independence really matters, as long as you have the right quality of person chairing that board, namely someone who understands the issues and deals with the role properly. That can be rotated across agencies, but, predominantly, that has rested with the local authority, but there is an opportunity for others to chair those boards, as we do with MAPPA. As to whether there is a need to pay somebody independent to do that, that probably would add a level of scrutiny and accountability, but in the times of austerity that we face, we have the skills, the ability and the right people in our organisations to chair those boards without the independence.

[378] **Mr Barrow:** I would agree with most of what Jeff said. I, too, have experienced both, and having the boards established in such a way that people understand their individual scrutiny role as part of the board is probably more important than whether or not the chair is

independent. In areas where there were not independently paid chairs and chairs were revolving, it added some ownership for individual agencies in terms of engagement with boards.

[379] **Elin Jones:** The Bill provides powers of entry where an adult is deemed at risk, but it removes the powers of local authorities to apply for a court order to remove persons in need of care to a place of safety. Do any of you have views on the removal of those powers, especially the police? Do you consider that the removal of that power from local authorities could place an additional burden on your work in conjunction with adults at risk?

[380] **Mr Farrar:** I do not think so. That is a power that is rarely used now. The amount of times that that power is used by health authorities or local authorities is limited. We generally use powers under the Mental Health Act 2007, and they are sufficient. So, that is probably sensible. If you take the National Assistance Act 1948 for example, before I came here today, I had to do a bit of research to find out when we actually used that power. So, other legislation is available for that, and I do not think that it will increase the responsibilities of the police. We have a collegiate approach now before we take somebody out of a house. If there is an immediate need to do it, we do that under the Mental Health Act anyway, with the health authority. There is probably no real risk in that.

[381] **Rebecca Evans:** To take you back to the powers to merge boards, we have had some evidence from the Practitioners Alliance for Safeguarding Adults that there is more common ground and that more joint working goes on between adult protection and domestic abuse practitioners than adult and child protection workers. It suggests that if there is to be just one board in the future, domestic violence should be part of that board as well. Do you have a view on that?

[382] **Mr Farrar:** As I said at the start, I am a strong advocate of one public service. That may be some way off, but until we start thinking like that, we will always work in silos and miss opportunities. One of the things being piloted at the moment in the Gwent area is a missing persons' hub and a process in which all key people are involved in early decision making and conversations. The third sector is also involved in that. That is driven towards understanding the needs of the people who use the service and it has the opportunity to develop into all areas of vulnerable people work. We know that victims of domestic abuse, vulnerable adults and children in need of protection are very often in the same families. When we split things, we are in danger of having conversations in splendid isolation and forgetting that there is a bigger picture. For example, if a young child goes missing overnight, is probation or the prison service saying, 'You need to know that dad was released from prison only yesterday'? Is health telling us, 'Mum's a victim of domestic abuse and presented herself at casualty last night'? Is the third sector saying, 'We have involvement with that family', because they are a minority ethnic group, or they are from a particular area? Do we routinely do that? No, we do not.

[383] I can see the argument for domestic abuse and adult protection being separated, but I do not think that is any stronger an argument than to separate them at all, because they are all about protecting vulnerable people. It goes back to what I said at the start, which is that we need to mirror the processes that we have, and we need to gear into that some element of conversation across the individuals and services, not necessarily our systems within public services. I understand why that argument would be presented, because I have a lot to do with domestic abuse, but I think that it is a false argument, really.

[384] **Mr Barrow:** I was going to make a similar point in terms of the clients that we work with—there are huge crossovers between public protection arrangements, domestic abuse and vulnerable adults. For me, it is as important to sort the governance structures for them as to ensure that there is integrated working among the statutory services. There have been fairly

significant strides in recent years in Wales in terms of ensuring that. Links between governance levels are obviously important in terms of making sure that arrangements are not diverging, but I would agree with what Jeff has included.

[385] **Rebecca Evans:** Moving on to a different issue, which is the definition of adults at risk in section 104 of the Bill, are you satisfied with that, and do you feel that, in practice, it will encompass and enable all vulnerable adults to be safeguarded, or can you envisage occasions when vulnerable adults would be excluded under the definition in the Bill?

[386] **Mr Farrar:** It is a positive step forward because it gives us clarity around a definition of the term, which is lacking at the moment. We tend to have it in other areas around domestic abuse or child protection, but if it is missing in adult protection then it gives us clarity as organisations to understand what we are working towards. It comes back to the point about mirroring our procedures for vulnerable adults in the same way that we do for other areas. We should not be inconsistent. It is a positive step from the police perspective.

[387] **Darren Millar:** I just wanted to pick up on some of the issues raised by Rebecca. Jeff, you seem to suggest that this communication needs to take place on a regular basis between all of the different agencies, but we know from the serious case reviews et cetera, and through the tragic cases that pop up, that, very often, that communication is not as effective as it ought to be. Sometimes that can be because of an individual's professional judgment, and sometimes it can be because there is no requirement for people to share information. There are provisions on the face of the Bill about duties to report matters between different agencies, for both adults and children, and there is a requirement for information to be shared when a partner agency requests it. Do you think that those are strong enough, or do you still think that there will be some holes in the net so that, on occasion, information might not be shared, even when it is appropriate or sensible for it to be?

[388] **Mr Farrar:** It is valuable to give some direction to people. The one thing that I would say on this is that, at a very senior level, for you as Assembly Members, Ministers, chief executives, chief constables—for all of us across the public sector—we recognise that it is about doing the right thing and not necessarily just following the rules. However, when we actually go down into our organisations, people will say to us, 'Yes, we get that that is the right thing to do, but actually this is what the rules say, so I am not going to do it, because it would put me at risk'. We know that, across public services, over many years—and there are lots of valid reasons why this has happened—there is a propensity towards seeing risks to ourselves as service providers, because we could lose our job, or we could be put into jail, and then there is risk to the vulnerable person. Having been involved in a number of serious case reviews where we have all followed procedure and done what it says in the book but, actually, we still end up with somebody who dies, that cannot be an effective outcome. One of the things that we are learning is that it is valuable to give direction and clarity about what you should be sharing, but the real way to achieve this is by designing our systems in such a way that we are collaborative in what we are doing. That is what will make the biggest difference to the people of Wales, not necessarily putting direction in guidance. However, I think that that will help some people—this is a minority, not the majority—who hide behind statements such as, 'I've got no formal direction to do that'. If it is going to help vulnerable people, then it is a positive step forward.

[389] **Darren Millar:** So, you think that this will deal with the typical response of, 'We cannot share that for data protection purposes' or whatever it is that is thrown back at somebody when a request for information is made.

[390] **Mr Farrar:** It may help, but I would say that, when we unpack those instances where people say that they cannot share something for data protection reasons, you find that they do not know what they are talking about. This is because, actually, there is already a power under

the Crime and Disorder Act 1998 to share information. This Bill will strengthen it, but it already exists. So, people do hide behind statements like, 'I'm not going to give information out, because I might create personal risk', when, actually, they can share it under existing legislation. In all the guidance and direction we have under the Wales accord on the sharing of personal information in Welsh Government and under our information sharing protocols, it is pretty watertight. However, I think it is more about people really not understanding what they can give to other agencies.

[391] **Darren Millar:** So, this re-emphasises the current position, rather than strengthening the arrangements for collaboration in information sharing, in your opinion.

[392] **Mr Farrar:** I think that it does help to reinforce what your duty is to share information.

[393] **Darren Millar:** Is this necessary at all, if all of the other stuff exists? Can we not just scratch out section 114 and some of the other bits because they are not needed? You are telling me that we have legislation on the table already.

[394] **Mr Farrar:** I would say, from my professional experience, having been involved in an awful lot of this work over many years, that the real answer is to design the system in such a way that you look at what is required from relevant people and we brigade ourselves around it, so that we are sharing and having early conversations. I think that that would be a step forward. So, the answer from me is that I think that we already have enough legislation to ensure that we do share information effectively.

[395] **Darren Millar:** So, we do not need additional legislation on the face of this Bill to deal with communication or information sharing between agencies.

[396] **Mr Farrar:** It might strengthen it for people at a certain level in the organisation. Whether it is necessary, I am not convinced.

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

[398] **Vaughan Gething:** One of the points raised earlier was that of the funding of safeguarding boards. A suggestion was made that there has been some conversation between partners, including you, about a voluntary funding formula. However, we understand that we could not prescribe a formula on the face of this Bill for the National Assembly to require you, as largely non-devolved bodies, or to prescribe what you must contribute. This is not about what is in the Bill, but I would just like to clarify whether you are in a position where you think it would be possible, in a fairly brief period of time, to agree a voluntary funding formula that you would sign up to, to support the functions of either adult or child safeguarding boards?

[399] **Mr Farrar:** It might be helpful for me to start on that because I have done quite a lot of work on this one. There is huge inconsistency in the funding from organisations other than local authorities across Wales. I will give you an example. In 2009-10, Gwent Police contributed £50,000 to local safeguarding boards. South Wales Police did not contribute anything towards them, whereas the north Wales and Dyfed-Powys forces contributed something in the region of £7,000 to £8,000 a year. That is not a criticism of any of the forces, because they were contributing a significant amount of time and people in terms of attendance and heavy involvement in the safeguarding boards. However, there is huge inconsistency, and I think that some element of a recommendation to do with what that might look like would be very helpful. If that comes to a 30:30:30 split, it would not be helpful, because we are not funded for it, but I do think that there needs to be a conversation with the Home Office around funding for local safeguarding children boards, because we would be taking it out of our base

budget, as to what we do with it. However, there is huge inconsistency. So, what health is contributing, what the police are contributing and what probation services are contributing—which tend to put the most in outside of local authorities—are wildly different across our 22 local authorities. Some guidance on that—or something stronger than guidance, because there is an agreement with the Home Office—would be really useful for partners within local safeguarding children boards. As it is at the moment, every year, there is a discussion with senior people across organisations to try to negotiate funding for safeguarding boards, and that cannot be right. It cannot be right that there is such inconsistency across Wales.

1.30 p.m.

[400] **Vaughan Gething:** Does the probation service have a view on this?

[401] **Mr Barrow:** As an organisation that works throughout Wales, we certainly recognise Jeff's description of inconsistency in terms of what different partners are currently providing with regard to the safeguarding arrangements. Where possible, we have tended to work towards a contribution of 5% of the total funding of the safeguarding boards in addition to the other resources that we provide in terms of personnel, time et cetera. We would certainly welcome national guidance in terms of what that would look like for contributions, because, once again, we find it difficult to explain why we are contributing some elements in Gwent and other partners are not contributing the same to what is done in south Wales. In our case, a discussion is needed with the Ministry of Justice, as our contribution to those boards is not included in our core grant at the moment. However, we would welcome some consistency in the process.

[402] **Vaughan Gething:** That is helpful.

[403] **Mr Booty:** The only thing that I would add is that, from the MAPPA experience, from HM Prison Service's point of view, through MOJ, there has been an attempt from the centre to provide—albeit modest—consistency with regard to the contributions from the prison service side to the funding of local MAPPA boards. So, as Jeff said, from the national offender management service centre at MOJ, there has been an effort to provide support in the field. I guess that that happened over time, but there has been some seed funding to recognise the contribution that is made at a local level.

[404] **Mr Farrar:** Chair, I would just like to add one point to that. If there is a recommendation regarding funding, there needs to be recognition that not all of the safeguarding boards do the same things. So, there are safeguarding boards that have more staff, offer more training and are more proactive in certain areas and that is why they present a business case for the money that they want. Others might not be doing any of that. So, to have a blanket amount of money for each safeguarding board, unless they are doing consistent work, might not be fair.

[405] **Kenneth Skates:** Do you think that the lead partner on all safeguarding boards across Wales should be the same? Should there be consistency in terms of who leads them? At the moment, the Bill provides Welsh Ministers with powers to decide who will be the lead partner, but there is no statement in the Bill that the lead partner will be the local authority, for example.

[406] **Mr Farrar:** My view, from being involved in them, is that we all have a stake in safeguarding vulnerable people, but the local authority is a key player in that. To have that consistency would be helpful. It is a function that, without co-ordination, sits with the local authority because of the social care that is involved. However, there needs to be recognition that we are all key partners in that. That consistency across Wales, with the local authorities leading them, would be helpful.

[407] **Mr Barrow:** I agree completely.

[408] **Vaughan Gething:** Thank you; that is helpful. Darren, is your question on this point, or a different point?

[409] **Darren Millar:** It is on a different point.

[410] **Elin Jones:** I want to go back to a point that was made earlier by the probation service. Despite the fact that you contribute financially in all areas of Wales currently, you are not named as one of the partners for the boards on the face of the Bill. Would you want to be named?

[411] **Mr Barrow:** It is a point that I think I made just before you came in.

[412] **Elin Jones:** No, I was here, but I did not quite understand whether you wanted it to be on the face of the Bill.

[413] **Mr Barrow:** There is a Wales Probation answer and a Ministry of Justice answer to this, I think. From a Wales Probation point of view, the reality of our engagement in communities and devolved safeguarding issues means that we need to be a part of those boards—in terms of the reality of the operational interaction, which feeds down through it. The Ministry of Justice position—and there is ongoing engagement between the MOJ and its Welsh Government counterparts in drawing up the Bill—is that there is some concern regarding some legislation on non-devolved functions.

[414] **Elin Jones:** Okay, maybe I was not here.

[415] **Darren Millar:** What are the views of the witnesses about the Deputy Minister's intention that there will be six safeguarding boards in Wales? Is that the right number? Is it too few or too many? Are they going to be too large? Are the boundaries the right boundaries, particularly given the different boundaries for the police service, for example? What do you think about that?

[416] **Mr Barrow:** From the point of view of Wales Probation, the boundaries outlined, while not entirely coterminous with our seven local delivery units, are certainly compatible. It is more appropriate in terms of the size of some boards, their regional make-up and the reality of working across. We are quite comfortable with what has been described.

[417] **Mr Farrar:** Three of the police forces in Wales—North Wales, Dyfed-Powys and Gwent—would have one board. Gwent Police already has one board; we pushed for that because it makes sense. South Wales Police would have three boards. So, when we start talking about funding formulas, there is an issue in that for South Wales Police. It is not an issue for now, but we tend to change boundaries. That might also be important for what regions look like.

[418] The Gwent region is coterminous with health and police. If you have more than six safeguarding boards, you end up with our senior people having to go to 22 meetings that all say the same things. I have a detective superintendent who was going to five local safeguarding children boards, meeting the same people and having the same conversations. It was a full-time job. I know that this will be echoed by the four Welsh police forces: six boards would be a positive step.

[419] **Darren Millar:** Do you think that three boards are too many in south Wales, or is the number about right?

[420] **Mr Farrar:** No, there have to be three boards, because of the complexity of west, north and Cardiff. It is a very big urban area, so those boards need to be there. However, regarding consistency, financial contribution and recognising what I said earlier, there might be a bigger impact on South Wales Police if there was a direction around funding than on Gwent Police. I think that it would be a welcome step forward, because at the moment south Wales would probably have somewhere in the region of eight or 10 local safeguarding children boards.

[421] **Lynne Neagle:** With regard to independent advocacy, a number of witnesses have told us that they think that the availability of independent advocacy should be included on the face of the Bill. Do you have a view on that?

[422] **Mr Farrar:** Not really. From a police perspective, it has little or no relevance.

[423] **Vaughan Gething:** Okay, I think that that is it. Thank you for your time and evidence this afternoon. We will send you a transcript of today's session. You can correct any anomalies—but there will not be, hopefully—in the transcript. If other questions arise, we may write to you to see whether there are specific follow-ups that you can provide to help us with our scrutiny work. Once again, thank you for your time and evidence this afternoon.

1.40 p.m.

Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 2 **Social Services and Well-being (Wales) Bill: Evidence Session 2**

[424] **Vaughan Gething:** Good afternoon, once again. Our next witness is Anna Buchanan, director of protection, scrutiny and human rights at the office of the Commissioner for Older People in Wales. Thank you very much for the written evidence that we have had from the commissioner, which Members have had a chance to consider. I will ask the first question and then we will kick off with other questions from Members.

[425] We have been looking broadly at safeguarding, but, in this session, we will cover more than just the safeguarding subject. However, I am interested initially in a specific safeguarding point that has been made more than once, which is about the order that would allow someone to go in to have a conversation with an adult who may be at risk. In your evidence, you were quite clear that you did not think that that power went far enough, and that you would want to see the potential power for removal. In our previous sessions, local government has said that that power is hardly ever used, and the police said that they think that there are adequate powers under the Mental Health Act 2007 and that not having the power in this Bill is not a problem. Bearing that in mind, do you still maintain your position that having that power would be helpful and necessary?

[426] **Ms Buchanan:** The position now is that the Bill provides for someone to go in to find out what is going on in circumstance where there may be coercive control or someone may have to do things against their will. So, professionals would go in to find out what was going on in that situation. The next step, however, is that if you find that something untoward is going on, how do you remove someone if they have got themselves into a position where they are unable to make decisions for themselves? This matter has been looked at by the courts. There are cases that have gone to the High Court, and the inherent jurisdiction of the court, and the court has been asked to make an order for a warrant to go in, first of all to find out what is going on, but secondly, to be able to remove someone from a situation if that is in their best interests. I recognise that that brings about a very delicate balance in the field of human rights.

[427] If you look at the Scottish situation—I am sure that people have referred to the Scottish Act—there is an order in there called a ‘removal order’, which means that you can take someone out for a short period of time to help them independently reassess the situation in which they find themselves, so that they can then make a decision as to whether they stay or leave. It is a bit like a risk assessment as well for them; are they managing the situation well or are they not?

[428] We put ourselves in a place where there could be quite a difficult situation, whereby a professional could go in and assess that someone is being unduly influenced or coercively controlled by someone else and then they just leave and that person is left to suffer the consequences. The next question is: do we need something on the face of the Bill that takes it that one step forward, like the Scottish model? I would say that we do, in very rare circumstances—the removal order in Scotland has only been used once, although it has been threatened on more occasions than that in order to go in to a situation to help somebody. The alternative, which has been used by some local authorities in England, is section 47 of the National Assistance Act 1948, which allows for people to be taken out of situations that are clearly not helping and in which they are stuck. That would be why we say that we need that extra step, but there must be safeguards around it and it would be with the consent of the court. If you want more information around the legal precedent for that, which was submitted in our evidence to the Welsh Government, I will happily give that to you.

[429] **Vaughan Gething:** We now have some specific questions, starting with Lynne Neagle and then Gwyn Price.

[430] **Lynne Neagle:** The commissioner has been quite critical of the decision not to include a statement of principles on the face of the Bill. Your evidence states that you are extremely disappointed that this is not reflected in the current draft. Could you give us some detail on why you think that is a flaw?

1.45 p.m.

[431] **Ms Buchanan:** Yes, absolutely. Certain elements of the Bill are quite process driven, are they not? They are more to do with how we deliver services, and that kind of thing. However, some areas of it are to do with people’s lives, their human rights, and interference in their private and family life. It was very much recognised in the Mental Capacity Act 2005 that dealing with those who lack capacity really involves interference with their rights. That is why statutory principles were enacted in that Act. I want to read two sentences very quickly that explain why they were.

[432] ‘Decisions and actions carried out under the Mental Capacity Act 2005 should be tested against the 5 key principles...The principles act as benchmarks for decision makers.’

[433] There was no duty placed on people to apply those principles. However, this means that, if there is a failure, or if something comes to court and is seen not to be in accord with those principles, there is a benchmark and standard by which it can be measured. When the Law Commission started this ball rolling, it spoke very clearly about having statutory principles. We feel that, having lost that on the way, we are missing something that could help people to secure their human rights.

[434] **Lynne Neagle:** I will move on from that to the issue of eligibility criteria. The commissioner has also raised concerns about the fact that there is very little detail on the face of the Bill as to how the national eligibility criteria will be applied. We have heard from the Deputy Minister, during a meeting of the Children and Young People Committee, that there needs to be some flexibility about that because needs and circumstances change. How would

you urge the Welsh Government to resolve that conflict?

[435] **Ms Buchanan:** I have to say that I am probably not the best person to help you with the eligibility criteria. My understanding was that I would primarily be talking about safeguarding today. However, if you like, I can go back and we can submit further written evidence on that.

[436] **Vaughan Gething:** Okay. I now bring in Gwyn Price.

[437] **Gwyn R. Price:** Good afternoon. Do you have a view, at the office of the older people's commissioner, as to the concerns shown by others regarding how the safeguarding element of the Bill will be financed? Do you have concerns in that area?

[438] **Ms Buchanan:** To a certain extent, given the financial climate, yes, we do. To a certain extent, it is not suitable for the commissioner to make great comment on the detail. However, we understand that adult protection co-ordinators operate on a shoestring now. The work that they put in, and the lack of admin support that they have, is quite incredible. So, we think that whatever they need should be put in place for them. I think that they would be very grateful for any funding that they receive. We have to take account of the financial situation that we are in right now. However, I do not think that financial constraints should be the chief concern in this. We are at the stage where we are moving adult protection on to a statutory framework for the very first time. This is not just a question of levelling it up with child protection. That is not what this is about. This is not an either/or situation. This is about giving a statutory framework for the first time, so that those who are adult protection co-ordinators can access the money that they need, however little that may be.

[439] **Vaughan Gething:** We now have Darren Millar, followed by Rebecca Evans. Rebecca, was your question on this point? I see that it was not. I therefore bring in Darren.

[440] **Darren Millar:** Thank you for the evidence that was sent in, Ms Buchanan. There are two issues that the commissioner raises that have a direct impact on safeguarding. One is the definition of adults who are at risk. There have been concerns that not everyone who may require some sort of support or service, particularly those who have been subject to abuse, may be included within that definition. I would like to hear your views on that. The second issue is the role of independent advocacy in safeguarding, and the extent to which you are satisfied or dissatisfied with the provisions of the Bill in relation to advocacy.

[441] **Ms Buchanan:** I will take the definition issue first. We understand that, before, the definition of 'vulnerable adult' was someone who was in receipt of social services. That is quite a narrow pool of people, even in terms of older people. The definition that is on the face of the Bill right now has a fair bit of merit to it. I do not know if you have it in front of you, but, on the three points in section 104(1), under (a), (b) and (c), I think that (b) and (c) are the wrong way around. What this does is narrow the funnel. It says that an adult at risk is someone who,

[442] 'is experiencing or is at risk of abuse or neglect',

[443] and then it says,

[444] 'has needs for care and support',

[445] and then,

[446] 'as a result of those needs is unable to protect himself or herself'.

[447] It goes in that order. However, I think that the most logical order is to say that they are or could be experiencing harm, and because they are unable to protect themselves against the abuse and the neglect, then they need care and support in order to deal with it.

[448] That brings in one of the points raised by Mind on the risk assessment needed, particularly around those who have capacity as to how they can manage that risk themselves. Some people will be able to manage risk with a little bit of support, but others will need an awful lot of support. If paragraph (b) dealt with, 'Are you able to support yourself and protect yourself from the risk of abuse?', then the next logical paragraph would be, 'What care and support do they need?' If you want me to explain that again, I can quite easily do so.

[449] **Darren Millar:** It would be helpful to have a note on that. I was interested that Age Alliance Wales brought a suggestion to the table in terms of a different definition of 'adults at risk' that included a specific reference to age. Is that something that the older people's commissioner supports?

[450] **Ms Buchanan:** We had originally come up with a definition, which I would love to see included. The definition was brought together by us, Professor John Williams, before he was advising anybody, Mick Collins, the chair of the Practitioners Alliance for Safeguarding Adults in Wales, and Age Cymru. We came up with that definition by looking at the Domestic Violence, Crime and Victims Act 2004 where there was a definition of what a vulnerable adult is. The Act says that 'vulnerable adult' means a person aged 16 or over who, because of their circumstances, is suffering or at risk of suffering harm and whose ability to protect themselves from such harm is 'significantly impaired'. It then gives a list of reasons such as disability, illness and mental incapacity. However, you could miss out those labels at the end and just say 'because of something'.

[451] **Darren Millar:** That would widen the funnel, as you said.

[452] **Ms Buchanan:** It would widen the funnel. I know that there is panic that that could open the floodgates so that everybody could be eligible for protection. However, if (b) and (c) were reversed, that would not be the case, because the risk assessment would be there asking, 'Can this person protect themselves?' If they can, then they do not need lots of care and support, they might just need a little bit of support. However, if they cannot, then care and support has to wing in to help them protect themselves. So, that is on the definition.

[453] On independent advocacy, as you know, we did a review of advocacy in care homes, 'Voice, Choice and Control'. Our position on this is that there should be a range of advocacy available to people—it could be self-advocacy or it could be friends or relatives who advocate. However, there are occasions when nothing but an independent advocate will do, for example, because the family are not working in the interests of that older person, because there is no-one to advocate on behalf of that older person, or—particularly in relation to safeguarding—because someone is in a very isolated situation where everyone around them is, to them, not trustworthy, even if, to us, they are, but, to them, they are not. I think that there comes a point when, if someone does not have independent advocacy, they lose their voice entirely. That is a human rights issue and it goes back to our point about the statutory principles on the face of the Bill. We cannot have people in Wales, whether they are older or not, ever being in a situation where they do not have a voice. However, that does not mean that it always has to be independent advocacy.

[454] **Darren Millar:** There is a price attached to making independent advocacy available to those people who need it. Do you think that the financial resources attached to this Bill are sufficient to meet that cost?

[455] **Ms Buchanan:** Right now, in some ways, it is difficult to say. There is still an

advocacy business case to come forth from the Welsh Government, and the commissioner is heading a group that will advise on that advocacy business case for older people. Our position is that independent advocacy is for those situations where there is no-one else to advocate. You have to weigh up the cost against the cost of someone's human right being violated because they no longer have a voice; they have effectively had their voice taken away from them.

[456] **Vaughan Gething:** Lindsay Whittle wants to follow up one of the points made, then Rebecca Evans.

[457] **Lindsay Whittle:** I want to follow up very briefly on independent advocacy, of which I am all in favour, of course. Do you feel, because we are talking about advocacy for extremely vulnerable people, particularly older people—some older people are vulnerable, while others are not—and we are using the word 'independent', that advocates should be registered and inspected?

[458] **Ms Buchanan:** 'Independent' is the issue, is it not? How do you know that someone is independent? Inspection? It would depend. If a service was put in place, for example, for independent advocacy, it would make a lot of sense to have an element of inspection, because, without it, how would you hold them to account for what they are doing? I think that it would be more appropriate to have advocacy standards and to say that people must go through a certain amount of training. You cannot have people left, right and centre setting themselves up as independent advocates. So, there would need to be a certain amount of training—I do not think that it would be a lot of training—in basic things like safeguarding and other issues, for example, issues relating to dementia. Even though it would be an independent mental capacity advocate who would deal with those with dementia, you might have someone who is at the stage of not yet having been diagnosed and people would need to understand that. So, it depends on what kind of cohort develops. Will it be like a body of advocates that you could inspect? It would be quite difficult if you just had small groups all over the place, but that would have to be looked at in relation to the advocacy business case. Does that answer your question?

[459] **Lindsay Whittle:** Yes; thanks for that answer. Training has come up a lot whenever I have asked that question. Thank you.

[460] **Rebecca Evans:** In the section defining an adult at risk, which Darren asked about, there is no definition of the word 'neglect'. Do you think that it would be helpful to have it on the face of the Bill, and if so, do you think that it should also cover self-neglect? I understand that that is included in the Adult Support and Protection (Scotland) Act 2007. If that is something that you would support, how do you balance people's human rights to live in a way in which they choose, even if it is not the way that somebody else would choose for them?

[461] **Ms Buchanan:** The starting point is exactly what you say: we must not make assumptions that because someone looks a bit scruffy, or lives in a certain way, that that is dreadful and we must sort it out. There are big human rights issues there. On there being no definition of neglect, I think that it would be useful to have that definition for a whole host of reasons; not just so that we have a nice definition on the face of the Bill, but because there is an issue around situations where someone is abused through neglect, because there is not a positive element to neglect, is there? There is no, 'I did something to someone and therefore they are neglected'; it is a case of, 'It is because I omitted to do something that they were neglected'. We know, for example, speaking about the recent Operation Jasmine case—I think that it is okay to talk about this—charges could not be brought on the basis of wilful neglect, because it is very difficult to prove an omission. So, anything that could unpack that and show what it is that neglect is, and what that means for the person who is being abused, would be really helpful. If there was work to be done around that, we would be very keen on

helping to explore that. We would like to explore that and see how that could be worked in. In terms of self-neglect, I think that that should be included, but, again, you must have those safeguards in place, which are to do with human rights but also assessing risk. You may have people who are quite well influenced by a certain element of risk—for example, a house that is falling down around them—and they have to be allowed to do that. This is where the balance always comes with the human rights arguments.

2.00 p.m.

[462] **Rebecca Evans:** With regard to the definition, are you able to point, at the moment, either in legislation or just in work that you do, to a definition of neglect that you think would be suitable, or is that something that you would like to come back to us on?

[463] **Ms Buchanan:** I think that the reality is that, across the various statutes, there are various definitions, because you have wilful neglect, the Mental Health Act and the Mental Capacity Act. I could not give you an answer on that right now, but I can certainly go away and have a look at that. I am willing to do that.

[464] **Vaughan Gething:** There is a follow-up point from Lynne Neagle.

[465] **Lynne Neagle:** On the issue of neglect, we heard from the NSPCC in the Children and Young People Committee that it is doing some work with the Welsh Government around the issue of neglect. Is that not something that the older people's commissioner's office has been involved in at all?

[466] **Ms Buchanan:** No.

[467] **Lynne Neagle:** So, there have been no discussions with Government.

[468] **Ms Buchanan:** No.

[469] **Lynne Neagle:** It seems to me that if we are going to bring together the safeguarding of adults and children in many of the policy processes, we also need to look at how we define neglect in both those instances.

[470] **Ms Buchanan:** That makes a lot of sense. I will take that back to the commissioner and we can discuss it.

[471] **Vaughan Gething:** On this point about the Bill being a people's Bill, and concerns about whether that means that, potentially, distinct issues for adults and children are not dealt with appropriately, safeguarding is one area where that has been suggested. I am interested in your view on the specific power in the Bill where Welsh Ministers may merge the proposed regional boards for adult safeguarding and child safeguarding. Is that something that you could foresee as being useful, or is that a section in the Bill that you think we may dispense with?

[472] **Ms Buchanan:** The key point here is that adult safeguarding and child safeguarding are not the same thing. There are commonalities, and often people will have worked in both fields, but they are not the same thing. At the most basic level, with children, you are working with those who are assumed to not have capacity; whereas, with adults, the assumption is that they have capacity, unless it is proven otherwise. That just brings a different perspective from day one. In terms of the joint boards, I could see no real issue in them sharing what you might call back-office functions—the kind of administrative support, the secretariat and so forth. In 2010, the commissioner took a group—there were three of us—to Scotland to speak to civil servants who had set up the Adult Support and Protection (Scotland) Act 2007. This was one

thing that we wanted to raise with them because, in some places, they had joint boards. In some places they worked really well, and in some places they just did not work. I think that it very much depends on who is there, how they work and so forth. Therefore, if that was to remain in the Bill, and if it was felt that there should be regulations brought about to make it happen, I do not think that it should take place without having extensive consultation with those who would be affected. I think that a better option would be for people to be able to opt in themselves to do that if they felt that it might save them money, for example. What would happen is that you may have a chair, but just by going through cases you would automatically have a divide in terms of how things would work because they are not the same thing. However, as I said, they do have similarities.

[473] **Vaughan Gething:** That is helpful. I will ask one more question and then I will look around for Members' questions. Going back to the regional board structure, some witnesses have suggested to us that this would be a very positive thing; and we heard very clear evidence from Gwent Police and ACPO earlier. Other witnesses have also suggested that going for six regional footprints may be a mistake and may not be the way to improve safeguarding arrangements. I am interested in the view of the older people's commissioner or whether you have a view on this particular area.

[474] **Ms Buchanan:** For us, the issue is the outcome for older people. That is what should drive it. What is best for older people? We know that, for older people, things to do with health and social care often overlap. If it would help older people to have fewer safeguarding boards, we would support that, but we would want to see evidence that that would bring a better outcome for older people. That is all that I will say on the issue of whether there should be six or whichever number of boards. Do you want me to comment on the national safeguarding boards?

[475] **Vaughan Gething:** There is a proposal for a national independent board and that is, at present, for one national independent board. Your sister or brother commissioner, the children's commissioner, has suggested that he would like to see separate national independent boards for adult safeguarding and child safeguarding. Do you agree with that specific proposal of having two separate boards or do you think that, in any event, a national independent board will provide something that is useful, particularly with the way that it is set out already in the Bill?

[476] **Ms Buchanan:** If you had two boards, it could be quite confusing. You would have two national boards. If you had one board that had two elements to it, that might be a better way to go ahead, because if the board existed as an independent body, as the commissioners' bodies are—we should note as well that if a safeguarding board was set up and was independent, we would need to look carefully at the overlap with bodies like us; we would make sure that we had a memorandum of understanding drafted between us—it would take a big overview of everything that was going on. My understanding is that it would look at how policies and procedures are working, keep things under review and look at cases that come up that are particularly serious, the lessons that can be learned and so forth. If the right people are put on the board, then some people will be able to deal with adult and children's issues, because of their backgrounds, having had extensive involvement in both; that would be one way of dealing with it. Another way would be to have some people working on separate matters in relation to children and some in relation to adults. However, having more than one board at a national level would be confusing.

[477] **Vaughan Gething:** Are there any other questions that other Members want to ask? There is one thing that we should ask before you go, and that is about information sharing and co-operation. We have asked this question to other witnesses, and I am interested in your view as well. Section 114 of the Bill provides some powers and duties with regard to information sharing. We are all familiar with the fact that where things go wrong, it is largely

because organisations do not talk to each other and share information. Is section 114 drawn in a way that helps usefully to increase the power and the duty that people have? Is it a section that we could lose or dispense with? Do you think that the section, as drafted, would help to change some of the cultural attitudes and not simply whether people understand the law, especially as it relates to data protection?

[478] **Ms Buchanan:** I think that it should stay. It is important to have it there. We know from serious case reviews that the failure to share information is fatal. I was listening to deputy chief constable Jeff Farrar's evidence earlier, and he spoke about one integrated public service. We need to be more joined up on all these protection issues and have information flowing through. Before we finish, if you would be willing, Chair, I would like to say something brief about domestic abuse and how that ties in with this. However, what you say about changing the culture around information sharing is important, because, otherwise, and we find this in the course of our work, you find that people hide behind data protection sometimes, and do not want to share things. There is a myth that you cannot share anything at any point with anyone. There is confusion over what confidentiality means, which is a duty of confidence to your client, and then what data protection is about, which is to protect the individual. Sometimes we are not sharing information, and we should be, within the realms of the law, because it would protect the individual. So, keeping that section signals that there should be a step change in this approach to data protection.

[479] **Vaughan Gething:** That is helpful. Lynne Neagle is next, and then Rebecca Evans.

[480] **Lynne Neagle:** I just wanted to ask about the powers in the Bill to enable charges to be made for things that are not currently charged for. Have you got any worries that that might represent a threat to safeguarding adults?

[481] **Ms Buchanan:** If there is any charge for any information that someone would need in order to be safeguarded for any reason, then yes. It is not to say that things should never be charged for; I just think that we need to look carefully at who is most vulnerable and most at risk, because those are the people who we should be going to with as much free-flowing and free-in-the-financial-sense information and advice as possible, as early as possible. It is a question of priority more than anything.

[482] **Vaughan Gething:** I know that you want to make a point about domestic abuse and violence, and I know that this is a question that Rebecca Evans asked earlier, about potential combinations of adult safeguarding, domestic abuse and child safeguarding. I would be interested in any comments that you want to make on this particular area.

[483] **Ms Buchanan:** Very briefly, in the evidence that we sent to the Welsh Government we said that it is really important to get the read-across between the two. For example, the most recent CSSIW report said that 32%—I think that that is right; I might be wrong—of abuse takes place in an older person's home. Most of that will go to adult protection, but I would quite confidently say that the majority of that will be family abuse—children abusing parents, or partners abusing—and that is also domestic abuse. The issue there is that, when it is identified as domestic abuse, it opens up pathways that adult protection does not, in terms of remedies in the law, and civil remedies that can be sought by an individual—for example, an occupation order, or a non-molestation order—things that might help manage a situation in a home. That is particularly important for older people who may not want to leave the home, even though the abuser is there, because they may be the carer for the abuser, or they may be cared for by the abuser. Sometimes, what needs to go in is some support or some legal parameter around it.

[484] What is interesting, mentioning the link between child protection and abuse, is that we all know that all the legislation that deals with domestic abuse is very firmly tied up with

family law, and that read-across has not been made to adult protection in the way that perhaps it could be. It is not that it is not made at all; it is just that it is not made in the way that it could be. Therefore, one of our suggestions has been that when the Bill is complete, and when the code of practice and the guidance have been drafted, there should be clear instruction about what links across to domestic abuse, so that people recognise it. Equally, when the domestic abuse and violence against women Bill comes in, it would also be really helpful to have something drafted in the guidance or code of practice or whatever that reads across to adult protection. As Jeff Farrar said earlier, we need that early intervention and early read-across to recognise that older people can be victims of domestic abuse as well. That is the reason why I raise it.

[485] **Vaughan Gethin:** That is very helpful. Thank you for your evidence this afternoon. We will send you a transcript, as is normal, to ensure that it is accurate and to give you the opportunity to correct anything. We may write to the older person's commissioner's office, if there are other questions that, on reflection, we see that we have not got to in today's session, so that there is an opportunity to deal with those as well.

[486] **Ms Buchanan:** Please do, thank you.

[487] **Vaughan Gething:** Members, we are going to take a short comfort break. We are running slightly ahead of time, but I would ask you to try to get back for about 2.20 p.m. because our next witness is already here. We can then make a start rather than wait until 2.30 p.m.

*Gohiriwyd y cyfarfod rhwng 2.14 p.m. a 2.25 p.m.
The meeting adjourned between 2.14 p.m. and 2.25 p.m.*

Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 2 Social Services and Well-being (Wales) Bill: Evidence Session 2

[488] **Vaughan Gething:** Good afternoon, again, and welcome to Michelle Denwood, our next witness, as we broadly go through the safeguarding themes in evidence on the Social Services and Well-being (Wales) Bill. Thank you very much for coming in today, Michelle. We have had a chance to read through a range of written evidence in advance of your coming here. So, I will ask the opening question and, as you have seen, we will move around the rest of the table for other Members to have an opportunity to ask questions.

[489] **Ms Denwood:** Okay.

[490] **Vaughan Gething:** The starting point is not a matter that we have raised with other witnesses, but I think it is a useful place to start from. Some witnesses have questioned whether the Bill as drafted meets the Welsh Government's own aspirations and whether safeguarding is too large a subject to put into this Bill. The alternative argument, of course, is that it is more coherent to have safeguarding as a part of this broad-sweep Bill. I am interested in your point of view and whether you think that, generally, the way that safeguarding is dealt with in this Bill is coherent, or whether you think that it would be more beneficial to have a separate safeguarding Bill.

[491] **Ms Denwood:** Looking at the Bill and the detail in it, in totality, we have seven pages in relation to safeguarding. Personally, I believe that it would be clearly advantageous if it was removed from the Bill and we had separate legislation.

[492] **Vaughan Gething:** Okay, that is very clear. Gwyn Price is going to start with the first of our detailed questions, and then we shall move around the table.

[493] **Gwyn R. Price:** Do you have a view on whether there should be an independent chair on the board and whether it should be specified that they should have a background in social care and health?

[494] **Ms Denwood:** From experience, I believe that it would be of clear benefit to have an independent chair on the regional boards. I do not think that you would need specifically to identify that they would need a health or a social care background; if you look at people's experience within social care, health, the police, probation or any other field in which you work with people, including young people and children, I think that that ultimate experience would be beneficial, and that is that level of independence. You have the experts, hopefully, around the table, and they can inform and challenge and be part of the formal group.

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

[496] **Vaughan Gething:** Does anyone on the other side want to start off?

[497] **Darren Millar:** I can start, if you want.

[498] **Vaughan Gething:** Great.

[499] **Darren Millar:** Hello there.

[500] **Ms Denwood:** Hi.

[501] **Darren Millar:** I hope that you are one of my constituents—you are from the north, are you not? *[Laughter.]*

[502] **Ms Denwood:** I say nothing. *[Laughter.]*

[503] **Vaughan Gething:** I do not think the question is relevant to the Bill.

[504] **Darren Millar:** I would just like to clarify something. You would like to see the safeguarding elements of the Bill taken out and a new piece of legislation, in a different way, to address the safeguarding issues.

[505] **Ms Denwood:** Looking at the safeguarding element of this Bill, I do like what I see, and I am delighted that we are moving in this direction—absolutely. I do believe that to give it credibility, direction and challenge, it would be hugely beneficial for it to be separate and independent. Evidently, it has to link with many other forms of legislation, and it can link to everything that it needs to—we need to be very clear about this—but I do think that it needs to have scrutiny done independently.

[506] **Darren Millar:** So, you think that it is in danger of being lost, because it is such a wide-ranging Bill.

[507] **Ms Denwood:** I absolutely do.

[508] **Darren Millar:** Okay, and is that the view of the NHS in Wales, or are you just representing—

[509] **Ms Denwood:** I am representing north Wales—the Betsi Cadwaladr University Local Health Board. I am able to give its opinion, but, obviously, everyone has had the same opportunity to consult and inform in relation to the document.

[510] **Darren Millar:** Thank you. I would like to ask about information sharing, if I may. One issue that seems to crop up on a regular basis with serious case reviews is that information has not been shared properly, or there has been a breakdown in communication between the different partner agencies that are responsible for safeguarding, and that has been a failure that has sometimes, literally, led to tragic deaths. Do you think that the provisions in the Bill in relation to duties to require information to be shared are sufficient? Do you think that they build on existing legislation, or do you think that we can do away with them completely because existing legislation is more than adequate?

[511] **Ms Denwood:** I think that we do need to strengthen the governance around information sharing. I am well aware of other legislation and guidance. Speaking on behalf of the NHS, it is about how we are able to share that information, and about our technology and ability to retrieve data efficiently and quickly to provide that information. However, I do believe that we need to be very clear. Within this, with regard to information sharing and accountability, I do not see any clear reference to independent contractors from our GPs, as such. Obviously, we are looking at the NHS—it is identified there—but I think we need to be very clear about to whom we are referring and to build independent contractors into the information-sharing governance for safeguarding.

2.30 p.m.

[512] **Darren Millar:** Okay. So, because GPs are standalone, independent contractors, they will not necessarily be one of the agencies, if you like, that is attached to the Bill. That is very interesting. So, what is the current situation when a GP needs to blow the whistle with regard to a safeguarding concern that presents itself in his or her surgery? How is that fed into the process?

[513] **Ms Denwood:** There is legislation out there, and they are governed by the General Medical Council. Within that, there is clear guidance on sharing information. However, to strengthen that within the safeguarding arena, it needs to be included in black and white and there needs to be a clear reference to it.

[514] **Darren Millar:** So, it needs to be explicitly referred to on the face of the Bill.

[515] **Ms Denwood:** Yes. With regard to work with children, there are no difficulties in obtaining that information, but we get that challenge, and quite rightly so, because it is about relevant information. It is key in relation to data protection to have that relevant information that we are sharing on behalf of any investigation. However, I have to navigate many different pieces of guidance and legislation to have something in front of people to say what I require for the purpose of a, b or c.

[516] **Darren Millar:** You have made reference to GPs; what other independent contractors are we talking about?

[517] **Ms Denwood:** Optometrists—

[518] **Darren Millar:** Dentists?

[519] **Ms Denwood:** Yes. They have their own guidance and legislation, but I think that this would then encompass all of that.

[520] **Darren Millar:** It would consolidate it.

[521] **Ms Denwood:** Yes, absolutely. That is what is necessary.

[522] **Lindsay Whittle:** I am interested in hearing your views on combining the safeguarding boards for children and those for vulnerable adults, particularly bearing in mind that your title is the assistant director for both. We have heard from many children's organisations that do not favour it, but, surprisingly, on the adult side, there is a mixed reaction. What is Betsi Cadwaladr University Local Health Board's view, and your view, on that?

[523] **Ms Denwood:** Within BCU, following the Deputy Minister's statement early on, we started to look at this. As an organisation, we could see huge gaps when we looked at families, relatives and engaging people. Safeguarding hit all of the spectrums within that—the elderly, adults, children and young people, and it incorporated many different areas of abuse, including domestic abuse. Through our boards and our reporting framework, I then set up a safeguarding people at risk sub-committee. That clearly recognises and identifies that, although there are clear differences in safeguarding children compared with safeguarding adults, there are also some key similarities. That working together and cross-referencing has been fundamental for us to improve our services.

[524] **Lindsay Whittle:** That is very interesting. Sometimes I am in favour, but other times I am not, when I hear the evidence.

[525] **Ms Denwood:** The regional boards operate at the highest level. We are looking at that strategy and governance, and the clear direction from the national board. Then, underneath that, there are fora that are set up. They could implement our work for children specifically, or adults, and then feed in together. However, there have to be clear arms of cross-referencing, otherwise we are working in silos.

[526] **Lindsay Whittle:** Thank you for that; it was a very good answer.

[527] **Rebecca Evans:** Do you have any views on the financial implications of the Bill? It has been raised many times with us in evidence, as you can imagine. The NSPCC has said that the most obvious barrier to implementing the Bill is resourcing and funding. It said that significant upfront investment would be required to enable the rebalancing of service that needs to take place. What is your view with regard to funding? Is that something that you recognise?

[528] **Ms Denwood:** Yes, absolutely. In relation to referrals for children, for the LSCBs in north Wales, the configuration of finance is very different for the three boards. In total, we pay a £70,000 contribution. There is some challenge around that contribution within our organisation, evidently, given financial constraints and service redesign. There are differences of opinion in relation to the financial contribution. For adults, there has not been any direction for financial contribution, although I have given money as necessary. Absolutely, we need to have a clear formula that is around the guidance, governance and the challenge in relation to how that money is spent. However, equally for adults and children, we need a financial contribution for the board to be effective in undertaking its statutory functions and to get an outcome. We are looking for a positive outcome and to make a difference for children, young people and adults.

[529] When we look at the Bill in its totality, reference is made to the finance of the board only, obviously. However, I think that we need to look at this in totality. We have the finance there for social workers for training. We must not underestimate the need for training and education in relation to the NHS organisations. What I am trying to impress on the NHS is that every person that accesses our service is potentially vulnerable. On that basis, we need to be completely engaged, and that training and awareness must be equally distributed. We can have joint training, which is hugely beneficial, but many people in the NHS, such as porters, cleaners and administration staff, need a lower level of training, but that key awareness is

vital. I am waving that flag very fast and high.

[530] **Rebecca Evans:** With regard to the funding formula, several people have suggested to us that that should be on the face of the Bill. Is that something you would agree with, or would you be happy for it to come later?

[531] **Ms Denwood:** No, I think that it needs to be on the face of the Bill. I think that it needs to be a very clear statement, because there are financial challenges all around and I think that it needs to be there and clear. We do not want to get into fora, as we have been in, discussing financial contributions. We are participating in health, we are engaged, and we want that full engagement with our staff. I have included specialists in mental health on our LSCBs for their expertise in mental health and learning disability. So, we have a wide range of contributions to our activities and physical engagement, but we also need financial engagement across all sectors that is fair and accountable.

[532] **Vaughan Gething:** Are you concerned that prescribing a financial formula on the face of the Bill will end up being too restrictive? How will that transfer across to non-devolved functions such as the police, for example? The National Assembly could not require the police, as far as I am aware, to make a contribution to safeguarding, for example.

[533] **Ms Denwood:** That is something that has been highlighted and raised for children's safeguarding. Ultimately, all statutory agencies have a responsibility and are accountable for safeguarding. I do not think that it is restrictive. Ultimately, no-one is going to contribute otherwise. We cannot just have 'may'. We have had 'may' with regard to children. Even when we changed the governance in 2006 for safeguarding children, it was 'may contribute'. We have 'may contribute' again in this Bill. We need something at some point to say, 'You will financially contribute', because we are just going round in circles otherwise. We need to make a difference.

[534] **Kenneth Skates:** In terms of intervention, the Bill at the moment states that there is power to gain access to premises, but some witnesses have suggested that there should be a definition that allows professionals to also take vulnerable people to a safe place, but that it would only happen in a very small number of cases. Would you agree with that?

[535] **Ms Denwood:** I do in that small number of cases. It is about the ownership for that individual to be able to make choices if they are able, and that there is a clear assessment and threshold to do so. When we look at best-interest principles, we have to be very clear. These types of cases may be few and far between, but it is very difficult. There is also a challenge as to how we engage with human rights legislation, because we do not want to go down a path where we have a legal challenge because our legislation does not sit nicely with human rights legislation. That is something that we need to look at. However, further consideration needs to be given to that, and clarity within the detail of the regulation would maybe assist people to have a more informed ability to give a clear opinion.

[536] **William Graham:** We heard this morning suggestions that it would be better to have two boards—one for adults and one for children. Do you have a view on that?

[537] **Ms Denwood:** I do. I spoke earlier about that, but I believe that this is something that we need to strive for. I believe that the regional board should be a joint board, with governance arrangements underneath to ensure that we are not missing a local activity. However, the regional board as a strategic driver should, in my opinion, be a joint board.

[538] **William Graham:** Thank you for that; I missed your earlier evidence, sorry. The advisory group has suggested that perhaps the national board should include the involvement of individuals at risk of harm. Do you have a view on that?

[539] **Ms Denwood:** Can you say that again, sorry?

[540] **William Graham:** The advisory board suggest that individuals at risk of harm should be members of that board—some of the clients, as it were. Would you find favour with that?

[541] **Ms Denwood:** I do not think that they should be standing members of that board, but it should be very clear that there should be public involvement to guide and challenge the activities of the board. The difficulty at a strategic level is that we may lose something from that, but public members, children and such groups must absolutely inform the activities of the board.

[542] **William Graham:** As a corollary to that, what is your view on peer advocates? We have heard that fairly well argued this morning.

[543] **Ms Denwood:** I absolutely agree that there should be advocates for adults at risk. If we look at independent mental capacity advocates and independent domestic violence advocates in relation to domestic abuse, there is a cohort of patients, or adults, out there who have no-one to speak on their behalf. It is really important that we make reference to that and consider that inclusion.

[544] **Darren Millar:** Do the community health councils not perform the advocacy roles sufficiently well as far as the health side of things is concerned?

[545] **Ms Denwood:** There is a key element of that, absolutely. I cannot go into great detail; it is not my ultimate speciality, but there is that ability. However, when we are looking at safeguarding and that key information, that should be separate from CHCs.

[546] **Darren Millar:** Okay. Just to confirm, you believe that it should be independent advocacy, not provided or funded by the individuals sat around the safeguarding boards.

[547] **Ms Denwood:** Absolutely.

[548] **Rebecca Evans:** You mentioned adults at risk. Are you satisfied that all vulnerable adults who might need some safeguarding interventions would be captured under that definition in the Bill, or do you think it could be broadened?

[549] **Ms Denwood:** I have gone over and over this quite intensely, I have to say. As I say, we need clarity because the minute we have subjectivity, we have challenge. So, we need clarity of what we are referring to, and the categories need to be clearly defined within regulation. I have gone through what is in the Bill. Section 104 of the Bill talks about where an adult is experiencing or is at risk of abuse or neglect. It then goes on to refer to ‘needs for care and support.’ Part of my thinking was whether it is ‘and’ or whether it is ‘or’, and it could be either/or. They could be adults at risk who do not need any care, but who need support in a different way, but they may also be an adult whose care, lifestyle or needs are not being met for whatever reason and who fits into that category. You then have a caveat, because you have ‘and...as a result of those needs.’ I would not put ‘those needs’ in there; I would say, ‘as a result, is unable to protect himself or herself against abuse.’ I have gone through that on many occasions.

[550] The care and support element feeds through the whole Bill. If you lose that, you potentially lose the function of the adult safeguarding board. We do not want it to go back, in the case of children, to an area child protection committee, or to adult protection—it is about safeguarding. We need to start working on preventative activities, such as moving in early, early identification and early intervention. We will not, then, have adults who are

experiencing abuse or are at risk of abuse.

2.45 p.m.

[551] **Rebecca Evans:** That definition includes the word ‘neglect’, but that is not defined within the Bill. Do you think that further definition would be useful? If so, could you point us to some other pieces of legislation or guidance that you would use that offer a suitable definition of neglect for this purpose?

[552] **Ms Denwood:** I cannot direct you to another definition. We are working to the all-Wales adult protection procedures; neglect is defined in those. When we talk about neglect, if I am looking from an NHS point of view, it is about neglect of care and treatment that can have a detrimental outcome. If I am looking at pressure care, for example, which is a hugely topical and important item on the agenda, if we do not care for an adult appropriately and we neglect their needs—or if somebody neglects the needs of someone who requires care—there may be a devastating outcome. I believe that neglect needs to be included. It is very difficult to identify or obtain clarity, because there can sometimes be a dripping-tap effect with neglect. You have to be very clear with documentation and identification as to the key standards and thresholds that are imposed. There is neglect of children, but adults who are at risk equally need to be protected.

[553] **Elin Jones:** To follow on from that, you mentioned in your response the importance of preventative services and work. The Bill, as it is currently drafted, says that local authorities must provide and arrange for provision of preventative services. However, it does not provide that duty for local health boards on the face of the Bill; it just says that you have to have regard to the importance of preventative work. Do you think that parity of duty for local authorities and local health boards would be useful in that respect?

[554] **Ms Denwood:** Yes, I do. If they are accessing any of our NHS services, that would be useful.

[555] **Darren Millar:** I have two questions. First, in terms of the national board, there was a suggestion this morning when we were taking evidence from social services departments that the current provision on the face of the Bill suggested that the board could be either regulatory, in terms of its work, or simply about adding value, giving advice and spreading good practice, in terms of the outputs. What is your view? Should it be both, or one or the other?

[556] **Ms Denwood:** It should be both.

[557] **Darren Millar:** How do you think that that might conflict with other inspectorates that already exist in Wales, such as the Care and Social Services Inspectorate for Wales, Healthcare Inspectorate Wales et cetera?

[558] **Ms Denwood:** I think that we should be working collaboratively. It is really important, when we look at the national board, that we have that governance arrangement around our regulators and assessors, so that we are, quite clearly, looking at the highest standards. If we leave those functions separate, then regulations, assessments and criteria are different and thresholds are challenged. I think that those things need to be clearly embraced in this.

[559] **Darren Millar:** What you are suggesting is another tier of regulation for health, but is that not the last thing we need?

[560] **Ms Denwood:** No, because you still have HIW. So, it is about informing and working

with that national board. It is not a separate body; we do not want anything sitting outside and working on its own. We need to be working together in relation to this.

[561] **Darren Millar:** Do you think that it would give an opportunity for joint work on safeguarding by the inspectorates?

[562] **Ms Denwood:** Yes, I do.

[563] **Darren Millar:** Would you expect to see those regulators sitting around the table on this board?

[564] **Ms Denwood:** Absolutely; that is what I mean.

[565] **Darren Millar:** My final question is in relation to your role. You are the assistant director for safeguarding children and vulnerable adults.

[566] **Ms Denwood:** I am not, actually.

[567] **Darren Millar:** What are you now, Michelle? *[Laughter.]*

[568] **Ms Denwood:** I used to have that role. From 1 October, I have been the deputy director of nursing and safeguarding.

[569] **Darren Millar:** Does every local health board in Wales have someone like you?

[570] **Ms Denwood:** Absolutely not. *[Laughter.]*

[571] **Vaughan Gething:** We kind of asked for that.

[572] **Ms Denwood:** Sorry. *[Laughter.]*

[573] **Darren Millar:** What arrangements do other health boards have to ensure that safeguarding is taken seriously? Do we need to put something on the face of the Bill to ensure that people like you are in senior positions within health boards, so that this agenda is taken seriously?

[574] **Ms Denwood:** In a number of health boards, there are deputy directors of nursing who have safeguarding as part of their portfolios. My Master's degree in childcare law and my activities enable me to influence our board. As a deputy director, I am on that health board and I am influencing it to make change. I am involved at the highest level. We recognise that there are difficulties, but our health board is very much in favour of my role and position.

[575] **Darren Millar:** Should there be a statutory obligation on health boards to appoint someone with those sorts of responsibilities?

[576] **Ms Denwood:** I think that it may be very difficult to get that totality of skill. At the moment, there are named nurses for children. I have kept that title in my portfolio because we are looking at regulation, and it is about the named nurse working at a higher level. So, I am able to influence the board. We do not have people saying, 'Oh, we could be looking at that,' in relation to adults. Part of this is that I am pushing for our health board to have a key named doctor for the safeguarding of adults. It is really important to drive the medical agenda and the strategic agenda, so that they work together. It is vital for children, and it needs to be the same for adults. I am working on that at the moment.

[577] **Darren Millar:** So, that is the sort of good practice where you would expect advice

to be given by the national board, rather than being on the face of the Bill.

[578] **Ms Denwood:** Yes.

[579] **Vaughan Gething:** Are there any further questions? I see that there are not. It appears that we have come to the end of the session. It has been very interesting. Thank you for your evidence today. If subsequent questions arise, we may write to you to try to clarify issues or seek further information. You will receive a copy of the transcript of today's session. If there any anomalies or corrections that you wish to make, you can do so before the Record is made public.

[580] **Ms Denwood:** Okay, thank you.

*Gohiriwyd y cyfarfod rhwng 2.52 p.m. a 3.01 p.m.
The meeting adjourned between 2.52 p.m. and 3.01 p.m.*

Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 2 Social Services and Well-being (Wales) Bill: Evidence Session 2

[581] **Vaughan Gething:** Good afternoon and welcome to today's final session of our Stage 1 inquiry into the Social Services and Well-being (Wales) Bill. We are delighted to be joined by the Children's Commissioner for Wales, Keith Towler, and Dr Sam Clutton from the office of the Children's Commissioner for Wales. As you know, there will be a series of questions—you have been here before but, just to reconfirm, if any questions are asked or comments are made in Welsh, you can use the translation on channel 1 of the headsets. There is no need to press the button on the microphones in front of you; they will come on automatically.

[582] I will ask the first question, then we will move around the table for a range of questions from other Members. Thank you for the written evidence, which we have had a chance to read and consider. Your evidence strikes a fairly central challenge to the manner in which the Welsh Government has produced the Bill and the intentions behind it. In particular, you refer to the United Nations Convention on the Rights of the Child and you set out your view in very clear terms that the Bill as drafted breaches the best-interest principle in article 3. You set out section 13 of the Bill, 'Refusal by a child of a needs assessment', as the clearest breach of the best-interest principle. Section 13 sets out that children aged 16 or older can refuse an assessment. Can you confirm whether that is part of your concern about the breach of the best-interest principle? The section then sets out that children themselves, when they have sufficient understanding, may refuse an assessment. To me, that looks like Gillick competence—children are able to make a decision if they are competent to do so. I am interested in why you see that as being a breach of the best-interest principle.

[583] **Mr Towler:** Okay, shall we start with that bit?

[584] **Vaughan Gething:** Yes, please.

[585] **Mr Towler:** Article 12 of the UN Convention on the Rights of the Child, as you all know, makes it really clear that children and young people should have an opportunity to voice issues that are important to them and that professionals and carers should listen to what children and young people talk about. However, the primacy of article 3, in relation to best interest, is a really complex area. I do not think that it is compatible with the UN Convention on the Rights of the Child to confer the opportunity to refuse an assessment if that is contrary to the best-interest principle. Article 12 seeks to make sure that, in practice, social workers, teachers, health practitioners and others work with children and young people to understand

what they are saying but without losing sight of the best-interest principle. That is a really complex thing to get right in relation to the Bill, but it is central to the convention itself.

[586] On the other issues that you asked about in relation to the best-interest principle, in the absence of children's rights impact assessments, the point that I am trying to make about the drafting of this Bill is that, in it, we do not have the criteria—the thinking—from the Government in relation to the UN convention that convinces me that this 'people' approach, bringing concern for children, young people and adults into one arrangement, is actually in the best interests of children. It would have been really helpful if the Welsh Government had been able to publish its children's rights impact assessment when it released the Bill, because that would enable me, as the children's commissioner, to make sure that the motivation for doing this is right. In other words, I think that it is the Deputy Minister's vision that this will increase protection and support of services for children and young people, but, as it is currently drafted, I do not see that. I am trying to point out that the Bill, on its own, is insufficient to enable me to determine whether the vision that the Deputy Minister articulates will be in the best interests of children.

[587] **Vaughan Gething:** In your evidence, you set out that section 13 is the clearest breach. I am struggling, because, at face value, this would appear to be a paternalistic interpretation. If, say, a 15-year-old who is perfectly capable of understanding the nature of the risk that they are taking makes a decision, you appear to be saying that they are not entitled to refuse the assessment. From the way in which the section is drafted, that is how I would expect it to be interpreted.

[588] **Mr Towler:** Sam is desperate to get in here.

[589] **Dr Clutton:** In relation to the context of social services and prevention, should a professional make a referral in relation to a child who is aged 15 or five because of concerns about parenting capacity, the child is not necessarily well-placed to understand that that parenting capacity might be problematic if that is the parent with whom the child has grown up and whom the child understands. That is where it is different from Gillick competency in relation to healthcare, where a medical intervention can be explained to a child and a medical professional is involved in the decision-making process. So, on the point of refusing an assessment, there may be problematic parenting capacity, for example, which, from the child's perspective, is not problematic, because that is what they have grown up with, but we would still want to intervene in their best interests.

[590] **Vaughan Gething:** That leads to problematic assumptions about the capacity to judge best interests. It still seems that you are saying that, if a professional says that there are problems with parenting skills within a family, even if the child meets the requirements of the Bill in understanding the nature of the decision that they are making, the view of the professional that there should be a needs assessment will override. Of course, there is a catch-all and a caveat within the section, as drafted.

[591] **Dr Clutton:** I think that the fundamental basis of social care intervention in Wales is that professionals make those expert decisions in relation to whether parenting capacity is problematic, or not. That is why we have social care intervention.

[592] **Lynne Neagle:** On this point, there is provision for the views of the child to be overridden in the case that there is a risk of abuse, neglect or other kinds of harm. Would that not provide an appropriate safeguard in the kind of circumstances to which you have referred?

[593] **Dr Clutton:** The spirit of the Bill is around prevention and early intervention, and if

we wait until the point at which there is a risk of abuse, neglect, or harm, does that not run counter to the fundamental intentions of the Bill? Should not the assessment of care and support needs be about providing support at the earliest possible point?

[594] **Darren Millar:** I would be grateful if you would explain a bit more about the rationale behind your objection here, because I did not quite grasp it from reading it. From what I gather now—you just have to confirm that my thinking is right—what you are saying is that, sometimes, the best interests of the child might be to override what the child wants, and the Bill does not provide for that in terms of an assessment. Is that correct?

[595] **Mr Towler:** Yes. In essence, that is what we are talking about. The principle behind article 12 in terms of that practice, whether that is in social work, health work or whatever, is about—I hate to use the word ‘co-production’—working with the child. It is not about overriding a child’s view on something and not explaining what is happening. This is about working completely in partnership with the child to help them to understand what is in their best interests. So, article 12 is about effective practice on a day to day basis, in which all of us would engage. So, you are absolutely right. It is like a parenting argument about setting boundaries for children. It is about saying, ‘We are the responsible adults here and the responsibility for the best-interest principle is ours’. The convention recognises, by virtue of their age, that children are vulnerable by virtue of being young and are developing human beings. It is not that we deny them the voice; we want to listen to and understand what they say, but we cannot divorce from that our responsibility, as adults, to act in their best interests.

[596] **Darren Millar:** So, what we are saying is that we are all on the same side here. We all want to achieve a greater voice and better protection for children, and that we want to listen to the voice of children in any decisions that are made, but there has to be this overriding principle of the best interests of the children being served. You do not feel that the Bill currently provides for that. How would you like to see the Bill change specifically to address your concerns?

[597] **Mr Towler:** We have done some work on a child rights impact assessment of the Bill, which will be finished tomorrow; we will send it to you to take a look at. The principle that we currently have in relation to best interest is articulated in the Children Act 1989 and the Children Act 2004. It is the paramount principle in relation to the protection and delivery of services for children and young people. So, the question that I would have to ask myself, as the children’s commissioner, is whether the Bill, as drafted, moves backwards from the position that we already have in legislation. In our child rights impact assessment which, I assume, officials will have done for the Welsh Government in terms of determining this, although I have not seen that yet, we have tried to determine that. I need to see or understand the rationale for the current drafting of the Bill. I talked about eligibility criteria and the assessment process, but if we knew what the assessment process and the eligibility criteria were, we probably would not be having this debate. It is very difficult to argue about the Bill divorced from seeing the eligibility criteria and the assessment process.

[598] **Darren Millar:** So, there is a timing issue in terms of—

[599] **Mr Towler:** There is a timing issue, and something about the transparency of the child rights impact assessment. If that had been released at the time that the Bill was released, we might be able to see the Deputy Minister’s vision, which she articulates really positively, with the child rights impact assessment, enabling us to draw a view about whether the logic for the Bill is driven from that driver. I cannot see that at the moment. Does that make sense?

[600] **Darren Millar:** That is helpful. So, that piece of work will be published by you tomorrow.

[601] **Mr Towler:** We will be finalising our own piece of work on the child rights impact assessment. We will share that with you, so that you can see our thinking on that.

[602] **Vaughan Gething:** We will go to Gwyn Price next and then I will come back to this side of the table. I will try to go back and forth.

[603] **Gwyn R. Price:** Good afternoon to you both. What is required to address the concerns that the content of the Bill, as currently drafted, might create additional barriers for disabled children in accessing services?

[604] **Mr Towler:** Under current legislation in relation to children in need, which this Bill removes, disabled children and young people are clearly identified as children in need. The Bill replaces that with a two-stage process: first, that a child or young person has been assessed as having a care and support need; and then, eligibility criteria to assess whether they are eligible for a care and support need. Under current legislation, with the Children Act, we are very clear that disabled children and young people are children in need. Again, I return to the point that I was making to Darren earlier: without seeing the assessment process and the eligibility criteria, I am concerned that for disabled children and young people, because they are not mentioned on the face of this Bill, this could, in relation to the convention, be a retrogressive step. In other words, the protections currently afforded could be undermined. Do you want to add anything to that, Sam?

[605] **Dr Clutton:** No.

[606] **Gwyn R. Price:** The concern is that, if you had seen something before, perhaps you would not be saying what you are saying today.

[607] **Mr Towler:** Yes. I think that there is something about the clarity of this in relation to the child rights impact assessment that would have enabled me to have some confidence that the vision that the Deputy Minister has articulated, which is a very solid vision, is backed up with something that actually has protection in place for children as currently described, and which this Bill builds on. However, I cannot yet see that.

[608] **Dr Clutton:** The fact remains that, under section 17 of the Children Act 1989, a disabled child is a child in need. That provision is lost in this Bill.

3.15 p.m.

[609] **Gwyn R. Price:** Thank you for clarifying that.

[610] **Darren Millar:** May I—

[611] **Vaughan Gething:** Hang on.

[612] **Darren Millar:** It is on this issue.

[613] **Vaughan Gething:** I call Darren Miller on this issue and then William Graham.

[614] **Darren Millar:** I am sorry to jump in. To clarify: why is it lost? Is it because there is this broader category of disability on the face of the Bill, which means that you may be disabled but not in need?

[615] **Dr Clutton:** It is because the criteria for the conditions that must be met for a child to be considered in need under section 17 of the 1989 Act include three issues, one of which is that he or she is disabled. However, in the consideration of a child who has care or support

needs in the Bill, that he or she is disabled is not one of the criteria that are set out, except there is an assessment that shows that they have care and support needs and then there is an assessment that those care and support needs meet eligibility criteria.

[616] **Darren Millar:** However, there will be children who are disabled who do not have specific care and support needs, will there not? So, is it not fair to treat them in the same way as everybody else? People who are disabled are not automatically in need or vulnerable, are they?

[617] **Dr Clutton:** What the UN convention and the Committee on the Rights of the Child say is that, under article 23 and general comment No. 9 on the rights of disabled children, we need to afford special protection to disabled children and young people.

[618] **Darren Millar:** Okay, but you must recognise that not all disabled children will be vulnerable or in need.

[619] **Mr Towler:** I would recognise that, but I would also recognise that there are an awful lot of parents of disabled children and young people who talk every day about fighting to win care and support for their children. So, the current position is already quite difficult for those children, and the opportunity for this Bill to make sure that those care and support needs are met when assessed and when it is appropriate is what we are concerned about here. In terms of the casework that we get into the office, it is a considerable issue. I am sorry if I sound like a broken record already when we are only 10 minutes in, but I must say that if we had the child rights impact assessment, we would have quite a few of these answers. Without sight of that, I think that I am duty bound to raise these issues.

[620] **William Graham:** To turn to Part 7 and the establishment of a new national independent safeguarding board, you have expressed concern about it being for both adults and children. Would you like to expand on your concerns?

[621] **Mr Towler:** I have always been supportive of the idea of having an independent national chair in relation to a safeguarding board. Some of this goes back to the first question about the motivation for the Bill and the aligning of the procedures for children and young people and for vulnerable adults. Safeguarding vulnerable adults is a massive task in itself, so the concern that I have with the establishment of a national board that will focus on children and adults is that there will be a huge workload. It will be a massive workload. The Welsh Government and the Deputy Minister have been clear in some of the things that Gwenda Thomas has said that we have had a legitimate concern about local safeguarding children boards in some areas and whether they have been able to fulfil their current obligations. Lots of work has gone on that has focused on making sure that we get safeguarding and child protection practice to where we need them to be. That is a huge agenda in itself. Again, the vulnerable adults agenda is massive. My concern about aligning the processes and placing those tasks with a national board is that the workload in relation to the vulnerable adults part of that, which is equally as important as the children part, could skew the focus of the board, because the workload might be seen to be greater for adults than it is for children. I do not mean to pitch the needs of one group against another. My concern is that we are setting a very large agenda for one national board.

[622] **William Graham:** If you favour two boards, in essence, there are resource implications. Would you be concerned about that, because we are told that the Bill is cost-neutral?

[623] **Mr Towler:** You are right, the workload is enormous, and we are seeing already in the field that social services, health, the police and other organisations are moving towards regional arrangements for local safeguarding children boards. The critique of how effective

the local arrangements for LSCBs have been has resulted in people not waiting for the Bill, but beginning to move—probably with some justification—towards more regional arrangements. That is without losing a sense of the local arrangements when they are positive, and how those feed in. So, as this Bill proceeds, and as that work proceeds, there has to be a pragmatic approach to making sure, with the LSCB arrangements, that if there is to be accountability to a national board, and the national board has a relationship with Government, it is working in a very sensible direction and we do not lose the momentum that we are getting following some very high-profile concerns around safeguarding children. So, on the point that you are making about whether we need two boards or one board with two very distinct work streams, and the practicalities of that, I would be very interested in working with Government on that. There are two very distinct work streams. Bringing them together in one—I do not think that that is possible.

[624] **William Graham:** Finally, would you be concerned about the lack of local accountability?

[625] **Mr Towler:** There has been some concern that, even moving from local safeguarding children boards to more regional arrangements, we will lose a local focus, so that local intelligence and information could get lost, particularly in relation to preventative services. If we are honest, when we look at LSCBs, with some exceptions, we would say that the broad safeguarding bit—safeguarding children and young people—is everybody’s business and that that locality has been marginalised to child protection work. LSCBs have centred on serious case reviews and that level of work. As I say, there are some exceptions to that, but from the discussions that I have had, particularly with directors of social services and heads of children’s services, who, in the main, are trying to drive forward the regional agenda in partnership with others, I know that they are very focused on making sure that they do not lose that local activity, particularly in relation to preventative services. That is clearly on people’s agenda, and very pragmatically so.

[626] **Vaughan Gething:** I call Lindsay Whittle and then I will move to the other side for Rebecca Evans and Ken Skates.

[627] **Lindsay Whittle:** I have two quick questions. This is an extremely complicated Bill that covers a whole raft of individuals. Commissioner, would you like to see the Welsh Government bring forward a separate Bill for children?

[628] **Mr Towler:** I am not entirely sure that that is necessary. What we need is the child rights impact assessment; in other words, we need a clear basis from the Welsh Government about this Bill building on what is in the best interests of children, and we need the eligibility and assessment criteria to go with that. The other side of this is the inspection and regulation process that is going through. I am not entirely sure that we need a separate Bill for children, but we do need clarity.

[629] **Lindsay Whittle:** The next question, which is probably very easy to answer, is about an amendment to the Bill against the smacking of children. I guess that you will still be fully supportive of that amendment when it comes—and it will come.

[630] **Mr Towler:** Yes, I am very much in support of that. Since we lost the children and young people’s Bill from the legislative programme, which I thought would be a really good opportunity, I have said continuously that, in relation to the defence of reasonable punishment, whatever that might be—and you and I have articulated this a couple of times—or, in other words, the smacking of a child, the Welsh Government should take the earliest legislative opportunity to ban the smacking of children. That opportunity presents itself with this Bill in the shape of an amendment. It would provide clarity for practitioners to be able to work with parents in a positive way, and be unequivocal that smacking and hitting children is

wrong. The UN Convention on the Rights of the Child would make it very clear that smacking children is in contravention to the convention. It would not be a retrogressive step for the Bill not to do this, because we do not currently have that protection in place, but in terms of a child rights impact assessment that could show what benefits could be brought to children by including an amendment in relation to removing the smacking of children, that would be very helpful indeed.

[631] **Lindsay Whittle:** It is important to put that on the record: this is about the wellbeing of children. I know that the Government in London will argue that we do not have powers over the criminal justice system, but we are not talking about that; we are talking about the wellbeing of children. You are right, Keith Towler: this is a golden opportunity. We know that it will come in years to come—for goodness' sake, let us do it now. Thank you for that, Chair; it is on the record now.

[632] **Vaughan Gething:** That was a comment, rather than a question. On this specific point, we have Ken, then Darren, and then we shall move to Rebecca for a different series of questions.

[633] **Kenneth Skates:** Just on this point, could you confirm whether you would consider that shaking should be considered alongside the smacking, slapping or spanking of children?

[634] **Mr Towler:** Shaking a child?

[635] **Kenneth Skates:** Yes. Would that be 'reasonable punishment'?

[636] **Mr Towler:** The concept of reasonable punishment in itself is not one that, in terms of a physical act, I could possibly ever agree with.

[637] **Kenneth Skates:** Okay. Would you ban shaking?

[638] **Mr Towler:** Yes, I would, in terms of violence towards a child.

[639] **Kenneth Skates:** So, you would recommend including shaking in an amendment, if one is brought.

[640] **Mr Towler:** Indeed.

[641] **Vaughan Gething:** Darren, on this point.

[642] **Darren Millar:** Regardless of people's views on the physical chastisement of children—and there is a range of views around the table—do you not think that if this were to be an aspect of this Bill, it could potentially jeopardise the delivery of the Bill completely, given that we would get bogged down in that one particular issue, so that other areas of the Bill would perhaps not receive appropriate attention? Also, given that there would undoubtedly be a legal challenge from the UK Government, no matter what colour it might be now or in the future, is it not inappropriate to try to tackle and deal with that issue at present?

[643] **Mr Towler:** I am going to sidestep that question and say that it is a matter for you politicians to determine, actually. My job, as the human rights institution for children, is to say what I think is in the best interests of children, and there is no doubt in my mind that banning smacking is in the best interests of children. My view about taking the first legislative opportunity to do that is one that I will always hold. However, on the politics of this between the Welsh Government, the Assembly and the UK Government, I recognise that the UK Government has a particular position and stance on this, but my position cannot be deflected from the politics of the matter; I think that that is for the politicians to determine.

[644] **Darren Millar:** That is a good politician's answer, actually.

[645] **Mr Towler:** Thank you. *[Laughter.]*

[646] **Rebecca Evans:** Turning now to Part 6 of the Bill, which looks at services for looked-after and accommodated children, I know that you referred to this Part of the Bill in the Children and Young People Committee as a bit of a missed trick. Could you tell us what specific amendments you would like this committee to recommend, in order to fulfil the Welsh Government's policy intentions and to strengthen its approach to delivery for looked-after children?

[647] **Mr Towler:** Could I ask you to take that one, Sam?

[648] **Dr Clutton:** Yes.

[649] One of the considerations to be taken from the child rights impact assessment was that there was an indication early on from the First Minister that this Bill would be used to strengthen arrangements for looked-after children. The explanatory memorandum sets out quite clearly that this restates a lot of existing provision in relation to looked-after children. One of the things that we have been looking at is the 'Towards a Stable Life and a Brighter Future' regulation and guidance issued by the Welsh Government in 2007 under the Children Act 2004. It focuses on the stability of placements and support in relation to access to health and education, et cetera. So, it is really about the delivery of all the articles of the UNCRC for those children who are looked after by corporate parents. Also, there does not seem to be any reason why those provisions could not be included within the Bill to strengthen or supersede the regulation and guidance that we already have in Wales in the best interests of looked-after children.

[650] **Rebecca Evans:** I have one more specific question. Some concerns have been raised with us that in sections 89 to 96 of the Bill, which describe the categories of young people who are entitled to support, the five categories used mirror those used by the prison service. Some people have suggested to us that that is not really an appropriate way in which to categorise and look at looked-after children. Is that a concern that you share and would you offer different categories, or is it something that you are comfortable with in the Bill?

3.30 p.m.

[651] **Dr Clutton:** In terms of the way in which the categories are set out on the face of the Bill, there is a clear need for greater clarity in terms of levels of eligibility for young people leaving care in different circumstances. However, I do not think that the commissioner would be at all pleased if those professionals and services working with young people were to refer to them as a 'category 1 young person', or a 'category 3 young person'. That is where it becomes problematic—not in terms of a clear understanding of eligibility related to levels of need, but, if that language was to move into practice with young people, then it would be problematic.

[652] **Mr Towler:** That would take us back to the principles contained within the UN Convention on the Rights of the Child, which talks about the potential of individual children, their care and support needs and the provision of services, and their participation in decision making. It is centred on children's needs as individual human beings, rather than as categories.

[653] **Vaughan Gething:** On this point, William Graham has a question, before we move on to Ken Skates's question.

[654] **William Graham:** We have not had the opportunity to see the report from the Children and Young People Committee yet, but do you have a view on fostering into adoption in terms of enhancing children's rights?

[655] **Mr Towler:** Are you referring to the opportunity in terms of permanence for foster parents to become adoptive parents?

[656] **William Graham:** Well, the greater chance of that happening, shall we say? That is, that it is a part of the selection process.

[657] **Mr Towler:** There is no doubt, in terms of some of the casework that we have done as an office, that, where children are seeking permanence, and foster parents would be keen to move to adopt those children, where it can happen seamlessly and it is in the child's best interests, it clearly should take place. There are lots of anxieties for children, as you know, in the looked-after system, particularly around the transition from care to independence, which is what Ken Skates's work has picked up. Some of the issues for children in foster placements are that they become very anxious at a point at which their educational futures are being determined and their life chances are being affected, particularly if they are being removed from a foster parent with whom they have developed a warm and loving family life. That is coupled with the resource issue that local authorities face in losing a foster parent to those children and the constant problem of the recruitment of foster parents. That is a real issue, but, from a child's point of view in relation to permanence, there are some real benefits for children and young people in that situation.

[658] **Kenneth Skates:** Out of interest, to what extent do you think the When I am Ready scheme could be complementary to this Bill? When I was developing that, I was told by a number of organisations, including those representing children in care, that legislation is not always the best way to achieve the desired results and that a scheme may be able to achieve those results faster and better. Do you agree with that? Do you see the When I am Ready scheme as being complementary, or is it insufficient, as it is not law?

[659] **Mr Towler:** I do see it as being complementary. The eligibility criteria and the work that you have done through the When I am Ready scheme would be a marriage made in heaven, particularly in relation to the transition from care to independence, and particularly for those young people who are not choosing further education, in an academic sense, as their route to future life. So, there are a lot of young people who become very anxious, if they are not in continuing and full-time education, as they might want to pursue another route in life, that those opportunities are not afforded to them. So, if we could match up the When I am Ready scheme with the eligibility criteria and then think about the regulation and inspection process, we could find some practice developments that could create change where law-making would not be required, but we would be very clear. The other side of that, which we touch on our response, in relation to information being provided to children and young people in a way in which children and young people can understand it, is that the provision of local and national information for children in our looked-after system about their rights and entitlements would go an awful long way towards achieving this.

[660] **Vaughan Gething:** Before I go around the table to ask for questions from other Members again, I would like to tidy up a couple of points. We have not dealt with this yet, but, in your response to the White Paper, you set out the issue of parental consent to assessment of need as being the single-most important issue that needed to be addressed. The Bill sets out that a parent can refuse an assessment for a child under the age of 16. I know that you reference this back to the point about best interests. However, article 3 refers to the need to take into account the rights and duties of a child's parents. So, how do you marry-up the whole wording of article 3 with that?

[661] I then want to move on to the duty to promote co-operation, but perhaps you could deal first with that point about parent refusal of an assessment of need.

[662] **Dr Clutton:** In terms of parental refusal of assessment of need, there is evidence from practice that adult service practitioners, where they have a concern about the parenting capacity of one of their service users, are unlikely to refer before it reaches the point of a child protection issue. This is partly because they are concerned that, in needing to seek consent from their adult service user to make a referral and request an assessment of their children as children in need, they may disengage them from the adult intervention, such as a substance misuse intervention, where the parent has substance misuse issues. That is clearly not in the best interests of the child, because the earlier we can get in to give support to those families and to support adult service users in their parenting capacity, the better the outcomes we are likely to secure for those children.

[663] **Vaughan Gething:** It looks or sounds like enforced intervention, if a parent does not want to consent to a needs assessment of a child under 16. Bearing in mind article 3 in its full form, would that intervention be in the best interests of a child? Are you concerned about the reality of disengagement, and are people, in practice, too frightened to engage and intervene? Are you concerned about the drafting of the Bill, because it contains a catch-all where a local authority can nevertheless undertake an assessment?

[664] **Dr Clutton:** The point at which the Bill allows for that intervention to take place is, in the main, at the point where you would want to make a child protection concern instead of a child in need concern. It is where there is a risk of harm, neglect or abuse. In terms of supporting the best interests of and better outcomes for children and young people, there is a need to intervene as soon as possible. That is what the flagship programmes of Welsh Government, such as Flying Start, Families First and integrated family support services, are built on: the need to work with whole families and to engage with parents and children at the same time. If we cannot share information, there are no clear referral pathways or the referral pathways do not appear to be open to adult services, we know that does not support best practice in terms of good outcomes for children. There is a lot of evidence in relation to that.

[665] **Vaughan Gething:** In terms of the way in which the Bill is drafted, are you saying that you wish to see this section removed so that a parent cannot refuse an assessment?

[666] **Dr Clutton:** Yes.

[667] **Vaughan Gething:** Okay, that is absolutely clear. Darren, on this point?

[668] **Darren Millar:** It is not on this point; it is on a separate point.

[669] **Vaughan Gething:** Okay. Section 144 of the Bill on arrangements to promote co-operation for children restates section 1 of the Children Act 2004, and inserts a section on wellbeing. I understand from the evidence some of the process points around the assessment, which you spoke about earlier, and the impact assessment, but I am interested in the content now. Are you satisfied that the content of section 144 advances the interests of children or not? There is something about the process of how you get somewhere, but it is also about what is in the Bill. Do you think that what is in the Bill is a sensible measure that will enhance and improve the interests of children in Wales?

[670] **Mr Towler:** Sam has done some work on our children's rights impact assessment.

[671] **Dr Clutton:** There is no clear evidence to suggest that this will give greater effect to the UN convention or that it will enhance children's rights, but there is no evidence at the

moment either that it will be retrogressive. However, the decision-making process in relation to making that change is fundamentally wrong. Changes to existing legislation for children where the due regard duty is applied should be made on the basis that they will give greater effect to the convention. However, the explanatory memorandum is quite clear that these changes are being made in order to align arrangements between adults and children. In the submission, what was questioned was the principle behind the reason for the decision, and whether the due regard duty had been applied or not. In terms of how that will affect the way in which services promote the wellbeing of children and young people or not, elsewhere in our submission, there is a reference to one of the domains of wellbeing in relation to securing rights. The commissioner's main point in relation to that was that, in securing those rights as applied to children and young people we need direct reference to the UNCRC. In terms of the actual definition of 'wellbeing', that was the only problematic issue that the commissioner identified. The issue within the submission is that changes to existing legislation should be made only if an assessment using the due regard duty suggests that it will give greater effect to the UNCRC, or at the very least, respect it.

[672] **Vaughan Gething:** I think that my question was on a slightly different issue. I understand, from reading your submission, that you have a concern about the process and you say that there is a breach from not undertaking that process clearly. However, I am interested in the wording as it is and inserting the wellbeing duty as drafted, which includes the welfare principle from section 1 of the Children Act 1989. Do you see that, as it is in the Bill, as advancing the interests of children from where we are at present? Do you see that as an advance or not?

[673] **Mr Towler:** It is difficult to answer.

[674] **Dr Clutton:** I think, at the very least, it respects the position we are in at the moment, and were the securing rights element to be aligned directly to the UNCRC, as it applies to children, then, yes, it would give greater effect to the UNCRC.

[675] **Vaughan Gething:** Okay. Darren Millar is next, on a different point.

[676] **Darren Millar:** One thing that many witnesses have indicated that they would like to see as a result of the Bill is the establishment of independent advocacy for people in need. You are obviously a fantastic advocate for children already, but what are your views on independent advocacy? Is there enough of it in Wales, and is what is contained in the Bill sufficient to deliver on that Welsh Government aspiration?

[677] **Mr Towler:** You will obviously be aware of my review of independent professional advocacy for looked-after children, care leavers and children in need, 'Missing Voices'. I was disappointed not to see on the face of this Bill direct reference to independent professional advocacy for children and young people. I conducted my review using the powers of the commissioner a year ago and had very good, productive discussions with Ministers and officials about where we need to get to. However, over the last year, I have been disappointed with the progress that we have made. I hear from some providers that the position in relation to resourcing for advocacy has actually moved back for some areas from what I looked at a year ago. I am just about to release a follow-up anniversary report on independent professional advocacy that is looking specifically at commissioning arrangements and will do a full review this time next year of the recommendations that I have made.

[678] In terms of this Bill, I would like to see an amendment that specifically references independent professional advocacy. Without that, it is very difficult to understand how we can move to a position where this Bill improves the current position for children in getting their voice heard. This is not about complaints processes; this is fundamentally about article 12 of the UNCRC, and recognising that, sometimes, children and young people, in order to express

their wishes and feelings—which takes us to this best-interest principle again—need the assistance of a professional, independent advocate who can sit down and work through what it is that that child wants to say and how they want to say it. All too often, I hear examples of children in the looked-after system still not even knowing that they have the entitlement. We have a lot of work to do on this and I think the Bill could really crack it if we had an amendment.

[679] **Darren Millar:** Thank you for that. There is obviously a resource implication when it comes to making that opportunity available. Have you estimated the resource that might be required in terms of the advocacy for children in particular?

3.45 p.m.

[680] **Mr Towler:** We know that the current spending on independent professional advocacy is not based on any robust assessment of need. It is a bit of a finger-in-the-air position. That finger might have been put in the air about four or five years ago, and the resourcing has not improved since then. If each of those 5,500 children and young people in the looked-after system knew that they had an entitlement to advocacy, I imagine that the take-up of advocacy would be much greater than is currently the position. We had a really helpful and productive meeting with the Welsh Government officials the week before last, which included advocacy providers, representatives from the ADSS, the Welsh Local Government Association and others. We are beginning to get to the point where some robust thinking is going on about what the resource base could look like.

[681] Obviously, we recognise that these are challenging and difficult times. However, I am bound to say—and I am going to use this opportunity to do so—that the historical abuse situation in north Wales should tell us one thing very clearly, and that is that when the voices of children and young people are not heard, listened to or respected, bad things can sometimes happen. If there is one thing that we can get right, as a legacy for all of those people who are currently going through the historical abuse situation, it would be to ensure that, for children's advocacy in the looked-after system, for care leavers and for children in need, proper assessments are carried out and the resource implications are resolved once and for all. I do not think that we can afford not to do that if we really want to safeguard our children. That work is under way.

[682] **Darren Millar:** I am glad that you have taken the opportunity to make reference to the situation in north Wales. What role do you anticipate that your office would play in the provision of advocacy, if at all?

[683] **Mr Towler:** I have just under two years left as the children's commissioner. I have said publicly that my priority in the next two years is getting us to a position where advocacy for these children can be in place. Working effectively with the Government—holding it to account, but also working with it on getting those robust assessments—is in my work programme for the next couple of years. So, we will make that happen. On the work that my office does in terms of casework support, we are beginning to see more opportunities for my officers to be advocates for children. However, I would say that the commissioner's office should not be relied on to deliver advocacy provision. The commissioning arrangement between local authorities and providers of advocacy has to be right. We may be able to help in getting those assessments done.

[684] **Darren Millar:** You do not want to be commissioning services or providing services directly; is that so? You want to be the policeman, if you like, to ensure that other people are doing that.

[685] **Mr Towler:** Yes; absolutely. It is like the principle of the commissioner in all other

aspects, which is a very privileged position in which to be. I understand that completely, and it is not my position to run or manage services; it is, rather, to hold people to account and to remind and inspire them to do the right thing. It is a very privileged position, and one that I enjoy thoroughly. However, that also means that, from time to time, you have to stand up and say things. Getting tied into service delivery would not give you that kind of independence.

[686] **Vaughan Gething:** I do not see that there are any further questions from Members, so we will draw our session to a close. Thank you for your time and evidence, commissioner. You will, of course, receive a transcript, should you wish to clarify or correct any of the items in it. It may be that, on reflection, the committee has further questions to put to you. If we do, we will write to you. Thank you very much for your time today.

3.49 p.m.

Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd
Motion under Standing Order No. 17.42 to Resolve to Exclude the Public

[687] **Vaughan Gething:** I remind Members that we will meet formally at our next meeting on 8 May. The first two items are the forward work programme and to receive the report from the Children and Young People Committee on elements of this particular Bill. I propose that we meet to discuss those items in private.

[688] I move that

the committee resolves to exclude the public from the first two items of business in accordance with Standing Order No. 17.42.

[689] I see that Members are content.

Derbyniwyd y cynnig.
Motion agreed.

[690] **Vaughan Gething:** The final announcement is that a working lunch has been arranged with the advisory group on 16 May. Please let us know whether you are attending, as it will help with the arrangements. I am sure that the advisory group will want to see you all there. Thank you very much for your time and contributions today.

Daeth y cyfarfod i ben am 3.49 p.m.
The meeting ended at 3.49 p.m.