



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

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

**Dydd Iau, 6 Mehefin 2013
Thursday, 6 June 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
Lynne Neagle	Llafur Labour
Gwyn R. Price	Llafur Labour
Kenneth Skates	Llafur Labour
Lindsay Whittle	Plaid Cymru The Party of Wales
Kirsty Williams	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

**Eraill yn bresennol
Others in attendance**

Yr Athrawes a'r Fonesig/ Professor Dame June Clark	Athro Emeritws Nyrsio Cymunedol, Prifysgol Abertawe Professor Emeritus, Community Nursing, Swansea University
Albert Heaney	Cyfarwyddwr Gwasanaethau Cymdeithasol, Llywodraeth Cymru Director of Social Services, Welsh Government
Mike Lubinski	Uwch-gyfreithiwr, y Tîm Gofal Cymdeithasol, Llywodraeth Cymru Senior Lawyer, Social Care Team, Welsh Government
Yr Athro/Professor Ceri Phillips Julie Rogers	Athro Economeg Iechyd, Prifysgol Abertawe Professor of Health Economics, Swansea University Dirprwy Gyfarwyddwr yr Is-adran Deddfwriaeth a Pholisi Gwasanaethau Cymdeithasol, Llywodraeth Cymru Deputy Director Social Services Legislation and Policy Division, Welsh Government
Gwenda Thomas	Aelod Cynulliad, Llafur (y Dirprwy Weinidog Gwasanaethau Cymdeithasol) Assembly Member, Labour (the Deputy Minister for Social Services)

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

Fay Buckle	Clerc Clerk
Claire Griffiths	Dirprwy Glerc Deputy Clerk
Joanest Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser

Dechreuodd rhan gyhoeddus y cyfarfod am 1.31 p.m.

The public part of the meeting began at 1.31 p.m.

Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 5
Social Services and Well-being (Wales) Bill: Evidence Session 5

[1] **Vaughan Gething:** Good afternoon, all. Welcome to Members for the remainder of today's meeting of the Health and Social Care Committee. As you know, this afternoon, we are continuing with the final part of our scrutiny of the Social Services and Well-being (Wales) Bill. We are joined this afternoon for this final evidence session by the Deputy Minister, Gwenda Thomas. Good afternoon.

[2] **The Deputy Minister for Social Services (Gwenda Thomas):** Good afternoon.

[3] **Vaughan Gething:** Gwenda, would you like to introduce your officials? After that we will start with our questions.

[4] **Gwenda Thomas:** Yes, I will start with the director. Albert, would you like to introduce yourself?

[5] **Mr Heaney:** Good afternoon. I am Albert Heaney, director of social services, Welsh Government.

[6] **Ms Rogers:** I am Julie Rogers, deputy director with responsibility for the social services Bill.

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

[8] **Vaughan Gething:** Excellent. The world would be better if it had more lawyers in it, as everybody knows.

[9] I will start off with the opening question. Thank you for the letter you wrote to me in response, dated 20 May, Deputy Minister. In it, you set out some of the repeals that have been listed. I am interested in that list of repeals and whether or not it is a finalised list, at present, of all the repeals that are going to be made, and whether we should now be able to identify all of the elements being repealed, if they are being maintained and kept across in the Bill as drafted.

[10] **Gwenda Thomas:** Thank you for that. I will ask Mike, the lawyer, to take this question, given its technical nature.

[11] **Mr Lubienski:** The list of repeals is a full list. The reason for the wording on the list, saying that it was not necessarily a final list, is in the event that any minor additional provision is identified as requiring repeal to ensure the coherence of the system that is left. I think that we have provided as full a list as we can at this stage. Any further repeal that is required that we would identify would be of an extremely minor nature.

[12] **Vaughan Gething:** Okay. The second question, Deputy Minister, is regarding your previous evidence on agreement with the relevant Secretaries of State with regard to competence. At that point, you indicated that there were some ongoing discussions, in particular with the Ministry of Justice, and that that had affected how you wanted to bring in the Bill. I am interested in whether you have finalised those discussions and whether you can give us an update on whether we can expect an amendment. It was in relation to safeguarding, in particular, I think.

[13] **Gwenda Thomas:** There is no final agreement on one aspect. There was a meeting on 10 April between our officials and Whitehall, and I believe that it was a positive meeting. However, there is a sticking point, although I must reiterate that I believe that our Bill is fully within competence. With regard to the funding of the safeguarding boards, however, there is not full agreement. The Bill provides that we could require the police to contribute to the funding of the safeguarding boards, and I had a very positive meeting earlier in the week with the offices of the commissioners of police, and there was a willingness to co-operate. However, there is that one sticking point on the actual funding.

[14] I would like to say to committee, though, that the Western Bay safeguarding board has now been set up, and the police are contributing to that board, which augers well, because they did not contribute to the separate boards of Neath, Bridgend and Swansea before. So, there are some positive things, but not a final settlement with Whitehall.

[15] **Vaughan Gething:** Thank you. Did you have a question on this subject, William?

[16] **William Graham:** Yes. Probation services contributing was also a concern of yours; how are you with that?

[17] **Gwenda Thomas:** That is a non-devolved responsibility as well, so that is part of the negotiations with Whitehall. As I said, there is no definite resolution to that at the moment.

[18] **Vaughan Gething:** Okay. I have Lynne, then Gwyn, and then William, and then I will look to other Members for questions.

[19] **Lynne Neagle:** I want to ask about the eligibility criteria, Deputy Minister. When you came to us last time, we asked for some detail on that. However, it appeared that that was something of a work in progress. It is fair to say that that is quite fundamental to the Bill and we are all keen to know a bit more about your thinking on that. Are you able to give us any indication of what the new eligibility criteria would look like and at what sort of a level you would be looking to set the bar? I am mindful of the fact that this is still being worked up. At what stage are we likely to see some detail on this as this Bill goes through?

[20] **Gwenda Thomas:** Thank you for that. I am mindful of the representations on this. In my letter of 20 May to the Chair, I provided you with further information relating to assessments, eligibility, information, advice and assistance and the care plans and portability. There were separate leaflets on each of those. I would like to say today that I will be making a written statement in early July and writing to you again at that time. The meeting today provides me with a good opportunity to say that I plan to make a major policy statement on the eligibility framework later on this year, before you are asked to vote on the Bill. I fully intend to engage with all stakeholders and partners. Indeed, that work has started with stakeholder events. I believe that we have had about 400 people participating already. I fully intend to include local government, the Association of Directors of Social Services and the private, independent and voluntary sectors—all of our stakeholders. I made that clear in a speech this morning to the Westminster policy forum.

[21] **Vaughan Gething:** Lynne, did you have a follow-up question on that?

[22] **Lynne Neagle:** Yes. So, the statement on 20 July will not be the one on the eligibility framework. That will come out later, but before we pass the Bill.

[23] **Gwenda Thomas:** No, the written statement will be on the eligibility criteria.

[24] **Lynne Neagle:** Right, okay.

- [25] **Vaughan Gething:** Lin and Kirsty have follow up points of the issue of eligibility.
- [26] **Lindsay Whittle:** When you addressed the Children and Young People Committee in April, you said that you would provide further information to this committee today. Is that the further information that you are providing—that you are going to issue a statement prior to us deciding?
- [27] **Gwenda Thomas:** No, I have already issued—. My letter to the Chair on 20 May was quite detailed and, accompanying that were four leaflets, one of which elaborated on the eligibility criteria.
- [28] **Lindsay Whittle:** Right, okay.
- [29] **Kirsty Williams:** I am still unclear from what you have said to the committee this morning what the timetable will be. What information will Assembly Members have prior to voting at Stage 3 as to who will be entitled to and eligible for a service under this legislation?
- [30] **Gwenda Thomas:** You will have the major policy entitlement statement. That will be the policy that will underpin the development of the regulations. You will have that policy statement on eligibility before you are asked to vote on the Bill.
- [31] **Kirsty Williams:** Could you explain to me, then, how you are working on this? If you are in a position to deliver a major policy statement at Stage 3, how much longer after that will it be before we see subordinate legislation or the framework published?
- [32] **Gwenda Thomas:** I have already said that the timetable for regulations has been set out quite clearly. You have had that timetable. Regulations will be developed in 2014, following the policy statement. Those regulations will be developed with a full consultation process. They are subject to the affirmative process, so there will be full consultation at that point. So, you have already had these details in writing. I believe you had those when I last attended this committee in April. That was made available to you. The regulations will be developed, but, in the meantime, we are working, as I have said, with stakeholders to develop this eligibility framework. I think that it is a bold step to have put on the face of the Bill some people who will be passported. On the face of the Bill, there will be passporting of eligibility criteria to include children in care, children leaving care, other children who are accommodated and adults at risk. Those will be passported. There is a need for some time to think about whether that passporting can be extended. That is my aim. I believe that some profoundly disabled should be passported as well, and I am using this time to develop that thinking. Stakeholders are contributing to that. I also think that we need proportionate assessment. In other words, if there is a low degree of need, then why do we need complicated assessments in order to decide on meeting that need? In the middle, however, there are the people with complex needs and we need to develop those eligibility criteria and get them right. I believe that this process of consulting is extremely important and that work, as I said, is ongoing.
- [33] **Vaughan Gething:** Is that all on eligibility for now, Kirsty?
- [34] **Kirsty Williams:** Yes, thank you.
- [35] **Vaughan Gething:** Okay. I have Gwyn next, then William, and then I will look to other Members.
- [36] **Gwyn R. Price:** Good afternoon and welcome, Albert, to the real world down here. My question is on user voice and control, Deputy Minister. Are you satisfied that user voice and control is sufficiently well realised in the Bill? How will the national outcomes

framework enhance the user voice and control situation? We have had some video conferences lately with children and young adults up in north Wales, and they were very concerned that their voices are sometimes not being heard fully. They are being passed from pillar to post and, when a case study is carried out on them, it is just dropped as soon as the next social worker takes over and their cases are not carried on. So, I would like clarification on those lines.

[37] **Gwenda Thomas:** I believe that people having a voice and control is key and underpins all the thinking in this Bill. That is what it is about. I am satisfied that user voice and control is realised right through the Bill, from the strategic level to the national outcomes and to the organisational level. The underpinning of this Bill by the wellbeing principle for people who need care and support, as well as carers who need support, is very important indeed. That overall, overarching aim of ensuring the wellbeing of people includes the greater voice and control for people in Wales and the policy statement on wellbeing has set that out quite clearly. You have had the statement on wellbeing, which has been circulated widely. At the strategic level, I believe that the national outcomes framework will support user voice and control. It is very important that we shift the emphasis to ensuring that we meet the needs of people, rather than fit people into services. That is very important to me. I believe that adults are the best people to say what their needs are and what outcomes they want for their daily care needs. So, at a strategic level, the outcomes framework will ensure that the outcomes for people are realised and we will have a strong performance framework to measure the effectiveness of the outcomes framework.

1.15 p.m.

[38] **Vaughan Gething:** On the other element that Gwyn Price asked about, namely the voice and control as it relates to young adults and children. Gwyn referred to part of the evidence around people aged 16 and under. How do you see voice and control working for them?

[39] **Gwenda Thomas:** I am sorry I missed that. I was really pleased to read the evidence of the NSPCC to the committee and the reference to the people aspect of the Bill. Children and young people are people as well, and this Bill covers all people in Wales who need care and support or carers who need support. There will be no differentiation. I mentioned adults because adults have a right to say, as have children, but adults will say what the outcomes are. Children need to be supported to do that, but with regard to the outcomes for children within the provisions of the Bill, we need to look at their emotional, behavioural, social, developmental and other needs. The Bill's provisions do cater for that.

[40] **Vaughan Gething:** Thank you. I have William Graham, Ken Skates, Lindsay Whittle and then Rebecca Evans.

[41] **William Graham:** Minister, your Bill does not make any requirements on Welsh Ministers or local authorities to provide independent advocacy, except in specific circumstances, such as the case for complaints about privately arranged or funded palliative care. In evidence to this committee, you have acknowledged concerns about this lack of advocacy provision and suggested that you may bring forward some amendments to the Bill to address them. Are you still so minded and what are they likely to contain, bearing in mind that, as you will have seen in publicity this morning, various charities have raised the issue of advocacy with you?

[42] **Gwenda Thomas:** I am. When I attended the committee on 18 April, I said that this was an area that I was considering, in light of what stakeholders have said. I can now inform the committee that an amendment to further extend the framework provisions for an individual's right to advocacy is one that the Government will be bringing forward.

[43] **William Graham:** I see. How will you do that?

[44] **Gwenda Thomas:** A statement on that is imminent. I have views as to what that amendment should include. I think that it should enable regulations to place duties on local authorities to make advocacy available in prescribed circumstances, for example in terms of people with complex needs who may not have the capability, or in terms of wider family or community networks being able to advocate on a person's behalf in decisions about their care. There should also be a duty to enable independent support to people when the local authority is investigating a concern of risk or abuse, duties to require local authorities to promote and inform people of their rights to advocacy, including self-funders, and a duty to require registered care providers to inform people in their care about the availability of advocacy services by the local authority.

[45] **Vaughan Gething:** On this, Rebecca Evans and then Lindsay Whittle.

[46] **Rebecca Evans:** The Deputy Minister has just clarified my point. I was keen to ascertain whether we were talking about independent advocacy, but I think that we are.

[47] **Gwenda Thomas:** Yes.

[48] **Lindsay Whittle:** Will the independent advocacy organisations be registered and inspected? I fear that there could be people who could just set up an independent advocacy service. I think they need to be registered and inspected.

[49] **Gwenda Thomas:** I made my view on that clear. So, yes, I think that they should be registered and regulated. You know that I will soon be bringing forward a White Paper on regulation and inspection. There will be a statement on that soon, before recess, and we aim to introduce the White Paper early in the autumn. However, the statement will include the aspects that we intend to cover, and that will be part of it.

[50] **Kenneth Skates:** Good afternoon, Deputy Minister. I want to move on to wellbeing duties, particularly whether the issues of having a safe home, or safe accommodation, and independent living should be included in the definition of wellbeing in the Bill.

[51] **Gwenda Thomas:** I believe that having a safe home is fundamental to wellbeing. The Bill will provide the framework for delivery of social services in Wales and that aspect will be developed through regulations and the code of practice. I welcome the suggestion that you make, however I am not minded to change the definition of wellbeing on the face of the Bill. That definition is grounded in the Children Act 2004 and that is well understood. However, I believe that extending these rights and entitlements to adults is the way forward. In relation to the inclusion of independent living, I would say that it is a service model and what we are developing is the legal framework. So, the Bill provides for independence and I believe that that will cover people's rights to independent living and their rights to independence. I would not envisage that being excluded in any way.

[52] **Kenneth Skates:** Thank you. With regard to the definition of wellbeing, a number of witnesses said that it would be good to harmonise the definition. Is that something that the Government is keen to do?

[53] **Gwenda Thomas:** As far as this Bill is concerned, we are dealing with people's need for care and support, and carers' needs for support. That is what this Bill is about, but I am mindful that we need to work across portfolios, given that wellbeing is a responsibility for nearly all portfolios. I am working hard with my colleagues and ensuring that what we are doing in our Bill will complement what is being done across the Welsh Government.

[54] **Lindsay Whittle:** Deputy Minister, we heard in our written and oral evidence from many organisations about the removing of the defence of reasonable punishment for children. Will you consider any amendments to the Bill on that clause, please?

[55] **Gwenda Thomas:** It is not my intention to consider that amendment. The policy of the Welsh Government on this has been stated. We think that we should develop parenting policies and highlight the effectiveness of alternatives to disciplining children. It is not now within my portfolio since the last Cabinet reshuffle and it is not my intention to bring that amendment.

[56] **Lindsay Whittle:** I agree with most of what you say, Deputy Minister, but this is a golden opportunity. It has been well documented for the lifetime of the National Assembly for Wales that there is a move to bring this into being in Wales, and I think that we are missing the opportunity now to save on Bills in the future. It is something that the National Assembly for Wales can do now to make a name for itself. Increasingly, we—the countries of Britain—are out on a limb in comparison with the rest of Europe; we are playing catch up and it is clear that this is going to happen and I fear that we are missing a golden opportunity. I fully accept what you say. I will have to put forward an amendment and we will have to wait to see what happens.

[57] **Gwenda Thomas:** I respect your views.

[58] **Lindsay Whittle:** Thank you, Deputy Minister.

[59] **Rebecca Evans:** I note that the carers Measure will be repealed in your list of repeals relating to this Bill. Could you clarify how carers' rights will transfer legally across to the new piece of legislation?

[60] **Gwenda Thomas:** The technical answer is that it transfers into—what section is it, Mike?

[61] **Mr Lubienski:** For which provision?

[62] **Rebecca Evans:** The carers Measure. Those legal rights.

[63] **Mr Lubienski:** The Carers Strategies (Wales) Measure 2010?

[64] **Rebecca Evans:** Yes.

[65] **Mr Lubienski:** In part, through the information, advice and assistance provision in section 8 of the Bill and in part, also, through the amendment to section 40 of the National Health Service (Wales) Act 2006, which is provided for in section 5(3) of the Bill; section 40 of the National Health Service (Wales) Act being the section that imposes a duty on local authorities and local health boards to jointly prepare strategies for the wellbeing of the population in their area.

[66] **Rebecca Evans:** So, I presume that the rights in the Carers Strategies (Wales) Measure are essentially moved in their entirety to the new Bill. I presume that we are not losing any of those rights.

[67] **Gwenda Thomas:** No; and they are also added to. An individual carer will have the right to an assessment. I am confident that the general principles and features of the Measure have been transferred into the Bill, and that the Bill, in fact, furthers the right of carers and will bring more benefits to carers than the previous Measure did.

[68] **Rebecca Evans:** Thank you, Deputy Minister. One of the rights that our witnesses have told us that they would like to see is the right of carers to have their assessments made portable across local authorities as well. How would you respond to that?

[69] **Gwenda Thomas:** It was not an intention of the Bill originally and it is not there at the moment. I have listened and felt this myself, but I have not been able to rationalise in my mind why a care plan should not be portable. I have asked officials now to bring me further advice and a potential amendment so that the Bill does include the right of portability of care plans for carers.

[70] **Rebecca Evans:** Excellent. That is very welcome news, Deputy Minister. Again on assessments, why have aids and adaptations not been specifically included? How will the legislative framework provide for aids and adaptations?

[71] **Gwenda Thomas:** I believe that aids and adaptations will still be available. The Bill will not change that. People will continue to have access to equipment, adaptations and other services that will be accessible in the community and through support provided to people who have eligible needs. We have not listed every service on the face of the Bill, for a number of reasons, and I have explained that. However, I do believe that the right to aids and adaptations will be preserved.

[72] **Rebecca Evans:** My final question is on assessment. What was your reason for allowing parental refusal of an assessment? We have heard various pieces of evidence that the circumstances in which parents should be able to refuse an assessment for their child should be tightened up. How would you respond to that?

[73] **Gwenda Thomas:** I think that this is all about the safeguarding and protection of children. We will, of course, give mature young people the right to refuse an assessment. That will be their right unless, of course, that is over-ridden by safeguarding and protection issues. I believe that children sometimes have to be protected from parents. We all know that. I think that the Bill will set out more coherently when a refusal can be made. I think that the Bill also sets out more clearly the paramouncy of the welfare of that child or young person.

[74] **Elin Jones:** I have questions that relate to the inter-relationship between the NHS and social services. I have four detailed questions on the Bill, and then one more general question on Part 9.

[75] I will start with section 17(5) of the Bill. We had evidence from a local health board that it could not understand why assessments could be delegated to local authorities, but that there was no power of delegation of assessment to the NHS. Therefore, NHS staff found, at times, when they were looking to make an assessment on a ward, that they were waiting for a social worker from the receiving authority to come and be part of the assessment, because that was required, and it was not allowed to delegate the power to them to undertake that assessment on behalf of the local authority. So, the delegation works only one way. Why does it not work both ways in order to aid the integration of services and get rid of some of the barriers? That is my first question.

1.30 p.m.

[76] My second one is on sections 31(4) and 31(5) and comes from the evidence that we have before us today from June Clark. Sections 31(4) and 31(5) prohibit a local authority from providing or arranging care by a registered nurse. Why have you chosen to have a power that prohibits local authorities from employing nurses, given that we want to see greater integration between local authorities and health work?

[77] In a similar vein, you have powers in this Bill on direct payments for social care, but not for NHS care, and, of course, some individuals—

[78] **Gwenda Thomas:** Can you repeat that last bit?

[79] **Elin Jones:** The third question is about direct payments for social care, which are covered in this Bill, but not direct payments for NHS care and, of course, some individuals require continuing social and NHS care. We have had evidence, which again is in front of us today, from the Welsh Local Government Association stating that it is concerned that there is nothing in the Bill to allow the direct payments model to cover those individuals who have continuing care needs both from a health perspective and a social care perspective. Perhaps you can address that issue.

[80] Section 6, on preventative services, places a duty on local authorities. It says that they must provide or arrange for a range of preventative services, but it does not place a similar duty on local health boards. It just says that local health boards must have due regard for preventative services. Why do you see the roles of local authorities and local health boards differently in promoting preventative services?

[81] My more general point is on Part 9, which is the part on the promotion of integration, partnership working and the pooling of budgets between local authorities and the NHS in general. The powers that are outlined in that part, as far as I can tell, are no different to the powers that exist in different places already. There is nothing in that part that makes it more likely that we will see local authorities and the NHS working more together. So, there are no powers to require it to happen. We have had conflicting evidence on this. Local authorities and the WLGA have said that they want to see more national direction on integration and the pooling of budgets in this Bill. Local health boards have said that they do not want to be required to do that in legislation. So, Deputy Minister, why are you not taking the opportunity provided by this Bill to require co-operation and the pooling of budgets between adult social care and the NHS?

[82] **Gwenda Thomas:** We are requiring it. This Bill is about social services. It is not a Bill to reform the NHS. I make that clear. It is a Bill about social services, but there is provision in the Bill to require the integration of health and social services. I believe that that is clear in the Bill, and if anybody is not clear about that, then we need to make sure that it is absolutely clear. It is about the integration and provision of services, and the way that health and social services work together to achieve that. So, there is a power to require it in the Bill, and I had no confusion in my mind about that. That is the general point.

[83] **Elin Jones:** May I come back on the general point?

[84] **Vaughan Gething:** Have you finished answering the general point, before we move on to others?

[85] **Gwenda Thomas:** Yes.

[86] **Vaughan Gething:** Elin on the general point, then, about integration.

[87] **Elin Jones:** Can you point out to me where in the Bill you think the power is to require the pooling of budgets between all local health boards and local authorities in Wales? That is, on the face of the Bill, rather than in regulation-making powers for you, if you choose to do so for one, two or more authorities?

[88] **Gwenda Thomas:** It is in section 147, 'Partnership arrangements'. Subsection (1)

reads:

[89] ‘Regulations may require specified partnership arrangements to be made by—

(a) two or more local authorities, or

(b) one or more local authorities and one or more Local Health Boards.’

[90] So, that ‘may’ refers to Welsh Ministers, and not to local authorities and the NHS. Welsh Ministers may require joint working between health and social services.

[91] **Elin Jones:** I guess that the point of disagreement between us will come in that it is a ‘may’ require, and it is a regulation-making power for Ministers.

[92] **Gwenda Thomas:** This will be subject to the affirmative procedure.

[93] **Elin Jones:** So, you are not taking the opportunity to put it on the face of the Bill, but it is your intention to make all local authorities and local health boards work together.

[94] **Gwenda Thomas:** Yes.

[95] **Elin Jones:** As drafted, the Bill refers to one or more local authorities, or possibly one local authority and one local health board, so there is no national direction on the face of this Bill, other than through regulation-making powers that you may choose to use, although you have not declared any policy intention to do that.

[96] **Gwenda Thomas:** I am not a qualified lawyer, but I will read section 146, which states that

[97] ‘a local authority must exercise its social services functions with a view to ensuring the integration of care and support provision with health provision and health-related provision where it considers that that would—

(a) promote the wellbeing of children’,

[98] or of adults and carers.

[99] I am not going to dig a legal hole for myself, because I am not a competent lawyer, but Mike Lubienski might want to elaborate on that, and any point that committee wants to make on it. However, I think that there is provision there to require integrated working.

[100] **Elin Jones:** I know that you have regulation-making powers there, but it does not happen from the passing of this Bill. That is the difference of view between us.

[101] **Kirsty Williams:** On that, would they fall under the priority category, the optional-as-required category, or the stand-alone category? We have three categories for regulations, have we not? I am just wondering where those particular regulations fall into that categorisation.

[102] **Ms Rogers:** In terms of the first use of partnership powers, it would be to re-enact the integrated family support services legislation. Those are currently partnership arrangements in separate legislation, and they have been consolidated within these partnership powers here, so the first use of the powers that we would envisage would be to re-enact the IFSS legislation. That would be a priority on enacting this Bill.

[103] **Vaughan Gething:** What I understand as being rehearsed here is that the apparent policy intention of the Government is not on the face of the Bill, and Elin is clearly asking for it to be on the face of the Bill. This may be helpful: I received a letter that was circulated to committee dated 3 June—a joint letter from Association of Directors of Social Services Cymru, the Welsh NHS Confederation and the WLGA, which largely addresses this area. It says:

[104] ‘We believe the Bill needs to provide a clear vision for integration, enabling local authorities, the NHS and other partners to work constructively together...It should require local authorities and NHS to work in partnership, through local statements of intent, appropriate joint governance mechanism, and proportionate shared performance management arrangements.’

[105] The point here is: will there be something on the face of the Bill that you envisage will require that to happen, rather than a power for you to require it to happen in regulations?

[106] **Gwenda Thomas:** Can you take that, please, Mike?

[107] **Mr Lubienski:** In the scheme for what is set out, there is the general duty in section 146 to ensure co-operation on the one hand, and on the other there is a regulation-making power to direct partnership arrangements in relation to specific issues or in specific areas. So, the point made, that the Bill itself does not require partnership arrangements, is a fair one. However, nothing in the points made in the letter referred to by the Chair is inconsistent with, and are not achievable under, the general duty in section 146.

[108] **Vaughan Gething:** Okay. Elin, did you want to continue? There is a clear disagreement about—

[109] **Elin Jones:** I do not think that I need to pursue it. The Deputy Minister does not believe at this stage that it is an area of work in which she wants to make a requirement on the face of the Bill to make it happen. You are content with regulation-making powers—

[110] **Gwenda Thomas:** Yes.

[111] **Elin Jones:** You are content with regulation-making powers to require specific partnership arrangements, and we have heard some evidence on what the intended first use of those regulation-making powers would be, which, of course, would not really get to the crux of the matter in adult social care: bedblocking and all of the complicated issues that I am sure we will come to with Dame June Clark later on.

[112] **Gwenda Thomas:** The Bill provides the framework to enable joint working; regulations and the codes of practice will develop the details as to how that must happen, and they will be subject to the affirmative procedure and subject to consultation. That puts my thoughts on it.

[113] **Elin Jones:** My view on it is that some of the powers that could allow that to happen have existed in other pieces of legislation; they just have not been taken up. Okay, we have a joint letter from the local health boards and the local authorities before us today, but there was clearly a different attitude towards formal partnership working and the pooling of budgets in the evidence sessions with local authorities, which seemed to be more keen, and local health boards, which did not seem particularly keen to have it required of them.

[114] **Gwenda Thomas:** My view is that we should require this, and there has to be integration of social services and health. There is a precedent for this happening, as has been mentioned, in the integrated family support teams. There was a requirement there in

legislation and that has happened, and we are seeing it enacted by the integrated family support teams. I think that this is set on that very same principle. So, we have legislated as the National Assembly to make it happen with regard to children's services, and I see no conflict there in developing it through the provisions in the Bill.

[115] **Vaughan Gething:** Do you want to move on to the detailed points?

[116] **Elin Jones:** The four questions; yes.

[117] **Vaughan Gething:** So, there is section 17(5), and then section 31—

[118] **Gwenda Thomas:** Yes, the delegation.

[119] **Vaughan Gething:** Yes.

[120] **Gwenda Thomas:** The delegation of the assessment process. This Bill is about social services, and the assessment process—the development of it—is work that is in hand. We are developing our thinking on that. You give examples—and I have had examples—of where there have been delays in assessing people's needs when they are in hospital. I believe that that has to be a multidisciplinary assessment for which all parties should be present when it is made—health and social services should participate in that assessment.

1.45 p.m.

[121] I am not sure that I am clear in my mind about what is being said here. If I understand it correctly, are you saying that nurses should be able to assess with regard to social care needs and vice versa? The best response that I can give is that I do think that it needs to be a multi-agency comprehensive assessment of the need of that person, throughout social services and health, in order to develop that care plan.

[122] **Elin Jones:** May I just respond to that? I would just like to say that I do not disagree in principle with what you are saying. What we heard as a committee from the local health boards was that, on wards, they were facing situations where they were keen to assess and release a patient from a general hospital—let us say Bronglais General Hospital and the receiving authority was Powys—but getting a social worker from Newtown to Bronglais when there may be only one social worker in the whole of the north of Powys could prove hugely problematic for them, and there was a question of whether it could be delegated to the local health board from the local authority. This was a barrier that they were facing. Therefore, all I will ask at this point is whether the Deputy Minister could look at the evidence from the local health board to see in particular how it thought this could be used as a mechanism to remove some of the existing barriers that make it practically quite challenging in a ward situation.

[123] **Gwenda Thomas:** I am happy to look at that. I have seen examples of cross-border issues between Neath Port Talbot and Carmarthenshire, for example, and the barrier does exist. I am happy to take that away and look at it.

[124] **Vaughan Gething:** What about sections 31(4) and (5)?

[125] **Gwenda Thomas:** These prohibit local authorities from taking up some duties of nursing, I believe. The advice that we have had here is contained in the Law Commission report. The Law Commission suggests that this should not happen; that we should not look to social services staff to take on nursing responsibilities, except where these are quite simple. The Law Commission has been clear about that. We need to be careful on that issue. We have seen some issues, which have been publicised, have they not, within communities where

sometimes some things have gone wrong? So, the Law Commission's advice on that was that it should not happen.

[126] The direct payments with regard to the integration of services and the direct payments for the health element are what I think you were talking about. I will not go into the way in which we will develop direct payments for social care, but there is an issue as to how we fund that care package, and I am looking at that with the Minister for Health and Social Services at the moment. However, the Bill provides for the extension of direct payments. It is important here to look at the review that is currently being taken forward of the continuing healthcare guidelines. I am keen to see the result of that review. There are issues about some delay, but fundamentally, on the principles of the continuing healthcare guidelines, it seems to be working, and working quite well insofar as the guidelines go. I also believe—and this is off the top of my head—that the NHS is looking at fee charging with regard to ongoing care. That is another review that we need to see the result of. So, those two things are happening. However, I will stress that the Bill is dealing with the integration of services, and this is a very important aspect that I need to come back on because of the two reviews that are taking place.

[127] **Elin Jones:** Thank you for that answer. We had some evidence on this from the local health boards on the legal advice given to them. When the issue of direct payments for nursing care is taken up with them by families, who are possibly already in receipt of direct payments for the social care of an individual, and who want the complete package for that individual, the issue is that there is no clear legal basis for them to make direct payments for continuing care, although they did suggest that there was one such care package in Wales, but they did not want to mention which one just in case the legal basis was not sufficient to allow it to happen. I was going to suggest, Deputy Minister, that this Bill provides an opportunity, given the review work that is coming on board and that neither you, nor the Minister for health, want to make any final decisions on this. Section 34(1) says that,

[128] 'Regulations may require or allow a local authority to make payments'.

[129] You could consider putting regulation-making powers for local health boards alongside local authorities in that section, which would futureproof the legislative base so that, should you decide to allow this to happen in future, this Act, as it would be at that time, could be used for regulation-making powers for that purpose.

[130] **Gwenda Thomas:** I will take that on board. I am keen to see the results of the reviews. We must not lose sight of the entitlement where continuing healthcare is considered the way forward for a person who needs care and support, and that becomes the responsibility of the NHS at that point. It is quite a detailed issue, and we need the results of those two reviews on fee charging and on the guidelines to aid us in deciding on the best way forward.

[131] The preventative services of local authorities are covered in the Bill, and it is suggested that there will be due regard for preventative services in the NHS. I think that there will be a difference between what will be preventative in the NHS, although we say in the Bill that we would look to people to look after their own health with regard to preventative services. However, the preventative services that we talk about in the Bill are based—officials will correct me if I am not right—on a Schedule on preventative services to the Children Act 1989. We would want to enact that Schedule for adults as well, but I will elaborate on that, as I said in the letter to the Chair on 20 May. I will bring more details forward in the autumn with regard to preventative and early intervention services, but the committee might want to consider that Schedule.

[132] **William Graham:** You will have seen previous evidence and we are talking to further witnesses this afternoon on this conflict between the two budgets. Help me with

people who are suffering from, say, vascular dementia. They are certified by the court as lacking mental capacity, but they do not have any other particular healthcare issues. It is a mental health matter, so it is an elderly mentally ill home, but there is no help for that from the state in any way—it is either funded entirely by the local authority or privately funded. Why does the health authority escape any real responsibility for mental health in that respect?

[133] **Gwenda Thomas:** This is one that I would need time to consider. What I can say is that in the leaflet that I circulated on care planning, we make it clear that an important aspect of care planning must be that it looks at needs outside of social care, and that contained in that care plan are needs under the mental health Act, children's services and special educational needs. My aim is that that one care plan will deal with all of the requirements of an individual service user, and that that user, if they have capacity, or somebody on their behalf—and here comes the advocacy that I mentioned earlier—will have a voice in that care plan and that his or her carers will have a voice in that care plan. That is contained within the Carers Strategies (Wales) Measure 2010, which gives the carer the right to participate in the care planning and also in policy development. We have heard that that Measure will come across in its entirety to the Bill, so I can come back with a comprehensive answer to your question. However, your question leads my mind to answer in that way.

[134] **William Graham:** I accept that. What I am really getting at is this conflict between who is paying for what. I respect that what you are trying to do is avoid that and I am grateful for your answer.

[135] **Gwenda Thomas:** You know that I am also keen to develop the team around the family approach to providing for the needs of people with dementia.

[136] **Vaughan Gething:** On a new set of questions, Kirsty Williams, who has waited very patiently for everyone else to finish their first set.

[137] **Kirsty Williams:** Thank you. In the information that you sent to the Chair, accompanying your letter of 20 May, you talked about transitional arrangements, where there would be a need to ensure continuity of care for individuals in relation to the transition of the current system to the application of the new law. Could you clarify what you mean by that? If people are currently in receipt of a service, will they continue to receive that service under the new regime, or would there be a requirement for them to be reassessed under the new legislation? Could we find ourselves in a situation where people who are currently in receipt of a service may not be eligible to have their needs met under the new law?

[138] **Gwenda Thomas:** Thank you for that question. I have been very mindful about the need for continuity of service through the transition period. I am giving that serious thought. With regard to the transition, we are committed to seamless transition for people needing care. The way that I understand this is that I am not expecting people to need to be reassessed, but existing arrangements provide for reviews of their care plans. Fundamental to that will be the continuity of care, the respect that those people in receipt of care deserve and the way in which we deal with it. There will be transition, of course, as with any change, but I am very mindful that we need to be very careful as to how we handle this period in people's lives.

[139] **Kirsty Williams:** To clarify that then, if you are currently in receipt of a service, the current law requires that service to be reviewed from time to time to ensure that that service continues to meet the needs of an individual because those needs can change. Is it possible that, as a result of a review of the services provided for somebody who is currently eligible for services, and the implementation of this new law, that person could find that they no longer meet the eligibility criteria for a continuing service? I hear that you are mindful and that you are going to be sensitive and that we are going to be respectful, but I am trying to get to the crux of it. Could we find ourselves in a situation where people will no longer be eligible

for a service? What happens to those individuals in that context?

2.00 p.m.

[140] **Mr Heaney:** Thank you, Deputy Minister, for inviting me in. The current situation is exactly as you have just described. Citizens will have an assessment of need, if they have a need that is defined as currently eligible. What we have to bear in mind is that the current arrangements mean that if you are an adult, for example, different local authorities can set different eligibility criteria, as it stands. So, you could have variation in the citizens defined as eligible. This Bill proposes to remove the postcode lottery, shall we say. However, crucially, it is about the assessment of care and support needs. The Bill introduces care and support needs. If a citizen is eligible for care and support, they will receive that. When they come to the natural point to review, that review will take place, and if the citizen no longer has care and support needs, they would not need to have a continuation of service.

[141] **Kirsty Williams:** I know how it works at present. My concern is trying to get some clarity on what will happen. As you know, quite rightly, different local authorities have different levels of eligibility criteria. Most of those, I admit, are at the substantial or critical end. However, there are local authorities that are providing services below that level. I cannot envisage a situation where the national eligibility criteria will cut in much below what is currently termed as the critical or substantial end—I may be wrong; we will see. So, what happens, if you are in a local authority where services have been provided below that level of need and suddenly—not because your needs have changed, but because the law and the eligibility criteria have changed—you find yourself outside national eligibility criteria? It is not because your needs have changed, but because you live in a local authority that used to meet needs below that level, and now the law has changed and, suddenly, it says that, while you still have care and support needs, they are below the level at which it is the duty of the local authority to provide care and support. What happens to individuals in those circumstances?

[142] **Mr Heaney:** The individual in those circumstances will be covered by the range of preventative services. This is not about setting social services in isolation; it is about setting social services in a context of wider community-based planning and a range of services that need to be available to provide a citizen with support.

[143] **Kirsty Williams:** However, the difference, of course, is that the kind of services that that person would have been receiving may have been based on their individual needs, and preventative services, as they are drawn up in the legislation, are population-wide services; they are not services that are preventative for that individual, but services that are preventative for the broad base of the population. What I am trying to do is explore the situation for an individual whose needs have not changed, but for whom the law has changed so that, suddenly, they are no longer entitled to an individual service, but their support service has to come from a population-based service. What happens to that person? They fall out of the system.

[144] I will move on to this vexed issue of the balance—

[145] **Gwenda Thomas:** Do you want me to come back on that first point?

[146] **Kirsty Williams:** I think that I am clear on it.

[147] **Vaughan Gething:** You can come back on it if you want to, Deputy Minister.

[148] **Gwenda Thomas:** What I meant was, shall I come back to the committee with a response to that point?

[149] **Kirsty Williams:** Yes, thank you. Document 2, which came with the letter to the Chair, describes the regulation process, as you said. It states that sufficient time will be allowed during 2015 for the trialling of regulations and that the majority of statutory instruments will come into force by April 2016. Could you tell us what statutory instruments will fall outside of that time frame? You go on to say that there are three categories of regulation—the ‘priority’ category, ‘the optional (as required)’ category and the ‘stand-alone’ category—which all have different timetables. Will it be possible for you to give a more comprehensive list of which bits fall into those categories?

[150] **Ms Rogers:** I think that what the Deputy Minister has tried to do is to be as transparent as possible and to share work in progress. We have, therefore, come up with the categories that we have as a way of trying to break this down and give you some more information.

[151] **Kirsty Williams:** There are a lot of them.

[152] **Ms Rogers:** Yes, there are a number. It is about getting the phasing of that right. We know that the main regulations around assessment, eligibility and the core processes in the Bill are the ones on which we want to concentrate. Those are the ones that will make the new system happen. Our intention is to have those implemented and in force by April 2016. Those are the big ones. There is an argument that the ones around safeguarding, say, could be done later on. However, there is a sense that those are priority regulations and are the ones that would need to be done earlier. So, it is about getting that balance right. As the Minister said, we intend to have the policy intent of the major regulations cleared and available publicly by the end of this calendar year. We are hoping to run a consultation in the middle of 2014, which would be on a package so that people can look at the regulations side by side. That will be a formal and public open consultation.

[153] **Kirsty Williams:** Moving on to the issue of finance, I am suitably told off by your reference in the letter to the question I asked the First Minister. However, I am not the only person labouring under the misapprehension that the financial regime for this Bill is predominantly cost neutral. I acknowledge that the explanatory memorandum states that there is money set aside for training and transition. However, the whole premise of the financial rationale for this Bill is that it will be cost neutral.

[154] **Gwenda Thomas:** In the long term.

[155] **Kirsty Williams:** Okay. We have had a lot of evidence from the Welsh Local Government Association and others about whether that will be the case. I note that you have said now that we are talking about cost neutrality in the longer term, which raises the question of what resources will be available in the short and medium term to implement the legislation and achieve the changes that will then allow us to realise those cost savings and cost neutrality in the long term.

[156] **Gwenda Thomas:** This Bill is a marathon, not a sprint. We are not going to achieve all of this overnight. It has to be cost neutral; there is no more money. I have been absolutely clear about that. There is no more money. We cannot seek to replace the existing legislation with legislation that will cost more. There will be help with transition and implementation, and I am committed to coming back to the committee in the autumn with extra details on the regulatory impact assessment. We will do that. The issue of cost neutrality is very important. We have been open about that from the beginning. We have put in £50,000 for the implementation of the change in the adoption rules and we have told you about training allowances and some other implementation costs. However, there is no more money with regard to the service delivery. What drives this Bill is that there has to be a change in the way

that we work. We have to work in different ways. We are already seeing examples of that, with some excellent projects on integration and so forth. We have been clear that there will be Government-funded help with transition and implementation and we will detail that when we update the RIA in the autumn.

[157] **Lindsay Whittle:** Could you tell us about the training costs? I am concerned about the training costs for all the staff as a result of all these changes. Where is that money coming from?

[158] **Gwenda Thomas:** I have issued a statement on training and you have seen the statement on the £8 million that we are already providing, which is topped up to about £11 million by local authorities. Local authorities will need to realign their resources in order to implement the Bill. The training needs will change, but the funding will be there. We are committed to that. I have issued a statement on that very recently.

[159] **Vaughan Gething:** We are back to you, Kirsty, to continue with the finance questions.

[160] **Kirsty Williams:** So, you are being very clear that there are no plans to provide any additional resources other than those already mentioned in the explanatory memorandum.

[161] **Gwenda Thomas:** No. We are considering what resources may be needed for transition and implementation. That does not mean to say that we are not looking at what funding will be needed to kick-start some change. We have in no way concluded our thinking on that.

[162] **Kirsty Williams:** When will you be in a position to provide the committee with a revised explanatory memorandum? If the one we are looking at is no longer relevant, because you are making further considerations, when will you be in a position to provide updated information to this committee?

[163] **Gwenda Thomas:** That is in the letter to the Chair of 20 May, which you are quoting from: we will bring it forward in the autumn.

[164] **Vaughan Gething:** It is for the autumn. There will be a revised regulatory impact assessment. Did you have anything else on finance, Kirsty?

[165] **Kirsty Williams:** No, that is fine for now.

[166] **Vaughan Gething:** Okay. Elin, did you have questions on finance?

[167] **Elin Jones:** I just have a quick question. You made a commitment earlier in committee to bring forward an amendment on independent advocacy. What are your views on the funding of that service?

[168] **Gwenda Thomas:** We will be looking at the amendment to the Bill. That will be enabling. The regulations and code of practice will develop the details of that, but the policy intent will be made absolutely clear.

[169] **Elin Jones:** What about the funding of the independent advocacy service?

[170] **Gwenda Thomas:** That will be a change that we will consider. We will consider whether we need to fund it as a transitional issue. I see that as no different to any of the other changes that we will be looking to implement. We will also look at any transitional and implementation costs.

[171] **Elin Jones:** So, that will come in October as well.

[172] **Gwenda Thomas:** Yes.

[173] **Vaughan Gething:** Rebecca Evans is next, and then Lynne Neagle, also on finance.

[174] **Rebecca Evans:** Do you envisage any extra costs for the health service, the third sector or any other partners in terms of delivering the intentions behind the Bill, if it is passed?

[175] **Gwenda Thomas:** The third sector is fully on board with our thinking on this. We will need to look at the grants to align the funding that we make available to the third sector with the needs of the Bill. All of that will be included in the implementation plan that will be published. That will be a three-year plan and will cover the issues that you are raising now.

[176] **Rebecca Evans:** If the health service it is to work more closely with social services in future, do you envisage that there would be extra training costs involved?

[177] **Gwenda Thomas:** The training can extend to the health service. There is nothing to stop that. Of course, the longer-term savings and the benefits of integration will be felt just as much by the NHS as they will be by social services.

[178] **Lynne Neagle:** The Deputy Minister's letter to the Chair on this section also refers to the power for local authorities to charge for preventative services, information, advice and assistance. You have noted the committee's concerns about that and you have assured us that you have powers of regulation and codes of practice to set limits or disapply elements of the charging provisions. Are you saying that no local authority will be able to start charging for information and advice without your permission, or is that something that you might have to regulate later on down the line if you find that they are doing it? I am not quite clear. Would that be covered initially by the code and the regulations?

[179] **Gwenda Thomas:** What I would expect is a test of reasonableness with regard to charging. Of course, the powers also include the power for a Minister to restrict charging in certain circumstances. However, I think the test of reasonableness for local authorities will be very important.

[180] **Lynne Neagle:** So, there will be guidance set out before this new power is allowed to operate. You will be setting guidance as to how local authorities should operate that.

[181] **Gwenda Thomas:** Yes, definitely.

[182] **Vaughan Gething:** On this point, Kirsty Williams.

[183] **Kirsty Williams:** On the point of charging, in the letter and the documentation, you say that:

[184] 'I do not think it is unreasonable to expect a child or family that has the means to pay for a service',

[185] including information for young people. If the whole rationale is that, by investing in preventative services, we stop people's needs from escalating and then costing either social services or the NHS more, how do you envisage a regime that charges for preventative services achieving that policy goal?

2.15 p.m.

[186] So, why would an individual choose to spend their money upfront on a preventative service, which is charged for, when they could let their needs escalate and delay having to dip into their own resources? They could then end up with a more severe need, perhaps costing the NHS money because they have gone into hospital, and, because they have an eligible need, they will not need to pay for the service at all. How does the Government's policy intention, which I agree with completely, actually work if we are charging for preventative services?

[187] **Gwenda Thomas:** We will be using the code of practice and the regulations to provide the details on what I think is appropriate to charge. Of course, we will be consulting on those. I am not sure I quite understand—

[188] **Kirsty Williams:** I am thinking about if I have a care need and I could be assisted by a preventative service, but I have to pay for that service, so I am reluctant to do that for whatever reason—money may be difficult or I may just be bloody-minded about it and I do not want pay for that service. My needs then escalate and I suddenly have a much more acute need, which either costs the NHS more, or potentially will cost social services more for a service that perhaps I will not be charged for at a later date. What I am worried about is that we are going to charge for preventative services, which may preclude people from engaging in that agenda, and therefore your policy objective of all of this working because we have kept people in the lesser-needs category is not realised.

[189] **Gwenda Thomas:** There would be the question of affordability. There would be preventative services, would there not? I do not think that it is unreasonable to include the provision in the Bill to allow for charging for preventative services. The issue here is to develop the thinking in regard to what can be charged for, and what would be reasonable to charge for. However, the question of people's ability to afford to pay that would underpin that charging policy, as it does now.

[190] **Vaughan Gething:** We have another round of questions, starting with Lindsay Whittle and then over to Lynne Neagle.

[191] **Lindsay Whittle:** On safeguarding and protection boards, I appreciate that the regulations will eventually set out the geography, membership, functions and funding of those boards, and I understand that we are having a national independent safeguarding board as well. I understand that six safeguarding boards are being considered. We heard evidence from many witnesses about section 117 of the Bill that there is this potential for a future Minister, or even you, to merge children's safeguarding boards with adult safeguarding boards. You said in previous evidence to us that that would not be in the short or even the medium term, but you said that you felt that it was important to have this particular section in there. However, many witnesses, with respect, disagree with you. Could you further explain your rationale behind keeping section 117 in there? What would the six boards be coterminous with? I believe that they should be coterminous with the health boards, although there are seven of those. If there were to be a future merging of social services and health, then at least the safeguarding boards were already working with the health boards. I think that would make more sense.

[192] **Gwenda Thomas:** We are seeing examples of that developing. In fact, with the children's safeguarding boards, three have already formed on the health footprint, which is encouraging. With regard to the adult safeguarding boards, we should all together celebrate the fact that we are placing the safeguarding of adults on a legislative footing in Wales. This has been long overdue and it has been widely welcomed by stakeholders who have contacted me.

[193] With regard to the merging of these boards, I set up a forum to advise me on this. That forum included the Welsh Local Government Association, the Association of Directors of Social Services in Wales and the Children's Commissioner for Wales. The advice that I received from that forum was that there should be consideration of the merging of these boards, if that was in the best interest of the people who needed to be safeguarded. I am aware of what has been said since to the committee, and there is no intention in my mind to merge those boards unless and until it becomes absolutely clear that that is in the best interest of the people of Wales. There is a view that the merging of those boards would be of benefit and would do away with the age barriers. I think that creating artificial barriers has often, perhaps unintentionally, resulted in people falling through the gaps at the transitional stage between being a child and becoming an adult, and later into life. The question of the merger is not something that will happen quickly, and it would not happen unless it was in the best interest of the future of safeguarding. That is my view on that. However, it was contained in advice to me from the forum that I set up.

[194] **Lindsay Whittle:** I appreciate that, but on the issue of six boards as opposed to seven, where are we in that respect? I do not see the logic for having six.

[195] **Gwenda Thomas:** I am not aware that there is concern about that. There are some issues in north Wales that I believe can be, and are being, sorted, but this is based on the six footprints of public services in Wales, which was contained in the compact that was signed by local government.

[196] **Lindsay Whittle:** It simply does not make sense to me, but I have to accept what you say. What about the funding of these boards?

[197] **Gwenda Thomas:** I referred to the funding of the boards earlier. I believe that a partner should fund this. I do not think that it should all fall on local government because that is what we have seen in the past—given the lack of participation in the funding, it all fell to social services. I have explained the issue of consent with Whitehall and that we are working on that, but I have also said that, voluntarily, the police have contributed to the new board in the Swansea bay area. If that can happen on a voluntary basis, that is good, but we need to continue those negotiations with Whitehall. The Bill, as published, does allow us to require a sharing of the funding by the police.

[198] **Lindsay Whittle:** Just the police. What about other independent health contractors for information sharing?

[199] **Gwenda Thomas:** The independent health contractors.

[200] **Lindsay Whittle:** Yes; GPs, dentists and pharmacists who all assist in safeguarding children and vulnerable adults.

[201] **Gwenda Thomas:** That will be the NHS's contribution to these boards. It is fundamental, is it not? They are partners. I would think that the NHS would look to its independent contractors or whatever. I believe that there is a provision in the Bill to allow it to extend to contractors such as pharmacies. I am not saying that specifically in relation to the boards, but generally.

[202] **Lindsay Whittle:** All right. Thank you.

[203] **Vaughan Gething:** On this subject, I have Lynne Neagle and Rebecca Evans wishing to speak.

[204] **Lynne Neagle:** On the power to merge the regional safeguarding boards, I am grateful for the assurances that you have given. However, we have had evidence from children's charities that they think that if you were to go ahead with that, it should be subject to the superaffirmative procedure in the Assembly. Is that something that you can agree to?

[205] **Gwenda Thomas:** It will be the affirmative procedure. I have not agreed to a superaffirmative as yet.

[206] **Vaughan Gething:** Did you not have another set of questions, Lynne?

[207] **Lynne Neagle:** Yes. I had some other questions about children. We have had quite a bit of evidence expressing concern about the repeal of the Children Act, particularly the loss of the category 'child in need', and particular concerns were expressed about the impact on disabled children. In your letter to the committee Chair, you said that the Bill actually strengthens the provision for the children that are currently covered by the Children Act. Could you expand on that and explain how that is the case, with particular reference to disabled children? I am particularly worried about disabled children, because, in my experience, they have to fight for everything.

[208] **Gwenda Thomas:** Thank you for that question. I take this issue very seriously, of course. This Bill is about people with care and support needs and carers with support needs. Children are a key group within the people concept, and the Bill also contains regulation-making powers that can be used to add to the definition of a disabled child over time. I am sure that that power will be used to meet any changing circumstances.

[209] I do not know if it was you, Lynne, but someone has mentioned the table of destinations and that shows that the provisions are not lost. I am glad of this opportunity to highlight section 17 of the Children Act and to say quite clearly that section 17 of that Act currently provides no automatic right to a service for a disabled child. Instead, a disabled child's entitlement to services depends upon the assessment disclosing sufficient evidence to promote the provision of that service. Section 17(1) of the Children Act 1989 imposes a duty on a local authority to safeguard and promote the welfare of a child in need, the definition of which includes a disabled child, by providing a range and level of services appropriate to the child's needs. However, there is no automatic right to that service under section 17. The local authority must determine that a child has needs that can be met by the provision of a service under section 17. There is no guarantee, therefore, that a disabled child will necessarily have a need for services and, if he or she has a need, that the local authority will provide a service to meet that need.

[210] I am absolutely clear, therefore, that the Bill preserves the entitlement for children that currently exists in law, and the rights that we have created, in fact, go beyond what is provided by section 17 of the Act by creating on the face of the Bill a duty on local authorities to carry out an assessment of children where they appear to need care and support and then a duty to meet those needs that meet the eligibility criteria. Disabled children and young people will also benefit from the new assessment arrangements in the Bill, as all people will have a right to an assessment, and we want the assessment to be proportionate to need to ensure that more energy is focused on delivering solutions and not on bureaucratic assessment processes.

[211] I am sorry to have read that out formally, but it is important to be clear as to the limitations of section 17 and to seek to convince the committee that what we are doing with the Bill goes further than what is contained in section 17.

[212] **Lynne Neagle:** I have one other question relating to the letter that the committee received from the NSPCC that highlights some of the inconsistencies in section 106 with the duty to report adults at risk, which requires relevant partners to inform the local authority.

However, there is no corresponding duty for children. Is that just an omission? Is that something that you could look at?

[213] **Gwenda Thomas:** The requirement for the sharing of information in the Bill would cover that.

[214] **Ms Rogers:** The Deputy Minister did say when she was at the Children and Young People Committee that she would bring forward a Government amendment in this area, because we realised that the duties were inequitable within the published Bill. So, there will be an amendment on this in order to equalise them.

[215] **Vaughan Gething:** I have William Graham next, and then we have about half an hour left, so if other members of the committee want to get in to ask their questions before the Deputy Minister has to go, please indicate early.

[216] **William Graham:** May I ask you about the transition from children's services to adults' services? You rightly pointed out that there is no definition of complex needs; you went on to talk about that, and I think that we were then satisfied with that. However, I am concerned that you lay great emphasis on the development of the regulations and codes of practice. It will be a long time before we will see those. What assurance can you give us that this transition would not be better mentioned on the face of the Bill?

2.30 p.m.

[217] **Gwenda Thomas:** This issue of transition is important and very close to my heart. The Bill legislates for a shift away from the current organisation of services along artificial age baselines to the establishment of a people model. Shifting the focus in that way is designed to smooth out the bumps where they have arisen, and allow people to move seamlessly through the system. The new system will ensure that needs are identified and met according to the outcomes. That is the important issue: the outcomes that people wish to achieve as opposed to the current way of just fitting people into available services. The Bill makes provision, as we have heard already, on information, advice and assistance, and those services will help people to make the most effective use of the care and support that they need. People's right to an assessment will be important, and I want that assessment to be proportionate, to touch on what Kirsty said earlier. The issue of the portability of assessments will be important in supporting this transition as well. We know that disabled children with complex needs—I know this very well—have a poor experience of the transition into adulthood, but all the thought that has gone into this Bill, and the concept of the people model, and in particular the highlighting of this issue in the independent commissioner's report, really pointed us towards what was needed in the Bill to ensure that there is a smoother transition.

[218] **William Graham:** My second question is about the authorised officer, and the power to enter premises. I do not quite understand why you want to repeal the National Assistance Act provision, because that is so well known by practitioners. Hopefully, it is rarely needed, but where it occurs, most people in that field know about it. Why do you wish to repeal it?

[219] **Gwenda Thomas:** This struck me last night as I was reading through these papers on the repeal of the National Assistance Act 1948. That was, of course, 65 years ago. Part of that Act covers the duty to charge for third-party accommodation—residential care—and what the Law Commission said was that, 65 years on, the legislation is so bitty and fragmented everywhere that it is difficult for front-line workers to find various bits of legislation. The aim here is to bring together all of that in a social services Act, and the National Assistance Act is very much part of that. So, that is the reason: to update it, as it has developed piecemeal until 2013. The issue of its having served its purpose in a way is one that has very much struck me

as being an issue that needs to be dealt with.

[220] **William Graham:** I accept the need for modernising and rationalising, but section 47 is, as I say, well practised, and everyone knows what it means. Why bother to repeal it?

[221] **Gwenda Thomas:** Mike, do you want to come in specifically on section 47?

[222] **Mr Lubienski:** Section 47 is very rarely used. It only applies in relation to people who suffer from grave or chronic disease, or aged or infirm people living in insanitary conditions who are unable to care for themselves. It is probably anachronistic in the current time.

[223] **William Graham:** I do not think that that is right at all, frankly. There are many cases that show exactly that: people living in insanitary conditions—and this is the one way of dealing with it straightaway without having to wait for any other assessment.

[224] **Kirsty Williams:** I would like to amplify the point that William has made. Section 47 of the National Assistance Act 1948 has been seen to be valuable, because it allows people to remove a person who is in need of care and attention. While the legislation before us gives people the power to enter premises and to speak privately to an individual who may be perceived to be at risk, which is very welcome and supported, there is concern that that power stops there, in that, having entered the premises and having seen an individual on their own, there is no subsequent power for the authorities to remove the person to a place of safety. Prior to this law, they could have used section 47 of the Act, and of course, in Scotland, there is the safeguarding and protection Act of 2007, which would allow for the removal of such a person. I am just wondering whether, on consideration, you feel that the Government would be able to bring forward an amendment that not only would allow people to enter and give them the ability to interview someone in private, but, should they be really fearful of abuse, they would also have the power to remove that person in the very limited number of occasions, I am sure, where that would occur.

[225] **Gwenda Thomas:** I find this very interesting. with regard to section 47 and the comments. We had to amend the Bill because of consents and what was decreed to be a non-devolved criminal justice issue with regard to the power of removal. We are still talking about that, and our Bill was amended in order to bring it into the competence of the National Assembly at that point. If there is agreement on consent, we can amend the Bill accordingly.

[226] On the issue of the power of removal, a social worker, for example, having talked to a person it is suspected has been abused, will have recourse to the police with regard to any criminal charges that are to be brought in connection with the mistreatment of the person. This is not an issue that has been brought to its conclusion with regard to the power of removal, and the Royal College of Nursing made this point. I have a note here that states that section 105 of the Bill would allow for an order to have access to any adult at risk. Do you want to elaborate on that, Mike, or do we need to take it away?

[227] **Mr Lubienski:** The only point that I was making was that there is a difference, in that section 47 of the National Assistance Act is about the removal of persons who are living in insanitary conditions, versus the power in section 105 of the Bill to apply for orders of the court to allow access to any vulnerable adult who is at risk. It is a much wider—

[228] **Kirsty Williams:** I appreciate that section 105 allows access to persons, and that is very welcome. However, the evidence that we have received is that you have enshrined the safeguarding of adults in legislation, which is welcome, and that you have powers of entry and powers to gain access to an individual. However, the final piece of the jigsaw is, having gained access, what powers does a practitioner have if it is felt necessary to get a person out

of that situation and to a place of safety? While there may be very obvious examples where the criminal justice system could intervene, such as cases of physical or sexual violence, there may be other forms of neglect and abuse that would cause a practitioner to want to remove a person to a place of safety, but which would not be quite so clear cut in a criminal justice system. I was just thinking: would the Government give further consideration to adding an additional step to the powers and the direction of travel already in the Bill in terms of the powers of entry and access to a person? It seems almost as though the final step has been forgotten.

[229] **Gwenda Thomas:** I am grateful to the committee for the opportunity to share this. There is, obviously, the need to consider the wishes of an adult who is at risk and who has capacity. That is an issue that we must take seriously within this as well. So, the best thing for me to do is to write to the committee to clarify the rationale and to share with you our evidence about this issue. I hope that that is helpful.

[230] **William Graham:** May I make one point? Often, these orders are fiercely resisted by the individual. That should be borne in mind.

[231] **Vaughan Gething:** I call on Gwyn Price, then Ken Skates and then Kirsty Williams.

[232] **Gwyn R. Price:** I would like to touch on direct payments, Deputy Minister. We had evidence from panels of children and young people suggesting that there is little awareness among them of direct payments and that they are getting lost in the system. I know from some of your letters to us that you intend to extend this a little bit, but could you bring the committee up to date with regard to where you think we should extend awareness of direct payments?

[233] **Gwenda Thomas:** Yes. I have to refer to Mark Isherwood here and would like the committee to record my thanks to him for his co-operation and the way in which we are working together to develop this, and Mark's subsequent willingness to withdraw his Member-proposed Bill. I know that Mark had collected a lot of evidence with regard to direct payments as well. I do not believe that we are doing well enough with regard to ensuring that service users are aware of direct payments—and Kirsty will know, because she was lobbied, if that is the right word, quite rightly, by Scope as well. We had the event in the Pierhead, which I learned a lot from. However, to be clear with the committee, we are not intending to go down the opt-out route for direct payments in Wales. Having said that, quite clearly, at the care planning stage, awareness needs to be raised among people considering services right at the beginning about the fact that direct payments are available to them.

[234] In my experience, and probably yours, too, what has frightened people a lot is the administration of direct payments. The Bill requires local authorities to become brokers or agents to help people with regard to their decision on direct payments. This could mean that they could trawl the market for providers and certainly help with the administration of both the setting up of direct payments and the subsequent support that is needed. I also think that this is something that could be looked at by, perhaps, a group of direct payment recipients themselves, perhaps to set up a co-operative or to look to set up a social enterprise. There are examples of this. There is one in my area that has been going for quite a lot of years to support people who choose direct payments. However, we certainly need to extend it. My intention is to extend it to carers as well, to give them a right to receive direct payments. I will also look more generally at how we improve the situation with regard to people's awareness of direct payments and offer support if they choose that kind of support for the provision of their care needs.

[235] **Kenneth Skates:** Deputy Minister, I would like to ask a few questions about services for looked-after and accommodated children and, specifically, Part 6 of the Bill. I am sure

that you will be aware of the report to this committee by the Children and Young People Committee, which notes that Part 6 is only a partial consolidation of existing legislation and it expresses its concerns that the Bill does not clarify provision for looked-after and accommodated children. Would you be able to provide further clarification, possibly in writing, of the duties in Part 6 of the Bill and the extent to which they replicate or build on existing duties?

2.45 p.m.

[236] **Ms Rogers:** I believe that the Deputy Minister has already provided the table of derivations and destinations that track through the Children Act 1989. However, we would be happy to provide some further information. Broadly speaking, the Bill pulls in those bits of the Children Act 1989 that are within the gift of the devolved administration, and seeks to simplify that in a way that is easier for people to understand and use.

[237] **Kenneth Skates:** On a smaller point regarding care leavers entitled to support under sections 88 and 94, are you aware of concerns about the terminology used in categories 1 to 5? Concerns have been expressed to us that the terminology is rather close to that which is used for the prison service, and there are calls for it to be adjusted somewhat.

[238] **Gwenda Thomas:** I would like to acknowledge your efforts in regard to care leavers as well, which culminated in the scheme to support care leavers. The way in which we were able to work together with you, Ken Skates, and with Mark Isherwood on that one shows the importance of backbench contribution to the development of legislation.

[239] I have some concerns. Whatever you would call this group of people might give them some type of label, but if the committee has any suggestions for a replacement for the word 'category', I would be more than pleased to consider that.

[240] **Rebecca Evans:** I have three questions on some things that we have not already discussed. We have not really looked at adoption in this committee, although we have talked about it at length in the Children and Young People Committee. We have heard calls for a duty to provide post-adoption support to be included in the Bill. Is that something that you would be willing to consider?

[241] **Gwenda Thomas:** Yes, definitely. The duty to provide post-adoption support will now be the responsibility of the national adoption service. There is a power to direct the service to commission from the third sector any services that it thinks it needs, and I would see a big role for the third sector in providing after-adoption services. It is clearly set out in the plan that I have circulated to committee that the duty to provide post-adoption services is placed on the national adoption service. I pay tribute to ADSS Cymru and the WLGA for the work that they have done, along with the third sector and the Children and Young People Committee, in developing the thinking that has got us to where we are with the proposals for a national adoption service.

[242] **Rebecca Evans:** Moving on to section 8 of the Bill, which refers to accessing information and advice, we have heard quite a bit of evidence that the Bill should be amended to refer to accessible information and advice. Is this something on which you might consider bringing forward an amendment to address?

[243] **Gwenda Thomas:** I would expect information to be accessible, full stop. It needs to be made available in different formats, such as through face-to-face meetings, using telecommunication and the various modern technologies that we have, in Braille and also by having tapes for the hard of hearing. I would expect that service to be provided and to be accessible to everyone, and to ensure that people with difficulties in communicating or

understanding know about this service and can access it.

[244] **Rebecca Evans:** Are you satisfied that there is a legislative base to deliver your expectation?

[245] **Gwenda Thomas:** Yes, there is. Accessible information is not mentioned on the face of the Bill, but that will be a fundamental requirement placed on local authorities and their partners in the code of practice, and in the arrangements setting out the role and functions of future information. All of the roles of the information advice and assistance service will be included in that code of practice, which, of course, will have to be debated on the floor of the Assembly and accepted by Members.

[246] **Rebecca Evans:** My final question refers to the repealing of the Social Care Charges (Wales) Measure 2010. What are the implications of repealing that, and to what extent will the charging provisions in the Bill replace those in the Measure, particularly the £50 a week cap on charging?

[247] **Gwenda Thomas:** The charges Measure in its entirety is brought into the Bill and there is no intention to do away with the weekly cap.

[248] **Vaughan Gething:** That concludes questions from Members today. I very much thank the Deputy Minister and her officials for attending and assisting us in our scrutiny. Before you go, Deputy Minister, I should announce that the Enterprise and Business Committee, and we have two members of that committee here, has asked this committee to consider a legislative consent motion on the Care Bill before Parliament. I presume that this will not be a problem, but I just want to check and clarify that you would be happy to respond to any considerations that arise in this committee if we were to undertake a short report on that. We will consider our approach next week.

[249] **Gwenda Thomas:** Yes. There are three aspects to that LCM and it does talk about the cross-country provision and the accommodation needs of people. I have been happy to support that LCM, but the views of the committee on it would be welcome. I believe that it will be tabled very shortly for discussion in Plenary.

[250] **Vaughan Gething:** Thank you very much for that and for attending this afternoon. Members will note that our two next witnesses have arrived, but we will need to shuffle around a bit and people may need to leave or take a quick comfort break before we start.

2.53 p.m.

Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru): Sesiwn Dystiolaeth 5 Social Services and Well-being (Wales) Bill: Evidence Session 5

[251] **Vaughan Gething:** Welcome back to today's final session of the Health and Social Care Committee and our final evidence session in considering the Social Services and Well-being (Wales) Bill. I am very pleased to welcome Dame June Clark and Professor Ceri Phillips to the committee today. Thank you both very much for attending a little earlier than intended; we do appreciate it. It would be helpful if you could first state your names and your current roles for the record, I will ask the opening question and then we will move on to other Members for questions.

[252] **Dame June Clark:** My name, if you want the full whack for the minutes, is Professor Dame June Clark. As far as I am concerned, please just call me June; it is easier. In terms of role, I am now retired—I was 72 earlier this week—[*Interruption.*] Thank you. I am a nurse

through and through, and my original background, many years ago now, was that I was a health visitor. I went into nursing management and I managed community nursing services in England. That extended until I became a chief nursing adviser to a health authority, where I managed the full range of services. Throughout that period, I increasingly became interested in services for, and care of, older people. Nowadays, I am a member of the board of trustees of Age Cymru and I sit on the care and support committee of Gwalia, so I maintain my interest in older people. As I made clear in my paper, although I had experience with children many years ago, it is only in terms of the care of older people that I now claim any particular expertise.

[253] **Vaughan Gething:** Thank you for your written evidence, which we have had an opportunity to read. Professor Phillips, do you want to introduce yourself and your current role?

[254] **Professor Phillips:** I am Ceri Phillips and I am professor of health economics at Swansea University. I am also a non-executive member of Abertawe Bro Morgannwg University Local Health Board.

[255] **Vaughan Gething:** Thank you. I will ask the opening question. There has been much debate around the policy intention of the Bill and the structure that it sets out to try to achieve that. One area of questioning on which we have focused is whether the Bill sets out the right structure to achieve the desired integration and delivery between health and social care. Do you think that the structure that the Bill sets out will deliver on what appears to be a relatively agreeable policy intention? I do not know who wants to start on that.

[256] **Dame June Clark:** I forgot to say that the last six years of my career were spent as professor of nursing at Swansea University. The short and frank answer to your question is that I do not believe that the structure set out will deliver on the policy intention. The reason for that is that for the last 25 years, and several times in my working experience, legislation, documents and strategies have required health authorities and local authorities to co-operate and talk about co-operation. However, this has not happened. I believe that, in this Bill, we now have an opportunity to do something about that. I think that there are lessons in the Scottish provision, which is, chronologically, a little ahead of ours, that could be learnt to enable us to achieve what we want.

[257] **Professor Phillips:** I am optimistic that it can go some way towards addressing the agenda. However, evidence over a number of years would suggest that as long we have this distinction in terms of organisations, those organisational agendas will come to the fore, especially in an era where resources are not going to be in any great supply, in a sense, to be able to facilitate integration; it is going to have to come out of existing resources. The organisations will tend to retreat into tradition and the existing practices of which they are aware. Perhaps my optimism is, therefore, misguided in terms of evidence. However, I think that we need to see that there is, through the Bill, at least an attempt to make some step changes so that we get integration, not just in name but in reality. The frameworks of the financial structures and information systems remain major obstacles. If the Bill can make at least an attempt to change the cultures around finance and information systems, we may be on the right road.

[258] **Elin Jones:** I agree with you, June, that the Bill misses an opportunity to fully integrate health and social services, to pool budgets and to break down the barriers that we all know exist and affect an individual's care. We had the opportunity to question the Deputy Minister on this before you came into the room. She believes that the powers in the Bill at the moment are adequate to promote social service functions, with a view to the integration of care with health provision. The Bill gives her regulation-making powers to specify partnership arrangements between two or more local authorities or local health boards.

3.00 p.m.

[259] However, of course, that does not make it happen from day one of the passing of this legislation. In fact, when she was further asked about what those regulations were intended to pursue, it was not the integration of social services and health that was the priority use of those regulations, according to her evidence. After that preamble—sorry—I wanted to ask how you think the Bill could be improved or amended to require local authorities and local health boards to pool budgets, to work together and even to merge on health and social services. We have had evidence from local authorities to say that they want more national direction on this issue from this legislation, but local health boards have been less forthcoming in wanting such provisions in this Bill.

[260] **Dame June Clark:** The simple, but not easy, answer would be: everywhere in the Bill where the word ‘may’ is used, the word ‘may’ should be replaced by something stronger like ‘require’. That is what the Scottish Bill does. It requires local health boards, health authorities and local authorities to do things. The second thing is that the word ‘co-operate’ is very soft and ambiguous. I am anxious that we should have something that affects the delivery of service. I remember very well, back in 1990 when the Act came in, I was chief nurse to Harrow health authority, part of its multidisciplinary management team, and we specifically set up, in response to that legislation, a committee—another one—to co-operate. We talked and talked and talked, the services stayed exactly the same and we did nothing. I do not believe that our experience there was atypical in any way. We have had permissive legislation for 25 years. I said in the first part of one of my papers that the select committee’s report in 2011 said that we need to move beyond arguing for integration to making it happen. I do not see enough in this Bill, although I welcome it and there is a heck of a lot in it that is really good. However, that bit is just not strong enough. I would be really sad if we missed what I see as a once-in-a-lifetime opportunity.

[261] **Professor Phillips:** I agree. To hope that it will happen will probably result in failure. The wording needs to be stronger. The word ‘duty’ should perhaps be applied. Both social services departments and local health boards have lots of things on their plates and unless they are obligated to deliver on this, I think that we will still see the same problems that currently exist. The problems as I see them with health and social care systems are not in the individual components of the systems—they tend to work well; it is in the bits where they seek to join up that the problems lie. This Bill gives us an opportunity to join those pieces up with a degree of obligation on the relevant organisations to work together. They need to be required to work together rather than just pay lip service to it.

[262] **Dame June Clark:** There is another point that is relevant to this: there is a difference, I believe, between the concept of integrated care and integrated services. In my old age, I am prepared to be a lot more pragmatic and flexible than I used to be. I understand, although I regret, the difficulties that there are about integrating services, combining health authorities and local authorities. In an ideal world, would that not be nice, but, even then, it would not be perfect. However, there are other ways of integrating care and maybe within the Bill and the regulations or whatever will follow we could work down that road. I will come back to that; you may want to ask me more about what I mean about specific bits of it.

[263] **Vaughan Gething:** Okay. I have William Graham, Kirsty Williams and Lindsay Whittle who wish to speak, and then I will look to the other side of the table.

[264] **William Graham:** Looking at your evidence, and the bit about continuing healthcare in particular, I thought your comment on ‘not off my budget’ was absolutely explicit. I suppose all Members here have probably had cases of exactly this kind. How do you think this Bill can be improved in terms of the assessment? As you rightly say, the NHS is

responsible for providing the assessment. Therefore, it is in its interest to minimise the number. You have suggested that the bar is set rather high in Wales. The sorts of cases we often have involve elderly patients who are declared by the courts as lacking capacity, perhaps due to vascular dementia. They are confined to an EMI home because of behavioural problems. Whether it is privately funded or provided by the local authorities, the NHS is out of that entirely—it does not have to contribute. It is difficult to isolate the mental health element of the care package. I would have to say that, in most cases, the prospect of recovery is probably minimal, but it certainly has to be addressed. How can the assessments be improved? You say that there should be a single all-Wales tool. That is greatly to be welcomed, surely.

[265] **Dame June Clark:** Yes, it is, but it is only a small step in the right direction. I will not focus—because you will have heard it elsewhere—on the suffering that this system causes, or on the cost of care, because it is often said that it is unaffordable. All this is affordable, because somebody is affording it now; it is just the distribution among who affords what. Therefore, I think that the answer to your question lies in the concept of pooled budgets. It is not in separate budgets, with two organisations protecting their own and saying, ‘I do not care who pays for this, as long as it is not me’. If you talk to district nurses and assessors at the ground level, that culture is there. One can understand it, even if you do not agree with it. So, a pooled budget would be the first thing. Then, in terms of the assessment, if you have a pooled budget, you need only one assessment to discover what the care needs are and what is needed by way of a care plan to meet those needs. It is only when that is out of the way that you are in a position to move on. What worries me in all of this—I put it in one of my papers—is that, every time you have an interface, a whole industry comes up around it. Civil servants, legislators and others will fight about definitions and ask about exactly what is meant and how it is interpreted. You have, in the case of continuing care, a whole new industry and breed of people. I do not know how many jobs there are in Wales; I have tried to find out information and it is quite difficult. However, health boards had to appoint special people to do these assessments, and had to train them and pay for everything that goes with that. It is just a waste of money that should be spent on direct care. That is really what makes me even angrier than when I think about the suffering that people who are experiencing it go through.

[266] **Professor Phillips:** Under the current system, organisations and professionals are incentivised to switch and shift cost, as opposed to incurring the cost. The positive thing about pooled budgets is that that would not be the case. The issue with assessment is more difficult. Assessment is undertaken by professionals who have their own particular frameworks and their own agendas. It has been shown in oncology, for example, that where you get multidisciplinary assessment, you get better patient outcomes, because the oncologists are working alongside the nurses, the surgeons and others who are involved in the care of that patient. The assessment of the patient is more of a whole-person assessment. What we tend to get in health and social care is that the nurse does an assessment and will think that the particular patient requires the services that the nurse can provide, whereas the social worker will think that the service user will need the services that social services can provide. I have an anecdotal example. Many years ago, we sat in on a discussion of the case of an elderly person who was deteriorating rapidly. She had recently lost her husband, who had been a major carer. Both the health service and social services were trying to deal with this lady and trying to provide the services that they thought would meet her needs. Then, a junior social worker at the back timidly put up her hand and said, ‘It’s the garden’. The director of social services asked the question, ‘What do you mean, “It’s the garden”?’ and it emerged that her husband had dutifully tended their garden and ensured that the flowers were in bloom and so on. Since he had died, no-one had paid any attention to the garden. When she looked out through the patio windows, she got depressed and demoralised. The response of social services was, ‘We don’t do gardens’.

[267] **William Graham:** Do you think, from the little analogy that I gave you, that the mental health aspect of it is ignored? Thirty years ago, when I started in politics, going around care homes, they were pretty terrifying, as you will well know. Forgive me; I am thinking of certain aspects of it. However, they have got much better; there is no doubt about it. However, I do detect that that EMI part of it needs a great deal more of a push to be brought up to a reasonable standard, where not only the patient, but the families and those offering the care, are happy that it is the best that can be provided.

[268] **Dame June Clark:** I agree with you. I think that mental health needs are very often underestimated and under-assessed. One of the reasons for that, and let us not go down that route because we will be here all day, but as a nurse I can say that there are faults with basic nursing education, which underestimate the importance of mental health needs. I think that that is perpetuated all the way through. It is quite true. I am ashamed to admit it, but it is true that, in many cases, there is an over-emphasis on the physical aspects of health, as opposed to the mental aspects of health. However, I do not think that that is a simple distinction between, say, nursing and social work. I think that it is a much more general problem.

[269] **Kirsty Williams:** I would like to come back to some of the barriers that prevent some of this integration happening. If you are going to do it anywhere, Powys is a good place to start because there is coterminosity between the local authority and the local health board. Of course, the local health board does not provide complex secondary and tertiary care services. It provides community services. However, I still have the scars of trying to get integration and a set of joint appointments and joint services to be developed. One of the things that you do not mention in your list of barriers, although it is touched upon slightly in terms of organisational culture, are issues around accountability and governance arrangements that, in the end, were among the things that put the kibosh on the whole project. Elected councillors were saying to the local health board, 'Well, that's fine for you to say that, but we have an election every four years and we have to be accountable to the public in a way that you and your board members are simply not accountable'. Could you explain, as I am not as familiar as I should be with the Scottish model, how issues around accountability and governance arrangements for how those pooled budgets will be spent by that new chief executive officer are addressed when that person is reporting to two different organisations that have two different structures of accountability and governance? Could you overcome some of this by moving towards a set of shared outcomes? While the NHS and social services have different outcomes and performance indicators to which they have to perform, the chances of overcoming some of this, it seems to me, are very difficult.

[270] **Dame June Clark:** You are right. I had not particularly thought about that as a barrier until you raised it at the Institute of Welsh Affairs seminar, I think, which we had a while back. My personal position on the issue of accountability is that I am willing to say right up front that I believe that health boards should be elected. Having said that, you asked about the Scottish model. The relevant bit in the Scottish Bill is very explicit: the two authorities are required to set up what they call a partnership board. However, the partnership board is not a committee for talking; it is an organisation for delivering services, with a single chief executive officer, who is accountable to both authorities.

3.15 p.m.

[271] I can see, having worked through general management in the health service, from functional management to general management and all of that over the years, that that is not easy to achieve, but it is a big step forward. If people in my field 20 years ago in the health service had to get used to the notion of dual accountability in healthcare, then I think it could be achieved in this model. I do not pretend that it will be easy. From what I have seen, just on the web, really, of what has been happening in Scotland, Scotland has had lots of consultations about this, and this is an issue that has come up. Some of the things that were

originally proposed there have had to be softened, but I do not know the detail of that. However, if you have to have two different authorities, it is better to have one CEO with a clear accountability to both of them, however hard that may be, than the kind of situation that we have had over the years of different committees with totally different accountabilities. Does that help a bit? It is not easy.

[272] **Kirsty Williams:** No, none of it is.

[273] **Professor Phillips:** One authority and accountability within one agency or authority would be the ideal situation. There are examples of that around the world, such as in Scandinavia, where there are county councils that have health and social care. I think that the Republic of Ireland has health boards. However, we are not contemplating that model. One would like to think that, in drawing up the job specification for the CEO, there would be a clear perspective that he or she would be accountable to a joint body, as opposed to two separate bodies. The organisations need to reflect that, so that it is not just the CEO who has to be accountable, but there is a body that, in a sense, emerges from the two distinct agencies to oversee that.

[274] The issue of governance is a bit of a smokescreen, because people always hide behind things that they find difficult. We want to ensure that the right care is delivered to the right person at the right time in the right place and so on. That is, basically, the bottom line. If there is any deviation from that in terms of governance, that body and that CEO need to be held accountable for it.

[275] **Dame June Clark:** I agree very much with what Ceri has said. That is the reason I drew attention earlier to the distinction between integrated services and integrated care. If we cannot put the world right—yet—around the authorities, there is a lot that we could do about integrated care within the kinds of things that we can do. For example, I can see at least three ways of achieving that, and I am talking at a theoretical level now, because feasibility is a different issue, and you cannot undo history. What we have, we have, and there is no way that we can go back to 1948 or whenever.

[276] In 1974, I was a health visitor employed by a local authority, Berkshire County Council, and I was also, the same time, a member of the then new area health authorities that were being created, both of the shadow authorities that we had in those days, which did all of the detailed work about accountability and other issues, and then of the firm board. As I said in my paper, the way that things were divided up at that time was a negotiated settlement, based on professionals. All the community nursing services, of which I was a part, had our contracts moved over to the new health authorities, and all the social workers who worked in hospitals had their contracts of employment moved to the social services departments. That is at the root of what I see as a serious barrier, which is this nonsense, as I believe it to be, that says that local authorities must not do anything that the NHS does and that the NHS must not do anything that local authorities do. That is stupid, because it is already happening. The phrase, in both sets of legislation, is ‘care and support’; both kinds of authorities provide care and support to people who need it. It would be theoretically possible to do a reverse transfer, and, indeed, that is what England has just done in respect of its public health function, so I would not accept that it cannot be done, but I can see that it is not wonderfully feasible.

[277] A second way, using the systems that we have at the moment, which I do not particularly like, would be to use the mechanism of commissioning and contracting. At the moment, a local authority will contract with, often, a third-sector organisation—I am thinking of the one that I am involved in, Gwalia, for example, which holds a contract for the provision of services in Carmarthen. I do not see any reason why local authorities should not contract with local health boards to provide all those services. As I said earlier, I am much more concerned to be pragmatic and practical now than the kind of niceties that I would have been

concerned about if we could rewrite history. There are ways, so long as you distinguish between integrated care, which is our primary aim, and integrated services. I agree with Ceri that ‘integrated services’ is an unnecessary barrier—it is a bit of a smokescreen, although I know that that is a strong term.

[278] **Kirsty Williams:** As you quite rightly say, in England, public health has gone back to its traditional home, which is within local government. It always used to be a function of local government, and, if you look at the big advances in healthcare, they have been made by the civic authorities like Birmingham City Council. It was their public health initiatives that made the biggest advances in outcomes for people. In Wales, we used to have different trusts, did we not? We had acute trusts and community trusts. God forbid that we should have another reorganisation, but do you think that, as a medium or longer-term goal, we could look to maybe take community services out from health boards and, along with public health, put them back into the domain of local authorities? That is, if local authorities were bigger.

[279] **Dame June Clark:** We could do, but I think it is more practical to go the other way. With all their faults in the health service—and there are plenty—the community nursing services have two things that, because of history, local authority social services do not. First, they have in place a regulatory framework that is designed to protect the public. Secondly, they have an integral and important—although I do not think it is adequate—training programme for the care of older people. It has specialists, going back to your earlier point, such as nurses in dementia care, and in care of older people. It has ready-made structures that mean that the community nursing services could provide all the personal care that is currently provided by local authorities. It is too late to be worried about it now, but, thinking back, there was a huge investment for local authorities to make in training and recruiting new people in a field where there was no history of a knowledge base, and I have given you the two definitions that show that most clearly. Whether that could ever be achieved, because of politics, I do not know, but in theory, it could be, and that would be the direction to do it.

[280] **Professor Phillips:** To answer the question directly, I would say ‘no’, because modern community services need, in a sense, to be the current hospital. We have hospital-at-home models, for example, where we need not just nurses working in the community, but specialists, and the current health direction would suggest that we need to get the specialists out to where the patients are, rather than getting patients in to see the consultants in the hospitals. I would not like to envisage the discussions between the BMA and local authorities if you were trying to get local authorities to employ doctors, let alone nurses.

[281] **Vaughan Gething:** I have William and Elin on this point, and then I will go to Lindsay for a different set of questions.

[282] **William Graham:** On the points that you raised there, why do you think, in this Bill, there are specific clauses forbidding providing or arranging provision of nursing care by a registered nurse?

[283] **Dame June Clark:** I think it is just a hangover from that 1974 legislation. It has sort of gone on being repeated and repeated; I can see no rationale for it in 2013 at all. The reality is that, in the provision of personal care, depending on how you define it, health authorities are already providing that in hospitals and homes and so on, through nursing services. Local authorities are also providing it, so it is already happening. So, the legislation, as it was written, does not make sense and is not practical. I can see no rationale for it now; I could see the rationale in 1974 when we were busy, with the BMA, trying to negotiate with doctors about who should employ medical officers of health and their staff and so on. It is written on my heart, so I remember it well, even though it was a long time ago. I think that we should just get rid of it.

[284] If we leave it in the Bill as it is, then what we will get—no, I am not going to be careful about what I say. What we will get is a field day for the regulation writers and the legislators and draughters and so on, in interpreting what this means. It is also tied up with what seems to be a small problem, but one that looms quite large. It is the distinction—and it comes into funding—between nursing care and personal care. I believe passionately that there is no difference, but that does not mean to say that it has to be provided by this or that organisation; it has to be provided by those with the knowledge and skills to do it. That is why I mentioned that we should, if we can, in the Bill, get our definitions right, and use the Scottish definition of nursing care, which is any care that requires the knowledge and skills of a qualified nurse, rather than the English definition, which is full of ‘except this’ and ‘except that’ and decisions about whether nursing care is needed—and I ask, who on earth is deciding need? That simply provides a field day for the lawyers, and that is what led to the Coughlan case and all of that. We could get rid of all of that if we simply took this chunk out of the Bill and let it be flexible. I do not care who provides the services, so long as it is done by agreement, it is integrated, it is comprehensive and it is knowledge-based.

[285] **Vaughan Gething:** Elin, is your question on this point?

[286] **Elin Jones:** It is on this point. I asked the Deputy Minister earlier in the session why this particular clause barring the employment by local authorities was in the Bill, and her response was that it came from Law Commission advice. However, I did not go back to it in that session, because I had a lot of questions. Perhaps this is an issue on which we could ask the Deputy Minister for further evidence and clarification as to what advice she was referring to specifically. Or maybe you know what it is.

[287] **Dame June Clark:** What happens at the grass roots, for example—and this is only one example—is that we know that in residential care homes, as the age of admission increases and people have more comorbidities and so on, the health needs increase and there are more and more requirements for nursing care. At the moment, the process requires that, even if there happens to be a nurse on the staff of a residential care home, you still have to pull in the district nurse from the community nursing services to make the assessment of need. Now that is daft. As I have said, I think that, as in Scotland, there should be a single category of care home, and if every care home had the right skill mix of nurses, care assistants and others, and access to specialists, then you would not have to do that; it would just be so much more simple, and people could get the expert advice they need when they needed it. That would avoid some hospital admissions, because there is a fair reaction among care workers as much as there is among doctors in being risk averse and saying, ‘We’d better send her to the hospital’—that exists. Also, of course, a lot of conditions are missed in the early stages, because of the lack of the appropriate knowledge base—you know, linking diuretics with incontinence in the night, for example, and linking nutrition with pressure sores; all of that sort of stuff. Very often, it is left too late, because the primary carers did not have the knowledge base.

3.30 p.m.

[288] **Professor Phillips:** There is also a danger of professional boundaries existing, and that is evident in the Francis inquiry, where there was a clear demarcation as to who did what, and we know the outcomes of that.

[289] **Lindsay Whittle:** Good afternoon. I appreciate that you are here to talk more about the principles of assessment, the right to an assessment, and service users’ perspectives, but most of this conversation seems to me to be about elderly persons’ care, but this Bill also looks at provisions for young people. First, do you think that this Bill is too large? Personally, I think that it is too large and that it should be separated into a part that deals with younger people and another that deals with older people. We know, from all of the statistics that we

have, that the major express thundering down the track in Wales is the fact that we have a growing elderly population—and, having had my bus pass recently, I am very pleased that we have a growing elderly population. Do you think that this Bill is too large, and what is your experience from the Scottish perspective? Scotland seems to be mentioned in glowing terms throughout this conversation today and in your evidence, but how did Scotland cope with the mix of young people and older people?

[290] **Dame June Clark:** I do not claim any expertise on whether Bills are too large or too small, but it is significant that the Scottish Bill is about adult health and social care integration and is specifically concerned with adults. There is a separate Bill to do with children and young people.

[291] **Lindsay Whittle:** That is just what I wanted to hear, Chair. Thank you.

[292] **Professor Phillips:** I also cannot comment on whether it is too large, but the issues that exist in terms of elderly care also exist in terms of children and young people. The service users, the patients, tend to fall between the gaps. Those gaps can be quite large and quite devastating in terms of the outcomes for the people concerned. We need to ensure that we close the gaps so that they are as small as possible, so that people do not fall down into the crevices.

[293] **Lindsay Whittle:** Thanks for that; I appreciate that. Unfortunately, we have more and more young people coming into care in Wales, but it is nowhere near the volume of older people and elderly mentally infirm people in Wales. However, what I am concerned about is that I know that, in local authorities, by and large, children's services are separate from adults' services. I can see a case for integrating health and social care for older people, but I cannot see a case for integrating services for children between social care and health—at least not in all cases. I can see the case for disabled children, but I cannot see the case for fostering and adoption. That is why I think that this Bill is too large and we should concentrate mainly on elderly care, which is our big, powerful 125 express coming down the line in Wales. By the way, June—as you like to be called June—there are many Members here who fully agree that health boards should be accountable and elected as well. Thank you for saying that.

[294] **Vaughan Gething:** Although, technically, that is not a part of this Bill.

[295] **Lindsay Whittle:** No, sadly it is not.

[296] **Elin Jones:** There may be an amendment on that.

[297] **Dame June Clark:** I really would not want to comment on the position of children, as I do not, any more, have that kind of expertise. However, I can see your concerns, and I share them, about the size of what we are trying to do.

[298] **Lindsay Whittle:** It is just too big, is it not?

[299] **Dame June Clark:** I suppose that it is something to do with the notion of a once-in-a-lifetime opportunity, and the fact that you have to put in as much as you can in the one opportunity you get. I do not know.

[300] **Lindsay Whittle:** I have been through a number of reorganisations. I have been in local government for 38 years and I have been through three reorganisations, because I am old enough to remember the urban district councils as well. So, they are not insurmountable problems, but they are expensive.

[301] **Elin Jones:** So, it is a thrice-in-a-lifetime opportunity, then.

[302] **Lindsay Whittle:** Yes, indeed.

[303] **Vaughan Gething:** How lucky. I call on Gwyn Price.

[304] **Gwyn R. Price:** Good afternoon, both. On voice and control, do you believe that the voice of the user is being taken into consideration enough in this Bill?

[305] **Dame June Clark:** Yes and no. Yes, it is, but not enough. That is as much to do with the cultural shifts that we have to make as it is to do with the legislative shifts. There are still patronising attitudes around among all types of health and social care professionals, in that sometimes they think they know best. To be fair, sometimes they do—it is not an easy judgment to make. I was listening to your earlier discussion about what you do regarding people who need to be removed from a bad environment. I remember a lady with 25 cats in a tiny house, from my health visiting days. It is a fine line. We just have to keep on trying to get more and more. Perhaps it is not in the legislation, because it is much more to do with the allocation of resources, but the need for advocacy services is really important for older people, and we are not doing enough there. That is a question of resources more than it is of legislation. The funding for some third sector advocacy services, for example, has had to be cut.

[306] **Vaughan Gething:** The final set of questions is from Rebecca Evans.

[307] **Rebecca Evans:** You have both spoken about people falling through the gaps between health and social care services, but I am also familiar with cases where people with certain conditions fall between teams in social services, such as people with autism who fall between the mental health team and the learning disabilities team. Do you think that this Bill, with its new focus on the individual and their needs, will help us to prevent people from falling through those gaps in future?

[308] **Professor Phillips:** Going back to the point that I made about assessment, professionals tend to assess within their own individual frameworks. If a person does not necessarily meet the perceived needs of the professional and the service that they provide, there can be problems. That is why we need integration, in terms of assessment and holistic assessment, to avoid the issues to which you refer.

[309] **Dame June Clark:** I agree entirely. It is an issue for another day, but in the past I have spoken and written a lot about the issue of specialisation within professions. Within my profession, for example, we have premature specialisation. All the literature says that, generally speaking, professionals in all professions want more and more specialisation, because it meets their needs and interests, and ordinary people want more and more generalisation, because they want someone who will deal with them as a whole. I must say that I am a generalist. I do not get my way, but I would like to see much more generalism in care, particularly at a primary care level.

[310] **Rebecca Evans:** I have a different question. Do you feel that the legislation, as written, is clear enough about the role that the voluntary sector and independent sector can play in terms of integrated care?

[311] **Dame June Clark:** I do not know how much enough is enough, because, as with the other issue that we just mentioned, we should go as far and as fast as we can. It is obvious to everyone that the third sector plays a huge role in the delivery of care of all kinds. The evidence suggests that it is pretty good at it. So, I do not think that we should be afraid of it in any way.

[312] **Professor Phillips:** I think that there will be increasing dependence on the third sector. It has suggested that it has not been given a voice in the planning of services and in assessments, which has resulted in it picking up the pieces rather than being part of the partnership and the collaborative venture, so that it could, in some cases, prevent problems as well as deal with problems.

[313] **Vaughan Gething:** That ends our questions and our evidence-taking on this particular Bill. Thank you very much for giving up time to come here today to answer questions from the committee. We will send you a transcript of today's session, so that you can see that it is all correct. If there are any corrections to be made, please send them to the clerk. Thank you again for assisting us today.

3.39 p.m.

Papurau i'w Nodi Papers to Note

[314] **Vaughan Gething:** We have a few papers to note, including the minutes of our previous meetings on 16 and 22 May. We have a number of papers relating to evidence on the Bill. I should also specifically draw your attention to correspondence on the Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012, namely the formal letter from the Minister saying that they will not be going ahead.

3.40 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

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

the committee resolves to exclude the public from the meeting on 12, 20 and 26 June in accordance with Standing Order No. 17.42(vi).

[316] I see that Members are content.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth y cyfarfod i ben am 3.40 p.m.
The meeting ended at 3.40 p.m.*