



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

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol **The Constitutional and Legislative Affairs Committee**

Dydd Llun, 12 Mai 2014
Monday, 12 May 2014

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

The proceedings are reported in the language in which they were spoken in the committee. In

addition, a transcription of the simultaneous interpretation is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
Julie James	Llafur Labour
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
Eluned Parrott	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Andrew Jolley	Prif Weithredwr Cynorthwyol, Gwasanaethau Cyfreithiol a Rheoleiddiol, a Swyddog Monitro, Cyngor Bwrdeistref Sirol Pen-y-bont ar Ogwr Assistant Chief Executive, Legal and Regulatory Services and Monitoring Officer, Bridgend County Borough Council
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Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Stephen Boyce	Y Gwasanaeth Ymchwil Research Service
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Ruth Hatton	Dirprwy Clerc Deputy Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 14:30.

The meeting began at 14:30.

Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant
Introduction, Apologies, Substitutions and Declarations of Interest

[1] **David Melding:** Good afternoon, everyone, and welcome to this meeting of the Constitutional and Legislative Affairs Committee. I will start with the usual housekeeping announcements. We do not expect a routine fire drill, so if you hear the alarm, please follow the instructions of the ushers, who will help us leave the building safely. Please switch off all mobile phones and other electronic devices. These proceedings will be conducted in Welsh and English. When Welsh is spoken, there is a translation available on channel 1, and if you are hard of hearing, you can amplify our proceedings on channel 0. There are no apologies and I am pleased to see that we have the full committee here today.

**Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad arnynt o
dan Reol Sefydlog 21.2 na 21.3
Instruments that Raise no Reporting Issues under Standing Order 21.2 or 21.3**

[2] **David Melding:** The items are listed there for you. Are there any queries? There are none, so we are content.

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

[3] **David Melding:** We have a paper to note. We have received a letter from the Presiding Officer outlining the fact that the legislative consent memorandum in relation to the Wales Bill is coming to us, and that there is a deadline of 26 June for us to report. There are a couple of issues around this and how it will affect our work programme, but we will have an opportunity to discuss them in a moment when we are in private session. Our evidence session will start at 3 p.m. as notified, so I will now move the relevant Standing Order that we meet in private until 3 p.m.

14:31

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

[4] **David Melding:** I move that

the committee resolves to exclude the public from the meeting for the next item of business in accordance with Standing Order 17.42(vi).

[5] Unless any Member objects, and I see no-one objecting, we will now go into private session. Please switch off the broadcasting.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 14:31.
The public part of the meeting ended at 14:31.*

*Ailymgynullodd y pwyllgor yn gyhoeddus am 15:00.
The committee reconvened in public at 15:00.*

**Tystiolaeth yn ymwneud â'r Ymchwiliad i Anghymhwyso Person rhag bod yn
Aelod o Gynulliad Cenedlaethol Cymru
Evidence in Relation to the Inquiry on the Disqualification of Members from the
National Assembly for Wales**

[6] **David Melding:** The Constitutional and Legislative Affairs Committee is now back in public session. This is the third oral evidence session in our inquiry into the disqualification of membership from the National Assembly for Wales. I am delighted to welcome Andrew Jolley, who is the assistant chief executive, legal and regulatory services, and monitoring officer at Bridgend County Borough Council. Mr Jolley is representing Lawyers in Local Government.

[7] We are very grateful to you for giving of your time, as well as for the written evidence that you have submitted. Our proceedings are conducted in Welsh and English, and, when Welsh is spoken, there is a translation available on channel 1 on the headsets. If you need to amplify the proceedings, you can do so on channel 0. We have all read your written evidence, so unless you want to add to that, I suggest that we move straight to questions, if that is acceptable.

[8] **Mr Jolley:** I am in your hands, Chairman.

[9] **David Melding:** I will ask the first question. In your written evidence, you emphasise that the National Assembly needs to expand on basic principles, and you refer to Parliament, the European Parliament, the Scottish Parliament and the Northern Ireland Assembly in this regard. I think that we would like to hear more about that, and about where you think we fail, perhaps, to base our order on basic principles, and where there is, perhaps, good practice in those other legislatures.

[10] **Mr Jolley:** Chairman, I certainly was not suggesting that there had been a failure; I was referring to the general statutory background to exclusions that applies to you as the National Assembly, but also to Scotland, Northern Ireland and, indeed, the UK Parliament. Essentially, the overriding principle, perhaps, is that one cannot be a judge and, say, a civil servant or directly employed by—. So, all I was saying in that first heading was that the principles should continue to apply. If you look at those principles across the separate assemblies, you will see a slightly different wording or different expressions of those principles, but I did not read anything into it—essentially they were saying the same thing, unless I missed something. Actually, if one looks to local government, there is an exclusion in terms of a previous criminal conviction, and I confess that I did not see that elsewhere, so I think that that is an addition. However, otherwise, all I was saying was that those need to be maintained, and not lost in the process.

[11] **David Melding:** I understand; thank you for that clarification. I will ask Suzy Davies to take us through the first set of questions.

[12] **Suzy Davies:** Thank you, Chair. I do not know whether you had a chance to catch the evidence that we had from the Electoral Reform Society and the Electoral Commission last week, but, effectively, they said that the current criteria for disqualifications are unclear. I do not know whether that is something that you would agree with.

[13] **Mr Jolley:** I did not find them unclear. Perhaps I should, of course, start with that evidence. To me, it is a list, and the danger with a list—ask any lawyer about lists—is that, once you start listing things, you will miss something out and you will be in trouble. So, that is one comment that I would make.

[14] I think that, in terms of clarity, and if you could bear with me while I find the particular point in my papers—. For a very short time, I worked for Education and Learning Wales, and I was conscious while doing so that employees of ELWa were not civil servants. In the wording of parts of the Order, there is an exclusion in terms of members who are not employees. While the employees would normally be caught by the general exclusions, or the 2010 Order, it did occur to me that there could be—speaking as a lawyer—someone who had fallen in between, because you would not be caught by the 2010 Order, either by the fact that you were a chairperson or member, nor would you would be caught by being an officer either, and, yet, at that organisation, ELWa, it was possible to be an officer and a member.

[15] When going through the Order, that was really my only concern in terms of the clarity of it. However, moving on from that, I have said in my evidence—and I do not

necessarily have the answer, I am afraid—that you have a list of things, but that, as soon as you have a list, something else comes along, and it does not work anymore, or you have the option of having a far more generic consideration of why this is a problem—a generic description in terms of the kind of role that would not be suitable.

[16] **Suzy Davies:** That would be much more fun for lawyers, actually.

[17] **Mr Jolley:** Yes, and then, of course, you would have to open it up and consider that somebody has to make the final decision and adjudicate on that, so it makes it far more complex. I suggest a middle road of both—you can have your list and then an explanation at the end as to why that list is there, and that other roles will be considered. However, you still have to have someone who makes that final decision. Of course, you then get into a lengthy process, and you do not necessarily have a lot of time when you are coming up to an election.

[18] **Suzy Davies:** We were given some examples of inconsistencies and you made the point about members and officers, and the status of particular officers within organisations, but particularly councils, and the fact that somebody could be an officer, but quite junior, who would be excluded just because of the definition that had been included in the Order. I wanted to ask you about something that you mentioned in evidence—it is on this point—about somebody being disqualified if they advised Government from within a council. However, there is a situation there, as well, in that there are different degrees of advice, are there not? I was wondering whether you would like to expand a little bit more on that, about where you think the line would be drawn between somebody who is involved in putting a consultation response together, perhaps, and somebody who directly advises Government or, indeed, Cabinet members.

[19] **Mr Jolley:** It is not straightforward, but I come from a background where, actually, it is hard cheese. There is a very hard line, and I advise members that they do not make decisions. I appreciate the argument that you can have junior officers, but, for me, it is more of an issue of what the job is and what the role is, as opposed to who appoints or what the seniority is. Certainly, in giving advice, in local government terms, you could have a senior officer doing it, but quite junior officers advise and they have that important role with members in terms of developing policy. So, yes, you can have a junior officer who I would exclude.

[20] **Suzy Davies:** In those circumstances, I know that, in your evidence, you say that you would disqualify from the point of taking the oath, rather than from the declaration of candidature, but I always understood that the conflict-of-interest argument applied from the declaration of candidature for very good reasons. You may have, for example, junior employees, even, who might be seen to have friends in the particular organisation in which they work and have an influence that, perhaps, other candidates in the immediate area do not. How do you deal with that suggestion that conflict arises from the moment that you declare a political affiliation?

[21] **Mr Jolley:** I come from a position of not wanting to exclude people from being able to stand for the National Assembly. I think that, if you are expecting someone to resign their post at the point of candidature, you will lose people—it will restrict the number of people coming forward. I suggested the point of declaration of office because you are then expecting people to lose their jobs when they know that they have got the position. I can accept your argument in terms of that difficult period in between, but one thing has to override the other and, to me, it is not excluding people from the political process—it is not excluding people from the Assembly.

[22] **Suzy Davies:** Would that not also apply to the more junior officers who I was talking about earlier, who might be standing for election knowing that they are not going to win, but

who would, nevertheless, be disqualified by the hard line that you were talking about?

[23] **Mr Jolley:** No, because you would only have that duality if you were elected and you did not give up your job. You could be advising; it is only at the point that you are actually elected that it becomes an issue and you are excluded from office.

[24] **Suzy Davies:** However, if you do not end up with a situation where disqualification takes place at the time of taking the oath—that it remains where it is at the moment—why would the junior officers who advise be in a worse position than those who might be working as cooks or bin men or something in a council?

[25] **Mr Jolley:** I do not see the difficulty, in all honesty. You are employed, and you choose to stand for office. You are selected, you go for election and you are able to do all of that until you get to the point where you are elected and you have to take the oath. It does not matter what you do for a living. You can stand and you can be elected, but, when you are elected, you then must make a decision. You either stay as a Member of the National Assembly and give up your job or you keep your job and give up your office.

[26] **Suzy Davies:** So, the influence that you might have just simply in your role as a candidate is not as important as the influence you may have should you be elected?

[27] **Mr Jolley:** I think it is important to encourage people from all backgrounds. That is my issue. It could be someone who does not have any previous experience of the National Assembly and it could be somebody who has been advising the National Assembly. The issue for me is that you do not mix the roles once you are in the National Assembly.

[28] **Suzy Davies:** I think that we would all agree with that.

[29] **Mr Jolley:** It is not an issue for me in the process of becoming a Member. My concern is that you exclude too many people.

[30] **Suzy Davies:** That is what I was going to ask you about. Do you think that we have got the balance a little bit wrong at the moment—that there are too many people included on the ‘no list’?

[31] **Mr Jolley:** I think that maybe you are talking about slightly different things because you can stand for—

[32] **David Melding:** If we took the point of taking the oath then, in effect, no-one is excluded until they take the oath.

[33] **Suzy Davies:** But we are not at that position. My current question—

[34] **David Melding:** The witness has said that that is where he would want to be. Do you think it should be the oath for everything? So, a chief executive of a local authority could stand and be a candidate and only really if elected would then be—

[35] **Mr Jolley:** I think that the principle applies across the board. The issue to me is not to exclude people so as to enable you to have the broader spread of people that you can have.

[36] **Suzy Davies:** Is that the same as saying that what we have at the moment, not what we could have, is too restrictive—that people are excluded by the current position?

[37] **Mr Jolley:** I cannot say whether people are or not because I do not have experience of it. I think that the most appropriate time is when you know that you are elected and you are

about to take that oath to do so. You can pull it back a little from there and say that it is at the point of the result being announced. You could say that. When I was considering the evidence it came to me really that you would need that small amount of time to make your mind up because really you do not know, do you? You are assuming. You simply do not know what the result will be, and even if somebody is restricted from even considering that because they have a role that could compete with that— I hope later in the evidence we will deal with the whole issue of whether it is considered to be full time or not because that will impinge as well—it is important to encourage as many people as you can, but there has to be a point when you then make your mind up. It ought to be when you know what your position is and not before.

[38] **Suzy Davies:** Okay, thank you.

[39] **David Melding:** Simon, did you have anything specific to ask?

[40] **Simon Thomas:** Yes. My question is on the implications of that really. As has been suggested by other evidence, it is quite attractive in terms of ensuring that anyone can put forward their name to stand. However, in reality, I can see some real conflicts of interest emerging if the chief executive of the Arts Council of Wales, funded by the Welsh Government, stood for election to the Assembly, for example. There would be all sorts of ructions possible within the organisation, maybe not in a democratic process but within the organisation concerned. How would you see those being dealt with? Do you think that that could be done in a different way by codes of conduct or the relationship rules within an organisation that may say, 'You must step aside for the period of the election' or whatever? Is that what you would foresee?

[41] **Mr Jolley:** It could be. You have your code of conduct. There is a code of conduct for civil servants that would catch many of the posts that you are considering. I think that is quite appropriate. Equally, my overall concern is enabling people to stand. If you have a period of time where you must vacate your post, I think there needs to be an understanding of how that takes effect. Is it on full pay? Is it on low pay? Is there a real bar to somebody standing for office? I take the point. If you are in that senior role in an organisation, as a civil servant who then chooses to move into politics, and if you are unsuccessful, then there is an implication, of course, that I hardly need to go into. That is a hard decision that you must make. In all consideration of democracy, it is a consideration you ought to be able to make. It is your future and your decision.

15:15

[42] **Julie James:** Good afternoon, Andrew; it is really nice to see you here at the Assembly. I will turn to the time issue. I want to ask you to expand on what you said in your evidence about the balance of time and how that might affect your decision.

[43] **Mr Jolley:** I was struck, throughout the questions asked in the consultation, while you could spend time considering what particular roles were ill at ease or inappropriate in terms of mixing with candidature, that, overall, it comes to the view of just how much time should be spent on this role. If you were to determine that it was full-time role, it rather knocks out the consideration of what other roles could be suitable or unsuitable. It is a hard decision to say that the role is full time and that one cannot do anything else.

[44] Moving on from that and looking at the need for the public to see probity, I should explain that in local government terms, as a lawyer, I deal with probity in terms of whether somebody is complying with the law, but I also deal with the model code of conduct for local authority members. That deals not only with the law but with how the general public sees what a local member is doing. It is that second type of probity that I refer to here. Does the general public expect, when it elects someone to the National Assembly, for that person to be

in the National Assembly full time, or is it accepted that they are not. I cannot say whether it is or not; you know what your roles are.

[45] I am struck, and I referred to it in the evidence, by the remuneration for National Assembly Members, accepting that Members of the European Parliament, for example, could double hat—if that is an expression I can use—and that the remuneration would therefore be less. On the other hand, I also mention in my evidence that there has been a strong view that that is not appropriate and that it is a full-time role. That is what I have tried to get across in my evidence. I think that it is worthy of consideration. It is worthy of consideration from a public perspective, of what the public expects of you, but it is also worthy of consideration here, because if you are looking at what is an appropriate role outside the National Assembly, then the time commitment does make a big difference.

[46] It also makes a big difference, going back to the original point, to how you attract people to stand for election. The less regulation the better and the wider the group of people. Equally, there is a concern, if there is no consideration of the time commitment once elected, then it is quite possible that you will not see somebody after they have been elected and they carry on working in their normal environment. I am not giving an answer again, I am sorry, but—

[47] **Julie James:** May I put something else to you, then? You will know, in local government, that a councillor only has to attend once in six months not to be disqualified, which most normal members of the public think is an outrageous state of affairs. I do not believe that the rules have changed for cabinet members, so they are still subject to the once-every-six-months rule, unless something has changed a lot since I was last in local government. Do you think that the Assembly should consider whether those rules—for both the Assembly and local government, because that is what the Assembly can effect—should be changed so that cabinet members in a local authority, for example, have to attend for some other set amount of time? Could we usefully do that for the Assembly as well? You would have to attend so many Plenary sessions or whatever, unless you have a sick certificate.

[48] **Mr Jolley:** On the latter point, it would be very good from a public perspective for the public simply to know. When you are dealing with that second stage of probity, it is really about information. It is about the general public knowing what is expected. If you were to say, ‘Yes, you are expected to turn up x number of times, or attend whatever functions’, then at least the general public understands what is expected of you. I have raised the issue in my evidence about concerns at cabinet level in local government simply because we fairly recently lost one, and that is due to the inability to work and take the time commitment for cabinet.

[49] **Julie James:** There is a provision, is there not, that employers ought to give reasonable time off for undertaking public duties?

[50] **Mr Jolley:** That was the issue.

[51] **Julie James:** There is an issue about what is reasonable, effectively.

[52] **Mr Jolley:** That was exactly the issue and I have permission from the cabinet member to talk about it. Essentially, the cabinet member’s employment was reorganised and he was in a management position, and it was quite simply incompatible. The amount of time to be taken off was simply incompatible with him being a cabinet member. We all have mortgages et cetera to pay, so he had to cease to be a cabinet member. While there is that protection, therefore, in local government, it did not work in that sense, because it is plainly unreasonable to expect an employer, essentially, just to release someone completely. That protection does not apply to you. It is debateable, really, whether it would assist in any event.

[53] **Julie James:** I suppose that my last question then, is: do you think that that difficulty with paid employment also exists for unpaid types of work—for other public appointments such as school governors, or I think that you mentioned the high sheriff, for example?

[54] **Mr Jolley:** Yes. I have a slightly different point in terms of the high sheriff, but, yes, it is a time commitment. In voluntary work, you are expected to undertake a certain level of that work, particularly if you are in an organisation or management function in that respect. Clearly, there is an impact, because you cannot do two things at once.

[55] **Julie James:** I think that my colleagues might have questions on that.

[56] **David Melding:** We will deal with the actual offices separately.

[57] **Julie James:** I have come to the end of the section of questions that I wanted to ask, Chair. Thank you, Andrew.

[58] **Eluned Parrott:** I wanted to ask about the roles of the lords lieutenant and high sheriffs, which you raised specifically in your evidence. You say that you are concerned that the role will be politicised by election to the National Assembly for Wales. Would the role not be politicised by the incumbent standing for election to the National Assembly or another political body?

[59] **Mr Jolley:** I have the same view as I had in the previous conversation. I think that there is a necessity to open up the ability to stand for election, as wide as possible, in exactly the same way as considering a senior civil servant. I appreciate that you can politicise that role in simply standing, but what is most important to me is that distinction between being able to stand and opening up as much as possible and then having to make the decision of which you are going to do. Doing both, in some instances, is clearly improper. When I was looking through the legislation in order to prepare the evidence, I honestly had not appreciated that it was possible to stand for election to the National Assembly while being a lord lieutenant. I was very surprised to see it, because, in the same way that we keep the judiciary separate from legislature, we keep the Queen away from law making and decision making, and the lord lieutenant is a representative of the Queen. So, to me, it did politicise or had the potential to politicise the role.

[60] **Eluned Parrott:** In terms of the practical application of these two offices, though, do they have that kind of constitutional problem? They are seen as honorary positions, surely.

[61] **Mr Jolley:** They are seen as representatives of the Queen and they are seen by the public very much as representatives of the Queen, They mix with politicians regularly, certainly at local government level and, I am sure, at National Assembly level—they mix and they are seen as different. Their role is seen as different. I have some difficulty in that role also being a politician and being seen as a politician, because that, to me, blurs that distinction.

[62] **Eluned Parrott:** Indeed. In which case then, I will go back to the point that I have just made, which is that, actually, someone's political life perhaps begins when they are selected to campaign and, by campaigning, you are politicising the particular office. Is it perhaps necessary to have some roles, where political neutrality is very important, where there is disqualification on standing, and some roles where there is disqualification on election?

[63] **Mr Jolley:** It is possible to do that. I will give you my honest opinion. I would keep it as one place in time, and I would explain to the public why. I would say, 'This is why we do

this. It's because we want to open candidature up as wide as we possibly can'.

[64] **Eluned Parrott:** Okay. Thank you. Sorry, did you want to—

[65] **Julie James:** Just on that point, may I just ask a really tiny question? The high sheriff, as I understand it—again, it is years since I did it—is the returning officer, for example, for the parliamentary elections.

[66] **David Melding:** You cannot stand in your own actual jurisdiction, Julie. Is that not the case?

[67] **Julie James:** Nevertheless, it would be very odd for a person who was the—

[68] **David Melding:** I think that it is very strange that you can stand in north Wales if you are a high sheriff in south Wales, as I understand it. So, I do think—

[69] **Julie James:** It seems quite strange to me that someone who is the returning officer for an election can also be a candidate—

[70] **David Melding:** It would prevent you from being your own returning officer, though.

[71] **Julie James:** I am delighted to hear that. Nevertheless, I think that I would be very distressed to find that the returning officer was also a candidate somewhere else.

[72] **David Melding:** It does have a Monty Pythonesque side to it, that is for sure.

[73] **Mr Jolley:** Chair, I can say that, in my short period as an acting returning officer, I found it extremely difficult to be a monitoring officer and an acting returning officer because I spend my life absolutely being clear with the members that I am not political and that I am independent of all. Then, to find myself responsible for running a local election, I found very hard.

[74] **Eluned Parrott:** I want to drill into some of the comments that you made to Suzy Davies a little earlier regarding the idea of having both a list of disqualified roles, and also, within the disqualification Order, a set of principles by which a role will be considered disqualified. Can you perhaps expand on how you think that that would work in practice?

[75] **Mr Jolley:** I see it as a bit of a fudge. So, working in practice is difficult. I think that as soon as you get—. Well, there are the two fundamental problems. You can have a list and you can try to determine, in advance, catching everyone that you think it is inappropriate to enable to be a National Assembly Member. The clear difficulty with that is that, if you leave something out or something happens in between, you need to make another Order quickly. The only way that I can see around that is to have a catch-all set of principles. First of all, you set out why you have the list and the purpose of the list, and then you have a set of principles that, if it is not on the list, it will still apply. So, one of the fundamentals could be that you advise directly the National Assembly for Wales. However, as soon as you have that, you must have a mechanism for adjudicating. That makes it far more complex, of course. It is time-consuming, and, ultimately, you are in the High Court on a challenge if someone disagrees. You are also doing that right at the time when, actually, there is a very fine timeline running, because the election is in process. A rock and a hard place come to mind. I am afraid that it is a decision that will have to be made. Up until now, of course, you have the 2010 Order as the latest one, and you have the list. I cannot criticise that as a way of operating because my alternative can be far more complex. I do think that it would be good to set out, with some clarity, some principles, even with the equivalent of the 2010 Order, just to say why these positions are deemed as exclusionary from election. I am not sure that I can help

you any further, really, because I think that there are the two options, and I do not think that either is perfect.

[76] **Eluned Parrott:** No, indeed. We understand that. Obviously, one of the principles that has been suggested to us as being very important is that of clarity, so that people who are considering standing for election do not fear that they may be caught out by roles unwittingly. If there were some grey areas around the roles, I would suggest to you that that would actually put people off who might otherwise think of standing. Would you be seeking to resolve these things before people stand for election, or would you expect these things to be resolved after someone had been elected to office?

15:30

[77] **Mr Jolley:** Preferably, you would do it before, and, once the new Order was in place, of course, it would be possible to seek clarification, hopefully, long before you went into an election process, but I am in no doubt at all that you would be in that problem during an election process and, therefore, the decision should be made at that time, if at all possible. I think that the reality is, however, that, if you have the kind of catch-all paragraph that I have, you will be in a situation where someone has been elected and there will be a High Court challenge, and, therefore, they would stay in office until a decision was made.

[78] **Eluned Parrott:** Okay, thank you. Just one final question from me about the disqualification Orders: you make the point that they are statutory instruments with UK-wide effect, but may I ask you about the suggestion that those Orders should, nevertheless, be made by the Privy Council in a bilingual form?

[79] **Mr Jolley:** I am an English non-Welsh speaker, but I honestly cannot see any reason at all for an argument for an Order that is applicable in Wales not to be in Welsh.

[80] **Eluned Parrott:** Okay. Thank you, Chair.

[81] **David Melding:** Simon is next.

[82] **Simon Thomas:** Ar y pwynt hwnnw, os caf i ofyn cwestiwn yn Gymraeg i chi, yn y dystiolaeth ysgrifenedig yr ydych wedi ei rhoi, rydych chi'n sôn am y Senedd yn San Steffan ond nid ydych yn gwahaniaethu rhwng aelodaeth o Dŷ'r Cyffredin a Thŷ'r Arglwyddi. A ydy hynny'n golygu eich bod chi'n gweld aelodaeth o'r ddau gorff yn gydradd i bob pwrpas a dylid, beth bynnag sy'n cael ei benderfynu, eu trin yn yr un ffordd?

Simon Thomas: On that point, if I may ask you a question in Welsh, in your written evidence, you talk about the Westminster Parliament, but you do not differentiate between membership of the House of Lords and of the House of Commons. Does that mean that you see membership of both bodies as equal, to all intents and purposes, and that, whatever is decided, both should be treated in the same way?

[83] **Mr Jolley:** Under the existing legislation, so far as I can see, they are not, because a Member of the House of Lords can stand, whereas a Member of the House of Commons cannot. I did not mean to make any distinction in my evidence. I think—

[84] **Simon Thomas:** Should a distinction be made, even?

[85] **Mr Jolley:** I am not so sure that it should. It comes back to the time commitment and double-hatting, in the sense of whether the public understands or agrees that, in electing an individual to two roles, it is possible to undertake both. I certainly had no intention of making the distinction. I see them as the same, and I see the issue as the thing.

[86] **Simon Thomas:** *Okay, diolch am* **Simon Thomas:** Okay, thank you for that—
hynny—

[87] **David Melding:** Are you following up on the membership of the House of Lords?

[88] **Simon Thomas:** Yes.

[89] **David Melding:** You have another question.

[90] **Simon Thomas:** Yes.

[91] Yr hyn nad yw'n glir i mi yw, achos bod Bil Cymru yn mynd drwyddo ar hyn o bryd, sydd yn mynd i fod yn fwy clir byth ynglŷn ag aelodaeth o Dŷ'r Cyffredin ac aelodaeth o'r lle hwn, ond nad yw'n ymdrin ag aelodaeth o Dŷ'r Arglwyddi—. A ydych chi, felly, o'r farn mai amser sydd yn penderfynu ar y gwrthdaro buddiannau sy'n gallu codi yn y fan hon, neu a oes egwyddor fwy pwysig ynglŷn ag aelodaeth o ddau gorff gwahanol sy'n deddfu mewn dau le gwahanol tu fewn i'r deyrnas ar hyn o bryd?

What is not clear to me is, because the Wales Bill is going through at present, which is going to be even clearer about membership of the House of Commons and membership of this place, but does not deal with membership of the House of Lords—. Are you, therefore, of the view that time will decide on the conflict of interest that could arise here, or is there a more important principle regarding the membership of two different bodies that legislate in two different places within the UK at present?

[92] **Mr Jolley:** I think that there are two areas that are fundamental to me. One is: what is the nature of the role that you can elect to? Is it full time or is it not?

[93] **Simon Thomas:** It is full-time, I can assure you. [*Laughter.*]

[94] **Suzy Davies:** And then some.

[95] **Mr Jolley:** Okay. That said, I fail to understand how you can properly undertake two roles. Then there is the hard probity, the legal probity issue of whether there is a direct conflict between the roles. I make some reference to the roles of local government and the National Assembly, and I think that it is perfectly possible to argue that there is no conflict, because those roles are so different. There is legislation and policy, and then there is the undertaking of that—

[96] **Simon Thomas:** That is between a councillor and Assembly Member, yes?

[97] **Mr Jolley:** Yes. However, I do see, actually, a perfectly good argument for saying, 'Well, no, there is a conflict, because, in one position, you are creating the very public policy and legislation in order for you then to go off and implement it.'

[98] **Simon Thomas:** You could be in the Chamber here, arguing for more resources for the county council of which you are a member.

[99] **Mr Jolley:** Yes.

[100] **Simon Thomas:** It has happened.

[101] **David Melding:** However, you do that as a Member as well, though, do you not? [*Laughter.*]

[102] **Simon Thomas:** Well, yes. The issue of the legislative chambers—the Commons and the House of Lords—is of a different order again, surely. Or is it the same hard probity issue?

[103] **Mr Jolley:** Well, there is the same argument both ways, because there are two separate functions. Perhaps the stronger argument is the time commitment, because I fail to see how you could do both jobs properly. Equally, I can understand the argument of any Member of the National Assembly saying, in local government terms, or even perhaps in parliamentary terms, ‘In my constituency, actually, I can do both roles perfectly well, because I see people, and, if I am given one problem, I know where to take it, and, given another, I know another way to take it’. With regard to the time commitment to the organisations themselves, however, I think that that is a fundamental problem.

[104] **Simon Thomas:** There is a scrutiny issue, for example, in both places.

[105] **Mr Jolley:** Yes.

[106] **Simon Thomas:** Os caf, fe symudaf **Simon Thomas:** If I may, I will move on to another subject.

[107] **David Melding:** Could I just ask something, if you are moving to another subject? If you base this distinction on time, a lot of Members of the House of Lords are not working peers; they are there to bring specific experience from particular walks of life, and they are expressly not appointed by the parties as full-time working peers. So, would they be excluded from membership in your ideal Order, or do think that, in that case, there would be an argument to allow people to have membership of two legislatures?

[108] **Mr Jolley:** I still come back to timing and the amount of time that is needed to do both roles. If it is argued, perfectly legitimately, that there is sufficient time, then you come down to the probity issue, and I think that I make the distinction somewhere my evidence that there is a world of difference—. I think that I used the example of the National Assembly appointing a Member to sit on another body, and there is a world of difference between that, with the Member sitting on the body, taking part, and coming back, and that person not being appointed by the National Assembly but actually sitting on it privately and then advising independently. I think that it comes down to that distinction for the House of Lords in that sense. Is there conflict in those roles? Is the role of someone in the House of Lords a bar to their being a candidate here? Maybe there is not; but, because they scrutinise legislation, it could depend on what that legislation is. In local government terms, we deal with that all the time, because the model code of conduct may well allow a member to sit on a committee for one subject but not another. So, it could be dealt with in that way.

[109] **David Melding:** Okay. Back to you, Simon.

[110] **Simon Thomas:** Diolch. Rydym eisoes wedi cyffwrdd â'r ffaith bod Gorchymyn anghymwyso eisoes mewn grym, sef un 2010, ac fe gawsom ryw faint o drafferth yn yr etholiad diwethaf, gan fod dau Aelod yn aelodau o gyrff a oedd wedi'u rhestru yn y Gorchymyn hwnnw, a hwythau heb fod yn ymwybodol yn llwyr o hynny. Un o'r pethau a ddeilliodd o'r broses honno, yn yr adroddiad gan y Comisiwn Etholiadol yn sgîl hynny, oedd nad oedd rhannu gwybodaeth digonol yn digwydd ynglŷn â pha gyrff oedd ar y rhestr neu beidio. O'ch **Simon Thomas:** Thank you. We have already touched on the fact that there is a disqualification Order already in force, namely the 2010 one, but we had some trouble at the last election, because two Members were members of bodies that were listed in that Order, and they were not completely aware of that. One of the things that stemmed from that process, in the report by the Electoral Commission at that time, was that there was not sufficient sharing of information in terms of which bodies appeared on that list. From your point of

safbwynt chithau yn llywodraeth leol ac o ran cynrychioli cyfrieithwyr yn llywodraeth leol, a yw hynny'n rhywbeth sy'n bryder i chi, sef nad yw pobl, beth bynnag am yr egwyddorion yr ydych wedi sôn amdanynt heddiw, yn ymwybodol o'r rhestr hon yn ddigonol wrth i etholiadau gael eu cynnal?

view, in local government and representing lawyers in local government, is this a matter of concern for you? As well as the principles that you have mentioned today, there are people who are unaware of this list, or not sufficiently aware of it, in standing for election.

[111] **Mr Jolley:** I am not a lawyer who issues the mantra that ignorance of the law is no defence; I am a little kinder than that.

[112] **Julie James:** I am not. [*Laughter.*]

[113] **Mr Jolley:** Certainly, in local government terms, in running an election, or preparing for one, we often run awareness sessions for potential candidates. In those, we will deal with issues of whether someone can stand. Sorry, I do not know how much work is done in terms of the National Assembly, but I would certainly encourage that kind of event to take place. Any information flow is a good thing, and I would not be happy with the simple issuing of an Order and leaving it at that; it should be publicised. To me, the best way of doing that is to run similar events for anyone who is thinking of candidature, and it is not simply an issue of 'Can you?', because those events are encouraging people to stand and take part in democracy. However, publication is all, yes, and knowledge is all.

[114] **Simon Thomas:** So, to go back to part of your evidence—

[115] Gwnaf ofyn yn Gymraeg. I droi yn ôl at ran o'r dystiolaeth yr ydych wedi ei rhoi ynglŷn â'r angen i osod egwyddorion rhywle yn y Gorchymyn—efallai Gorchymyn o egwyddorion, neu gymysgedd o'r ddau beth, rhestr ac egwyddorion—a fyddai'r egwyddorion yn fodd i gynnal y fath drafodaeth gyda darpar ymgeiswyr o flaen llaw yn hytrach na rhoi rhestr iddynt o 250 o gyrff, neu beth bynnag, a dweud wrthynt, 'Wel, gofynnwch i'ch hunain a ydych yn rhoi cyngor i gorff sy'n cael ei ariannu gan Lywodraeth Cymru, a ydych chi'n rhoi cyngor i Lywodraeth Cymru, neu a ydych chi'n eistedd ar gorff megis hwn?'. A fyddech yn ei weld fel ffordd o drafod gyda darpar ymgeiswyr? Byddai angen penderfynu wedyn a yw'r corff yn gymwys neu beidio cyn dyddiad yr etholiad ac nid ar ôl yr etholiad ei hunan.

I will ask my question in Welsh. Going back to some of the evidence that you presented in terms of the need to set out principles somewhere in the Order—perhaps it would be an Order of principles, or a mixture of both, with a list and principles—would those principles be a means of having that sort of discussion with potential candidates in advance rather than giving them a list of 250 bodies, or whatever, and telling them, 'Well, you should ask yourself whether you are giving advice to a Welsh Government-sponsored body, whether you are advising the Welsh Government itself, or whether you are sitting on a specific body such as this one'. Would you see that as a means of discussing with potential candidates? There would be a need to decide then whether or not the body was a relevant body before the date of election and not after the election itself.

[116] **Mr Jolley:** Undoubtedly, before is the better time. I think the advantage of—. It can be a set of principles and it can be an explanatory note, essentially. The explanatory note may go further to assist people in simply understanding that there is an issue, and it is an important one that they need to have regard to before even considering standing. But, yes, before, as much as possible. Unfortunately, I am afraid that I know, as a lawyer, that these things just do not work, and you end up with problems right at the end regardless. However, the more effort that can be made to explain, first, that these principles exist and that the list exists, and also to explain why—partly for the candidate but partly for the general public to understand—and the more publicity that is given to that, the better.

[117] **Simon Thomas:** So, clearly the fact that we are undertaking this inquiry, and hopefully that there will be an Order in good time, is something that you would support.

[118] I have a final question, therefore. You have been very clear about becoming ineligible on the taking of the oath, in effect. You become an official Assembly Member when you take the oath. How would that be squared with employment law? You mentioned in the evidence that, with public bodies, usually that is worked through: nobody tries to hold you to a contract in those circumstances. However, it might be different if you are an employee of a small hardware firm in Ystrad Mynach or something. There might be real difficulties with that. Could we have a law in Wales that simply says that contract law is set aside when you become a Member of the National Assembly, to break through the ice, as it were, or does it have to be much more messy than that?

[119] **Mr Jolley:** Well, you can have a law, but I think that it is extremely problematic to have a law. It is particularly hard on any employer, should that happen. There is not an answer. I have set out in my evidence my concerns. I think that there is a primary need to encourage people to stand. Whatever you do, there is a problem with that notice period. Some people, let us be blunt, have a notice period of 'Now clear your desk', particularly if they work in the ICT industry, so that is not particularly a problem. For other people, a week's notice is not going to be an issue. Perhaps when you get to three months, though, it is. At that point, I would hope that the majority of employers would be able to cope with that, but, strictly speaking, it is a breach of contract.

[120] Notice periods are not really enforceable, when it comes down to it. Nobody can really be held to it or be forced by court order to go to work. So, that is not really the issue. There is an issue of fairness to employers, because it is hard to lose a key member of staff.

[121] **Simon Thomas:** There might be awkward things like holiday entitlement that has not been taken, and odds and ends that might need tidying up in that way. Apart from a very definite law that says, almost, 'Set aside the contract if you are elected here', is there any way that has been thought about or that you are aware of that could—I am thinking of something analogous to maternity leave—give you the right to return to work? So, you could have left employment, but you have the right to return if you are not elected to the National Assembly. Would that be a way of doing it?

15:45

[122] **Mr Jolley:** It is possible to frame that legislation, but the practical difficulty is in getting it enacted. So far as I am aware, it would take a Westminster Act to do it and, if that was to happen, it would be appropriate, of course, to do it for all electoral considerations. It is possible to do—speaking as a lawyer, you can have a law. I suppose that I am sitting here wondering whether it would ever come.

[123] **Simon Thomas:** Okay. Diolch yn fawr.

[124] **David Melding:** May I just put a final question to you, Mr Jolley? I have been very impressed by the underlying theme of your evidence, which is to make democracy as open as possible to all and to get as many talented people elected as is possible. Is it not also a principle of democracy that the people decide? If people want to elect their councillor or local lord, who is in the House of Lords, to the Assembly and everyone knows it, is there a great issue about that?

[125] **Mr Jolley:** Not for me, although I may be misunderstanding the question.

[126] **David Melding:** Well, if your local councillor is standing to be an Assembly Member and you elect them, then you have elected them, have you not?

[127] **Mr Jolley:** Oh I see, wearing twin hats, you mean. That is a perfectly valid point, although you may find that there are different people electing them, of course, so it does not necessarily work in the same way. I am not sure that I can answer the question from the general public's perspective, but I suppose that I ask the question of whether the general public is accepting of politicians who have two fundamentally different roles and, therefore, whether that politician has time to do both. The electorate can elect, but that does not necessarily mean that it is happy afterwards.

[128] **David Melding:** Well, that is certainly true. [*Laughter.*]

[129] **Simon Thomas:** A power of recall, perhaps? [*Laughter.*]

[130] **David Melding:** Thank you very much, Mr Jolley. You have been very, very helpful both in oral session and in your written evidence. If I may say so, you have given us a lot to think about. We are grateful for your time this afternoon.

[131] **Mr Jolley:** Thank you.

15:47

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

[132] **David Melding:** I need to move the relevant Standing Order in order that we can meet in private to give weight to that evidence. I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order 17.42(vi).

[133] **David Melding:** I see that no Member objects.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 15:47.
The public part of the meeting ended at 15:47.*