



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

Y Pwyllgor Plant, Pobl Ifanc ac Addysg **The Children, Young People and Education** **Committee**

Dydd Mercher, 11 Mehefin 2014
Wednesday, 11 June 2014

Cynnwys **Contents**

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions

Y Bil Addysg Uwch (Cymru)—Sesiwn Dystiolaeth 2
Higher Education (Wales) Bill—Evidence Session 2

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

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

These 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**

Keith Davies

Llafur

Labour

Suzy Davies

Ceidwadwyr Cymreig

Welsh Conservatives

| | |
|----------------|--|
| Rebecca Evans | Llafur Labour |
| Bethan Jenkins | Plaid Cymru The Party of Wales |
| Ann Jones | Llafur (Cadeirydd y Pwyllgor) Labour (Chair of the Committee) |
| David Rees | Llafur Labour |
| Aled Roberts | Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats |
| Simon Thomas | Plaid Cymru The Party of Wales |

**Eraill yn bresennol
Others in attendance**

| | |
|-----------------|---|
| Dr David Blaney | Prif Weithredwr, Cyngor Cyllido Addysg Uwch Cymru Chief Executive, Higher Education Funding Council for Wales |
| Celia Hunt | Cyfarwyddwr Datblygu Strategol, Cyngor Cyllido Addysg Uwch Cymru Director of Strategic Development, Higher Education Funding Council for Wales |
| Bethan Owen | Pennaeth Ymgysylltu Sefydliadol, Cyngor Cyllido Addysg Uwch Cymru Director of Institutional Engagement, Higher Education Funding Council for Wales |

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

| | |
|------------------|--|
| Sarah Bartlett | Dirprwy Glerc Deputy Clerk |
| Gareth Pembridge | Cynghorydd Cyfreithiol Legal Adviser |
| Gareth Rogers | Clerc Clerk |
| Ann Thomas | Y Gwasanaeth Ymchwil Research Service |

Dechreuodd y cyfarfod am 09:31.

The meeting began at 09:31.

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

[1] **Ann Jones:** Good morning, everybody. Welcome to the Children, Young People and Education Committee. I will just go through the usual housekeeping rules. May I ask you make sure that your mobile phones have been switched off, because they affect both the broadcasting and the translation? Translation from Welsh to English is on channel 1 of the headsets, and the amplification of the floor language is on channel 0. We have had apologies from Angela Burns. I believe that Angela has now had her operation, and so we send her our good wishes and hope that she will be back with us soon. We have also had apologies from Lynne Neagle this morning. I think that is about it—apart from the fire alarm. If the fire alarm sounds, we will take our instructions from the ushers, or follow me, because I will be one of

the first out of the building. Members did not declare any interests the last time, so I do not suppose that there is anything to declare this time. We will move, if that is alright, into our first session.

09:32

Y Bil Addysg Uwch (Cymru)—Sesiwn Dystiolaeth 2 Higher Education (Wales) Bill—Evidence Session 2

[2] **Ann Jones:** Carrying on with our Stage 1 scrutiny of the Higher Education (Wales) Bill, we are pleased to have with us today representatives from the Higher Education Funding Council for Wales. We have with us David Blaney, the chief executive, Celia Hunt, the director of strategic development, and Bethan Owen, the director of institutional engagement. You are all very welcome, and thank you very much for your paper. We have about an hour for this session, but there are quite a few questions—you know what it is like—so we will go through them as quickly as we can. I am going to move straight into questions, if that is okay. I will ask Suzy to start off the questioning.

[3] **Suzy Davies:** Good morning, everyone, and thank you for the paper. In your evidence, you are quite clear that you think there is a necessity to introduce a new regulatory framework, on the basis that your leverage is being minimised by the change—in the sense that money is now following the student, rather than going straight to the universities. However, as you already have the Further and Higher Education Act 1992 to help you with your structures, frameworks and regulation powers, do you think that the aims of this Bill could be achieved other than through legislation?

[4] **Dr Blaney:** Thank you. You are right, we do welcome the introduction of the Bill in the context of the current fees and funding regime, where a substantial amount of our funding is now being spent on the tuition fee grant. The issue is partly about leverage for policy delivery, but also partly, if you like, about the statutory underpinning for our statutory responsibilities, particularly in respect of quality, but also in respect of oversight of the financial affairs of the institutions in the sector. As I think was explained to you last week, some of the institutions in the sector, in the next academic year, will depend on our funding to the extent of only about 5% of their total income next year, so you could get into a situation where it becomes more difficult legally for us to apply the whole range of controls that we currently apply just on the basis of 5% of their income. So, it is about making sure that we have got a robust underpinning for that which we do. In the main, the deployment of any of these tools—for example, we could currently withdraw funding from an institution—is pretty extreme and would only happen in a situation of crisis, and we would all of us hope never to get there, but it is important to make sure that you have the machinery in place should that become necessary. So, I think that our view is that the current arrangements of fees and funding were putting us into a position where the underpinning for our statutory responsibilities was becoming more tenuous.

[5] **Suzy Davies:** We heard evidence from the Minister in Plenary rather than in this session last week that it would be highly unlikely for existing higher education institutions to act in such a way as to jeopardise their direct grant funding, albeit it is a much smaller amount than it used to be. You have already indicated that the withdrawal of funds would be a bit of a nuclear option, so why are you concerned that, however small the amount of money going in by way of direct grant, that would not be a sufficient lever in circumstances where things are starting to go awry with a particular institution?

[6] **Dr Blaney:** There are two parts to my response on that. The first is to say that we have made clear in our submission that our view is that the existing funded institutions are

socially responsible and understand the context in which they operate and so on. That responsibility varies between institutions and it varies over time. So, sometimes they are more inclined to press back than others. I do not think that we would envisage ever getting to a place where nuclear buttons need to be pressed. In many respects, if we get there, then an awful lot has failed on the way. So, we would certainly seek to avoid that, but actually one of the ways in which you avoid that is to have that available. It is a deterrent. However, the other part of my response is that there is scope now in the new arrangements for alternative providers to come into the market—those that we do not fund at all at the moment—and, therefore, we would have no basis on which to exercise the statutory responsibilities in respect of equality in financial governance.

[7] **Suzy Davies:** How would you deal with those new entrants into the market, if you like, at the moment?

[8] **Dr Blaney:** At the moment, we do not have any purchase on them, but the issue of making available to students the higher levels of Government support means that that is the more attractive business to get into potentially; therefore, there is more demand. We have certainly seen it in England, where there are all sorts of providers coming into the frame now. At the moment, it is very limited activity in Wales. There are providers out there, but we anticipate that that could grow and that could then become more of a challenge for us.

[9] **Aled Roberts:** Beth yn union yw'r **Aled Roberts:** What exactly are the legal anawsterau cyfreithiol yr oeddech yn sôn difficulties that you were talking about in amdanynt o ran eich grymoedd presennol? terms of your current powers?

[10] **Dr Blaney:** The issue becomes one of the balance between the controlling influence that we might want to bring to bear on an institution and the institution's autonomy. As we said in our submission, we are very clear about the importance of institutional autonomy in terms of the high-performing, higher education system; we certainly do not want to get in the position where we are threatening that. However, actually, the more we want to intervene in a particular institution's circumstances, the more likely they are to push back for reasons of autonomy, and that is fine. If you get to a point where your influence is only about 5% of their total income, then that becomes something that is challengeable, as we understand it, legally.

[11] **Simon Thomas:** Yn y dystiolaeth rydych wedi'i chyflwyno, rydych yn ei gwneud yn glir eich bod yn cefnogi'r Bil gan ei fod yn eich galluogi i ddiogelu lles y cyhoedd ac arian cyhoeddus sy'n dilyn y myfyriwr yn llawer mwy. Rydych hefyd yn gwneud y pwynt nad oes modd yn y Bil i ddelio ag addysg uwch y tu allan i Gymru, lle mae'r rhan fwyaf o fyfyrwyr o Gymru yn mynd gydag arian cyhoeddus Cymru. A oes gennych unrhyw ddrwgdybiaeth ynghylch sut y bydd hynny'n effeithio ar sut y mae prifysgolion yng Nghymru, a fydd o dan ofynion y Bil, a phrifysgolion y tu allan i Gymru yn gallu cystadlu â'i gilydd, gan eich bod yn rheoli un set o amodau ond heb unrhyw fodd i gyffwrdd â'r set arall? **Simon Thomas:** In the evidence, you make it clear that you support the Bill because it allows you to safeguard the public benefit and public money that follows the student much more. You also make the point that there is nowhere in the Bill to deal with higher education outside Wales, where the majority of students from Wales go with Welsh public money. Do you have any doubts about how it will impact on the way in which universities in Wales, which will be subject to the Bill's requirements, and the universities outside Wales can compete with each other, given that you control one set of conditions but do not have any influence on the other set?

[12] **Dr Blaney:** There is a fundamental issue about the current arrangements. In a sense, the Bill does not go there—the current arrangements of Welsh Government funding going across the bridge, predominantly into England, but also elsewhere in the UK. There is a

public benefit for those individual students, clearly, but, beyond that, there is no means of securing the public benefit for that funding. That potentially places Welsh institutions in a different competitive position, relative to those institutions elsewhere in the UK. That is a genuine concern. Clearly, institutions in England are subject to fee plans and so on, but they are different from ours. You can see a divergent set of policy constraints coming to bear in the future. So, there is potential for competitive disadvantage to the Welsh sector in respect of that.

[13] **Simon Thomas:** There are changes possibly happening in England to loosen up, from the Welsh perspective, on some of those arrangements, are there not? So, that could make the disadvantage potentially even larger.

[14] **Dr Blaney:** That is right, and there is also the removal of the cap on student numbers in England. We cannot tell what will happen until it happens, but there is a prospect that Welsh students will become more attractive to English institutions, particularly if they come from widening-access backgrounds, because English institutions have to address that set of expectations. One of the key challenges with widening-access students is that they are not only hard to get but they are hard to keep. They are hard to keep, a lot of the time, because of financial pressures. So, if they are coming in from Wales with their fees paid, then that makes them attractive students. We mentioned this to the Finance Committee here; the vocabulary used is that they are like ‘gold dust’ to English institutions. So, there is a potential competitive pull across the bridge.

[15] **Simon Thomas:** It is a kind of double whammy for the Welsh institutions. It is not just that they have a more rigorous regime—and it could be even more rigorous, potentially, under this Bill—but they have gold dust students whose value has doubled or trebled in the English system because they tick certain boxes and allow the English system to do a little bit of patching on the social responsibility side and get on with the real job of recruiting in the market. Is that a fair assessment?

[16] **Dr Blaney:** I would not use the vocabulary that you have used in terms of ‘patching’ on the social justice side—that is politician talk. However, it is certainly the case that there is likely to be increased competitive pressure. That arises from the fees and funding regime issue, rather than this Bill. This Bill does not address that. It does not seek to address it, and that remains an issue for us. It remains an issue in terms of our capacity to control the money going across the bridge as well.

[17] **Simon Thomas:** I will use more of the politician’s language that might tempt you. You just made the point that this Bill does not address those fundamental issues. I accept that, but as those fundamental forces are very powerful throughout the HE system in the United Kingdom—and particularly powerful in England, and are growing more powerful as the market opens up with the marketisation of HE—is this Bill, first, sufficient to act as a bulwark against that? Even if it is not sufficient, is it the right approach to try to act as a bulwark against that? Are we trying to patch the dam after the waters have gone through?

[18] **Dr Blaney:** Again, I am going to resist the temptation to endorse your vocabulary. What we are discussing here is a consequence of the fees and funding regime in Wales. Clearly, the Bill does not get there. In that sense, it is not sufficient to deal with those issues. There is a parallel process with the Ian Diamond review, which is looking at that deal. What we are talking about, in a sense, is the unintended consequences of a particular policy response in Wales. Those consequences are clear and are within the remit of Diamond, and that is what we will have to wait for. In a sense, this Bill is dealing with some of the consequences insofar as it can at the moment. However, there is a bigger picture that is being addressed at the same time.

[19] **Bethan Jenkins:** I just want to understand whether you think it is appropriate to legislate in this way, considering that Diamond is still under review. When I said last week that Diamond could come up with a very different outlook as to where we can go for the future, one of the Minister's advisors said that there will always be that pot of money to follow student support services, regardless of any change to the fee structures or how that student support is put forward. For me, I see that it is all part of the same thing, because if we legislate on this now it is confining the Government to a certain rationale and a certain principle that may differ from what the Diamond review comes out with. I wondered whether you had an opinion on that at all.

09:45

[20] **Dr Blaney:** I do not see how it necessarily confines the Government in terms of the way in which it might respond to Diamond. I think that this Bill is dealing with the circumstances that arise now. During the next academic year, as I said, we will have institutions in the sector exposed to our funding to only the extent of 5%. So, that issue is here with us now and that is what this Bill is trying to address. Whether or not this Bill will remain necessary post Diamond is a question that I cannot answer. It depends what Ian Diamond comes up with and how the Government responds to that.

[21] **Bethan Jenkins:** That is the point that I am trying to make, though.

[22] **Dr Blaney:** Personally, I do not think that it is inconceivable that you could get to a situation where, actually, this Bill becomes redundant. For example, if Ian Diamond were to say, 'Well, let us go back to the status quo ante', then, actually, the consequences that this seeks to address would no longer exist and therefore this becomes redundant, potentially. So, it is a judgment about how far you think that Diamond is likely to go and how far the politics of that will then take us back to where we were or take us somewhere else completely different. So, I suspect that it is possible that, after Diamond, there might be a need to look at this again, but I do not think that that is a case for us not to do this now.

[23] **Ann Jones:** Suzy, we come back to you.

[24] **Suzy Davies:** Okay. Well, that takes us to the nub of my question, actually, which is, if, for example, Diamond does say, 'Let us go back to how things were before' and you get all of your financial levers back, effectively, what is in this Bill that is additional to the current set of powers that you have? If we went back to the status quo, plus the Bill, what extra do you have?

[25] **Dr Blaney:** First of all, one caveat to our answers, which I should have offered at the beginning, is that we have had very limited time to get our heads around the detail of this Bill, so there will be stuff that we just do not yet understand fully and, of course, there is also stuff in here that is about secondary legislation, which, clearly we have not seen either. So, there are limits to how detailed we can be in our response. Our understanding is that the purpose of the Bill is to seek, as far as possible, to replace the statutory underpinning for what we currently do.

[26] **Suzy Davies:** May I ask you what is wrong with the 1992 Act, then?

[27] **Dr Blaney:** It is to do with the amount of funding that is—. The 1992 Act is all predicated on funding—all of it, even controlling the fee levels that institutions charge. If they go over that, our form of redress is to deal with it through funding, and if an institution is getting only 5% of its income through our funding, then that leverage is—.

[28] **Suzy Davies:** Do not forget that my question is predicated on this combination

situation, shall we say?

[29] **Dr Blaney:** Yes, sure. Our understanding is that the purpose of the Bill is to allow us to carry on doing what we do with a robust statutory underpinning, and that is certainly how we would want to implement it. So, we are not looking here to exercise significant additional leverage. We are here trying to say, ‘Okay, well, funding is no longer an effective basis for what we do, so we have a statutory basis that is regulatory based, but, other than that, what we want to do is carry on having the same relationships and the same types of influence with the institutions that we currently have’. So, if your question is, ‘What is additional in this Bill that we do not currently have?’, actually, as far as we are concerned, this is about doing what we currently do.

[30] **Suzy Davies:** Okay. Well, that is very helpful and I accept the point that you have not had a chance to see whether there might be additional powers that you acquire as a result of this Act, but thank you for that. May I also take you back to the question about students going across the border and this question of public good? Obviously, in order to ensure that public good is maintained for students who go across the border, there is your relationship with the Higher Education Funding Council for England, is there not? If this Bill goes ahead, how is that likely to affect how you work with HEFCE at the moment? Obviously, it will have a different, but nevertheless still fairly robust, obligation to check that the public good—if I can use those words—is preserved.

[31] **Dr Blaney:** You are right; we work very closely with HEFCE and we rely on its assurance activities in respect of the institutions in the English sector, just as it relies on ours in respect of the English students coming into Wales. That will not change. We would expect to continue to have that relationship and to work with it in that regard. There will be changes to how it does that, clearly, as there will be changes, potentially, to how we do it. It is changing its regime. However, its regime is, essentially, based on an agreement with the sector rather than legislation at the moment.

[32] The issue about public good is not so much about assurance of institutions’ financial status and their governance arrangements; it is about the other Welsh policy priorities that we are able to secure, to an extent, through fee plans and so on in Wales, but cannot translate across the bridge.

[33] **Suzy Davies:** All right. So, there is no concern about their own quality assurance pathways; it is more about increased access and that kind of thing.

[34] **Dr Blaney:** It is that type of thing. The quality assurance machinery that we use is a UK-wide machinery. Albeit that there are nuances within the different countries, it is the QAA that we all use. I think that the Minister was clear last week, and we very strongly feel, that it is important that we maintain a UK-wide approach in that respect. We want the Welsh institutions to be on a UK playing field for that.

[35] **Suzy Davies:** May I move our questions on now to further education institutes and the provision of higher education in further education institutes? There is a big question about how this Bill affects that provision, is there not? What would you like to tell us about your concerns on that?

[36] **Dr Blaney:** There are two types of provision of higher education in FE institutions in Wales. A large amount of it is through franchise relationships with higher education institutions in Wales. Our take on that has always been that our relationship with that provision is through the HEI because it is the awarding body. We would not anticipate that changing.

[37] **Suzy Davies:** We had confused evidence from the Minister on this last week, which is why I thought that we might get some clarity from you.

[38] **Dr Blaney:** Subject to the caveat that I offered a minute ago about there being stuff in here that we might not have got our heads around fully yet, where there is a franchise from HE institutions in Wales to FE institutions in Wales, our mindset has always been that the flow of responsibility and accountability runs through the HEI to the FE college, and the awarding responsibility of the HEI—it is its qualification—is the key to that in quality assurance terms. So, we would not see that changing. There is also some provision that is directly funded by us at the moment within FE, but most of that is part-time.

[39] **Suzy Davies:** Apologies, I did not mean to butt in. Would you expect to see the whole of the FE institute complying with what is intended in this Bill just because it has a franchise arrangement, or, indeed, there is some sort of direct HE provision?

[40] **Dr Blaney:** There are several dimensions to this. Our understanding, I think, of this Bill is that, if an FE institution chooses to become an automatically designated institution, it would, by doing so, sign up to the total regime. What that regime looks like in practice is another question. For example, the FE institutions in Wales are already subject to Welsh Government oversight in terms of finance, governance and all of that.

[41] **Suzy Davies:** And Estyn.

[42] **Dr Blaney:** Yes, and Estyn. We would not want to get into a position where we are in any way duplicating what is happening there. You have to be sensible about this. Under those circumstances, I think that our initial response would be that we need to have clear sight of the arrangements that are already in place in respect of those FE institutions, and then we would plug any gaps, but we would not seek to duplicate. Probably, the one exception would be in respect of quality. If it is HE provision, that does not fall under the Estyn umbrella; that would be QAA.

[43] **Ann Jones:** I have Keith and Aled wishing to come in on this particular point.

[44] **Keith Davies:** There was actually a meeting here last night on the future of FE colleges. The principal of Gower College Swansea actually said that it provides HE degrees, but it does them through Swansea University, because, he said, if it did them as Gower College Swansea degrees no-one would want to pursue those particular courses, and people outside would have questions about the quality. So, personally, I cannot see FE colleges arranging their own HE qualifications.

[45] **Ms Hunt:** There are four FE colleges at the moment that we fund directly, and they are expected to have fee plans. They all have arrangements with universities in terms of the validation of their degrees, but, instead of the responsibility and the funding et cetera going through the university, the FE college has slightly more control over it. However, we have been moving over a period of years to put more responsibility on the FEIs to ensure that they give their students a level playing field with the students in the HEIs. For example, we expect them now to have a student charter for their HE students; we expect them to be part of the national student survey. These are all things that they did not do in the past.

[46] **Dr Blaney:** One of the consequences of that is that, if that provision is relatively small as a part of the total activity at the FE college, it becomes something that is not worth the candle because of the overhead burden of that; it is best for them to have a franchise relationship with an HEI in order to avoid that. That is their judgment; they have to make judgments about that.

[47] **Keith Davies:** Yes, but one of the issues, you see, that came up—. They talk about mature students, really, and women in particular, who could live at home and attend the local FE college. So, it is not going away, and it might, in fact, grow.

[48] **Dr Blaney:** Local provision through FE colleges is, I think, destined always to be part of the mix, and it is an important part of the mix of provision. So, what we are discussing is the mechanics of how that is funded and how it is overseen. Most of the direct funding provision of HE in FE colleges in Wales is very small volume, and the more that we expect them to put on top of that delivery the overheads of charters and so on, the more that that starts not to make economic sense, so it would be better off doing it through a franchise. So, it is still local delivery; it is just that the mechanics behind it are different.

[49] **Ann Jones:** David, did you want to come in on that point? Then Simon wants to come in and I will bring Aled in as well.

[50] **David Rees:** I agree with the concept of franchises—[*Inaudible.*] Obviously, it can get a franchise from an institution across the border. In north-east Wales, it could be a closer institution, such as Chester maybe. What controls do we have on that situation where, therefore, the franchisor is an English institution, whereas the students are in a Welsh institution? What mechanisms do we have to ensure quality—. You might say that it is a small element for them, but HE is prestigious for them. For many FE colleges, the ability to deliver HE is prestigious and it is a way of attracting more students.

[51] **Dr Blaney:** This is one instance where the caveat that we offer about the detail is sounded loudly, because the cross-border issues are actually quite complex, and I do not think that we have got our heads around what is in here in terms of the detail of that. In terms of quality, at the moment, Celia—

[52] **Ms Hunt:** We are quite comfortable on the quality side, because the quality assurance agency works UK wide, so although there are some differences in our institutional review process in Wales, because we want to take account of Welsh-medium education and things such as that, actually, the overall approach is currently the same. However, we will need to ensure that, if the Bill goes through, we can maintain some of that UK quality assurance mechanism so that that kind of cross-border issue, in terms of quality assurance, can be dealt with.

[53] **Ann Jones:** Okay, I have got Simon and Aled. We are still on the first set of questions, and we almost halfway through this session, so—.

[54] **Simon Thomas:** These are some of the basic principles.

[55] **Ann Jones:** They are, and that is why I am allowing time, but we need fairness towards the other points that we need to tease out as well.

[56] **Simon Thomas:** Thank you, Chair. I just wanted to ask this, because underpinning some of these questions, I think, is a fundamental difficulty in the Bill, which is that part-time provision is not included, and a lot of what we have discussed is actually part-time. How it is delivered is almost immaterial, because it is part-time, it is not included in the Bill and we are not going to address it. The only thing that I see that is going to address part-time is the terms of reference for the Diamond review. We have been talking about part-time for the last three or four years, that it needs to be addressed and done, but it is not happening in this Bill. If it is not there, in what way are you as HEFCW going to be able to deal with all these issues that are fundamentally underpinned by the fact that part-time just does not feature within your regulatory role anymore, as I see it, in this Bill?

[57] **Dr Blaney:** You are right. Part-time is not included in this Bill unless an institution chooses to be an automatically designated institution for full-time, but also provides part-time, at which point, as I understand it, its whole curriculum falls within the frame of the Bill. So, that will be fine under those circumstances. Beyond that, we hope to carry on funding part-time, which we are doing at the moment, and, so long as we are able to fund part-time, we will be able to rely on the 1992 Act provisions for that.

[58] **Simon Thomas:** However, HE institutions tell us that they are cross-subsidising part-time and that, in effect, your money is not enough to keep part-time going. Diamond is in 2017, and legislation from Diamond is in 2018, 2019 or 2020. Are you really able to maintain that control over part-time for that period of time?

[59] **Dr Blaney:** I am not sure in terms of the funding. I think that the part-time issue becomes a significant issue if we ever get to a point where the tuition fee grant cost to us means that we cannot fund part-time any longer. I do not see that at the moment, but it is not beyond the realms of possibility. At that point, we would start to get sweaty palms about the impact of all of this. In terms of part-time policy, we are doing stuff. Celia could talk about our policy work there.

[60] **Ms Hunt:** We are just about to publish a position statement, which is saying what we feel part-time should be doing for the Welsh economy in terms of skills building and widening access. At the moment, we are able to maintain the funding levels, as we have been asked to do by the Minister. I think that there is a concern about what might happen if those funding levels go down. As you have said, HEIs already see that this is not really a commercial opportunity for them. The market is not good for part-time at the moment and, in a sense, it needs further incentivisation because of that. It will be interesting to see how we can do something like that through the fee plan, for example, or using other levers.

10:00

[61] **Aled Roberts:** Jest ar y pwynt o ran rheolaeth, mae pedwar sefydliad ar hyn o bryd sy'n cael eu hariannu yn uniongyrchol. A ydych wedi cynnal unrhyw drafodaethau â Cholegau Cymru neu'r pedwar sefydliad unigol ynghylch eich bwriadau o ran eu bod yn dod o dan eich strwythurau, wrth feddwl bod y Bil Addysg Bellach (Cymru) wedi rhoi rwy o annibyniaeth iddynt o achos safbwynt y Swyddfa Ystadegau Gwladol? A oes unrhyw fath o wrthdaro yn hyn o beth?

Aled Roberts: Just on the point about regulation, there are four institutions at the moment that are funded directly. Have you held any discussions with Colleges Wales or the four individual institutions regarding your intention that they should come within your structures, given that the Higher Education (Wales) Bill has given more independence to them because of the point of view of the Office for National Statistics? Is there any kind of opposition in that regard?

[62] **Dr Blaney:** In some respects, you are asking the wrong people. We certainly have not had those conversations, because we have seen this Bill for a fortnight, so we were not in a position to have that conversation with them. So, if there is a potential conflict between the previous Bill and this one, you would have to ask the Government, I think, about that; it is beyond us.

[63] **Aled Roberts:** So, you have not had any discussions regarding your intention that those directly financed institutions would come within your remit for the whole of their activities.

[64] **Dr Blaney:** We have had no conversation with them at all, because we have only been aware of that in the last fortnight, since we saw the Bill. We do have conversations, clearly, with the FE colleges and with Colegau Cymru on all sorts of matters, but we have not

discussed this.

[65] **Ann Jones:** Before Suzy comes in and finishes her questions, may I just ask, as there was pre-legislative scrutiny by the Government, whether you responded to any pre-legislative scrutiny on what the Government's proposals were for this Bill?

[66] **Dr Blaney:** We made two formal responses. One was to the technical consultation, which was a public consultation, and our response to that is on our website and publicly available. We could share that. We have also made a contribution to the impact assessment process, in terms of the extent to which we felt the Bill was addressing the issues we were concerned about, and an assessment of the additional costs to us of running the provisions of the Bill.

[67] **Ann Jones:** So, as there was pre-leg scrutiny, you were aware of some of the issues that may have come into the Bill.

[68] **Dr Blaney:** We were aware of some of the issues. In terms of our conversations with Government officials on this, we had quite a lot of conversations a year or so ago when they were doing their early thinking on this Bill. We responded to the technical consultation and identified some of the concerns that we had. Some of them still exist, such as the capacity to control the cost of the tuition fee grant not being covered in the Bill. We have had quite a lot of exchanges since, and an awful lot of that has been largely answering questions that I think emanate from Government lawyers. Okay—I do not need to say more, clearly. Some of those questions have made sense to us and, with others, it has been less clear where they are coming from. However, we did not have sight of the Bill until it was laid.

[69] **Ann Jones:** Sorry, Becks—you have a point.

[70] **Rebecca Evans:** Just on this, the explanatory memorandum said that you provided both challenge and support on the development of the Bill, and contributed positively to policy development, and, as a result, you have had a meaningful influence on the provisions sought in the Bill. Do you think that is an accurate reflection of the work that went on in development of the Bill, or might it be over-egging it slightly?

[71] **Dr Blaney:** We had a lot of conversations, certainly early on, and we have had exchanges since on matters of detail. Until we saw the Bill, it was difficult for us to assess the extent to which that was having an impact, and, clearly, some of the things that we wanted addressed in the Bill have not been addressed in it, but other things have. Our starting point was essentially about the statutory underpinning for our statutory responsibility for quality and oversight of governance and finance, and that has been addressed. So, I do not think that it is over-egging it, particularly, but the conversations have been going on for some time. We did not see what it was going to look like until it was published, though.

[72] **Ann Jones:** Do you want to finish your question off, Suzy?

[73] **Suzy Davies:** I have only one more question for you, really, as the others have been answered already, which is great. On the charitable status of HEIs, I think there have been some concerns expressed during the development of this Bill that the rules around charitable status could be compromised by this Bill in some way. The Minister made it plain last week that charitable status is an absolute requirement of the institutes to be governed by this Bill. Have you got any concerns about whether there might be conflicts of interest between charitable regulation and what is coming up in this Bill?

[74] **Dr Blaney:** I do not think that we have. I am not sure that we are the right people to ask. The Charity Commission would be better placed than we are to answer this question, I

think. As I understand it, the nature of the concerns emanates from the degree of expected intervention that we might make, and, as we have made clear in our submission, we would expect to operate this regime in the way that we currently do. There is absolutely no desire on our part to get too close to the operation of institutions; we are very conscious that we do not want to become shadow directors, because, at that point, we become responsible for all of their mistakes. We are capable of making our own mistakes; we do not want to be responsible for theirs. So, we are quite sensitive about it not really being for us in relation to the charities; it is about having the right relationship between us and the institutions. We sit comfortably, or uncomfortably, between the Government and the institutions—[*Interruption.*] At elbow length; I am not sure about that. If it is elbow length, then we have long forearms. We want to make that balance right—we do not want to get too close to Government, and we do not want to get too close to the institutions. So, it is an interesting balancing act that we operate here, but keeping the right distance is important. So, in operation, I do not think that we see ourselves in any way challenging the charitable status issues.

[75] **Suzy Davies:** Are you concerned, perhaps, that this Bill applies only to charitable institutions? We have taken evidence from other parts of the UK, and, certainly in Scotland, we heard evidence that SQA wanted to have control over the choice of the institutions it regulated. Now, there may be private providers on the horizon, waiting to come to Wales. There are not many at the moment, but would you not like to get your mitts on them as well?

[76] **Dr Blaney:** As I understand it, the decision to require charitable status is a policy decision designed to avoid this becoming a highly commercial market. That is a Government policy position, I think, so it is not for us to say. However, personally, I am quite comfortable with the idea that we do not want this to become a wide-open commercial market in the way that it is becoming in England, with all the consequences that flow from that. So, as I understand it, it is a ministerial position that higher education is a public good and that, therefore, it should be seen in those terms. It is not about commercial gain. That is why—

[77] **Suzy Davies:** But your extra-long arm allows you to express a view, surely. [*Laughter.*]

[78] **Dr Blaney:** My view would be that I am comfortable with the idea that it is constrained to charities. I think that it is fine.

[79] **Suzy Davies:** Fine.

[80] **Ann Jones:** I think that we are going to move on, because we have some other areas. We have touched on the impact, but, Rebecca, you have some questions on the impact of the Bill.

[81] **Rebecca Evans:** Yes, just a couple questions more on that. Have you managed to make any assessment of what financial impact the Bill might have for HEFCW?

[82] **Dr Blaney:** We have. We submitted material to the impact assessment process, and that has been translated into some of the numbers that are in the explanatory memorandum behind the Bill. I am bound to say that I am not sure that we have yet managed to reconcile the translation of those numbers back to our original submission—that is a timing issue. I am not suggesting that there is a problem there; it is just that they have cast it in particular ways. Our assessment—and it is an assessment—is based on all sorts of assumptions about how many institutions we are dealing with, how many times we are likely to get into conflict with them over fee plans, or whatever it might happen to be, and what would be the time required for doing that, but our assessment is that we reckon that about eight to nine additional members of staff would be required. We did that with a template we were given by the Government in order to assess our estimate of how many hours would be required against

different tasks, but we also did a sense test by speaking to our colleagues in Scotland, who currently operate a process with an outcome agreement, which is essentially moving towards a process where they agree with each individual institution what they are going to deliver and how much they are going to be paid for it. This Bill is not exactly the same as that, but it is the nearest equivalent that we could find, and, indeed, in Scotland, they are essentially saying that it is one member of reasonably senior staff, on average, per institution, which comes out at about eight or nine. So, we did the sense check, and it came out with the same number, so we thought, okay, that is reasonable as a basis, but it is only an estimate.

[83] **Rebecca Evans:** Would you be able to share with us the paper that you submitted on the impact assessment?

[84] **Dr Blaney:** Subject to there being any constraints on doing that, yes, I would be happy to do that.

[85] **Rebecca Evans:** Great; thank you. Do you think that the implementation timescale for the Bill is realistic?

[86] **Dr Blaney:** I think that the implementation timescale is possible, but tight. In the end, it depends—what is going to happen is that, in order to implement according to the timescale, a lot of work will have to start in parallel with the scrutiny process. So, in some senses, we will have to pre-empt that process in order to be able to put in place the necessary arrangements. That, of course, carries risk, because the scrutiny process could, and very likely will, in some respects, change the nature of the Bill. So, we might be doing work that we have to do again, which is not an entirely comfortable place to be. If the number of changes is relatively limited, we could probably get to a place, just about, where we can do it. The key driver for that is the next round of fee plans, for which the guidance would have to go out around March or April next year. So, we would have to have not only the Bill through, but the regulations and the Welsh Government guidance to us, and then we would have to translate that into guidance for the sector. All of that would have to happen by March. So, you can see that we cannot get there unless we are doing the work now. So, there is risk, I would say. It is just about doable if there is not too much perturbation.

[87] **Ann Jones:** Aled, you have some questions on the relationships with providers.

[88] **Aled Roberts:** Rwy'n derbyn yr hyn yr ydych yn ei ddweud ynglŷn â'r amser yr ydych wedi ei gael i ystyried holl oblygiadau'r Bil, ond rydych wedi sôn eisoes am yr is-ddeddfwriaeth, hynny yw, y rheoliadau a phethau felly. Ar gyfer y Bil hwn, credaf fod 20 o bwerau is-ddeddfu, ac allan o hynny, dim ond un sy'n defnyddio'r weithdrefn bositif. Mae 19 ohonynt yn dibynnu ar y weithdrefn negyddol. A ydych yn credu, wrth ystyried hynny, fod unrhyw beth hwyrach fyddai'n well ei gynnwys ar wyneb y Bil nad ydyw wedi ymddangos hyd yn hyn, yn hytrach na mewn rheoliadau?

Aled Roberts: I accept what you have said regarding the time you have had to consider the implications of the Bill, but you have already mentioned the secondary legislation, that is, the regulations and so forth. In this Bill, I believe that there are 20 secondary legislation powers and, of those, only one uses the affirmative procedure. Therefore, 19 of them use the negative procedure. Given that, do you believe that there is anything that it would be better to include on the face of the Bill that has not appeared thus far, rather than including it in regulations?

[89] **Dr Blaney:** It is hard for us to give a definitive answer about specific instances of that. The reality is that there is a balance to be struck between material that is essentially technical in nature and which is probably not stuff that is usefully scrutinised by relatively expensive committees like this, and the Assembly as a whole, and a lot of the regulations that are proposed as secondary legislation are essentially of that nature. Also, the reality is that

some of those change over time, as a result of learning how they operate in practice, but also because the context changes. Whether or not the full positive approval process would be appropriate for stuff that is technical and subject to tweaks is a judgment; it is not our judgment to make, happily. So, I do not think there is anything in there that we would want to come to you and say specifically, 'This needs to be affirmative, rather than negative'. However, there is quite a lot of this Bill that is left to secondary legislation, and I know that that will exercise other people who come to speak to you about that. Have I got this right, Bethan?

[90] **Ms Owen:** Yes.

[91] Credaf ei fod yn dod yn ôl at y pwynt am yr amser. Gan nad yw'r manylion yn y rheoliadau yn hollol glir eto, mae lot o'r pethau y bu ichi sôn amdanynt, o ran y ffaith nad yw'n bosibl i fod yn siŵr beth fydd yn y cod cyllid, bydd pethau felly yn gliriach pan welwn beth sydd yn y rheoliadau. Felly, dyna fydd yn rhoi'r pwysau, gan y bydd angen amser i ystyried yn llawn beth fydd ynddo.

I believe that it comes back to the point about timing. As the details in the regulations are not entirely clear yet, a lot of the things that you referred to, in terms of not being sure what will be in the financial code, such things will be clearer when we see what is in the regulations. So, that is what will bring pressure to bear, as time will be needed to consider its content fully.

[92] **Aled Roberts:** Credaf mai'r pryder pennaf yw'r cod ariannol. Cafwyd trafodaeth yr wythnos diwethaf ynglŷn ag a ddylid cytuno'r cod ariannol gwreiddiol drwy'r weithdrefn bositif fel bod yr un gwreiddiol yn cael ei ystyried gan y Cynulliad, hyd yn oed os, ar ôl hynny, bydd y cod newydd yn cael ei benderfynu gan y Gweinidog. Mae cryn dipyn o bryder ynghylch beth yn union fydd yn cael ei gynnwys yn y cod ariannol, a dyna'r hyn yr ydym ni, yn Aelodau, wedi'i dderbyn.

Aled Roberts: I believe that the main concern is the financial code. There was a discussion last week about whether or not the initial financial code should be subject to the affirmative procedure so that the initial code would be considered by the Assembly, even if, after that, the new code is decided by the Minister. There is a lot of concern regarding what exactly will be included in the financial code, and that is what we, as Members, have heard.

[93] Hefyd, a oes gennych chi unrhyw sylw ar y pryderon ynghylch y baich gweinyddol a biwrocratiaeth sy'n cael eu crybwyll gan rai darparwyr o ran y rheoleiddio newydd?

Also, do you have any concerns regarding the administrative burden and bureaucracy that are referred to by some providers with regard to the new regulation?

10:15

[94] **Dr Blaney:** To address your first point first, we currently have a financial memorandum between ourselves and the institutions in Wales. That is a matter for us; it does not get Government approval, far less Assembly approval. It is, essentially, a technical document, and when we produce these documents, we produce them with the sector. Our normal practice of operation is not to be imposing on the sector—it is to be working with it. That is very important; if you think about the whole range of Welsh Government policy delivery, and we seek to encourage the sector to deliver on Welsh Government priorities, it is about encouraging and creating the environment within which they can do it. It is the sector that delivers, not us, so we work with it. The financial memorandum that we currently have we consult on, and we have formal consultation but also an awful lot of informal conversations with directors of finance, and so on, to make sure that they are clear what it is we are trying to do, and we are clear that we are not being unreasonable. We also learn a lot about how best to achieve these outcomes from talking to the sector.

[95] So, our view generally will be that we can work with the sector and do this, and we do not actually need machinery above it. That, in the end, will be a political judgment.

[96] On the issue about burden on the institutions, partly, to my mind at any rate, it is a judgment based on what institutions might think the implications of this legislation are. Our view is that, as far as possible, we want to carry on working the way that we currently work with them, in which case the burden is not, necessarily, substantially greater. However, there are bits of this legislation that are not yet fully specified, or bits of it that are part of secondary legislation, therefore by definition not yet specified, so what you have is a slight vacuum of detail. The sector will inevitably fill that vacuum with its worst fears, which gives rise to anxieties about potential burden. We certainly would wish to minimise that in operation.

[97] **Ann Jones:** Keith, you have a point on this.

[98] **Keith Davies:** Efallai na fyddwch yn gallu rhoi'r ateb, ond beth yw'r gwahaniaeth rhwng y cod newydd a'r cod sydd gennych yn awr? A oes digon o drafodaethau wedi bod gyda'r colegau, ac yn y blaen, ar y cod newydd?

Keith Davies: You may not be able to answer, but what is the difference between the new code and the code that you currently have? Has there been sufficient discussion with the colleges, and so forth, on the new code?

[99] **Ms Owen:** Rydych yn gofyn am fanylion yn y fan hyn, ac nid ydym yn gallu bod yn glir ar hynny ar hyn o bryd. Mae gennym god ar y funud sydd yn god cyllid ac yn god rheoleiddio. Ar y cyfan, mae'n sôn am weithdrefnau *best practice* a beth sydd i'w ddisgwyl gan unrhyw brifysgol, unrhyw gorff neu unrhyw elusen sy'n cael ei rhedeg yn dda. Mae'r cod hwn yn god cyllid a fydd ynghlwm â'r Ddeddf hon, ac mae manylion ynglŷn â beth yn union fydd y gwahaniaeth rhwng hwnnw a'r hyn sydd gennym yn awr, sydd eto angen eu trafod.

Ms Owen: You are asking about details here, and we cannot be clear about that at present. We have a code at present that is a financial code and a regulatory code. On the whole, it talks about best practice procedures and what is to be expected of any university, body or charity that is run well. This code is a financial code that will be tied in to this Act, and there are details about what exactly the difference will be between that and what we currently have, which need to be discussed.

[100] Rwy'n meddwl bod pryder y colegau, hwyrach—. Rydym wedi dweud na fyddem yn edrych i beidio â chymryd mantais lwyr o bethau sy'n cael eu gwneud yn barod, ond mae hynny'n rhan o weithio drwy'r manylion a deall yn iawn beth sydd yno yn barod, beth yw'r gwahaniaethau a sut y gallwn wneud hynny. Nid wyf yn siŵr fy mod yn gweld hynny fel rhywbeth sydd ei angen ar wyneb Bil, yn hytrach na mewn gweithdrefnau ar gyfer sut rydym yn gwneud iddo weithio.

I think the colleges' concern, perhaps—. We have said that we will not be looking to not take full advantage of what has been done already, but that is part of working through the details in terms of understanding what is there already, what the differences are and how we can do that. I am not sure that I see that as something that needs to be on the face of the Bill, rather than in the procedure in terms of how we make it work.

[101] **Keith Davies:** Felly, beth rydych yn ei ddweud yw nad oes gennym ddigon o fanylion ar hyn o bryd ar y cod newydd.

Keith Davies: So, what you are saying is that we do not have enough detail at present on the new code.

[102] **Ms Owen:** Ie, dyna rwy'n ddweud.

Ms Owen: Yes, that is what I am saying.

[103] **Aled Roberts:** Rydych wedi sôn y gofynnwyd i chi faint o staff ychwanegol y bydd yn rhaid i chi eu cyflogi wrth ystyried eich grymoedd newydd o dan y Bil. Dywedodd swyddogion y Llywodraeth eu bod am ddod yn ôl atom ar ôl cyfarfod yr wythnos diwethaf ynglŷn â'r costau sy'n gysylltiedig â'r Bil, ond mae'r memorandwm esboniadol yn sôn am gostau ychwanegol o ryw £9 miliwn yn ystod y pum mlynedd cyntaf, gyda £7.5 miliwn o'r costau hynny yn syrthio ar sefydliadau, a rhyw £978,000 arnoch chi. A ydych yn teimlo fod y gost ychwanegol, wrth gofio'r holl bwysau a'r elfen gystadleuol y gwnaethoch sôn amdani o ran beth mae sefydliadau yng Nghymru yn gorfod ei dalu o gymharu â rheoleiddio yn Lloegr, yn bris rhesymol i'w dalu?

Aled Roberts: You mentioned that you have been asked how many additional staff you will have to employ given your new powers under the Bill. Government officials said that they want to come back to us after last week's meeting regarding the costs related to the Bill, but the explanatory memorandum talks about additional costs of around £9 million during the first five years, with £7.5 million of those costs falling on institutions, and some £978,000 falling on you. Do you feel that that additional cost, bearing in mind all the pressures and the competitive element that you mentioned in terms of what institutions in Wales have to pay as compared with regulation in England, is a reasonable price to pay?

[104] **Dr Blaney:** I am going to duck answering questions about the costs in the sector; I have no idea how those numbers have been derived, so I cannot answer.

[105] **Aled Roberts:** Okay. I will ask my last question. You have already answered Simon Thomas's point about the danger of competitive disadvantage between Welsh institutions and English institutions. The Bill looks at lighter-touch, case-by-case, regulation for those colleges or institutions, not automatically designated. Is there a danger in your mind within Wales of competitive disadvantage between the fully regulated providers and those lighter touch, case by case, providers?

[106] **Dr Blaney:** I think that there is a potential danger. It has yet to be made clear what 'lighter touch' means; that is an important bit of detail, which, at some point, we will need to understand. Our view is that there are indeed dangers about adopting a lighter touch, just on the argument about proportionality, based on how much Welsh Governments funds any such institution can have, or their students can have. Our view would be that the more secure basis upon which to judge the lightness of touch would be an assessment of risk. You can imagine that there could be an issue about competition, because, in the end, providers that come in that only want a very small bit of the business are, typically, cherry-picking the relatively cost-efficient, relatively popular provision. We are quite anxious that we would not want to see a situation where those people are not subject to pretty much the same quality assurance regime as everybody else—if not exactly the same, because why would you want quality-lite? These are still students and, in the end, it is their interest that you have to protect.

[107] We are also a little bit anxious about the capacity of such providers to make little or no contribution to broader Welsh policy priorities. We have talked about widening access and Welsh medium. With both of those, if you put an economically rational hat on as an institutional manager, you would not touch them with a bargepole, because they are expensive. Our institutions do not go there, and in fact, we also help to prevent them from going there. However, we would not want the situation to arise where alternative providers can come in, cherry-pick some very popular, maybe profitable—although they will be charities—bits of the curriculum, make very little contribution to the broader Welsh Government priorities and have a lighter regime in terms of quality. All of that seems to us to be not taking proper account of the risk attached to it. So, I think that the assessment should be about risks. It should be about a reasonable expectation about contribution to Welsh priorities if they are taking Welsh money, and it should not be just about how much money they are taking, but about proportionality on that basis.

[108] **Ann Jones:** We are going to have to try to make some progress. We have started to talk about fee and access plans. Simon, first, and then Bethan.

[109] **Simon Thomas:** A gaf orffen y cwestiwn a ofynnodd Aled Roberts i chi? A yw hynny'n golygu nad yw'n glir yn y Bil ar hyn o bryd sut mae'r broses yn mynd i weithio, ynteu bod gennych ofidiau nad yw'r Bil yn ddigon cadarn yn y fan honno?

Simon Thomas: May I finish with the question that Aled Roberts asked you? Does this mean that it is not clear in the Bill how this process will work, or that you have concerns that the Bill is not robust enough in that area?

[110] **Dr Blaney:** I do not think that it is clear in the Bill how that process is going to work.

[111] **Ms Owen:** Mae'n ardal arall lle nad yw yn y Bil. Mae'r *case by case* yn y rheoliadau, a dyna lle bydd y manylion ar sut mae'n mynd i weithio.

Ms Owen: It is another area where it is not in the Bill. The case by case is in the regulations, and that is where the details of how it will work will be.

[112] **Simon Thomas:** Nid oes gennych fanylion hyd yma.

Simon Thomas: So, you do not have the details to date.

[113] Os cawn symud ymlaen yn fwy penodol at y cynlluniau ffioedd a mynediad, wrth ddarllen y dystiolaeth roeddwn wedi synnu ychydig, a dweud y gwir, eich bod mor glir bod gennych amheuon ynglŷn â'r cynlluniau newydd hyn, oherwydd nad oes ffocws ar ddeilliannau ac mai dim ond cyrraedd mynediad oedd ffocws y cynlluniau hyn. A allwch chi ddweud dau beth wrthyf felly? A oeddech wedi bwydo i mewn i ymgynghoriad y Llywodraeth tua blwyddyn yn ôl ynglŷn â'r angen hwn i edrych ar ddeilliannau? Yn ail, a ydych yn gweld unrhyw fodd i'r cynlluniau hyn weithredu yn y modd yr ydych wedi ei awgrymu yn y dystiolaeth?

If we can move on more specifically to the fee and access plans, having read the evidence, I was a little surprised, to be honest, that you said so clearly that you have doubts about these new plans, because there is no focus on outcomes and that the focus of the plans was entirely on access. Can you, therefore, tell me two things? Did you feed into the Government consultation around a year ago about the need to look at outcomes? Secondly, do you see any way for these plans to operate in the way in which you have suggested in your evidence?

[114] **Dr Blaney:** I will kick off, shall I, and then Celia can carry on? Yes, we have made clear to our colleagues in Government what we see as the limitations of the fee planning process for policy leverage. We have been, under the current regime, working to focus plans more on outcomes than on activities. We consider that to be important. Our sense of the way in which this legislation is being cast is that that moves us back more towards activities than outcomes; Celia can talk a bit more about that. Then there are broader issues to do with the effectiveness of the fee plan as a policy lever, simply because of the timelines over which that process inevitably extends.

[115] **Ms Hunt:** We have been moving over a period of a couple of years in consultation with the sector to try to put that emphasis much more on outcomes and to take a slightly broader view as well. When I say 'outcomes', we are defining that in terms of the HEFCW corporate strategy measures, so that includes the widening access measure, which is about not only Communities First, but also the bottom 20% of the Welsh index of multiple deprivation. We are talking about retention measures, the national student survey and participation across the UK in terms of higher education. So, it is a range of measures, and we are trying to put much more emphasis on how institutions set targets against those broader contributions to

Welsh Government objectives rather than, ‘We are doing an activity next week’, or, ‘We are going to do three visits to schools’, or, ‘We are going to have a summer school in the summer’. It is easy to tick boxes and say, ‘Yes, we had the summer school’, but we want to know what that achieved and, in the end, what that achieved in terms of the broader Welsh Government priority. So, when fee plans first started in 2012-13, there was a whole range of measures of all sorts of different widening-access groups and, as the central body, we were unable to put all of those together and say what this was going to give us in a Welsh context. So, we have been slowly moving it in that direction and, perhaps, pushing the Welsh Government’s guidance to us, which has been in place for a few years, to the limit. However, it has been in discussion with Welsh Government officials.

[116] **Simon Thomas:** I understand the point that you are making and it is something that we see. HEIs are very keen to tell us all about their activities, but it is very difficult to drill down into the effects; I appreciate that. I just want to press you a little bit about why, on the face of the Bill, the plans do not have that necessary ability to continue that work. If you have been pushing Welsh guidance to the limit, clearly your wish would be that the new set of guidance, which in effect will be the guidance around these plans, should take you beyond that limit to the next stage, if you like. You seem to be suggesting that you do not think that it will allow you to do that. Certainly, the written evidence says that. What leads you to believe that that would be a particularly difficult hindrance to overcome?

Ms Hunt: There are two points on that. One is that it is going to be called ‘the fee and access plan’, so it will be much more explicitly about access; whereas we have been trying to push it so that it is not just about access, but about broader contributions to Welsh Government policy. The other point is the continuing emphasis on what institutions are actually doing, which is these activities in a sense. Obviously, all of the activities are important—it is important for institutions to know what is effective and what is not. We are working with Wales Institute of Social and Economic Research, Data and Methods about trying to track, measure and monitor that in a much more effective way. However, in the end, it is about what that achieves in terms of widening access. There are different ways in which you can measure that, and maybe Communities First and the Welsh index of multiple deprivation is not the right way or maybe some of the other measures that we have are not currently the correct ones, but in the end that is what you want—you want a contribution from those activities to outcomes for Wales.

[117] **Simon Thomas:** Is this something that is a fundamental—not a flaw, as such—direction in the Bill that is going to be very difficult for you to turn back or is it something that, in the architecture of the Bill, can be amended, if you like? Is there another way of trying to address the Welsh Government’s objectives, which presumably are much the same as yours in this field, certainly in terms of what they say in policy objective terms? Have they simply gone off on the wrong tangent?

[118] **Ms Hunt:** In the end, I do not think that the fee plan is a particularly effective deliverer of policy. I think that we said in our submission that formulaic funding and incentivising in that way is a much more effective and, in fact, cheaper way of doing it in the end. So, we are pushing it perhaps to the boundaries of how far we should take a fee plan. As David said, with fee planning, you are talking about putting the guidance out in one year and not being able to measure whether that has been effective for another two or three years. That, in the end, is not as effective a way of delivering policy objectives in comparison to the funding levers.

10:30

[119] **Simon Thomas:** I have two questions to follow. First, is there a way of speeding up fee plans as they are set up? You say in your evidence that it is three years, really, before you

can take an honest measure of whether they have been effective or not. Is there any way of speeding that up? The second, related, question is: you say very clearly that they are not as effective, but you also know that we do not have the direct funding—that has gone; is there a third way, another approach, that could work here?

[120] **Dr Blaney:** To answer your first question, probably not, because the approval of the fee plan is the precursor to an institution being able to advertise the fee level. They have to do that a year before a course starts, and then they have to do stuff and then we have to—. I think two and half to three—.

[121] **Simon Thomas:** So, you are stuck with it, basically.

[122] **Dr Blaney:** I think that we are stuck with it. That is quickest it is going to be. On the third way, let us see what comes out of Diamond. What we are talking about with the fee plan is that it is not an effective policy tool, as we have said, but it is there as a consequence of the fees and funding regime. That is the fundamental issue here.

[123] **Simon Thomas:** It is really about following money, is it not?

[124] **Dr Blaney:** Yes, that is right, and it is less effective.

[125] **Ann Jones:** That was a comment, more than a question, was it?

[126] **Simon Thomas:** It was a comment, but I had an answer as well.

[127] **Ann Jones:** Yes, so that is alright then. Bethan, do you have a question?

[128] **Bethan Jenkins:** Yes, I just wanted to ask a question for clarification, really. You say that you have the HEFCW corporate standards and you have outlined them. I am curious as to why they cannot be delivered now as opposed to measuring the activity. Why is it that you have that problem if you have the HEFCW corporate standards already in place? You mentioned the summer schools and so forth. If you have an issue with that, why is it not something that could be changed within the current system, as opposed to under this new legislation?

[129] **Ms Hunt:** As David was saying, this is about policy leverage. David has already said that not all of these agendas are ones that make economic sense for universities. Under the previous regime, we would have used funding levers for our funding method to reward institutions for recruiting more widening-access students or more Welsh-medium students. We have mechanisms for doing that. Those mechanisms have now gone because of the fees and funding regime. That is why we are trying to use the fee plan in a stronger way to try to secure some of those objectives.

[130] **Dr Blaney:** Part of the difficulty here, as I perceive it, is that the moment you try to write something like this into legislation, you end up with lawyers having to be specific and to define. We are beginning to see bits of that in this Bill now. For example, it defines our right of entry. Some of the sectors have expressed concern because, at the moment, under the funding regime, our funding conditions mean that they have to give us information if we ask for it. That implies that we could therefore allow the QAA to go in. It has not had to be defined so specifically before. But, the moment you go down a regulatory route, it all has to be tied down. That makes it all look a lot scarier. It also means that, in the end, you have less room for manoeuvre in operation as well. At the moment, we are kind of pushing at the boundaries of the fee plans. If we are tied down even further, it will make it even harder for us to push at the boundaries.

[131] **Bethan Jenkins:** Have you had a conversation with the higher education institutions about whether it would conflict with their NPISH status? If it is going to be that prescriptive within the regulatory system, it may affect that status. Surely, that is something quite fundamental to the discussion we need to be having.

[132] **Dr Blaney:** We have not had that conversation. For us to have the conversation, we only saw this Bill a fortnight ago—

[133] **Bethan Jenkins:** But, you have been involved in the pre-consultation discussions with the Minister and so forth, and you put in various pieces of evidence. You have had more of a look at it than I think you—

[134] **Dr Blaney:** No, what we have done is offered our views on various aspects of what we might wish to see and what we had seen in the technical consultation. We did not know where that was going to end up until this thing came out a fortnight ago. We had not seen it before then. The issue about NPISH is an issue that has exercised the sector. Our view is, in operation, we would not want to substantially change what we do from what we do now. Therefore, there would not necessarily be any impact on NPISH. The difficulty, as I understand it, that the sector sees—and you will have to talk to them, which doubtless you will—is that there is potential, in the way in which this Bill is specified, to allow us to go further than we currently go. We would not want to, but there is that potential and they have a reasonable, or at least a rational, concern to know where the boundaries of that lie and that it does not impact on NPISH. Our understanding, from discussions with officials, is that they do not see an issue, but you would have to ask them for the basis upon which they do not see an issue.

[135] **Bethan Jenkins:** It is probably not a question for you, but I just find it difficult, again, to understand the rationale for it. If you say that you are not going to actually potentially use the additional powers that this would give you, because you are quite happy with the flexibility within the system as it stands—

[136] **Simon Thomas:** The difficulty is that when you write it down and make regulations, people will get—

[137] **Bethan Jenkins:** People will expect that you would be able to use it. I think that that is probably what the student contribution would say; they would want it to be more prescriptive, so that they know that HE institutions are being held to account, more effectively.

[138] **Dr Blaney:** All of this is about balance, in the end. It is about balance between going in hard and having a sort of persuasive regime, which is where, at the moment, we sit. Historically, we have had funding by which we can influence behaviour and actually offset some of the economic irrationality of widening access and Welsh-medium by making it more lucrative in funding terms. So, that has been fine, but it has still always been about persuasion of autonomous institutions to kind of do the right thing. I do not see that changing, because the moment that we get into having to really swipe them around their heads with sticks—and, actually, we are totally in a different place in relationship terms, and these are still autonomous bodies—we will end up with a much more fractious and difficult set of relationships, which would be less effective in the end, in my view. That does not mean to say that we do not want to continue to encourage the institutions to go the extra mile in these policy areas, because we do.

[139] The purpose of the Bill, as far as I am concerned, is to provide, underpinning it, a set of tools that are there in the armoury, hopefully never to be opened up, but there. If you do not have that, there is nothing stopping institutions pushing back if they want to. That is not to

say that they will, but some do. It is a constant state of flux. The state in which institutions are either with us or against us changes as a sector over time, and it changes by institution over time as well. Sometimes they love us and sometimes they hate us. That is to be expected. That is the burden of our position. That is a constant negotiation. However, always as a backstop, you have the powers. We are saying that the funding powers are not there as a backstop now, effectively, because of the way that that has been diminished. So, you need something else. However, we still want it only to be a backstop.

[140] **Ann Jones:** I am going to run this session over because there are some questions on quality assessment, and also we want to come back to the financial code. Can we have briefer questions and some brief answers? Then, perhaps we can write for further information. I now call David.

[141] **David Rees:** Thank you, Chair. I will be very brief.

[142] **Ann Jones:** Sorry. I was not directing that at you, because you have been very good all through the session. It was this side of the table.

[143] **David Rees:** You have mentioned quality assurance, but I want to be convinced, basically, that you are happy that all HE provision within Wales, whatever the course, whether it is franchised or not franchised, whether it is in FE, is part-time, full-time or whatever, will actually come under the remit of this Bill for quality assurance purposes.

[144] **Dr Blaney:** We do not know what the arrangements are going to be for the case-by-case designation, so we cannot really comment on that. However, beyond that, I think that we are comfortable.

[145] **David Rees:** Yes, that was very simple. I told you that I would be short and sharp.

[146] **Ann Jones:** Is that fine? Okay. Thank you very much. I will therefore move on to the financial assessment. Keith, there are some questions that we need to continue with.

[147] **Keith Davies:** They have answered the first part because it was on the financial code, really.

[148] **Ann Jones:** Yes. Is there anything else that you need to ask in there?

[149] **Keith Davies:** In a sense, because you do not know the details of the code, it is difficult to ask what concerns the institutions. If we do not have the detail, then—.

[150] **Dr Blaney:** I think that that is right. As I said, in the absence of detail, institutions will fill the void with their concerns. I think that that is perfectly understandable, but until we have a clearer sight of some of this, or clearer sight of the intentions, that is where we will be.

[151] **Ann Jones:** That is why—*[Inaudible.]*—I should have said that a lot earlier. *[Laughter.]*

[152] **Simon Thomas:** You did, actually.

[153] **Ann Jones:** I did, but then you all totally ignored me. *[Laughter.]* I wish to thank you very much. We did overrun, but thank you very much. We will send you a copy of the transcript to check. You have pointed out that you have only recently seen this Bill; therefore, when you have had a more in-depth look at it, if you think that there is something in there that would assist us with the Stage 1 inquiry, we would be happy to take further written evidence. I doubt very much whether there will be time to call you back in, but we would take some

further written evidence and perhaps engage with you, if there is anything that you look at and suddenly think, ‘We should have said that’, or, ‘We should have helped the committee to do that’.

[154] **David Rees:** Chair, may I ask, on that additional evidence, in your paper you mention that 60% of your funding goes to tuition fee grants, could you just clarify where the other 40% goes for us? How much goes on part-time, how much on quality assurance, how much on other grants and how much on research? It would be nice to have that information.

[155] **Ann Jones:** We are happy to just take a note on that.

[156] **Dr Blaney:** Let us give you a note, but the shorthand answer is that the bulk of that is spent on research and then part-time. They are the two big-ticket items, but we have a nice pie chart in a recent press release that we can send to you, which will answer that.

[157] **Ann Jones:** Okay, fine, but if there is anything else—. Thank you very much for coming in and giving us your evidence today. Okay, if committee is happy, we will go into private session.

10:40

**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**

[158] **Ann Jones:** I move that

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 17.42(vi).

[159] I see that Members are in agreement.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 10:40.
The public part of the meeting ended at 10:40.*