



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

## **Y Pwyllgor Plant a Phobl Ifanc** **The Children and Young People Committee**

**Dydd Iau, 19 Gorffennaf 2012**  
**Thursday, 19 July 2012**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi 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**

Angela Burns	Ceidwadwyr Cymreig Welsh Conservatives
Christine Chapman	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Jocelyn Davies	Plaid Cymru The Party of Wales
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
Rebecca Evans	Llafur Labour
Julie Morgan	Llafur Labour
Lynne Neagle	Llafur Labour
Jenny Rathbone	Llafur Labour
Aled Roberts	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

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

Leighton Andrews	Aelod Cynulliad, Llafur (y Gweinidog Addysg a Sgiliau) Assembly Member, Labour (Minister for Education and Skills)
Debra Jenkins	Swyddog Polisi, Tîm Plant sy'n Agored i Niwed Policy Officer, Vulnerable Children Team
Anthony Jordan	Adran Addysg a Sgiliau, Llywodraeth Cymru Department for Education and Skills, Welsh Government
Simon Morea	Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
Ceri Planchant	Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
Amina Rix	Gwasanaethau Cyfreithiol, Llywodraeth Cymru Legal Services, Welsh Government
Julie Rogers	Dirprwy Gyfarwyddwr Gwasanaethau Cymdeithasol Plant Deputy Director of Children's Social Services
Gwenda Thomas	Aelod Cynulliad, Llafur (y Dirprwy Weinidog Plant a Gwasanaethau Cymdeithasol) Assembly Member, Labour (Deputy Minister for Children and Social Services)

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

Steve Davies	Cynghorydd Cyfreithiol Legal Adviser
Kayleigh Driscoll	Dirprwy Glerc Deputy Clerk
Claire Morris	Clerc Clerk

Sarah Sargent	Dirprwy Glerc Deputy Clerk
Sian Thomas	Y Gwasanaeth Ymchwil Research Service
Liz Wilkinson	Clerc Clerk

*Dechreuodd y cyfarfod am 9.13 a.m.  
The meeting began at 9.13 a.m.*

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

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

[1] **Christine Chapman:** Good morning, everyone, and welcome to the Assembly's Children and Young People Committee.

[2] I move that

*the committee resolves to exclude the public for items 2 and 3 to discuss the committee's forward work programme and its approach to the scrutiny of the draft budget, in accordance with Standing Order No. 17.42(vi).*

[3] Are all Members content? I see that they are. We will now move into private session for those items, and the meeting will resume in public at 10 a.m..

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 9.14 a.m.  
The public part of the meeting ended at 9.14 a.m.*

*Ailymgynullodd y pwyllgor yn gyhoeddus am 10.00 a.m.  
The committee reconvened in public at 10.00 a.m.*

**Sesiwn Graffu gyda'r Dirprwy Weinidog Plant a Gwasanaethau Cymdeithasol  
ar yr Ymchwiliad i Fabwysiadu**

**Scrutiny Session with the Deputy Minister for Children and Social Services on  
the Inquiry into Adoption**

[4] **Christine Chapman:** Welcome back to the Children and Young People Committee. We will continue with the adoption inquiry and I welcome the Deputy Minister for Children and Social Services, Gwenda Thomas. Could you introduce your officials or would they like to introduce themselves for the record?

[5] **Ms Rogers:** I am Julie Rogers, deputy director of children's social services.

[6] **Ms Jenkins:** I am Deb Jenkins, policy officer in the vulnerable children's team.

[7] **Christine Chapman:** Welcome to you all. Deputy Minister, you have submitted a paper in advance and Members will have read it, but I know that you would like to make some introductory remarks before we go into questions.

[8] **The Deputy Minister for Children and Social Services (Gwenda Thomas):** Yes, thank you, Chair. With your permission, I would like to begin by welcoming, very warmly, the Children and Young People Committee's decision to undertake the inquiry into adoption. I am sure that it will contribute invaluable to the evidence that we have collected and that we will still need as we develop our thinking with regard to the national adoption service. We have set that out in 'Sustainable Social Services for Wales: A Framework for Action' and in the programme for government.

[9] I also thank the committee for postponing the latter stages of your inquiry in order to align it with the Welsh Government's formal consultation. I hope that that will enhance the committee's work, providing you with the opportunity to reflect on my proposals. I am determined to improve the way in which adoption services in Wales are delivered, but without losing the undeniable strength of existing procedures—achieving change, therefore, without detriment to the process.

[10] The establishment of a national adoption service will reap greater benefits and equity in the arrangements for adoptions, including the pooling of prospective adopters, specialist skills, the enabling of reinvestment in permanent placements for children, and greater equity in after-adoption services through training and after-adoption support programmes. I know that you have heard evidence on that.

[11] Through my meetings and correspondence, I sense that there is an appetite for change and a consensus from all of those involved in adoption that, for the sake of children who need a loving family—something that many children take for granted—we do not take one day longer than necessary to place these children and give them permanency in a loving family.

[12] **Christine Chapman:** I want to start off with some questions on the delays that we have heard about. Over the past three years, the average number of days it has taken Welsh local authorities to place a child for adoption, once it has been decided that it in their best interest to do so, has varied from 150 days in one local authority to over 500 days in another. Would you like to comment on that? Why has there been such variation between Welsh local authorities?

[13] **Gwenda Thomas:** There are variations between local authorities on many aspects of their responsibilities and this is one of them. That is why the risk would be to not take any action and to try to preserve the status quo. There are excellent examples of good practice out there. Gwent, for example, has some excellent processes in place, as have other authorities in other areas, but there is inconsistency. One of the main aims of setting up a national adoption service is to bring more equity to the process; we cannot have those inconsistencies. When you think about the geography of Wales and the fact that some local authorities, in fairness to them, are small, cover vast areas and perhaps place only a handful of children a year, I do not think that that is in the best interests of children. I also do not think that having 23 individual agencies is the best way forward.

[14] **Christine Chapman:** We know that, in England, local authorities will be set targets and will be monitored on the time taken between the issuing of a placement order and the placing of the child. What are your views on this approach of monitoring and setting targets?

[15] **Gwenda Thomas:** I do not believe in adoption targets. I believe that time needs to be taken in the case of each individual child to ensure that what is being proposed is in the best interests of that individual child. That is not to say that we cannot have targets on performance and improvements. We will certainly need those, and they are embraced within the social services Bill. The national adoption service is part of the proposals included in the Bill, as you know. So, the Bill will give us a legislative base to set targets on performance. We will do that through the standards and compliance unit, which will be set up under the

provision of the Bill, and also in the way that we will develop the improvements structure within the Bill. Some local authorities will measure their performance by measuring themselves against other authorities. The Bill will provide a legislative base for the first time, and that is what I see as being the best use of targets.

[16] **Jenny Rathbone:** I understand that you do not want to set targets. However, do you agree that we need to deliver a shock to the system? You produced an excellent flow chart tracking how things happen. In terms of moving things on and trying to ensure that we are not taking nearly three years between a child coming into care and being placed, I wonder whether it would not be possible for the search for a suitable placement for a child to start as soon as the local authority adoption panel recommends a child for adoption. Then, by the time the court order is in place, the child could be placed.

[17] **Gwenda Thomas:** Yes, we are looking at that. Indeed, I signed regulations yesterday with regard to removing the necessity for adoption panels to be part of the evidence-gathering and decision-making process on the issue of whether a child should be placed for adoption. This is duplication, and part of the reason why the process is taking so long. I served on an adoption panel for many years, and perhaps others have done so as well. The adoption panel goes into all of this evidence and takes the time to look at what is in the best interests of the child. The panel decides whether it is in the best interests of the child to be adopted, and then the case moves to the court process, which goes through all the same evidence and considers exactly the same issues as the panel. The best-interests aspect of the panel's work will now be removed from 1 September. However, where a court is not involved, for example when a child is volunteered for adoption and where there is consent from both parents, the panel will have that responsibility in the case of those children. So, this is a case of defending a process for children where the issue should not be so complicated, but also of removing the need to repeat the work. That, in itself, will be a big step forward.

[18] **Lynne Neagle:** Good morning, Gwenda. May I ask about the duty on local authorities to have a plan for permanency agreed by the time of the child's second looked-after children review? Between 2008 and 2011, there were 13 local authorities in Wales failing to meet this requirement, and in one local authority, more than 40% of children were without a permanency plan in place when there should have been. Do you have any idea why that variation exists, in relation to those worrying figures?

[19] **Gwenda Thomas:** There has been an improvement. The majority of local authorities do now comply with this by the second review. In some authorities, that figure is up to about 80%, but that is not good enough. The answer to my first question explained that there is a lack of equity and consistency of performance. I see the setting up of the national adoption agency as very much promoting the excellence that we need and have in the national framework. The intention is that the national adoption service will be headed by a head of service who will be accountable to local authorities. However, there will be autonomy to take decisions on what is best for the process. I think that that will allow local authorities to keep their corporate parenting responsibilities and move the process forward much quicker. I am sure that that can be achieved without detriment. It will allow them to focus on permanency. Adoption is only one permanent solution and it is not in the interest of all children. They will need to focus on what permanent options are best for a child, including returning home to a birth family, staying in residential care until independence, living long term with foster carers, living with a relative or other family members, and, of course, adoption. They need to be encouraged to develop their work—decisions on permanency, the development of adoption plans and preparing reports in a timely way for the court process. Having this national focus through the national adoption service will help to iron out those inconsistencies. It is not acceptable and is one of the reasons why we have to move forward.

[20] **Julie Morgan:** On each local authority having a permanency planning team, you

mentioned in your introduction that some authorities have very few children who are in that situation. Do you think that every local authority should have a permanency planning scheme or should the consortia work together on that? How do you see this being taken forward in authorities where there are very few children in this situation?

[21] **Gwenda Thomas:** That is the very purpose of the national adoption service. One of that service's big responsibilities will be to focus on adopters and ensure that there is consistency of recruitment, the provision of training and a very strong recruitment process. We know that the number of adopters has gone down a bit in the last 18 months, so that is a thing that we need to stop and reverse. I believe that the responsibility for permanency has to stay with local authorities. I would expect every local authority to have an adoption team and, within that team, a strong focus on deciding what permanent solution is best for a child as soon as possible. We know that things will vary between one child and another and that some cases will be more complex than others, but establishing permanency has to be the underlying requirement that every team within every local authority focuses on.

[22] **Jenny Rathbone:** To follow up on that, are you saying that you would expect every local authority to have a dedicated adoption team that is not involved in other child protection work?

[23] **Gwenda Thomas:** There would still be adoption agencies within local authorities. This does not change any of that. The requirement for those—

[24] **Jenny Rathbone:** Would they be a dedicated team of social workers who would work on adoption and who would not be pushed off into doing other firefighting?

[25] **Gwenda Thomas:** I cannot see any other way in which that could happen. They would have to have an agency. I know that the Welsh Local Government Association and the Association of Directors of Social Services Cymru have talked to you about regional provision. We are quite open to talking about that. If that is the best answer for some regions, I am more than willing to talk about it. However, the responsibility under local government law has to remain with individual local authorities.

10.15 a.m.

[26] If they choose to develop that on a regional basis, that is all well and good. However, there is the issue of having a local agency, along with the independent agency, St David's Children Society, as well as Barnardo's, which operates in Wales although it does not have a dedicated Welsh adoption focus. As I said at the beginning, we cannot develop things to the detriment of what is good in local provision, but we have to have more consistency, and I see the national adoption service as the way to achieve that.

[27] **Jenny Rathbone:** I want to move on now to concurrent planning, which is obviously something that has had quite a public airing in the past month or so. When Barnardo's Cymru came to talk to us, it said that it wanted to see strong leadership and commitment on the part of local authorities' senior management to promote the use of concurrent planning. What can the Welsh Government do to more proactively promote concurrent and twin-track planning by Welsh local authorities? None of them is doing it at the moment.

[28] **Gwenda Thomas:** I have reservations. I know that, in discussions between my officials and the Department for Education and Skills, that department had its own questions in that regard. I will try to explain this. What it would actually mean is that we would have to seek to recruit adopters who were prepared to become foster carers as well. I think that some people might feel that that was not for them because it would mean going through the assessment process to become foster carers at the same time as the process for adoption. The

process for becoming foster carers would require them to accept contact with birth families and the possibility of the child going back to the birth family. What I am saying is that that will perhaps not be for many adopters, whose main aim is to adopt a child for life and to become that child's family forever. So, there are issues with that. We need to learn about this and see how it develops. However, I have some reservations and I think that, in the end, it would probably be a very small group of people who would agree to that.

[29] **Jenny Rathbone:** I accept that it is not for everyone, but it has led to a radical improvement in the rates of getting children adopted in the London borough of Harrow, I think. The risk then falls on the adults in the arrangement rather than the child. We have heard a great deal of evidence about the disruption to the attachment process because children are passed from one foster carer to another before they reach their adoptive family.

[30] **Gwenda Thomas:** I am not saying that it is a bad thing. However, you would have to recruit adopters who would be prepared to accept that process. If there are people who want to do that, they should receive an excellent service and be encouraged, but a lot of work would be needed to prepare adoptive parents for that—for the challenge and the joy of the process. However, it would have to come from a willingness on the part of prospective adopters to go through those concurrent processes.

[31] **Jenny Rathbone:** One of the voluntary agencies is looking at this and at the detail of the processes and the safeguards that need to be in place. Would you support that, if it comes forward as a realistic prospect?

[32] **Gwenda Thomas:** I would support any adoptive parent who was prepared to come forward on that basis. We would not say, 'No, you can't do this', because, if there are people out there who would be prepared to go through that process, they would have to be encouraged and supported.

[33] **Jenny Rathbone:** So you would not oppose agencies adopting such a process.

[34] **Gwenda Thomas:** I would certainly see nothing against it, but I think that we need to learn from the process and to listen to what is happening in England. I am quite open to that on all aspects of this.

[35] **Christine Chapman:** Thank you, Deputy Minister. I want to move on now to look at the support services we have heard about. I will bring Jocelyn in on this.

[36] **Jocelyn Davies:** Deputy Minister, many adoptive parents to whom we have spoken suggest that the provision of adoption services is very uneven. You have mentioned it several times this morning, so, obviously, you accept that this is a major issue. Some parents have told us that they had poor responses when they initially made enquiries of the local authority, perhaps having to wait many months. They had to be very persistent in order to get that first interview, which was offputting, and that is especially disappointing when the profile of adoption is being raised. Perhaps a national recruitment campaign is being run, but then they ring the local authority and they are put off. Can you explain to us how your plans will address that?

[37] **Gwenda Thomas:** I dealt with a case last week in my constituency office where a telephone call to a reception desk was not dealt with at all. You have to think about whether that is an isolated example or whether there is a bigger problem in providing that front door for applicants and dealing with them. I am committed to eradicating waiting lists for adopters. It is the only aim that we can have. When we know that children are waiting in the system to be adopted and when we have a recruitment drive, we have to have that as a goal. There should not be waiting lists. The national adoption service will help us to achieve that. We

have talked about the inconsistency of good practice already, and that is why I see a risk in not doing anything. We have to change that.

[38] With regard to support after adoption, it is very patchy. I have talked to parents who have adopted who have had good experiences, and I visited one family in Cardiff, but it is not consistent or good enough. We need the national adoption service to develop the details of the framework and, within that, we will look to the voluntary sector with a view to developing a research project on this in this financial year—we have to move it as quickly as that—so that we have good research with regard to support after adoption and how we develop it. However, in partnership with the voluntary sector, local government and the independent sector, the aim is to develop that thinking and, as I said, to develop it this year.

[39] **Jocelyn Davies:** You mentioned the eradication of waiting lists. I do not think that, for the people whom we spoke to, the time that it takes to go through the process and to adopt was the issue. It was the poor response that they received initially. In fact, the point has been made to us that, if you cannot go through the process you are required to, you certainly will not cope with the adoption afterwards, but that initial enquiry and having the correct information seems to be very important.

[40] You say that the current thinking behind the adoption service would be to provide national leadership and an overview. Is that not the current role of the Welsh Government? Is there a danger that, if the service has a limited remit, it will not be able to go far enough to make the step change that you told us earlier was so vitally needed?

[41] **Gwenda Thomas:** To go back to your first comment, I accept absolutely what you say, but I think that it is both. It is the reaction to adopters when they first come forward, but it is also the process. The process needs to speed up and that is a lot of what this is about. So, I think that it is both. I see the national adoption service as providing leadership. The role of Government is to take the strategic lead, and we will do that. The consultation on the social services Bill has brought out wide support for the national adoption service. There has to be a strategic lead. The national partnership forum that I have set up, which is a cross-party forum, is going to deal with the issue of driving the Bill forward, with the implementation group there to support it, and that is the way forward. That strategic lead has to reflect the thinking of Government, supported by the national service.

[42] The national service will have the responsibility and will concentrate on the adopter. It will provide a framework for adoption approvals, including the panels, and will establish a resource hub that provides a gateway for potential adopters and information on training programmes, along with information on the assessment process and a general advice line, linking adopters with children and commissioning services such as post-adoption support and providing national leadership with an overview of adoption services. The strategic lead for that will be provided by Government.

[43] **Christine Chapman:** Before I bring Jenny in, Deputy Minister, could you clarify whether you envisage the new national adoption service taking complete responsibility for recruiting potential adopters?

[44] **Gwenda Thomas:** No. It will have a responsibility, but, if a potential adopter comes to the front door of the local authority, then there has to be a way of co-ordinating that. We cannot have a situation of only looking to match children within that small area. I explained at the beginning that I think that a handful of children being placed by small authorities within vast geographical areas has probably slowed things down for adopters in other areas.

[45] **Christine Chapman:** So, ultimately, it would not be the responsibility of the new service then; it would still be with the local authorities, do you think?



[46] **Gwenda Thomas:** No, it would be a responsibility of the national service as well to recruit adopters and to make a link with children, but you cannot close the door on people coming to a local authority to voice their interest locally, can you? We need to have a coherent process to match adopters with children and to recruit the adopters, but the national adoption service will focus on the adopter.

[47] **Christine Chapman:** Okay. I think that Lynne has something on this point, before I bring Jenny in.

[48] **Lynne Neagle:** If somebody were to go to the local authority in a particular area, it would not be the case that the local authority would say that it is all being dealt with by the national adoption service and that they would need to get in touch with it. It would do some processing on a local level, would it?

[49] **Gwenda Thomas:** I would certainly expect that. I would not expect anybody who came into a local authority office to be told to get in touch with somebody else. It would be a responsibility for the local authority to pass that information on and for contact then to be made by the national service. I do not believe that people should be pushed from pillar to post.

[50] **Lynne Neagle:** I agree with that, but local authorities would not be dealing with it; there would be a referral system so that all the adopters would be dealt with by the national service, rather than all this process going through on a local level.

[51] **Gwenda Thomas:** The national adoption agency would co-ordinate this process. The court process would still be done locally. It remains the responsibility of the local authority to develop the adoption plan and to prepare the reports for court. That would have to be done through the local courts system. I see no conflict, however—I have given you the list of things that the national adoption service will do. After all, the national adoption service will be the coming together of the local services, which would still be accountable to local government. However, there will be autonomy for the head of the national service to take decisions, and the Welsh Government will take a strategic lead on that.

[52] **Christine Chapman:** Obviously, we have seen inconsistencies in provision and approach, so would the national service identify where there could be gaps and inconsistencies? How would it work?

10.30 a.m.

[53] **Gwenda Thomas:** We know where there are gaps, and that is why we need to change, because there are gaps. I can see no reason, if it is in the best interests of a child from Swansea to be adopted in Newport or Cardiff, not to do that—I can see nothing wrong with that. However, we need that sharing and that linking of children with adopters to be far more consistent. I see the establishment of this national service facilitating that process for that child. That is the important thing at the end of the day. I think that, perhaps, we will lose the extent of the offers that can be made through working too locally and through keeping things too local with regard to children who need adoption and the identification of adopters. The high skills of the social workers who work in the national adoption service will be needed to drive that forward.

[54] **Christine Chapman:** You said that the national service would be accountable to the local authorities rather than the other way around.

[55] **Gwenda Thomas:** It will be accountable to local authorities, but we will work in

partnership with them and we have set up the expert adoption advisory group, which is already meeting. The advisory group has recognised this and has looked at the issue of placement and the role of the national adoption service. The expert group embraces very wide opinions and views in the adoption family. It is a good thing to have brought those people together in order to advise me of the way forward. This is one of the issues that that expert group has already dealt with in its first meeting and it will come back to it very quickly.

[56] **Jenny Rathbone:** I understand that if someone walks through the door in Brecon or Wrexham, you want them to be given encouragement to go through the assessment process. What I am not clear about is whether local authorities are all definitely going to be involved in the pooling of prospective adopters, because in your paper you talk about encouraging the pooling of prospective adopters. Is this going to leave local authorities with the option of keeping their prospective adopters to themselves so that they can place their local children, or are we going to have a national service where all prospective adopters are going to be on a register and can then be matched with children who need placements?

[57] **Gwenda Thomas:** Indeed; that is one of the things that we want to achieve. That is what is happening at the moment and we have to stop that from happening. We see the national adoption service as a way of driving that forward.

[58] **Jenny Rathbone:** However, the word that you use in your paper is 'encourage'; do you mean 'expect', and therefore it will happen?

[59] **Gwenda Thomas:** It is my intention to hold to account all of the people involved in this process, led by the officials here, the Welsh Local Government Association, the Children and Family Court Advisory and Support Service Cymru and all partners. I will have expectations of them and I will hold to account any of the partners that do not comply with the standards that we will set. However, we will also have the adoption register. So, the adoption register will still be there, with prospective adopters linked to it. That will be another of the responsibilities of the national service.

[60] **Jenny Rathbone:** So, all local authorities will be directed to pool their prospective adopters.

[61] **Gwenda Thomas:** Yes, that would be the aim.

[62] **Julie Morgan:** When the national adoption service is launched, we hope that many more adopters will come forward because of the publicity and the focus that it will provide. If adopters come directly to the national adoption service, will they then be directed to their local authority to do their assessment, or would the national adoption service have the facilities to do anything itself?

[63] **Gwenda Thomas:** This is a developing process. We are developing these frameworks and we are considering this at the moment. I would value the view of the committee on that process and the way in which you see that aspect developing. My view is that there has to be open dialogue between all local authorities and the national adoption service, and the independent adoption service, which is carrying out extremely valuable work in Wales. I see that as developing the regulations that will follow this process.

[64] **Julie Morgan:** I suppose most of our views are coloured by the extreme variations in practice that we have seen, and if people do come eagerly to the national adoption service, my instinct would be to send them to a voluntary organisation that specialises specifically in this. Do you have any thoughts on that, bearing in mind that some of the local authorities have so little experience of doing this because of the lack of demand in their areas?

[65] **Gwenda Thomas:** That is a very important point. I have already said, with regard to after-support services, that we need that research. We need the research projects and we will rely heavily on the voluntary sector in working with us to develop that. We will, in this financial year, ensure that we move this forward and we will have a bidding process for that work.

[66] **Jocelyn Davies:** You mentioned the overwhelming support for the national adoption service, and we certainly found that, but I would put it to you that it depended what they thought it was going to be. They were generally very supportive of what they would like it to be, but I do not think that any of them have described what you have laid out for us today.

[67] **Gwenda Thomas:** I am sorry; you do not think that any of them did what?

[68] **Jocelyn Davies:** They did not describe what you have laid out for us today. I know that your excellent chart was mentioned earlier. Do you think that we could have a diagram of the structure of the national adoption service, as you envisage it will be?

[69] **Gwenda Thomas:** I would be more than happy to do that. We need to consider the response to the social services Bill that included this, but I am wondering whether we have raised enough awareness about this if people who gave evidence to the committee are not clear about the intention. We need, therefore, to ensure that we develop that thinking and share this information. I am sure that the expert group, which has only met once—it is early days—will want to advise us on that, and through its expertise and the breadth of the membership of that group, I am sure we will improve on that situation that you described.

[70] **Suzy Davies:** I will take you back momentarily to Jenny's question about the pooling of adopters. I was encouraged to hear that the word is more likely to be 'expectation' rather than 'encouragement' when it comes to pooling. However, we have quite a porous and long border there; will you be inviting local authorities in the adjacent English counties to contribute to the pool? Obviously, you have no authority over them so you cannot enforce it, but what is the relationship going to be with those adjacent English authorities?

[71] **Gwenda Thomas:** You know that the House of Lords for example, through a select committee, is looking at adoption for England and Wales, and we will be providing evidence to that committee. I do not think that there should be any borders with regard to placing a child if that is in that child's best interest and there are adopters who can be linked to that child. There is good dialogue on this, at official level, between England and Wales and I would encourage that. That is why we are talking to them about the concurrent issue that Jenny brought up. I cannot see anything that would impede that happening.

[72] This is a huge opportunity and I do not think that there has been this kind of opportunity ever before, where you have a family justice review happening at the same time as the Welsh Government is looking to review our adoption processes. The family justice review has made wide-ranging recommendations with regard to the court process and the welfare of children. We are part of the family justice board that has been set up on an England-and-Wales basis. We have three seats on that and we have already set up our family justice network in Wales. I am so encouraged by the enthusiasm for that network. We have three judges on it and various partners, including the Welsh Local Government Association; all are coming together to develop the thinking in Wales and to ensure that we use these new processes, which are coming our way, to speed up the court process—which is inextricably linked to the adoption process—and to ensure that we get the best out of both processes.

[73] We must remember that the proposal for the national adoption service is contained within the social services Bill, which will give it a legislative base. So, there is a huge opportunity here to move forward, but we must be prepared to listen to one another and to

develop the best possible regulations that we can for Wales in the course of the development of the Bill. We have a unique position as a Welsh Government and we have our own position with regard to how we see the way forward in Wales. We are a small country; we can be clever and we can improve this process, I believe, beyond all recognition.

[74] **Suzy Davies:** You will not have the authority to enforce standards over the border, so how do you ensure that there are other mechanisms for ensuring that those adjacent counties are making their adopters available?

[75] **Gwenda Thomas:** I think that the linking process will be important in that and we will have our own standards. I may already have mentioned that, within the provisions of the Bill, we will have a standards and compliance unit and an improvement process.

[76] **Christine Chapman:** For your information, I have written to Baroness Butler-Sloss on behalf of the committee regarding the select committee on adoption legislation, just to inform the House of Lords that we are also undertaking this inquiry.

[77] **Aled Roberts:** Rwyf eisiau deall yn iawn y berthynas rhwng llywodraeth leol a'r gwasanaeth cenedlaethol. Credaf fod llawer o rwystredigaeth ynghylch y gwahaniaeth yn ansawdd y gwasanaeth rhwng yr awdurdodau lleol. Roedd y rhan fwyaf ohonom wedi meddwl y byddai'r staff sy'n ymwneud â mabwysiadu yn perthyn i'r gwasanaeth cenedlaethol, ond yn ôl yr hyn yr ydych wedi'i ddweud y bore yma, bydd y rôl strategol yn cael ei chymryd gan y gwasanaeth cenedlaethol ac y bydd y gweithwyr cymdeithasol yn dal i fod yn rhan o'r cynghorau unigol. Felly, beth fydd maint y gwasanaeth cenedlaethol a fydd yn cael ei greu? Deallaf y bydd system o sicrhau bod popeth yn cyfateb ar draws y gwasanaeth, ond beth yn union fydd maint y gwasanaeth cenedlaethol o ran nifer y staff ac yn y blaen?

**Aled Roberts:** I want to properly understand the relationship between local government and the national service. I think that there is much frustration about the difference in the quality of service within the local authorities. Most of us thought that the staff involved in adoption would be part of the national service, but from what you have said this morning, the strategic role will be taken by the national service and that the social workers will remain part of the individual councils. So, what will be the size of the national service that is to be created? I understand that there will be a system of ensuring that everything matches throughout the service, but what exactly will be the size of the national service in terms of the number of staff and so on?

[78] **Gwenda Thomas:** Ni allaf roi'r manylion hynny i chi'r bore yma; rydym yn datblygu'r broses ac rwyf yn falch i glywed eich barn am hyn. Bydd cyfrifoldebau lleol yn parhau ac y mae hwnnw'n fater cyfreithiol. Bydd cyfrifoldeb yr awdurdod lleol fel rhiant yn parhau a bydd y cyfrifoldeb hwnnw'n cynnwys paratoi'r cynllun mabwysiadu, fel y dywedais, paratoi adroddiadau i'r llys a sicrhau bod canolbwyntio ar y broses honno a'n bod yn gallu gwneud pethau'n gyflymach nag ydym yn eu gwneud ar hyn o bryd. Bydd y cyfrifoldeb hwnnw'n sefyll ynghyd â'r asiantaethau lleol, ond byddant i gyd yn cyfrannu at yr asiantaeth genedlaethol hefyd.

**Gwenda Thomas:** I cannot give you those details this morning; we are developing the process and I am pleased to hear your views on this. Local responsibilities will continue and that is a legal issue. The local authority will still have responsibility as a parent and that responsibility will include preparing the adoption plan, as I said, preparing reports for the courts and ensuring that there is a focus on that process and that we can do things much quicker than we are currently doing them. That responsibility will remain along with the local agencies, but they will all contribute to the national agency as well.

[79] **Aled Roberts:** Felly, bydd y staff

**Aled Roberts:** So, those staff members will

hynny'n weithwyr yn y cynghorau unigol ac yn cael eu rheoli gan reolwyr yn y cynghorau yn hytrach na chan y gwasanaeth cenedlaethol.

be workers within the individual councils and will be managed by managers within the councils rather than by the national agency.

[80] **Gwenda Thomas:** Bydd pennaeth gwasanaeth yn arwain y gwasanaeth cenedlaethol, ond bydd gan y person hwnnw hawl i wneud penderfyniadau sy'n annibynnol ar y swydd. Er bod y swydd yn un llywodraeth leol, bydd gan bennaeth y gwasanaeth hwnnw awtonomiaeth i wneud penderfyniadau ac i yrru'r broses ymlaen.

**Gwenda Thomas:** There will be a head of service who will lead the national service, but that person will have the right to make decisions independently of the job. Although the job is a local government one, the head of that service will have autonomy to make decisions and to drive the process forward.

[81] **Christine Chapman:** Angela has a question next, followed by Rebecca, who has been waiting patiently.

10.45 a.m.

[82] **Angela Burns:** My question is on funding, which is quite important in light of what you have just said because the evidence that we have heard during the inquiry is that there is disconnect between different agencies and local authorities. You could argue that some of it is down to funding, because they say that they do not have money for enough social workers to deal with adoption, to offer post-adoption support or to run the service in a way that is right for that area. You get some that do it well and others that do it poorly. Money is not the answer to everything—I understand that—but in your paper, you make a comment about social return on investment, concluding that, for every successful adoption, with a child receiving the support that it needs, there will probably be a social return of over £1 million per placement. I had envisaged that a national adoption agency would be able to hold that kind of number in its head.

[83] I was going to ask you what kind of funding you would be able to bring in to the national adoption agency, given how much long-term money you are saving for every child placed and supported successfully. However, that question has been thrown into disarray, because if the responsibility for delivery—and, therefore, for hiring and training social workers—still rests with local authorities, how will you be able to marry up the disconnect between their funding and the funding streams that you have as a national adoption agency? Unless there is some tie-in, with some of the additional funds that we save for every successful adoption pushed back into the system, how are we going to afford all the other things that we have discovered during the course of our inquiry that people need—such as ongoing support once they have adopted a child and so on?

[84] **Gwenda Thomas:** I have been absolutely clear, in all that I have said about the social services Bill, that we do not have any more money. We will have some money to kick start some processes, which we will make available, but, in the economic climate that faces us, we have to work in different ways and we have to ensure that we get everything that we can out of every penny that we have. Having said that, discretion will remain with local authorities. The principle of the revenue support grant in Wales is that it is unhypothecated—it is for local authorities to decide how they distribute their money from the RSG. However, we have put extra money into social services for the next three years; we have defended the budget and we have put in that extra £34 million over the next three years. I believe that what you say about the social return is very important. I do not think that we have been very good at identifying these savings. We have also said that any savings made will be ploughed back into the service.

[85] I cannot see that there will be a problem in developing the national service. We are open, as regards the previous question, about staff remaining in local authorities. I see the need for staff to work locally, to prepare this work and to be there for the adoption plan, the court reports and so on, but there is no necessity for them to remain employed by that local authority as an individual local authority. These are things that we are developing and upon which you, as a committee, will probably have a view. We will certainly need the workforce on the ground locally to deal with courts, but we are open to discussion about the best staffing structure and how we reinvest that resource. We will need some money to start off the national adoption service. The intention is not to save money; the intention is to improve the process for children and adopters, but, by doing that and using innovative ways of thinking, we can save, as the social return shows. However, we need a coherent process that allows us to recycle that money into the process as well.

[86] **Angela Burns:** I understand your answer, Deputy Minister, but my concern remains this disconnect. The Government takes a strategic view, and for every child successfully adopted today, you know that you will save, in 20 years' time, the social care costs for that individual if everything had gone horribly wrong for them at age 5, but local authorities tend to be far more short-termist in their views—it is much more about how much money they have in their budget this year. I would like to ask you to explore the narrowing of that disconnect. You may have the social goal, but I simply do not believe, from the evidence that we have seen and from the way that some get it right and others do not, that local authorities will take some of the money that they are sitting on or has been given to them in the revenue support grant and put it into that. They do not see the long-term benefits that saving Peter aged 5 will have for their support of Peter aged 20. It does not get factored into their thinking process.

[87] **Gwenda Thomas:** I take that point. As I said, it is the responsibility of local authorities to decide how they spend their money through the RSG, but we want to identify and iron out inconsistencies. That is why we will set standards and an improvement framework. We will have a legislative base for that and if there is non-compliance, for any reason—funding or whatever—we will be able to hold people to account for that. We have to link this to the provisions in the Bill that will allow us to set the standards and to direct improvement where that is needed. If you want to take that further, I will be more than happy to—

[88] **Christine Chapman:** Evidence of the inconsistency is probably the main point for this committee. There is some really good practice out there, but it is about bringing the poor practice up to the same level as the best. We are running short of time and the Minister for Education and Skills is coming in just after 11 a.m., so I will take two questions, one from Rebecca and one from Julie, and then we will have to end the session.

[89] **Rebecca Evans:** You referred to the expert working group, and I was wondering whether it is considering outsourcing the national adoption service to voluntary agencies, given their high standard of performance in that area. Also, you said that the working group has only met once so far. It was set up following the publication of the plans. Do you think, in hindsight, that that was the best way to develop robust policy in this important area?

[90] **Gwenda Thomas:** I might not have made it clear, although I hope that I have, that the Welsh Government will not own the national adoption service. It will be owned by local authorities, and they will develop it in co-operation, one with the other, under the provisions of the social services Bill. So, we will not own it. The responsibility will remain with local authorities. I hope that that answers your question about outsourcing to the voluntary sector. There are supportive services that will be best provided by the voluntary sector, and I have tried to explain that we will work with the voluntary sector, for example, on after-adoption support services and other services, but the national adoption service will be owned by local

government. We are still developing the details around that. The social services Bill allows the establishment of the national adoption service and will place requirements for standards, compliance and improvements on local authorities in that process.

[91] **Julie Morgan:** During our inquiry, we have met a lot of adoptive parents, and one of the key issues raised is that many of them felt that they were not given full, accurate information about the children's needs. We also heard quite a bit about attachment theory and whether the children's situation would allow them to become attached. I was pleased when we were told that, in the end, every child could be adopted. I wondered about the degree of expertise needed for those pre-adoption assessments. That is a big demand on local authorities, to be able to produce social workers with that extra training. Do you have any views on that?

[92] **Gwenda Thomas:** Yes, I do. We can imagine being a social worker dealing with issues of this nature, and dealing with the need for permanency at the same time that there are serious issues affecting the child, along with very complex family issues and combative behaviour in many cases. I think that the expertise needed to do that is not in question.

[93] However, it is important that the adopters are fully prepared for the challenges that they will face, and that they are supported in that. The inconsistency in post-adoption support services does not help the adopter. The regulations—I cannot remember which ones; I think that they were brought in in 2005—allow or require the local authority to look across education and to work with CAMHS, and it is not confined to social services. That process needs to be embraced; we need to look at all of the issues and all of the support services that are sometimes needed in complex cases, and any prospective adopter must be very much a part of that.

[94] **Christine Chapman:** Thank you, Deputy Minister. I need to draw this part of the meeting to a close. I thank you for attending. We did have some other questions, so we will write to you so that you can respond in writing. I also want to let you know that, as a committee, we are going to write to the Minister for Education and Skills on issues concerning education, as we have had evidence on that, and we shall also write to the Minister for Health and Social Services on CAMHS. You will be sent a copy of the Record, in case there are any issues of accuracy.

[95] **Gwenda Thomas:** Thank you. I hope that this can be an ongoing process. I know that you will feed into the consultation as it continues.

[96] **Christine Chapman:** Thank you, and I thank your officials.

[97] We will now take a very short break. Before that, I want to put on record something that I forgot to mention earlier. I want to thank Julie Morgan for chairing last week in my absence.

[98] **Julie Morgan:** Thank you. They were very lively.

[99] **Christine Chapman:** If you can all come back here by 11.05 a.m., I would appreciate it.

*Gohiriwyd y cyfarfod rhwng 10.58 a.m. ac 11.04 a.m.  
The meeting adjourned between 10.58 a.m. and 11.04 a.m.*

**Bil Safonau a Threfniadaeth Ysgolion (Cymru): Cyfnod 1—Sesiwn Dystiolaeth 6**  
**School Standards and Organisation (Wales) Bill: Stage 1—Evidence Session 6**

[100] **Christine Chapman:** I welcome Leighton Andrews, Minister for Education and Skills. Please could you introduce your officials for the record?

[101] **The Minister for Education and Skills (Leighton Andrews):** Yes, indeed. I have with me Anthony Jordan and Ceri Planchant.

[102] **Christine Chapman:** We have a lot of questions to ask on this today. I will start. With regard to Part 2 of the Bill, on standards, can you explain how local authorities' power of intervention will work in practice against the background of the four regional school improvement consortia?

[103] **Leighton Andrews:** Yes, indeed. The responsibility for intervention rests with local authorities. The consortia themselves do not have any powers of intervention in individual schools. However, clearly, we anticipate that, with the development of school improvement services on a regional basis, they will be more powerful bodies that will be able to provide a better quality of resource on which local authorities can draw in the process of intervention.

[104] **Rebecca Evans:** Minister, what consideration have you given to the United Nations convention on the rights of the child in developing the Bill, and what is your response to the view of the Children's Commissioner for Wales that the UNCRC should be mentioned on the face of the Bill?

[105] **Leighton Andrews:** Since the passage of the Measure in the previous Assembly, all Ministers are under a duty to consider the impact of the UNCRC in every aspect of our work. We have been doing that within the department. I think that we are clear about how the Bill fits with the demands of the UNCRC. I am relatively relaxed about the children's commissioner's specific point. We have in any case a duty to comply with the UNCRC, so I am not sure that adding it to the Bill would actually change our obligations in any regard. However, if that is an issue that the committee would like to press, I would be relaxed about that.

[106] **Rebecca Evans:** What consideration have you given to including in the Bill a monitoring mechanism so that you can assess the use and effectiveness of the powers of intervention?

[107] **Leighton Andrews:** Are we talking here about the warnings about school intervention?

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

[109] **Leighton Andrews:** There is no specific system in place at the moment to monitor the use of warning notices. Officials are discussing with the Welsh Local Government Association and Estyn how best that might be achieved. We do not currently monitor the use and effectiveness of local authority powers of intervention, but Estyn looked at this issue back in 2008 and found that very few local authorities had issued warning notices. Therefore, we have taken the view that the law on intervention is unclear and difficult to navigate. That has been supported by the advice that we have had from the WLGA. So, we propose to review the legislation annually to see the impact that it is having on the ground. To do that, we would seek views from Estyn, the WLGA and local authorities.

[110] **Rebecca Evans:** Several things might affect local authorities' decisions to intervene



in schools that are causing concern. We heard from the National Union of Teachers that local authorities may choose not to use their existing powers of intervention because of the damage that an intervention might cause to their relationship with an individual school. Other than the complexity of legislation, can you comment on other factors that may affect a local authority's decision to intervene in a school? To what extent might these factors, such as damaging relationships, prevent the Bill from achieving its aim of raising standards?

[111] **Leighton Andrews:** I think that they are less likely to have an impact in future because of the move to reorganise school improvement services on a regional basis. Increasingly, through the stock takes undertaken by our school standards unit, we are finding evidence that local authorities—not all, but some—have not really provided the level of challenge to schools facing difficulty that we might have expected them to under existing legislation and their existing responsibilities. If anything, you can argue that there may have been too cosy a relationship in some areas between the school improvement services of local authorities and particular schools. That cosiness is less likely to exist in the reorganised situation, as we will have school improvement services on a regional basis and so those services will be less concerned about keeping on the right side of headteachers, perhaps, and will be prepared to offer more challenge, which will be helpful. As I have said throughout, the point of this is that earlier intervention ought to be less drastic, and if we are not having effective intervention at an early stage at the present time, you can understand why we are ending up with schools falling into special measures in the way that we are.

[112] **Christine Chapman:** I want to move on to questions on the grounds for intervention, which will be asked by Aled.

[113] **Aled Roberts:** Weinidog, rydym wedi cael tystiolaeth bod rhai yn pryderu am y seiliau dros ymyrryd, a bod rhai o'r seiliau hynny'n rhy agored. A ydych yn rhannu'r pryderon hynny? Sut yr ydych yn teimlo y bydd y Bil yn gwarchod rhag hynny? Yn ôl rhai o'r tystion, gan fod rhai adrannau mor agored, mae perygl y bydd ymyrryd diangen neu amhriodol yn digwydd.

**Aled Roberts:** Minister, we have had evidence that some are concerned about the grounds for intervention, and that some of those grounds are too open-ended. Do you share those concerns? How do you think the Bill will guard against that? According to some witnesses, some sections are so open-ended that there is a risk that unnecessary or inappropriate intervention may occur.

[114] **Leighton Andrews:** This is difficult, is it not? Sometimes, local authorities tell us that the grounds given to them by the Welsh Government are far too open. Then, we will propose giving them guidance, and they will say that we are being too prescriptive. My view is that we have deliberately kept the detail for the statutory guidance. If local authorities comply with the statutory guidance, there should not be a problem, frankly, in the way that they take this forward. We would consult on the statutory guidance, and the authorities would have an opportunity to respond to the consultation. Of course, they have to operate within a wider legal framework, where what they do can be challenged in the courts. So, they will want to be very clear themselves about how this will work. As I said, with the move to having school improvement services on a regional basis, I hope that we will have stronger school improvement services that will have a very clear understanding of the legislation.

[115] **Aled Roberts:** Hoffwn symud ymlaen at seiliau 2 a 3. Unwaith eto, rydym wedi cael tystiolaeth am y mater hwn. A fyddai modd ichi egluro'r meini prawf a gaiff eu defnyddio i benderfynu a yw'r seiliau hyn yn bodoli ar unrhyw adeg?

**Aled Roberts:** I would like to move on to grounds 2 and 3. Once again, we have had evidence on this issue. Would it be possible for you to explain the criteria that would be used to determine whether these grounds exist at any stage?

[116] **Leighton Andrews:** I will start with ground 2, which is where there has essentially

been a serious breakdown in the way in which the school is managed or governed. The key sorts of information that would justify a warning notice under ground 2 would be—starting with the school itself—evaluation reports, evidence on its achievement of targets for value for money and capacity to improve, Estyn reports, and data trends, which would be useful to local authorities in making that judgment. One such trend could be declining school popularity, if school rolls are falling more rapidly than might be expected in line with demographics. Another could be repeatedly high truancy or absence rates, or increasing absence rates. More informally, perhaps, it could be feedback from parents and others. That would be ground 2. I can go on to ground 3 if you would like.

[117] **Aled Roberts:** Un peth y mae nifer o bobl wedi'i godi mewn perthynas â sail 3 yw'r ffaith bod ymddygiad rhieni'n cael ei gynnwys fel un o'r ystyriaethau. Beth yw'r meddylfryd y tu ôl i hynny, yn benodol?

**Aled Roberts:** One thing that many people have raised in relation to ground 3 is the fact that the behaviour of parents is included as one of the considerations. What is the thinking behind that, specifically?

[118] **Leighton Andrews:** This is not a new power and it already exists in current legislation. A governing body clearly has a duty to maintain discipline in a school, and the local authority has a responsibility for the safety of staff and pupils. If you had a situation in which the behaviour of parents was having a detrimental effect on educational standards or was compromising safety, you would expect the local authority to intervene. As I said, this is not a new power. It already exists.

11.15 a.m.

[119] **Aled Roberts:** Rydym hefyd wedi cael tystiolaeth gan yr NAHT a Llywodraethwyr Cymru am gynnwys yn y Bil allu ysgolion i apelio yn erbyn penderfyniad awdurdod lleol i ymyrryd. Beth yw eich barn am eu tystiolaeth?

**Aled Roberts:** We have also heard evidence from NAHT and Governors Wales on including in the Bill the ability for schools to appeal against the local authority's decision to intervene. What are your views on their evidence?

[120] **Leighton Andrews:** I am not sure why there would be a reason to do that, and it seems to me that that would take us into a whole series of questions about who they would appeal to and so on. We already know that local authorities rarely use powers of intervention. In passing this legislation, it is not my desire for local authorities to intervene at a late stage when things have got difficult. I would rather they carry out their existing responsibilities to monitor progress within schools on an annual basis and seek to address the challenges that those schools face before they become in need of a fundamental intervention.

[121] If Estyn finds a school to be in need of a fundamental intervention by a local authority, as distinct from by Estyn itself, the time for appeal has probably passed. I am not sure why we should give the right of appeal to a school. If we are going to do that, perhaps we should give the right of appeal to pupils on whether the school needs intervention if it is failing in standards. This opens up a whole series of questions, it seems to me. We are not there to protect the integrity of schools as institutions per se; we are there to ensure that young people get a decent education. That is where the responsibility needs to lie.

[122] **Aled Roberts:** Rwy'n symud ymlaen at adran 21, sef y gwahanol seiliau. Pa fath o ddata neu wybodaeth yr ydych yn meddwl y bydd awdurdodau lleol yn eu defnyddio i ymyrryd? Rwy'n cyfeirio'n benodol at sail 3 yn yr adran honno.

**Aled Roberts:** I will move on to section 21, on the various grounds. What kind of data or information do you think that local authorities will use as basis to intervene? I refer specifically to ground 3 in that section.

[123] **Leighton Andrews:** Again, it is not new. We have taken the wording from existing section 497A of the Education Act 1996. We would expect local authorities to look at the full range of data, qualitative and quantitative, available to them, which would include Estyn's report, our banding information, and absence rates and so on. To illustrate that, we used the powers under section 497A to intervene in the education functions of Blaenau Gwent on the basis that Estyn had found both the local authority education service and its prospects for improvement to be unsatisfactory. That is an example of our using the powers that are available.

[124] **Aled Roberts:** The Association of Teachers and Lecturers in particular was critical of the use of the word 'adequate', and other terms in the Bill. Is that vocabulary in the existing legislation?

[125] **Leighton Andrews:** The term 'adequate' has been defined for Estyn reports, but it has also been defined in legislation. I have already said, in relation to one local authority, that I regard 'adequate' as barely good enough. I may well have to use that term in relation to other authorities in the future. It is set down. There is an understanding that it means that the authority is not necessarily failing but is borderline in the level and quality of the service that it is giving to pupils and parents.

[126] **Christine Chapman:** We will move on to chapter 3 and questions on school improvement guidance. I will bring in Simon Thomas.

[127] **Simon Thomas:** Weinidog, mae'r Bil yn ei gwneud yn glir bod yn rhaid ymgynghori ag awdurdodau ysgol a phobl yr ydych yn ystyried eu bod yn addas, fel petai, ar y canllawiau gwella ysgolion. A hoffech ymhelaethu ar bwy fyddai'r bobl hynny?  
**Simon Thomas:** Minister, the Bill makes clear the need to consult with school authorities and those people considered appropriate, as it were, on the school improvement guidelines. Would you like to expand on who those people would be?

[128] **Leighton Andrews:** Do you mean in drafting the guidance?

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

[130] **Leighton Andrews:** We would certainly expect to consult local authorities, Estyn and the Welsh Local Government Association, and we would expect the representatives of the unions to have a view. I have established a practitioners' panel of leading headteachers, and we would certainly take its advice on this as well.

[131] **Simon Thomas:** Why have you not made that more explicit on the face of the Bill, particularly the role of Estyn and the teaching profession—not necessarily the unions, but, for example, the expert practitioners?

[132] **Leighton Andrews:** I do not know whether you need to, do you?

[133] **Simon Thomas:** I am asking you why you took the decision not to.

[134] **Leighton Andrews:** It seems to me that you have a long list of consultees when you have some sort of statutory process, such as for school reorganisation. Here, you are not specifying a process to go through where you may get objections; you are specifying here a process where you take into account what is best practice in the field and how you want that to be implemented.

[135] **Simon Thomas:** The question that is being asked, really, is: how can we ensure that, when you talk about best practice, a future Minister will listen to that range of opinion about

best practice, rather than cherry pick what he or she might think is a Gove-like solution of a return to Latin and teaching by rote in the classroom, for example?

[136] **Leighton Andrews:** I am sure that you would not really want me to comment on what is being done in other administrations.

[137] **Simon Thomas:** No, but I wanted to predict a future Wales where this might happen.

[138] **Leighton Andrews:** Well, you are clearly predicting a very different future for Wales than the future that I foresee. [*Laughter.*] However, it seems to me that any Minister for education is going to have regard to the fact that they are likely to be scrutinised on the way in which they have gone about drawing up school improvement practice, and they would be very foolish indeed not to take into account a wide range of views, including the organisations that I have specified. So, I see no reason to write this on the face of the Bill.

[139] **Jocelyn Davies:** You have certainly now put it on the record that that is the interpretation of that part of the Bill, and we are grateful for that. I guess that you have been following our deliberations; how do you feel about what the teaching unions said, namely that they did not think that it was appropriate for the Minister to dictate teaching practices and approaches? Some said that it would de-professionalise those who are subject to the statutory guidance. So, what do you say in response to that?

[140] **Leighton Andrews:** I am not sure that all teaching unions quite said it in the way in which you put it.

[141] **Jocelyn Davies:** I did not say 'all'.

[142] **Leighton Andrews:** You said 'the teaching unions', so I want to be specific here. There are different views among the unions on a number of these issues. I think that it is right that we have some national consensus in Wales regarding what constitutes best practice. That is not my consensus; I would draw on the experience of those in the field who are the experts, really. We are undertaking academic research in respect of the high reliability resources for publishing, we have the practitioners' panel that I have established, we have serving headteachers involved in the development of best practice, and we have located that best practice and will be publishing it on our own website and it draws directly on what is going on within the classroom. We have evidence from school improvement professionals within local authorities, and some of those are now transferring to regional consortia.

[143] On best practice, we have best practice examples that are listed on Estyn's website. So, these best practice examples are coming from the profession, they are not coming from the Minister. However, on the basis of the academic research that is available to us, we have to identify which of those practices really are leading edge and are delivering improvements within real school situations. There is a legitimate role for us at a national level in setting standards on the basis of what the experts are telling us.

[144] **Jocelyn Davies:** The WLGA and Estyn said that it would have to be flexible enough to be adapted to local circumstances. We heard from Michael Imperato, who made the point that it must not be too general or it could then become useless. So, it is tricky to get that balance right. Are you confident that that can be done? Also, just to clarify, if the Welsh Government does not have the expertise and capacity itself to develop this best practice, is that something that will emerge as consensus among those with expertise in Wales?

[145] **Leighton Andrews:** Yes. That is the basis on which we have moved forward. There is excellent teaching practice in Wales, but there is also some poor teaching practice in Wales. Therefore, we have to make a judgment about what is the best teaching practice and what is

really repaying with results. A number of the steps that we have taken over the last 12 months, not least the banding, have enabled us to identify where the best practice is.

[146] **Jocelyn Davies:** I agree with you, Minister, because we know that there are some practices that are simply not working, or children would be learning to read and write. Simply reapplying those to new pupils does not seem sensible. I am not a teacher, but I can see that.

[147] **Leighton Andrews:** I am glad that we are in consensus on that point.

[148] **Jocelyn Davies:** There is consensus. There was a point made about the time that it would take to develop it, implement it and then for the improvement to take place, because, obviously, these things cannot possibly happen overnight. What do you think the timescales would be?

[149] **Leighton Andrews:** It is not as if we were starting with this Bill. If you recall, I made a statement in February 2011, saying that we would develop statutory guidance for school improvement. We obviously started work on that from that moment onwards. However, this is the first legislative opportunity that we have had to implement it.

[150] **Angela Burns:** Thank you for your answers, Minister. It is the one area of the Bill that gives me the most cause for concern, not because I do not think that we should have statutory guidance—I do—but because it is about making sure that we have the ability to flex it and, more importantly, to revise it on a really timely basis. With the best will in the world, as Jocelyn has just said, once it gets absorbed into the body politic and gets out there into the civil service and then out to the teachers, who then need training before implementing it, it can become old quite quickly. Do you think that we should put any backstop mechanism into the Bill in order to ensure that timeliness is somehow built into the whole process, so that it does not become old hat too quickly?

[151] **Leighton Andrews:** There is an obligation on us to ensure that the statutory guidance is up to date. As I say, we have been working through this for some 15 months. We have held some regional events during the course of this year, attended by headteachers from all over Wales, where best practice has been explained and rolled out and good examples used in small workshop settings, principally with headteachers, but with some teachers as well. That has been found to be very valuable. In a sense, therefore, we are already doing that. Digital materials will be available, including video material, to support this, and we will want to ensure that the Learning Wales website and the professional learning communities online website for those in the profession are regularly updated and we will be putting in the resources to support that.

[152] **Christine Chapman:** We will move on now to questions around school organisation. I will bring Jenny in.

[153] **Leighton Andrews:** Before we move on to school reorganisation, there is just one thing that I wanted to say to the committee. We have identified that there is some confusion in the guidance on intervention and the guidance on school improvement within the explanatory memorandum. We need to make some changes there. They are relatively simple changes—there has been some transposition—and we will bring those changes forward to you at Stage 2.

[154] **Jenny Rathbone:** There has been some debate in our evidence about how weight is given to different categories of objectors and whether that enables the development of a fair system. Can you clarify how the system will be demonstrably fair, given that it affords greater importance to the views of some groups over others.

11.30 a.m.

[155] **Leighton Andrews:** Before I answer, I would like to introduce Simon Morea, who has just joined us at the table.

[156] On the categories, if there were objections from those that we have identified as category 1 objectors, they would trigger a reference of the particular proposal to the Minister. That category is fairly easy to understand. These are objections that would come from outside an existing local area, so would signify a concern that is likely to be beyond that of one local authority. For example, if a local authority objects to a proposal by a neighbouring local authority, that clearly needs to be addressed at a different level. To give you an example: you could have a local authority that planned to close, for the sake of argument, a Welsh-medium school that was on the border with another local authority. Not every local authority has Welsh-medium schools within its local authority boundary, so you could see how that could be detrimental to the education of pupils in that area. Clearly, that would then need to go to the Minister to determine, because it goes beyond one area.

[157] In respect of categories 2 and 3, objectors in category 2 would trigger immediately a reference to the local determination panel. In the case of category 3, there would need to be 10 objectors for a reference to the local determination panel. We are right in the level of weight that we are giving here. We have to recognise that the LDP process should be triggered when there is a genuine level of local concern. That is what we are trying to signify here through the determination of particular categories.

[158] **Jenny Rathbone:** So, your measurement of genuine local concern is through a category 3 objector and people being able to get a petition from a number of individuals. It is difficult to measure genuine concern, is it not?

[159] **Leighton Andrews:** Sometimes, proposals come to me with objectors on both sides. You have to look at those and weigh and balance them—some are for and some are against. That will always be the case. As you are aware, we have a situation at the moment of one objection being enough to trigger a reference, which does not seem to be what we were aiming at. That is problematic. However, it is not so much about a petition, but about 10 individual objectors within that category. In practice, we all know from our own experience that, if a group feels strongly about something, it will not be difficult to trigger 10 objectors, so I do not think that it is a particularly onerous burden.

[160] **Suzy Davies:** I commend you on your commitment to local decision making and I am keen to see that the local determination panels work effectively. They have a responsible role—they bear many of the hallmarks of a tribunal and are, I would argue, quasi-judicial in their nature. So, what can you tell this committee to reassure us that a bunch of local worthies on £500 will have the relevant skill, expertise, knowledge and independence to ensure that it will not become a source of income for judicial review and human rights lawyers for many years to come?

[161] **Leighton Andrews:** Let me try to deal with all of the assumptions that are contained in that question. First, they are not quasi-judicial. Secondly, they are not tribunals. Thirdly, the way in which they are constituted is a matter that needs to be developed with great care by local authorities. However, we already expect local authorities to appoint panels in respect of exclusion or admission appeals for schools. I do not know why we see it as being beyond the wit of local authorities to do the same in respect of determination panels on school organisation.

[162] It is certainly open to local authorities to take advice on this. We want these to be independent; there will be officers within local authorities already who have legal

responsibility for ensuring that persons who have conflicts of interest are not appointed to such panels. I have heard the evidence given to you by a number of people including a prominent lawyer in the field, but I do not share their concerns. Our overwhelming desire here is that, where decisions are genuinely local, they should be taken at a local level. However, let me say that this is not a tribunal process like an employment tribunal. This is not a process like a public inquiry on a planning appeal. This is a determination process, and the process that will be followed by the local determination panel will be the same, in a sense, as would be followed by me if I were making the determination. The papers will come to that panel, which will consider the papers and make a decision on the basis of those.

[163] **Suzy Davies:** Minister, you know as well as I do that it will take only one parent with one slight procedural query to get this going straight to the ombudsman or judicial review. Surely there must be something in the Bill that will convince anyone that, first, the members of the panel are properly chosen—there is nothing in the Bill about how they are to be chosen—and, secondly, that there is some sort of appeal system built in that does not necessitate any aggrieved person to consider judicial review as a first option.

[164] **Leighton Andrews:** Again, I have to challenge the assumptions behind the question. First, it is always open to anyone to take a local authority to the ombudsman or to seek judicial review in a particular situation. Those rights would exist for any aggrieved person regardless. The question we have to ask is why, given that local authority decisions on school organisation can be judicially reviewed now, so few proceed to judicial review or to being challenged by the ombudsman. These things do not happen in many cases in fact. There are some celebrated cases—the Member for Cardiff North is aware of some in her constituency—but they do not happen very often, and it is entirely open to people to do that at the present time. Therefore, I see no reason to believe that it would be more likely with the local determination panel process than it would with the current process of decision by local authority cabinet.

[165] **Suzy Davies:** How often do appeal applications come across your desk?

[166] **Leighton Andrews:** They are not appeals. They are objections tabled to a local authority decision and they come to me for determination. They are not appeals.

[167] **Suzy Davies:** Do you think there should be scope for appeal?

[168] **Leighton Andrews:** No. I think there should be scope for determination, as we currently have. If I may reassure the Member further on one point, we will set out the detail of the appointments process in statutory guidance.

[169] **Suzy Davies:** Those are interesting answers, Minister.

[170] **Christine Chapman:** I want to bring Simon in on this point.

[171] **Simon Thomas:** Yes, on this very point, you said very clearly, Minister, that this is not a quasi-judicial process. How can you guard against it escalating into that sort of process by one party simply introducing a solicitor or barrister? We have seen that happening with other more informal decision-making panels, and the effect is to turn it into a more adversarial, traditional, if you like, judicial process. Are you going to set out in guidance, if not in the Bill, steps to ensure that that does not happen? It strikes me that there is a danger that someone might do that and, in essence, change the process that you have set out before us today.

[172] **Leighton Andrews:** I think that I have already explained that the decision on the part of the LDP will be made on the basis of the papers submitted to it. There will not be an

opportunity for legal submissions in the way you are suggesting, unless they have already been made as part of the objection process.

[173] **Simon Thomas:** However, those papers might be produced by a barrister, for example, on behalf of a group of people. The other side might then feel that they—

[174] **Leighton Andrews:** No, no, no. This is not a process in which one side has a lawyer advising it and submitting papers. This is a situation in which the organisation proposal is published by the local authority, the process is then gone through for local consultation, objections are received, papers are delivered, and, at the appropriate stage, a determination would have to be made—it is currently made by me. I look at the papers, my officials look at the papers and ask follow-up questions, and I take a decision. The LDP would be in a similar position. The LDP would have advice to support it, but it would not be a situation where it would be asking for legal submissions or taking legal submissions.

[175] **Simon Thomas:** You will publish guidance setting that out.

[176] **Leighton Andrews:** Yes, indeed.

[177] **Suzu Davies:** I want to come back on that because the explanatory memorandum clearly envisages that these panels, from time to time, may need to take legal advice. It is stated that

[178] ‘up to a likely maximum of £5,000 where a series of meetings is necessary, legal advice is required and officers are required to provide significant administrative support.’

[179] Any time that anyone gives legal advice will be open to challenge and the process that Simon Thomas briefly described will inevitably arise where there is legal advice that can be challenged by other legal advice.

[180] **Leighton Andrews:** There will naturally be a need for LDPs to take legal advice in certain circumstances, because, sometimes, objectors may come through with issues that relate to the location of a new school, which may be part of the consideration a local authority has made in drawing up a proposal for a closure. So, a whole series of issues may be raised, for example on a planning basis in relation to a school organisation decision, which are ultimately not matters that the LDP might need to consider, but they might need legal advice, which would advise them that they did not need to consider it, given that planning issues would be outside of their remit. I am speculating here, but I am trying to give an example of one that is in my mind from recent experience in the past two years of having to make a determination. It seems to me that that is a reasonably straightforward piece of legal advice to inform them on the nature of the decision that they are making. It is not a piece of legal advice that is likely to be challenged; I do not see why it is any more likely to be challenged in respect of an LDP than it is to be challenged on the basis of the original local authority cabinet decision.

[181] It has been said to me, by the same prominent lawyer in the field who gave evidence to you, that a judicial review is most likely to succeed under the current system following the decision by the local authority, not following the decision by the Minister. The same will probably be true in the new situation, where the point at which a judicial review is most likely to succeed is after a decision by a local authority cabinet, rather than by an LDP. However, I am not a lawyer, and I would not counsel anyone to take my advice as being the way in which they should proceed in the future.

[182] **Jocelyn Davies:** You are probably not insured to give advice, so it best not to give advice under the circumstances. [*Laughter.*]



[183] **Leighton Andrews:** I think that my remarks here are protected. [*Laughter.*]

[184] **Jocelyn Davies:** The reason given to us by that prominent lawyer—who we called to give evidence to this committee because he is highly respected and experienced in this field—as to why judicial review was less likely at ministerial level is because of the expertise that surrounds you in the civil service, and how carefully you know that you have to make decisions. For example, if there was a referral to you about this issue, I doubt that you would stay in a meeting that was discussing that particular issue. I doubt that you would stay in a room with people who were discussing that issue. So, you know, under the ministerial code, that you are protecting yourself from judicial review. You also know that having expertise around you is protecting you from judicial review. That is the point that he made to us and that is the reason why you were subject to fewer judicial reviews than might be the case elsewhere.

[185] **Leighton Andrews:** I have the utmost respect for the lawyer in question; indeed, I have taken informal legal advice from him in respect of a school closure decision in my constituency some years ago. The issue I would come back to is this: you would have to answer the question of why it is that we have so few judicial reviews when decisions are made by local authority cabinets in the first instance, because that is an area that can be challenged in the present situation. What we hope in this new process is that local authorities will ensure that the quality of the proposals that they put forward will be higher than we have seen over recent years and they will be conscious of the obligations on them. The reality is that we will make it clear in the guidance how these panels are to be selected and, also, we can make recommendations in the guidance as to the conduct of members who are due to undertake a local determination.

11.45 a.m.

[186] **Suzy Davies:** This will be my last question on this. The answer to your first question about why there have been so few judicial reviews is, of course, because those matters now come to you for determination and, as Jocelyn pointed out, you have expert advice—

[187] **Leighton Andrews:** No, I am sorry, that is not right. The point that I am making is that the place at which judicial reviews could most likely happen in the system is after the decision by a local authority on a particular organisation proposal. If you are going to succeed in a judicial review, my understanding of the process is that you would be more likely to succeed there. We get very few of those.

[188] **Suzy Davies:** You have admitted that there is another bite of the cherry, to use one of your phrases. However, my second point was that you mentioned successful judicial reviews earlier. I am not concerned about their success or otherwise; I am trying to prevent their happening in the first place. That is why I would like to see the clarity in the Bill and a little more of an open-minded approach to an alternative to judicial review for people who are aggrieved. That is why I raised some sort of appeals system or determination by a Minister. Perhaps you would like to consider that.

[189] **Leighton Andrews:** May I go back to the starting point of this legislation? The starting point of this legislation is to speed up this process. I made this clear in my statement in the Assembly in, I think, June 2010. The current process takes some six months, often more, to determine. That is after the initial proposals have been made and consultation has happened on the ground. It is a long process, it blights schools and, very often, the ultimate reality is that parents have made a decision about a particular school and you end up, as we did in the situation in Carmarthen only two years ago, with a school that is due to reopen but has no pupils. We are dealing with that particular instance in a swifter way in this Bill.

[190] Colleagues have to decide on this whether they believe that it is important that local authorities deal with the school surplus places issue first, whether it is important that decisions on school organisation should be taken swiftly but within a framework that allows objections to be made, or whether we have a process in which it is impossible, ultimately, to make decisions on the organisation of school places in less than two to three years. That is the reality that you face.

[191] **Christine Chapman:** May I take you back, Minister? All of us would agree that the purpose of this is to make progress and to make sure that things happen more quickly, but the fact that you said that judicial reviews do not always succeed now and do not always happen does not mean that they could not in the future. Obviously, it depends on who is putting them forward, which groups of parents and so on. I think that most of us are concerned about making sure that there would be no pitfalls out there if we went down this road.

[192] **Leighton Andrews:** Sure.

[193] **Christine Chapman:** I want to bring Julie in first, and then Jocelyn.

[194] **Julie Morgan:** I want to go back to the independence issue. It was raised that there was a perception that the Minister was more independent than these local determination panels. Quite a few suggestions came forward that perhaps the membership should be drawn from the wider region, rather than the particular local authority. I want to know whether you could explore that.

[195] **Leighton Andrews:** That is certainly possible. Under what we are proposing, local authorities could work with others in their regional consortia, for example, to determine the membership of local determination panels. That is entirely open to them to do.

[196] **Julie Morgan:** Thank you. That came from a lot of the witnesses.

[197] **Leighton Andrews:** I think it is a valid point.

[198] **Jocelyn Davies:** One of the points raised with us about the delay was not so much about the statutory process, but about the failure of political will at the local authority level, so the proposals do not come forward.

[199] **Leighton Andrews:** Let me say, there are issues about political will, not least in the 12 months before local authority elections, in all parties.

[200] **Jocelyn Davies:** There are always elections.

[201] **Leighton Andrews:** Well, yes, all right, but you do not see that many school reorganisation proposals coming forward in the 12 months before a local authority election. Let us be honest; we all know that. This is not a party matter, either. I think that we would all agree—and there are people here who have been leaders of authorities who would understand what I am saying—that proposals come forward, and they are controversial. Every school organisation decision, virtually, is controversial at one level or another. I do not think this is so much an issue of political will. Sometimes there are failures to follow the process properly. That does not happen very often, but it does happen from time to time. There are times when we have to instruct local authorities to go back and go through the process again, because they have got the process wrong. Those kinds of things do happen. I do not think that we will ever get to a place where these decisions are not controversial. I suspect that they are. However, I do think that we have to resolve these matters swiftly if we are going to enable local authorities to undertake their responsibilities to address the issue of surplus places and to

provide the proper level of schools for their population, and if we are to end uncertainty for pupils and parents, teachers and headteachers.

[202] **Jenny Rathbone:** We understand that school reorganisation is always an emotive issue, and what you are intending to do is speed up the process so that it is not so cumbersome and does not lead to planning blight in schools. I just wondered whether you had conferred with groups that have been involved in past reorganisations—either pupil groups or governing bodies—to get their views on how we can make the process speedier, but also to be seen to be fair.

[203] **Leighton Andrews:** We held a consultation on this, and it was open to everybody to make their responses clear. I signalled my intentions to go down this route over two years ago, so there has been considerable opportunity for people to make representations. I have been through school closure issues in my own constituency and I am well aware of the kinds of concerns that parents, governing bodies and others have, and I am sure that other colleagues have been through similar processes. I do not think that these proposals have been drawn up in the absence of an understanding of that.

[204] **Jenny Rathbone:** On a very specific point about the proposal to allow a truncated process for the closure of small schools, with no requirement to consult prior to the publication of the statutory notices, small schools are being defined in the Bill as those with 10 or fewer registered pupils, and Michael Imperato, in his evidence, said that there was a danger that, in making that qualification arbitrarily, it was open to this concept of a fettering decision, whereby there is an inability to look at the specific circumstances of a small school. I wonder whether you could comment on whether that fettering decision will instantly be leapt upon by lawyers.

[205] **Leighton Andrews:** I do not see that myself. I would be prepared to debate the viability of schools with fewer than 10 pupils with anybody in the Assembly, because I simply do not believe that they are viable. We have to have a mechanism that enables decisions to be taken more swiftly. I gave the example of the Carmarthen situation, which occurred in the last couple of years. There have been one or two others like that that have come forward and might have ended up in the same position, had the local authority not been prepared to take the risk of saying, ‘Well, we are in a position where we might as well close in any case’. So, I think that we do need this process. We have to get a bit more real about some of the issues around small schools, bluntly. Sorry—I do not mean you, Jenny; we in Wales have to get more real.

[206] **Jenny Rathbone:** That is okay. I did not interpret it in that way.

[207] Moving on to section 62 of the Bill, and the circumstances in which the Minister decides that action is required to rationalise school places in the absence of local authorities taking that action, some concerns have been expressed about how the local inquiry that would be automatically triggered would then happen in a vacuum, in that there would be no further opportunity to come back. Once the local inquiry had taken place and a decision had been made, there would be no right of appeal.

[208] **Leighton Andrews:** What we are proposing here is the existing legislation, actually, in the School Standards and Framework Act 1998, so it is not new. The process is already laid down. The reason why we have not put a lot of detail down is that we would need to look at the local circumstances that apply in relation to a proposal such as this. As a Minister, I would clearly want to ensure that the person appointed had the appropriate skills to carry out such an inquiry and that we laid down at the outset the nature of the process that we would follow. Ultimately, it would be for the Welsh Ministers to make the decision, and the person appointed to run the local inquiry would make recommendations to the Minister.

[209] Clearly, any decision I might take could then be challenged subsequently if I or any subsequent Minister, to use a phrase from earlier, acted in an unreasonable manner. So, I think that there are checks and balances built into that process.

[210] **Christine Chapman:** Moving on now to chapter 5 proposals for restructuring sixth-form education, Lynne Neagle has a question.

[211] **Lynne Neagle:** I want to ask about section 72 of the Bill, which gives Welsh Ministers the power to discontinue sixth-form education. Could you say how the powers provided for are different from those in the Learning and Skills Act 2000, and could you outline the reason for any changes?

[212] **Leighton Andrews:** They are essentially the same as those in the Learning and Skills Act. The one difference is that the Learning and Skills Act requires that the power to make proposals is exercised with a view to achieving several general objectives relating to improved educational achievement, participation rate increase and broadening of the range of opportunities. We have not put these in the Bill, but they will be set out in the school organisation code. As I made clear earlier, we will share the draft of that school organisation code with the committee.

[213] **Lynne Neagle:** We took evidence from witnesses who are concerned that this was a mistake and that sixth forms should be looked at in the context of wider school organisational issues and taking local factors into account. What is your response to that view?

[214] **Leighton Andrews:** We would clearly need to take local factors into account, but one of the issues that you have to make a judgment on in respect of sixth forms is the balance between sixth-form provision in an area and further education provision. Obviously, further education provision is separate from school organisation. There is a difference in that, essentially, we determine the funding for sixth forms, just as we determine the funding for further education colleges. So, there is a strong central element in the planning of post-16 education already.

[215] **Christine Chapman:** I just want us to move on now to Simon Thomas's question.

[216] **Simon Thomas:** Rwyf am ofyn i chi ynglŷn â'r cynlluniau Cymraeg mewn addysg. Fel yr ydych yn gwybod, mae'r dystiolaeth i'r pwyllgor wedi bod yn gefnogol i'r bwriad yn y Bil i roi'r rhain ar lefel statudol. A fedrwch esbonio i ni pa gamau neu gosbau sy'n cael eu hystyried os nad yw awdurdodau lleol yn cydymffurfio â'r ddyletswydd newydd hon?

**Simon Thomas:** I want to ask you about the plans for Welsh in education. As you know, the evidence to the committee has been supportive of the intention in the Bill to place these on a statutory level. Can you explain to us what steps or sanctions are being considered if local authorities fail to comply with this new duty?

[217] **Leighton Andrews:** May I start by issuing an invitation to Simon to say that if he has any particular sanctions in mind, I would be very pleased to hear them? [*Laughter.*]

[218] **Simon Thomas:** Now is not a good time to talk of sanctions to any Plaid Cymru member. [*Laughter.*]

12.00 p.m.

[219] **Leighton Andrews:** I do not quite understand that; would you like to elaborate? [*Laughter.*]

[220] **Christine Chapman:** No, I think that we will leave that point.

[221] **Simon Thomas:** I could not possibly comment.

[222] **Leighton Andrews:** In my experience—and others who have been Ministers may wish to comment on this—the sanctions that tend to work tend to be financial.

[223] **Simon Thomas:** You do not need to have legislation—

[224] **Leighton Andrews:** Well, you do actually, on the whole.

[225] **Simon Thomas:** Do you have any further proposals at this stage?

[226] **Leighton Andrews:** I am broadly happy with what we have put into the Bill. I think that what we are doing here is sending quite a clear signal of our expectations to local authorities. It is an important area for us to get right. Bear in mind that the Bill allows me, of course, if I am not satisfied with the plan drawn up by the local authority, to impose a plan myself.

[227] **Simon Thomas:** Diolch am hynny, Weinidog. I symud un cam ymlaen, er, fel y dywedais, bod pawb wedi bod yn gefnogol o fwiad y Bil, mae rhai wedi dweud efallai bod bwlch yn agor rhwng gosod y ddyletswydd hon, sydd yn y pen draw yn mesur y galw am addysg Gymraeg, a rhyw fath o ddyletswydd debyg i gwrdd â'r galw am addysg Gymraeg. Y comisiynydd plant oedd un o'r tystion mwyaf diweddar a ddywedodd hwn. Dywedodd

**Simon Thomas:** Thank you for that, Minister. To move forward a step, although, as I said, everyone has been supportive of the intention of the Bill, some have said that there is perhaps a gap opening up between introducing this duty, which, in the end will measure the demand for Welsh-medium education, and some sort of similar duty to meet the demand for Welsh-medium education. The children's commissioner was one of the most recent witnesses to say this. He said

[228] 'There is a difference between planning and improving standards and increasing the provision.'

[229] Mae'r Bil yn delio â chynllunio a gwella safonau yn y cyd-destun Cymraeg, ond nid yw'r Bil yn delio ag ychwanegu at y ddarpariaeth. A yw hynny'n rhywbeth y byddwch yn ystyried wrth ddiwygio'r Bil?

The Bill deals with planning and improving standards in the Welsh-language context, but the Bill does not deal with increasing the provision. Is this something that you would consider in amending the Bill?

[230] **Leighton Andrews:** Could you be more specific in terms of what you mean by improving the provision? Were you talking about capital provision for schools?

[231] **Simon Thomas:** No. We are talking about a process in the Bill that will lead to a better assessment of the demand for Welsh-medium education. We are likely to see a demand that will need to be met by local authorities. How would you expect local authorities to meet that demand, and is there a place in the Bill for dealing with that in a statutory manner?

[232] **Leighton Andrews:** I suppose that the first point is that what we are expecting to do is to create a proper measurement of the demand. We think that some local authorities do that currently and others do not.

[233] **Simon Thomas:** So, it is best practice.

[234] **Leighton Andrews:** Indeed; adopting best practice. Once they have made that assessment, they then need to ensure that that is incorporated within their plan, and that plan needs to show how they will meet that demand for provision. It may be that the local authority will want to do that in co-operation with a neighbouring local authority. That happens in some circumstances at present, and that is perfectly acceptable. However, I think that what this is really saying is that we do not expect the planning of Welsh-medium provision to be tangential or additional to a local authority's overall approach to its planning of school provision in general. We expect it to be at the heart of it. Therefore, if they are taking into account the planning of school places, the demand for Welsh-medium education has to be one of the things that they are taking into account right at the outset.

[235] So, when they are therefore bringing forward proposals for school organisation, they need to be thinking about the best distribution of school places at the present time, whether some additional schools should be designated as Welsh-medium schools, whether there is an opportunity, as some authorities are doing, to look at more creative forms of schooling, whether that is on a three-to-19 basis or developing primary schools on an existing secondary site, as we have seen, or opening up starter classes on an existing English-medium site. All of those things can be considered and are being actively considered now and undertaken by specific local authorities. So, all of those things should be open to them and they should be considering them at this stage. I wrote to new cabinet leads of local authorities in May regarding two specific things: one was surplus places and the other was the designation of catchment areas. That is also an element of the planning that they need to undertake.

[236] You cannot be entirely scientific about this, because human demography is—

[237] **Simon Thomas:** It is a moveable feast.

[238] **Leighton Andrews:** Yes, indeed. However, I think that we can plan better. If people take into account all of these factors at the beginning of the process, there is more chance of success.

[239] **Simon Thomas:** In reply to my earlier question, you talked about scrutinising these plans and the possibility, if you found a plan to be inadequate, that you would impose your own solution, as it were. In doing that, you would take all of these other factors into account, including the other plans and processes within this Bill, would you?

[240] **Leighton Andrews:** We would have to, for it to be a realistic plan.

[241] **Simon Thomas:** I orffen, a ydych yn rhagweld y bydd mwy o alw am athrawon sy'n medru addysgu drwy gyfrwng y Gymraeg? A oes gennych unrhyw gynlluniau eraill i ehangu'r capasiti hwnnw, gan fod nifer yn pryderu y bydd cynnydd, sydd i'w groesawu, yn nifer yn dysgu drwy gyfrwng y Gymraeg, ond efallai nad ydym wedi paratoi'r proffesiwn i fod yn drwyadl yn y dulliau addysgu drwy gyfrwng y Gymraeg?

**Simon Thomas:** Finally, do you anticipate that there will be more demand for teachers able to teach through the medium of Welsh? Do you have any other plans to expand that capacity, because many are concerned that there will be an increase, which is to be welcomed, in the number learning through the medium of Welsh, but that we may not have thoroughly prepared the profession in Welsh-medium teaching methods?

[242] **Leighton Andrews:** I think that it is quite likely that demand will rise. Certainly, on a percentage basis, it is rising. At the moment, the provision that we are putting in place is in line with the demand. The Welsh-in-education grant is currently £5.6 million per annum. On top of that, we have the sabbatical scheme, which is releasing practitioners. It is a very

successful scheme, and we are seeing a significant number of teachers progressing through that. So, I am reasonably happy with that at the moment, but I suspect that if we had more realistic, shall we say, Welsh-in-education strategic plans being drawn up by local authorities—

[243] **Simon Thomas:** More honest ones, too.

[244] **Leighton Andrews:** That is probably what I meant—I used the word ‘realistic’. If that were to happen, I think that we would need to reassess the demand, and we would clearly want to do that.

[245] **Simon Thomas:** So, you will keep that under review.

[246] **Leighton Andrews:** Indeed. We have a 10-year strategy on Welsh-medium education, but we look at that on annual basis.

[247] **Christine Chapman:** We will move on to Part 5, and questions from Angela.

[248] **Angela Burns:** Minister, I want to talk about free breakfasts in primary schools and also schools-based counselling. Sections 89 and 90 require a local authority to provide free school breakfasts unless the school governing body does not want it or the local authority decides it would be unreasonable to provide them. In your evidence when you came before the committee on 9 May, you talked about what would be the test of unreasonableness, including a lack of demand. In particular, you mentioned ‘disproportionate costs and staffing’. Now that the funding is going into the revenue support grant—and it is not my intention to cast any aspersions on local authorities—how will you ensure that that test of reasonableness really is reasonable and fair, and that local authorities do not give disproportionate cost or a reduction in staffing as a reason for not providing free school breakfasts?

[249] **Leighton Andrews:** Well, we know what the take-up is currently, and we will be able to track any changes to the take-up of the free school breakfast programme. I think that there will be considerable opportunities for scrutiny at a local level to ensure that local authorities do not pull a fast one, as it were. The Bill clearly gives me power to intervene under section 21 should local authorities be acting unreasonably. Therefore, we have the powers under this Bill.

[250] **Angela Burns:** To take a quick look at schools-based counselling, does the money that will be transferred into the revenue support grant include extending the counselling to year 6?

[251] **Leighton Andrews:** The money that we are putting in will reflect the cost of continuing to provide counselling to secondary pupils, providing it to year 6 in primary schools, and, potentially, to 16 to 18-year-olds as well.

[252] **Angela Burns:** My final question comes back to a point that you have semi-answered already, which is about monitoring. We talked just now about monitoring the provision of free school breakfasts, and it seems to me that you will leave that down to local people and local scrutiny, and for them to say, ‘Hey, my free school breakfasts have disappeared’. Will it be the same for counselling or will you put proper monitoring mechanisms in place to ensure that your outcomes are met?

[253] **Leighton Andrews:** What we would expect to do under section 94 of the Bill, if I can take you to that—sorry, I should have introduced Amina Rix, who has joined us. Section 94 contains requirements for information about independent counselling services. So, it is on the face of the Bill. We can direct local authorities to compile information about the service

secured by them and they will need to provide us with that information. So, we have powers on the face of the Bill to follow that through.

[254] **Angela Burns:** Therefore, as far as you are concerned, the counselling services are covered, but free school breakfasts will be left to local scrutiny.

[255] **Leighton Andrews:** Well, we do collect data on free school breakfasts already, and we plan to continue to do that, through the school census.

[256] **Julie Morgan:** On free school breakfasts, if the amount of money to be transferred is for the schools that take up free school breakfasts at the moment, where will the extra money come from if other schools decide to take them up?

[257] **Leighton Andrews:** Local authorities are going to have to look at their own provision. The scheme has been around now for six or seven years—or perhaps longer, I cannot remember. It started when I came into the Assembly, so it must have started in 2003 or 2004, actually, which is eight or nine years. Authorities have had plenty of opportunities to encourage take-up at a local level. It is right that we seek to reduce the number of specific grants that we have in the system and ensure that more of those are within the revenue support grant, because that minimises the overall administrative costs that face us and local authorities. The money that we are putting in allows for a degree of modest expansion, but there has to come a cut-off point at which we say that it is now accepted practice and therefore we would expect local authorities to look at it and determine any future expansion themselves. They have had the additional money from us and they have known that that additional money has been available and it has been open to them to widen the pool of applicants for that money.

[258] **Julie Morgan:** I accept that, and it is good that the money goes to the local authorities. It is just that the children's commissioner expressed concern about the schools that do not take up the free school breakfasts. There are whole areas that do not take up free breakfasts, and you wonder what leadership could be given locally to make it happen.

[259] **Leighton Andrews:** Indeed. I think that is a fair point. However, bear in mind that the grant has risen consistently. It was £10.7 million in the last financial year, it is £12.7 million in this financial year, and, at the point of transfer, it is predicted to be £14.7 million, so I think that we have been quite generous in the provision that we have allocated.

[260] **Julie Morgan:** So, there is room for moderate expansion.

[261] **Leighton Andrews:** Yes.

[262] **Julie Morgan:** That is great. Thank you.

[263] **Jocelyn Davies:** On a point of clarification, maybe I misunderstood your answer to Angela about intervention with regard to school breakfasts. Did you say that you would use section 21 grounds for intervention?

[264] **Leighton Andrews:** If I had to, yes.

[265] **Jocelyn Davies:** That allows you to intervene in education functions. So, as far as you are concerned, free school breakfasts would come under education functions.

[266] **Leighton Andrews:** Yes. In fact, the Bill actually makes the breakfast duties and powers education functions of local authorities.



[267] **Jocelyn Davies:** Yes, and then you would intervene under ground 2, in that they would be acting unreasonably, if it was—

[268] **Leighton Andrews:** Yes.

[269] **Jocelyn Davies:** Okay. I just wanted to be clear about that.

[270] **Angela Burns:** I want to clarify the point—Julie Morgan covered it to an extent—that it is not so much that they should not have the money through the revenue support grant, but about ensuring that the outcomes and the direction of travel are met, because it is the Government's prerogative to set that strategic direction. One council may spend an awful lot more than another, but, provided that authorities meet the objectives, then how they arrive at those objectives is not so important. What we are looking at is whether they meet the objectives in full. That is why monitoring systems are so important. One of the things that has come up again and again in the past few years is that, unless we monitor people adequately, we cannot see whether those outcomes have been truly met with the money that is being spent from the public purse.

12.15 p.m.

[271] **Leighton Andrews:** I accept that. As I say, we collect data on free breakfasts, and we will continue to do so.

[272] **Christine Chapman:** We have other questions, and I am very conscious that we are running short of time. Julie Morgan is next.

[273] **Julie James:** I wish to talk about the power to vary charges for school meals. There was general support from witnesses for this, although they queried how this would be administered and how decisions would be made on which children paid less, and there was also an issue about whether this would pass equalities legislation. So, there were a lot of practical issues relating to how this would happen, although there was general support for it. Could you comment on that?

[274] **Leighton Andrews:** I do not see why there should be any problem in relation to equalities legislation. In a sense, that is down to how these proposals are implemented on the ground. We have taken the view that we are giving a power to charge flexibly to local authorities. As I explained in the previous session, this does not mean that they can levy unreasonable charges. In fact, we would see it as being a way of ensuring take-up by reducing the cost, rather than the other way around. There will be guidance that we will publish that will clarify the element that prevents schools and local authorities from charging more than the cost of providing the meal. What we are doing here is entirely in line with equalities legislation, and offers local authorities the opportunity to demonstrate that they are implementing equalities legislation.

[275] **Julie Morgan:** Children in Wales suggested to us that there should be some benchmark across Wales to help local authorities. Presumably, you would provide that in the guidance.

[276] **Leighton Andrews:** That depends on the nature of the benchmark, I suppose. What are we talking about here?

[277] **Julie Morgan:** Would there be any guidance given to local authorities stating that certain kinds of circumstances should apply to the child if the charge were to be lowered or that the charge should be lowered to a certain level?

[278] **Leighton Andrews:** I am certainly willing to look at that within the guidance, if there are specific proposals.

[279] **Julie Morgan:** That is what Children in Wales was considering.

[280] **Leighton Andrews:** If Children in Wales wants to write to us with examples, that would be helpful.

[281] **Christine Chapman:** Julie, do you have any other questions?

[282] **Julie Morgan:** My other question was back on the issue of school counselling. Could you expand on what a reasonable level of counselling would be?

[283] **Leighton Andrews:** We will expect authorities to apply an objective test for reasonableness. Within guidance, we can certainly give them some expectations around the level of provision, and we can spell out in that that we would expect them to adhere to it.

[284] **Julie Morgan:** So, it would be in the guidance.

[285] **Leighton Andrews:** Yes.

[286] **Lynne Neagle:** Regarding the changes to the provision for parents' meetings, there was a general consensus that the requirement to hold an annual meeting should be removed. However, we heard concerns, particularly from Save the Children, that placing the onus on parents to request a meeting might further exclude those parents who are, in any event, the least likely to get involved in their children's education. Do you have any comment on that?

[287] **Leighton Andrews:** I am not sure. I understand why Save the Children says that. However, I am aware that there has been a request for a meeting at a school in my own constituency recently; parents are, in my experience, quite adept these days at finding ways to network in order to make these things happen. I am glad that you made the point that there was consensus around the removal of the annual parents' meeting. However, the point that I would make is that we know that the annual parents' meeting is the opportunity. People are not going to those meetings at the present time. There should be an onus on schools to find more innovative ways of engaging with parents. Some of the best practice that we have seen—particularly in secondary schools that have had particular achievements and are performing above what might have been expected given their socio-demographic conditions—is when schools have adopted other methods of going out to parents, rather than the traditional timetabled meeting, which can be an intimidating process when you are in an environment being run by professionals. It is down to encouraging schools to find other means of communicating with parents. I point to schools that have done that, and we may need to specify more explicitly in the school improvement guidance the examples of good practice that we have in outreach to parents.

[288] **Lynne Neagle:** Have you given any consideration to including in the Bill a right for governing bodies to refuse a request for a parents meeting? We had an example from Governors Wales of when parents want to discuss a particular teacher, and I can think of other sensitive examples where there could be issues. Have you given that any consideration?

[289] **Leighton Andrews:** Governing bodies are clear on their responsibilities in respect of employment issues, data protection and those kinds of issues, which you would clearly not discuss in an open forum as such. We can put that in the guidance to address that.

[290] **Rebecca Evans:** Can you update us on the work that you have been doing to determine the overall cost of implementing the Bill? What plans do you have to fund

implementation over and above the existing grants?

[291] **Leighton Andrews:** There are no changes to the explanatory memorandum in respect of costs. We have made some estimates in respect of school improvement guidance and organisation. Those were set down in the explanatory memorandum. There is nothing to add at this stage.

[292] **Suzy Davies:** Minister, I have a specific question on school organisation, in relation to section 63. I apologise if I have missed the answer to this question in the explanatory memorandum. It concerns proposals by Welsh Ministers to rationalise school places. If I understand this correctly, proposals can be made if there are objections at a local inquiry. At the end of a local inquiry, a report is made and when it comes to the adoption of the proposals they can either be adopted with modifications, approved with modifications or it is possible to make further proposals under section 60. Section 63(2) says that if the Welsh Ministers make further proposals, in accordance with that, there is no need for another local inquiry. I can understand that. However, what is the procedure for scrutinising those additional proposals? As I said, I may have missed it, but I cannot find the answer to that question anywhere.

[293] **Leighton Andrews:** Do you mean where we come back with a different set of proposals?

[294] **Suzy Davies:** Yes, with yet another set of proposals—that are likely to be small.

[295] **Leighton Andrews:** I do not know the answer to that, so I will write to you.

[296] **Suzy Davies:** That is fine; thank you very much.

[297] **Christine Chapman:** The other point I want to make before we finish is that you have agreed to share with us the draft code on school organisation. It would be helpful if the committee could have sight of the draft code before it finalises its report at the end of September. Would you be happy to do that?

[298] **Leighton Andrews:** I do not know whether we will be in a position to do that. We ought to be able to give it to you by the beginning of Stage 2, but I am not sure whether we will be able to do it by the end of September.

[299] **Christine Chapman:** Okay. I thank you, Minister, and your officials for attending. This has been a useful session.

[300] **Leighton Andrews:** Thank you.

12.25 p.m.

**Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd o  
Weddill y Cyfarfod**

**Motion under Standing Order No. 17.42 to Resolve to Exclude the Public from  
the Meeting for the Remainder of Business**

[301] **Christine Chapman:** I move that

*in accordance with Standing Order No. 17.42(vi), the committee resolves to meet in private for the remainder of today's meeting.*

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

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 12.25 p.m.  
The public part of the meeting ended at 12.25 p.m.*