



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

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[The Children, Young People and Education
Committee](#)

02/03/2017

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle y mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Mohammad Asghar Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives
Michelle Brown Bywgraffiad Biography	UKIP Cymru UKIP Wales
Hefin David Bywgraffiad Biography	Llafur Labour
John Griffiths Bywgraffiad Biography	Llafur Labour
Llyr Gruffydd Bywgraffiad Biography	Plaid Cymru The Party of Wales
Darren Millar Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives
Julie Morgan Bywgraffiad Biography	Llafur Labour
Lynne Neagle Bywgraffiad Biography	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)

Eraill yn bresennol
Others in attendance

Dr Frank Atherton	Prif Swyddog Meddygol Cymru Chief Medical Officer for Wales
Elizabeth Bowen-Dack	Swyddog Ymchwiliadau a Chyngor, Comisiynydd Plant Cymru Investigations and Advice Officer, Children's Commissioner for Wales
Hywel Dafydd	Rheolwr Polisi a Materion Cyhoeddus, Comisiynydd Plant Cymru Policy and Public Affairs Manager, Children's Commissioner for Wales
Catherine Davies	Swyddog Polisi ar gyfer Plant, Cymdeithas Llywodraeth Leol Cymru Policy Officer for Children, Welsh Local Government Association
Huw Gapper	Uwch Swyddog Polisi ac Ymchwil Senior Officer Policy and Research
Dr Sally Holland	Comisiynydd Plant Cymru Children's Commissioner for Wales

Meri Huws	Comisiynydd y Gymraeg Welsh Language Commissioner
Dr Chris Llewelyn	Dirprwy Brif Weithredwr, Cyfarwyddwr y Gyfarwyddiaeth Dysgu Gydol Oes, Hamdden a Gwybodaeth, Cymdeithas Llywodraeth Leol Cymru Deputy Chief Executive, Director of Lifelong Learning, Leisure and Information Directorate, Welsh Local Government Association
Gareth Morgans	Cyfarwyddwr Addysg Strategol o Gyngor Sir Caerfyrddin, Cymdeithas Cyfarwyddwyr Addysg Cymru Strategic Education Director from Carmarthenshire County Council, Association of Directors of Education in Wales
Dr Heather Payne	Uwch Swyddog Meddygol, Llywodraeth Cymru Senior Medical Officer, Welsh Government
Rhiannon Walker	Llywydd, Tribiwnlys Anghenion Addysgol Arbennig Cymru President, Special Educational Needs Tribunal for Wales

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

Jon Antoniazzi	Clerc Clerk
Michael Dauncey	Y Gwasanaeth Ymchwil Research Service
Sarah Hatherley	Y Gwasanaeth Ymchwil Research Service
Sam Mason	Cynghorydd Cyfreithiol Legal Adviser
Gareth Rogers	Ail Clerc Second Clerk
Lisa Salkeld	Cynghorydd Cyfreithiol Legal Adviser

Dechreuodd y cyfarfod am 09:30.

The meeting began at 09:30.

**Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datgan Buddiannau
Introductions, Apologies, Substitutions and Declarations of Interest**

[1] **Lynne Neagle:** Good morning, everyone. Can I welcome you all to this morning's meeting of the Children, Young People and Education Committee? We've received no apologies for absence. Can I ask whether there are any declarations of interest, please? No. Okay, lovely. Thank you.

**Ystyried Adroddiad Blynyddol y Prif Swyddog Meddygol
Consideration of the Chief Medical Officer's Annual Report**

[2] **Lynne Neagle:** Item 2, then, is the consideration of the chief medical officer's annual report. I'm delighted to welcome Dr Frank Atherton, the chief medical officer, and also Heather Payne, who is the senior medical officer for maternal and child health. So, thank you both for attending today. We're delighted to have this opportunity to talk about your report. Would you like to make any opening remarks, Dr Atherton?

[3] **Dr Atherton:** I would, thank you, Chair. Thank you for the invitation to come and talk about my annual report. I've been in post now as chief medical officer just since last August, and one of the great privileges of my job as the lead of the medical profession in Wales is to produce an independent annual report, which highlights the things that I think are needed to drive forward the health and well-being of the population here in Wales. So, it's a great opportunity, I think, and I'm very grateful to the committee for giving us time to consider this report, because I think the committee has a great opportunity here to drive forward the health and well-being of children and young people using the report.

[4] It is a joint report with Chris Jones, because obviously I arrived in August and Chris Jones led the team in developing a lot of the report and then we finalised it when I arrived. I've brought Heather Payne along, who's a paediatrician and a senior medical officer in Welsh Government, to try and help us, because she helped to shape much of the child health agenda around the report.

[5] So, the CMO report traditionally sets out an assessment of where we are in Wales with health and well-being, and it's an important opportunity to stock-take where we are on that agenda, really. This year, we decided—Chris Jones and I—that we would use the report to focus very much on health

inequalities. It's no surprise, I'm sure, to any members of this committee that health inequalities exist in Wales, as they exist in many, in fact all, other countries. By inequalities we're really talking about the inequalities in the social gradient of health here in Wales, so that people from poorer communities have a worse experience than people from better-off, more affluent communities.

[6] Although there's been a lot written and discussed about health inequalities over recent years, the report really focuses on what we can do within the health service to start to tackle these inequalities. We should never forget that health inequalities are driven largely by those social determinants of health—those things that make and keep us better as individuals and as communities. Things like housing, our education, our opportunities to have good employment—all of these really impact on our health. But the point of the CMO report of last year is that the NHS can and should have a big role to play in reducing those inequalities.

[7] So, I think that we need to develop a more sustainable healthcare system, and of course we need to manage demand within the health system—there's been a lot of discussion about that recently as we've been through the winter months here in Wales. We are a busy system, but we are a large-spending organisation. We do consume a significant amount of resource, and so there is an onus, I believe, on the NHS to do better, not just at improving health but also at driving down the inequalities that we have in health here in Wales.

[8] So, in the report, we do talk about new models—potential new models—for health and health service provision, moving away from a traditional division between community, primary and secondary care and thinking about some of those interventions that can work at community level to both drive down demand and to improve health and reduce health inequalities. There's a lot of discussion at the moment around social prescribing and around different ways to promote well-being, and the report touches on many of those.

[9] There's also something very important in the report not just about organisations but about professionals and how professionals work, and how professionals in their daily job can support the reduction in health inequalities as well as supporting individuals to be as healthy as they possibly can. So, we look to all professional bodies and to the professions as entities, and to those individuals working within the professions, to use this

report to shape what they do in their daily lives and daily work.

[10] The report has eight recommendations—you'll have seen those, committee members. I won't go through those, but we can touch on those. I suppose my kind of take-home points really are five. First of all, there is a social gradient—we need to be aware of it, we need to be conscious of it and we need to not just accept it as a fact of life but do something about it. Secondly, we do have a significant amount of resource in the NHS, and, if we use that resource better and in a different way, we can start to drive down those inequalities. Thirdly, the NHS has a key role here, but it can't do it on its own—it needs to work in partnership and in collaboration with communities, with individuals, and with other parts of society. Fourthly, it is this collective action that will drive down inequalities if we take them seriously and if we, as a nation, choose to take them seriously. Finally—this will speak, I'm sure, to this committee—a relentless focus on the early years and tackling inequalities at an early stage in the development of individuals, pre birth and in the early years, is a really important dynamic and an important way to start to tackle inequalities. So, with that, Chair, I'm very happy to take any questions that the committee would like to ask.

[11] **Lynne Neagle:** Thank you very much for those opening remarks, and can I remind Members to make sure that any electronic devices are on silent, please? Thank you. Okay, if I can just start, then, by asking you: you made very strong points about health inequalities, so how would you like to see health services respond to deliver fairer outcomes for children and young people?

[12] **Dr Atherton:** So, it really starts with planning and co-ordination. I would like health services to have health inequalities at the heart of their thinking. We do have a planning system in the NHS. Local health boards are expected every year to update their annual plans, and there's quite an elaborate process for that. What I would want to see would be that, within those plans, within the IMTPs—the integrated and medium-term plans—all health boards really think about inequalities and how the services that are being provided will impact on health and inequalities. So, at planning level, there's an issue.

[13] There's also something within the services that are delivered—every service—and this comes down to clinicians as well. I would expect every service to be asking the question, 'Well, who is benefiting from the services that we're providing, and who is not benefiting?' The second part of that

question is really important. If we think about—. Take any example. Take the screening programme—we know that within our screening programmes we do pretty well in Wales in terms of meeting our targets for population coverage, but there's inevitably a variation in that according to the social divide. So, that requires the managers, the leaders and the planners of those services to be using data more effectively to see who is accessing the services and who is not accessing the services, and then to target the interventions and the education materials and the communications so that people in more deprived communities access those services. In that way, if we were to adopt that approach across all services, we would start to drive down these inequalities. There are many other examples around.

[14] **Lynne Neagle:** Okay, thank you. The Royal College of Paediatrics and Child Health has called on the Welsh Government to develop an evidence-based child health and well-being strategy covering the whole of childhood. We did use to have in Wales a national service framework to drive improvements in child health—I think that's gone now. I just wondered what you think about the strategy. Without having something like that, how confident can we be that we have actually got the mechanisms to drive the change that we need?

[15] **Dr Atherton:** I was very pleased to see the royal college report, because it very much chimed—. It came out just shortly after the CMO report last year, and it very much chimed and many of the messages were very consistent—again, looking for a relentless focus on improving child health, but also reducing inequalities in child health. Of course, the national service framework did run through the period to 2015, and there is a question about where we go from here, and a question about whether we develop a new child health plan, a strategy or a framework. There is a process around that and, clearly, the Minister and the Cabinet Secretary will be taking a view on that. But, for sure, the royal college report and the CMO report do point us in the direction of continuing to need to focus on child health as a major determinant of health, of the future of adult health, but also a major driver of inequalities.

[16] **Lynne Neagle:** Thank you. Julie Morgan.

[17] **Julie Morgan:** Thank you. I wanted to ask you about the Healthy Child Wales programme. I think this was introduced last year, wasn't it, in October 2016. Could you tell us about any sort of progress that has been made? I realise it's all fairly recent, but are there any problems emerging with the

implementation of the project and what are the sorts of challenges that are being met?

[18] **Dr Atherton:** I was delighted to arrive here and find the Healthy Child Wales programme—it was just about ready to launch when I arrived here—because it struck me, looking at it with fresh eyes, as a great example of the kind of approach that we need if we are going to reduce health inequalities. So, Michael Marmot, who's one of the leading UK but also international experts on inequalities, points to this concept of proportionate universalism—of having universal services that are available to all, but within that having very targeted services so that those most in need get the most benefit. In that way, we reduce the inequality gap. I see Healthy Child Wales as a programme very much based on that principle—that there will be services available to everybody, but that we will target our resources to those most in need. So, the principle is absolutely right.

[19] Now, the programme, of course, is relatively new. There have been efforts, I know, to align it with existing programmes—with Flying Start in particular—and I'm pleased to see that that is taking place. There are always going to be questions and issues when you introduce a new programme of implementation—with the workforce, because there's a need to educate the workforce to bring everybody up to speed so that they know exactly what's required, to make sure that the public knows what the offer is, and to be clear on communications. So, as far as I can see, in its early days, the Healthy Child Wales programme is the right direction for us to be moving in in Wales. I do see the contents of that—the universal screening, identification of problems early in childhood and then the early intervention—as highly consistent with the work around the first 1,000 days in life and around identifying and tackling adverse childhood experiences—all things that are referenced in the CMO report. So, I think it's an excellent example of a service model that is fit for the future, is built on evidence and can take us forwards in terms of promoting child health and reducing inequalities.

[20] **Julie Morgan:** I think it's a very impressive programme. When do you think you'll be able to evaluate how it's working?

[21] **Dr Atherton:** Heather may have some idea of the evaluation process.

[22] **Dr Payne:** There's an evaluation process planned as part of the implementation, because for the first time we'd developed a situation where we had a universal, throughout-Wales programme. Everybody was doing

child health surveillance, as it's called, but everybody was doing it slightly differently. So, children who were most likely to move—children in poverty—might go from one programme to another, so we couldn't track them and they might fall between gaps. So, we now have a universal programme, and we have also started to have reports back on the actual coverage of the health visiting contacts. That's the first time we've had those comprehensive data, and they're showing that contacts are being made in the 85 per cent area of the target population. Now, of course, with a universal service, the ones you're most likely to be most interested in are the 15 per cent that aren't in that 85 per cent. So, for the first time, we have coverage data. Obviously, we rely on our health visitors and the skills mix that they have also agreed to put in place to do a good, professional job. The quality, again, is looked at differently, and it'll be looked at comprehensively in an evaluation programme. But we're already getting some feedback on the success of the programme and the fact that, as the CMO says, all the health boards have really focused on recruiting enough health visitors to deliver. We know exactly how many children. We know exactly how many contacts. We've made it as few as possible so that it's absolutely—it's parsimonious from the point of view of effective interventions, but it's effective in choosing critical points in a child's development where the contact is made.

09:45

[23] So, all those things have been taken into consideration in the planning of it and the implementation. An evaluation programme is planned, but the early responses are that it's very acceptable to people, that health visitors and their colleagues like it, that it's producing effective referrals on to our other partner agencies, and, as I say, the initial tranche of, 'How are we doing? What's the coverage like?', is looking actually very good.

[24] **Julie Morgan:** So, you think that the families that need the increased intervention, you are reaching them—

[25] **Dr Payne:** I think—

[26] **Julie Morgan:** —the 85 per cent of them. Is that what you're saying?

[27] **Dr Payne:** That's just the initial figures. We haven't had a chance to evaluate whether they are the right 85 per cent as yet. But, again, the whole thing has been put in place with a mindset of making every contact count, of aiming to reduce inequality, and, as I say, we are relying on our health

visiting colleagues to actually make sure that they practice in that way. That does require a cultural change for everybody, because it's much easier to deal with the people who pitch up in front of you and knock on your door. We are asking them to look for the people who don't even open the door when they knock on the door because of their own internal stress and pressures. That takes more time, so that's a developing process, but that, ultimately, will be the measure of success of making a difference for these children who really require these interventions at an early stage.

[28] **Lynne Neagle:** Thank you. We're moving on now to Hefin and Flying Start.

[29] **Hefin David:** Yes, you've mentioned Flying Start. Can I ask you to reflect upon the coverage and reach of Flying Start?

[30] **Dr Atherton:** Well, really, Chair, I've come here today to talk about the CMO's report, and I haven't come here really prepared with statistics to talk about the performance of programmes. I think that's something that perhaps—if we want to dive into those kinds of areas, maybe that's a different forum. But what I can say—

[31] **Hefin David:** You referenced Flying Start yourself in the evidence you gave, which is why I raised it.

[32] **Dr Atherton:** What I can say is there's obviously a clear need to make sure that the Healthy Child Wales programme as an entity is very closely integrated with Flying Start. My understanding is that efforts have been made to make sure that those programmes are aligned. That's the critical thing about making sure that we're using resource wisely.

[33] **Hefin David:** Let's look a bit broader, then. Would you say that we've got the right balance between universal services and targeted support, for example, things like Flying Start?

[34] **Dr Atherton:** That is an excellent question and, of course, there's no absolutely right balance. We need to make sure that every service gives that consideration to having a mixture. Really, that has to be data-driven. As Heather was saying, we need to understand who is accessing the services and who is not. I think we need to get better. One of the calls in the report is to use data more wisely so that we evaluate and we understand and we measure who is getting access to services and who is not, because only when

we have that kind of information can we effectively target and make those decisions about how much of our resource should be put into a universal service versus a targeted service.

[35] **Dr Payne:** If I could add some comments about—. Again, the planning for the development and implementation of Healthy Child Wales was exactly to try and address some of those kind of cliff-edge differences between Flying Start and non-Flying-Start areas and, of course, the kind of rose effect, when you have a distribution of poverty throughout the population. It will be clustered in some lower super-output areas—you know, geographical areas, which is why Flying Start is provided like it is. But, actually, there'll be more children in poverty living in richer areas who can't benefit from Flying Start. This is exactly the reason that, working with our health visitor colleagues, a piece of work has been commissioned from the University of South Wales that is called the family resilience assessment tool. This enables practitioners of all sorts, again, Flying Start and non-Flying Start health visitors—. They're all health visitors, so it's just an organisational difference. But this FRAIT tool allows everybody to be really ACE-informed, adverse childhood experience informed, and to actually assess the level of—. We've always looked at risk for children, but, actually, the concept of resilience is one that is probably much more positive, and so this is looking at the family's ability to deal with hardship, challenges and difficulties, whether internal or external to the family. So, the use of that tool, which is being developed as part of the Healthy Child Wales programme and is coming on stream, we feel is a very exciting new development that is very novel in Wales, and is being developed within Wales, validated, and it's undergoing the multi-agency team process and we're hoping to be able to use that. So, that's the kind of tool and the data collection that we will have that will, as the CMO says, enable us to actually answer the right questions, because there isn't an evidence-based empirical answer to your question at the moment, but that's the kind of tool that will allow us to do that. We know that's the important question to answer and we envisage being able to do that, again as part of the evaluation.

[36] **Hefin David:** I think that comes back to the concept of reach, you know, the reach of services. If you're looking at the geographical focus—if something needs to focus towards the Welsh index of multiple deprivation data, for example, then it's inevitable the services are not going to reach, whereas if you're using perhaps what you're talking about, a needs-based approach, then it's a different way of targeting services.

[37] **Dr Atherton:** Again, it comes to back to the health system and its use—well, health, social care, and education systems' use—of data and using them in a better way to disaggregate information at quite a local level so that services can be targeted, so your point is well taken.

[38] **Lynne Neagle:** John, on this.

[39] **John Griffiths:** Yes. I just wanted to ask about the Flying Start, Chair—not reach, although, obviously, that's an important issue, but the actual services delivered under Flying Start. I guess there are issues as to how they link with other programmes, as has been mentioned, but also what is involved in Flying Start itself. I think it's seen generally as successful. Do you have any views as to whether Flying Start could be usefully further developed in terms of the component parts within it?

[40] **Dr Atherton:** I think some of that is, you know, a future policy question, which is better addressed by the Minister and the Cabinet Secretary. But, in terms of a general view of Flying Start, I mean, I've been watching the evolution of Flying Start, and Sure Start as it was in England, and, before that, the precursor to that in the US, for a number of years. I suppose my observation would be that they've brought a renewed focus on the early years agenda, they have brought to bear a lot more evidence about what works, and that's built up over the years. So, the kinds of interventions that we've arrived at now within Flying Start of enhanced home visiting, of that targeted support, there is a good evidence base around them now. In terms of future policy, well, evaluation is always important and we do need to look to future policy, but that's really for the future and for Ministers to answer, I believe.

[41] **Lynne Neagle:** Okay, thank you. We'll move on now, then, to the first 1,000 days. Llyr.

[42] **Llyr Gruffydd:** Yes, thank you. You described the first 1,000 days as 'crucial' in your report, and rightly so; I'm sure we'd all subscribe to that. But I'm just wondering whether you feel that NHS organisations, particularly Public Health Wales, are doing enough in terms of effecting interventions during the first 1,000 days.

[43] **Dr Atherton:** I do look to Public Health Wales to provide us with the drive and energy around some of this, and to support the rest of the NHS in providing the intellectual and the evidence base. My personal view is that

they're doing a very good job of that. Some of the reports around 'Making a Difference' do help, again, to give us more information about inequalities. The challenge, of course, is to move from information and analysis to action on the ground, and that is where the whole of the NHS needs to step up, and where professions and individuals need to have this in the back of their mind whenever they're in contact with patients, really.

[44] So, I do detect a sea change in Wales, to a degree that impresses me, having come in here as chief medical officer just six or seven months ago. I think there is an energy and an understanding that, if we focus on those first 1,000 days, if we really look at the pre-conceptual, through pregnancy, and then the early years of life, we can make a difference to the lives of the next generation. And, within all of those areas of that kind of early life-course, I think we have a better understanding of what the interventions are that can actually make a difference. So, pre-conceptual health is really, really important. Within pregnancy, we need to focus on smoking in pregnancy, on weight gain during pregnancy, both making sure that maternal weight doesn't increase too much, because that can have adverse effects and impacts on obesity down the road, but also that we don't miss cases of children in utero who are not growing effectively and intervene where needed, and, then, of course, once children are born, making sure that breastfeeding is supported and enabled—we still have a way to go there in Wales; we've been making progress, but there's more that we need to do—and then, as children develop, making sure that we have screening programmes, for example, through Healthy Child Wales, that can identify problems and put in place those early interventions that are going to make a difference.

[45] So, taking that whole life-course approach—. To be very clear about your question, I think we have good evidence; Public Health Wales does a good job and assembles the evidence. I think the NHS does a reasonable job of taking that into action, but I think there's more we can do. And we know now what we need to do. And so the challenge for the NHS, and for practitioners within the NHS, is to step up and really use that evidence base effectively.

[46] **Llyr Gruffydd:** So, you'd agree then that the narrative, or the rhetoric maybe, around more upstream spend, more preventative investment, clearly is the right one, but we need that more decisive shift to actually be implementing that on the ground, as opposed to maybe doing it—piecemeal is too strong, but maybe not as decisively as many of us would like.

[47] **Dr Atherton:** Well, you're talking to a public health physician, so the idea that prevention is really important is, of course, absolutely one that I subscribe to, and I think that is embedded now very much as a concept within Wales and within the NHS. I don't meet anybody in my travels who would resile from that. There are challenges, of course. The health sector, health services, are always under pressure, but we do need to move to a system whereby prevention is at the heart of what we do, and all our services take that prevention on. And it goes back to the planning process of looking at services not just in terms of what we provide and providing more of the same, but thinking through the whole pathway of service provision, from prevention through to early intervention through to treatment through to care, and so looking at it as a joined-up system.

[48] **Llyr Gruffydd:** So, do you think that we have the necessary information, the statistics, the accountability within the system, to be able to clearly enough identify that the spend is going to those right places, and that all of those different work streams do actually come together to achieve what you just outlined?

10:00

[49] **Dr Atherton:** Again, we have some information. You can always look for more information. It's very difficult to disaggregate the amount of spend that goes on prevention, because the system works in a more integrated way than that. So, we have a fair idea. We know how much money we spend through Public Health Wales, we know how much money we spend on vaccinations, for example, and those are all elements of preventative spend. But it's very difficult to disaggregate what is the total spend on prevention versus treatment. In fact, that's a somewhat artificial question, really, and an artificial divide, because we do need the whole system to work as one system. Do we need to shift the balance of activity and focus towards prevention, towards community care, towards primary care? Absolutely, that is the case. Are we moving in that direction? It seems to me that we are in Wales. But, if your question is, 'Do we need better metrics and better understanding?', I would agree we do need that.

[50] **Dr Payne:** If I could just illustrate an example of what the CMO's been referring to, maybe with the maternal smoking—the quit smoking initiative. Again, we know that about 18 per cent of pregnant women continue to smoke. We know that that is hugely, potentially, damaging for the baby.

Smoking seems to account for about a quarter of avoidable stillbirths. Again, this is not to blame anybody—people find themselves in situations that they can't control. Public Health Wales runs lots of quit smoking sessions, and previously it was found that all these women would be—. The maternity strategy measures now their carbon monoxide routinely and focuses on helping women to quit smoking. Previously, they were just referred into a routine quit smoking service run by Public Health Wales—very good, lots of people found it useful—but, in fact, it wasn't working for pregnant women. What they needed was a specific service tailored to them. So, within their quit smoking, they focused some—it's called MAMSS; the maternal stop smoking service, effectively. And that was much more successful. So, it wasn't actually more money, it was just using the evidence that they had about quit rates and then asking women, 'Well, what do you want?' And it was just silly things like they would ring a woman's phone and leave a number, but because it was a blank number, it wasn't an identifiable number, they wouldn't pick it up and they might not be able to afford to pick up their voicemail—because if you're on pay as you go then you have to pay. So, it was these silly little barriers, but they are the ones that underline inequality. So, they had a much more focused in-the-clinic approach with the MAMSS, and it's been twice as successful. So, it's just an example of focusing on the outcome, reducing low birth weight, using the data, being innovative, doing things much more focused on the women themselves to produce the outcome that we all want.

[51] **Lynne Neagle:** Thank you. John, did you still want to come in?

[52] **John Griffiths:** I think the health service, obviously, has a huge task in dealing with the day-to-day pressures that it faces. Getting a sort of cultural shift within the NHS so that they work more effectively with a range of partners—and perhaps partnerships that address issues that wouldn't traditionally be seen as part of the health service's job—is quite difficult. With the first 1,000 days, I hear from some schools that when they're trying to build partnerships to work with the community, to work with families and to address whatever problems their children might have and the families might have, it's often the health service that is most difficult to get to the table when they're trying to pull all the key partners together to build an effective approach. So, how do we get that cultural shift in the NHS so that we're more effective in making those partnerships work, implementing the policies and the strategies, as Llyr said?

[53] **Dr Atherton:** It's interesting that we have—again, one of the very positive things I've found here in Wales is that we have a framework for

driving those co-operations and those collaborations, which is second to none globally. So, the health and well-being of future generations and the creation of public service boards, you know. So, at that level of the system, we have great, great opportunities and I guess much of that is still bedding down and becoming established. But that needs to translate, doesn't it, to action on the ground and to partnerships between professionals as well. I don't know any specifics about the examples you mentioned, but I would expect that any health professional who is thinking broadly about the patient that they're seeing and about the conditions that that patient is coming from would be wishing to establish and foster and build on those collaborations. So, again, part of the challenge in the CMO report is for organisations to tackle those kinds of issues to make sure that they have partnerships, and one of the recommendations is very strongly about collaborations and making sure that those collaborations are working effectively. And they would need to have, of course, feedback loops, so that where there are glitches and problems in the system that they can identify them and address them. But also, the challenge is on individuals and individual practitioners to think about the circumstances of the patients that they're treating. I sometimes think of it in terms of, you know—. If I think of any branch of medicine or nursing—whether it's geriatrics or paediatrics or gastroenterology—that the treating physician or the treating clinician should be looking at the patient in front of them. And of course, there is a primacy to the doctor-patient, nurse-patient or clinician-patient interaction, but they also need to consider the circumstances that that person has come from, and the people who are not in front of them, and the people who are not benefiting from the services that they are providing. So, bringing that lens of inequalities, I think, will start to address some of those really gritty problems that, perhaps, you're describing.

[54] **Lynne Neagle:** Thank you. Julie.

[55] **Julie Morgan:** I was very interested to hear about what you were doing about tackling low birth weights and smoking in pregnancy, which seems absolutely crucial, and the example, I think, that Heather used was very good. But, how do you actually identify the women who are smoking in pregnancy?

[56] **Dr Atherton:** Heather can give details, but my understanding is that that would be collected when people first make their booking for antenatal care. The rate of 18 per cent is the figure that exists in Wales at the moment, but within that, of course, there is quite a lot of inequality. Different health

boards have different rates, so it varies between 20 or 25 per cent and lower. In terms of how we capture those data—

[57] **Dr Payne:** Again, this was put in place—. Actual carbon monoxide monitoring of all pregnant women at booking was put in place as part of the maternity strategy quite a few years ago. The actual quit smoking rate is the outcome that is monitored at the chief nursing officer's maternity boards with each of the health boards, which they were reporting on six-monthly and now they're reporting on annually. So, again, all the outcome indicators from the process—what proportion of women have booked by 10 weeks of pregnancy so that there is an opportunity to give all the public health messages around weight, smoking, diet, check for diabetes and things like that, and risk factors, asking about smoking. And again, previously, they were only checking the carbon monoxide of women who said they smoked, but in fact it was then found that the evidence was that you should check everybody to make it universal and to help everybody, and that's what's now done. The interesting thing is that that picks up some women who don't smoke themselves, but who are in a household where there is smoking, so it has been an opportunity to actually help support the message going to the household: 'Don't smoke; this woman who is pregnant is actually breathing in your smoke, and the baby is, too'. And also, it has picked up some lactose intolerance, which is a very rare finding. And it has also picked up faulty chimneys.

[58] So, again, these are unintended positive effects. There are often unintended negative effects of these things. So, again, it has been a universal intervention, which has actually supported women. It's almost like having—. Rather than just talking about something, if you've actually got a measurement saying, 'Fabulous, you've got zero'—or I think it's under three on the carbon monoxide—but if it's over that, it challenges women to be honest. It's universal, so it's not picking on people, and it supports the general message of, 'We really care about what happens to you and your baby, and this is the way we can help you get the best for everybody'.

[59] **Julie Morgan:** So, we do have the data on—. The 18 per cent is—.

[60] **Dr Payne:** The health boards maintain their own measurement data. The outcome data that are reported to the maternity boards are on the quit smoking rate. So, how many were smoking and who gave up by the end of pregnancy.

[61] **Lynne Neagle:** Thank you. Okay, we've got quite a few areas left to cover, so I would like to appeal for brief questions and brief answers as well, if that's okay. We're going on now to talk about ACEs and I've got Hefin first.

[62] **Hefin David:** The first time I'd heard of adverse childhood experiences as an antecedent to future harmful behaviour was when the Cabinet Secretary for Communities and Children gave evidence to this committee. One of the things that he mentioned was that four ACEs are particularly harmful, and you've got those in your report, which is fascinating. But, at the same time, is it a little bit reductionist to say, 'Four experiences means this'? It's very specific.

[63] **Dr Atherton:** It's a good question. I suppose the evidence base around ACEs is still evolving, to a degree. I think this is an area where Wales is ahead of many other countries in terms of thinking about the implications. What's the right cut-off? Is it four, three or five? What we can say is that, from the evidence, the more ACEs you have, the worse things are. So, there is no artificial cut-off and so four, perhaps, does feel a bit artificial. I think our challenge is to identify and intervene early with adverse events more generally. But, really, in terms of just displaying the disparity and the impact that ACEs have, it's quite helpful to show that if you have more than four, you have a certain level of impact, and less than four, less of an impact. It's really to illustrate the problem. But our challenge in Wales is to support children and young people to have as few adverse events as possible, as part of a broad, preventative agenda.

[64] **Hefin David:** Okay. Just to finish, then, you agree that the general principle of the concept is sound, but perhaps the precise causation and correlation might be over-exaggerated, possibly, or more research is needed.

[65] **Dr Atherton:** I think there are correlations, and it's appropriate to use that word. You can't imply causality from any one of those, but what you can say is that the more—and I think the evidence base is pretty solid about this—adverse events you have, the less likely you're—

[66] **Hefin David:** It's just this four—it is quite striking. I wonder if it might be a little bit reductionist.

[67] **Dr Atherton:** It's for demonstrating the size and the scale of the problem—for that purpose, it's helpful. Perhaps in terms of managing

individual children and individual young people, it's less helpful, but the principle is there.

[68] **Lynne Neagle:** If I can just pick up on this as well—and I realise that this is a political point—but there is a perception that ACEs are becoming the only show in town in terms of Government policy on some of these areas, but child neglect is still the main reason that children end up on the child protection register and child neglect is not recognised as an ACE; it is recognised as an outcome of ACEs. Do you think there is any risk that this focus on ACEs means that we will not be tackling issues like child neglect as strongly as we should be?

[69] **Dr Atherton:** There is a broad policy question there, but I don't believe that the system is designed to ignore child neglect. Many of those things that are ACEs contribute to the child neglect. The Healthy Child Wales programme would be—part of that screening programme is to identify those kinds of issues. Of course, we do have systems for child protection in Wales, which we rely on to be robust and to identify and intervene where need be. So, I don't think that a focus on ACEs, which is helpful in terms of thinking about inequalities, as outlined in the report, necessarily goes any way to diminish the need to make sure that we have robust child protection. So, my view as a professional would be that we need to work on both fronts.

[70] **Lynne Neagle:** Okay, thank you very much. We'll move on now to Oscar and childhood injuries.

[71] **Mohammad Asghar:** Thank you very much indeed, Chair. Thank you, Frank. Your earlier remark—a really good one—was that you would like to see an improved and sustainable healthcare system in Wales. Have you got any guidelines for doctors in surgeries, after hours, if a child turns up and they just don't bother to see them because their time is up?

10:15

[72] **Dr Atherton:** In general terms—. I can't speak to the specific case you're talking about, but in general terms, the system that we have is providing a level of service that people generally benefit from. So, most people who go to see a general practitioner are highly satisfied with the services they're getting. We shouldn't ignore the fact that GPs are under pressure, they're working hard, they're delivering a fantastic service, and mostly, the outcomes that they deliver are valued and respected by people.

We do have in Wales, of course, a process—a model—of how we want services to develop, based around prudent healthcare, about co-producing services with patients. So, I think, again in general terms, that we would expect all services to be working with the patients—with the people they're serving—to understand how their services are being delivered, what the impact of those services are, and how they can be improved. The best practices that I've been into in Wales do have those kinds of principles and those ways of working embedded. For sure, there are always improvements that can be made in any kind of service delivery, but those principles will stand us in good stead and will stand the profession in good stead in doing what we need to do, which is to retain the credibility and the respect of the public that we're serving.

[73] **Mohammad Asghar:** Thank you, and thank you, Chair. Finally, when children grow between the age of 13 and 18, that is a very delicate age. People are learning, suicidal, have depression or there's alcohol abuse. Serious incidents happen in that age group. So, in the health service, what are the measures that are also involved? Especially the Royal College of Paediatrics and Child Health—they say that, for young people in their mid-teens, focus should be on reducing suicide and self-harm and reducing accidents and injuries, especially those linked with alcohol abuse in that age group and road traffic accidents. What action would the chief medical officer—that means you—like to see the Welsh Government take to prevent young people's deaths in this country?

[74] **Dr Atherton:** Yes, well, again, in the report, we do call for a life-course approach. Although there is a very strong focus on the early years and early years development, because we need to think about the next generation and how healthy they will be in the future, I do recognise absolutely that the health of people in the teenage years is a really important point, and your point is well made, that it's really accidents and mental health issues that cause the biggest burden of both morbidity and mortality in that age group. So, there are interventions that can work. As I understand it, we've invested quite significantly in child and adolescent mental health services—in mental health services for young people. For sure, we need to really look at how they're provided. We need to think about the prevention aspects and what's happening in our schools in broader society around bullying. I know there's a lot of work going on around those, and I'd like to see that intensified. In terms of road accidents, I think there is an issue around alcohol, not just for young people but for all of us, to think about our relationship with alcohol. I was pleased to see that—. I can't take any credit, but before I arrived we had

revised the CMO guidelines across the four nations, which are much clearer in terms of alcohol consumption. But educating young people in both the pleasures and the dangers of things like alcohol is really important, and that gets you into the questions of the curriculum and the personal social education within schools.

[75] So, on all of those fronts, we need to have that prevention lens—the services that people need, and the real challenges. There is one other thing that I will say—and, again, it comes out a little bit in the report, but perhaps it's more about the broad determinants—it's about the environment. We need to create an environment in Wales where young people can thrive, and where they're not subject to the kind of pressures that lead to those adverse outcomes. That's, as CMO, where I find my energy and my drive, and what I would like to see. I would like to see Wales as a place where the environment is conducive to health.

[76] **Lynne Neagle:** Thank you. Darren on this.

[77] **Darren Millar:** Just a very brief follow-up—you mentioned the curriculum there. Obviously, we've got a new curriculum, which is currently being shaped in Wales, and that affords an opportunity to do something differently, perhaps, in terms of educating our young people in terms of public health and health behaviours. Have you been involved in the development of the curriculum at all?

[78] **Dr Atherton:** Well, I haven't personally, but I certainly welcome the fact that health and well-being, physical activity and being healthy and active is a strong focus in there, because I think that really is highly constant, again, in the royal college report and also the CMO's report. But Heather will have been involved in some of that detail, I'm sure.

[79] **Dr Payne:** Yes, certainly. On the area of learning and experience of health and well-being, we have tried to bring in public health ideas to that. Also, because, again, from our engagement, as a department, with our education colleagues, what I've discovered is that, of course, health was seen as physical education and personal and social education in the past. What we've done—and we've had some very productive relationships with the University of Wales Trinity Saint David in developing some teacher training programmes on this—is actually say, 'Well, health and well-being is not just an outcome or an area of learning, it's a potential substrate for learning.' So, in other words, you can get a class to say how many steps they took

yesterday or last week; how many of their five or even 10 fruit and veg they ate yesterday. So, you can collect data, you can make bar charts, you can do maths, you can do geography, you can do humanities and mental health, you know, *Anna Karenina*—you can actually use health outcomes and measures as something to learn about and through.

[80] So, again, it's very much in the spirit of the Donaldson reforms and there's a lot of work under way in order to do that, and, again, bring these public health messages to children who are so ready to hear them and, you know, really ready to be engaged in their own future well-being. This is a manifestation of children's rights. This is what children's rights look like in real life: children being part of decision making, taking responsibility and wanting and having the aspiration for better health for themselves and everyone.

[81] **Darren Millar:** And you've mentioned the relationship with alcohol already, but what about other substance misuse and addiction problems in society? Do you think that there's sufficient focus? You didn't mention specifically addiction-related services in the report, but access to those can sometimes be quite difficult in some parts of Wales. Obviously, gambling addiction, and pornography addiction even, can also have an adverse impact on children and young people. How do you see those sorts of issues being addressed? Is that something that you're content with at the moment in terms of the availability of services, or not?

[82] **Dr Atherton:** 'Content' wouldn't be the word. Clearly, I've had a long interest in questions of addiction generally, and although we do focus on substance misuse, we don't often focus on drugs [correction: gambling]—there is that broader range of issues. It's certainly something that I've flagged that I may want to look at in future CMO reports.

[83] Part of my challenge here is to focus on the things that will make a difference to people in Wales, and I think I agree with you, if I take the tone of your question right, that those are issues that we need to take very seriously. We don't deal with them specifically in this year's CMO report. Clearly, there are services for substance misuse here in Wales. It's a great example of where inequalities are writ large in that world and it tends to be people from poorer communities who fall into the traps of substance misuse and other forms of addiction. So, there is a social gradient very much written into that element of public health and health service provision, and it's something that I would like to explore further, perhaps, during my tenure as

chief medical officer. Thank you for asking the question.

[84] **Darren Millar:** Thank you.

[85] **Lynne Neagle:** Thank you. The final questions, then, I think are going to have to be on childhood obesity from Llyr.

[86] **Llyr Gruffydd:** Very briefly, although, I fear it will be very difficult to answer briefly. We seem to have a plethora of policies and initiatives around childhood obesity at the moment, although they seem to be having a limited impact, let's say. Where do we go from here in terms of childhood obesity?

[87] **Dr Atherton:** That was a brief question, thank you. And, of course, you're right: it is a complex area. I suppose, when I think about obesity, my default is to think, 'Well, for sure it's a major problem and we need to tackle it and find ways to address it', but we mustn't lose sight of the fact that most kids, for example, are of healthy weight. So, we mustn't over-talk the issue.

[88] But it is a complex environment, and we shouldn't be negative about our ability to impinge on that. In fact, the latest statistics I've seen suggest that perhaps the increase in child weight may be stabilising, so there may be some good news around that. But we do have some of the elements of knowing what we need to do. And, again, it comes back to some of those life-course issues, so that if we—. We know that if we support women in pregnancy to maintain a healthy weight, that can have impacts on their children in terms of not becoming obese or overweight later in life. We know that smoking in pregnancy can have an impact on that. We know that breastfeeding rates can have an impact on that. So, we need to work on all of those fronts. And then, of course, once children are born, we need to think about the environment, again, that they are in, and the question about the school curriculum has good resonance here, because children spend a significant part of their time in school. I've been very impressed with things like the daily mile, you know. So, there are initiatives around.

[89] So, I think we have the elements that we need to do but we need to be more systematic in how we apply them. We also need to continue to work on that broader environment issue. Some of that is within our control here in Wales, some of it is not because it's UK-wide competencies. There is, of course, a UK-wide strategy, and we've made interventions to try and tackle some of those things in there about advertising unhealthy foods for children et cetera. We'd like to see more action on some of those things. We'd like to

see more action on nutrition labelling so that people actually know what they're buying and are clearer about the choices that they're making. So, there's a whole range of things that we can do.

[90] I'm not nihilistic or negative about our ability to impact on obesity—it's a big issue for us, a major issue. It has such implications for chronic diseases for the future generation and we do need to work on it systematically. But we know the bits that we need to do.

[91] **Llyr Gruffydd:** Would it be helpful, in bringing all those bits together, to have some sort of national childhood obesity strategy for Wales?

[92] **Dr Atherton:** I can see some merits in that suggestion. We do have elements, you know, in the Healthy Child Wales programme. I sometimes wonder whether we're kind of too rich in strategies and too short on delivery in Wales. What I'd like to see is more delivery around some of those things. But, for certain, that's something we could consider, going forward, if it's really a policy question that we'd push to the Minister and the Cabinet Secretary. But we need a framework and we need some way of making sure that the whole system is working on what we know works and doing it effectively, and doing it not just for the whole population, but doing it in a targeted way so that those most disadvantaged and those most at risk are benefitting the most—again, the theme of my report.

[93] **Llyr Gruffydd:** Thank you.

[94] **Lynne Neagle:** Okay. Well, we've run out of time. I think it's been a fascinating session and it's given us absolutely lots to think about and will also inform the work that we're doing on the first 1,000 days. So, thank you, both, very much for your attendance. You will receive a transcript to check for accuracy in due course. On behalf of the committee, thank you for coming and we look forward to working with you going forward.

[95] **Dr Atherton:** Thank you, Chair. Thank you, Members.

[96] **Lynne Neagle:** The committee will now break until 10.40 a.m.

*Gohiriwyd y cyfarfod rhwng 10:29 a 10:41.
The meeting adjourned between 10:29 and 10:41.*

**Y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru):
Sesiwn Dystiolaeth 3
Additional Learning Needs and Education Tribunal (Wales) Bill:
Evidence Session 3**

[97] **Lynne Neagle:** Can I welcome everybody back, then, for item 3, which is evidence session 3 on the Additional Learning Needs and Education Tribunal (Wales) Bill? I'm very pleased to welcome Dr Chris Llewelyn, director of lifelong learning at the Welsh Local Government Association; Catherine Davies, policy officer for children at the WLGA; and Gareth Morgans, who is strategic education director from Carmarthenshire County Council and is here today to represent the Association of Directors of Education in Wales. So, thank you all for attending, and for the paper that you provided in advance. Are you happy for us to go straight into questions? Thank you. The first question is from Oscar.

[98] **Mohammad Asghar:** Thank you very much, Chair, and thank you, panel. Good morning to you. My question, straight and direct, what support does the WLGA believe is required from the Welsh Government to implement the Bill; and how long do they expect the provisions of the Bill will take to sufficiently embed themselves into local authority working?

[99] **Dr Llewelyn:** It's a very broad question, so I think it may be that it will take the full hour to—

[100] **Mohammad Asghar:** Share it.

[101] **Dr Llewelyn:** Yes. In terms of the thrust of the Bill and the direction of travel, we think it's the right way forward: something that brings coherence to this area, that streamlines it, that's focused on the needs of the learner—the individual learner—and an integrated approach that brings all the partners together, but in particular is focused on involving individual learners, their families, parents or guardians in the provision that's made for them. The whole planning process, we think all of that is a good thing. We're supportive in terms of the thrust of the Bill, and we've given evidence before, but it is a big undertaking and there is a significant era of testing and seeing how it progresses. We've got some concerns in some areas, which we've highlighted in the evidence, but a lot of it will be a case of seeing how effectively it's rolled out and how effectively the transitional arrangements work. Up until now, we've worked very closely with the Welsh Government

and other partners in getting to this point, and our hope would be that that continues and that that high level of co-operation and responding to the concerns of local government, but other partners, continues. So, as long as that dialogue continues, hopefully we can address some of the impediments, problems or concerns as things move forward.

[102] **Lynne Neagle:** Thank you. Go on.

[103] **Mohammad Asghar:** Thank you, Chair. My question is to Gareth now. What pressure on local authorities do the WLGA and Carmarthenshire County Council foresee arising as a result of the Bill, and how do they believe that they should be tackled or supported by the Welsh Government?

[104] **Lynne Neagle:** Again, that's a very broad question. So, obviously, we're going to go into these issues in detail. Maybe you could just give us brief opening remarks on that.

10:45

[105] **Mr Morgans:** As a local authority, I think we've been involved in this work since 2009 probably, because we've been part of the pilot authorities developing the ideas behind the reform from that point in time. I think we're in a good place as an authority, in the sense that many of our schools are working in the person-centred practice way. Many schools are using the individual development plans already. I think one of the biggest challenges is workforce development—that all staff in schools, teachers and teaching support staff, are aware of the way of working. I think there's a challenge as well of ensuring that all parents, carers, et cetera, are aware of the new system of working, so awareness raising, I think, is a huge focus for us as an authority, and working also with partners—with further education, health and social services as well. We're in a very good position in respect of those partners, because we have been working in that way for a number of years. So, it's continuing to work in that way with those partners.

[106] Another thing is a slight change in culture as well. Maybe there has been an over-dependency on local authorities in respect of statements, et cetera, and funding, and the statement getting funding. Again, it's changing culture in schools in that schools are able to manage and meet the needs of learners from their resources, and being innovative in the way they use their resources as well.

[107] **Lynne Neagle:** Okay, thank you very much. If we can talk specifically, then, about IDPs, to what extent do you think the Bill provides sufficient clarity over when local authorities would be responsible for running an IDP, as opposed to schools?

[108] **Ms Davies:** I don't think the Bill is quite clear at this stage. It's clear for some children and young people—for looked-after children, those who are dual registered or detained—but otherwise there is an expectation in the Bill, and it goes into detail in the regulatory impact assessment, that the school or the further education institution will normally maintain the IDP, but the Bill in section 10 then says that if the school or FEI is unable to determine the additional learning needs or the additional learning provision that is required, or is unable to meet that provision, then they can refer it to the local authority to look at. I suppose that wording is a bit ambiguous and it could be open to interpretation. So, we would expect the code to throw a bit more information or a bit more detail about maybe how that's going to work, and we know that within the Welsh Government's strategic implementation group, the expert sub-groups are indeed looking at that in more detail. I mean, the RIA does say that the expectation is that, by and large, local authorities will continue to hold IDPs for the same levels of children that they currently hold statements for. But, again, it isn't actually clear and I don't think until you see (a) a bit more information and then it starts—you know, once you actually get into the system as to how it will kind of work in practice.

[109] **Mr Morgans:** I think one of the key things is consistency across—. At the moment, you've probably got 22 different systems in Wales, although we've got the same legislation and the same code of practice, but I think it's about consistency. The expert group working on this is looking at those issues and maybe when IDPs are a local authority responsibility, et cetera. So, there is a group of experts across Wales dealing with that issue and probably working through some of the challenges.

[110] **Lynne Neagle:** Okay, so there's nothing you want to add, then, in terms of any concerns you might have about local authorities ending up being responsible for more provision under this new system.

[111] **Dr Llewelyn:** I think there is concern, but this is where—. It's the point I made earlier: we're content with the direction of travel, but this is so complex that it will take some time beforehand to see what exactly it means at an operational level. I suppose there is an element of trial and error in

seeing how it develops operationally. As much as we can prepare and the code will help, and the work of the various expert groups will be advantageous, this is such a cultural shift as well, which makes it exciting but also challenging. I think the understanding of the implications and maybe the unintended consequences will take some time, and is potentially challenging.

[112] **Lynne Neagle:** Okay, thank you.

[113] **Mr Morgans:** I think as well it's making sure schools have the resources to deliver what they need to deliver for the learners in their care. We've gone down the path in Carmarthenshire of delegating a large percentage of our SEN funding to schools, so that they can deal with those needs from their own budgets. I think it's making sure that schools have the resources so that they can provide the additional learning provision required and meet those needs without having to revert to the local authority.

[114] **Lynne Neagle:** Okay. Thank you. Darren, on this.

[115] **Darren Millar:** Yes. Can I just ask you—? You mentioned earlier on that you were piloting some of this work; so, what has your experience been in terms of the level of need at which a school might refer on to the local authority? I think you suggested before that it would be a similar level of need to the current special educational needs provision where a statement is required. Is that what has been happening?

[116] **Mr Morgans:** No. We've been a very high statementing authority for many, many years. I came into post in 2009, and I think we had about 1,200 statements—about 5 per cent of our pupil population. That's reduced to about 900 now. I think it's the new way of working in the sense that the schools don't have to come to the authority for a statement to get the money. I think that was the vicious circle we had, in the sense that they had to have a statement to have some funding. So, we've delegated the funding. We still statement pupils, if they require a statement, and that process helps that learner, but I think we've seen a reduction in the requests for statements from schools. Also, we've had a process where we've employed some family engagement officers who have been working with parents, explaining and probably providing advice and guidance on what a school can provide for their child from within the resources that they have.

[117] **Darren Millar:** So, you've invested in the schools becoming more

creative about the use of their resources, and given them extra resources to meet needs without having to come to the local authority.

[118] **Mr Morgans:** Yes. We've invested quite a lot in training our special educational needs co-ordinators, additional learning needs co-ordinators, or whatever you want to call them now, in the sense of upskilling them. Also, I think, from releasing officer time from being part of a statementing process, being able to provide more support and guidance in schools for teachers.

[119] **Darren Millar:** Because, presumably, it will be different in each school setting as to what they can or can't provide, because of the nature of the fact that schools have different resources, different buildings, different facilities, and different members of staff with different sets and suites of expertise. So, it's very difficult to draw a black line, as it were, and say, 'Everybody above that black line goes to the local authority.' It's more of a grey mist between, is it?

[120] **Mr Morgans:** Yes. One thing we have done is protect our smaller schools. Carmarthenshire is quite a rural authority and about 40 schools have fewer than 100 pupils, so we've protected those schools. So, we do hold the resource for those schools because, whatever formula of allocating funding you'd have, they wouldn't have sufficient funds to meet the need. So, we have dealt with that issue. I think it's about upskilling the ALNCo role and about them sharing resources as well. There are conversations now about sharing resources across schools as well.

[121] **Darren Millar:** They share ALNCos as well, do they?

[122] **Mr Morgans:** They share ALNCos, but also they're talking about sharing staff in the sense of support staff, and maybe some support teachers. So, yes, that agenda is moving on. Yes.

[123] **Darren Millar:** Okay. Thanks.

[124] **Lynne Neagle:** Thank you. Julie.

[125] **Julie Morgan:** Thank you. I wanted to ask you about the wide age range that is covered by this, with the early years and the post-16 education. Could you tell us how you feel about that?

[126] **Mr Morgans:** Yes, it's an interesting challenge. I think the early years,

probably, is less of a challenge for us because we have—

[127] **Julie Morgan:** It's less of a challenge.

[128] **Mr Morgans:** Less, yes, because I think we had systems and processes in place already about identification and working with partners about having information about those learners before they come to school. We have kind of entry-into-education panels where different professionals come around the table to discuss those learners prior to them commencing in education. They don't have an IDP yet, but probably that process could evolve so that they do have that plan, coming into school. We know what their needs, more or less, are and what support they require in the pre-school setting. So, the transition then is supported so that that transition to school is more effective.

[129] The post 16, yes, I think it's a challenge. It's something new in the sense that I think it's new territory for several authorities. We have a good relationship with our further education college, and the majority of our learners will progress to further education college in Carmarthenshire—Coleg Sir Gâr—and I think they are developing their provision for learners with additional learning needs. I think that's very, very exciting as well—an opportunity to work with them on developing that provision. The other element, of course, is the specialist colleges, which is totally new to us as authorities, really. That's a concern for us in the sense that it's something that we haven't done before. I think there's some more work to be done there in respect of how that works and how that placement is managed.

[130] **Dr Llewelyn:** I was just going to say, in terms of your question, in all the discussions we've had internally within local government, there is support for what's being proposed. From the learner point of view, having a coherent nought to 25 and avoiding the dislocation at 16 seems to make sense. Certainly, from the learner side, I think it does. But, as Gareth said, because the relationship between local authorities and post-16 providers is historically different, I think there will be challenges in coming to terms with that, but there seems to be a commitment on the side of all partners to work their way through those challenges.

[131] **Julie Morgan:** So, you think that it will depend on building up the personal relationships that are there already to some extent but need to be developed a lot more?

[132] **Mr Morgans:** At this point in time, there are projects in the four consortia, with some funding from Welsh Government, to look at different work streams and projects. One of the projects we're working through in ERW is that transition from school into post-16 education, training, or whatever. So, Powys are leading on that work, but it is working with further education on seeing how we can improve that transition and properly develop what's available as well in our consortia for those learners.

[133] **Julie Morgan:** Yes. And do you think there needs to be anything more in the Bill to tackle that issue?

[134] **Ms Davies:** Sorry, I was actually going to say, coming back to what we said were our concerns in our paper, that perhaps we have got a bit more information now we've got the draft code about the early years, where there will be heavy reliance on health services to help identify and help local authorities deliver the provision needed in, particularly, the pre-compulsory school age—so, nought to two years. I mean, one issue we've thought about, which, again, just isn't clear, I think, at this stage, is that the subsequent duty on health or that health must consider if there's a relevant treatment of service, whether that actually also applies in the early years. It isn't clear. The Bill does give a power to the NHS, if they think they come across a child who they think has ALN, to, subject to the consent of the parents, bring that to the attention of the local authority, because I think there might be an issue about how children could, potentially, slip through the net in the nought to two years, because if they are not brought to the attention of the authority, the authority won't know that they're there.

[135] So, at the other end of the scale, the current duties on Welsh Ministers in section 140 of the Learning and Skills Act 2000 are, we understand, effectively being transferred entirely to local authorities. But I think the way the Bill is structured, it isn't as clear, perhaps, as is, 'The duty is currently on Welsh Ministers.' So, I think, for the 19 to 25 age range, it isn't clear whether authorities would be expected to fund children in placements or in further education up to age 25. Again, that's something that one of the expert groups is probably looking at, and I'm sure there will be more information coming out in due course that we can then, you know, take into account.

[136] **Julie Morgan:** Yes, thank you.

[137] **Lynne Neagle:** Thank you. Darren.

[138] **Darren Millar:** Just a very brief question: you mentioned the fact that there's a duty on the health service to make a referral, if they think it's appropriate, to a local authority. But that only applies to the early years. What happens if someone develops something that may affect their education after the early years? Do you think there ought to be a duty to bring that to their attention? It might be a sight problem, for example—sensory impairment.

[139] **Ms Davies:** Well, I suppose once they get into compulsory school age, then they will have come to the attention of the local authority because they will be having an IDP as part of their school, so—

[140] **Darren Millar:** But, obviously, if they have a health check-up and there's something that isn't immediately noticeable to a school, they may go—. If it's something like a hearing loss, which can take place over a long period of time, that could have a massive impact on their education, couldn't it? Do you think that that duty ought to apply more widely?

[141] **Ms Davies:** I don't think it's a duty; I think it's a power. They don't have to do it; they may do it.

[142] **Darren Millar:** Okay. But do you think it's a bit restrictive suggesting that it should just be in the early years? That's the question. I think it's unusual, personally, but there is—

[143] **Ms Davies:** Yes, I suppose. I don't know, you'd maybe have to probe the thinking behind why it's being done like that, and, as you say, why that doesn't extend across the age ranges. And how that then does link with subsequent—.

[144] **Darren Millar:** You seem to be nodding away there.

[145] **Mr Morgans:** I think it's a fair point, because I think there are examples currently in the system where a child might have a hearing impairment that's not identified and is maybe not picked up by the school either. I know of an example recently where kind of, you know, health did pick it up, but they did inform the school. So, there are kind of informal mechanisms of doing that. But, maybe strengthening the legislation might be useful for the parents and for schools and providers, yes.

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

[147] **Lynne Neagle:** We're going to come on to talk about health in more detail now, but, before we move off post-16, can I just ask you if you could expand on what you think the implications are of the lack of a provision in the Bill for a local authority to direct FE providers, and whether you are particularly concerned that you might end up having to make a lot more provision because of that—that it may not be funded for?

11:00

[148] **Ms Davies:** That must be a possibility. I can understand, I suppose, legally speaking, why there is no equivalent provision for local authorities to direct an FEI to maintain an IDP, as there is for local authorities and schools, because that legal relationship isn't there. So, as we've said in our evidence, FEIs are nothing to do with the local authorities. It is possible. The RIA suggests that the majority of children in FEI will have their IDPs maintained by the institution. I think they've estimated that there are about 120 with complex learning disabilities in FE, and maybe half of those will go on to be maintained by the local authority. Plus, of course, then, the local authority will have the independent specialist placement, as well, when that duty transfers across.

[149] **Dr Llewelyn:** It is a genuine concern among the 22, as it currently stands.

[150] **Ms Davies:** Once an authority has taken on one from an FE institution, there doesn't seem to be any way of 'giving it back', if those circumstances change and it would be appropriate to do that, which, of course, an authority could do with a school.

[151] **Lynne Neagle:** Okay, thank you very much. We'll move on, then, to health issues more generally. Hefin.

[152] **Hefin David:** Oh, right, okay. It was about the role of the DECLO—is that okay to go into?

[153] **Lynne Neagle:** Yes.

[154] **Hefin David:** So, the role of the DECLO. In the WLGA submission, in section 48, you say:

[155] 'The WLGA welcomes the strengthening in the Bill of the Designated

Education Clinical Lead Officer (DECLO) role as a strategic coordinator of health bodies' input'

[156] which suggests that, as a result of consultation, that role has been made more strategic. Is that the right understanding?

[157] **Mr Morgans:** I think it has been strengthened. The new Bill has been strengthened from the first version, I think, in the sense of the responsibility of health.

[158] **Hefin David:** Now, when I read the explanatory memorandum, page 50, it only refers to it as a change of title, from designated medical officer or designated clinical officer, and the words there are,

[159] 'The Bill changes the title of these officers to designated educational clinical lead officers (DECLO). The amendment has no effect on the nature of the role but clarifies the purpose of the role'.

[160] So, you were saying that it's a strategic change, whereas the explanatory memorandum is saying that it's just a change in title.

[161] **Mr Morgans:** Okay, I probably misunderstood. I think, in the Bill itself, the role of health has been strengthened. Maybe not the DECLO itself, but the role of health, probably, has been strengthened, and the responsibilities of health.

[162] **Hefin David:** But in your submission you say that the role of the DECLO has been strengthened and made more strategic.

[163] **Ms Davies:** Perhaps because, since we've been kind of living with it, and we know that things have happened with the DECLO role and the way it will operate. I think, yes, it may be the wrong terminology in that case, but we know that so much work has been done in the interim on the DECLO role that it feels that it has been strengthened, if you see what I'm saying. Maybe the terminology in the Bill hasn't strengthened, but what underpins the Bill and how the DECLO role will work has already been strengthened. Because we've seen the work that has been done—the pilots that are now going on in Betsi Cadwaladr and Aneurin Bevan to pilot that role. I think, maybe, it's just a kind of mindset, that we feel it's been strengthened.

[164] **Hefin David:** Okay. If we just hold that work, that pilot, I'm just a bit

concerned that the Welsh Government, based on their explanatory memorandum, doesn't feel it has been strengthened. So, your perception is that it has been strengthened, but there's nothing codified to say, 'This role has been strengthened'. In fact, it says the change in title has no effect on the nature of the role. Would this be something worth pursuing with Ministers? Or is this something you're satisfied and you're fine with?

[165] **Mr Morgans:** I was in an awareness-raising event on Tuesday in Carmarthen, because there's a series of eight now happening for practitioners. And you know, the clear message in that presentation was that the role of health has been strengthened following feedback from stakeholders in the consultation. I see the whole health package as one, and I think, from the wording, it's strengthened. And I think the key person is the DECLO role, and I think that's new. That's quite exciting. But, yes, I appreciate, maybe that—

[166] **Hefin David:** I'd like to understand more about that role, to be honest with you.

[167] **Dr Llewelyn:** I think that's a fair point, in terms of reconciling what's in the explanatory text and the way we've presented it, because what we want is to avoid ambiguity so that, at a later point, everybody has that understanding. It is an important role so it might be something that is worth pursuing, just to make sure that our understanding and interpretation is the one that's widely shared.

[168] **Hefin David:** I mean, a key point of contact and a key liaison will be that role, I would have thought. And there needs to be a clarity about the strategic nature within the health board and the clinical knowledge that person will have, which might be more based on the kind of knowledge an operational, front-line person might have. So, there needs to be some clarity. So, just before I finish my line of questioning, can you just tell us a little bit more about the pilot and whether that's given you—between Aneurin Bevan and the two health board pilots—any insight into anything in that area?

[169] **Ms Davies:** Welsh Government, that's their pilot rather than—so, no, we wouldn't know anything about how that's going at the moment.

[170] **Lynne Neagle:** The NHS Confederation—.

[171] **Hefin David:** It's just because you raised it.

[172] **Ms Davies:** Yes, sorry. I'm sure they'll be able to give you when they've—

[173] **Mr Morgans:** In terms of the role, what you'd want is that the focus is on the needs of the learner as opposed to any kind of institutional gate-keeping kind of role.

[174] **Hefin David:** You are calling for

[175] 'greater clarity as to the position of local authorities or schools if the clinical judgement is that there is no relevant treatment'.

[176] The DECLLO then would come in and be a key liaison person, I would have thought.

[177] **Mr Morgans:** I think, for us, it's having one designated person who we can go straight to for any challenges or issues we have with provision from health. At the moment, we might go to different heads of service or departments, and it is quite challenging sometimes to get the right person within the health service to have an influence. But I am concerned about, maybe, one of these roles in a huge health board like Hywel Dda, which spans quite a large geographical area. There are issues there, I think, which we need to kind of investigate, in the sense of whether it is one role. Or do you have three or whatever? I don't know. And also about access to those officers as well and how that is managed.

[178] **Hefin David:** Okay, thank you.

[179] **Lynne Neagle:** We've got Llyr next on this.

[180] **Llyr Gruffydd:** Y pwynt **Llyr Gruffydd:** The point I was going roeddwn i'n mynd i'w godi yw'r to raise is the point that's just been pwynt sydd newydd gael ei wneud. made.

[181] **Lynne Neagle:** Okay. Oscar.

[182] **Mohammad Asghar:** Thank you very much, Chair. I'd like to ask about early years.

[183] **Lynne Neagle:** Sorry?

[184] **Mohammad Asghar:** One question for early years.

[185] **Lynne Neagle:** No, because we did that earlier.

[186] **Mohammad Asghar:** All right.

[187] **Lynne Neagle:** Darren.

[188] **Darren Millar:** It is on this very same point—I know you’ve raised concerns. So, in the draft code, it suggests on page 125 that the time allocated to undertake the DECLO role is estimated to be one day per 40,000 children. Do you think that that’s adequate, realistic, feasible?

[189] **Mr Morgans:** I don’t know, to be honest. I think the pilots will be interesting, to see what kind of level of time these officers need. It’ll be interesting to see if there are people in the system who want the challenge, because I think it’s a very, very challenging role—it’s a new role. I think there’s been a draft job description explaining the remit. It is huge, I think, to be honest. But I think we’ve got to look at the pilots and see how that works, really.

[190] **Darren Millar:** You’d agree with me though that, whoever the DECLO is, they need to have sufficient clout within the organisation to get information, sometimes very rapidly, in order to support an assessment that’s been taking place in a school or through a local authority or and FEI.

[191] **Mr Morgans:** It was raised on Tuesday, about, in south-west Wales, there’s an issue about paediatricians. I shall be going to that DECLO and saying, ‘Okay what are you going to do about it?’ Processes are being held up, advice is not given, and that person should be able to take that to the board and put that challenge.

[192] **Darren Millar:** It can sometimes be months for a chief executive to get a response to an Assembly Member on an individual case, let alone someone who’s less senior than that within an organisation. Okay, thank you.

[193] **Lynne Neagle:** So, are you happy that section 18 of the Bill is sufficiently strong then? That’s the one that says that they must secure it if they decide that there is likely to be a benefit in a child or young person receiving it. Obviously, it’s being strengthened from the draft, but does it go

far enough?

[194] **Ms Davies:** Yes, it is better than it was. But, at the end of the day, there still isn't real parity between health and local authorities. And there's the point we've made about what happens if a local authority refers a case to the health board, and the health board considers that there is no relevant treatment or service that would help the learner. Where do you go from there? Is that the end of it? Can the authority then say, 'We've asked them and they say no'. Or is it effectively deemed to be an education need, and the authority has to be provide and pay for it? And I think Gareth has got some examples of that.

[195] **Mr Morgans:** I think this goes back to what we were discussing earlier, really, about having speech and language therapy provision. At the moment, several local authorities buy that service from health or pay a service level agreement—we pay a considerable sum. That is a health need. In the future, do I say, 'Okay, you provide that for the 100 pupils you're providing for now, and I don't have to pay for it.'? So, I think that's an area we need to investigate and kind of tease out, and there are other areas as well of health needs. But it's an interesting kind of debate we're going to have, I think, on that issue.

[196] **Lynne Neagle:** Okay. Thank you very much. We'll go on now then to talk about disagreement avoidance—Michelle.

[197] **Michelle Brown:** Thank you, Chair. It's that we have the almost setting up of two separate systems of appeal. For decisions made by local authorities, you've got the education appeal tribunal, and then, against decisions that are made presumably by the NHS body, presumably you're going to have to use the NHS appeal system. How are those going to fit together in a case that is mixed? You know, you have a part of the appeal—part of it relates to the decision made by the LA and then there are additional problems obtaining treatment from the NHS body. Where does a parent go?

[198] **Mr Morgans:** My first comment would be, I think if you work in a very person-centred way, disagreement and complaints issues are reduced dramatically. We've seen that over the past few years in the sense that parents and pupils are involved in that process from the start. However, if they are unhappy, there are processes by which they can take the education local authority to tribunal. And, sometimes, they take us to tribunal on issues about provision from health and we have to defend those, or not, in that

process. I think there's an issue about the parent's awareness of the complaints process for health. I think sometimes they complain to the local authority about any provision for a child, and that may be the correct procedure, but I acknowledge it is challenging for parents at the moment in the sense there are two methods, two ways. Yes. I acknowledge the challenge.

[199] **Michelle Brown:** So, there'll be two avenues under the—

[200] **Mr Morgans:** Yes, there will be under—*[Inaudible.]*—as well.

[201] **Michelle Brown:** So, what concerns—I mean, that's surely going to duplicate costs as well, because if you've got two systems—. It's going to add to the confusion, surely. Have any discussions been had about whether that can be, whether the two systems can be, unified slightly so that things are a little bit more simple and straightforward for parents to follow?

[202] **Dr Llewelyn:** It has been discussed. It's one of these contestable issues that is very subjective, I think. It's a judgment whether you separate the two processes—one is an education issue, one is a health, and you have two parallel processes. I think it's contestable and it does divide opinion. We have had some discussion on it and I think it cropped up in a previous evidence session and I'm not sure there's a clear-cut solution to it.

[203] **Ms Davies:** Yes. I mean, we do understand. We understand the reasons that Welsh Government have argued as to why it's being done this way. But, clearly, from the point of view of the user—the child or the young person or the parent—it's very difficult to see how that helps them in any shape or form, really, to have to go through a completely different—and potentially on to the public services ombudsman if they're not happy with the way that the NHS complaints procedure deals with—. On the other hand, the Bill does allow the tribunal to order revision of an IDP that may relate to provision provided by health, but the health body is not required to comply with that. So, that does suggest—and I know you've got the Special Educational Needs Tribunal for Wales president coming to see you later on today—that they can take a view on health stuff, but I'm not sure, legally, then what happens, ultimately. You could argue, maybe, that now that there is an explicit link between what the Bill says about health service or treatment that is relevant to the learner's educational needs, actually that link has been made between health and education. And, actually, maybe, on that basis, the tribunal could have a role.

[204] **Michelle Brown:** It doesn't seem to be set out in the Bill, unless I'm missing something.

[205] **Ms Davies:** Well, no, that's just—. That's my—reading what the Bill says—. But that's obviously for lawyers and it's not, you know—I'm just kind of floating that, really.

[206] **Dr Llewelyn:** It is worth bearing in mind Gareth's initial point, that, with a more person-centred approach to provision, and the more the learners and the families and carers and guardians are involved in the planning process, what you'd hope over time is that there are fewer and fewer disputes in the system.

[207] **Lynne Neagle:** Okay. Darren on this.

[208] **Darren Millar:** It seems to me that the WLGA doesn't have a settled view, in terms of your members, as to whether the tribunal ought to be able to consider the health issues and whether the decisions of the tribunal ought to be something that health boards should have a duty to comply with, from what you've just said. What about the Association of Directors of Education—do you have a different view?

11:15

[209] **Mr Morgans:** There are different views within the group, I think. Personally, I think that one system would make sense, but again I don't think this Bill does that. For parents and users, as was mentioned, I think it would make total sense—they are looking at their child and all their needs and it would make sense to have one system of challenging if they're unhappy with that provision. But, again, there isn't a consensus.

[210] **Darren Millar:** So, what are the benefits of keeping the two systems separate? Because I haven't heard any yet. Are there any benefits? Why would any of your members support keeping the systems separate?

[211] **Mr Morgans:** I think the challenge is holding health to account for what they're supposed to be providing, and, maybe, if there's one system, will fall on the local authority? I think that's the concern. Because lot of support is provided within school and sometimes it can be written in a way that it is an education provision rather than health. So, I think there's

concern about that and maybe putting more pressure on our local authority services and budgets.

[212] **Darren Millar:** I see. Okay, thanks.

[213] **Lynne Neagle:** Okay, thank you very much. We're going to move on now to talk about finance. Oscar.

[214] **Mohammad Asghar:** Thank you very much, Chair. Has the WLGA undertaken any of its own cost projections of implementing the ALN Bill? If so, do these correlate with the Bill's regulatory impact assessment?

[215] **Ms Davies:** We haven't done anything specific. The WLGA worked with Welsh Government on the Deloitte work that they did a couple of years back now on SEN costs, at the point I think when they were drafting or thinking about drafting a Bill, and some of that is reflected in the RIA. We have done—. We haven't done any specific work on identifying the individual unit costs of things, for example, like the cost of a tribunal to a local authority, or the cost of a dispute resolution service. We haven't done—. Welsh Government have done—to be fair, I think they've done a very good job of trying to identify, with the information they've got, because it isn't easy, we know that. SEN spend is quite difficult to pin down, because it's done quite differently in different places and it's perhaps not recorded as consistently as you might hope. So, the answer is we haven't, really. What we've done, though, obviously, is go through what Welsh Government thinks the costs are and try to work out how they've come to those, what they've come to, and whether we think that's reasonable or not.

[216] **Mohammad Asghar:** Thanks, Chair. Does the WLGA believe that the £20 million announced by the Minister will be enough for local authorities to apply the ALN Bill? Are there any concerns that the majority of this £20 million will be absorbed by other public services rather than front-line education?

[217] **Ms Davies:** We know what's said in the RIA about the implementation grant that Welsh Government plan to make available to local authorities, and other bodies as well, and that there was this £2.6 million gap that appeared in transition costs. We understand that the £20 million, or part of the £20 million, at least—£10 million of the £20 million—will help address that. What we don't know yet is how that impacts on the amounts of implementation grant as stated in the RIA, although we understand that the RIA will be

revised to take account of that. So, we're not quite clear how the £20 million plays into what the costs are already stated in the RIA. Also, we don't know how the implementation grant—how Welsh Government intend or would like to distribute that and on what basis and so on. That is something that we're very keen to work with Welsh Government on, to talk about and discuss and get an agreed distribution, and that it should be a very light touch in terms of bureaucracy.

[218] **Lynne Neagle:** Llyr, on this.

[219] **Llyr Gruffydd:** Rŷm ni yn mynd o sefyllfa, wrth gwrs, lle mae yna 13,000 o ddysgwyr â datganiad statudol i sefyllfa lle mae yna dros 100,000 o IDPs yn mynd i fod. Yn fy marn i—lleygwr fel fi, efallai—yn anochel, mae yna oblygiadau cost difrifol yn hynny o beth. Felly, byddwn i'n tybio mai eich neges chi i'r Llywodraeth yw, os oes yna unrhyw gostau ychwanegol, eich bod chi'n cael cefnogaeth i gwrdd â'r costau yna. Hynny yw, rŷch chi'n rhagweld y bydd yna gostau ychwanegol.

Llyr Gruffydd: We're moving from a situation where 13,000 learners have a statutory statement to a situation where over 100,000 IDPs will be in place. In my view—speaking as a layperson—inevitably, there are going to be serious cost implications to that. So, I would assume that your message to Government, if there are to be additional costs, is that you need financial backing to pay those costs. That is, you foresee that there'll be additional costs.

[220] **Dr Llewelyn:** Un o'r trafferthion yw bod y maes yma'n hynod o anodd i'w ariannu, achos mae costau'n codi o flwyddyn i flwyddyn yn annisgwyl, felly, mae'n bwysig ein bod ni'n ymwybodol o'r posibiliadau hynny. Hyd yn hyn, mor bell ag y mae'n bosibl rhagweld beth fyddai'r costau, rŷm ni'n gymharol gyfforddus gyda'r fethodoleg mae'r Llywodraeth wedi'i ddefnyddio hyd yn hyn, ond mae yna bryder, fel rydych chi'n sôn—mae yna bryder y bydd costau'n codi yn y tymor byr ac efallai yn gostwng wrth i'r gyfundrefn newydd ddatblygu a

Dr Llewelyn: One of the problems is that this area is very difficult to fund, because costs rise from year to year in an unexpected way, so it is important that we are aware of those possibilities. So far, as far as it is possible to foresee what the costs would be, we're relatively comfortable with the methodology that the Government has used so far, but there is concern, as you mentioned—there is concern that the costs will rise in the short term and perhaps will reduce as the new system develops in operation, but

datblygu'n weithredol, ond hefyd, mae yna bosibiliadau y bydd yna gostau cudd, fel petai, achos fe fydd yna oblygiadau annisgwyl yn y Mesur.

there are also possibilities that there will be other costs, because there will be unexpected developments in the Bill.

[221] Felly, yn ein tystiolaeth ysgrifenedig ni, rŷm ni wedi trio dangos ble mae ein pryder ni a sut efallai y byddem ni yn gobeithio y bydd y Llywodraeth yn ymateb i'r sefyllfa dros y pedair blynedd gyntaf o wasanaethu'r Mesur newydd. Ond mae yna lot o ansicrwydd. Mae lot yn dibynnu ar fel y bydd y system newydd yma'n gweithio'n ymarferol ac yn weithredol.

Therefore, in our written evidence, we have tried to show where our concerns lie and how we would hope that the Government would respond to the situation over the first four years of services being provided under the new Bill. But there is a lot of uncertainty and a lot depends on how this new system works in practice and operationally.

[222] **Llyr Gruffydd:** A ydych chi'n hyderus bod y *pilots* a'r gwaith sy'n digwydd ar hyn o bryd yn mynd i roi darlun digon—mi roiff e ddarlun gwell, mae'n siŵr, ond a ydy'n mynd i fod yn ddigonol i chi gael yr hyder yna bod y sefyllfa ariannol yn mynd i fod yn un cynaliadwy—wel, yn y pedair blynedd, ond tu hwnt i'r pedair blynedd gyntaf, beth bynnag?

Llyr Gruffydd: Are you confident that the pilots and the work that is being undertaken at present gives a sufficiently—it will certainly give us a better picture, I'm sure, but will it be a sufficient picture for you to have the confidence that the financial position is going to be sustainable in the first four years, and beyond that?

[223] **Mr Morgan:** Cwpwl o sylwadau mewn ffordd—mae'n rhaid i ni gydnabod y byddem ni'n rhedeg dwy system am gyfnod achos bydd y system cyfredol gyda ni a byddem ni'n trio gweithredu'r system newydd. Mae hwnnw'n mynd i fod yn heriol, ac rydw i'n credu bydd yna angen capasiti ychwanegol. Rydw i'n credu bydd eisiau arian ar ysgolion hefyd, achos, os ydych chi'n moyn y cydlynedd anghenion dysgu ychwanegol yma i redeg y broses yn

Mr Morgan: A couple of comments—we have to recognise that we'll be running two systems for a while because we'll have the current system and we'll be trying to implement a new system. That's going to be very challenging, and I think there will be a need for additional capacity. I think that the schools will need money as well, because, if you want the ALNCo to run the process effectively, that person needs enough time to provide

effeithiol, mae eisiau digon o amser digyswllt ar y person hwnnw i fedru rhoi cefnogaeth i'r staff a hefyd rydw i'n credu bod eisiau buddsoddiad sylweddol mewn hyfforddi—hyfforddi cyffredinol ar gyfer pob aelod o staff mewn ysgolion.

the support to the staff and also I think we need investment in training—general training for all members of staff in schools.

[224] Rŷm ni wedi dechrau'r siwrnai yna eisoes, wrth gwrs. Mae peth cyllid wedi dod i ni ddechrau'r gwaith yna. Ond hefyd rydw i'n credu bod eisiau adeiladu capasiti'n rhanbarthol hefyd. Mae hwnnw ar waith trwy'r peth cyllid rŷm ni wedi cael y nawr o ran rhannu arferion ar draws siroedd ac efallai datblygu systemau ar y cyd, fel ein bod ni'n gallu cael rhyw fath o gysondeb ar draws siroedd sydd ar bwys ei gilydd. Eto, rwy'n credu ein bod yn mynd i ryw fan lle nad ydym wedi bod o'r blaen ac rwy'n credu y bydd yna gostau cudd yn y system, yn arbennig os bydd rhai ysgolion yn methu â chyflawni beth fydd eisiau arnyn nhw.

We have already started on that journey, of course. Some funding has come for us to start that work. But also I think that we need to build capacity regionally as well. That's in the pipeline through the funding we've had in terms of sharing practices across counties and perhaps developing joint systems so that we can have some kind of consistency across the counties that are next to each other. Again, I think that we're going to a place we haven't been before and I think there will be hidden costs in the system, particularly if some schools fail to deliver what they need to.

[225] **Llyr Gruffydd:** Os caf fi fynd ymlaen, gan eich bod chi wedi sôn am y cydlyneddion anghenion dysgu ychwanegol mewn ysgolion—

Llyr Gruffydd: If I may move on, therefore, because you have mentioned those ALNCos in schools—

[226] **Lynne Neagle:** Sorry, I thought you—*[Inaudible.]*—something else on finance.

[227] **Llyr Gruffydd:** Oh, sorry. Okay.

[228] **Lynne Neagle:** Just before you do, can I just briefly ask you to what extent you think the RIA underestimates the cost of local authorities responding to requests from parents to reconsider an IDP?

[229] **Mr Davies:** It's highly likely. I think the RIA overestimates the potential savings to local authorities by the fact that the Bill removes—. Well, there will be no disagreements or appeals in future about not having a statement, but there could still potentially be lots of other disagreements, notwithstanding, as Gareth has said, the whole person-centred approach and the dispute—you know, avoidance of disagreements at local level wherever possible and so on. But the system will—. It's probably inevitable that the system will be tested and if you look at the number of statemented children who had disagreements or took appeals about the content of their statement then, if you extrapolate that across, as you say, the extra 100,000-plus children in compulsory education, plus those in further education, to whom the right of appeal will also be extended, which it currently isn't, then you are looking at quite a lot more cases. We don't know. It's one of those things; you don't know.

[230] I suppose, at the end of the day, it is unlikely—. I think the savings are overestimated. Now, I can't imagine that the new system will cost any less than the current system does. As to whether it will cost more, yes, that's potential—again, it'll be something that we would have to keep under review over transition. We would expect to keep that under review and to keep talking to Welsh Government about those costs, and if it looks like there might be more money available, or how to use the implementation grant differently, perhaps, if issues arise that haven't been foreseen.

[231] **Lynne Neagle:** Okay. Thank you. Llyr on the ALNCOs.

[232] **Llyr Gruffydd:** Diolch. Rydych chi yn amlwg yn codi'r pwynt ynglŷn â'r lefel o gymhwyster a sgiliau fydd angen ar y cydlynnydd anghenion dysgu ychwanegol. A allwch chi jest ymhelaethu ychydig ar hynny? Oherwydd, wrth gwrs, mae yna symudiad i gryfhau sgiliau o fewn y gweithlu addysg, ac mae'n swnio fel petaech chi'n nofio yn erbyn y llif tamaid bach.

Llyr Gruffydd: Thank you. Obviously, you do raise the point about the level of the qualifications and skills required for the additional learning needs co-ordinator. Could you expand a little on that? Because, of course, there's a movement to strengthen the skills within the workforce, and it sounds as if you're going against that flow a little.

[233] **Mr Morgans:** Rwy'n credu bod yna garfan profiadol iawn o gydlynwyr gyda ni mewn ysgolion yn

Mr Morgans: I think there is a very experienced cohort of co-ordinators already, and if you asked them to

barod, a pe baech chi'n gofyn i'r rheini efallai i ddilyn gradd Meistr, byddai nifer o'r rheini efallai yn dewis peidio â bod yn gydlynwyr, oherwydd efallai nad yw'n rhan o'u cynllun nhw o ran cynllun bywyd ac ati. Rwy'n credu bod peth gwaith gyda ni ar waith o ran peilota systemau gwahanol o ran y cydlynwyr. Rwy'n credu bod eisiau cydlynwyr clwstwr, efallai, dros glwstwr o ysgolion. Hefyd, byddwn i â diddordeb mewn datblygu arbenigedd—*specialisms*—gwahanol gyda nhw, o ran eu bod nhw'n gallu gweithio gyda'i gilydd fel rhwydwaith o gydlynwyr, achos mae'n anodd i unrhyw un person fod yn arbenigwr ar bopeth. Felly, rwy'n croesawu y gydnabyddiaeth, efallai, bod gradd meistr yn rhywbeth y dylem ni anelu ato fe, ond rwy'n credu bod eisiau iddo fe fod yn raddol, ac efallai ei fod e'n adeiladu dros gyfnod, achos ni fyddwn i am dynnu'r bobl yma mas o'r system addysg i astudio am flwyddyn neu ddwy—byddwn i eisiau efallai iddyn nhw ei wneud e wrth weithio, ond bod rhyw fath o—pum mlynedd, efallai, neu eu bod nhw'n gallu ei wneud e dros amser.

[234] Rwy'n credu hefyd bod prinder yn mynd i fod. Yn sir Gaerfyrddin, mae gen i 112 o ysgolion. Nid wyf yn credu y bydd 112 o bobl eisiau bod yn gydlynwyr. Mae angen datblygu modelau gwahanol.

[235] Llyr
[*Anghlywadwy.*]—SENCOs gyda chi ar

pursue a Master's degree, maybe many of them would not choose to be co-ordinators because maybe that's not part of their plan, in terms of their life plan. But, I think some work is in place in terms of piloting different systems for the co-ordinators, and I think we need cluster co-ordinators, perhaps, or clusters in schools. I would also have an interest in them having different specialisms, so that they can co-operate as a network of co-ordinators, because it's difficult for any one person to be a specialist in everything. And so I welcome the recognition that the Master's degree is something that we should aim towards, but I think that it has to be gradual, and that it builds over a period, because I wouldn't want to take those people out of the education system to study for a year or two—I would want them to do it while working, but over a five-year period, perhaps, or they can do it over time.

I think also that there is going to be a shortage. In Carmarthenshire, I have 112 schools. I don't think I'll have 112 people who will want to be co-ordinators. We need to develop different models.

Llyr Gruffydd: [*Inaudible.*]—SENCOs at the moment?

hyn o bryd?

[236] **Mr Morgans:** Rwy'n credu bod hwn yn ehangach, oherwydd mae'r grŵp yn ehangach. Rwy'n credu eu bod nhw'n mynd i fod yn bobl fwy strategol, ac rwy'n credu bod eisiau eu bod nhw'n rhan o dimau uwch-reoli ysgolion, ac yn cael effaith ar ddysgu drwy ddysgu, yn hytrach na bod yn bobl, efallai, sy'n dysgu rhaglenni unigol. Mae'r rhain yn llawer mwy strategol. Ac rwy'n credu dyma'r gwahaniaeth gallwn ni ei wneud nawr i godi safonau hefyd. Rwy'n credu, gyda'r grŵp yma o ddysgwyr, bod yna fewnbwn pwysig.

Mr Morgans: I think this is broader, because the group is broader. They're going to be more strategic, and I think that they have to be a part of senior management teams in schools, and have an impact on learning rather than just teaching individual programmes. They have to be more strategic. And I think that this is the difference that we can make in terms of raising standards. I think that this group of learners will have a special input.

[237] **Dr Llewellyn:** Roeddwn jest moyn ychwanegu—. Nid ydym yn moyn rhoi'r argraff ein bod ni'n mynd yn erbyn y llif—

Dr Llewellyn: May I just add something here? We don't want to give the impression that we're going against at the tide—

[238] **Llyr Gruffydd:** Roeddwn bach yn gellweirus.

Llyr Gruffydd: I was being slightly flippant there.

[239] **Dr Llewellyn:** Mater o gydbwysedd yw e; jest i sicrhau, os oes buddsoddiad sylweddol, ein bod ni'n siŵr ein bod ni'n ychwanegu gwerth, achos os ydym yn ymwybodol bod adnoddau ac arian yn mynd i fod yn dynn, mae'n bwysig wedyn ein bod ni yn sicrhau ein bod ni yn buddsoddi lle rydym yn cael y gwerth gorau. Jest mater o fod yn gytbwys a chael y cydbwysedd hynny yw e.

Dr Llewellyn: It's just a matter of getting the balance, because we want to make sure that we do add value, because if we're aware that the resources and the funding will be tight, then it's important that we ensure that we invest where we can get the best value, and it's just a matter of being balanced and getting that right, really.

[240] **Llyr Gruffydd:** Ac mae hynny'n arwain at fy mhwynt nesaf i ynglŷn â

Llyr Gruffydd: And that leads me to the next point in terms of the

goblygiadau ariannol y gofyniad penodol yma. Rydych yn poeni am hynny, yn amlwg.

financial implications of this requirement. You're obviously concerned about that.

[241] **Dr Llewelyn:** Ydyn. Fel roeddwn yn sôn, mae jest yn fater o gydbwysedd a sicrhau, pan fod arian yn cael ei fuddsoddi, ein bod ni'n cael y gwerth gorau am y buddsoddiad.

Dr Llewelyn: Yes, we are. It's just an issue of balance and ensuring that when the money is invested, that we get the best value for that investment.

[242] **Llyr Gruffydd:** Sut ydych chi'n gweld y berthynas rhwng awdurdodau lleol ac ysgolion o safbwynt y newid yn y ddarpariaeth yma, a symud i'r system newydd, yn enwedig, efallai, o safbwynt goblygiadau sut mae darpariaeth ariannu i ysgolion yn digwydd? Mae rhyw 73 y cant yn gyffredinol o'r arian yn cael ei ddirprwyo i ysgolion ar hyn o bryd ar gyfer anghenion dysgu ychwanegol. A ydych chi'n rhagweld newid yn y balans yna yn sgil y datblygiad yma? Hynny yw, rydych yn dweud, os bydd clystyru'n digwydd, efallai bod hynny'n rhywbeth y byddwch chi'n gallu ei reoli'n well o'r canol, ond os ddim, yn amlwg mae'r sefyllfa yn mynd i newid.

Llyr Gruffydd: How do you see the relationship between local authorities and schools, in terms of the change in this provision, and moving to this new system, particularly in terms of the implications of how the provision for school funding will take place? Some 73 per cent generally of the funding is delegated to schools at present for additional learning needs. So, do you foresee a change in that balance as a result of this development? You said that if there is clustering, perhaps that is something that you could manage better centrally, but if not, well, the situation will change.

[243] **Mr Morgans:** Rwy'n credu bod mater ariannu anghenion dysgu ychwanegol yn gymhleth iawn. Pan rydym yn edrych ar data Llywodraeth Cymru o ran y gwariant ar addysg arbennig mewn awdurdodau, mae e'n amrywio'n sylweddol, oherwydd, rwy'n credu, mae'n cael ei gyfrifo mewn ffordd wahanol, ac mae yna

Mr Morgans: I think funding ALN is very complex. When we look at data from the Welsh Government in terms of expenditure on SEN in authorities, it does vary significantly, because it's accounted differently, and there are different services. I'm a strong believer in allocating as much as possible to the schools, so that they

wasanaethau gwahanol. Rwy'n can have freedom and capacity to gredwr cryf mewn dyrannu cymaint meet the needs within the workforce ag sy'n bosib i'r ysgolion, er mwyn that they have. That's not to say that bod eu nhw'n gallu cael rhyddid a you'll have to have a central service, chapasiti i gwrdd ag anghenion o a special service, but in giving more fewn y gweithlu sydd gyda nhw. Nid resources to schools, they can yw hynny i ddweud y bydd rhaid cael respond better, perhaps, to the challenges that they have within the schools. gwasanaeth canolog arbenigol, ond schools. rwy'n credu, o roi mwy o adnoddau i'r ysgol, y byddan nhw'n gallu ymateb, efallai, yn fwy hwylus i'r heriau sydd gyda nhw o fewn yr ysgol.

11:30

[244] Rwy'n credu ein bod ni wedi I think that we've tried over the years trio dros y blynyddoedd i edrych ar to look at the expenditure on SEN wariant addysg arbennig a thrio cael and tried to get some consistency, rhyw fath o gasgliad a chysondeb, but it's nearly impossible. One thing ond mae e bron yn amhosib. Un peth that the six ERW authorities are doing y mae'r chwech awdurdod yn ERW yn now is comparing systems, staffing ei wneud nawr yw cymharu systemau and expenditure, to see whether a chymharu staffio, a chymharu there are common issues, as well as gwariant, i weld a oes pethau sy'n differences, and to see whether there gyffredin a hefyd y gwahaniaethau, are things we can do regionally, in ac i weld a oes pethau y gallwn ni ei terms of intensive needs, perhaps. wneud yn rhanbarthol o ran rhai anghenion dwys, efallai.

[245] **Llyr Gruffydd:** Ond nid ydych **Llyr Gruffydd:** But you don't see chi'n gweld dim byd yn benodol fan anything specifically here that will hyn sy'n mynd i drawsnewid y necessarily transform that balance in gydbwysedd o reidrwydd ar hyn o any sense at the moment. bryd.

[246] **Mr Morgans:** Na. Byddwn i'n **Mr Morgans:** No. I'd hope that we'd gobeitho y byddwn ni'n gallu be able to increase the funding given cynyddu'r arian rŷm ni'n gallu ei roi i to schools rather than reduce it. ysgolion yn hytrach na'i leihau, yn sicr.

[247] **Llyr Gruffydd:** Diolch.

Llyr Gruffydd: Thank you.

[248] **Lynne Neagle:** Thank you. The committee has had calls from some stakeholders to use this Bill as a vehicle to make the duty to meet children's medical needs in school part of this Bill. Have you got a view on whether that is something that should be included? And what is your view on how effectively those needs are being met at the moment?

[249] **Mr Morgans:** It's a very, very good question. It's something I grapple with regularly in Carmarthenshire, in the sense of: we have children with medical needs in schools, and the only way we can meet their needs is by providing funding through additional learning needs, although it might not be an additional learning need—diabetes being one, which is quite challenging for schools to manage. They need to have staff, maybe, to regulate that child and check that child. I think, maybe, we're using that funding just to provide one-to-one support for something that is medical. But I think we're supporting schools in order that the child's needs are met. I think it's an area where there's more work to be done on how to, maybe, upskill certain members of staff within a school's workforce to deal with different kinds of medical needs.

[250] **Lynne Neagle:** Chris.

[251] **Dr Llewelyn:** It's interesting. It's one of those issues where we have had discussions, but not within this context, I'm afraid.

[252] **Lynne Neagle:** So you haven't got a view on it at the moment. Darren.

[253] **Darren Millar:** Can I just ask—? There's guidance on medical needs at the moment and it's in the process of being refreshed. I think it was due out in January, but we're still waiting for it at the moment, and I think it's in the process of being completed. I think this is the question I want you to answer: do you think that the scope of the Bill ought to incorporate medical needs and health needs within the ALN provision?

[254] **Mr Morgans:** Personally, yes. But then I think we should have funding to provide the support that the learner needs within school.

[255] **Darren Millar:** That all the health boards should be obliged to fund.

[256] **Mr Morgans:** Yes, if it's a health need. At the moment, I think education picks up that cost.

[257] **Daren Millar:** As you explained with the speech and language therapists.

[258] **Dr Llewelyn:** It is worth bearing in mind that this is a massive piece of legislation. And in terms of the cultural change, and the range of partners working together, it's challenging enough as it is. So it would represent additional challenges.

[259] **Darren Millar:** A slightly wider question if I can, Chair, and that is on home-to-school transport arrangements as well. Some individuals might need specialist home-to-school transport provision, which is over and beyond the obligations of the local authority to provide under normal circumstances. There's nothing in the Bill specifically about home-to-school transport arrangements. There may be a health need that requires that they be accompanied, for example. What do you think? Do you think the Bill is light on that? Do you think there's anything that needs to be said on the face of the Bill about home-to-school transport arrangements?

[260] **Mr Morgans:** I think there's other legislation about home-to-school transport, which hopefully will cover that requirement. We have systems and processes in place where, if the child has some special needs and they do need that, they do get that transport. I'm not concerned about that; I think the current legislation we have does cover that, from my personal view.

[261] **Mr Davies:** It would need to be something that would be considered as part of the IDP, as part of the additional learning provision, depending on the need. So, Gareth is right. I don't—. If you put it in this Bill as well— .

[262] **Lynne Neagle:** Julie, on the templates.

[263] **Julie Morgan:** Thank you very much. Do you think a universal template for IDPs is beneficial?

[264] **Mr Morgans:** I think there are mixed views on this. I think—coming from the consultation process—we've got two ends of the spectrum. We've had conversations in our consortium, and I think there is an appetite of maybe having some template for the consortium, in the sense that if there's movement of pupils between local authorities, the document is the same.

The statement currently is similar but, of course, there are variations. Personally, I'd like to see a national template, because I think that would ensure consistency for parents. It would be easier to explain how it all works, but again, that's up for discussion, I think. But yes, I'd welcome a common template.

[265] **Julie Morgan:** In the discussions we've had, it does seem to be an issue where people's views were divided.

[266] **Dr Llewelyn:** I think that having a common template is consistent with the overall approach of streamlining and bringing coherence, but there's a sort of trade-off of having something that is flexible and responsive and is rooted with the learner and the local needs, avoiding prescription if possible and decluttering, reducing complexity and so on. But personally, I am sympathetic—if the idea is to bring coherence and consistency and the idea is that it's focused on the needs of the individual learner, and if the learner then moves from one area to another, that consistency goes with the learner, then I can see why people are attracted to that, really.

[267] **Ms Davies:** In practical terms, you're both right; it would make it much easier. I think certainly going from a school to an FE institution, and suddenly there are two different sets of paper, albeit with minimum statutory requirements, but they look different—you can just see where issues might arise, certainly with duplication and all the rest of it. So, yes, on a practical basis it makes sense. But Chris is right that what you don't want then is for it to become a one-size-fits-all again, and everybody does everything, because it's meant to be flexible and it's meant to reflect the needs of the individual learner, and that's got to be the focus, not the actual process bit.

[268] **Julie Morgan:** So you think you could have a national template but take into account the individualised needs of the learner.

[269] **Ms Davies:** Yes.

[270] **Lynne Neagle:** Okay. Thank you very much. Just a final question from me, then. One of the main aims of this Bill is to remove some of the conflict from the system that exists around this whole area. Do you think this Bill is going to do enough to facilitate early resolution of disputes? In terms of the practical arrangements, most local authorities currently commission information and advice services from an external provider, known as parent partnerships. Do you foresee this arrangement continuing under the new

legislation?

[271] **Mr Morgans:** I think working in a person-centred way—and many of our schools were part of this pilot, as I mentioned—and having parents and learners as part of that process from the start does reduce conflict and disagreement and complaints generally, as well. Although I think we do need this independent advice and guidance for parents as well. I think there's room to improve the information we give parents, and there possibly could be a national steer of providing information and guidance to parents on the whole process, so that that's consistent. But I think that we still need some kind of independent advice and guidance for parents as well when we've exhausted, probably, conversations with parents and there are conflicts. But they need that advice and guidance as well, whatever organisation provides that—I don't think it matters, as long as the guidance is clear for them.

[272] **Ms Davies:** Yes, all local authorities will have to look at what arrangements they've got both for providing information and advice and for dispute resolution in the light of the Bill and in the light of the extended age range, because clearly they've not had to do that for post-16 before, so they all need to look at that and decide what arrangements will best suit their needs. There may be some where it all works very well and they're happy to continue with the parent partnership arrangements, even though it won't be a requirement as such. That will be something that they'll have to look at as they come to implementation.

[273] **Lynne Neagle:** The Bill also makes provision for advocacy to be made available to young people. Have you got any concerns about that, given the issues we've had on delivering with advocacy for looked-after children, or do you think that's something that local government is going to be able to manage?

[274] **Dr Llewelyn:** I think that what's proposed is the right way forward. I think the combination of having such a person-centred approach, involving the learner, the family and other partners in the planning process and then in continually reviewing provision as time goes by, combined with the other dispute resolution mechanisms—I think, you know, we're optimistic, then, that this will work and it is the best way forward.

[275] **Ms Davies:** In the longer run, I think it is, you know—. It's like everything new, isn't it? It's going to take time to bed in. Everybody in the system—schools, the workforce—everybody needs time to prepare, to adapt,

to adjust to this different culture and different process. So, the transition arrangements—. We know Welsh Government have obviously issued their consultation document this week and we'll be looking at that closely.

[276] **Lynne Neagle:** Okay, thank you very much. Nothing to add—no?

[277] **Mr Morgans:** I think providing advocacy's very, very important. I think it's crucial that our young people are aware that that service is available to them. We haven't had any concerns about providing for the looked-after children we have, but if this cohort grows and then potentially post-16, and any of these learners won't want their parents there, they might want somebody else there on their behalf—it's meeting that need and the costs associated with that, as well.

[278] **Lynne Neagle:** Okay. Lovely, thank you very much. Well, can I thank you all for attending and for your evidence this morning? I'm sure the committee have all found it really useful. You will, as usual, be sent a transcript to check for accuracy. Thank you, again.

11:42

**Y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru):
Sesiwn Dystiolaeth 4
Additional Learning Needs and Education Tribunal (Wales) Bill:
Evidence Session 4**

[279] **Lynne Neagle:** Okay. Item 4, then, is a further evidence session on the additional learning needs Bill. Can I welcome Sally Holland, Children's Commissioner for Wales, Hywel Dafydd, policy and public affairs manager, and Elizabeth Bowen-Dack, investigations and advice officer from the children's commissioner's office? Thank you for your attendance this morning and for the paper that you provided in advance. If you're happy, we'll go straight into questions.

[280] **Dr Holland:** Absolutely, yes.

[281] **Lynne Neagle:** Thank you. The first question is from Michelle.

[282] **Michelle Brown:** Thank you, Chair. I just wondered what your views are on whether the children and young people in this Bill have been placed enough centre stage, whether they have enough input into the development

of their individual development plans, and whether they have sufficient means, in your opinion, to actually push forward their opinions on how their learning needs should be addressed.

[283] **Dr Holland:** So, the participation of children in the new arrangements—if I could start with the specific issue of children under the new arrangements, and if it's all right, with the permission of the Chair, I would like to then expand into the more general issue of how child-centred the Bill is. Is that okay?

[284] **Michelle Brown:** Yes.

[285] **Dr Holland:** If we start on participation, generally, I feel that we've got strengthened proposals in this Bill and code for the participation of children and young people. I do welcome the provisions that require the views of children and young people, as well as their parents, to influence this Bill. I think there are—. In the best circumstances, we are seeing, already, person-centred planning, which includes children's views, and it's already a practice that you would see in the best circumstances, and we would see in the best of the casework that we come across. However, it's not, at the moment, on a statutory basis, and this Bill actually brings person-centred planning into much more of a statutory basis. So, I really welcome that. I would hope that, as local authorities consider how they will be implementing this Bill when it's passed as an Act, they will really think also about how they might involve children and young people at a more strategic level as well, perhaps through their young people's forums or other means, so that children with experience of additional learning needs provision help shape the general local authority's response as well. That can be done at school level, of course, through the school council. So, I would hope that some attention would be paid to that level of participation as well, through the practice of this Bill, but in terms of the provisions within the Bill, I do welcome the stronger emphasis on children and young people's views being heard here, and I would expect to see that happening now in every case.

11:45

[286] **Michelle Brown:** Thank you. What kind of weight—? The Bill doesn't seem to give any weight to the opinion of the children and young people and their carers. Do you think there should be some weighting put in there to place a priority on the opinion of the child, or is it better, in your opinion, to leave it a little bit more flexible?

[287] **Dr Holland:** I think, in the spirit of person-centred planning, you would want it to be differentiated to every case. So, you need to weigh up the child's right to have their view, under article 12, and to have their say with article 3 of the—when I say 'articles', I don't mean in the Bill, I mean the United Nations Convention on the Rights of the Child—UNCRC, and weighing that up with the best interests of the child. That weighing up needs to be done carefully at every place. If the child's specific views cannot always be met, for whatever reason, or because it's felt not to be in their best interests, the child should be given clear explanation of why that would be, and if they continue to dispute—if they could dispute it at all, in fact—access to an advocate and an independent advisor on how to take that forward. Again, I welcome the provision—the extension of advocacy—to children as a statutory right under this Bill. Again, that strengthens the ability of children who dispute any decision under this Bill to have that independent advice and support.

[288] So, generally, I feel it does strengthen it. I do think it would be difficult to put in any kind of formal weighting because of the very individual circumstances of each case. What I really would want to see is to make sure that there's no kind of standardised response to children and their families of, you know, 'We don't do that around here because we don't have that provision', or everyone with this condition has this kind of response. What you'd want is a much more nuanced response that is around the needs of the child and may actually be quite surprising solutions. If you asked the views of a child, maybe it could be quite straightforward. Liz is one of my advice workers who deal with cases every day. She gave me a very simple example, just as we were waiting to come in, of how, when they asked the child, they came up with a fairly straightforward response to some behaviour. It's a very quick example, can I ask Liz to—?

[289] **Ms Bowen-Dack:** It was just that the child was not behaving, shall we say, on a daily basis, and they couldn't work out why this child was doing that, and then—

[290] **Dr Holland:** A child with additional behavioural and learning difficulties.

[291] **Ms Bowen-Dack:** Yes, and they actually sat down and said to the child, 'Why are you behaving in this manner?' As it came about, it was the way that people were saying 'good morning' to that particular child. So, they changed

that, and the behaviour of the child changed.

[292] **Dr Holland:** So, they didn't need to do a great, big behavioural intervention there. So, you know, it's a really simple example, but it is an example of how, by asking the child directly, you can often get a really good way forward. So, I welcome anything that would increase the views of the child. But, certainly, it needs to be weighed up always with their best interests.

[293] I wonder, Chair, whether I'll get the opportunity to talk about the children's rights approach more generally—

[294] **Lynne Neagle:** Yes.

[295] **Dr Holland:** —or would you like me to talk about that now?

[296] **Lynne Neagle:** No, we've got questions on that.

[297] **Dr Holland:** Okay.

[298] **Lynne Neagle:** Michelle, have you finished your questions?

[299] **Michelle Brown:** I was just curious to—. You might not be able to answer this, to be fair, but do you think the infrastructure and resources are there to actually underpin this informing the young person and consulting and all of that? Do you think the infrastructure is there to provide it?

[300] **Dr Holland:** Well, there are sort of wider infrastructure questions in the Bill, of course, which I imagine we will come on to discuss later about whether we've got enough provision infrastructure there, for example, to make sure that children can take part through their first language—through Welsh or English, for example—there's a real issue around infrastructure there. In terms of the general approach, I would say that, actually, engaging a child to participate in ALN assessment and provision, or any other form of service for a child, isn't necessarily a resource-heavy approach. It can be heavier if you need to provide independent advocacy, but as a general practice, as the simple example we've just given, it actually can save time, because you're going straight to the child and straight to the solution. It should just become part of people's routine practice and routine way of working that they make sure that their materials are accessible to children and that they pause to ask children's views along the way. The best teachers,

schools and local authorities are already working in that way.

[301] **Michelle Brown:** Okay, thank you.

[302] **Lynne Neagle:** Thank you. We're going to go on now to talk about children's rights, and you have said that you would like to see a due regard duty on the face of the Bill. I'm sure you'll also be aware that the Welsh Government resisted those calls in relation to the Social Services and Well-being (Wales) Act 2014. What do you think the consequences will be if we go ahead with this Bill without that due regard duty?

[303] **Dr Holland:** Okay. Overall, of course, it did go into the social services and well-being Act, but not into the accompanying Regulation and Inspection of Social Care (Wales) Act 2016, which I was asking for last year. Overall, I would just remind colleagues—and probably this committee doesn't need this reminder—there has probably not been a greater opportunity to further the Welsh Government's duties to pay due regard to children's rights than in this piece of legislation. Since the National Assembly got primary legislation powers, it's probably, in my view, the biggest piece of legislation that's focused on children and their fundamental rights, solely. Some of the other Acts have been all-age Acts, haven't they? But this one is solely focused on children and young people up to the age of 25, and really, very fundamentally, about their human rights.

[304] Obviously, the Welsh Government has committed to paying due regard and for Ministers to pay due regard to children's rights through the children's rights Measure, but, for me, this gives a fantastic opportunity, and really a vital opportunity, to absolutely cement Wales's commitment to children's rights through this legislation.

[305] The primary objectives of the Bill—the three overarching objectives—and the 10 core aims really are children's rights-based, on the whole, and I'm very supportive of them, but I think where this Bill and the code misses a trick, really, is not to make that explicit link with children's rights. I think the objectives and the aims would be strengthened, made concrete and more coherent, actually, if they were more explicitly set within a children's rights framework, using a children's rights approach. I've taken some space within my written submission to explain, really, what a children's rights approach is in general, and have just given some examples of how it could relate to the Bill and to the code.

[306] I think, within the Bill, the primary means in which the Bill could be amended to embed it within a children's rights approach, overall, would be through the extension of due regard from just being for Ministers to all people-exercising functions. And then the code could make explicit links throughout to children's rights, and there are many aspects of the Bill that could do that.

[307] I think that the strengthening would be that it would be empowering for children and young people. It really fits the ethos and aims of the Act to move away from a system that, clearly, is experienced by children and parents as disempowering, as being one that puts up barriers and acts as a sort of gatekeeping—keeping children away from exercising their rights to a full education and to fulfil their potential. There's a clear intention within this Bill, which I wholly welcome, to take it out of a culture of battle. And the word 'battle' is what parents and children will say over and over again is their experience of the current system. And this Bill is about enabling a child's right to education, by explicitly making a due regard duty on all people-exercising functions—so the teachers, the teaching assistants, the local authority administrators, et cetera, and the people from other services who can assist a child's learning needs by explicitly giving them due regard. It will be reminding them of their fundamental duties under the UNCRC and it will remind them that children have a right to fulfil their best potential and to have a really full education. I think that's really important in terms of underlining the ethos. Actually, we've already got into discussing resourcing for the Bill, but think of the amount of resource, time and energy that goes into disputes at the moment, into gate-keeping, into keeping children out of the system. If we can move that resourcing into a much more enabling system that recognises children's rights to an education—and, for children with additional learning needs, there are rights to have those met—then we in Wales really will be moving a big step forward into embedding the UNCRC into our policy and legislation and into children's everyday experiences.

[308] So, as you can tell, I feel very passionately that this is an absolutely primary opportunity, and the biggest opportunity yet, for the National Assembly to embed children's rights. I think that it would go such a long way to fulfilling some of the calls from the UN committee on the rights of the child, from the concluding observations last year. It would be a very positive and proactive response from Wales to the UN committee's recommendations.

[309] Hywel's done a lot of work with the observatory for children's rights on implementing and developing a general children's rights approach for our

office. I don't know whether you want to add any points.

[310] **Mr Dafydd:** The point I would make is to keep it very practical in the sense that this isn't about symbolism; this is about bringing children's rights into their day-to-day lives within their school settings. Whilst there was significant debate in the previous Assembly, there may be a fear that bringing the due-regard duty onto the face of the Bill might result in further litigation and challenge, and obviously we've argued elsewhere in our response that we want to avoid litigation and challenge everywhere we can. However, it's worth clarifying that empowering children, parents and carers with greater accountability when service provision has not met the standard that is required for them to realise their rights—we would obviously welcome that greater level of accountability. And it's worth, finally, clarifying that due regard essentially promotes fair consideration of children's rights, as the discussion we had with Michelle Brown alluded to. It's not necessarily their precedence over parents' rights and other factors; it's all about looking holistically at children's rights in education, and promotion of their safeguarding and well-being, and also considering other laws that give further effect to children's rights as well.

[311] I think there would be a real danger if this Bill was to go ahead without the explicit duty of due regard within it, and serious questions should be asked about how Government are fulfilling their duty there, because whilst we have strong rhetoric in Wales on children's rights, the reality—you know, there is an implementation gap from the rhetoric to the reality. There would be a clear disparity with a significant piece of legislation such as the Social Services and Well-being (Wales) Act 2014, and this, for me, and for us, as Sally has already said, in terms of directly impacting on children's lives, and generations of children's lives, is one of the most significant pieces of legislation to come from this institution.

[312] **Dr Holland:** It would be a real logical partnering with the Social Services and Well-being (Wales) Act 2014 as well, because, of course, many of the children engaged in the additional learning needs system will also be receiving services under the social services and well-being Act. So, it would be a real logical extension—why would you have one set of professionals with a duty to pay due regard and not others when, for the child, they may be receiving services from both?

[313] **Lynne Neagle:** Okay, thank you. Just finally from me on children's rights impact assessments, you've raised some concerns in your paper about

the CRIA process that's been undertaken for this Bill. Would you be able to expand on those?

[314] **Dr Holland:** Absolutely. I think, obviously, we're looking at all the CRIAs coming out of Government at the moment, and I think really my comments on this CRIA would apply to the children's rights impact assessment process more generally. What we're seeing is some progress in them being completed, with more detail than perhaps earlier versions had, but we've not yet moved to a position where we're seeing many, if any, CRIAs that are fully comprehensive, or even fully analytical.

12:00

[315] The point of any kind of equality assessment is that it gives a real opportunity for decision makers and those drafting legislation policies to really pause and think and anticipate what the potential implications of this policy would be, or this new law or piece of legislation would be, on children's rights. There's a risk that the way that the sort of style we're seeing of CRIAs coming out of Government at the moment is that they really are being used to justify a course of action by only paying attention to positive effects. As you have already heard, I do feel that this Bill and the draft code do have some real positive potential to further children's rights in Wales. So, I agree with many of the positive statements in the CRIA, but to do proper analysis at this stage—and this is what the CRIA is for—they should give a full opportunity to look at potential positive and adverse, or unintentional adverse effects of a Bill and to give full consideration to that.

[316] So, there was, for example—. There are many potential adverse effects outlined in the accompanying documentation—the explanatory memorandum, for example. There is a potential for creating a continued risk-averse system, for example, if the intended provision is not fully resourced. There are potential difficulties if there's not adequate access to advocacy. So, I think I just would like to see, in general, an including in this Bill CRIAs that give a fuller potential for analysis, and that officials are not scared at this point to put a full picture to decision makers of potential unintended consequences, as well as the potential positive effects. So, that's really what it's about, but, for me, it's really about how we're approaching these kind of assessments throughout Government.

[317] **Lynne Neagle:** Thank you very much. Julie.

[318] **Julie Morgan:** Thank you very much. What do you see as perhaps the main advantages of moving from the three-tier system to one individual development plan? Have you got any comments on that?

[319] **Dr Holland:** Yes, absolutely. Well, in general, I really support the move to a more universal system. I think, at the moment, a lot of time and energy from parents and children, and those responding to them, is taken up in examining the thresholds between the three tiers, and that does create a more combative system. So, I think that moving away from that recognises a much more nuanced approach—you know, that you're not just one thing or the other—and that, actually, children's additional learning needs are complex, as they can be fluid, they may go up and down. So, in general, I really support that approach.

[320] I think there are some key issues that do need further clarification, either in amendments to the draft code or, actually, amendments to the Bill. There are two key issues for me. The first one really is that I don't feel that there's enough clarification at the moment in the code on the sorts of circumstances that would move a child's provision into an assessment for additional learning needs. So, of course, in general classroom provision, a teacher will be differentiating between the needs of children in their classroom, providing a different style for children who present differently with different learning needs, and a teacher will take a preventative and early intervention approach without any need to move into any kind of formal system. All good teachers will do that. What's not clear for us yet is at what point the teacher or the parent, or the child, or another professional around them, would recommend that an assessment should be made for additional learning needs. So, we think that early stage needs needs clarification on in what sorts of circumstances a child would first be assessed for additional learning needs. I think there's a missed opportunity to clarify that.

[321] The second one could be quite a major change if the committee was interested in putting this forward as an amendment. There's a risk really that we may be, through the Bill as it stands, reintroducing a new tiered system, because we now have a differentiation between what the school will handle and what the local authority will be dealing with between a school-maintained IDP and a local-authority-maintained IDP. We could end up with a very similar tiered system where the governing body of a school and the local authority are trying to battle out as to who's going to take responsibility. So, although the proposals are for one type of plan, there's actually still a proposal for a two-tiered process.

[322] So, in my written submission, we've suggested that the committee may want to examine the merits of the primary duty for the additional learning provision residing with the local authority in all situations, but that their governing bodies would maintain a responsibility for co-ordinating that provision within a school, for monitoring progress within the school setting and for doing the person-centred work with the child or young person. I think that would be consistent with the current legal position that we have between school governing bodies and local authorities. Of course, in Wales, all of our schools are under local authority control, so that's quite a straightforward relationship. It would give a real clear mechanism for governing bodies to escalate any concerns around collaboration with other bodies. So, the local authorities are in a much stronger, more authoritative position, for example, to ensure collaboration with health provision and social care and other bodies—transport et cetera—than a school is on its own. So, I feel that it would give real strength to the provision if the primary duty lay with local authorities.

[323] I think that the education consortia also have a role, particularly in ensuring that resources are used well. But I would like to propose to the committee that they may wish to consider this as a potential amendment to the Bill.

[324] **Julie Morgan:** So, you fear that the proposals as they stand now will produce, as we were discussing, a two-tier system.

[325] **Dr Holland:** Yes. What we're trying to do, I think—my main understanding of one of the key aims of the Bill is to take away an adversarial system from this to make it much more about fulfilling the child's right to education. Resources are wasted when we get into disputes about who's responsible for what. What we need to do is make sure that lines of responsibility are very clear and I think that the governing body in a school would have a vital role still to play here, but if that overall responsibility for provision for all schools still lay with the local authority, then you would avoid that potential dispute between governing bodies and local authorities. Also, it would be much more straightforward for smaller schools and rural schools—they're often rural schools, aren't they—to not have to team up with other schools to make sure that they have the provision and that they're ready.

[326] **Julie Morgan:** You spoke earlier about the battle—and they do refer to

it as a 'battle'. The battle—the experience that I've had—is usually with the local education authority. So, do you not think that having the governing body would be more immediate in terms of making it less adversarial?

[327] **Dr Holland:** I think the governing body would still have a really clear role for co-ordinating the provision and monitoring the child's progress. I think it's currently a battle with the LEA because of how the system is set up. The current system almost invites gate keeping. I think that the local authority needs to be challenged if they are encouraging that kind of experience for parents, and I agree—obviously, that's the kind of casework that comes into my office as well.

[328] **Mr Dafydd:** I think it's worth us reflecting on section 3.91 within the explanatory memorandum, which states that:

[329] 'Where a learner with an IDP maintained by a local authority is registered or enrolled at a maintained school...the Bill...requires that the school...takes all reasonable steps to secure the ALP included in the IDP—but ultimate responsibility rests with the local authority'.

[330] So, that type of arrangement and situation could work, instead of there being this two-tiered system for all school-based IDPs. That's what we're proposing.

[331] **Julie Morgan:** Thank you. Shall I go on or do you have somebody else?

[332] **Lynne Neagle:** Did you have a point on this, Darren?

[333] **Darren Millar:** Just a brief point. The OECD, yesterday, in its report, talked about ALN provision and suggested that this Bill was moving in the right direction. But, it did talk specifically about the regional consortia potentially playing a bigger role. Obviously, there's very little reference to the regional consortia in the explanatory memorandum at the moment, or even in the draft code. You hinted that the regional consortia might have a bigger role to play. Do you just want to tell us what sort of role that could be, potentially?

[334] **Dr Holland:** Yes. I agree that the regional consortia could play a role there. I think the consortia have been, up until now, really concerned with learner progression in very much an overall sense, haven't they? But, I think they could play a key role here in leadership, in terms of training and ethos,

but particularly in ensuring that finances are adequately distributed to children and young people, with provision for children and young people with additional learning needs. They would have a really good regional overview of that. At the moment, we don't have ring-fenced funding for additional learning needs. Obviously, funding is provided, but it's not ring-fenced. I think we need more monitoring of how funding is used for children and young people with additional learning needs. That's somewhere where I think the consortia could have a clear role.

[335] **Darren Millar:** Just on post-16 provision in particular, we had a bit of a discussion with the WLGA just a few moments ago and, in their evidence, it seems that one of their concerns is about the potential cost of the post-16 provision, which of course at the moment is currently met by the Welsh Government. Do you think there might be a role for the regional consortia in terms of commissioning the support effectively in FEIs if there's a need that manifests that an FEI is not able to meet on its own?

[336] **Dr Holland:** Well, FEIs are often providing for learners right across a region, aren't they? Young people will move across local authority areas to attend further education institutions. So, I could see a real role there. I think our general thrust or move forward in Wales is for much more regional planning and provision—at the moment, short of actual regionalisation of local authorities. It would be coherent and consistent with, for example, the regional planning and provision under the Social Services and Well-being (Wales) Act 2014 as well.

[337] **Darren Millar:** Thanks.

[338] **Lynne Neagle:** Okay, we've gone on, anyway, to the needs of learners of all ages. So, Llyr.

[339] **Llyr Gruffydd:** Diolch yn fawr iawn. Yn amlwg, mae hon yn Ddeddf sydd yn berthnasol i bobl o ddim i 25 oed, felly roeddwn jest eisiau holi ynglŷn ag oed cyn ysgol, a dweud y gwir. Mae yna baragraff yn eich tystiolaeth yn rhoi ychydig o sylw i'r cyfnodau allweddol yna a symud o un cyfnod i'r llall ac yn y blaen. Ond, jest i ganolbwyntio ar yr oed cyn ysgol i

Llyr Gruffydd: Thank you very much. Obviously, this is a Bill that is relevant to people from zero to 25 years of age, so I wanted to ask about the pre-school arrangements. There is a paragraph in your evidence that talks about those key stages and transitioning from one stage to another and so on. But, to concentrate on the pre-school age

ddechrau, pa mor ddigonol a ydych chi'n credu yw'r ddarpariaeth yn y Bill ar gyfer nodi anghenion a darparu ar eu cyfer nhw o safbwynt plant cyn eu bod nhw'n mynd i'r ysgol? groups to start, how sufficient do you think the provisions in the Bill are for identifying and providing for the needs of children of that age, before they go to school?

[340] **Dr Holland:** I think, in general, there's not a lot of focus on the early years in the Bill and code as it stands. So, I would like to see more clarity and detail about how the needs of this age group are going to be met. Of course, many children who are going to need additional learning needs, that's identifiable from birth. Certainly, when children start to enter pre-school provision, additional learning needs can often become apparent at that stage. So, most parents' first encounter with the additional needs of their child will come at this stage. It is important, then, for there to be clarity, support and co-ordination between services. So, for example, health visitors will have a key role at this point.

12:15

[341] So, I really think there could be a lot more clarity. I think there could also be more recognition at this point of the role of the non-maintained sector; many children at this stage will either be attending provision that is privately maintained or a *cylch meithrin* or a pre-school playgroup type of provision. They might be in a mixture of that and going to a maintained nursery. Nearly all of those children in Wales will go on to a maintained school, and that transition point is going to be crucial. So, I think, actually, there just isn't much detail yet as to how that's going to work. We know that that and the post-18 to 25 provision are both significant expansions of the scope of ALN provision in Wales. They're expansions that I welcome, but I think, for this age group, we really could do with a lot of clarity.

[342] Early intervention, of course, is just absolutely vital for the child's progress. I've spent time in the last couple of weeks with pre-school children who are deaf and hard of hearing and their parents, for example, where children are born deaf to hearing parents. Those parents need a lot of support in terms of communication right from the child's birth—access to British Sign Language training, et cetera—so that that child is given the best early start that will serve them well right through their educational situations. So, I would like to see more attention to that period and more clarification.

[343] **Llyr Gruffydd:** Mwy o sylw, ond **Llyr Gruffydd:** More attention, but

a fydddech chi eisiau rhoi dyletswyddau ychwanegol ar rai o'r *stakeholders* ychwanegol hefyd, felly? Hynny yw, roeddech chi'n sôn am gylchoedd meithrin ac yn y blaen. Yn amlwg, mae yna ddisgwyliad o safbwynt y gwasanaeth iechyd i adnabod yr anghenion, ond efallai dylid bod dyletswydd cryfach arnyn nhw i hysbysu gwahanol rhanddeiliaid ac yn y blaen, ond a fydddech chi am roi dyletswyddau penodol ar rai o'r darparwyr eraill hynny hefyd?

would you want to also place additional duties on some of the additional stakeholders, therefore? Because you were talking about the *cylchoedd meithrin* and so forth. Obviously, there's an expectation on the health service to identify needs, but perhaps there should be a stronger duty on them to inform various stakeholders and so forth, but would you want to put specific duties on some of those other providers, then?

[344] **Dr Holland:** Yes. I don't know whether we're going to talk about health provision more generally later, so I do welcome some of the strengthening of the duties on the health sector, but, yes, I would welcome a focus on duties to inform. As I said, for midwives, but particularly health visitors and specialists as well, there's going to be some real knowledge there and anticipation of the likely needs of a child. Do either of you have anything to add to that? No, okay.

[345] **Llyr Gruffydd:** A gaf i fynd i ben arall y sbectrwm, a phobl ifanc sydd mewn addysg bellach? Nid oes yna ddarpariaeth yn y Bil ar gyfer pobl ifanc sydd yn gwneud prentisiaethau, er enghraifft. Bydddech chi, rwy'n tybio, yn awyddus i weld y Bil yn cynnwys y rheini.

Llyr Gruffydd: Could I move on to the other end of the spectrum, therefore, and young people who are in further education? There is no provision in the Bill for young people who are undertaking apprenticeships, for example. I assume you would want to see the Bill including them.

[346] **Dr Holland:** I think, where practical. I would think that any work-based learning should be included in this Bill. There could be some difficulties in extending it to private sector businesses, but, of course, many young people who are taking part in traineeships, apprenticeships and work-based learning, will also be linked into a local college, et cetera. So, there certainly could be the ability to do that there. I think we should be exploring all options, really, at that point, and hopefully, you'll have some expert witnesses from that area who will be able to assist with looking at opportunities for that. But the needs of those young people should not be

forgotten.

[347] There are particular young people with additional needs who are much less likely to be in employment, education and training than other young people. So, anything we can do to help them live a full life and take part in and move into the field of work through apprenticeships and traineeships should be welcomed. I think, for that age group in general, as I say, I really welcome the extension of provision up to the age of 25—that kind of cliff edge that many young people experience at 16 or 18 in terms of provision is very stark, actually.

[348] Again, I spent time recently with a group of young people with complex additional learning needs and their parents in north Wales, a couple of months ago, and I was really struck by the parents' anxieties about the next stage after schooling in terms of college, training, workplaces or just things to do during the day. I asked them all what changes they would make if they could, if it was within their powers, and I was very struck by one mother saying to me, 'If I had a magic wand—this sounds awful—but I wouldn't let my child grow up because I'm so scared of what's going to happen next.' That was in a rural area. Actually, no, it wasn't; it was in a large town in north Wales, but the nearest college provision for those particular young people was in a rural area over an hour's drive away and for those young people the parents were facing driving them there and driving back at the beginning and end of each college day. There is some real need there in terms of resourcing and thinking through the implications of the Bill up to 25, but I still welcome the fact that this Bill gives us the opportunity for a smoother transition at that stage.

[349] At the moment, for example, if a young person's moving at 16 into—. Many schools only provide up to 16, so they'll be, of necessity, moving on perhaps to a sixth-form college, an FE college or a school that has a sixth-form and to have the right to bring their independent learning plan with them at that stage is also very welcome. Every transition is a concern, a potential crisis point for a child and their parents, and we really need to make sure that that doesn't become a great source of anxiety and crisis within a family, just because the child has reached a natural transition point in their age group.

[350] **Lynne Neagle:** Thank you. We're going to do the relationship with health now and then we'll come back to disputes, Michelle. So, Julie.

[351] **Julie Morgan:** Obviously, the relationship between health and the local authorities is absolutely crucial. Do you feel the provisions in the Bill are adequate?

[352] **Dr Holland:** Yes and no, I suppose. So, probably that's a 'no' then, isn't it? I do feel there's been a real shift in this Bill compared to the draft Bill. There's been a significant attempt to strengthen the duty on health bodies to make provision for children's additional learning needs through health. As you will be well aware, NHS bodies will have a new duty to consider if there's any relevant treatment or service, and if so they must secure the provision of the treatment or service, and that second part is a strengthening, which I strongly welcome.

[353] I do feel concerned about the powers of the tribunal though. So, I hope that in a less adversarial system we may have fewer disputed cases, but a clear rights-based system must give a clear accountability structure and a clear place to resolve disputes. I think it's concerning that we've made a step forward in terms of including health more securely within the provision aspect, but are maintaining two completely separate routes for appeals. To me it's illogical and it doesn't make sense. It's introducing a complexity that will be unhelpful for children and families. I think it would be easily solved by saying that health disputes that are about the provision to meet additional learning needs could be addressed by the tribunal as well.

[354] **Julie Morgan:** So, do you think there would be resistance to that?

[355] **Dr Holland:** I'm not sure why it's not currently there. Is it in the Bill or the code?

[356] **Mr Dafydd:** The resistance may come from Government, but the tribunals, SENTW themselves, now, this would be something that they are calling for.

[357] **Julie Morgan:** Right.

[358] **Dr Holland:** To me this would be a very rational and straightforward amendment.

[359] **Julie Morgan:** Right, thank you.

[360] **Lynne Neagle:** Hefin, on links with health.

[361] **Hefin David:** What about the relationship between the local authority and health? Is that sufficiently strong?

[362] **Dr Holland:** As I say, if the local authority was made responsible for additional learning or additional learning provision then it does give the opportunity for them to develop stronger links than, probably, are there at the moment in terms of strengthening the relationship with health and ensuring that they are fully engaged. The Bill actually doesn't fully reflect, in a way, where we're moving to in Wales in terms of under the Well-being of Future Generations (Wales) Act and new arrangements with the public services boards, for example. We should be moving into a situation at local authority level where we have new mechanisms under the public services boards to really strengthen arrangements between local authorities and health to ensure that, proactively, they're working together on meeting the holistic needs of children with additional learning needs. It's perhaps quite curious in a way that less attention—. Is there any attention given to that within the code? I'm not sure—[*Inaudible.*] If you read it carefully—.

[363] **Mr Dafydd:** I think the policy documentation is very light on references to the Well-being of Future Generations (Wales) Act and, as Sally says, there's more scope for that guidance to filter through to this Bill.

[364] **Lynne Neagle:** Okay, thanks. Hefin, do you—?

[365] **Hefin David:** I'll stop now if you wanted to go on.

[366] **Lynne Neagle:** Well, I've got Darren who wants to come in on this.

[367] **Darren Millar:** Yes, I just wanted to ask about the—. The Bill makes provision for requesting information from health boards, effectively, by local authorities, and says that they have to be the body that makes the referral to a health board to consider a need. But there's no provision allowing a school to make a direct referral to a health board and to request that a need be considered. Do you think that's a deficiency in the Bill? I mean notwithstanding your desire to have local authorities doing everything.

[368] **Dr Holland:** My feeling is that the local authority would have more power to do that more effectively and could really develop a really specialist team, a knowledgeable team, that could do that on behalf of schools, particularly small schools that wouldn't be able to afford to employ someone

specifically to do that. I'm not sure whether either member of my team have got a view on that.

[369] **Darren Millar:** But if the proposed system is established with the duties residing with individual schools and their governing bodies, do you think that they ought to have the opportunity to make a direct referral to a health board?

[370] **Dr Holland:** I can't, off the top of my head, think of a reason why not. I think, as I say, that the risk would be their level of expertise and power there in relation to the health board. Earlier on, your question implied, really, that—and my response agreed, really—there could be much more of an expectation of a two-way relationship there with health boards themselves proactively—health specialists and professionals proactively identifying potential additional learning needs, as well as the other way around. Really, under the public services boards, I would want to see a much stronger relationship all round in meeting these children's needs, as we know that one of the biggest barriers that children and their parents experience is that lack of join-up and lack of coordination between different services. Really, we would want to see a much more proactive approach from social services, health services, and education services, to meeting the holistic needs of these children and finding the best mechanisms and best communications to do that.

[371] **Darren Millar:** And just a final question from me: obviously, we've got some guidance for learners with medical needs at the moment, which is available to schools and is given out to local authorities. That's in the process of being refreshed. It's very near complete, as we understand it, as a committee, but we haven't yet seen it. Do you think that medical conditions should be within the scope of this Bill rather than without it, given the fact that very often a need will arise as a result of a medical condition, and, you know, the guidance that's currently issued doesn't give any system of redress whatsoever other than a complaint to a health board, presumably?

[372] **Dr Holland:** Yes. I agree that we certainly need to strengthen our current arrangements for children with health needs that affect their learning at school. I think the decision needs to be made as to through what mechanism that is done, but it certainly needs to—I know I've made some notes on this, I'm just trying to find out where they are in my pages.

12:30

[373] Anyway, I'll just tell you straight what I think.

[374] **Darren Millar:** Is having one system is, effectively, what I'm—

[375] **Dr Holland:** I think it's clear that the current system is not strong enough to meet all children's needs for health in school. The current guidance does not seem to be strong enough, and it needs to be strengthened. We currently have not been given an indication of how that's going to be achieved, or when. I think the least I would expect out of this scrutiny process would be a clear statement from Government as to their intention as to how they're going to strengthen children's rights in this area. It could well be that this Bill is a place where those rights could be brought together and put in, or it may be that Government says, 'We're confident we can meet those children's needs by strengthening of the statutory guidance there.' I suppose I feel that—I want those children's rights to be met through the most effective means, and I would like a clear statement as to how that's going to be done. Whether that's done through strengthening the current statutory guidance, but properly strengthening it, or through this Bill, I suppose I'm a bit neutral about.

[376] **Darren Millar:** Okay. Thanks.

[377] **Lynne Neagle:** Thank you. Michelle.

[378] **Michelle Brown:** Thank you, Chair. In terms of the casework that's coming through your office, how much of it relates to additional learning needs?

[379] **Dr Holland:** So, we did a quick tally before we came in here. We've had about 60 cases so far this year, to date, in relation to additional learning needs since 1 April, which is about 15 per cent of our cases, which is about standard for our office. They're very wide-ranging. They range from parents or children needing additional, just initial, information about how to access the system, which, as we know, is currently cumbersome and there's lots of gatekeeping in it, through to us having to intervene in a fairly complex way to ensure that children get their rights. We get involved at three levels, probably: giving initial information about rights and how to go about it, secondly would be assisting with things like wording to get those rights—'This is the process you need to do, and would you like us to help you with wording that?'—and, thirdly, we would get involved, often in quite a complex

way, before the child gets their rights. I don't know whether you want to have one or two examples or—

[380] **Michelle Brown:** I was actually going to go on to ask you what are the thorny—I'm guessing that it's going to be lots and lots of very varied reasons why these cases are coming through to you, but which would you say are the thorniest issues that are cropping up in your casework.

[381] **Dr Holland:** I'm going to turn to Liz, because she does this every day in my office, the thorniest issues.

[382] **Ms Bowen-Dack:** Probably, there are three key ones, which are assessment, provision and placement. They would be the three main ones that come up in those cases, and, depending on the type of question in relation to those—if I give you an example, advising parents on how to go access the assessment process, advising them on what sort of evidence they would need to take to the school or the local authority to make that request and to ensure that that's given the attention it deserves. Provision is quite wide-ranging, so it's anything from ancillary support to specialist teaching for dyslexia or a specific learning difficulty. Placements—again, that's specialist teaching facilities, or, even, for a child with additional learning needs, access to a mainstream school with additional support. So, they're the sorts of three main areas, really, that come through to us.

[383] **Dr Holland:** Often, we're finding that parents are finding that it's just all taking such a long period, and we often have to help speed the process up and cut to the quick. You were giving me an example earlier today about where a family were continually being asked for more information. Do you want to give that as an example?

[384] **Ms Bowen-Dack:** We had two cases, actually, one for a primary-age pupil who had obvious emotional and behavioural difficulties in the infant stage of school, and the school and the professionals involved with that young person were putting evidence to the education panel for additional provision or a specialist placement and the panel kept declining and asking for additional information or making additional suggestions, strategies to try. The school and the staff had exhausted those. We called the local authority concerned and just asked the question why were they continually doing this. At the next panel that child got a placement at a specialist teaching facility to help that pupil with their emotional and behavioural difficulties.

[385] **Dr Holland:** Whenever I meet parents—I meet a lot of parents and children and young people with additional learning needs of all types—their most common phrase, as we’ve said already, is that it’s been a battle. So, often, they say, ‘It’s great now; we’ve got this place and it’s working well but, gosh, it was a battle.’ And sometimes, they say, ‘and I’m a solicitor’ or ‘I’m a teacher myself’ or whatever and they say, ‘What must it be like if actually you struggle with literacy or something like that?’ So, anything that can make the system more streamlined, more accessible and simpler has got to actually save a lot of resource, which can be put into direct provision rather than that resource that goes into gatekeeping.

[386] **Michelle Brown:** Okay, thank you.

[387] **Lynne Neagle:** Okay. And, in terms of the process for resolving disputes, how important do you think it is that information and advocacy are made available, not just to parents but to young people? Have you got any concerns, given the difficulties that we’ve had delivering on advocacy for looked-after children, that this is going to prove a challenge for this as well?

[388] **Dr Holland:** I really welcome the strengthening of the right to independent support and advocacy for children, which, of course, is a new provision and that’s a clear extension of children’s rights, which I really welcome. I think it will be important to clarify and make a distinction between the role and functions of advice and assistance and actually rights-based independent advocacy, which, under this Bill, will be if a case is moving to dispute. I think that will be important. It will also be important to dovetail with other advocacy rights and services. Some children may have advocacy rights because they’re also looked after, for example. You certainly wouldn’t want a child to be having several advocates working on different aspects of their lives. You might want then streamline services more locally. It’s a big, new provision and some thought is going to be needed for that.

[389] You’ve mentioned looked-after children. One point I do really urge the committee to look at—it’s quite a technical point, but it’s really important—is the definition of the looked-after child in this Bill. For me, it’s a really important point. Currently, the definition of a child in the Bill is—and my colleagues will correct me if I’ve got this wrong, because I’m not looking at my notes here—for a child up to school-leaving age. Currently, in Wales, school-leaving age is 16. I think the whole definition of ‘a child’ under this Bill should be moved to 18 to be consistent with the law and with the United

Nations Convention on the Rights of the Child. So, that's one point. Using school-leaving age is not a legally strong point; the school-leaving age might change. There are many who would argue that it should already be 18. I think that's an issue for the looked-after child and it doesn't fit with our definitions of a looked-after child's rights under the Social Services and Well-being (Wales) Act 2014, which go right up to the age of 25. That's just a small technical point, but I do urge you to have a look at that in terms of your report. It's in my written submission.

[390] Another terminology issue is under section 61(3) on independent support. It talks about children and young people 'for whom the local authority is responsible' and it's not quite clear what that means. To us, it would make more sense for it to be about all children or young people resident in the local authority area, because, as I've already said, there's some uncertainty about does this mean just the children that the local authority, under this potential two-tier system, is taking responsibility for or does it also cover children whose needs are being met under the school governing body. So, I just think to change that to 'resident' would be a clarification.

[391] **Lynne Neagle:** And just finally, do you think there's any unintended consequences of requiring the consent of 16 to 18-year-olds to provide an IDP and make provision for them? And are we getting the balance right between children and young people's rights and the issue of their best interests?

[392] **Dr Holland:** I've sort of hinted at this already. I think that, as a first starting point, the Bill should extend the definition of a child up to the age of 18, and then young person up to 25. I think that would be legally consistent, and consistent with Wales's commitment to the United Nation's Convention on the Rights of the Child and other legislation concerning the definition of a child. So that's one aspect of my response; I feel that's very important. But for any child under 18, then, whether they're 16 or 14 or eight, those supporting them would want to weigh up the child's wishes and feelings, and their best interests. I think all children, who have capacity, should be encouraged to express a view, including a view as to whether they wish have an ALN assessment or not. I think that 16 therefore is a rather arbitrary cut-off in that sense and 18 would have much more legal coherence. That doesn't mean that I wouldn't take very seriously a 16 or 17-year-old's views if they wished to refuse an assessment. And you wouldn't be able to force an IDP on a child, or an assessment for it, if they're not in education, for

example, because they're 16 or 17.

[393] But I think, really, there are potential unintended consequences here. It could be that a child's first response—and of course, this could be a child with behavioural and emotional difficulties, perhaps on the autistic spectrum et cetera. Their first response might be, 'No, I'm not having that'. And in an era of austerity, to immediately say, therefore, 'Okay, you're not having it'—you know, there's a potential unintended consequence. I would want to make sure the door was left open for the child to be given the information as to the potential positives of having it, and, as I say, a real sort of weighing up of the best interests with the child's views. Perhaps, if a child or a young person up to the age of 18 continues to not wish to have one—of course, that may well be the best way forward. But those around them may wish to still state that they're likely to be eligible if they wish to return to education or training. And I think that we've heard from young people, perhaps—. This committee's heard many times about, for example, young people who have left care and then found at 16—. They've said, 'No, I'm going' and then found no way back in. We wouldn't want the same sort of thing to happen here.

[394] **Lynne Neagle:** Okay, thank you.

[395] **Mr Dafydd:** Just very quickly. It's a very valuable example to shed light on the earlier discussion about the duty of due regard; as working within a rights-based framework, all of those considerations are part of practice. So it's a very useful way to draw light on that earlier part of the discussion.

[396] **Lynne Neagle:** Okay, thank you.

[397] **Dr Holland:** And again, here we have this anomaly with looked-after children being defined as compulsory school age, which I really think must change.

[398] **Lynne Neagle:** Okay, lovely. Thank you. Can I thank the commissioner and her team for attending this morning? We've had a really helpful and fascinating discussion, and we thank you for your time. As usual, you will have a transcript of the discussion to check for accuracy, but thank you very much anyway.

[399] **Dr Holland:** Thank you very much. Diolch yn fawr.

[400] **Lynne Neagle:** The committee will now break for lunch. Can Members

be back here please at 13:40 for a pre-meeting? And if we can, we'll do a bit of a wash-up on this morning. Thank you.

*Gohiriwyd y cyfarfod rhwng 12:44 ac 13:46.
The meeting adjourned between 12:44 and 13:46.*

**Y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru):
Sesiwn Dystiolaeth 5
Additional Learning Needs and Education Tribunal (Wales) Bill:
Evidence Session 5**

[401] **Lynne Neagle:** Good afternoon. Can I welcome everybody back for an evidence session on the ALN Bill with the Welsh Language Commissioner? I'm delighted to welcome Meri Huws, the commissioner, and also Huw Gapper, who is a senior policy and research officer in her office. Thank you for coming and thank you too for your evidence in advance of the meeting. If you're happy we'll go straight into questions. If I could just start by asking you to what extent you feel this Bill is an improvement on the draft Bill that we saw previously.

[402] **Ms Huws:** Diolch yn fawr am y cyfle i fod yn rhan o'r drafodaeth yma. Pan welsom ni raglen lywodraethu'r Cynulliad yma ac adnabod y rhestr o Fesurau neu Filiau yr oeddech yn mynd i'w hystyried, roedd hwn yn un o'r Biliau a oedd yn agos iawn, iawn, iawn at fy nghalon i a'n calon ni fel sefydliad. Felly, a gaf i ddweud yn gyntaf pa mor falch ydw i bod y Bil wedi gweld golau dydd? A ydw i'n ei ystyried e'n welliant ar beth a gyflwynwyd yn 2015? Ydw, ydw, ydw. Mae e gymaint, gymaint cryfach. Roedd gennym gonsyrn fel sefydliad nad oedd y ddeddfwriaeth a gynigiwyd yn 2015 yn cydnabod anghenion o ran y Gymraeg nac yn adlewyrchu anghenion gwlad ddwyieithog. Rwy'n credu, gyda'r Bil yma, ein bod ni'n symud gymaint yn

Ms Huws: Thank you very much for the opportunity to participate in this debate. When we saw the programme for government for this Assembly and identified the list of Bills that you were to consider, this was one of the Bills that was very close to my own heart and it's very important for us as an institution too. So, can I say, first of all, how pleased I am that the Bill has seen the light of day? Do I believe it to be an improvement on what was presented in 2015? Yes, yes, yes. It is so much more robust. We did have concern as an organisation that the legislation proposed in 2015 didn't recognise the needs in terms of the Welsh language and didn't reflect the needs of a bilingual nation. I think with this Bill that we are moving so much

nes at yr hyn sydd ei angen. Mae gennym sylwadau, fel y buasech yn ei ddisgwyl. Rydych wedi cael sylwadau yn ein tystiolaeth ysgrifenedig ni, ond wir, rwyf wedi cael fy nghyffroi gan dôn y Bil yma. Mae'r uchelgais a'r brwdfrydedd sy'n dod drwy'r ddeddfwriaeth—ac nid yw hynny'n rhywbeth rwyf yn ei dweud yn aml— yn rhywbeth sydd wedi codi fy nghalon i. Yn sicr, rydym yma i geisio cryfhau lle y gallwn beth sydd yn barod yn gymaint gwell na beth a welsom o'r blaen.

closer to what is required. We do have comments, as you would expect. You will have received comments in our written evidence, but, to be honest, I have been excited by the tone of this Bill. The ambition and enthusiasm that comes through the legislation—and that's not something I say very often—is something that has really gladdened my heart. Certainly, we are here to try and strengthen where we can what is already so much better than what we saw before.

[403] **Lynne Neagle:** Thank you very much. John.

[404] **John Griffiths:** Thank you, Chair. Prynawn da. Can I ask to begin with: what's your assessment of current Welsh-medium provision for those with additional learning needs?

[405] **Ms Huws:** O ran yr hyn rydym ni'n ei ddeall o'r ddarpariaeth sydd allan yna, yn gyntaf, fe wna i gyfeirio at waith sydd wedi cael ei wneud gan ambell i sefydliad arall, ac ambell i sefydliad arall, rwy'n siŵr, sydd wedi bwydo i mewn i'r drafodaeth yma. Mae yna ddarn o waith wedi cael ei wneud gan Arad yn 2016 yn sgil strategaeth addysg cyfrwng Cymraeg y Llywodraeth ac mae yna ddarn o waith a wnaethpwyd gan Estyn yn ôl yn 2015 yn edrych ar y cynlluniau strategol, y WESPs. Rydym ni hefyd wedi gwneud darn o waith ar y cyd â'r comisiynydd plant. Rwy'n credu, o edrych ar beth ddaeth allan o waith Arad ac Estyn, bod yna'r anghysondeb rhyfeddaf ar draws Cymru o ran darpariaeth yn y maes

Ms Huws: In terms of how we understand the current provision, first of all I'll make reference to work carried out by a few other organisations, and some organisations who I'm sure have fed into this debate. A piece of work was carried out by Arad in 2016 in light of the Government's Welsh-medium education strategy and there is a piece of work carried out by Estyn back in 2015 looking at the Welsh in education strategic plans, the WESPs. We ourselves have undertaken a piece of work jointly with the children's commissioner. I think, looking at what emerged from the Arad and Estyn work, that there was incredible inconsistency across Wales in terms of provision in this area.

yma. Roedd yna bocedi o arfer da—ac rwy'n credu ei bod yn bwysig inni gofio bod yna bocedi o arfer da iawn ar gael. Rwyf yn gredwr cryf, os oes yna bocedi o arfer da, bod modd adlewyrchu hynny mewn llefydd eraill. Mae modd dysgu o'r gorau a'i greu e eto.

[406] Ac o ran y gwaith a wnaethom ni gyda'r comisiynydd plant—ac rwy'n gwybod bod Sally wedi rhoi tystiolaeth y bore yma—gwnaethom ddarn o waith yn ail hanner llynedd ar y cyd oherwydd bod y ddwy ohonom yn derbyn cwynion yn eithaf rheolaidd ynglŷn â darpariaeth addysg ychwanegol, neu addysg arbennig fel mae'n cael ei adnabod ar hyn o bryd. Penderfynom ni, yn hytrach na gofyn ddwywaith yr un cwestiynau, y buasem yn gofyn yr un cwestiynau ar y cyd i awdurdodau lleol. Rwy'n credu mai'r neges—. Fe wna i ofyn i Huw, mewn munud, i amlygu rhai o'r prif ganfyddiadau, ond yr hyn y gwnaethom ni ei ffeindio oedd bod yr anghysondeb yna yn wirionedd ar draws Cymru—buaswn i'n defnyddio'r term 'anghyfiawnder tiriogaethol'. Mae'n derm a ddefnyddiwyd yn ôl yn y 1970au i ddisgrifio gofal cymdeithasol, ac rwy'n credu mai beth sydd gennym ni, yn anffodus, i ryw raddau yng Nghymru yw loteri cod post o ran y ddarpariaeth. Rwy'n meddwl bod yna gyfle yn y fan hyn, yn y ddeddfwriaeth yma, i adnabod yr anghenion, i adnabod yr heriau ac i lenwi'r bylchau. Wyt ti eisiau sôn

There were pockets of good practice and I think it's important that we bear in mind that there are pockets of very good practice available. I am a strong believer that if you do have pockets of good practice then that can be replicated elsewhere. We can learn from the best and recreate it.

In terms of the work we carried out with the children's commissioner—and I know that Sally gave evidence this morning—we carried out a piece of work in the second half of last year jointly because both of us were receiving complaints quite regularly on the provision of additional learning needs, or special educational needs as it is now known. We decided that, rather than ask the same questions twice, we would ask local authorities the same questions jointly. I think that the message—. I will ask Huw to highlight some of the main findings, but what we did find was that there was this inconsistency and that that was a reality across Wales—I would use the term 'geographical injustice'. It was a term that was used back in the 1970s to describe social care, and I think that what we have to a certain extent in Wales is a postcode lottery in terms of provision. I think there's an opportunity here, through this legislation, to identify needs, to identify challenges and to fill those gaps. Do you just want to talk briefly about the other findings of our work with the children's commissioner?

ychydig am y canfyddiadau eraill o'n gwaith ni gyda'r comisiynydd plant?

[407] **Mr Gapper:** Mi anfonwyd holiadur at y 22 awdurdod lleol. Mi roedd yr holiadur yn ymwneud â darpariaeth addysg cyfrwng Cymraeg yn gyffredinol oherwydd ein bod ni'n derbyn cwynion am y ddarpariaeth addysg Gymraeg yn gyffredinol, ond mi roedd rhai cwestiynau ynglŷn â'r ddarpariaeth dysgu ychwanegol yn benodol. Mi gafwyd ymatebion gan fwyafrif yr awdurdodau lleol.

Mr Gapper: A questionnaire was sent to the 22 local authorities, and the questionnaire was to do with Welsh-medium provision in general because we were having complaints about the provision through the medium of Welsh generally. Some of the questions were about the ALN provision specifically, and we had responses from the majority of local authorities.

[408] Mae'r prif ganfyddiadau wedi'u nodi yn ein tystiolaeth ysgrifenedig, felly ni af i ormod o fanylder. Ond, yn fras, y prif ganfyddiadau oedd, fel yr oedd Meri yn ei ddweud, fod yna anghysondeb daearyddol sylweddol. Y pwyntiau eraill a oedd yn codi oedd, yn gyntaf ac yn bwysig iawn, rwy'n meddwl: y pwynt cychwynnol efo'r ddarpariaeth ydy adnabod anghenion dysgu ychwanegol. Fel rhan o hynny, mae yna asesiadau ac mae yna brofion yn cael eu cynnal—er enghraifft, o ran dyslecsia a rhai cyflyrau eraill—ac nid yw'r asesiadau hynny ar gael yn y Gymraeg. Mae hynny'n broblem, rwy'n meddwl, oherwydd os ydych yn gofyn i blentyn—efallai rhai ifanc iawn a phobl ifanc eraill—sy'n siarad Cymraeg i gymryd prawf neu asesiad drwy gyfrwng y Saesneg, mae yna risg o ran dilysrwydd y prawf neu'r asesiad hwnnw.

The main findings are noted in our written evidence, so I won't go into too much detail about that. But, broadly speaking, the main findings were, as Meri said, that there are geographical inconsistencies that are significant. The other points arising, first and very importantly, were that the initial point with the provision is identifying ALN. As part of that, there are assessments and there are tests that are undertaken—for example, in terms of dyslexia and other conditions—and those assessments aren't available in Welsh. This is a problem, I think, because if you ask a child—maybe very young children or other young people—who speaks Welsh to take a test or an assessment through the medium of English, there is a risk in terms of the validity of that test or that assessment.

[409] Mi oedd yna dystiolaeth fod

There was evidence that some

rhai awdurdodau wedi mynd ati i gyfieithu asesiadau eu hunain. Roedd eraill yn ffeindio ffyrdd o gwmpas y peth—er enghraifft, yn hytrach na chynnal yr asesiad safonol, roedden nhw jest yn goruchwyllo yn gyffredinol heb gynnal asesiad ar gyfer plant sy'n siarad Cymraeg. Felly, o ran yr asesiadau—y profion—mae yna broblem fawr yn fanna, ac os nad yw hynny yn cael ei wneud yn gywir ar gychwyn y broses, mae beth sy'n digwydd wedyn dan fygythiad hefyd, rwy'n meddwl.

authorities had translated their own assessments. Others found ways around that—for example, rather than holding a standardised assessment, they just oversaw or observed that generally without having an assessment for children who speak Welsh. So, in terms of the assessments and the test, there is a great problem there. If that isn't corrected at the outset of the process, what happens then is under threat as well, I think.

[410] Datganiadau anghenion addysg arbennig—bydd y rhain yn cael eu disodli gan gynlluniau datblygu unigol. Ond, o ran datganiadau, mae yna amrywiaeth o ran beth sy'n cael ei gofnodi o ran y Gymraeg. Lle bo plentyn yn siarad Cymraeg, mi roedd rhai awdurdodau yn dweud wrthym ni eu bod yn cofnodi iaith y cartref, ac eraill yn dweud eu bod yn cofnodi cyfrwng dysgu yr unigolyn hwnnw o fewn yr ysgol, y coleg neu'r sefydliad addysgol arall. Felly, mae gwahanol gwybodaeth yn glŷn ag iaith y plentyn yn cael ei chofnodi.

Statements in terms of SEN—these will be displaced by the IDPs. But, in terms of the statements, there is a variation in terms of what's recorded in terms of the Welsh language. With a Welsh-speaking child, some authorities were saying that they were recording their home language, while others were saying that they were recording the medium of learning of that individual in the school or other educational institution. So, different information in terms of the language of the child was being recorded.

[411] Mae'r Bil, wrth gwrs, yn gosod dyletswydd ar sefydliadau i gofnodi mewn cynllun datblygu unigol beth yw iaith y plentyn ac ym mha iaith y dylid darparu'r cymorth. Mae angen mynd i'r afael â hyn, rwy'n meddwl. Beth sydd angen ei gofnodi—ai iaith y cartref sy'n bwysig neu ai iaith y cyfrwng dysgu sy'n bwysig? Sut mae

The Bill, of course, does impose a duty on institutions to record in an IDP the language of the child and in what language the support should be provided. We need to tackle this, I think. What needs to be recorded—is it the home language or the language of the medium of learning? How do you decide in what language the

penderynu ym mha iaith y dylid darparu cymorth i'r plentyn? Nid yw'r Bil na'r cod, fel y maent yn sefyll, ddim yn ymafael â hynny.

[412] Mae amrywiaeth eang, wedyn, o ran cyfleusterau sydd ar gael drwy gyfrwng y Gymraeg i blant sydd ag anghenion dysgu ychwanegol. Fel yr ydym ni'n gwybod, mae yna unedau arbennig mewn ysgolion ar gyfer y rheini sydd ag anghenion dwys. Dim ond mewn ychydig o siroedd y mae unedau ar gael sy'n gallu cynnig cymorth drwy gyfrwng y Gymraeg. Mae'r cwynion rydym wedi'u derbyn yn dangos bod rhai plant—rhai siaradwyr Cymraeg—sydd ag anghenion dysgu ychwanegol dwys yn gorfod cael eu hanfon i unedau arbennig o fewn ysgolion cyfrwng Saesneg oherwydd nad oes yna unedau arbennig yn bodoli o fewn ysgolion cyfrwng Cymraeg yr ardal. Mae rhieni'n mynegi pryder difrifol wrthym ni ynglŷn â hynny.

[413] Mae rhai awdurdodau yn methu darparu o gwbl ar gyfer anghenion dwys drwy gyfrwng y Gymraeg, er enghraifft, awtistiaeth a phroblemau ymddygiad difrifol. Mae yna rai ardaloedd lle nid oes darpariaeth Cymraeg ar gyfer yr anghenion dwys hynny. Ac yn olaf, o ran staffio, mae rhai ardaloedd yn medru darparu ystod lawn o staff sy'n ddwyieithog, er enghraifft, seicolegwyr addysg ac yn y blaen, a'r staff cynorthwyol. Mewn ardaloedd eraill, mae yna ddiffygion go iawn o

support should be provided to the child? The Bill and the code, at present, don't tackle that issue.

There is a wide variety, then, in terms of facilities that are available through the medium of Welsh for ALN students. As we know, there are special units for children—for those with intensive needs. Only a few counties have units available that can offer Welsh-medium support. The complaints that we've had show that some children—some Welsh-speaking children—who have intensive ALN needs are sent to units within English-medium schools because there aren't special units within the Welsh-medium schools in the area. The parents are very concerned and are expressing that to us.

Some authorities fail to provide at all for profound needs through the medium of Welsh, for example, autism and behavioural problems. In some areas, there is no Welsh-medium provision for those profound needs. And finally, in terms of staffing, some areas can provide a full range of staff who are bilingual, for example, educational psychologists and so forth, and support staff. In other areas, there are real weaknesses in terms of a lack of bilingual staff, but in those

ran diffyg staff dwyieithog, ond yn yr ardaloedd hynny mi oedd yna ryw faint o dystiolaeth o rannu personél a chydweithio i geisio cwrdd â'r gofyn. Felly, dyna, yn fras, yw'r prif bwyntiau yn gyffredinol. Fel roedd Meri yn dweud, mae'r darlun yn anghyson ar draws Cymru.

areas there was some evidence of sharing personnel and collaborating to try and meet the demand. So, very broadly, those are the main points, in general. As Meri said, there is a very inconsistent picture across Wales.

[414] **John Griffiths:** If I could follow up, Chair: you mentioned, Meri, that this Bill is an opportunity to fill those gaps. Huw has pointed out some areas in which, perhaps, the legislation isn't going to fill those gaps. What's your overall assessment of the legislation, as framed at the moment, in terms of making the necessary improvements?

[415] **Ms Huws:** O ran edrych ar beth sydd wedi cael ei gyhoeddi yn benodol, sef y Bil ar hyn o bryd, a'r cod sydd wedi gweld golau dydd yn ddiweddar—a gaf i ddechrau gyda'r Bil? Rydw i'n credu bod yna gyfle wedi cael ei gollu yn y Bil, ac yn y memorandwm esboniadol yn arbennig, sy'n gosod allan y tri nod a'r 10 amcan. Neu'r tri amcan a'r 10 nod. A gaf i gynnig bod eisiau unfed nod ar ddeg? Rydw i yn credu, o adnabod yr heriau sydd gyda ni yng Nghymru, a'r awydd i ddarparu, fod yna gyfle fan hyn ar dop y Bil i ddatgan bod creu gwasanaeth dilys, dwyieithog i Gymru angen mynd mewn i'r datganiad yna.

Ms Huws: In terms of looking at what has been published, specifically the Bill at the moment, and the code that has seen the light of day recently—may I start with the Bill? I do think that an opportunity has been missed in the Bill, and in the explanatory memorandum particularly, which sets out the three main aims and the 10 objectives. Or vice versa. May I suggest that we need an eleventh aim? I do think that, by identifying the challenges we have in Wales, and the desire to make provision, that there is an opportunity here at the top of the Bill, to state that creating a properly bilingual service in Wales needs to be included in that statement.

[416] Y peth cyntaf buaswn i'n ei wneud, er mwyn cryfhau a sicrhau cyfeiriad polisi i ddarn o ddeddfwriaeth sydd yn gryf yn barod, buasai gosod nod ychwanegol i mewn, sy'n cydnabod realiti Cymru o

The first thing I would do in order to strengthen the Bill and to ensure a policy direction for a piece of legislation that is already strong, would be to set that additional eleventh aim, which recognises the

ddwy iaith swyddogol. Buaswn i'n dechrau yn fanna. Rydw i'n credu, wedyn, o edrych ar y Bil—ac mi ddown ni nôl at hyn mewn manylder—ac yn sicr mae yna dystiolaeth, mewn ambell i le, nid yw'n eglur beth yw dyletswydd y corff sydd yn darparu—y corff sydd yn asesu nac yn darparu. Rydw i yn cael yr argraff, o ddarllen y Bil yn fanwl, yn ambell i le, mai edrych ar ddarpariaeth cyfrwng Cymraeg fel eilbeth mae'n ei wneud. Nid yw e'n trin y Gymraeg a'r Saesneg fel darpariaeth gyfartal. Mae'n sôn am ba mor ddymunol byddai fe i ddarparu gwasanaeth cyfrwng Cymraeg, yn hytrach na'r angen i ddarparu. Felly, rydw i'n gweld, o'r top i lawr: nod ychwanegol—dyna byddai fy nymuniad i; ac edrych ar rai o'r pwyntiau manwl yn y Bil i sicrhau nad oes unrhyw anghytundeb ynglŷn â gwasanaeth sy'n gyfartal yn y ddwy iaith, ac mae hynny'n heriol.

[417] Ac wedyn, o edrych ar y cod, ac edrych ar dudalen 10 y cod yn arbennig, sydd yn delio â'r Gymraeg, buaswn i'n dweud bod yna waith sylweddol i'w wneud ar y cod, o ran rhoi arweiniad i gynllunwyr ac i ddarparwyr ynglŷn â beth yw cynnig gwasanaeth trwy gyfrwng y Gymraeg sydd yn gyfartal â'r un Saesneg. So, rydw i'n credu bod yna sawl cam, ac mae yna gyfle bendigedig i'w wneud e nawr, o'r memorandwm esboniadol, trwy'r Bil, i'r cod, ac wedyn drwyddo i'r rhaglen trawsnewid y mae'r Gweinidog wedi

reality of a Wales that has two official languages. I would start there. I think, then, in looking at the Bill—and we'll return to this in detail—there is evidence here that, in some sections, it isn't entirely clear what the duty of the provider body is—the assessing body nor the providing body. I do get the impression, having read the Bill in some detail, that occasionally it is looking at Welsh-medium provision as a bolt-on. It doesn't treat the Welsh language and the English language as equal provision. It mentions how desirable it would be to provide a Welsh-medium service, rather than identifying the need to provide that service. So, from the top down, I think we need an additional aim, and we need to look at some of the detailed points of the Bill to ensure that there is no disparity in terms of the equality of service in both languages, and that's challenging.

And then, looking at the code, and looking at page 10 of the code particularly, which deals with the Welsh language, I would say that there is significant work to be done on the code in terms of providing guidance to planners and providers, in terms of what it means to provide a service though the medium of Welsh that has equality with the English provision. So, I think there are a number of steps and there is a wonderful opportunity here to do it now, from the explanatory memorandum, through the Bill and

cyfeirio ato. Rydw i'n credu, o wneud into the code, and then into the y newidiadau deddfwriaethol, byddai transformation programme that the modd gyrru'r rhaglen trawsnewid, Minister has referred to. I think, in wedyn. making these legislative changes, we can then drive that transformational programme.

[418] **John Griffiths:** Could I just follow up, briefly, Chair, on the staffing issues? Huw mentioned that one of the issues, obviously, is having the availability of Welsh language service provision and service providers. Obviously, we're not as bilingual as a nation as we would like to be, at the current time. So, to what extent do those issues, and issues of variability from one part of Wales to another in terms of Welsh speaking and the Welsh-speaking resource, in terms of people to do the jobs—to what extent does that affect the practicalities of delivering the sort of provision we would like to see through the medium of Welsh?

[419] **Ms Huws:** Mae yna her **Ms Huws:** There is a substantial sylweddol yn fanna, ac mae Huw wedi challenge there, and Huw has cyfeirio at y ffaith, mewn rhai llefydd, referred to the fact that, in some nad oes darparwyr ac mewn llefydd areas, there are no providers, and in eraill prin, efallai, yw'r darparwyr. others those providers are few and Ond, maen nhw yn bodoli. far between. But, they are there.

14:00

[420] Rwy'n credu bod hwn yn fater I think this is a matter generally for sydd yn gyffredinol i iechyd, gofal health, social care and education in cymdeithasol ac addysg yng Wales. We need to plan for our needs, Nghymru. Mae angen inni gynllunio but also the needs of future at ein hanghenion ni, ond hefyd generations. I believe, in identifying anghenion cenedlaethau'r dyfodol. the needs in a piece of legislation Rwy'n credu, o gydnabod yr angen such as this, then you can drive mewn darn o ddeddfwriaeth fel hon, policy and train and recruit in Wales. mae modd wedyn gyrru polisi It's not going to happen overnight. hyfforddi a recriwtio yng Nghymru. Nid yw'n mynd i ddigwydd dros nos.

[421] Rwy'n credu bod angen rhoi I do think that we need to put short-cynlluniau tymor byr yn eu lle. Mae term plans in place. Huw has Huw wedi sôn am ardaloedd yn mentioned areas sharing services. I

rhannu gwasanaethau. Rwy'n credu bod angen inni edrych ar y posibiladau yna. Ond, rwy'n credu, o dderbyn bod yna wendid staffio, mai nawr yw'r cyfle i ddweud, 'Reit, ble ydym ni'n mynd i fod mewn 10 mlynedd?', a chynllunio i sicrhau nad ydym ni yn yr unfan, ein bod ni wedi recriwtio, ein bod ni wedi hyfforddi a'n bod ni wedi creu'r gweithlu.

think we need to look at those possibilities. But, I believe, in accepting that there are staffing weaknesses, this is the opportunity to say, 'Right, where will we be in 10 years' time?', and to plan to ensure that we are not in exactly the same place, that we will have recruited staff, we will have trained staff and we will have created that workforce.

[422] Mae'r ddarpariaeth yn tyfu yng Nghymru o ran y ddarpariaeth i alluogi hynny mewn meysydd iechyd. Mae angen edrych ar anghenion dysgu ychwanegol hefyd, fe fyddwn i'n dweud. Nawr yw'r cyfle i wneud.

The provision is growing in Wales in terms of the provision to enable that in health. We need to look at ALN also, I'd say. This is the opportunity to do so.

[423] **Mr Gapper:** A allaf i ychwanegu at hynny? Mae angen cynllunio drwy ein system addysg ac yn y blaen ar gyfer y dyfodol, fel mae Meri'n dweud, a chael digon o seicolegwyr addysg ac ymarferwyr eraill sy'n gallu siarad Cymraeg. Ond, mae hynny'n mynd i gymryd amser ac mae yna gwestiwn ynglŷn â beth ydym ni'n gwneud yn y cyfamser. Beth sydd ddim yn glir yn y cod ydy, o ran y cyfamser hwnnw, beth yw'r disgwyliadau ar awdurdodau a darparwyr eraill i gydweithio a rhannu adnoddau, ac yn y blaen.

Mr Gapper: If I could add to that. We need to plan through the education system for the future, as Meri said, and have enough educational psychologists and other practitioners who are able to speak Welsh. But, that's going to take time and there is a question about what we do in the meantime. What's not clear in the code, in terms of the meantime, is what the expectations are on authorities and other providers to collaborate and share resources, and so forth.

[424] **Lynne Neagle:** Thank you. Llyr.

[425] **Llyr Gruffydd:** Rwy'n teimlo bod bach o'r iâr a'r wŷ yn fan hyn, onid oes? Hynny yw, heb fod yna rhywbeth cryf yn y ddeddfwriaeth yn dweud bod angen darpariaeth

Llyr Gruffydd: I think there's a chicken-and-egg situation here, isn't there? Because, unless there is something robust in the legislation saying that Welsh-medium provision

cyfrwng Cymraeg, o bosibl, fe fyddwn ni'n cael yr un drafodaeth eto mewn 10 mlynedd arall.

is required, then we may be having the same conversation again in another 10 years.

[426] Nid wyf yn gwybod i ba raddau y dylem ni fod yn defnyddio'r Bil hwn fel cyfle i ddweud, 'Mi ddylai fod yna ddarpariaeth ar gael' ac wedyn, yn sgil hynny, efallai bod yna gymalau machlud sy'n dweud, 'O fewn pum mlynedd, bydd yr elfen "ei bod yn ddymunol i gael" yn troi mewn i "fod yn rhaid"', neu rywbeth fel yna.

I don't know to what extent we should be using this Bill as an opportunity to say, 'There should be Welsh-medium provision available' and then, in light of that, perhaps there could be some sunset clauses saying, 'Within five years, "it would be desirable to have" will become "a requirement"', or something like that.

[427] Rwyf jest yn teimlo bod yna berygl, os ydym ni'n aros am strategaethau ac yn aros i bobl ddod ymlaen o le bynnag maen nhw'n dod i gael eu hyfforddi ac yn y blaen—nid yw'n rhoi sicrwydd i fi y bydd y gwasanaeth yn gwella ar ddiwedd y dydd.

I just think that there's a risk if we are waiting for strategies and waiting for people to come through, from wherever they are, to be trained and so on—it doesn't give me that assurance that the service will improve at the end of the day.

[428] **Ms Huws:** Beth sydd gyda ni fan hyn, rwy'n credu, fel mae'r Gweinidog wedi disgrifio, yw system gyfan, sydd yn ddeddfwriaethol, sydd yn sôn am raglen a chod. Nid wyf yn siŵr bod y pecyn yna yn cydnabod yn deilwng yr anghenion sydd yna i greu gwasanaeth dwyieithog a chryfhau'r elfen Gymraeg er mwyn sicrhau bod yna gyfartaledd, bod yna gydbwysedd, bod yna gyfiawnder.

Ms Huws: What we have here, as the Minister has described, is a whole system, which is legislative, which talks about a programme and a code. I'm not sure that that package does recognise in a valid way the needs that are there to create a bilingual service and to strengthen the Welsh language element in order to ensure that there is equality and that there is balance and that there is justice.

[429] **Llyr Gruffydd:** A oes unrhyw asesiad wedi'i wneud ynglŷn â pha mor bell ydym ni o gyrraedd y pwynt le gallwn ni ddweud bod yna wasanaethau? Hynny yw, rwy'n gwybod ei fod yn cymryd nifer o

Llyr Gruffydd: Has there been any assessment made of how far we are away from the point where we can say that services are available? I know it takes a number of years to train, it takes time to recruit, and

flynyddoedd i hyfforddi, mae angen amser i recriwtio, mae demograffi hefyd yn cyfrannu, am wn i. Ond, a oes rhyw fath o—? Hynny yw, pa mor fuan y gallwn ni gyrraedd y pwynt lle rydym ni'n hapus bod darpariaeth ar gael, beth bynnag, petai cyrff yn dymuno ei ddefnyddio?

[430] **Mr Gapper:** Fe gyfeiriodd Meri gynnu at waith y mae cwmni ymchwil Arad wedi'i wneud fel rhan o strategaeth addysg cyfrwng Cymraeg y Llywodraeth, a'r gwaith mae Estyn wedi'i wneud. Fe wnaethon nhw ffeindio bod y ddarpariaeth yn anghyson ac fe argymhellodd y ddau sefydliad hynny fod angen adolygu'r ddarpariaeth cyfrwng Cymraeg yn gyson. Mae'r Bil yn gosod dyletswydd ar awdurdodau lleol i adolygu. Mae angen edrych ar eiriad y ddyletswydd, ond mae'r ddyletswydd i wneud yno. Felly, mi fydd angen gwneud yn y dyfodol. Nid yw'n amlwg i ni ei fod wedi cael ei wneud hyd yma.

[431] **Ms Huws:** Nid yw'r asesiad yna wedi cael ei wneud. Beth sydd gyda ni fwyfwy yw data—a data'r Llywodraeth ydyw—ynglŷn â nifer yr ymarferwyr mewn gwahanol feysydd sydd â sgiliau ieithyddol. Nid yw'r data yna wedi bod ar gael. Mae hynny'n fan cychwyn da. Rydym ni'n adnabod lle maen nhw heddiw. Gwneud y darn yna ar angen y dyfodol ac wedyn cau'r twll sydd angen. Mae'n swnio'n syml ond—

demography also plays a role, I suppose. But, how soon can we get to the point where we're content that provision is available, should bodies choose to use it?

Mr Gapper: Meri referred earlier to the work that the research company Arad has done as part of the Welsh-medium education strategy of the Government, and the work that Estyn has done. They found that the provision was inconsistent and the two institutions recommended that we needed to review the Welsh-medium provision consistently. The Bill does impose a duty on local authorities to review. We need to look at the wording of the duty, but it is there. So, we will need to do that in the future. But, it's not obvious to us that it has been done so far.

Ms Huws: That assessment hasn't been done. What we do have, increasingly, are data—and they're Government data—on the number of practitioners in the various areas who do have linguistic skills. Those data haven't been available. That's a strong starting point. We can identify where we are today. We need to do that work on the needs of the future and then close that gap. It sounds simple but it isn't—

[432] **Llyr Gruffydd:** Rwy'n siŵr nad ydyw. Rwy'n gwybod nad ydyw. **Llyr Gruffydd:** I'm sure it isn't. I know it's not.

[433] **Ms Huws:** Na, ond mae modd ei wneud, rwy'n credu. **Ms Huws:** No, but it can be done, I believe.

[434] **Llyr Gruffydd:** Diolch. **Llyr Gruffydd:** Thank you.

[435] **Lynne Neagle:** Thank you. Llyr, do you want to go on to your questions now?

[436] **Llyr Gruffydd:** Rydym wedi cyffwrdd ar y dyletswyddau. Roeddwn jest eisiau gofyn i chi ymhelaethu efallai ar yr hyn sydd yn eich tystiolaeth chi ynglŷn â pha mor ddigonol—wel, fe gymerwn ni nhw yn eu tro, efallai. Mae rhannau 10 a 12 yn ei gwneud hi'n ofynnol i gyrff llywodraethol, awdurdodau addysg ac yn y blaen i ystyried a ddylai darpariaeth anghenion dysgu ychwanegol gael ei darparu drwy gyfrwng y Gymraeg, a nodi hynny yn y cynllun datblygu. A ydych chi'n teimlo bod hynny'n ddigon cryf?

Llyr Gruffydd: We have touched on the duties. I just wanted to ask you to expand on what is in your evidence in terms of how adequate—well, we'll take them in turn, perhaps. Parts 10 and 12 make it a requirement for governing bodies, education authorities and so forth to consider whether ALN provision should be provided through the medium of Welsh, and to specify this in the IDP. Do you feel that that's strong enough?

[437] **Ms Huws:** Na. **Ms Huws:** No.

[438] **Mr Gapper:** Mae eisiau cydnabod ein bod ni'n croesawu bod y ddyletswydd yna yn y Bil—mae hynny yn sicr yn gam ymlaen—ond mae eisiau edrych ar eiriad y dyletswyddau hynny. O ran penderfynu a nodi mewn cynllun datblygu unigol a ddylai'r ddarpariaeth gael ei chynnig yn Gymraeg neu'n Saesneg, y ddyletswydd yn y Bil ydy penderfynu a ddylai'r ddarpariaeth dysgu **Mr Gapper:** We should welcome that that duty is contained within the Bill—it's certainly a step forward—but we need to look at the wording of the duties. In terms of deciding and recording in an IDP whether the provision should be provided in Welsh or in English, the duty in the Bill is to decide whether the additional learning need provision should be provided in Welsh—not in Welsh or in English, but whether it

ychwanegol gael ei darparu yn Gymraeg—nid yn Gymraeg neu'n Saesneg, ond a ddylai gael ei darparu yn Gymraeg. I ni, mae hynny yn awgrymu efallai mai, fel sefyllfa ddiodyfyn, yn Saesneg y dylai'r ddarpariaeth fod heblaw y gwneir penderfyniad y dylid ei darparu'n Gymraeg. Mae'n bosibl, rwy'n meddwl, y byddai rhai awdurdodau a rhai sefydliadau yn dehongli hynny mewn ffordd sy'n awgrymu mai Saesneg ydy iaith ddiodyfyn y gwasanaeth. Mi fyddai'n saffach, rwy'n meddwl, i aralleirio hynny i nodi y dylid penderfynu ai'r Gymraeg neu'r Saesneg ddylai iaith y ddarpariaeth fod. Felly, mae eisiau newid hynny, rwy'n meddwl.

[439] Mae adrannau 10 a 12 wedyn yn sôn hefyd am benderfynu ar iaith y ddarpariaeth. Mae'n beth cadarnhaol, rwy'n meddwl, fod plant, pobl ifanc a rhieni yn rhan o'r broses honno o ddod i benderfyniad ar anghenion dysgu y plentyn neu'r person ifanc. Mae'r Bil yn glir ynglŷn â hynny. Ond sut mae'r bobl hynny ar y cyd i ddod i benderfyniad ynglŷn â iaith y ddarpariaeth? Ai iaith y cartref sy'n bwysig, neu iaith y cyfrwng dysgu o fewn yr ysgol neu'r feithrinfa? Sut mae penderfynu? Mae angen arweiniad clir ar hynny, ac nid yw'r cod na'r Bil yn darparu hynny ar hyn o bryd.

[440] **Llyr Gruffydd:** Jest ar y pwynt yna, achos fe wnaethoch chi gyfeirio at hynny yn gynharach, ac roedd yn

should be provided in Welsh. For us, that suggests that the default would be that provision would be made in English, unless a decision is made to make provision in Welsh. It's possible that some authorities or some institutions may interpret that in a way that would mean that English is the default language of the service. It would be safer, I believe, to reword that so that it would state that the decision should be made as to whether the provision should be made in Welsh or in English. So, I think that needs to be changed or amended.

Sections 10 and 12 then mention deciding on the language of provision. It's positive, I think, that children, young people and parents are part of that process of coming to a decision on the learning needs of the child or young person. The Bill's clear on that. But how are those people to come to a joint decision on the language of provision? Is it the language of the home, or the language of the medium of learning in the school or the nursery? How does one decide? There needs to be clear guidance on that, and neither the code nor the Bill provide that at the moment.

Llyr Gruffydd: Just on that point, because you referred to that earlier, and it just struck me that, well, it's a

fy nharo i fel, wel, mater o ofyn i'r teulu, ie, fuasai fe? Beth yw'r ffactorau eraill sy'n mynd i ddylanwadu?

matter of asking the family, isn't it? What are the other factors that are going to have an influence on that?

[441] **Ms Huws:** Rwyf yn credu, fel mae Huw wedi ei ddweud, fod barn gan y person ei hun, barn gan y teulu, wrth gwrs, ac mae yna farn gan arbenigwyr a fydd yn bwysu i mewn i'r broses yna. Fe wnaethom ni adnabod y gwendid yn y Bil yn y lle cyntaf. Nid yw'r geiriad, a gaf i bwysleisio, yn dderbyniol, ond fe wnaethom ni aros wedyn i weld y cod gan ddisgwyl cael mwy o gyfoeth o gyfarwyddyd ynglŷn a sut oedd y drafodaeth yna i ddigwydd. Fel rwyf wedi dweud, os gwnawn ni edrych ar y cod, mae yna gyfeiriad yna at gydymffurfiaeth â Mesur y Gymraeg (Cymru) 2011. Gymaint ag ydw i yn croesawu hynny, wrth gwrs, nid wyf yn credu bod hynny y cyfoeth o gyfarwyddyd y bydd ei eisiau i ddelio â sefyllfa eithaf sensitif ac eithaf dyrys. Rwy'n credu, yn fan hyn, mae angen i ni fynd nôl at y cod a'i gryfhau o ran sut mae gwneud y math yna o benderfyniadau.

Ms Huws: As Huw said, the individual will have an opinion, the family will have an opinion, of course, and specialists feeding into the process will have an opinion. We identified the weakness in the Bill initially. The wording, may I emphasise, isn't acceptable as it stands, but then we waited to see the code, expecting to have a greater wealth of direction in terms of how that discussion was to happen. I think I've stated already that if we look at the code, there is reference to compliance with the Welsh Language (Wales) Measure 2011. Much as I welcome that, of course, I don't believe that that is sufficient direction in order to deal with what is quite a sensitive and complex issue. I think here we need to return to the code and strengthen it in terms of how that kind of decision is reached.

[442] **Llyr Gruffydd:** Ac yn y cod fyddai gwneud hynny, nid ar wyneb y Bil.

Llyr Gruffydd: And you'd do that in the code, not on the face of the Bill.

[443] **Ms Huws:** Ie, cytuno.

Ms Huws: Yes.

[444] **Mr Gapper:** Mae yna enghreifftiau mewn cyd-destunau eraill lle mae yna arweiniad o'r fath yn cael ei ddarparu. Er enghraifft,

Mr Gapper: There are examples in other contexts where guidance of that sort is provided. For example, the Royal College of Speech and

mae Coleg Brenhinol y Therapyddion iaith a Lleferydd yn darparu arweiniad i'w therapyddion ar sut i benderfynu ym mha iaith y dylid darparu therapïau lleferydd iaith. Felly, mae'n bodoli mewn cyd-destunau eraill, ac mae angen iddo fo gael ei gynneg yn fan hyn hefyd.

[445] **Llyr Gruffydd:** Océ. Rydym ni wedi cyffwrdd yn flaenorol ar adran 18 a'r ddyletswydd ar gyrff iechyd, ac yn y blaen, ac rydym yn cydnabod y sefyllfa o safbwynt diffyg darpariaeth. Yn y sefyllfa yr ydym yn ffeindio'n hunain ynnddi, a ydy cymryd pob cam rhesymol yn ddigon cryf? Hynny yw, eto, rydym yn gadael ein hunain yn agored i rywun mewn swyddfa yn cymryd hanner eiliad i bendroni, ac yn dod i'r casgliad bod yna ddim byd y gallan nhw ei wneud.

[446] **Ms Huws:** Rwy'n credu bod y geiriau—. Mae rhesymoldeb, wrth gwrs, wrth graidd pob cyfraith, ond mae dweud mai dyna'r unig beth sydd eisiau ei wneud yw ystyried beth sy'n rhesymol, nid yw hynny'n adlewyrchu yr uchelgais a'r her sydd yng ngweddill y Bil. Rwy'n credu bod eisiau i ni edrych ar y geiriad yna: a ydy'n ddigon bod rhywun mewn swyddfa yn dweud, 'Wel, rwyf wedi ystyried; rwy'n credu fy mod i wedi ei ystyried yn rhesymol a dyna ni—dyna i gyd yr oedd angen i mi ei wneud'? Rwy'n credu mai'r cwestiwn yw: sut ydym ni yn mynd i gyflawni y ddyletswydd yma?

Language Therapists do provide guidance to their therapists on how to make a decision as to in which language that therapy should be provided. So, it exists in other contexts, and it needs to be replicated here too.

Llyr Gruffydd: Okay. We touched previously on section 18 and the duties on health bodies, and so forth, and we recognise the situation in terms of the lack of provision. In the situation in which we are find ourselves, is taking every reasonable step strong enough? That is, again, we are leaving ourselves open to someone in an office taking half a second to consider it, and then coming to the conclusion that there's nothing that they can do.

Ms Huws: I think the words—. Reasonability, of course, is at the heart of all legislation, but to state that that is all that's required, I don't think that reflects the ambition and the challenge posed by the rest of the Bill. I do think that we need to look at that wording: is it enough that someone in an office somewhere says, 'Well, I've considered it; I think I've reasonably considered it and that's it—that's all the legislation requires'? The question is: how are we going to deliver this duty?

[447] **Mr Gapper:** Yn gysylltiedig â hynny, mae yna gwestiwn yn codi, os mai'r ddyletswydd ydy ystyried pob cam rhesymol, mae yna gwestiwn o ran pwy sy'n penderfynu a ydy'r corff wedi cymryd pob cam rhesymol neu beidio. Fel rydych chi wedi ei glywed gan y comisiynydd plant y bore yma, nid yw'r Bil yn caniatáu i dribiwnlys ystyried methiant i ddarparu cymorth dysgu ychwanegol. Os felly, y corff fydd dan ddyletswydd i ddarparu'n Gymraeg, i gymryd pob cam rhesymol i ddarparu'n Gymraeg, a fydd hefyd yn penderfynu a ydy o wedi cymryd pob cam rhesymol ai peidio. Mae honno'n sefyllfa, rydw i'n meddwl, y mae'n rhaid ailedrych arni hi.

[448] **Llyr Gruffydd:** Mae hwnnw'n bwynt pwysig. Mae hwnnw'n bwynt pwysig iawn, ydy.

[449] **Ms Huws:** Mae hwnnw'n ddiffyg sylweddol yn y Bil yn ei gyfanrwydd, rydw i'n credu.

[450] **Llyr Gruffydd:** Ac adran 56 wedyn, sy'n sôn am awdurdodau lleol yn cadw'r ddarpariaeth o dan adolygiad, rydym ni wedi sôn am hwnnw hefyd, a dweud y gwir. Nid wyf i'n siŵr os oes rhywbeth rydych chi eisiau ei ychwanegu.

[451] **Ms Huws:** Fel mae Huw wedi cyfeirio, yr un peth yr ym ni wedi'i adnabod yn y gwaith ymchwil rydym ni wedi ei wneud, ac mae Arad ac Estyn wedi ei wneud, yw nad oes yna

Mr Gapper: Related to that, there is a question that arises, if the duty is to consider all reasonable steps, then there is a question as to who decides whether the body taken every reasonable step or not. As you've heard from the children's commissioner this morning, the Bill doesn't allow the tribunal to consider a failure to provide ALN support. If so, the body that will have the duty to provide Welsh-medium provision, to take every reasonable step to make Welsh-medium provision available, will then have to decide whether reasonable steps have been taken or not. That is a situation, I think, that we need to look at again.

Llyr Gruffydd: That's an important point, I think—a very important point, yes.

Ms Huws: That is a weakness in the Bill as a whole, I think.

Llyr Gruffydd: And section 56 then, talking about local authorities keeping the provision under review, you've mentioned that. I'm not sure if there's anything you want to add to that.

Ms Huws: As Huw has mentioned, the one thing that we have identified in the research that we've done, and that of Arad and Estyn, is that reviews have not been happening. So,

ddim adolygiadau wedi bod yn if the purpose of section 56 is to digwydd. Felly, os taw pwrpas rhan ensure that those reviews are 56 yw sicrhau bod yr adolygiadau happening and are effective, well, yna'n digwydd ac yn digwydd yn excellent. I'm not sure that the effeithiol, gwydych. Nid wyf i'n sicr bod wording reflects that, and maybe it's y geiriad yn adlewyrchu hynny, ac a slip and maybe it's a translation efallai mai slip yw e ac efallai trosi o'r issue, but what we have in section Saesneg, ond beth sydd gennym ni 56, and what is necessary, is to yn rhan 56—yr hyn sy'n angenrheidiol—yw,

[452] 'rhoi sylw i ddymunoldeb 'have regard to the desirability of sicrhau bod darpariaeth ddysgu ensuring that additional learning ychwanegol ar gael yn Gymraeg,' provision is available in Welsh,'

[453] sydd eto'n creu'r cwestiwn which, again, brings up the question yma: ai'r angen yn fan hyn yw i as to whether what we need to do eistedd i lawr ac ystyried, 'A ydy e'n here is to sit down and consider, 'Is it ddymunol? Na, nid yw e'n ddymunol. desirable? No, it's not desirable; we Nid oes angen inni ei gael e. O, felly, don't need to have it. Therefore, I rydw i wedi cyflawni'r hyn sy'n have delivered what's necessary in angenrheidiol o ran gwneud asesiad?' terms of making an assessment.'

[454] Nid wyf i'n honni mai dyna I'm not claiming that that's what fuasai awdurdodau lleol yn ei wneud, local authorities would do, but I do ond rydw i'n credu bod geiriad o think that the wording is perhaps a bosib ychydig yn llac fan hyn sydd little lax here, and it needs to be angen cael ei dynhau er mwyn creu'r tightened up in order to create that angen yna i adolygu ac adolygu'n need to review effectively and effeithiol ac yn rheolaidd. regularly.

[455] **Lynne Neagle:** Thank you. You referred to the code, and we know that this is an incredibly complex area that we're dealing with, and we're going to be very reliant on the code to put the meat on the bones. But the final code will be made under the negative procedure. Are you satisfied that that allows for sufficient scrutiny of that final document?

[456] **Ms Huws:** Rydw i'n credu eich **Ms Huws:** I think you've put your bod chi wedi rhoi'ch bys ar rywbeth finger on something that's extremely eithriadol o bwysig. Mae'r cod mor, important there. The code is so mor, mor bwysig. Y cod sy'n mynd i fundamentally important. The code

osod patrwm gweithredu am y will set the pattern for delivery over degawd, 20 mlynedd nesaf, mewn the next decade, or 20 years, in realiti, a buaswn i'n dymuno cael y reality, and I would like to have this math o drafodaeth agored yma a'r kind of open debate and scrutiny on craffu agored ar y darn yna o that piece of legislation, because it ddeddfwriaeth, achos mi fydd yn god will be a statutory code. The statudol. Mae'r posibiladau o wneud possibility of making errors or camgymeriadau, llithriadau neu adael leaving significant gaps in that bylchau sylweddol yn hwnnw—rydw means it is something that we do i'n credu bod angen inni gael craffu. need to scrutinise in detail. As an Buasem ni fel corff allanol yn external organisation, we would gwerthfawrogi'r cyfle i fod yn rhan appreciate the opportunity to be part o'r drafodaeth gyhoeddus yna. of that public debate.

[457] **Lynne Neagle:** Thank you. Michelle.

[458] **Michelle Brown:** Thank you, Chair. What do you see as the main challenges for providing provision for additional learning needs in Welsh? Obviously, funding's going to be a big one, so, apart from funding, what are the big challenges?

[459] **Ms Huws:** Reit. Rydw i'n credu ein bod ni wedi rhoi blas ar rai o'r heriau rydym ni'n eu hadnabod, ac a gaf i ddweud nad ydw i'n bychanu'r heriau? Maen nhw yn sylweddol, ond mae'n faes mor bwysig, ac mae angen inni ddefnyddio'r Bil, y cod a'r broses yma i sicrhau nad ydym ni yma mewn degawd yn cael yr un drafodaeth. Rydw i'n credu bod yna gyfle fan hyn i adnabod yr heriau a chau rhai o'r bylchau.

Ms Huws: Right, I think that we've given you a taste of some of the challenges that we've identified, and could I say that I don't belittle those challenges? They are significant, but it's such an important area, and we need to use the Bill, the code and this process to ensure that we're not here in a decade having the same debate. There is an opportunity here to identify the challenges and to fill some of those gaps.

[460] Rydw i'n credu, yn gyntaf, yr anghysondeb sydd yn bodoli ar draws Cymru o ran bodolaeth gwasanaeth trwy gyfrwng y Gymraeg yn y maes yma. Rydym ni'n wlad fach, ond rydym ni'n llwyddo creu gwasanaethau sydd yn anghyson.

First of all, there is the inconsistency that exists across Wales in terms of the existence of a service through the medium of Welsh in this area. We're a small country, but we manage to create inconsistent services. There is a real need for us to look at the

Mae angen inni yn wirioneddol edrych ar y gweithlu a chynllunio'r gweithlu—adnabod yr anghenion. Mi allwn ni sôn am therapyddion lleferydd, mi allwn ni sôn am y seicolegwyr addysg, ond hefyd y rhai hynny sydd yn mynd i fod yn cynnig y cymorth o ddydd i ddydd ar lawr gwlad—eu bod nhw'n gallu gweithredu trwy gyfrwng y Gymraeg yn ogystal â'r Saesneg. So, adnabod anghenion y gweithlu a chymryd hynny fel cynllun gweithlu'r dyfodol a darparu o ran hynny.

workforce and workforce planning—to identify the needs. We could talk about speech therapists and the educational psychologists, but also those who are going to be providing the support from day to day on the ground—that they can operate through the medium of Welsh, as well as in English. So, identifying workforce needs and taking that as a workforce plan for the future and providing for that.

[461] Mae Huw, ar ddechrau'r cyflwyniad, wedi sôn am y profion, neu'r diffyg profion sydd ar gael o ran asesu anghenion plant a phobl ifanc. Mae hwn yn codi yn gŵyn ac yn gonsŷrn yn y swyddfa yn aml. Mae yna rai cwynion ffurfiol wedi dod i mewn ar y mater yma.

Huw, at the outset of the meeting, mentioned the tests, or the lack of tests that are available in terms of assessing need among children and young people. This is often raised as a complaint and a concern in my office. There have been formal complaints coming in on this issue.

14:15

[462] Rwy'n credu, er mor anodd, fod angen i ni greu a safoni y profion yna. Rwy'n gwybod mai poblogaeth fach sydd yng Nghymru, ac mae hynny'n gosod her o ran safoni profion, ond nid ydw i'n credu ei bod hi'n amhosib—mae'n digwydd mewn gwladwriaethau eraill sydd â phoblogaeth yr un mor fach â Chymru. So, mae'r cwestiwn yna o brofion.

Although it's difficult, we need to create and standardise those tests. I know that we have a small population in Wales, and that poses a challenge in terms of standardisation but I don't think it's impossible—it happens in other states that have populations as small as Wales's. So, there is the question of tests.

[463] Wedyn, rhywbeth sydd wedi cael ei godi—ac rwy'n gwybod bod trafodaeth wedi bod ar lawr y

Also, something that's been raised—I know there's been a debate in the Assembly about the voice of the

Cynulliad ynglŷn â llais y plentyn. Rwyf i yn credu, o edrych ar adnoddau a theclynnau sydd yn caniatáu i blentyn gael llais—nid yw hi wastad yn rhwydd i'r unigolyn yna gael llais—fod yn rhaid i ni sicrhau bod yr adnoddau ychwanegol yna ar gael drwy gyfrwng y Gymraeg hefyd i ganiatáu hynny. Mae gweithlu'n bwysig, ond wir mae angen y pecyn adnoddau hefyd sydd yn briodol.

child. I do believe that, in looking at resources and the tools that allow children to have that voice—it's not always easy for that individual to have a voice—we have to ensure that those additional resources are available through the medium of Welsh as well in order to allow that to happen. The workforce is very important, but we genuinely need a package of resources that are appropriate.

[464] So, dyna'r prif heriau. Mae'r rheini'n tueddu i fod yn heriau tymor canolig i dymor hir. Rwy'n credu y gallwn ni ddefnyddio'r Bil i gynllunio at hynny. Rwy'n mynd i ail-ddweud rhywbeth ddywedodd Huw. Mae yna anghenion heddiw ac fe fydd yna anghenion y diwrnod y mae'r Bil yma'n dod yn gyfraith, ac rwy'n credu bod angen i ni edrych ar ffyrdd o leihau a gwella'r sefyllfa bresennol trwy gydweithio, trwy gydgyllunio ac adeiladu ar arfer da lle y mae hynny'n bodoli—ac mae e yn bodoli.

So, those are the main challenges. They tend to be medium-term to long-term challenges. I think that we can use this Bill to plan for that. I'm going to restate something that Huw said. There are needs today and there will be needs when the Bill becomes law, and I think we need to look at ways of reducing and improving the current situation through collaboration, through joint planning and by building on good practice where it exists—and it does exist.

[465] **Michelle Brown:** Thank you.

[466] **Lynne Neagle:** Thank you. Julie.

[467] **Julie Morgan:** Thank you very much. Prynawn da. I wanted to ask you about the tribunal proceedings in particular, and, really, to start off, to ask you to what extent tribunal proceedings are available in Welsh at the moment.

[468] **Ms Huws:** Wyt ti eisiau cymryd hwn?

Ms Huws: Would you like to cover that?

[469] **Mr Gapper:** Ie. O ran y

Mr Gapper: Yes. In terms of the SEN

tribiwnlys addysg anghenion arbennig sy'n bodoli ar hyn o bryd—sy'n newid, wrth gwrs, o dan y Bil, i fod yn dribiwnlys addysg—mi fydd ganddo reolau'n ymwneud â'r Gymraeg. Ond, o ystyried y crëwyd tribiwnlys y Gymraeg yn ddiweddar ac mi aeth y tribiwnlys hwnnw trwy broses o ymgynghori ar ei reolau ei hun, gan gynnwys rheolau'n ymwneud â'r Gymraeg, rwy'n meddwl bod hwn yn gyfle, efallai, i ni edrych ar sut mae'r Gymraeg yn cael ei defnyddio o fewn y tribiwnlys addysg, fel y mae'n mynd i fod, felly.

tribunal as it stands—which will change, of course, under the Bill, to be an educational tribunal—it will have some rules related to the Welsh language. Bearing in mind that the Welsh language tribunal was created recently and that that went through a process of consultation on its own rules and regulations, including rules relating to the Welsh language, I think this is an opportunity for us to look at how the Welsh language is used within the education tribunal, as it will be named.

[470] Mae yna ofynion ar bob tribiwnlys yng Nghymru. Mae Deddf yr Iaith Gymraeg yn rhoi'r hawl i unigolyn siarad Cymraeg mewn unrhyw achos llys. Ond, rwy'n meddwl, mewn llys fel hyn—tribiwnlys fel hyn—Ile mae plant neu bobl ifanc ynghlwm â phob achos, efallai fod yna ystyriaethau ieithyddol penodol.

There are requirements on all tribunals in Wales. The Welsh Language Act gives individuals the right to speak Welsh in any court case. But, I do think, in a tribunal such as this, where children and young people are involved in all cases, there may be some specific linguistic considerations in play here.

[471] Oes, mae angen caniatáu i blant siarad Cymraeg, ond all y tribiwnlys yma hefyd ganiatáu i blant glywed y Gymraeg a chlywed cwestiynau yn y Gymraeg? Ac mae yna gwestiwn o ran defnydd cyfieithu ar y pryd. Nid yw plant a phobl yn gyffredinol yn cyfathrebu ar lafar yn unig; mae'r ffordd rydym ni'n dweud pethau yn bwysig. A ddylai aelodau'r tribiwnlys addysg fedru clywed beth sydd gan blant i'w ddweud yn syth o geg y plentyn, felly, yn hytrach na thrwy ddefnydd offer cyfieithu ar y

Yes, we need to allow children to speak Welsh, but should this tribunal, too, allow children to hear the Welsh language and to hear questions through the medium of Welsh? There's also a question about the use of simultaneous interpretation. Children and people generally don't simply communicate orally; the way we say things is important. Should members of the education tribunal be able to hear what children have to say directly, rather than hearing it through interpretation equipment?

pryd? Felly, mae yna gwestiynau penodol o ran defnydd y Gymraeg o fewn y tribiwnlys addysg. Gallwn ni ailedrych arnyn nhw wrth i'r tribiwnlys newid o dan y Bil yma.

So, there are some specific questions there in terms of the use of the Welsh language within the education tribunal. We can certainly review them as the tribunal changes under this Bill.

[472] **Ms Huws:** Rwy'n credu bod y broses sydd wedi cael ei defnyddio wrth sefydlu tribiwnlys y Gymraeg, sef y tribiwnlys mwyaf newydd yng Nghymru—rwy'n credu bod modd mynd drwy'r broses yna gan edrych ar anghenion arbennig, heriau arbennig a fydd yn deillio o'r tribiwnlys yma. Mae'n gyfle bendigedig i edrych ar beth yw cyfiawnder hefyd, a sut mae modd sicrhau cyfiawnder mewn gwlad ddwyieithog.

Ms Huws: I think that the process used in establishing the Welsh language tribunal, which is the newest one in Wales—I think it would be possible to go through that process and look at special needs and special challenges that will stem from this tribunal. But it's an excellent opportunity to also look at what justice is and how we can ensure justice in a bilingual nation.

[473] **Julie Morgan:** So, you see it as an opportunity basically. Thank you. What about independent advocacy and the availability of that through the medium of Welsh? Do you see that as being covered sufficiently in the Bill?

[474] **Ms Huws:** Rwy'n credu bod bodolaeth rhan 62 o'r Mesur yn eithriadol o bwysig. Mae angen gwasanaeth eiriolaeth annibynnol i unigolion. Rŷm ni'n croesawu hynny. Nid ydw i'n sicr—ac mae'n dod yn ôl at y cwestiwn yma o'r cod—sut mae'r cod yn mynd i sicrhau bod rhan 62 yn ateb anghenion ieithyddol gwahanol unigolion. Rwy'n credu bod hynny yn gonsŷrn i ni, a dyna eto lle buaswn i'n dymuno bod yn rhan o'r drafodaeth ar y cod i gryfhau'r elfen yna. Fel mae Huw wedi sôn, mae yna gyfarwyddiadau proffesiynol ar gael mewn meysydd fel therapi lleferydd.

Ms Huws: I think that the existence of section 62 of the Bill is very important. We need an independent advocacy service for individuals, and we welcome that. I'm not sure—and this comes back to this question of the code—how that code is going to ensure that section 62 does meet the linguistic needs of different individuals. I think that that is a concern for us, and that again is where I would want to be part of the discussion on the code to strengthen the then element. As Huw mentioned, there is professional guidance available in areas such as speech

Mae yna, rwy'n gwybod, reolau—wel, nid rheolau—cyfarwyddyd ynglŷn ag eiriolaeth effeithiol yn y byd, ac mae wedi cael ei ddatblygu dros y blynyddoedd. Rwy'n credu ei bod yn werth i ni sicrhau bod y cod yn adlewyrchu'r arfer dda yna.

therapy. There are, I know, rules—not rules—guidance regarding effective advocacy in the world, and that has been developed over the years. I think it would be worth our while to ensure that the code does reflect that good practice.

[475] Mae yna, wrth gwrs, fodelau mewn gwledydd eraill lle mae yna fwy nag un iaith y gallem ni fod yn edrych arnyn nhw i sicrhau bod rhan 62 yn ateb anghenion gwlad gyda dwy iaith swyddogol.

There are, of course, models in other countries that have more than one language that we could be looking at to ensure that section 62 does meet the needs of a country that has two official languages.

[476] **Mr Gapper:** Jest i ychwanegu at hynny, mae'r cod ar hyn o bryd yn nodi bod rhaid i'r gwasanaeth eiriolaeth yna fod ar gael mewn ffordd sy'n addas i'r plentyn ac yn hygyrch i'r plentyn. Nid yw'n nodi'n benodol fod rhaid iddo fo fod ar gael yn Gymraeg lle mae ei angen o. Efallai fod angen nodi hynny'n benodol fel ei fod yn glir i bawb.

Mr Gapper: Just to add to that, the code, as it currently stands, does note that the advocacy service must be available in a way that is appropriate and accessible to the child. It doesn't particularly specify that it has to be available through the medium of Welsh, where required. Perhaps we need to note that specifically so that it is explicit.

[477] **Lynne Neagle:** Thank you. Darren.

[478] **Darren Millar:** Can I just follow up on that? So, in terms of the advocacy services that are available at the moment, obviously, you mentioned earlier on, Meri, about this postcode lottery that currently exists, in some of your opening comments. I just wonder to what extent there's been any mapping, actually, of the availability of Welsh language advocacy services for children and young people, if at all. If there hasn't been, who should do that?

[479] **Ms Huws:** Nid wyf i'n ymwybodol bod yna un Cymru gyfan wedi digwydd. Rwy'n credu bod yna ardaloedd lle mae'r awdurdod lleol neu'r bwrdd iechyd wedi adnabod

Ms Huws: I am not aware that an all-Wales mapping exercise has been undertaken. I think that there are areas where the local authority or health board have identified special

angen arbennig ac wedi edrych ar needs and what they have within beth sydd gyda nhw o fewn eu their areas, but certainly there is not hardaloedd nhw, ond, yn sicr, nid oes an all-Wales picture that I am aware of. yna bictiwr Cymru gyfan yr wyf fi'n of. ymwybodol ohono fe.

[480] Rwy'n credu bod hwnnw'n I think that that takes us back to the mynd â ni yn ôl at y fframwaith yma framework, which is built around the sydd yn cau o gwmpas yr unigolyn ac individual and that this is a holistic yn sicrhau bod hwn yn system, yn ei system. If we are going to ensure gyfanrwydd. Os ydym ni'n mynd i that kind of system, we need to do sicrhau system yn ei gyfanrwydd, this work—research, data—now, from mae angen i ni wneud y gwaith the outset, and ensure that it is in the yma—ymchwil, data—nawr, o'r code. This needs to be done. We dechrau, a sicrhau ei fod e yn y cod. need to know where we stand today Mae angen ei wneud e. Mae angen i in order to know where we are going ni wybod lle rŷm ni'n sefyll heddiw er to reach. mwyn gwybod lle rŷm ni'n mynd i gyrraedd.

[481] **Darren Millar:** Access to the service is going to be very difficult, I would imagine, in some parts of Wales in particular. Can I just ask you as well, in terms of addressing this postcode lottery, and not just in terms of access to advocacy, but to any service at all, do you see there being a role for regional consortia at all?

[482] **Ms Huws:** Rwy'n credu bod **Ms Huws:** I think that that is one of hwnnw'n un o'r marciau cwestiwn the question marks that we've rŷm ni wedi'i adnabod o'r identified from the legislation and ddeddfwriaeth ac o'r cod: pa rôl y the code: what role can these gall y consortia yma ei chwarae yn consortia play in all of this? Given hyn? O'r ffaith eu bod nhw'n bodoli, that they do exist, I think they have a rwy'n credu bod yna le iddyn nhw i role in ensuring that these services sicrhau bod y gwasanaethau yn cael are jointly planned within their eu cynllunio ar y cyd o fewn eu regions, but also that this research is rhanbarthau, ond hefyd bod y gwaith carried out. If you were to share it ymchwil yma'n digwydd. Petasech out between the consortia, then the chi'n ei rannu fe rhwng y consortia, research work would be a fair bit buasai'r gwaith ymchwil tipyn yn easier. haws.

[483] **Darren Millar:** You see them being able to help build some capacity as well in the system. But you think that it's the code that the consortia should be referencing, rather than on the face of the Bill somewhere.

[484] **Ms Huws:** Rwy'n gredwr cryf mewn dechrau gyda'r memorandwm esboniadol a rhoi datganiad clir o ran nod yn fanna, wedyn atebwch rhai o'r anghenion sydd o fewn y Bil. Er enghraifft, os nad yw rhan 62 yn cyfeirio at wasanaeth eiriolaeth yn y ddwy iaith, rwy'n credu efallai fod yna gam yn fanna, fod yna dwll yn fanna, a hefyd mae angen inni edrych ar y cod. Nid wyf i'n credu bod un darn yn bwysicach na'r llall. Mae eisiau'r dilyniant o'r memorandwm esboniadol trwyddo i'r cod.

Ms Huws: I'm a strong believer in starting with the explanatory memorandum and giving a clear statement there in terms of your aim and ambition, and that you then meet some of the needs that appear within the Bill. For example, if section 62 doesn't refer to an advocacy service in both languages, I think there may be an error or a gap there. But we also need to look at the code. I don't think that one is more important than the other. You need that continuity from the explanatory memorandum all the way through to the code.

[485] **Darren Millar:** Iawn, diolch.

Darren Millar: Fine, thank you.

[486] **Lynne Neagle:** Linked to Darren's question, are there any particular specialisms that we should be aware of where there are difficulties having a service in Welsh? For example, speech and language therapy, dyslexia et cetera—are there any particular problems in any areas there?

[487] **Ms Huws:** Fe wnaif i droi atat ti mewn munud, Huw. Rwy'n credu bod y gwasanaeth eiriolaeth yn ei hunan yn faes sydd yn dal i fod yn gymharol newydd. Rwy'n credu bod yna waith datblygu'r maes yna a chyfle arbennig i greu eiriolwyr sydd yn gallu gweithio mewn dwy iaith.

Ms Huws: I'll turn to you in a second, Huw. I think that the advocacy service in itself is still relatively new. I think there is still development work to be done in that area and a great opportunity to create advocates who can work in both languages.

[488] Mae'r cwestiwn o therapyddion lleferydd wedi bod yn broblem ers degawdau. Rŷm ni wedi adnabod y broblem yng Nghymru ers yr 1980au

The question of speech therapists has been a problem for many decades. We've identified the problem in Wales since the 1980s.

ac nid yw'r sefyllfa wedi newid. Rwy'n credu bod honno'n esiampl o pe bai yna gynllunio wedi bod, o adnabod yr angen a darparu'r hyfforddiant, ni fuaswn le'r ydym ni heddiw. Ond rwy'n credu bod therapyddion lleferydd a seicolegwyr addysg—mae angen pobl sy'n gallu gweithio yn y ddwy iaith, a meysydd eraill rwy'ti wedi'u hadnabod.

[489] **Mr Gapper:** Mi oedd ein hymchwil ni'n dangos, o ran seicolegwyr addysg, fod cryn dipyn ohonyn nhw'n ddwyieithog, ac roedd ardaloedd yn medru cael mynediad at seicolegwyr addysg dwyieithog. O ran ymarferwyr arbenigol eraill, roedd y darlun yn gymysg iawn, felly, ac efallai bod hynny amlygu pwysigrwydd rôl y consortia o hwyluso cydweithio a rhannu adnoddau.

[490] **Lynne Neagle:** And as far as you're aware, are those shortfalls being addressed by the Welsh Government's transformation programme? Are they working specifically to get more of these people who can deliver their services in Welsh?

[491] **Ms Huws:** Rwy'n credu bod yna gydnabyddiaeth gynyddol o'r angen i wneud hynny; nid wyf yn sicr bod hynny wedi troi'n gynlluniau. Fe fyddech chi'n ymwybodol o'r gwaith mae'r Coleg Cymraeg Cenedlaethol yn ei wneud mewn rhai meysydd. Yn sicr, yn y maes iechyd a gofal cymdeithasol, mae yna gyrsiau nawr sydd wedi cael eu datblygu mewn rhai meysydd arbennig. Ond rwy'n credu bod y darn yma o

The situation hasn't changed. I think that that's an example of where, if there had been planning in terms of identifying needs and providing training, we wouldn't be where we are today. But I think that speech therapists and educational psychologists—we need people who can work in both languages, and other areas that you've identified.

Mr Gapper: Our research demonstrated, in terms of educational psychologists, that a fair few of them were bilingual, and there was access in many areas to those bilingual educational psychologists. In terms of other specialist practitioners, the picture was very mixed indeed, and perhaps that highlights the importance of the role of consortia in facilitating collaboration and sharing resources.

Ms Huws: I believe there is increasing recognition of the need to do that; I'm not entirely sure that that has turned into concrete plans. You will be aware of the work of the Coleg Cymraeg Cenedlaethol in certain areas. Certainly, in health and social care, there are now courses that have been developed in particular specialisms. But I do think that this piece of legislation does create another 10-year plan in terms of

ddeddfwriaeth yn creu cynllun 10–mlynedd eto o ran hyfforddi, ac nid yn unig mewn prifysgolion. Rwy'n credu bod yn rhaid i ni gydnabod fan hyn rôl colegau addysg bellach wrth sôn am y bobl hynny sydd yn cynnig y gofal o ddydd i ddydd, mewn sefyllfaoedd dosbarth ac yn y blaen, hefyd. Felly, nid jest yn y prifysgolion mae eisiau'r arbenigwyr; mae eisiau darpariaeth lefel 3 a 4 trwy'n colegau addysg bellach ni hefyd.

training, and not only at universities. I do think we have to all recognise here the role of further education colleges as we talk of those people who provide the day-to-day care in classroom situations and so on, too. So, it's not just in universities where we need the specialists; we need that level 3 and 4 provision through our FE colleges, too.

[492] **Lynne Neagle:** Thank you. Are there any other questions from Members? Is there anything that you would like to add just before—?

[493] **Ms Huws:** Na, jest fy mod yn croesawu'r cyfle yma. Rwy'n credu bod yna gyfle bendigedig i wneud beth mae'r Gweinidog wedi ein hannog ni i'w wneud, sef cryfhau'r ddeddfwriaeth. Ar sail y ddeddfwriaeth flaenorol, rŷm ni'n debygol o fyw gyda hwn am 20 mlynedd, o bosib, os nad yn hirach, felly, rwy'n credu bod angen inni gael y memorandwm, y Bil a'r cod yn y man cryfaf posib, a nawr yw'r adeg i wneud hynny. Nid wyf yn credu bod 'patch-o' wedi'r digwyddiad yn mynd i fod yn ddigonol. Rydw i wedi cael fy nghyffroi gan y posibiliadau, ac rwy'n credu, fel sefydliad, rŷm ni wrth ein boddau bod hyn yn digwydd a bod y drafodaeth yn digwydd.

Ms Huws: No, just to say that I do welcome this opportunity. I think there's a wonderful opportunity for us to do what the Minister is encouraging us to do, namely to strengthen the legislation. On the basis of the previous legislation, we're likely to be living with this for 20 years or more, possibly, so I do think that we need to get the memorandum, the Bill and the code to the strongest place possible, and this is the time to achieve that. I don't think we can patch it up after the event—that isn't going to be sufficient. I've been excited by the possibilities, and, as an institution, we are delighted that this is happening and that the debate is taking place.

[494] **Mr Gapper:** Os caf i jest ychwanegu, fel mae Meri'n ei ddweud, mae'r Bil yn darparu ar gyfer y Gymraeg; mae yna ofynion yna ac

Mr Gapper: If I could just add, as Meri said, the Bill does provide for the Welsh language; there are requirements there and that is to be

mae hynny i'w groesawu. Ond un peth sydd ddim yna ar hyn o bryd ydy gallu unigolyn i ddal corff yn atebol am fethu â darparu yn y Gymraeg. Mae angen edrych ar hynny. Mae'n sylfaenol, rwy'n meddwl, a bydd yn rhaid edrych ar hynny eto.

welcomed. But the one thing that's not there is the ability of an individual to hold a body accountable for failing to provide through the medium of Welsh. So, we need to look at that. It's a fundamental point, I think, and we will need to look at that again.

[495] **Lynne Neagle:** Okay. Can I thank you both for attending this afternoon, and for your evidence? You will, as is normal practice, be sent a transcript to check for accuracy, but thank you very much for your time this afternoon. Thank you. We're going to take a short break. Special Educational Needs Tribunal for Wales

*Gohiriwyd y cyfarfod rhwng 14:28 a 14:59.
The meeting adjourned between 14:28 and 14:59.*

**Y Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru):
Sesiwn Dystiolaeth 6
Additional Learning Needs and Education Tribunal (Wales) Bill:
Evidence Session 6**

[496] **Lynne Neagle:** Okay. Item 6 today is our final evidence session today on the ALN Bill. I'm delighted to welcome Rhiannon Walker, who is president of the Special Educational Needs Tribunal for Wales. Thank you very much for attending, and apologies for keeping you waiting today. Thank you for the paper you've provided in advance. Are you happy to go straight into questions?

15:00

[497] **Ms Walker:** Yes, fine.

[498] **Lynne Neagle:** Thank you. John.

[499] **John Griffiths:** Yes, I wonder if I can start by asking some questions about the main changes to the tribunal and begin by asking: to what extent are the changes more than a change in name and a change to the actual functions?

[500] **Ms Walker:** Obviously, it's a Bill that we welcome. It will bring changes. I think we are concerned regarding issues of training. There are capacity issues that are going to be coming up now whereby—I appreciate, under the 2012 regulations, we've already had capacity that we've had to determine whether or not young people and children have had capacity. But this is taking it a little bit further in that, obviously, it's extending it to young people from 16 onwards, which we've not had to do before. I think our concern there, as indeed in other areas of the Bill, is the relationship between the parents and the child, because our experience at the present time—that even though children have had the ability to appeal to us directly, it's mostly parents of the over-16s. Now, the over-16s are meant to look at the capacity issues themselves, or at least have some sort of representation. So, we are concerned a little bit around that. We're going to be putting in more training. We've had some training, obviously, but we'll be putting in more training from that point of view.

[501] We also feel that we could have more appeals. It's quite interesting to note that the appeal numbers, year on year since the 2011–12 year, have been rising. Okay, we're not talking a huge amount of figures, but still, they are significant. I think, in 2011–12, there were 84 appeals and six claims, whereas in 2015, there were 118 appeals and 15 claims. We're also seeing, on a like-for-like basis, the current year also increasing. I find that quite interesting if you think about changes and looking at what's—. Obviously, I've been looking at what's happening to the English side as well, because they've gone down this path—although it was Wales's idea first, may I hasten to add, and they copied us. They've done it rather differently. They found that the appeals, basically the year before, went up significantly before the Bill came. I appreciate this is hearsay, but they put that down to basically parents being concerned about whether or not the rights were going to be upheld et cetera, et cetera. In the year their Bill came out, their figures went down a little bit—sort of averaged out. Again, they put that down to the sort of bedding of the Bill, people finding their way, finding what's going on. Interestingly enough, after that, their appeals have gone up 20 per cent, which is quite a big jump. Having said that, I think we have to be realistic about this. We are extending, which I am totally for, the appeal range up to 25. That is, of necessity, going to see, potentially, some increases. It will be interesting to see what happens, but I do think it's extremely important because we have had examples in the tribunal—once children pass that 18–19, depending on the school year, it's like falling off a cliff for a lot of parents and their children. Where do they go? I think this continued level of support is very, very important and, from my point of view, is one of the

major aspects of the Bill for helping the children in Wales.

[502] **John Griffiths:** Could you tell us as well: currently, what functions the tribunal fulfils in addition to special educational needs matters?

[503] **Ms Walker:** Yes, certainly. We basically, obviously, do disability claims. You've just heard the figures in relation to disability claims. They've had a slow run, as it were. There are claims, but I think what it is is that it's taken quite a long time for this Act—the disability Act—to basically come to the forefront, and now that people are beginning to understand it, we're having quite a few more claims and they're usually quite complicated. The other thing I will say about that is that I don't think the claims are ever going to be in hugely significant numbers, and I think that's due, a lot, to the fact that there're no teeth in the Act, in that you get an apology, and that can be very important—that can be very important to parents: you know, that the wrong has been acknowledged—but there's nothing else, so they have to go through a lot of angst to get that apology and some people don't feel it's worth it. So, we do that.

[504] As I said, going back again, we do do capacity, and that's going to be an increasing matter. We are hopeful—again, it's something I feel quite strongly about—. I feel that Wales have got a devolved tribunal that we've basically set up from scratch. So, that's been quite a luxury and we have tried to set it up, obviously in an appropriate way, and developed a level of expertise that I believe that—. I'm very proud of my members and my chairpeople, and I think there's a great level of expertise there that, in some respects, could be utilised better for the people of Wales.

[505] So, consequently, I believe and I feel that the renaming of our tribunal is most appropriate and I would like in the future—something I keep talking to the Minister about—to see the tribunal develop, because there are—. One of the things the Bill doesn't address is that, basically, it's not a one-shop stop for parents. Parents, in a situation where they come to us, are very troubled and have a lot on their plates. And if they're having to deal with the lots of different methods I think it's very difficult for them. One of my main bones of contention is the school exclusion appeals, which are basically dealt with, as you will know, by the actual school governors. So, they could be definitely looked at as if they're unfair. I'm sure they're not, but from an outside perspective, they certainly look as if they're not because they're basically part of the body that's excluded the child in the first place. I firmly believe that the tribunal is well placed to take on that sort of work as well in

the future.

[506] **John Griffiths:** But as the proposals are currently framed, will there be any other function that the tribunal will have apart from the additional learning needs cases, the disability discrimination claim—

[507] **Ms Walker:** And the capacity.

[508] **John Griffiths:** And the capacity—. Well, yes—

[509] **Ms Walker:** The new capacity could be placed because the new Bill—

[510] **John Griffiths:** But beyond that?

[511] **Ms Walker:** No, not as far as I'm aware because the new Bill, remember, does envisage a situation that is not certainly current—that a person can appeal on the question of capacity alone, even if they don't later bring an appeal to the tribunal.

[512] **John Griffiths:** Okay. If the role of the tribunal doesn't develop in the way you suggest it might, do you then consider that the title—the educational tribunal Wales—might be misleading in as much as it might suggest that other educational matters, beyond those that it will, at least initially, have responsibility for, might be included within the title, to create that perception?

[513] **Ms Walker:** I think it's a better generic term and, yes, I can see by a quick glance you could, but if you just looked at the website and the other publications, I think the situation would become very clear. But I do think the generic term is far better. I think parents and users will feel better coming to an education tribunal rather than an education tribunal that deals with additional needs or anything like that, because it might carry some sort of stigma.

[514] **John Griffiths:** Yes, okay. Final question from me, if I might, Chair: are there many changes to the membership, the appointments, or other practical arrangements for the tribunal?

[515] **Ms Walker:** Nothing that we can pinpoint at the moment that is going to be very, very difficult for us. We're already going to be doing recruitment, because I've decided to recruit for some more chairs, because of difficulty

getting panels together sometimes. And I feel that spare capacity is going to be needed in the next 12 months. There are going to be training issues, but there are always training issues. And there are going to be issues such as change of documentation et cetera, but those are issues we're used to dealing with. So, there's nothing that's of great significance that I can see at the present time, although of course that might change.

[516] **John Griffiths:** Okay, thank you.

[517] **Lynne Neagle:** Thank you. Michelle.

[518] **Michelle Brown:** Thank you. In relation to the Government's third overarching objective in the additional learning needs Bill, which is to make the system fairer and more transparent, I note that—what is it—section 68(3) provides for proceedings to be held in private. What's your view on that, because transparency and sunlight shone on the judgments made in tribunals can be quite comforting? There have been complaints about family courts being so secretive that—. There are big concerns there, because of the secrecy. I just wondered what you think of transparency in your own tribunal.

[519] **Ms Walker:** I think there's a balance to be had, if I'm honest, because we are dealing with vulnerable children and young adults. Depending on the needs, we are dealing with very sensitive issues. I think you have to put yourself in the place of parents and young people. Do they want them to be completely open? Do they want, potentially, press there? Because our courts are open. Do they want press there? Is it appropriate to have press there when dealing with these very sensitive issues of children? As a parent myself, I certainly wouldn't want it for my child.

[520] Having said that, we do have a situation now, and I don't see why that couldn't continue, where, although our hearings are closed, parents, if they want grandparents there for support, or anybody else, another party—provided there's a good reason, I always let them in, and I think that's important, because it's for support. But I'm not convinced by totally open, for the reasons I've said, because of the sensitivity of the issues. If those issues were to be reported in a wider arena, I think it would be inappropriate.

[521] But, as I said, I'm quite relaxed about professionals coming in. Indeed, we used to have, when it was the council—and tribunals coming in to check what was going on and make sure it was open. They used to give us a report, which was always very helpful. So, I'm very open for anything like that. But,

my only concern is that sensitivity.

[522] **Michelle Brown:** Okay, thank you.

[523] **Lynne Neagle:** Lovely, thank you. Can I just ask then: the purpose of this Bill is to remove a lot of the tension that currently exists in the system, so to what extent are you satisfied that the arrangements in the Bill will allow for disagreements to be sorted out at an early stage and therefore not need to come to tribunal?

[524] **Ms Walker:** That's a very difficult one because I think there are certain tensions that still haven't been addressed, and—I'm sure you've probably heard this—it's a bit of a bugbear. From our experience, most of the contentious issues do tend to revolve around provision of SALT—speech and language therapy—and occupational therapy. Those two aspects are basically controlled by health and, under the current system, as an education tribunal, we state that, if the child needs that from an educational context, which is important, the local authority have to provide it. The local authority then go to the health authority and say, 'We need this', and I think the health authority looks at it in a different way, perhaps in a totally clinical way, and then there becomes this situation whereby we make an order and it's not, basically, adhered to, which is very frustrating for parents. I appreciate that the Bill has done a lot towards that, but that provision, I think, at 18.9, basically gives the health authority the veto.

15:15

[525] I find it very strange that an authority like that can have a veto on an independent tribunal's decision that that particular provision is needed in the educational context. I find that that's going to cause a tremendous amount of problems and also it is going to come back to the Government, basically, because the appeal from us on anything like that comes back to the Government. It's extremely frustrating and upsetting for parents. In anticipation that you were going to ask something like this, I've got an extract—I've changed all the details—from one of the parents who went through this and the local authority, which I won't mention, did not comply with the order.

[526] They do say, and they have to say that, 'The two organisations have acted appropriately, fairly. SENTW in particular are constrained by legislation as to what actions they are able to take and after a hearing cannot take

action to ensure compliance with its recommendation. If we can follow all the correct processes’—this parent says—‘and still not have a satisfactory resolution, then either the processes are wrong or they’re not being adequately enforced. The failure to hold the council to account has given them permission to continue to act inappropriately, to the detriment of the children. In replying to our previous communications, several organisations have told us that they do not deal with individual cases. This is not an individual case—these are children. Additionally, this is not about one discrete issue—there have been multiple and prolonged failures by the local authority over a seven-year period. If no other family experiences these issues with’—whoever—‘are the council deliberately targeting them?’

[527] That gives you a bit of the strength of feeling and the feeling of, ‘We’ve done everything we can, we’ve gone through every avenue, and still we can’t get the order that we’ve been given’. So, in answer to your question, I feel that, yes, there’s been a lot done, but there are still going to be problems because that issue hasn’t been resolved. I know it’s a difficult issue and I know it’s a hot potato, but I do wonder why it can’t be settled by saying to health that we’re not talking about pure, clinical need here; we’re talking about a clinical need in an education setting. Consequently, I don’t see why they should have the veto.

[528] The other problem I see as well is that the Bill does not make any mention of social services. A lot of the tensions with parents are that they look for schools with 24-hour care, which is extremely expensive for the local authority—an absolute fortune. They do so because there is no social care support, so that they do have some respite. So, I do think that that’s a bit of a problem as well. Sorry, I’m not being negative—it’s gone a tremendous way forward, but there are still problems, and I think that those problems, especially the health ones, could be resolved. I think, if that could be resolved, it would be a major, major way forward.

[529] **Lynne Neagle:** Okay, thank you. On this, Darren.

[530] **Darren Millar:** So, at the moment, the Minister’s response, when concerns have been raised about the health side of things, if we say—and it suggests this in the draft code as well—is that parents should appeal through the NHS redress system, the ‘Putting Things Right’ process, and, if they’re not happy with that, they should go to the public services ombudsman. Your suggestion, effectively, is that the health service element of the provision of support ought to fall within the remit of the redress system, through the

tribunal rather than separately.

[531] **Ms Walker:** Absolutely. It's the decision of the tribunal. Why does the parent have to go somewhere to get it right? Isn't the whole point that we came forward about getting it right the first time? It's not got right the first time because it's come to tribunal. So, the parents have done that. We hopefully have got the right order, and yet, somebody says, 'No, I don't agree with that', and we're not entitled to go then to have the matter back to us and say, 'Well, why do you think it's wrong?'

[532] **Darren Millar:** Can you just elaborate on the social services element of your response? So, there's a provision in Conwy, as a local authority, at Ysgol y Gogarth, for example, which offers some residential respite and residential element. Is the need for respite something that you can consider as part of the needs and package of support for an individual?

[533] **Ms Walker:** Not at the moment.

[534] **Darren Millar:** Would you like to be able to?

[535] **Ms Walker:** Yes, we would, because if we did, we feel that we could keep more children at home because of the fact that they wouldn't need full-time, 24-hour care, or residential care, because that support would be given in the community through social services support, with respite, and a bit of additional help, which would be a lot cheaper. I appreciate that different departments have different budgets, and that's very difficult, but, if you look at it in the round, that would be a cost saving.

[536] **Darren Millar:** And have you raised this as a tribunal with the Minister?

[537] **Ms Walker:** We haven't so much, because I'm due a meeting with the Minister in the next few weeks, but we have raised it in our responses. Can I come back to you on the other point? Because the actual Bill makes reference that, if it's not right, they can go for judicial review, as if it's a simple thing. I'm horrified that anybody should suggest—. A judicial review is only for a point of law—fine, a point of law, but if it's just a point of law, the fact that somebody hasn't complied with an order of the tribunal, there is no way the parents should go to the extortionate expense of a judicial review. It's totally inappropriate.

[538] **Darren Millar:** Thank you.

[539] **Lynne Neagle:** We've gone into health, so we'll come back to the other issues, Llyr, and concentrate on this for the moment. Julie.

[540] **Julie Morgan:** So, obviously, you've told us that you feel you should be able to direct health, basically, in what they're supposed to do. That is the—

[541] **Ms Walker:** Not direct health, but just the educational provision that's required.

[542] **Julie Morgan:** Yes. Have you had any sort of feedback from health about how they would feel about that in your general work?

[543] **Ms Walker:** We haven't had direct access, but, obviously, this is something that we've been in consultation on since the beginning, and this is something that we've brought up and brought up, and we're being told that it's impossible, that health's budget is there and they can't be doing it, and, if it's possible, they will do so, and there's going to be—you call it something very odd, but, basically, a medical officer who's going to be part of the child-centred procedure, et cetera. There's meant to be a medical officer now under the SEN, and we've yet to see any input from that person. And I know from the pilot systems—we were quite closely involved with those—that one of the problems was always getting all the appropriate people together to put take the individual plans forward on a round basis. And getting these people together is very, very difficult. So, that's where we've come up against a sort of brick wall, really. But I can guarantee you that, if anything isn't going to be complied with in an order, the most complaints we get are in relation to SALT and occupational therapy.

[544] **Julie Morgan:** So, what do you think should be in the Bill to address this?

[545] **Ms Walker:** I think a small amendment that says that if we as a tribunal have found that, for the child's educational needs, SALT or occupational therapy is required, then either—and more money is given to local authorities so they can buy it in, but the problem is finding them. They're in the health authorities, and all the health authorities should provide them—not that they can override our order now, if they think it's unreasonable, which is what they're allowed to do now under section 18. I did write it down somewhere, but I'm sure you know it just as well as I do. I just think that is just a coach and horses. I appreciate there might be a difficulty with budgets,

but, if we really want to make a difference, and really make this work, I think that's one of the major differences that we could do now while there's still time. I'm sorry, I'm a bit passionate about it.

[546] **Julie Morgan:** Thank you.

[547] **Lynne Neagle:** Okay. Thank you, Julie. Llyr.

[548] **Llyr Gruffydd:** We touched at the beginning, or you mentioned potential issues around workload, and I just wanted to probe a little bit further on some of those. You say in your paper that you don't expect—or that it's unlikely to bring down appeals from their current levels of around 100 to 105 per year, initially at least, although you do suggest there might be a long-term increase in tribunal cases. On what do you base that assessment?

[549] **Ms Walker:** I base that assessment on the fact that—it's inevitable. With 16–25, we don't know what's going to come out of that. It's very new for us, further education. I suspect there are going to be a lot of appeals coming from that. It's going to be interesting and challenging for us in that I think we will then get more appeals from young people.

[550] **Llyr Gruffydd:** So in relation to the 100 or so that you mention here, are you anticipating a reduction in your existing workload that will then be supplemented by the broadened responsibilities in terms of age?

[551] **Ms Walker:** It depends which way this Bill goes. My feeling is that, if it continues the way it's going, I don't think our numbers will go down at all. They'll increase, because of the increase in the age. I think if you include the health aspect in it, I think they could well go down, but they may well increase overall because—I don't know what's going to happen in that 16–25 group. That's a bit of an unknown.

[552] **Llyr Gruffydd:** Yes. Okay. Well, it is, yes, indeed. You mentioned the experience in England and I'm just wondering whether there are any lessons that we can learn from the situation there and whether you anticipate a similar spike in cases as has been experienced in England.

[553] **Ms Walker:** Well, it will be interesting. We are getting a spike now, as I said: 118 appeals in the last complete year, and on a month basis they're up from last year again, which would see us heading over 120.

[554] **Llyr Gruffydd:** But after—. You mentioned a 20 per cent increase in—

[555] **Ms Walker:** Well, this year. I'm talking about 2016–17. If we follow England we'll get a lull while everything beds in and people try the system and see how it's working. Then, if there are problems with the system, and it's not working—the people-centred approach isn't working, the departments aren't coming together enough, and the individual plans aren't going forward—then I think we will definitely see a spike of 20 per cent. So I think the thing to do is to make sure that this multidepartmental agency work does work properly. I think that's paramount to it.

[556] **Llyr Gruffydd:** Yes, I would agree. But how well resourced are you then to meet any increased demand that may arise?

[557] **Ms Walker:** Well, as I said, because of the spike we're having now, and because all our chairs and members are basically part time—they have other commitments—we've been finding it, because of the increase in hearings, and hearings having become much more complex—. Interestingly enough as well, we've had a huge increase on refusal to assess—a huge amount. That is very interesting, because I think that is a reaction to the Bill, to the unknown that's coming. People say, 'Well, I'd rather get my statement and then I know where I am.' I think that may well die down. I think the very complex cases will still stay with us.

[558] **Llyr Gruffydd:** So, what more could other stakeholders do to help manage the situation that you're facing now, in that things are going up and going down and there's uncertainty?

[559] **Ms Walker:** I think what they could do—. From a local authority point of view, when we did some of the pilots, the most successful things we did—. When we did the pilots in relation to the appeal for children, there were some fantastic things that were developed then in the two local authorities. One of the local authorities was very good, and had hardly any appeals, and the other one had quite a few appeals, and I saw their appeals come down. What they were doing is they were keeping in contact with parents. They were informing parents, talking more. Some of the things that they did develop I was very keen to see basically rolled out through Wales, and this is something I did bring up with the Minister, because I felt it was so important. There's no point paying for all those pilots and good practice coming out of them if we're not then adopting the practice throughout Wales, because I am

concerned that—. The other thing is with the individual development plans—I am concerned that there should be a certain format. Otherwise we're going to have a postcode lottery, and that is a problem. I don't think they were rolled out and I think that's a wasted opportunity and I think it's a waste of money.

15:30

[560] **Llyr Gruffydd:** Are you content that you're able to feed those views into this process, as it's moving forward?

[561] **Ms Walker:** Well, I try—I do try. I'm very fortunate that the Minister for education allows me some time, once a year, to go and take out my particular whinges on him and he very kindly listens and takes on board, as far as he can, and I do continue to push those sorts of things.

[562] I also do that through the user group meetings. I hold regular user group meetings and I try to disseminate good practice that has worked in other local authorities and get local authorities to talk to one another. Also, I try to highlight things that are going wrong—why local authorities are losing cases, you know, if they haven't prepared certain aspects well. We try and share that with them. So, going forward, we'll continue to do that and see where we can help where we can.

[563] **Lynne Neagle:** Thank you. When the draft Bill was under consideration, you had concerns that it was going to lead to a watering down of provision for children and young people with more complex needs. Is that the case with this Bill, with the system of everybody having an IDP?

[564] **Ms Walker:** I know that some people think it does water it down. I'm not so sure about that, because the people with severe needs, their needs are going to be so obvious that they are going to be seen to. It is then getting rid of all this School Action and School Action Plus. Everybody's going to have the plan who needs one, and that plan is individually catered to their needs. So, I don't have a major concern about the severe needs, because I think they speak so strongly for themselves that, quite frankly, you can't but help; you have to address those needs, they're so clear to see. I think the more difficult needs are the ones that are more difficult to diagnose, or if there's some discrepancy between diagnoses.

[565] **Lynne Neagle:** Okay. Thank you. Do you think that there should be a

universal template for IDPs and do you think that that would deliver portability throughout Wales then?

[566] **Ms Walker:** Absolutely. I think that is absolutely paramount. I think it's very, very important that we have—so that it doesn't matter where you move to in Wales, you take your plan with you and it's instantly recognisable in whichever local authority you go to. I think if that doesn't happen, it would be a major, major downfall.

[567] **Lynne Neagle:** And, you don't have any concern that one-size-fits-all might mean that you can't tailor support.

[568] **Ms Walker:** No, because, obviously, when we have a format, it's going to have to have provision in it—and there are people far better qualified than me to do that—that is going to take into account the individual needs of the children. But I think the format should be instantly recognisable and it should have certain things in it.

[569] **Lynne Neagle:** Thank you. Just in terms of your powers, you've expressed frustration about the health service, but are there any powers, or do you think that there should be powers, if bodies don't comply, with recurring issues, to actually—? Do you think there's something that we should be recommending in relation to that, or do parents simply have to go through the system again?

[570] **Ms Walker:** I think if you could, that would be helpful. What we do now, as I've said before, is try to disseminate helpful information through our user group meetings, but I think if we had a really bad serial offender, I would come and talk to the Minister and I'd make some other waves. But what I'm more concerned about—really concerned about—is that the Bill is silent on this. I think there's a very simple amendment that could be made, which is instead of parents—. If our order is not complied with, parents then basically have to either go to various places or they come through to the Assembly Government. And I think it's very difficult for the Government to actually have to pick up the pieces. The parent then has to get all the papers together again—they've already fought this once—and they then have to prepare it all for the Assembly Member to have a look at to see whether the matter hasn't been complied with and that takes a lot of time. In the meantime, their child's not having the provision they should do, which they've already fought for. It's extremely frustrating. I suggested to the various bodies—and I hope that it will be taken up—that we could be given

the power to have those sorts of appeals come back to us. We'll compile all the papers, because we will have them, mostly in electronic form, in any case. We can submit it. We can say, 'No, they haven't complied with this order, the order was quite clear.' We can then submit it to the Minister. It saves the Minister an awful lot of time. If the Government didn't want to give us the power to say, 'No, local authority, you're wrong; get on with it'—at least that would be a way that would not be so frustrating for parents. It would be more cost-effective and it would save Government time as well, and then the Assembly Member could do something about it.

[571] **Lynne Neagle:** Okay. Thank you very much. Are there any other questions from Members? No?

[572] **Darren Millar:** Sorry, just one. You mentioned earlier on about the portability of an IDP, particularly if it's within Wales. What about portability across the England-Wales border, both ways?

[573] **Ms Walker:** That's a very difficult one. What we do now when children move and we've got appeals running is that we liaise with the English side and we co-operate, basically, with one another. That's always worked very well. We do keep quite close links. I would hope that the local authorities would do that as well. I think that's a Government issue, isn't it, as to what credence is going to be put on an IDP coming from Wales.

[574] **Darren Millar:** To what extent do problems in accessing services in Wales that had been previously available at another school in England, for example, feature in your work?

[575] **Ms Walker:** We haven't had many transfers, to be honest with you, so I can't effectively comment on that. My apologies.

[576] **Darren Millar:** Okay. That's all right. Thank you.

[577] **Lynne Neagle:** Can I just ask one final question? Do you provide any sort of write-up of your cases? Obviously, the information is confidential, but is there any record that is in the public domain, or something like the ombudsman's casebook that he produces, of the kind of cases that you've dealt with?

[578] **Ms Walker:** There is, on our website. We basically anonymise our decisions and we publish them on the website.

[579] **Lynne Neagle:** Oh, excellent. Okay.

[580] **Ms Walker:** So, yes, you can have a look.

[581] **Lynne Neagle:** Lovely. Thank you very much. Well, can we thank you for attending this afternoon?

[582] **Ms Walker:** Thank you for giving me the opportunity to raise a few of the issues and my concerns. Thank you.

[583] **Lynne Neagle:** You will be sent a transcript to check for accuracy in due course, but thank you very much for your time.

[584] **Ms Walker:** Thank you very much. Good afternoon.

15:37

Papurau i'w Nodi Papers to Note

[585] **Lynne Neagle:** We'll move on, then, to item 7, which is papers to note. Paper to note 6 is a letter from NUS Wales to the Confederation of Passenger Transport Wales on the mytravelpass scheme, which has been sent to us for information. We are still awaiting the reply from the Welsh Government, which has been superseded; but it is, I suggest, something that we might want to keep an eye on.

[586] Paper to note 7 is the letter that we sent to the Constitutional and Legislative Affairs Committee following their consultation. Paper to note 8 is a letter from the Cabinet Secretary for Health, Well-being and Sport and the Minister for Social Services and Public Health with additional information following the meeting on 18 January.

[587] **Darren Millar:** Just on that point, Chair, if I may. I noticed that there was an update on the framework for school nursing within that letter. The committee will remember that we were told back in December, after we first raised this, I think, in September, that the framework was being refreshed and that it was going to be published around Christmas or the new year. That didn't materialise. When the Minister came before us then, he told us that it would be due in March. It looks like he's wiped that date now as well,

and it just looks like an open-ended, indefinite sort of period. Can we see if we can pin him down on the date for the publication of that?

[588] **Lynne Neagle:** Yes, if that's okay with everybody. There are also some issues in relation to the CAMHS information that I think we may want to follow up, if Members are happy. All the questions haven't been answered; so, we can do that.

[589] Paper to note 9 is the response from the Cabinet Secretary for Education to our letter on the Donaldson review. Paper to note 10 is our letter to the Cabinet Secretary for Education, following the session with Estyn. Paper to note 11 is a letter from Rhieni Dros Addysg Gymraeg on the issue of Welsh in education strategic plans. As you'll recall, we're already following this up with the Culture, Welsh Language and Communications Committee, and we'll come back on that. Is everybody happy to note those? Okay.

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

**Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Meeting**

Cynnig:

Motion:

bod y pwyllgor yn penderfynu that the committee resolves to gwahardd y cyhoedd o weddill y exclude the public from the cyfarfod ac ar gyfer eitem 1 y remainder of this meeting and for cyfarfod ar 8 Mawrth yn unol â Rheol Item 1 at the meeting on 8 March in Sefydlog 17.42(ix).

accordance with Standing Order 17.42(ix).

Cynigiwyd y cynnig.

Motion moved.

[590] **Lynne Neagle:** Item 8, then, is a motion under Standing Order 17.42 to resolve to exclude the public for the remainder of this meeting and the first item at our meeting on 8 March. Are Members content? Thank you very much.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 15:40.

The public part of the meeting ended at 15:40.