



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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[The Finance Committee](#)

09/03/2017

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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 dystiolaeth, 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

Mike Hedges Bywgraffiad Biography	Llafur Labour
Steffan Lewis Bywgraffiad Biography	Plaid Cymru The Party of Wales
Eluned Morgan Bywgraffiad Biography	Llafur Labour
Nick Ramsay Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives
Mark Reckless Bywgraffiad Biography	UKIP Cymru UKIP Wales
David Rees Bywgraffiad Biography	Llafur Labour
Simon Thomas Bywgraffiad Biography	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

Eraill yn bresennol
Others in attendance

Nick Bennett	Ombwdsmon Gwasanaethau Cyhoeddus Cymru Public Services Ombudsman for Wales
Huw Bryer	Rheolwr Gyfarwyddwr, Ymchwil OB3 Managing Director, OB3 Research
Katrin Shaw	Cyfarwyddwr Cynorthwyol a Chynghorwr Cyfreithiol, Ombwdsmon Gwasanaethau Cyhoeddus Cymru Assistant Director & Legal Adviser, Public Services Ombudsman for Wales

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

Bethan Davies	Clerc Clerk
Gareth Howells	Cynghorydd Cyfreithiol Legal Adviser
Joanne McCarthy	Y Gwasanaeth Ymchwil The Research Service
Georgina Owen	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 09:17.

The meeting began at 09:17.

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

[1] **Simon Thomas:** Bore da. Galwaf y Pwyllgor Cyllid i drefn a chroesawu pawb i sesiwn sy'n edrych ar y Bil Ombwdsman Gwasanaethau Cyhoeddus (Cymru) drafft. Ac mae'r Ombwdsman Gwasanaethau Cyhoeddus, ei staff a chynorthwywyr gyda ni y bore yma. A gaf i sicrhau, yn gyntaf, bod ffonau symudol a phethau felly wedi tawelu, ac atgoffa pawb bod cyfieithu ar sianel 1, a lefel y sain ar sianel 0? A hefyd, gan fod hwn yn bwnc weddol newydd i'r pwyllgor mewn sesiwn cyhoeddus, a oes unrhyw fuddiant i'w ddatgan gan aelod o'r pwyllgor? Nac oes.

Simon Thomas: Good morning. I call the Finance Committee to order and welcome everyone to a session where we will be looking at the draft Public Services Ombudsman (Wales) Bill. And the Public Services Ombudsman for Wales, his staff and assistants, are joining us this morning. May I make sure, first of all, that mobile phones and so forth have been put on silent, and remind everyone that interpretation is on channel 1 and amplification is on channel 0? And, because this is a relatively new subject for this committee in a public session, does anyone have a declaration of interest to make? I see that there are none.

09:18

**Trafod y Bil Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) Drafft:
Sesiwn Dystiolaeth
Consideration of the Draft Public Services Ombudsman (Wales) Bill:
Evidence Session**

[2] **Simon Thomas:** Felly, gwnawn fwrw ymlaen, gan groesawu'r ombwdsman gwasanaethau cyhoeddus, Mr Nick Bennett. Croeso i'r pwyllgor.

Simon Thomas: So, we will proceed, and welcome the ombudsman to the committee, Mr Nick Bennett. Welcome to the committee.

[3] **Mr Bennett:** Bore da. Diolch yn fawr.

Mr Bennett: Good morning. Thank you very much.

[4] **Simon Thomas:** Ac os wnewch chi, os gwelwch yn dda, gyflwyno'r pobl sydd gyda chi ar gyfer y cofnod hefyd? Diolch.

Simon Thomas: And if you would, could you just introduce the people who are joining you at the table, for the record? Thank you.

[5] **Mr Bennett:** Dyma Katrin Shaw, sy'n gweithio gyda fi, a Huw Bryer, sy'n rheolwr Ymchwil OB3, y cwmni sydd wedi'n helpu ni gyda'r *regulatory impact assessment*.

Mr Bennett: Katrin Shaw, who works with me, and Huw Bryer, who is the manager of OB3 Research, the company that's helped us with the regulatory impact assessment.

[6] **Simon Thomas:** Croeso i bawb felly. Os ydych yn hapus, mi wnawn fwrw yn syth ymlaen. Rydym ni wedi derbyn yr asesiad costau gyda chi, ac rydym ni, wrth gwrs, wedi bod, fel pwyllgor, yn trafod y Bil drafft yn y gorffennol hefyd. Felly, a gaf i jest ofyn yn y lle cyntaf, i ni ddeall y broses sy'n digwydd ar hyn o bryd: ar ôl i chi dderbyn cynw, neu rywbeth a all droi yn gwyn, sut ydych chi'n penderfynu ym mha ffordd i fwrw ymlaen â'r ymchwiliad, a, mewn ffordd, y ffordd rŷch chi yn penderfynu ei fod yn gwyn go iawn,

Simon Thomas: Welcome, everyone. If you're happy, we will proceed therefore. We have received the cost assessment, and we have, as a committee, been discussing the draft Bill in the past. So, may I ask initially, just so that we can understand the process that is undertaken at present: after you receive a complaint, or something that could turn into a complaint, how do you decide in what way to proceed with the investigation, and how do you decide that it is a real complaint, and therefore begin the processes?

ac felly yn dechrau agor y prosesau?

[7] **Mr Bennett:** Océ. Reit. I gychwyn, mae'n rhaid i ni fod yn glir bod y gwyn yn dod i fewn i'n awdurdodaeth ni. So, mae hynny'n hollbwysig. Yn ail, o safbwynt yr achwynydd, beth mae nhw'n chwilio amdano, o safbwynt cael iawn, neu iawndal? A oes yna broblemau ehangach pan fo'n dod i'r gwasanaeth yna—rhywbeth systemig sy'n digwydd, sy'n golygu bod yna fudd cyhoeddus? Sut y gallwn ni sicrhau ein bod ni'n gymesur, ac nid yn gor-gymhlethu pethau? Nid ydym eisiau bod yn rhy fiwrocraidaidd o safbwynt y ffordd rydym yn mynd o gwmpas pethau. A ydy hi'n bosib i ni sicrhau ein bod ni'n gallu datrys y mater heb gynnal ymchwiliad llawn? Rydw i'n meddwl bod hynny'n bwynt diddorol. Rydw i'n meddwl ein bod ni wedi gweld tua 38 y cant mwy o ddefnydd o ddatrysiad cynnar y llynedd, ac rydw i'n meddwl efallai y bydd y ffigyrau hyd yn oed uwch eleni. Efallai ein bod ni'n dod i'r pwynt lle rydym ni'n defnyddio datrysiad cynnar yn fwy nag ymchwiliadau.

[8] **Simon Thomas:** A ydy hwn yn rhywbeth yr ydych chi'n ei drafod gyda'r achwynydd, efallai, yn y lle cyntaf?

[9] **Mr Bennett:** Mae'n rhaid i ni drafod i weld beth sydd wedi mynd o'i le, a hefyd, i ryw raddau, beth maen nhw'n disgwyl ei gael allan o'r

Mr Bennett: Okay. Right. To start, we have to be clear that the complaint is within my jurisdiction. So, that's vital. Secondly, from the perspective of the complainant, what are they looking for in terms of receiving compensation and so forth? Are there broader problems when it comes to that service—a systemic issue that means that there is a public benefit? How can we ensure that we are proportionate, and that we don't overcomplicate things? We don't want to be too bureaucratic about how we proceed. Is it possible for us to ensure that we can resolve the issue without having a full inquiry or investigation? I think that's an interesting point, and I think that we've seen about a 38 per cent increase in the use of early resolution last year, and I think that those figures will be even higher this year. Maybe we're coming to the point now where we're using early resolution more than investigations.

Simon Thomas: Is that something that you discuss with the complainant, maybe, initially?

Mr Bennett: We have to discuss that to see what's gone wrong, and, to a certain extent, what they expect to get out of the process.

broses.

[10] **Simon Thomas:** A ydy cost yn chwarae rôl yn hyn o gwbl? Hynny yw, a ydych chi'n edrych ar natur y cwyn a'r datrysiad posibl, un ffordd neu'r llall, a'r budd a ddaw i'r achwynydd drwy'r broses yna, a hefyd y gost y byddai i'ch swyddfa chi i ymwneud â'r cwyn? A ydych chi'n ceisio barnu, yn y bôn, a ydy cwyn yn well mewn un broses yn fwy na'i gilydd?

Simon Thomas: Does the cost play a role in this in any way? That is, do you look at the nature of the complaint and the possible resolution, however that goes, and the benefit that will come to the complainant by going through that process, and also the cost for your office to deal with that complaint? So, do you try to decide, basically, whether a complaint should go through one process or the other?

[11] **Mr Bennett:** I ryw raddau, rydw i'n siŵr ein bod ni, ond nid y gost yw'r prif ffactor. Budd cyhoeddus yw'r prif ffactor—felly, y broses yr ydw i wedi'i disgrifio hyd yn hyn i ymwneud efo'r cwynion pan mae'n dod i wasanaethau cyhoeddus.

Mr Bennett: To a certain extent we do, but the cost is not the main factor. Public interest is the main factor—so, the process that I've described so far deals with complaints when it comes to public services.

[12] Wrth gwrs, hefyd rydw i'n gyfrifol am gwynion pan mae'n dod i'r cod ymddygiad am gynghorwyr yng Nghymru. Eto, nid y gost yw'r prif beth yn fanna, ond yn gyntaf, a ydy rhywun wedi torri'r cod ei hun, ac yn ail, beth yw'r budd cyhoeddus. A ydy rhywun wedi camddefnyddio eu rôl nhw fel cynghorydd ar gyfer budd preifat? A ydy bwlio neu ryw fath o gamddefnydd o rym wedi digwydd? Dyna'r prif beth sydd yn fy mhoeni fi, yn hytrach na'r gost.

Of course, I'm also responsible for complaints on the code of conduct in terms of councillors in Wales, and the cost is not the main thing there, but first of all, whether somebody has breached the code itself, and secondly, what is the public interest. Has somebody misused their role as a councillor for private benefit? Has bullying happened, or any misuse of power happened? That's the main thing that concerns me, rather than the cost.

[13] **Simon Thomas:** Rydych chi newydd sôn am y cod ymddygiad, ac wrth gwrs, rydw i'n cofio pan oeddech chi gerbron y pwyllgor yn

Simon Thomas: You've just referred to the code of conduct, and I do remember when you were before the committee and we were looking at

edrych ar eich cyfrifon y tro diwethaf, roeddech chi wedi tynnu sylw'r pwyllgor at y ffaith bod cwynion o dan y cod ymddygiad yn tueddu i godi amser hyn o'r flwyddyn—nid gwanwyn yw e, ond cyn etholiad; mae cynghorwyr yn gwneud cwynion am gynghorwyr eraill. A oes yna broses wahanol o dan y cod ymddygiad, neu a yw'n debyg i'r broses yr ydych chi wedi'i hamlinellu yn fwy cyffredinol? Hynny yw, os oes datrysiad cynnar a phethau felly.

the accounts previously, you drew the committee's attention to the fact that complaints under the code of conduct were increasing, and likely to increase around this time in the cycle. It's not because of spring, but because of an election, and councillors making complaints about other councillors. Is there a different process under the code of conduct for complaints, or is it similar to the process that you've outlined more generally? Is there an early resolution and so forth involved?

[14] **Mr Bennett:** Mae yna broses. Mae'n bosibl cael datrysiad lleol, ac rydym ni'n falch iawn bod datrysiadau lleol yn digwydd, a'r ffaith ein bod ni'n cael llai o gwynion blinderus. Rydym ni wedi cael gormod ohonyn nhw hyd yn hyn, ac rydw i'n falch bod y niferoedd i lawr eleni. Rydw i'n gobeithio y bydd pethau yn aros fel hynny wrth symud ymlaen. Wrth gwrs, rydym ni yn wynebu etholiad yn ystod y flwyddyn nesaf, ond y prif beth pan mae'n dod i'r cod ydy'r prawf dau gam: yn gyntaf, a ydy rhywun wedi torri'r cod, ac yn ail, a ydy o'n rhesymol a chymesur i ni drafod hynny. Y testun mawr ydy—a dyma'r ffordd y gallaf i fod yn atebol am gymryd y penderfyniadau yna—a ydy o yn dod o fewn budd cyhoeddus.

Mr Bennett: There is a process. You can have a local resolution, and we're very pleased that local resolutions are happening, and we have fewer complaints that are vexatious. We have had too many of them previously, and I'm pleased that the numbers are down this year, and I hope that things will remain that way as we go forward. We do face an election, of course, during the next year, but the main thing when it comes to the code is that two-stage test: has somebody breached the code, and secondly, is it reasonable and proportionate for us to deal with that. The big issue for me, and how I can be accountable for making that decision, is whether it comes within public interest.

[15] **Simon Thomas:** Mike Hedges.

[16] **Mike Hedges:** Diolch, Gadeirydd. Can I just take you through the UK Government's draft Bill on proposed powers for the public services

ombudsman in England? I assume you've looked at that. Have you made a comparison between the provisions in the UK draft Bill—for England—and the proposed legislation in Wales, and have you noticed any differences or substantial differences?

[17] **Mr Bennett:** Yes, I have looked at it. I've also been comparing the powers of the draft Bill that I hope you'll be ready to move forward with here with the powers that exist in other jurisdictions. I've done some of that work through a seminar in Aberystwyth, which I was very glad that the Chair of the committee could attend. I think whilst you were there you would have heard a contribution from my colleague the outgoing Scottish ombudsman, who felt that certainly Welsh legislation is currently a generation ahead of what currently operates at England/UK level. There are a lot of positives that could be said about the UK legislation, but there will be people that would detract from some of the proposals as well. Of course, there is a question over what happens with the UK legislation given that there will be other competitor issues in terms of the legislative timetable at Westminster. But even if it is adopted, it will not be as far reaching as the proposals in Wales. It will not be taking on the best practice that's been identified in terms of own-initiative, which has currently been adopted in Northern Ireland, nor the Complaints Standards Authority, which has been taken from lessons learnt in Scotland. It'll bring in some reforms. So, for example, the public will be able to approach the English/UK ombudsman directly rather than going through a member, but that's a reform that already exists here. It'll make for easier access to justice. So, there are some proposals that are similar to our draft legislation in terms of accepting oral complaints as well as written complaints. But it still won't deliver for England an integrated public service ombudsman service. So, housing, for example, will still be excluded from the English/UK proposals, and I guess, as well, for some, given that we are in a post-devolution era, it'll be mixing English services with UK non-devolved services, which may draw problems in terms of UK/England. I think there will be some people who will be uncomfortable about that, particularly in an era where you have issues like English votes for English laws, and so on. It could be a complicated process.

[18] **Mike Hedges:** I'd tend to agree with that statement. Without putting words into your mouth, having seen what's been done in England, would you agree that there's no need to make any alterations to the proposed Bill, as it stands at the moment?

[19] **Mr Bennett:** I would agree with that. I'm trying to disagree, given that I

don't want to be seen to be having anything put in my mouth in terms of phraseology. But genuinely, if you look at the proposals in Wales, these have been looked at—. And clearly, for those Members—I think you, Mike and Nick, were Members of the previous Assembly—. Originally, these proposals emerged in 2015, so, they've been in circulation now for some two years. I would argue that current Welsh legislation is ahead of what might happen if we see further reform in England and Wales, but if these proposals are adopted, then they will in no way embarrass Welsh legislators, they will simply ensure that we're ahead of the game and that there will be no lag in terms of further reforms that have happened in Scotland and Northern Ireland.

[20] **Mike Hedges:** I take it from what you've been saying that you don't see any need for changes to the regulatory impact assessment as a result of the UK Bill either.

[21] **Mr Bennett:** No, I don't.

[22] **Mr Bryer:** I'd agree with that. I think, as Nick has said, in England, they're effectively playing catch up. So, the process is more advanced here and my assessment of the Bill in England is that it would not require a revision to the RIA that we produce in Wales.

[23] **Mike Hedges:** I've got no more questions, but can I just make the comment that that is exceptionally helpful?

[24] **Simon Thomas:** Thank you. David Rees.

[25] **David Rees:** Diolch, Gadeirydd. You've already mentioned oral complaints being highlighted. You have a discretionary power at this point in time to accept oral complaints. Could you tell me perhaps to start with, how many oral complaints you receive in a year, effectively, and how many of those you would act upon?

[26] **Mr Bennett:** My issue with accepting oral complaints isn't one of practicality, it's one of perception, particularly during a time when we've seen, perhaps, issues when it comes to access to justice and issues when it comes to access to legal aid and other things. Currently, the legislation, our literature and other issues indicate that we would normally expect somebody to approach us with a written complaint. Now, my problem is if we've got a higher proportion—. We have got a higher proportion of people with literacy

issues in Wales compared to the UK norm; I think there's a difference of maybe 7 per cent. Sometimes, those are the people who need good public services more than others, and immediately, particularly with something like a literacy issue, it can create a stigma, which might put people off approaching us. However, some people do. The numbers are not huge. I'd estimate that it's perhaps around 50 people a year who would come to the office, and where they have a literacy issue, we will work with them. Our excellent complaints advice team would maybe spend two or three hours going through the issues that they feel have gone wrong, writing down that complaint for the complainant and sending it to them, so that, hopefully, an advocate can assist them and they will then send that back and we will investigate and give them the same service that we'd give anyone else in Wales, which should be their right and their due. Unfortunately, we would probably receive, I think, 50 per cent of those back. So, the other 50 per cent is completely wasted. We're never sure which ones, of course, but there is an inefficiency during a period where we've seen 5 per cent or 7 per cent increases year on year. This is an area where, if we had more freedom and less use of terms such as 'discretion', then I think we would perhaps receive more oral complaints, because perhaps people who do feel stigmatised because of literacy issues would feel freer to come to us, so numbers would go up. Secondly, we wouldn't necessarily have to be writing them down and sending them back for an advocate, so that we have that downtime. So, there's an efficiency gain for us, and I think there's a social justice point there.

09:30

[27] **David Rees:** I understand the social justice point. It seems to me that it's more of a clarity of perception to the public to understand that that mechanism is available to you, but that 'discretion' is maybe more of a putting off word, effectively, then, than anything else.

[28] **Mr Bennett:** I think so. I think I'm right in saying that the way that the legislation is currently transposed is down to my personal discretion, which—I'm sorry, but these are the citizens of Wales and their rights. If you had a literacy issue and were not able to provide me with a written complaint, it's somehow dependent upon my mood or my discretion. I don't think that's an appropriate way to be treating modern people in modern Wales.

[29] **David Rees:** Is there a view, then, that, actually, some of those written complaints also would be transferred into oral complaints?

[30] **Mr Bennett:** There might be further reforms or efficiencies further down the line, but I'm at pains to assure people, including my own staff, that this is not a move towards us becoming solely based on oral complaints. We don't want to become a call centre, as such. It's important that this doesn't have too radical of an effect upon the significant pressures that staff are already under, but it's about giving that flexibility for us, but also that further assurance and removing any perceived social injustice.

[31] **David Rees:** Okay.

[32] **Simon Thomas:** Eluned Morgan.

[33] **Eluned Morgan:** I'm not clear about exactly what the ombudsman does, so can I ask some really basic questions, if you don't mind? If my child was expected to get an A in a History exam and got a D, would they be allowed to complain to the ombudsman saying their teacher's rubbish? I don't know what the rules are here. What about if somebody went to a doctor and said 'I'm really ill, I want penicillin' and the doctor says no? And do you expect there to be an increase, with an age of austerity, in complaints, because of expectations and that there are likely to be cuts?

[34] **Mr Bennett:** I think we've got to be careful. The difference here, be it your child unhappy with their grades, or somebody—

[35] **Eluned Morgan:** My child wouldn't be unhappy; I would, though.

[36] **Mr Bennett:** Well, I've had other complaints closer to home. It's not about the outcome, as long as the process has been a correct one. So, it's about maladministration. Has somebody failed to follow the due process? That's where we can intervene. Is that correct, Katrin?

[37] **Ms Shaw:** It is. In relation to education complaints, we have no jurisdiction to look at conduct or curriculum issues. We can't actually look at complaints about the instruction in schools, so that certainly wouldn't be in jurisdiction anyway. The inspectorate for education does fall within jurisdiction. But, certainly with the GP appointment, that's a decision for the GP. Obviously, we can't interfere with properly made decisions. We can question professional judgement in health cases, but it would have to be more than that. So, we often have queries of that nature at the front line by our complaints advice team, as Nick says, but they're not the sort of

complaints that would make it through to the second stage of being a formal complaint.

[38] **Eluned Morgan:** Okay. That's clarified it—so, it's systems that you're looking at. Can I just ask you about the first stage and the second stage? So, in terms of the number of complaints that you get—I think I asked this the last time or the time before that you came—and the percentage that actually get through the process to the end, how many are successful, in terms of the complainant would see it as a success? What's the percentage that would be?

[39] **Mr Bennett:** Shall I start on this? Because I've got a range of numbers, and if I veer away from what you think is correct, please intervene. We receive 5,000 contacts from the public every year. Some 3,000 would be what we would term inquiries—so, they might be issues where someone is unhappy, but they might be for another jurisdiction; it might be a police related matter or a non-devolved matter or something for the financial ombudsman and so forth. There would be 2,000 complaints that we would receive, and we would investigate 400 of those. From our perspective, all of them would be resolved successfully and we would obviously have to follow correct process, but we would find in favour of the complainant in approximately 60 or 65 per cent, perhaps, of cases. There is a significant number that we do not uphold; some that we would discontinue. But increasingly, though, we are doing more when it comes to early resolution. So, the figures that I've seen so far for this year—and again, they'll have to be checked when it comes to the year end—show that perhaps this year we have done more early resolutions than we have done full investigations.

[40] So, if we can provide somebody with the outcome that they feel they're due, without incurring additional costs of bureaucracy, which I think are other questions that you've raised in the past, we need to make sure that we are being proportionate, particularly during the period of financial austerity. But going back to your earlier question again, I'm glad that you've raised it because where I do, I think, or the staff, incur that the wrath of the public is where perhaps they're angry with the outcome not the process. What they're coming back to us again and again is for, perhaps, an additional review, or there might be other issues that you've received similarly in terms of postbag issues—they might be outraged, but they are outraged about a well-made decision. I can't do anything about well-made decisions. Is that fair, Katrin?

[41] **Ms Shaw:** Yes.

[42] **Eluned Morgan:** Okay.

[43] **Simon Thomas:** David, do you want to come back on this?

[44] **David Rees:** Yes, two points on this. In relation to the oral questions, are they therefore on similar areas as the written type? In other words, are you using the same types of—*[Inaudible.]*—anyway? In your answer to Eluned's question on education, you said, 'It has nothing to do with us, in a sense', but you said that systems are. If a school, for example, decided to actually—in the major part of a two-year GCSE programme—spend—. If a pupil had 75 per cent of their education in that session through a supply teacher, that's a system failure, surely.

[45] **Mr Bennett:** Well, as we were saying earlier, we look at systems rather than outcomes, but when it comes to education, my jurisdiction is very narrow. So, most of the jurisdiction is around—well, all of our jurisdictions are around devolved public services. Whilst we could look at, perhaps, all aspects of patient treatment in the NHS, we cannot look at the whole pupil experience of a school.

[46] **David Rees:** Okay. That's interesting. I have another question—*[Inaudible.]* Again, you've indicated that, often, in this process, it's not outcomes, and people are very angry at an outcome, but the process that's been followed is correct. How many complaints that you receive haven't gone through that process initially? For example, I often see, from constituents, that they've gone through a complaint process with the health board or a public authority and the authorities then say, 'If you're unhappy with this, please contact the public service ombudsman.' How many come actually directly to you, rather than having done that internal process first?

[47] **Mr Bennett:** Have we got some premature numbers there? We term them as premature. We will receive a number of complaints each year, which are what we deem premature because perhaps there's been no effort made to try and resolve them with the public service provider. So, you know, that is our preferred method: that at least there's been some attempt to resolve it locally at the point of where service provision was made. However, I do have discretion there. So, perhaps, if that process has taken too long, we would not expect somebody to persist with a complaints process that was just providing them with ever-increasing frustration.

[48] That's the reason why I'm really interested in the Complaints Standards Authority in Scotland. It would provide for a framework where we could improve complaints happening across the public sector. It's still very, very patchy. It's patchy in local government. It's patchy still in terms of health—nearly 40 per cent of the complaints I receive are health related. They've been increasing every year. It used to be about 15 per cent of our business, 10 years ago. It's now almost 40 per cent. I think this year we'll see another 4 per cent increase in health-related complaints in Wales. There will be a variance where, for some health boards that have done very well—they will have seen a 25 per cent reduction in the volume of their complaints. Unfortunately, that is countered by a 25 per cent increase in other health boards.

[49] So, there is an issue here in terms of best practice and ensuring that public bodies get better at the way in which they serve the public. It's also an issue, obviously, given the Organisation for Economic Co-operation and Development review of the NHS, where they say, 'Look, if you're not going to follow the market, and have choice, it's important that voice is respected.' So, I think there's an awful lot more that we could do to ensure that we have more effective complaints-handling systems. And I'm very careful on this—I'm not advocating the use of market mechanisms, but if you don't have a market, you have a single provider, then there has to be contestability and there has to be an assurance that large organisations are trying to serve the individual.

[50] **David Rees:** I also raise it because some individuals have lost total confidence in the public body and have no belief that they will be listened to by the public body, so, is your discussion, then—? Is it at that point, when those individuals come and say, 'I've lost it. I can't—'?

[51] **Mr Bennett:** We've got that discretion. There is that gap, isn't there, between somebody who just comes straight to us because they're not minded to complain to the provider: 'Well, I'm sorry, but that's a premature complaint. You should go back—'? If somebody has got to the point where they're pretty much banging their head against a brick wall, then discretion does play a part, and I'd hope that we'd be able to assist those people.

[52] **Simon Thomas:** Nick Ramsay.

[53] **Nick Ramsay:** I thought your line that you cannot change or cannot have an influence on a well-made decision was a really interesting one. Do

you think that there's still a misunderstanding with a lot of the public, who see you very much as an appeals process on the decision itself, a bit like, I suppose, a planning inspector might be on a planning application, although not an exact comparison? But how do you get around that, so that they do understand the exact nature of the ombudsman and you are there to look at the process, purely, and not at peripheral issues?

[54] **Mr Bennett:** Well, I hope that we can communicate this more effectively moving forward, but I'm afraid, for a very small—it's a small number, Nick, but for a small number of people, I'm afraid they can't make that distinction, and their frustration and their anger, perhaps, at a particular decision can cloud the message that we try and explain quite gently to them. There are a small number of cases where we simply cannot get this message through, where we get the same message coming back, again and again and again, so we have to then bring in our managing customer complaints policy, and explain to somebody that we cannot deal with them anymore.

[55] **Nick Ramsay:** Because I've had a couple of situations where, if the council haven't given the right decision, they then come to me and say, 'Can you overturn this?', and then it's the Member of Parliament, and at the end of that, 'Well, if no-one will help me, I'll go to the ombudsman; he'll sort it out.' And I think, well, that's not how the system should be seen to be working at all, is it?

[56] **Mr Bennett:** No, but, you know, there are limits to my powers, and I hope with the draft Bill that you will be crossing that line.

[57] **Nick Ramsay:** You sit on top of everyone.

[58] **Mr Bennett:** I still don't want to be an appeals body. It is about maladministration and service failure, and I'm glad to see most people do get that distinction. But unfortunately there are some—some who we deal with on a regular basis—who don't quite get that.

[59] **Simon Thomas:** We might move on to some of those powers now, with Mark Reckless, I think.

[60] **Mark Reckless:** You sit on top of everyone, Nick Ramsay tells us. You spoke approvingly of the Complaints Standards Authority in Scotland, and I wonder: wouldn't it make more sense for you, as the ombudsman, to sort of set the standards for how other organisations investigate complaints, rather

than to have yet another body?

[61] **Mr Bennett:** Well, the Complaints Standards Authority, if I can give you some reassurance on that one—it sounds quite a grandiose and authoritative body; I'm afraid it's one and a half people on the first floor of an office block in Edinburgh. And it's part of the broader Scottish ombudsman's office, so I'm asking for the legislation to create something similar that would fit within the public services ombudsman's office in Wales, and it would similarly be, perhaps, one and a half or two people. It's not going to be a large human resources undertaking in that sense. But the reason that it has had such an impact in Scotland, and the reason why I think it would be of value not just to me in my office or to complainants—and you know I try and always keep in mind the experience of complainants, public service users in Wales—. It should be of value to you as well, in terms of your scrutiny role.

[62] The reason that they went down this road in Scotland was because they have 33 local authorities with 33 different complaints systems. Through adopting this approach, they've had a single system established for local government complaints in Scotland, but they also now require that all of those local authorities provide data on their performance when it comes to complaints handling. So, as a resident of Edinburgh, it's possible to find out—and I'm making these figures up—that you have a 95 per cent chance of your complaint being resolved within five days. Should you move to Glasgow, your chances might be reduced to 80 per cent—or in Dumfries and Galloway it might be even lower. Those are only indicative figures, but it gives a level of performance and scrutiny in a non-market system, and I think that would be of huge value to us in Wales, to try and make sure that with the existing 22 local authorities, whatever arrangements we have in the future, there is an emphasis there on performance and trying to resolve issues for people who use local government services. We don't currently have that system. We do have a complaints policy, but as I said earlier, that can be patchy in terms of the way that it's adopted. And I think having that rigour and having those data, those open data, which are available to parliamentarians in Scotland—it's not yet available to parliamentarians in Wales—would have a broader impact on public service performance.

09:45

[63] **Mark Reckless:** And how would that change your relationship with, say, the local authorities, if you're setting the standard by which they are to investigate the complaint, and perhaps facilitating the publication of those

data, which presumably will show some of them doing relatively poorly?

[64] **Mr Bennett:** Well, we already publish some data in terms of complaints performance, which are available in our annual report. We do meet regularly with, not just the Welsh Local Government Association, but also with the complaints officers of the 22 local authorities. I've discussed this informally with them in terms of the broader regulatory impact—would this be costly, how would it affect them and their relationship with us—and, to some extent, I think there would be a welcome from them, because there could be longer-term economies through having single systems across Wales, and perhaps as well it would escalate their relative importance. Where is the complaints culture within each of our 22 local authorities? How close is the complaints unit to the chief executive's office? What level of scrutiny is there at council level, in terms of the way in which offices and departments provide services to the different 22 populations that are served? So, I think it could only be a positive, or I'd hope it would only be a positive relationship, and certainly, the evidence so far in Scotland is that it's been a positive one, and that it has improved performance.

[65] **Mark Reckless:** Can we turn to the power to investigate on your own initiative? Wouldn't that also change your relationship with the bodies you're investigating and put you in, to adopt Nick Ramsay's phrase, a position more on top of them and able to control and have greater power over them?

[66] **Mr Bennett:** It could do, and it depends, of course, upon how the powers are used and how proportionate they are. I, or anybody who takes over from me—I have a fixed-term of seven years; I'm now in year 3. So, these are powers that would, I hope, be adopted during the remaining period of my office, but, clearly, whoever takes on there would have to be accountable for their use as well.

[67] Now, own initiative is a mainstream ombudsman function in terms of global or international best practice. It hasn't been used extensively in the UK, but it's starting to change. So, so far, Northern Ireland have adopted own initiative. It also exists in Ireland and much of the continent, but internationally—North America, Asia, large areas of the world—it's a typical ombudsman's function. For me, I think it could only be used in rare circumstances, perhaps once or twice a year. Why? Because, largely, we are a reactive office. I think it's important that we retain that reactive function, and that for the people—the 5,000 people who do come to the office every year, for the 2,000 well-made complaints—we continue to provide that service.

And that will continue, I think, to be where the overwhelming emphasis on the office is.

[68] **Mark Reckless:** So, you say you would perhaps investigate one or two, but in terms of your successor, whenever that time may come, what assurance do we have that they may not take a very different approach and investigate a much larger number and perhaps shift the culture of your office from being reactive to then being in charge of where there are problems in the public sector, and where they think they want to push things along?

[69] **Mr Bennett:** There are a number of points I'd like to cover on that one. Before I do, I think it's important, in terms of own initiative—. The reason why I think it's important—who complains for the homeless?

[70] **Mark Reckless:** Sorry, I didn't hear you.

[71] **Mr Bennett:** Who complains for the homeless? Increasingly, I think this legislation isn't about simply giving me more power. It's about the power to investigate complaints for those people who are in a vulnerable position. So, as I say—

[72] **Mark Reckless:** What about Shelter or those others who serve the homeless? Wouldn't that be something that they could do to support people who—?

[73] **Mr Bennett:** Well, certainly, they do lobby, but I think, again, going back—. This has been going on for some time, but for those Members from the fourth Assembly, I think you did take evidence from Shelter, who were supportive of own-initiative powers, because, as I say, if currently we expect somebody to have an address and a method of providing a written complaint, that certainly puts homeless people at a disadvantage. Also, increasingly, we live in an ageing society. If there's going to be a 30 per cent increase in the number of people aged over 65 over the next decade, a particular increase in those people aged over 85, and an increase in the proportion of the population experiencing sensory loss, how do they complain? If I was to criticise the legislation that we currently have, it is not futureproofed in terms of being able to serve what is going to be a more fragile and vulnerable population moving forward.

[74] So, it might well be that there is more use of those powers moving forward, but you would still have considerable control, not just over me, but

also my successors, because I have to come to the Assembly every year and to this committee seeking budgetary resources. I think any budgetary resources for the future would have an own-initiative line, which I think you can choose to fund or not to fund.

[75] Also, another thing that I'd like to emphasize, because there have been some reports recently to the contrary, I am not accountable to the Government; I'm accountable to you as an Assembly as a broader legislature. So, if I lose your confidence, you can sack me. So, there is an aspect to this of, 'Give me enough rope', because I think the powers that we're seeking here are mainstream. There is a risk, and the risk is in the implementation, and I expect to be held to account about the way that those powers are implemented. So, if we move ahead with legislative proposals for a complaints standards authority, I think the resources would be limited—the same with own initiative—but we've got to get it right. I think it's a responsibility for me and my team to make sure that we do that in the right way, and that we learn from other jurisdictions that have clearly had that previous experience.

[76] **Mark Reckless:** How much money would you like for those two budget lines initially?

[77] **Mr Bennett:** I think, roughly—we'll come to the regulatory impact assessment—we've costed the whole set of additional powers at, I think, approximately £300,000 a year, which is clearly a considerable amount of money, but I think proportionate to our existing budget, is relatively modest. And I'm also very pleased—I think there might have been some communication with officials on this—we have had a budget deficit issue for some years, but that has now been corrected. So, I think we will be in a position where there will be less call on the consolidated fund—I think a reduction of £292,000 next year and in subsequent years. So, there is a saving there. So, the net effect might be £18,000 to have an impact on a public service universe of over £16 billion, so I think there are good value-for-money reasons for moving ahead with this legislation.

[78] **Mark Reckless:** Thank you.

[79] **Simon Thomas:** David Rees.

[80] **David Rees:** On the own-initiative powers, I understand your arguments on areas that haven't got a voice, effectively, but there are

obviously other regulatory bodies in some of those areas. Healthcare Inspectorate Wales will be undertaking some of it. You identified that 40 per cent of your work is already health. So, in a sense, you are required to set up criteria for own initiatives under this draft Bill, but I don't see evidence where that criteria has to be approved by anybody, or that you report necessarily that criteria, and be accountable for that criteria, as you've just said, to the whole Assembly. How do we ensure that on own initiatives, in conjunction perhaps with any regulatory bodies, health inspectorates or any other inspectorates that exist today, you're working using a collaborative approach rather than anything else?

[81] **Mr Bennett:** I think that's a very fair question, and it goes back to my comment there about enough rope. It's not a question for 'we'; I have to justify, if I receive these powers and I have funding, I have to justify that expenditure. I would be very embarrassed if I was spending public money that was duplicating the powers of others. I currently—I don't know if this will be of some reassurance—meet regularly with the Older People's Commissioner for Wales, the Welsh Language Commissioner, the Children's Commissioner for Wales, the Future Generations Commissioner for Wales and also with the Auditor General for Wales. They've been supportive of me receiving these powers, but certainly if I was to have own-initiative powers, I would seek to assure you that I would carry on having those regular meetings with those others to make sure that there's a consensus and an evidence base around the type of issues that I might look at; so, you know, systemic issues—I think some of them are referred to in the regulatory impact assessment—where there have been specific issues around, perhaps, GP services or perhaps adaptations in social housing for older people.

[82] More recently, savings for children in foster care would be an issue where I had a specific issue that came up in Bridgend, which was a specific case of injustice for a looked-after child, but I currently have a concern that that might be happening in other places. So, currently, I publish a public interest report. I publish that. Essentially, it's a form of closing one's eyes, crossing one's fingers and hoping that other authorities read that report and correct other areas of maladministration that might be operating within their jurisdictions. I think you've always got to have that evidence base; you've always got to make sure that there's a resonance with other things that are going on.

[83] Another example, again in terms of older people's care—you remember that the older person's commissioner had a recent review of

nursing care. I have jurisdiction in that area, but I have not seen the same increase in the level of care complaints for older people that the older person's commissioner describes in her reviews. Is that because there's a problem with the methodology for the older person's commissioner's study? I doubt it. Or is there a fear issue because of increasing pressure on that care and the fact that there are fewer and fewer places—a fear not just from the older person, but perhaps from their family as well—that if they complain, or do anything too formal, there would be further repercussions that the care place might be lost? So, those are the types of areas where I'd like to look.

[84] **David Rees:** So, you're more than happy to have consultation with those bodies in that—*[Inaudible.]*

[85] **Mr Bennett:** Yes, and to do that to make sure that what would be a limited power and limited resources are not wasted and that they have maximum benefit in the public interest.

[86] **Simon Thomas:** A gaf i holi am hwnnw, jest i fod yn glir, achos mae'r asesiad effaith rheoleiddiol yn sôn yn benodol am y gwaith sydd wedi cael ei wneud yn rhyngwladol ac yn benodol, rwy'n meddwl, gan yr ombwdsman yn Iwerddon? Roedd ef yn bresennol yn y seminar yn Aberystwyth hefyd, os wyf yn cofio'n iawn. Mae yna batrwm rhyngwladol lle mae cryn nifer mwy o fentrau ar eich liwt eich hunain yn cael eu gwneud: mae yna sôn am ugeiniau yn ystod y flwyddyn. Rydych chi, wrth ateb Mr Reckless, wedi sôn am un neu ddau. Ym mha ffordd y gallwn ni fod yn glir ynglŷn â beth yw'r potensial ar gyfer y ffrwd gwaith yma yng Nghymru? Ac ym mha ffordd y byddech chi am sicrhau bod yna weithdrefnau yn eu lle ar gyfer olynnyddion—ar gyfer ombwdsmy'n y dyfodol—i sicrhau nad yw hwn yn rhyw fath o sgwarnog sydd yn mynd

Simon Thomas: Can I just ask about that, just to be clear, because the RIA mentions specifically the work that has been done internationally, and specifically, I think, by the ombudsman in Ireland? He was present in the Aberystwyth seminar, if I remember rightly. There is an international pattern, where many more of the own-initiative investigations are being undertaken: there is talk of dozens during the year. In answering Mr Reckless, you mentioned one or two of those. In what way can we be clear about what the potential is for this work stream in Wales? And in what way would you want to ensure that there are procedures in place for successors—the ombudsmen who will come in the future—to ensure that this is not some kind of red herring that will cost the Assembly a great deal of money, remembering that the

off ac yn costio cryn dipyn i'r Cynulliad, o gofio taw'r Cynulliad, fel rydych chi'n ei ddweud, sy'n talu am hwn yn hytrach na'r Llywodraeth? Assembly pays for this and not the Government?

[87] **Mr Bennett:** Yn gyntaf, nid ydych yn fy nhalu i i ddilyn ysgyfarnogod. Rwy'n meddwl os oes unrhyw un yn gwneud hynny, maen nhw yn y pen draw yn gyfrifol am hynny. Rwy'n teimlo'n gyfrifol iawn am yr arian cyhoeddus rydym ni yn ei gael. Rwy'n meddwl mai dim ond hyn a hyn o arian cyhoeddus a fydd ar gael ar gyfer gwneud hyn. Dyna pam rwy'n sôn am wneud efallai dau asesiad bob blwyddyn o dan bwerau fy liwt fy hun. Rwy'n meddwl ei fod yn bwysig i fabwysiadu arfer da. Mae'n bodoli ar hyn o bryd: mae yna Gymdeithas Ombwdsmyr Prydain ac Iwerddon; mae un Ewropeaidd ac un byd-eang hefyd. Felly, mae'r wybodaeth ar gael er mwyn dysgu beth sy'n digwydd yng Nghanada, neu Iwerddon neu yng Ngogledd Iwerddon—nhw yw'r awdurdodaeth sydd wedi mabwysiadu hyn yn fwyaf diweddar. **Mr Bennett:** First of all, you don't pay me to follow up on red herrings. I think that, if anyone were to do that, they would be ultimately responsible for that. I do feel a sense of great responsibility for the public money that we receive. I think that only so much public money will be available to carry this out. That is why I am talking about undertaking possibly two own-initiative investigations per year. I think it's important to adopt good practice. It's in place currently: there is a British and Irish Ombudsman Association; there is a European one and there is also an international one. So, that information is available so that we can learn from what happens in Canada or in Ireland or in Northern Ireland—they are the jurisdiction that has adopted this most recently.

[88] Felly, rwy'n meddwl ei fod yn bwysig bod y grym hwnnw'n bodoli, ond rwy'n meddwl ei fod yn bwysig hefyd ei fod yn cael ei ddefnyddio yn y ffordd iawn ar gyfer y budd cyhoeddus. So, I think that it's important that that power exists, but I also think that it's important that it's used in the right way for the public interest.

[89] **Simon Thomas:** Yn ystod y flwyddyn ddiwethaf, rydych yn sôn am un achos—y busnes arian poced neu gynilon ar gyfer plentyn mewn **Simon Thomas:** During the last year, you mentioned one case—this business of pocket money or savings for a child in foster care, but during

gofal maeth—ond yn ystod y flwyddyn ddiwethaf, a ydych yn gallu rhoi i'r pwyllgor dau neu dair enghraifft o le yr ydych yn teimlo y gallech fod wedi ystyried cychwyn ymchwiliad?

the last year, can you give the committee two or three examples of where you feel that you think you could have considered starting something like this?

[90] **Mr Bennett:** Mae yna nifer yn yr asesiad, ond weithiau nid yw'r pŵer yma jest ar gyfer gwneud pethau ar eich liwt eich hun ac edrych ar y sector neu broblem systemig; weithiau mae'n ffordd inni fod yn fwy ymatebol i ddinasyddion Cymru. Er enghraifft, ar hyn o bryd, os yw rhywun yn dod ataf ac yn cwyno am y meddyg ac rydym yn dechrau ymchwilio ac yn ffeindio nad yw'r meddyg ar fai, ond bod rhywbeth systemig yn effeithio ar weddill y bwrdd iechyd, mae'n rhaid i fi fynd yn ôl at yr achwynydd a gofyn iddyn nhw roi cwyn arall i mewn ar gyfer y bwrdd iechyd.

Mr Bennett: There are many in the assessment, but sometimes this power is not just about doing something on your own initiative and looking at the sector or a systemic problem; sometimes it's just a means by which we can be more responsive to the citizens of Wales. For example, if someone comes to me now with a complaint about their doctor and we start to investigate and find that it's not the doctor's fault, but that something systemic is affecting the rest of the health board, I have to go back to the complainant and request that they submit another complaint against the health board.

10:00

[91] Felly, nid ydy o'n adlewyrchu fel y ffordd orau i ganoli ein gwasanaethau ni ar gyfer dinasyddion Cymru. Mae'n gallu jest gwella'r ffordd rydym ni'n gwneud pethau o ddydd i ddydd.

So, that doesn't reflect the best way of centralising our services and structuring them for the citizens of Wales. So, it would just be a means of improving the way that we work from day to day.

[92] **Mr Bryer:** Buaswn i jest yn ychwanegu roedd hwn yn gwestiwn eithaf allweddol wrth i ni baratoi'r asesiad ac fe ofynnem ni i swyddfa'r ombwdsmon am enghreifftiau o'r math o fframwaith y byddai'r pŵer hwn yn cael ei ddefnyddio ynddo fe.

Mr Bryer: I would just add that this was a key question that we addressed in preparing the assessment and we asked the ombudsman's office for examples of the kind of framework that this power would be used in. So, I would

Felly, byddwn i'n eich cyfeirio chi at ffigur 1 ar dudalen 12 o'r asesiad ei hun, lle y mae'r swyddfa wedi cyflwyno ger bron disgrifiad o'r math o sefyllfaoedd y byddai'r pŵer yma yn cael ei ddefnyddio ynddyn nhw. Ac yn sgil hynny, mi ofynnais i hefyd i swyddfa'r ombwdsmon am nifer o enghreifftiau lle, pe tai'r pŵer yma wedi bod gyda nhw dros yr ychydig flynyddoedd diwethaf, y buasen nhw wedi dymuno ei ddefnyddio er lles diddordeb cyhoeddus. Yn atodiad A o'r asesiad, rŷm ni'n cyflwyno nifer o'r enghreifftiau hynny i chi. Beth y byddwn i hefyd yn ei ategu yw, o ran y dystiolaeth ryngwladol edrychom ni arni, roedd hi'n eithaf defnyddiol *actually* achos—mi ddown ni ymlaen i hyn—mae yna ddiffyg tystiolaeth yn gyffredinol o ran sgil-ffeithiau anuniongyrchol y math yma o bwerau. Ond, mae'n fy nharo i wrth edrych ar y dystiolaeth honno yn rhyngwladol fod yna dipyn o amrywiaeth ynglŷn â sut y mae cynlluniau ombwdsmyr yn darparu eu pwerau nhw, felly nid yw, o reidrydd, yn synhwyrol i gymharu'n uniongyrchol nifer a math yr ymchwiliadau *own initiative* sy'n digwydd mewn gwledydd eraill i'r math o ffordd y byddai'r ombwdsmyr yn y wlad hon yn eu defnyddio nhw. Felly, mae'n ddefnyddiol cael y wybodaeth honno fel cyd-destun, ond mae yna amrywiaeth hefyd ynglŷn â sut y mae'r pwerau yna'n cael eu defnyddio yn rhyngwladol.

refer you to figure 1 on page 12 of the assessment itself, where the office has described the types of situations where this power would be used. In the wake of that, I also asked the ombudsman's office for a number of examples where, if this power had been present over the last few years, they would have wished to have used it in the public interest. In annexe A to the assessment, we do present a number of those examples to you. What I'd also echo is that in terms of the international evidence that we looked at, it was quite useful actually, because—we'll come on to this—there is a lack of evidence generally in terms of the indirect consequences of these kinds of powers. But, it does strike me, in looking at the evidence, internationally, that there is quite a degree of variation in terms of how ombudsmen do undertake their powers. So, it's not necessarily sensible to make direct comparisons between the number and kinds of own-initiative investigations that happen in other countries and the way in which the ombudsmen in this country would operate. So, it's useful to have that information as a context, but there is variation in terms of how those powers are used internationally.

[93] **Simon Thomas:** Yn glou, **Simon Thomas:** Very quickly, David.

David. Ie.

[94] **David Rees:** Just for clarification, are you saying that, at this moment in time, if a complainant comes to you with a question about the GP practice and you identify an issue that actually is a health board issue, you can't actually take that further forward, you have to have a second complaint?

[95] **Mr Bennet:** We are reactive. We can respond. I think we do have broader own-initiative-type powers when it comes to code-of-conduct complaints, where perhaps somebody complains about an individual council and the broader issues that we can look at. Is that right, Katrin?

[96] **Ms Shaw:** Yes. If during the course of an investigation it seems somebody else may have breached the code, Nick can start an investigation. But we don't have that under the PSOW Act for maladministration complaints.

[97] **Mr Bennett:** So, it's limited; we can only use it for councillor complaints.

[98] **David Rees:** And you can't actually pursue that until you get further—.

[99] **Mr Bennett:** Indeed. So, it is a worry, in terms of, you know, perception for the public, for users that we go back to and say, 'Well, you know that previous complaint about the doctor, could you make a broader one about the health board as well, please?' It's—you know—.

[100] **Simon Thomas:** Eluned Morgan.

[101] **Eluned Morgan:** Ie, roeddwn i eisiau gofyn i chi ynglŷn ag ehangu hawl yr ombwdsmon i edrych i mewn i'r sector breifat fel rhan o'r gwaith. Roeddwn i eisiau gofyn i Huw yn benodol, gyda'ch asesiad chi, roeddech chi'n dweud bod y gallu i wneud rhyw fath o *investigation* yn y sector breifat yn gyfyng—a allwch chi ehangu ar hynny rywfaint?

Eluned Morgan: Yes, I wanted to ask you about extending the ombudsman's ability to look into the private sector as part of his work. I wanted to ask Huw specifically, in terms of your RIA, you said that the power to undertake some sort of investigation in the private sector was limited—can you expand on that a little?

[102] **Mr Bryer:** Mae yna ddau reswm penodol pam y mae'r term 'cyfyng' reasons for the term 'restricted'

yn ymddangos yn y rhan yna o'r adroddiad. Yn gyntaf, byddai'r pŵer yn gyfyngedig, o beth rwy'n ei ddeall, i fod jest yn gallu cael ei ddefnyddio mewn sefyllfaoedd lle y mae yna elfen gyhoeddus a phreifat yn y trywydd, os liciwch chi, o ran y gofal y byddai'r person wedi'i gael. Felly, mae'n gyfyngedig jest i'r enghreifftiau hynny. Byddai'r pwerau ddim yn golygu unrhyw beth ehangach lle y byddai'r ombudsmon yn gallu ymchwilio i ddarparpwydd iechyd preifat—rŷch chi'n gwybod, os mai dim ond elfen breifat sydd wedi bod yn y profiad hwnnw. So, mae'n gyfyngedig yn y cyd-destun hwnnw. Yr ail bwynt yw, mae'n gyfyng o ran y nifer o achosion y byddai hyn yn ei olygu yn flynyddol. Nawr, fe welwch chi yn yr asesiad fy mod i wedi gofyn i swyddfa'r ombudsmon am ddata o ran nifer yr achosion o ran cwynion yn y sector iechyd a fyddai wedi cynnwys elfen o ddarpariaeth iechyd breifat dros y blynyddoedd diwethaf i ni gael rhyw fath o gyd-destun ar hynny. Nid yw'r swyddfa ar hyn o bryd yn casglu data ar sail y profion hynny. Felly, roedd yna elfen eithaf pragmatig yn hyn, o ran trafod gyda swyddogion swyddfa Nick i weld, o ran eu profiad nhw, faint o'r rheini a fyddai wedi bod dros y blynyddoedd diwethaf. Ar sail eu profiad nhw o ddelio gyda'r math yna o gwynion, mae'n nifer eithaf cyfyng. Maen nhw'n rhagweld efallai saith, ar y mwyaf, o achosion y flwyddyn. Felly, eto, mae'n gyfyngedig o ran nifer yr achosion sy'n debygol o godi.

appearing in that part of the report. First of all, the power would be restricted, from what I understand, to just being able to be used in situations where there is a public element and a private element in terms of the pathway, if you like, of care that the person would have followed. So, it's restricted to those examples. The powers wouldn't mean anything broader, where the ombudsman could investigate a private healthcare provider—you know, just where there's just been a private element in that context. So, it's restricted in that context. The second point is that it's restricted in terms of the number of cases that this would mean or entail every year. Now, you'll see in the assessment that I have asked the ombudsman's office for data in terms of the number of cases in terms of complaints in the health sector that would have included a private provision element over the last few years to have some kind of context on that. The office at present doesn't gather data on that basis. So, there was a pragmatic element here, in terms of discussing with the officials in Nick's office to ask them, in terms of their experience, how many of those would have happened over the last few years. On the basis of their experience, in terms of handling those kinds of complaints, it is quite a limited number. They do foresee that there will be perhaps seven cases per year. So, it is limited in terms of the number of cases that are

likely to arise.

[103] **Mr Bennett:** Mae'r niferoedd yn fach iawn, ond mae'r anghyfiawnder—. Rwy'n dal i ysgrifennu—ac mae hi'n ysgrifennu nôl—at Mrs Lewis o Lanelli. Yn anffodus, bu ei gŵr hi farw. Roedd o wedi cael triniaeth yn y gwasanaeth iechyd, wedyn yn breifat ac wedyn yn y gwasanaeth iechyd. Roedd rhaid iddi ddisgwyl pum mlynedd a hanner i gael ateb. Mae Mrs Lewis wedi ysgrifennu nôl ataf ac mae hi eisiau gweld y ddeddfwriaeth yma. Mae hi'n gweld hyn fel rhywbeth personol iddi hi, oherwydd y profiad y mae hi a'i theulu wedi bod drwyddo.

Mr Bennett: The numbers are very small, but the injustice—. I am still writing—and she is in correspondence with me—to Mrs Lewis from Llanelli. Unfortunately, her husband died. He had received treatment in the health service, then went private and then went back to the health service. She had to wait five and a half years to get a response. Mrs Lewis has written back to me and she wants to see this legislation. She sees this as something personal to her, because of the experience that she and her family have been through.

[104] **Eluned Morgan:** Roeddech chi'n dweud bod y niferoedd yn gyfyng ond, y broblem yw, nid ydym ni'n gwybod faint yw'r niferoedd achos nid ydych chi'n casglu'r data. A ydych chi'n gobeithio gwneud rhywbeth ynglŷn â chasglu gwell data?

Eluned Morgan: You were saying that the numbers are limited but, the problem is, we don't know what the numbers are because you don't gather the data. Do you hope to do something about gathering better data?

[105] **Mr Bennett:** Yn sicr, fe wnawn ni wneud hynny. Y rheswm arall pam mae'n gyfyng—. Ar hyn o bryd, mae gyda fi'r pŵer, ac mae'r staff yn ymchwilio, o ran iechyd preifat lle mae wedi cael ei gomisiynu gan y gwasanaeth iechyd. So, nid yw hyn yn ymestyn lle mae wedi cael ei gomisiynu gan yr unigolyn. Mae'n gam mawr ar gyfer rhywun yn sefyllfa Mrs Lewis, ond nid yw'n gam mawr ar gyfer y swyddfa o safbwynt niferoedd.

Mr Bennett: Certainly, we will do that. The other reason why it is limited—. Currently, I do have the power, and staff are carrying out investigations, when private healthcare has been commissioned by the NHS, but it does not extend to where it has been commissioned by the individual. It's a big step for someone in a situation such as Mrs Lewis's, but it's not a big step for the office in terms of numbers.

[106] **Eluned Morgan:** A gaf i jest fod yn glir? Os yw'r gwasanaeth iechyd yn gwthio rhywun mewn i'r sector preifat, wedyn mae hawl gyda chi. Ond, os ydyn nhw'n gwneud hynny ar eu pen eu hunain, nid ydych chi'n cael ymyrryd. Ocê, rwy'n deall.

Eluned Morgan: Could I just clarify something? If the health service pushes somebody into the private sector, then you have the right. But, if they do it on their own, you can't intervene. Okay, I understand.

[107] **Simon Thomas:** Jest i fod yn glir, os caf i ddod mewn ar hynny, rydym ni'n sôn efallai am sefyllfa lle mae rhywun wedi bod i mewn i'r gwasanaeth iechyd cenedlaethol, i gael triniaeth ar eu clun neu rywbeth fel yna, ac mae rhywbeth yn mynd o'i le oherwydd oedi, rhestrau aros neu broblemau, ac maen nhw'n dewis mynd yn breifat, ond wedyn, o bosibl, mae rhywbeth yn mynd o'i le yno, ac wedyn, wrth gwrs, maen nhw'n bennu lan nôl yn yr ysbyty yn y gwasanaeth iechyd. Dyna'r cylch rydych chi eisiau gweld yn cael ei gau.

Simon Thomas: Just to be clear, if I may come in on this, we're talking perhaps about a situation where someone has been under the NHS, receiving hip treatment or something like that, and something goes wrong due to delays, waiting times or problems, and they choose to go private, but then, possibly, something goes wrong there, and then of course they end up back in hospital under the NHS. That's the cycle that you want to see ended.

[108] **Mr Bennett:** Ar hyn o bryd, rydym ni'n dilyn y sector. Rwyf i eisiau dilyn y claf er mwyn cael yr ateb a thorri drwy'r seilo yna. Dyna beth sy'n bodoli ar hyn o bryd.

Mr Bennett: At present, we follow the sector. I want to follow the patient in order to get the solution and cut through that silo. That's what happens at present

[109] **Eluned Morgan:** A allaf i ofyn ychydig mwy am gasglu data? Ar hyn o bryd, dyna'i gyd rydym ni'n ei glywed yw, 'Nid oes lot o bobl'. Mae eisiau gwell data. A oes rhaglen gyda chi i sicrhau bod y data yna'n mynd i wella?

Eluned Morgan: Can I ask a bit more about data gathering? At present, all we hear is, 'There's not many people'. We need better data. Do you have a programme to ensure that the data is going to improve?

[110] **Mr Bennett:** Oes. Rydym ni'n

Mr Bennett: Yes. We are doing much

gwneud lot mwy gyda data ar hyn o bryd. Rwyf i ar hyn o bryd yn edrych ar strwythur y swyddfa eto. Rydym ni'n mynd i gael dadansoddwr data—o leiaf yn rhan amser—er mwyn edrych ar y data sy'n bodoli. Rydym ni wedi defnyddio'r data, rwy'n gobeithio, yn fwy creadigol. Er enghraifft, mae pawb yn ymwybodol erbyn hyn fod 37 y cant o'n cwynion ni'n dod o'r sector iechyd, ond mae angen edrych ar ba themâu sy'n dod allan o'r cwynion yna.

more around data at present. I am currently looking at the office structuring again. We are going to have a data analyst, at least part time, in order to look at the data that exists. We have used those data, I believe, in a more creative manner. For example, everyone will be aware by now that 37 per cent of our complaints come from the health sector, but we need to look at what themes come out of those complaints.

[111] Yr un mawr y llynedd oedd triniaeth y tu allan i oriau. Felly, mi ddaru ni wneud adroddiad ar hynny— adroddiad thematig. Rwy'n falch iawn bod y gwasanaeth iechyd a'r Llywodraeth wedi mabwysiadu hynny. Rydym ni yn mynd i weld adolygiad o'r gwasanaeth yna yn ystod y flwyddyn. So, rwy'n gobeithio y gallwn ni ddadansoddi mwy eto, i fod o fudd cyhoeddus.

The big one last year was out-of-hours treatment. So, I did a thematic report on that. I'm very happy to say that the NHS and the Government have adopted that. We're now going to see a review of that particular service in the coming year. So, I hope that we can analyse the data to a greater extent, for the public good.

[112] **Eluned Morgan:** Diolch.

Eluned Morgan: Thank you.

[113] **Simon Thomas:** Rydym ni wedi trafod yr ochr breifat ond, a gaf i ofyn i chi, wrth fynd drwy'r broses yma o baratoi'r asesiad effaith hefyd, a ydych chi wedi adnabod os oes yna unrhyw gyrff cyhoeddus yn llechu yn y gyfundrefn gyhoeddus sydd gyda ni yng Nghymru nad ydych chi ar hyn o bryd yn gallu cymryd camau yn eu herbyn ond lle rydych chi'n teimlo efallai y dylid ailystyried ac y dylai'r rhieni fod yn rhan o'r broses hefyd?

Simon Thomas: We've discussed the private side, but, may I ask you, in going through this process of preparing the impact assessment as well, have you identified whether there are public bodies involved in the public sector in Wales that you can't take steps against at present where you feel this should be reconsidered so that those bodies become part of the process as well?

[114] **Mr Bennett:** Nid wyf i'n meddwl bod yna broblem pan mae'n dod i'r cyrff, ond efallai'r sectorau. Mae Katrin, er enghraifft, wedi sôn am addysg. Rwy'n meddwl efallai y bydd angen ystyried beth yw'n hawdurdodaeth ni ym maes addysg wrth symud ymlaen. Rwy'n meddwl hefyd, yn ystod y cyfnod o ymgynghori, daeth rhai cyrff ymlaen ac roedden nhw'n awyddus iawn i weld un neu ddau o gyrff ychwanegol yn dod ar y rhestr sydd o dan ein hawdurdodaeth, ac rwy'n cefnogi hynny.

Mr Bennett: I don't think that there's a problem when it comes to the bodies, but perhaps when we talk about sectors. Katrin, for example, has mentioned education. I think that there may be a need to consider what our jurisdiction is in the area of education, moving forward. I also think that, during the consultation period, some bodies did come forward and they were very eager to see one or two additional bodies coming on the list of our jurisdiction, and I do support that.

[115] **Simon Thomas:** Ond, mân bethau oedd y rheini, yn gyffredinol.

Simon Thomas: But those were minor things, though, in general.

[116] **Mr Bennett:** Ie.

Mr Bennett: Yes.

[117] **Simon Thomas:** Ocê. Steffan Lewis.

Simon Thomas: Okay. Steffan Lewis.

[118] **Steffan Lewis:** Thanks, Chair. In terms of the financial implications of the Bill, can you talk us through how you've got to the estimates in the RIA and how robust those figures are, and not just on the impact for your organisation, but on the rest of the public and private sectors as well?

[119] **Mr Bennett:** Well, I'll introduce Huw again. The reason that I asked Huw Bryer to look at this is because of his background in terms of evaluation, rather than just simply regulatory impact. So, it was best estimate that was required from the committee, and I think it's in that context that Huw's been able to do his work.

[120] **Mr Bryer:** Yes. The first thing to say is that this was a desk-based exercise; there was no primary research involved. It was a fairly contained piece of work that was undertaken in October and November of last year. So, we didn't do any primary research, if you like, with either bodies that would be within jurisdiction for Nick or complainants that would've had a service from the ombudsman's office. So, in that sense, we've been reliant on the

ombudsman's office and his team to provide us with data, information and evidence that we were able to examine and analyse to come to the findings in the RIA itself.

[121] I would say that, with the work that we did very closely with Nick's team, they were very helpful to us and provided us with the information that they had. We also went back and asked for a number of clarifications and asked additional questions, such as the ones I referred to earlier in terms of just probing, really, and exploring the context within which some of these additional powers would be used and to understand what implications that might have in the absence of hard data on indirect costs and benefits to bodies within jurisdiction, and they've been very helpful to us in that process.

[122] But there are limitations in terms of the harder data and evidence that are out there as far as costs are concerned. I'm confident that we've been able to prepare a reasonably robust account of what the direct costs are likely to be to the ombudsman's office in Wales, but, as I say, there are difficulties in terms of really quantifying and monetising the more indirect costs and benefits to other bodies. The point I would make on that is that it's not a Wales-only problem; those are challenges that apply more broadly, so the conversations that we had with the International Ombudsman Institute and the data that we looked at there suggest that there isn't this fantastic level of detail available in other countries.

[123] I also asked the ombudsman's office to have conversations with other bodies, including the Auditor General for Wales, to see whether they could shed light on methodologies that we could possibly look at to start to quantify this. His advice back was that there isn't anything that's completely obvious. You could, obviously, apply more detail to this, but there is, I suppose, a test of proportionality then, in that some of those methodologies need to be quite complex and also would be quite time consuming, really, for bodies within jurisdiction to provide information to help support that kind of process. So, on that basis, as I say, we're fairly confident that we've arrived at some robust figures in terms of what the direct cost would be, but, in terms of the broader picture, they're very much best estimates, really, on the availability of information that's been to hand and what's already in the public domain.

[124] **Steffan Lewis:** Thank you for that. What about the impacts of the proposals on the ombudsman's work balance, and specifically the proportion

of complaints closed after an initial consideration? How has that been assessed financially?

[125] **Mr Bryer:** We had those conversations with the team at the ombudsman's office, and there are subtleties in terms of the nature of the balance of the work, particularly for front-line staff within the ombudsman's team in terms of how they handle initial complaints and whether that can be done on an oral basis. As Nick said earlier, I think, there are potential efficiencies there in terms of cutting out the process of going back and forth to a complainant to try and secure a written confirmation of that.

[126] So, there are elements that have been factored into the calculations here, if you like, around the anticipated level of oral complaints. And we did explore whether those would differ from a regular complaint, if you like, and the guidance that we've received is that they would be processed in the same way and they are unlikely to be fundamentally different in terms of their nature to complaints that would be received through the regular course of business, really.

10:15

[127] We also, as I said, looked at different scenarios and instances within which the own-initiative investigations would be potentially deployed, and tried to understand how much of a bearing that would have on resource implications and the balance of work for the office itself. So, that's very much been taken into the account in the assumptions that we've arrived at there. And we also looked at the extent to which some of the additional workload that would be generated through these powers could be absorbed within existing resources. And I think if you look at the health proposal in particular, the numbers there are quite low, as we were saying, and I think the feeling amongst the team at the ombudsman's office is that that could be absorbed within the existing resources available. And that seemed to us to be quite a realistic proposition in terms of the numbers involved there, and the nature in which existing inquiries would be expanded there rather than additional work commissioned.

[128] So, yes, those are some of the detailed conversations that we had with staff in the ombudsman's office to arrive at informing some of those conclusions.

[129] **Steffan Lewis:** Just going back to the point you mentioned on the

receipt of oral complaints, and I note that, with the direct costs, you're not anticipating any additional costs there. But the nature of accepting a direct oral complaint is quite different from a written—. In terms of our constituency offices, for example, we know that if constituents come to us directly and want to speak face to face, or they build a rapport with staff in our office over the phone, then that is a very different kind of casework in terms of someone who corresponds in writing or over e-mail. That could be more time-consuming because there is an ability then for a member of the public to build a rapport with somebody in the ombudsman's office. Did you explore that—that that actually could have quite significant increases in cost?

[130] **Mr Bryer:** Yes. And that's reflected in the figures that have been presented, in the sense that, as I think Nick said earlier, there's very much a social justice component to this, particularly where there are likely to be literacy issues that prevent that written element of the complaint from occurring. And that may mean some additional time has to be spent in terms the front-line, upfront, if you like, process of dealing with that inquiry. So, yes, we've very much had those conversations with Nick's team, and they've incorporated considerations around those additional resource requirements into the data that they've provided us with.

[131] **Steffan Lewis:** Okay. And the options appraisal estimates that, if the powers are granted for the ombudsman to investigate private healthcare providers—you touched on this now—the impact will be 1 per cent, so 7 per annum. On what basis have you calculated that on the RIA, because, potentially, that could be significant as well?

[132] **Mr Bryer:** Well, as I said, there was no specific data for us. That would have been the ideal solution—that we could have gone to the ombudsman's office and they could have provided us with some data there to suggest, well, you know, of the health-related complaints that we've been dealing with over the past few years, x per cent, or x number, contained a private health component within the overall healthcare pathway. That wasn't available, so, as I said, we felt that the next best thing was to take a pragmatic approach there. So, the inquiries that went back to the office said, 'Well, okay, give us your best estimate in terms of, over the past couple of years, how many of those would have contained a private healthcare element?' and to forecast that forward. So, as I say, the message that came back was that it was very much a minority of the overall healthcare complaints that they were dealing with. So, it's on that basis that we've arrived at the figure.

[133] **Steffan Lewis:** Okay. And the RIA notes that no additional direct costs are expected in respect of the extension of jurisdiction. Is that a reasonable assumption?

[134] **Mr Bryer:** As I say, we explored with the ombudsman's team the extent to which additional resources would be required. They provided their assurance to me that, given, as I said, the conversation we were having earlier around the limited nature of that power, they are able to absorb that within their existing resources. As part of this, we looked at annual reports that would have been published over a number of years by the ombudsman, and that gave us confidence that the office knows what it's doing in terms of managing its resources and delivering the service within those resources. So, we had no reason to feel that that was an unrealistic prospect.

[135] **Steffan Lewis:** So, there's no fear that there'll be additional costs, because it could be assumed that, because of the nature of the private health sector, people might feel more inclined to go directly to the private healthcare provider, but now that it might be an additional option for them with the ombudsman, that that might be an increase.

[136] **Mr Bryer:** I think it's in a very specific set of circumstances that this power would be deployed, and my understanding from the conversations with officials within the ombudsman's office is that there isn't likely to be a massive proliferation of those instances occurring over the next few years. They're not anticipating that that is going to turn a curve in terms of a massive incline in those numbers. Nick will probably be able to give greater clarification on how he envisages that going, but my understanding is that it will be manageable within existing resources.

[137] **Mr Bennett:** I think numbers will be small, but the impact is high. As I say, I don't think it's acceptable that anyone recently bereaved has to experience what Mrs Lewis from Llanelli went through for five and a half years. So, if you accumulate that over the period of legislation, if this legislation is fit for purpose, as I'm sure it will be, for the next 10, 15 years, in those seven cases you might be—. Those are 100 experiences, perhaps, over the period of the legislation, over the next 10 years, where I think it would make a real impact to people's lives.

[138] **Mr Bryer:** I think what can be expected is that it would be part of an existing investigation, really, that the set of circumstances would involve that being in place. So, it would be an extension of an existing investigation to

provide a thorough service, really, that takes the whole complaint, the whole journey and the whole healthcare pathway, rather than being able to look at bits of it, really. So, it seemed to us that that was a logical conclusion.

[139] **Steffan Lewis:** Thank you. And, finally, the RIA refers to the costings set out in the UK Comptroller and Auditor General's report from 2008 in terms of complaints handling at the Department for Work and Pensions. Do you have more up-to-date information in respect of the costs differential of complaints resolved by front-line staff at public bodies, compared to the ombudsman?

[140] **Mr Bryer:** 'No' is the simple answer to that, and, if we had come across it, then we would very much have been looking at it. I think that's an indication in itself. I think that piece of work was around 2008, so—

[141] **Mr Bennett:** But it was referred to at the Aberystwyth seminar; there were a number of academics who specialise in this area. I don't think they were aware of—they certainly didn't refer to anything more up to date at that time either.

[142] **Steffan Lewis:** Okay, thank you.

[143] **Simon Thomas:** A gaf i jest ofyn yn benodol i Mr Bennett, rwy'n meddwl? Achos wrth i ni edrych fel pwyllgor yn ystod y flwyddyn diwethaf ar yr amcangyfrifon, roedd yn nodweddiadol, rydw i'n credu, bod nifer y cwynion rydych chi'n delio gyda nhw wedi mynd i fyny, ond bod y costau fesul cŵyn wedi dod i lawr. Roeddech chi, os rwy'n cofio'n iawn, wedi sôn am fuddsoddiad mewn offer technoleg gwybodaeth a oedd wedi helpu yn y broses yma, a phrosesau gwella, ac ati. A ydych chi felly yn awgrymu wrth y pwyllgor yma, gan eich bod chi wedi gosod cyfrifon yn y gorffennol gan ddisgwyl aros tu fewn i amlen o 0.03 y cant o wariant y grant bloc, pe bai y pwerau newydd

Simon Thomas: May I just ask specifically to Mr Bennett, if I may? Because as we've looked as a committee in the previous year at the estimates, it was something that we did note, that the number of complaints you received was going up, but that the per unit costs, as it were, were reducing. If I recall correctly, you did talk about investing in IT equipment that had helped in that, and you were talking about improvements in processes, and so forth. Are you therefore suggesting to the committee that, as you've laid accounts in the past where you've expected to keep within the envelope of 0.03 per cent of the block grant expenditure, if these new

yma a phe bai y Bil yma yn mynd yn eu blaen, a ydych chi'n dal i ddisgwyl y byddwch chi yn gallu rheoli costau tu fewn i'r amlen bresennol yn yr ystyr yna?

[144] **Mr Bennett:** Rydw i'n hyderus iawn am hynny oherwydd, i ryw raddau, y newyddion da rydym ni wedi ei gael pan fo'n dod i'r *deficit* yn y pensiynau. Ond, yn sicr, rydw i'n meddwl ein bod ni ar hyn o bryd tua 0.027 y cant o'r bloc, felly mi wnawn ni'n sicr aros o dan 0.3 y cant yn symud ymlaen. Ac mae hwn yn gyfle i ni wneud rhywbeth sydd ddim yn mynd i gostio llawer o bres, ond a allai gael effaith ar yr £16 biliwn yna sydd yn cael ei wario, sy'n mynd i fod yn fwy effeithiol, ac rwy'n gobeithio cael gwell effaith ar bobl yng Nghymru sy'n defnyddio gwasanaethau cyhoeddus, sy'n elfen eithaf pwysig o waith y Llywodraeth a'r lle yma.

powers and this new Bill were to proceed, would you still expect that you could manage your costs within the current envelope in that sense?

Mr Bennett: I'm very confident about that because, to a certain extent, of the good news that we've had when it comes to the pensions deficit. But certainly, I think that at present we're about 0.027 per cent of the block, so we will certainly stay within 0.3 per cent moving forward. And that is an opportunity for us to do something that's not going to cost much money, but will have an impact on that £16 billion that is spent, and which is going to be more effective, and I hope have a better impact on the people of Wales who use public services, which is a very important part of the work of the Government and this place.

[145] **Simon Thomas:** Nick Ramsay.

[146] **Nick Ramsay:** You've spoken about the costs of the Bill. The RIA focuses mainly on the costs to the ombudsman. What about the cost to other organisations in indirect costs? Have you quantified those?

[147] **Mr Bennett:** I think Huw can talk about some of the detail there, but I think I've given an assurance in terms of the way in which I would wish to co-ordinate the work that we do with other commissioners or other corporations sole, including the auditor general. I would hope as well that, where we're identifying systemic failures, corrections, and also being more citizen-centred so that we can look at a systemic issue without asking the complainant to come back with another complaint about the health board, or whatever else, there will be some savings. Huw, would you like to add to that?

[148] **Mr Bryer:** I think I've said that there are fairly significant limitations, really, as to what data, evidence and information is available to help inform a robust estimation of what those indirect costs and benefits would be. We've done our best with what was available to us, and we've not tried to build it up to be anything more than it is. It's an honest assessment, based on some limitations in terms of data. But, as I said earlier, that's not a Wales-specific issue. There are issues and challenges relating to measuring, quantifying and monetising the indirect benefits and costs of investigatory measures like this, and activities like this, elsewhere in the world. And some of the evidence we've looked at underpins that. The other thing I would say is, in the fourth Assembly, the previous committee to this, in its consultation, asked the question specifically, in this consultation exercise, to bodies within jurisdiction, 'What is this likely to cost you? What are the cost implications of this likely to be?' and we examined the evidence of that, because I was thinking that well, that, in theory, would have been a good source of information for us to go on, in terms of informing the assumptions that have underpinned the regulatory impact assessment. But none of those quantified the potential impacts on them in any way. There were no figures there—

[149] **Nick Ramsay:** Because the RIA identified that there was a lack of data in that area. Is there any further work that the ombudsman can do to try and get some more reliable data?

[150] **Mr Bryer:** Well, you could. 'Yes', is the answer to that, but I think, if you were to do that, then it would involve additional research, and if you think, 'Well, okay, what would a robust methodology for that kind of research exercise include?', it would be potentially quite resource-intensive. I think the response from the Auditor General for Wales suggested that there are methodologies you could adopt there to look at factoring, and to look in particular at trying to quantify the resources of officials within bodies within jurisdiction to respond to inquiries from the ombudsman's office, but they would be quite complex. And it wouldn't be something that you could do, I don't think, through a sort of simple web survey quantitative approach, where you would try and gather that information in quite a quick way from people within bodies within jurisdiction, because it is going to require some thought. It would require input from them to go back and look at the nature of resources that have had to be committed from their side to investigate as well. So, I think it's possible, but it would be very costly, it would be complex, and there is a big question there about whether it would be in proportion.

[151] **Mr Bennett:** I think that was the advice of the other Huw, Hugh Vaughan Thomas as well. The auditor general's advice was that it's possible, but it's disproportionate in terms of cost.

[152] **Nick Ramsay:** So, in terms of the value-for-money aspect of all of this, could you provide assurances to the committee that the changes in the Bill will represent value for money?

[153] **Mr Bennett:** Yes, absolutely. I've referred to the figures—

[154] **Nick Ramsay:** I'm glad you said that. It would be strange if you hadn't.

[155] **Mr Bennett:** We've costed this. We think, for all the powers and corrections, we're talking perhaps £300,000 a year. As I say, we're in this fortunate position given what's happened in terms of the pension deficit. So, given what would have looked like expected expenditure on the office, moving forward at a constant level of below 0.3, then it's possible to do this at a net cost of about £18,000—£18,000, again for public services that are costing the taxpayer £16 billion, I think is a fantastic ratio. I don't have the mathematical ability to tell you where exactly that is in terms of decimal points, but I think that is good value for money.

[156] Also, I think, the broader assurance to the committee—you know, these are devolved public services, and I think we have to make sure that we're ready to adopt the best possible global best practice, and that's what we've sought to do in terms of looking at things like the innovations in Scotland when it comes to complaints standards, looking at own initiative, and the best way in which that can be implemented as well, so that it's not a source of fishing trips, it is a source of justice and of public interest as well. So, I think it's good value, and it's further reform that makes sure that our legislation in Wales is at the vanguard, and that we're doing as much as we can to ensure that we put the needs of service users in Wales at the centre.

[157] **Nick Ramsay:** And, finally, how will you manage the costs of the office within existing resources?

[158] **Mr Bennett:** Well, I hope that this committee, of all committees, would be assured about the way in which we've gone about financial management over the last few years. We've had no issues in terms of qualified accounts. We remain within budget, and I think the Chair, very kindly, mentioned some

of the ratios, the average cost that we currently incur per complaint—it's been coming down year upon year, and I see this as a further part of that effort in terms of value for money. We need to turn the curve. It's in my interest to see fewer complaints. It's in the people of Wales's interest to see more contentment with the way in which public bodies go about their business and can respond to them as well. So, there'll be, I hope, broader cultural consequences for this, improving public service delivery.

[159] **Nick Ramsay:** Thanks.

10:30

[160] **Simon Thomas:** Mae'r pwyllgor yma, wrth gwrs, yn ymwybodol iawn eich bod chi'n atebol i'r Cynulliad, ac i'r pwyllgor, yn hytrach nag i unrhyw le arall. Ond, wedi dweud hynny, rydych chi'n ymwneud â'r Llywodraeth wrth drafod y prosesau hyn. A ydych chi wedi bod mewn sefyllfa o gwbl i drafod y Bil, neu, yn fwy penodol, y pethau gallech chi eu gwneud o dan y Bil posib, gyda'r Llywodraeth, gyda'r Ysgrifennydd Cabinet, neu swyddogion y Llywodraeth, ac a oes yna unrhyw drafodaeth rhyngoch chi ar hyn o bryd?

Simon Thomas: This committee, of course, is very aware that you are accountable to the Assembly, and to the committee, rather than anyone or anywhere else. But, having said that, you do engage with the Government in discussions about these processes. Have you been a position at all to talk about the Bill, or, more specifically, the things that you could do under the proposed Bill, with the Government, with the Cabinet Secretary, or Government officials, and is there any discussion between you currently?

[161] **Mr Bennett:** Dim byd ffurfiol, ond rydw i wedi trafod efo'r Gweinidog sy'n gyfrifol am lywodraeth leol, oherwydd un o'r pethau sy'n fy mhoeni i wrth symud ymlaen ydy atebolrwydd, oherwydd os ydych yn sôn am ba mor agored rydym ni'n gallu bod pan fo'n dod i wasanaethau, os ydym ni'n symud ymlaen i sefyllfa lle mae gwasanaethau cyhoeddus llywodraeth leol, er enghraifft, yn cael eu rheoli ar

Mr Bennett: Nothing formal, but I have discussed with the Minister responsible for local government, because one of the things that concerns me moving forward is accountability, because if you're talking about how open we can be in terms of services, if we move to a situation where public services in local government, for example, are managed at a regional level, well, the 22 councils are going to carry on in

lefel ranbarthol, mae 22 cyngor yn mynd i gario ymlaen i fodoli, ond, wrth gwrs, efallai bydd gyda chi saith partneriaeth ledled Cymru. O safbwynt yr achwynydd, ble mae nhw'n mynd? Os yw rhywbeth wedi mynd o'i le gyda gweithiwr cymdeithasol sydd wedi cael ei gyflogi gan Gyngor Môn, ond mae'r arweinyddiaeth a'r rheoli yn digwydd yng Nghyngor Conwy, er enghraifft, mae'n rhaid i ni sicrhau, rydw i'n meddwl, bod yna gyfundrefn agored iawn er mwyn i bobl gael cyfiawnder yn y dyfodol. A buaswn i yn gobeithio bod y Bil yma yn gallu helpu hynny i ddigwydd yn ystod cyfnod lle rydym ni'n mynd i weld rhyw fath o newid pan fo'n dod i wasanaethau llywodraeth leol.

[162] **Simon Thomas:** Iawn. Diolch yn fawr. Mae'n rhaid i ni ddod â'r sesiwn yma i ben. Diolch i Mr Bennett a'i swyddogion a'i gynorthwywyr. Ac, wrth gwrs, bydd trawsgrifiad i chi wirio ar gyfer cywirdeb, os oes cywirdeb neu rywbeth anghywir, i ni fod yn sicr yn ei gylch. Diolch yn fawr i chi unwaith eto. Diolch am hynny,

[163] **Mr Bennett:** Diolch yn fawr iawn i chi gyd.

10:32

existence, but you might have seven partnerships across Wales. In terms of the complainant, where do they go? If something's gone wrong with a social worker who is employed by Anglesey Council, but the leadership and management happens in Conwy Council, for example, we have to ensure, I think, that there is an open system in place so that people can have justice in the future. And I would hope that this Bill would be able to help that to happen during a period where we're going to see some changes when it comes to local government services.

Simon Thomas: Right. Thank you very much. We have to bring this session to a close. I'd like to thank Mr Bennett and his officials and his assistants. And, of course, a transcript will be available for you to just check for accuracy. Let us know if there is anything that you spot there, so that we can be assured of that. Thank you very much.

Mr Bennett: Thank you very much to all of you.

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y cyhoedd o
Weddill y Cyfarfod
Motion under Standing Order 17.42 to Resolve to Exclude the Public
from the Remainder of 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 yn unol â Rheol Sefydlog remainder of the meeting in
17.42(vi).*

*accordance with Standing Order
17.42(vi).*

Cynigiwyd y cynnig.

Motion moved.

[164] **Simon Thomas:** A gaf i ofyn i'r pwyllgor gymeradwyo ein bod ni'n mynd mewn i sesiwn preifat o dan Reol Sefydlog 17.42?

Simon Thomas: May I therefore request the committee to approve that we move into private session under Standing Order 17.42?

[165] Neb yn gwrthwynebu. Awn ni mewn i sesiwn preifat te. Diolch yn fawr.

I see no-one is opposed. So, we'll move into private session. Thank you very much.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 10:32.

The public part of the meeting ended at 10:32.