



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol The Communities, Equality and Local Government Committee

**Dydd Iau, 31 Ionawr 2013
Thursday, 31 January 2013**

Cynnwys Contents

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

Bil Llywodraeth Leol (Democratiaeth) (Cymru) (Cyfnod 1): Sesiwn Dystiolaeth gyda
Swyddfa Archwilio Cymru
Local Government (Democracy) (Wales) Bill (Stage 1): Evidence Session Wales Audit Office

Bil Llywodraeth Leol (Democratiaeth) (Cymru) (Cyfnod 1): Sesiwn Dystiolaeth gydag
Ombwdsmon Gwasanaethau Cyhoeddus Cymru
Local Government (Democracy) (Wales) Bill (Stage 1): Evidence Session with the Public
Services Ombudsman for Wales

Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd o Weddill y
Cyfarfod
Motion under Standing Order No. 17.42 to Resolve to Exclude the Public from the Remainder
of the Meeting

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

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Janet Finch-Saunders	Ceidwadwyr Cymreig Welsh Conservatives
Mike Hedges	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
Ann Jones	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Gwyn R. Price	Llafur Labour
Kenneth Skates	Llafur Labour
Joyce Watson	Llafur Labour
Lindsay Whittle	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Anthony Barrett	Archwilydd Cyffredinol Cynorthwyol Assistant Auditor General
Martin Peters	Rhelowr Cydymffurfio, Swyddfa Archwilio Cymru Compliance Manager, Wales Audit Office
Elizabeth Thomas	Cyfarwyddwr Ymchwiliadau a Chynghorydd Cyfreithiol, Ombwdsmon Gwasanaethau Cyhoeddus Cymru Director of Inquiries and Legal Adviser, Public Services Ombudsman for Wales
Peter Tyndall	Ombwdsmon Gwasanaethau Cyhoeddus Cymru Public Services Ombudsman for Wales

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

Bethan Davies	Clerc Clerk
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Leanne Hatcher	Dirprwy Glerc Deputy Clerk
Rhys Iorwerth	Y Gwasanaeth Ymchwil Research Service

Dechreuodd y cyfarfod am 9.32 a.m.

The meeting began at 9.32 a.m.

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

[1] **Ann Jones:** Good morning everyone and welcome to the Communities, Equality and Local Government Committee. I ask Members around the table to switch off their mobile phones and their pagers, as they interfere with the translation and broadcasting equipment. We operate bilingually and have translation equipment, on which you can listen to channel 1 for the translation from Welsh to English, and channel 0 for the floor language for amplification if needed. We are not expecting the fire alarm to sound, so, if it does go off, we will take our instructions from the ushers, or you can follow me because, as I always say, I will be one of the first from the building. Do Members need to declare any interests that they have not already declared? I see that they do not.

[2] **Mike Hedges:** If we cannot see you, we will just follow the Rhyl songs.

[3] **Ann Jones:** You can do that, although I think we should leave the Rhyl songs where they were in the Chamber yesterday. Thank you, Mike. You can follow me. I can see this is going to be a very difficult meeting, but there we go; we will plod on.

9.33 a.m.

**Bil Llywodraeth Leol (Democratiaeth) (Cymru) (Cyfnod 1): Sesiwn Dystiolaeth
gyda Swyddfa Archwilio Cymru**

**Local Government (Democracy) (Wales) Bill (Stage 1): Evidence Session Wales
Audit Office**

[4] **Ann Jones:** We will move on now, and be very professional about it, to the Local Government (Democracy) (Wales) Bill. We are still taking evidence at Stage 1, and I am delighted that this session will be with the Wales Audit Office. We have with us members of the WAO. May I ask you both to introduce yourselves for the record and then we will go straight to questions?

[5] **Mr Barrett:** Thank you very much, Chair. I am Anthony Barrett, assistant auditor general with the Wales Audit Office.

[6] **Mr Peters:** I am Martin Peters, compliance manager for the Wales Audit Office.

[7] **Ann Jones:** Thank you to you both and thank you very much for being here and for your written papers. I will start with the first question and ask you to what extent your office believes that this Bill achieves the stated aim of improving the efficiency of local democracy in Wales.

[8] **Mr Barrett:** I will say, by way of introduction, that we are coming at this from the perspective of auditors and we have experience both with the auditor general as auditor of the boundary commission, and myself as the appointed auditor for principal local government bodies in Wales. Overall, our view is that the Bill appears likely to help to improve the quality and timeliness of the boundary and electoral reviews, for example, by supporting a more continual cycle of reviews, which is quite important. In overall terms, we would support it and think that it would provide more effective government and electoral reviews.

[9] **Peter Black:** The boundary commission, when it came to give evidence to us, raised an objection about increasing the quorum to three on the grounds of cost. Do you have any

similar concerns as an audit office?

[10] **Mr Barrett:** We understand the risk of being inquorate if you increase the quorum. We do, however, consider that with a body corporate where there is collective responsibility it is important to have a sufficient number of minds and voices involved in the decision-making process. Given that local government reviews do not innately require the expert opinion of a single individual, there is scope for what you might call the wisdom of numbers. If a quorum of three proves problematic—and I understand that it could—we actually think that the answer would be to increase the number of commissioners to provide more flexibility.

[11] **Peter Black:** That is the proposal, is it not? Why does the Wales Audit Office say that the chief executive of the commission should be appointed by the commission itself rather than by Welsh Ministers?

[12] **Mr Barrett:** This is about increasing the probability of creating an effective team that can work together. It is our view that the commissioners might view having a chief executive imposed on them as being less effective than their selecting one themselves, so that they might work together. There is a risk that the mutual commitment would be reduced by Ministers appointing the chief executive. If you can choose your own chief executive, there is more impetus and motivation to work together.

[13] **Peter Black:** Can you think of any comparable public sector bodies in Wales where the chief executive is appointed by Ministers rather than by themselves?

[14] **Mr Peters:** Not in Wales. The other boundary commissions are in that position, in terms of their clerks.

[15] **Peter Black:** So, the proposals here are in line with what happens in the other boundary commissions.

[16] **Mr Peters:** Yes.

[17] **Peter Black:** Does that cause the sort of problem that you have just highlighted?

[18] **Mr Barrett:** To be honest, I do not know. I do not know how it operates in the other commissions.

[19] **Mike Hedges:** Does the Minister not appoint the chairs of NHS trusts, and will the Minister not appoint the chair and chief executive of the new environment body?

[20] **Mr Barrett:** In terms of NHS bodies, certainly the chairs are appointed by the Minister. I do not know whether the chief executive is; I think that is more local. That is more to do with the day-to-day working relationship.

[21] **Joyce Watson:** Does the Wales Audit Office agree with the proposal in the Bill to remove the current statutory requirement that one of the commissioners should be a Welsh speaker?

[22] **Mr Barrett:** The requirement under the Local Government Act 1972 now seems a somewhat narrow way to ensure that there is adequate regard for and equal treatment of the Welsh language. It does not seem to be entirely in keeping with the broader requirements of the Welsh Language Act 1993 and the Welsh Language (Wales) Measure 2011. We think that that more recent legislation is probably a better way of ensuring that the Welsh language is properly considered.

[23] **Joyce Watson:** We have heard some evidence that not having a Welsh speaker could throw up issues about understanding names and boundaries for councils—Welsh names particularly—and everything that is attached to that. Do you think that there is a risk in losing that?

[24] **Mr Barrett:** I do not think so. There are any number of non-Welsh speakers who would be more than capable of understanding the boundaries, local names, names of local communities, et cetera.

[25] **Gwyn R. Price:** Do you believe that the new arrangements proposed for local government boundary reviews will lead to more effective and convenient local government in Wales?

[26] **Mr Barrett:** We think that better reviews should lead to better representation, and by that I mean that councils are better able to represent the views of their constituents, which should help councils to design and provide services that meet the needs of the constituents. We do not have—and I do not think that anybody will have—detailed local data that evidences that view. However, looking at the issue on a different scale, we know from international comparisons that, generally, countries with good democratic arrangements have higher national income and better quality of life, for example measured by life expectancy, than countries with poor democratic arrangements. They achieve that higher level.

[27] **Ann Jones:** Are you happy with that, Gwyn? Lindsay, you have the next set of questions.

[28] **Lindsay Whittle:** Good morning. Could the Wales Audit Office explain why it states that the Bill itself should always include a reference to ensuring economy and efficiency in local government when boundary reviews are taking place? Is that essential, given that there are many other issues that you could consider when boundary reviews are taking place?

[29] **Mr Barrett:** Not just in the current economic climate, but at all times, value for money, economy, efficiency and effectiveness of anything that a public body does has to be a consideration. We think that it would be helpful. I expect that the commission would have a view to achieve economy and efficiency, but it would do no harm to put that beyond doubt by including it as a requirement.

[30] **Lindsay Whittle:** Are boundary reviews that important, perhaps, when deciding which ward goes where and which street lies in which ward?

[31] **Mr Barrett:** I am not an expert on that particular issue, but I think that with any decisions that authorities are making, they must consider whether there is an economy, efficiency and effectiveness issue within that, so that it is not overlooked. You would not want to create some unexpected consequences as a result of doing that.

[32] **Lindsay Whittle:** Okay. Thank you. Where and how exactly should that be placed in the Bill?

[33] **Mr Peters:** I think that it should go alongside the reference to the provisions for effective and convenient local government.

[34] **Lindsay Whittle:** Does the Wales Audit Office believe that it is right that the commission should be able to make proposals about the constitution of other public bodies, other than local authorities, whose make-up actually includes councillors?

[35] **Mr Barrett:** We were not clear, just from reading the Bill and the explanatory

memorandum, as to which bodies, specifically, that was aimed at. We understand from the Minister's evidence that bodies, such as fire authorities, would come within that view, which seems reasonable to us. You may be aware that I recently issued a report on a local drainage board. In that report I identified some serious shortcomings in the governance, resulting in the misuse of public money. I do not attribute that misuse to the structural composition of the board, but that board was very large and included local authority members. I think that the composition of that board, and the lack of attendance of some members at that board, because it was such a large board, contributed to some of the governance failures. So, depending on which organisations are included within this, I would say that it has some merits.

[36] **Lindsay Whittle:** Do you not think that we are heading towards larger public authorities and public boards? Who knows, perhaps there will be an all-Wales police authority one day, and therefore the constitution of that body would be very important, but should be decided, in my opinion, by that body.

[37] **Mr Barrett:** I do not have a view on who should decide the constitution of such a body. I think that a public body needs to have some framework within which to operate. It may be that this provides that type of framework.

[38] **Lindsay Whittle:** Section 29(10) of the Bill changes the terminology of local government electoral arrangements. I think that an electoral division becomes an 'electoral area', and a multimember electoral division becomes a 'multiple member area'. Do you have any views on that, because, let us be honest, what is in a name?

[39] **Mr Barrett:** We understand that a change in terminology can cause confusion for everyone. Let us be honest on these things. It can also create a lot of work in terms of changing documentation, instructions et cetera. This sort of problem has cropped up in various bits in the drafting of new legislation over the years. If we look, for example, at the Wales Audit Office and the Public Audit (Wales) Act 2004, we will see that the Government proposed to replace the term 'certify' with 'report'. We can see why that was proposed—it is making the language a bit more up to date and a bit more day to day—but that would have caused incompatibility with the founding legislation of a lot of Welsh public bodies. I can appreciate the need to want to modernise the language, but I think that one needs to be aware of how well things are currently understood with the old terminology and the effects that it could have in actually changing it.

[40] **Lindsay Whittle:** That is interesting.

[41] **Mike Hedges:** We could be changing one bit of terminology that people do not use to another terminology that people do not use. I would say that the word 'ward' is the one that most people use.

[42] **Ann Jones:** That was a comment. We do not need an answer to that.

9.45 a.m.

[43] **Janet Finch-Saunders:** As well as ensuring value for public money and efficiency, we are keen to ensure that this Bill seeks to improve transparency. Noting the earlier comment in your evidence thus far, could you explain why the commission is required to publish its intended procedures and methods for undertaking reviews electronically? Why are the current provisions in the Bill unsatisfactory?

[44] **Mr Barrett:** Yes, we think that the commission should publish that information and it is hard to see why it should not in terms of openness and transparency. Details of what weight would be given, for example, to written submissions of the public could lead to

correspondence campaigns. However, if that information is freely available to all parties, it introduces a level playing field. We think that the procedures and methods used for making decisions should be publicly available and publishing electronically is the most efficient way of doing so.

[45] **Ann Jones:** What happens in areas where people are not au fait with electronic equipment? You mentioned correspondence campaigns, but you can undertake such a campaign by e-mail much quicker than by producing a hand-written letter, which people used to do. Politicians tend to wait before answering their e-mails—I do not answer them straight away because the person who is writing to me by hand has to put their letter in the post. Why should they only be produced electronically?

[46] **Mr Barrett:** I think it should be widely available. The only reason is that we are moving increasingly into an electronic age and if you publish electronically, it improves general access. I agree that it does not necessarily target all of the people who you want to and you need to ensure, for example, that those people have access to that sort of information, whether through some sort of community facility where they can access the information or whether they write in and ask to be sent a copy of it.

[47] **Peter Black:** There is also provision to lodge reports at the local council offices. Would you expect that to be done electronically or in paper form?

[48] **Mr Barrett:** I do not see why, from a personal point of view, it cannot be done both ways. In terms of primacy, we are moving much more towards electronic provision. Talking as an auditor, if I issue documents, I will increasingly do so only electronically and not necessarily with a hard copy.

[49] **Mike Hedges:** Surely all that that does is pass the cost on from one organisation to the other because when the council receives it and if people want to see it, the council will probably print it out for them. So, instead of the boundary commission using its paper, the council has to use its paper to print it out.

[50] **Mr Barrett:** Generally speaking, we encourage people, unless they do not have the access, not to print things off. I know that we do not live in a paperless society, which might have been envisaged 20 or 30 years ago, but that is still the utopia that we aim for.

[51] **Mike Hedges:** I read this electronically and then printed it out.

[52] **Janet Finch-Saunders:** Do you think community councils are well covered in this regard?

[53] **Mr Barrett:** With regards to publication?

[54] **Janet Finch-Saunders:** Yes.

[55] **Mr Barrett:** Access for the public to community council information needs to be increased. I think that publishing electronically is a way of ensuring that. I issued a public-interest report on a couple of community councils in Swansea and when I went to the community council meeting, 30 members of the public were present. You can go to some unitary authorities where 30 members of the public will not be present. They were there because they were interested in the issues, but they complained about the fact that they had not seen the report, that no-one had made it available to them, that the notice of the meeting was not pinned up on the wall, and so on. Anything that can be done to increase public access to public information needs to be followed through.

[56] **Janet Finch-Saunders:** I agree with that. Does the Wales Audit Office agree with the Electoral Reform Society, which said that provisions in the Bill on consultation should be strengthened to ensure better engagement with the public when boundary reviews take place?

[57] **Mr Peters:** I would say that our own analysis of the Bill was that it was pretty good in terms of engagement. We do not share the same view as the ERS on that.

[58] **Mr Barrett:** From my point of view, the provisions for increasing engagement within the Bill were an improvement. You can always go further; it is a question of what is reasonable to do at this time.

[59] **Janet Finch-Saunders:** Finally from me, do you feel that this Bill will succeed overall in increasing engagement with communities? Do you think that it seeks to improve transparency, democracy and engagement?

[60] **Mr Barrett:** I think that it does, but you can only go so far: the people have to meet you halfway and they have to want to be engaged. Sometimes, I think that individual communities can find some of this stuff quite impenetrable. So, we need to do anything that we can to increase the access that people have and, I suppose, their access to people who can explain to them what is going on. It is not a matter of saying, 'That is the procedure', but asking what that means.

[61] **Kenneth Skates:** I have a question on the cost of internet sites. In the explanatory memorandum, there is an estimate of £700,000 for 350 councils in Wales. Do you agree with this estimate, as well as the estimate of £350,000 for the annual upkeep of those internet sites?

[62] **Mr Barrett:** We would hope that the set-up costs identified for councils that do not currently have a website will prove to be somewhat overstated; that would be our hope. In terms of a minimum requirement for hardware, those councils that do not currently have a personal computer would need to obtain one. We think that that could be done for less than £1,000 for a good-quality computer. Similarly, there would be an average of £1,000 for other start-up costs, which would need to cover things like training, initial content collation and website design. That may also be a bit high. We would, however, expect training to be the main cost for many councils; it is not just training in uploading information, as the important thing with websites is keeping them current. That, for me, is the important thing in terms of training: that people realise the importance of keeping those things up to date. One of the less identifiable costs, but no less real, is the increase in clerk time, in having to maintain the website, for example. Also, we are looking to increase engagement and if members of the public are accessing information on the website, they are more likely to contact the clerk and say, 'Can you tell me about x and y; can you direct me to this?'. So, there are other costs associated with it. They should not be seen as barriers, but I think it is important that we bear that in mind, because from my experience, quite often, clerks are already under quite a bit of pressure. This could just add to that.

[63] **Kenneth Skates:** You say that it would cost £1,000 per computer. What is happening in those councils that do not have websites at the moment? Do they not have computers? Do they have hand-written agendas and minutes?

[64] **Mr Barrett:** In some cases, they do. In other cases, I know that the clerks use their own personal computers, rather than council-purchased computers. In other cases, they are using very basic computers, rather than ones that might be able to be used to maintain websites.

[65] **Kenneth Skates:** Do you think that there is potential, in including such a considerable estimate, that we could face a situation where there is a perceived pot of money

and councils think that they can identify money for training, additional time for resources for the clerk and possibly £1,000 for a computer, whereas, in fact, many town and community councils are doing this right now without those additional associated costs and without having to seek those additional funds?

[66] **Mr Barrett:** There is always the risk that some organisations already have it and think that they could get some more, but I am not sure how else you can deal with that.

[67] **Mr Peters:** There is a competing risk of understating the overall cost. The overall cost, because of what Anthony was saying about ongoing engagement, is probably going to be fairly substantial and it will be ongoing. We would hope that the set-up costs will not be as big as stated. If you take everything together, it is probably a reasonable estimate.

[68] **Kenneth Skates:** You refer in your paper to additional costs arising from dealing with increased levels of engagement by the public under these provisions. Presumably, that is what you mentioned a moment ago about more contact from—

[69] **Mr Barrett:** That is exactly it. One of the reasons for publishing more information electronically and getting websites is so that members of the public read, digest and engage, which we would hope would mean that members of the public would be more involved in their community councils, for example, and therefore asking more questions and approaching the clerk for more information.

[70] **Kenneth Skates:** Do you think that there may be a need for clarity about who is responsible within town and community councils for responding to those inquiries? If it is just going to be the clerk, I am not entirely certain that that is right, because on the community council that I was a member of, two of us were responsible for the website, and when inquiries came through, they went through to the relevant member. Do you think that the way that this is set out at the moment could inadvertently direct all additional communications and inquiries to clerks, whereas the aim of it is to improve democracy, by ensuring that it goes to the relevant members?

[71] **Mr Barrett:** In most cases, it is useful to have a channel through which things go. There is an issue, which is probably related to the training, around the clerk engaging with the members of the community council and assigning responsibility to council members for particular areas and for them to respond on behalf of the community council.

[72] **Mr Peters:** I do not think that the Bill itself would push things towards the clerk, per se. I do not think that it is framed that way.

[73] **Mr Barrett:** It is just that if people are accessing information, the officer within a community council is the clerk, typically. That would be in some respects, in some ways, the face of the community council, from an administrative point of view.

[74] **Kenneth Skates:** Okay. Presumably, you believe that it is value for money, given that more than 40% of town and community councils spend less than £10,000 a year.

[75] **Mr Barrett:** The amount of money that might be required to provide the electronic access could be quite a significant chunk of community councils' money, but then I suppose I would ask, 'What price engagement?'. If you want to engage, you have to pay, and there is an issue about how it is funded.

[76] **Peter Black:** Do you think that all these extra requirements, in terms of transparency and accountability, and the costs and bureaucracy around that, will raise questions about the viability of some of these smaller councils?

[77] **Mr Barrett:** I do not have a view on that, really, but I think that it could do. Again, in my experience, personally and professionally, community councils can be very visible in their local communities. That may not be the case everywhere, and there might be some arguments for having larger organisations, but I do not know. It is not something that I have a particular view on.

[78] **Mike Hedges:** Town and community councils suggested that grant funding should be made available to the councils that do not have websites, in order for them to set them up. Do you think that that is right?

[79] **Mr Barrett:** That opens up a whole range of issues about the financing of local government, which is actually a policy question for the Welsh Government. I can see a case that local accountability and empowerment would be strongest where the cost of web publication was borne locally, so that local precept payers might be more likely to take issue with a council that was being extravagant in its web design, if they actually had to pay for it. However, I can also see that some councils, particularly given their small size, could need more support in terms of getting set up. For the sake of equity across Wales, it might be appropriate for the Welsh Government to smooth out that financial effect by providing some initial financial support. If you introduce a grant mechanism, you will also introduce the expense of a grant application mechanism and the other things that go on around that. From our experience of grants, I do not think that that is likely to be particularly efficient, particularly if you had hundreds of councils applying for small grants. We wonder whether it would be more efficient for the Welsh Government to provide financial support to representative bodies or to the principal councils to support the councils in their local communities and areas.

[80] **Mike Hedges:** I was going to ask you that question, because I agree with what you just said. Is it not true that if those councils that keep everything on paper, rather than using IT, were to provide paper copies to the principal council, it could scan the papers and make them available online? That would reduce the cost involved.

10.00 a.m.

[81] **Mr Barrett:** There is a lot to be said for all sorts of organisations, not only community councils, working more closely together. There is an obvious link between community councils and the principal authorities.

[82] **Mark Isherwood:** What are your views on the provisions in the Bill that change the practices of the Independent Remuneration Panel for Wales?

[83] **Mr Barrett:** As we say in our submission, we think the provisions in the Bill provide some useful streamlining, particularly of the process for specifying senior salary limits and also of the arrangements for the consideration of particular cases, but we do not have much more to add than is in the submission.

[84] **Mark Isherwood:** What are your views on the requirement for the panel to ensure that authorities publish all information on the remuneration of councillors and Welsh Ministers being able to prescribe other bodies where this might also apply?

[85] **Mr Barrett:** Again, we as an organisation would be in favour of that increased level of transparency. I think that that is good.

[86] **Mark Isherwood:** What are your views on the Electoral Reform Society's suggestion that the Bill should be strengthened to improve the scrutiny functions of local authorities? It

highlighted the resources for backbench and opposition members, the allocation of resources to scrutiny functions, and the procedures for appointing scrutiny committee chairs in particular.

[87] **Mr Barrett:** We are not sure what the Bill could realistically add to improve the scrutiny functions of local authorities. The Local Government (Wales) Measure 2011 already provides useful provisions in these respects. For example, it includes a provision for the head of democratic services to promote the scrutiny committees and to provide support and advice to them. We know that some of the requirements of the 2011 Measure are not yet as effective as they could be—for example, authorities are required by the Measure to make arrangements to enable residents to raise their views on matters under consideration by scrutiny committees. These arrangements are not always as visible as they should be. I am not clear as to how further legislation in terms of this Bill would help that. Time needs to be given for the current arrangements, as set out in the 2011 Measure, to bed in and to be seen to be effective.

[88] **Mark Isherwood:** Should there be greater clarity on scrutiny by councillors—particularly, but not exclusively, backbench and opposition members—regarding where they are allowed to represent issues, perhaps in their own ward, without breaching the code of conduct or, more broadly, where scrutiny crosses the line into, in some cases, alleged unacceptable behaviour?

[89] **Mr Peters:** Are you suggesting that that is a possibility?

[90] **Mark Isherwood:** I am asking whether you feel that the Bill could or should address that within the broader concerns raised about scrutiny in the context of the Bill.

[91] **Mr Barrett:** I do not have a particular view on that. From my point of view and from an audit perspective, that is a step too far in terms of expressing a view on it.

[92] **Ann Jones:** Peter and Janet have supplementary questions on this.

[93] **Janet Finch-Saunders:** It may well be the same one, but—

[94] **Peter Black:** You ask a question—

[95] **Ann Jones:** Go on, then; you ask a question and then Peter.

[96] **Janet Finch-Saunders:** On senior executive pay, do you feel that there could be the mechanics within the Bill for the remuneration board to also look at senior executive pay, as opposed to just councillors' pay? It is a big issue in Wales.

[97] **Mr Barrett:** I am only too aware of the issue and its sensitivity. I am not sure whether this is the right mechanism; that would be my view.

[98] **Ann Jones:** Peter, do you have another question?

[99] **Peter Black:** The issue is transparency and maybe they could look at a mechanism for that. Following on from a question that Mark asked, in England there have been changes in terms of planning so that local councillors do not have the same restrictions on them in terms of the code of conduct and prejudging applications as they do in Wales. Is there a case to make similar provisions in the Bill for local councils in Wales, or would you find that a step too far?

[100] **Mr Peters:** The prudent thing to do would be to see how the changes work out in England before making any changes in Wales.

[101] **Peter Black:** That was a very audit-office answer; thank you. [*Laughter.*]

[102] **Ann Jones:** Are there any other points that you wanted to raise on the Bill? Is there anything that you want to add to your evidence session or are you content that we have covered everything?

[103] **Mr Barrett:** I am quite happy and very grateful to have had the opportunity.

[104] **Ann Jones:** Thank you for coming in and answering the questions. We will send you a copy of the transcript. You have appeared at committees so you know what the drill is. Thank you for coming in to give us evidence today. I am sure that that will help us to make our final report at Stage 1. Thank you both very much. If the committee is in agreement, we will break until 10.15 a.m.; I see that you do agree.

*Gohiriwyd y cyfarfod rhwng 10.05 a.m. a 10.15 a.m.
The meeting adjourned between 10.05 a.m. and 10.15 a.m.*

**Bil Llywodraeth Leol (Democratiaeth) (Cymru) (Cyfnod 1): Sesiwn Dystiolaeth
gydag Ombwdsmon Gwasanaethau Cyhoeddus Cymru
Local Government (Democracy) (Wales) Bill (Stage 1): Evidence Session with the
Public Services Ombudsman for Wales**

[105] **Ann Jones:** We are now in public session again. If you switched your mobile phone on during the short break, could you please ensure that you have switched it off again?

[106] We now continue our evidence session on the Local Government (Democracy) (Wales) Bill and we have with us the Public Services Ombudsman for Wales. As this is a legislative evidence session, would you mind introducing yourselves for the record, please?

[107] **Mr Tyndall:** I am Peter Tyndall, Public Services Ombudsman for Wales.

[108] **Ms Thomas:** I am Elizabeth Thomas, the director of investigations and legal adviser for the ombudsman.

[109] **Ann Jones:** Thank you for coming to give evidence and for your written paper in response to the consultations. I will start with the first question if I may, Peter. To what extent do you believe that this Bill achieves the stated aim of improving the efficiency of local democracy in Wales?

[110] **Mr Tyndall:** From our perspective, our engagement with local authorities and community councils is twofold. One aspect is maladministration and the other is the ethical framework, particularly complaints that councillors have breached the code of conduct. Most of our comments on the White Paper related to aspects of the ethical framework. Some of those do not appear in the published legislation, but are due to be dealt with via secondary legislation. From that perspective, there is less here that directly impacts on the work of my office. Always in giving evidence, I confine myself to remarks that come from the work of the office rather than opinion. So, from that perspective, it is limited.

[111] What does impact on my office is the extension of jurisdiction to the boundary commission, which, I think, just corrects an anomaly. It is surprising that it was not in jurisdiction, previously. I cannot imagine that it will generate a lot of complaints of the kind that I could investigate about maladministration or service failure. There might be disagreements, but the kind of complaints that I look at are much more about processes being

correctly followed, and so on. So, I cannot see it generating an enormous amount of work for the office, but it seems an entirely commendable thing to do.

[112] The other aspect is probably joint standards committees, which I am sure we will touch on a little later. So, broadly speaking, we look at complaints alleging that members have breached the code. We try to deal with them quickly. We deal with them a lot quicker than we used to; the vast majority of people know within a fortnight whether we are going to investigate and then we try to keep investigations to within 12 months. We have found that the current framework does not necessarily always give consistent outcomes. Once we decide whether there is a case to answer, there is not always consistency in what happens once we put that case forward for consideration. So, that is one of the issues that I would like to touch on as we proceed with the questions.

[113] **Ann Jones:** Thank you for that. Peter is next.

[114] **Peter Black:** You have mentioned that a lot of the changes proposed in the White Paper in relation to the local government ethical framework are subject to secondary legislation. Is there anything in particular that should be in this Bill that is not and which would need primary legislation to change in terms of the framework?

[115] **Mr Tyndall:** The issues that we saw that needed change were two principle ones. One is the issue of complaints by members about other members. We want to see the kind of local resolution arrangements that some authorities have introduced, as standard across Wales. The proposal is that local authorities should introduce them on a voluntary basis, and we have seen patchy progress on that. The Minister has indicated that he will introduce secondary legislation to correct that if the progress is not more consistent across Wales. We took a view that it would be best to have a common framework across all authorities so that there was consistency of practice. The particular arrangements may need to differ, because some authorities have political groups and there can be a role for the leaders, whereas other authorities have a majority of independent members, and using the group as a means of dealing with any issues around conduct there probably would not be effective. Nonetheless, you can see that it would be possible to introduce a consistent framework across Wales. We would very much support that. Where there are local arrangements in place, we automatically refer cases back for local resolution when one member is complaining about the behaviour of another. I think that everybody accepts that that is preferable; it is just a question of making sure that we get it. Does it need to be in primary legislation? No. Does it need to be the subject of legislation? Not really, if the authorities deliver on consistent arrangements across Wales, but if they do not, it certainly needs to be the subject of secondary legislation.

[116] The other point that we had a particular view about was what happens when cases go to the adjudication panel and the increasing propensity of members, understandably, to be represented. However, in some instances, that representation has been underpinned by an unlimited indemnity, and the effect of that is that what is intended to be an informal tribunal-style arrangement often becomes something much more akin to a court and the costs then spiral out of any reasonable range. So, we took a strong view that a cap should be placed on the level of indemnity. We took a view at the time that that should be linked to the cap that an employment tribunal would have, because members were quite rightly saying that the consequences for them in terms of loss of income could be equivalent to losing a job. The cap for an employment tribunal, as I understand it, is £10,000. Subsequent discussions with the WLGA and officials put that cap at £20,000, which is still reasonable. However, in the context of the current economic circumstances and with the pressure on public services, to have money available above that level on an unlimited basis does not seem reasonable. Whether that is achieved by a voluntary arrangement or, again, by secondary legislation, I still believe that it needs to be introduced.

[117] **Peter Black:** On outcomes, currently, when you issue a report on maladministration with regard to a local authority, the remedies that you recommend are not mandatory on the local authority. Would there be more consistency if you had the power to make those remedies mandatory and would that be a consideration for this Bill?

[118] **Mr Tyndall:** Remedies in respect of members would bring that in line with the jurisdiction for maladministration. Where more serious cases are at stake, there would need to be some opportunity—normally, the view is that the decision by the ombudsman can only be appealed in the courts. So, to secure the independence of the office, if it were possible for me to make judgments or recommendations that were binding, they would have to be for the lower level of alleged breaches rather than the more serious cases, which probably still need to be heard by the standards committee or the tribunal of the adjudication panel, but that could be a very small number.

[119] **Peter Black:** Are the remedies on maladministration mandatory or are they still voluntary? I know that most authorities will comply with them, but—

[120] **Mr Tyndall:** Yes. They have the status of recommendations, and I always say when I come to the Assembly that none of my recommendations have ever not been adhered to. I say it increasingly with fingers crossed and touching wood, as you can imagine, because at some stage, inevitably, that will not be the case. However, the important thing to say is that, in the context of remedies to councils, there is a democratic process, first within the council, to consider the refusal, and secondly within the Assembly, because I could bring a special report here. You would have to think about a whole set of equivalent arrangements if you were to introduce something similar for code of conduct breaches.

[121] **Mike Hedges:** You referred to independent members. Are you aware that in a number of places, the independents are a formal political party and registered as such? For example, in Swansea, they are registered as independent and act in exactly the same way as any other political party. Secondly, you were talking about the level of support the local authority gives people in terms of legal representation. The danger is that if what they have done is done on the advice of officers of that authority—and I can think of a Member of this Assembly who got into trouble with you having taken such advice—surely, the local authority has an obligation to support them.

[122] **Ann Jones:** I do not think that that is within the scope of the Bill.

[123] **Mike Hedges:** It is just a comment that has been made and I think—

[124] **Ann Jones:** What we are trying to do here is to scrutinise the Bill.

[125] **Mr Tyndall:** The level of indemnity that is proposed, although it is capped, is adequate to enable somebody to defend their position. So, I still think a cap is desirable. However, that, as I say, would be subject of secondary rather than primary legislation.

[126] **Mike Hedges:** What about the first question on the independents?

[127] **Mr Tyndall:** I am well aware of some instances. My particular point is that where you have normal group discipline, the leaders can have a very persuasive role in respect of the conduct of members. In other instances, where the groupings are more fluid, that kind of discipline would be less effective. I was not arguing that the leaders should not have that role where they can, and if the independent group is a group in the same way that a political party forms a group, then obviously the leader of that group could behave in the same way as the leader of any political party.

[128] **Mark Isherwood:** Good morning. The last time you gave evidence to this committee on a related matter, you referred to recent casework in England, which had upheld a councillor's position against allegations of breaching a code of conduct and the precedent that might set, which has gone forward in England, I think. You also referred to a couple of longstanding, unresolved cases, which went against the grain, because most cases clearly were resolved, and to a particular town council where you had a very large number of complaints within a short space of time, possibly vexatious because they all came from the same group of people. Does this Bill or could this Bill address that?

[129] In terms of the £10,000 figure you were talking about, I am familiar with at least one, if not both of the cases. I understand that the full council voted to increase the funding because it was concerned that the allegations were brought by officers and it collectively felt that it wished to support the member concerned. Should that sort of safety valve be in place where the council itself feels that the matter merits further defence?

[130] **Mr Tyndall:** In the first instance, the case you were mentioning that set the precedent was actually a Welsh case. The particular precedent it set was in respect of the level of protection the Human Rights Act 1998 affords to councillors who, albeit making rude and controversial remarks, are protected under the human rights legislation, particularly in relation to freedom of speech. There is an enhanced protection for freedom of speech within a political context, which I am sure Members here are all aware of. It does have an impact and it does not require legislation to deal with it. I have dealt with it in the context of the guidance that I issued.

10.30 a.m.

[131] As you know, I have now issued separate guidance on the code for members of county and county borough councils, and members of community councils, and I have made clear what the impact of that is. Essentially, what it does is that it raises the bar on what constitutes legitimate political comment. I am having quite a lively debate with the monitoring officers of the local authorities as to where precisely the bar is now, and we will not know that until we bring another case to test where the other limit of it is. However, it is clear that the kind of harassing comment, persistent on blogs and so on, is fully protected. The particular instance was a trivial one about a community councillor persistently denigrating colleagues on his blog. We regarded it as a fairly trivial case and dealt with it accordingly, but it ended up in the High Court with the Adjudication Panel for Wales being successfully judicially reviewed, so it has set the bar, or reset the bar. Where the bar will eventually settle we do not know, but we have included the case example within the guidance that we issue to members, and we have given our view as to where the bar now is. That is available on our website, but I am happy to make copies available via e-mail to members of the committee if you have an interest in the guidance.

[132] I take a view that there is proportionality in all of this in terms of the level of the indemnity. Yes, there has to be sufficient funding in place to enable people to defend themselves properly, but I think that the levels of expenditure that we have seen have not been appropriate for the scale of the alleged breaches of the code, and the system is currently costing far more than I think it should. Therefore, I take the view that there has to be a cap. Clearly, there can be debate about where that cap should lie, or whether there should be one, but my view remains that the amount of time it takes to resolve cases as a result of the involvement of heavy legal forces, and very expensive ones, is not really proportionate to the alleged incidents.

[133] **Mark Isherwood:** Is that on both sides, because it would be the case that the council itself might be employing very expensive legal representation requiring or disproportionately putting at disadvantage the member who is facing the allegations from officers?

[134] **Mr Tyndall:** I have made it clear that I think that there should be a limitation on both sides.

[135] **Ann Jones:** We are going to have to move on, and we have to just consider what is in the Bill when we ask the ombudsman questions. We have an opportunity to fetch the ombudsman in to scrutinise his work outside this Bill in a general scrutiny session, and I do not want this to turn into that.

[136] **Lindsay Whittle:** It is a code of conduct issue, really. I have been a councillor for close on 40 years, and I do think that some councillors today are a little vexatious and a little too precious. They would not have survived the 1960s and 1970s. On the issue of the code of conduct, there is some secondary legislation—you have touched on it in your evidence—but do you really think that it is necessary, considering that the White Paper has already covered these matters? We are really over-egging the pudding, sometimes, on this code of conduct issue for councillors.

[137] **Mr Tyndall:** We had discussions with the Welsh Local Government Association and the Government about the changes being introduced on a voluntary basis. If that happens, then there is no need for secondary legislation, and I hope that that is what will happen.

[138] **Lindsay Whittle:** Okay. You say in your paper that the establishment of joint standards committees would at least address some of the concerns that you have about the local government ethical framework. Do you not think the provisions in section 63 of the Bill could be strengthened in some way to do that?

[139] **Mr Tyndall:** The issues we see are probably twofold. One set of issues is about consistency, and we think that that is linked to the lack of activity of some committees. If you take, for instance, fire authorities, there is almost never a reason for the standards committee of a fire authority to actually consider a complaint, so the problem is that it has no experience, and no process for doing so. A smaller number of standards committees would be likely to deal with sufficient cases for members to become more experienced in dealing with them. The question then is whether the Bill goes far enough in allowing for joint standards committees if they are desirable. Our view would generally be that, as with some of the other issues where we have looked for voluntary arrangements to succeed, we are not persuaded that there is enough momentum behind those voluntary arrangements to achieve that. Probably, I would tend to err in favour of there being a requirement for joint standards committees.

[140] The second issue, which we see on occasion, is the issue of people finding it difficult to find councillors who have not been engaged in the subject matter of the complaint that they are being asked to consider. So, that is the secondary aspect of the Bill. If you do not go for joint standards committees, should you have the power to refer matters to the standards committee of another authority? Certainly you should, because there are occasions when it is very difficult for an issue to be seen to have a fair airing locally.

[141] **Lindsay Whittle:** Would you have a standards committee from one authority checking another, and vice versa?

[142] **Mr Tyndall:** There are separate points. If you had joint standards committees you would not need to do it, because inevitably there would be members on the committee from authorities other than the one that was the subject of the complaint. If you did not have joint standards committees, the situation is like that which we have seen in some Welsh authorities, where all of the elected members of the standards committee have been involved in the subject matter of the complaint. In that case, it would be better for that authority to be able to

refer that matter to the standards committee of another authority.

[143] **Lindsay Whittle:** Okay, thank you.

[144] **Mike Hedges:** Are there any risks in allowing joint standards committees? Somewhere—it might have been here, it might have been outside of here—I have heard concern about, in large rural areas, if you start joining them together, the amount of travel that might be involved and the difficulties in getting people to cover meetings. If you put Powys and Ceredigion together, for example, which might sound logical, you have probably got a third of Wales there.

[145] **Mr Tyndall:** I do not think that the numbers of meetings involved would act as too much of a barrier. Clearly, it is easier to achieve in urban areas, but sometimes travelling from one Welsh valley to another can seem as much of a journey as going from Llandrindod to Aberystwyth. Given the number of cases and of meetings likely to be involved, it probably would not be a major obstacle.

[146] **Mike Hedges:** Just a quick comment: if the boundary commission had understood that when it did the last set of boundaries, we might not be having this meeting now.

[147] **Ann Jones:** That is a comment. We will move on to Gwyn.

[148] **Gwyn R. Price:** You covered most of this in your last comment. Do you agree with the Association of Council Secretaries and Solicitors that the Bill should include an additional power for an authority to refer a matter to another authority's standards committee where there might be difficulty in the home standards committee dealing with the case?

[149] **Mr Tyndall:** We have seen examples of this. It particularly happens when the subject of the complaint involves all of them. Let us say that confidential information is disclosed in the course of a debate in the council chamber, and all the members of the standards committee are present. It becomes difficult then to field a quorate standards committee, so having the opportunity to have that kind of case heard elsewhere is clearly an advantage.

[150] **Joyce Watson:** What is your view on the suggestion by the Association of Council Secretaries and Solicitors that the term of office of councillor members of a standards committee should be for the term that they are councillors rather than a dedicated, allotted four years?

[151] **Mr Tyndall:** We do not have strong views on that. It has never been an issue that has arisen in the course of our work, so we just do not have a strong view on it. The current arrangements have not caused us any difficulties, but I can understand the arguments that have been put as well. It is not an issue of great concern for us.

[152] **Kenneth Skates:** What are your views on the changes made in the Bill to the boundary commission, both structurally and operationally? Are there any areas where the Bill could be strengthened in this respect?

[153] **Mr Tyndall:** I am afraid I am not going to be able to be very helpful on this.

[154] **Kenneth Skates:** Okay. That is all right.

[155] **Mr Tyndall:** The boundary commission has not been in my jurisdiction. It would just be opinion rather than anything based on evidence, so I think it best that I do not respond to that. I do welcome the fact that the arrangements have been made to bring it within jurisdiction.

[156] **Mark Isherwood:** Moving on, we understand from your submission that you support the proposals regarding town and community councils providing information electronically. We have also had information from the Wales Audit Office that 40% of town and community councils currently have precepts of £10,000 or less, and many others are under £20,000. To what extent, therefore, given the public gain that you consider this would deliver, would this deliver value for money for the populations in those communities?

[157] **Mr Tyndall:** We would take the view that for each of them to independently set up websites would not be a sensible use of public money, particularly the smaller ones. That might be legitimate for some of the bigger ones. So, we would look to either the existing county borough councils offering some sort of support in that regard, with a small dedicated area on their websites for each of the community councils, or to the society of—

[158] **Mark Isherwood:** One Voice Wales.

[159] **Mr Tyndall:** Yes, but also the town and community clerks. So, either of those. One Voice Wales, clearly, would be one option for doing that. I would be very reluctant to see pages that see a lot of effort devoted, for instance, to putting the minutes online. We have the opportunity to read the minutes of town councils and community councils on occasion, and I am not sure that they would add greatly to the sum of human knowledge. However, putting details of the services provided and how to contact the council online would seem to me, in this day and age, to be important.

[160] The other thing that I would like to say is that one of the particular criticisms is that town and community councils are not seen to be engaging with the younger sections of their communities. Clearly, to do so they will need to think about the channels of communication that they use in the future.

[161] **Mark Isherwood:** We put similar questions to the WLGA and to One Voice Wales, which responded with various degrees of enthusiasm. One Voice Wales seemed very keen on being a host, but indicated resource issues for it as a small organisation. How do you believe that this should be funded?

[162] **Mr Tyndall:** As I have said, I think that we should be aiming at the lower end of inexpensive here. Clearly, if the town and community councils are going to provide it, they would have to pay for it; but you would hope that it would be done in a way that would cost them very little.

[163] **Janet Finch-Saunders:** Does the ombudsman have any other comments to make about any aspects of the Bill that have not been covered? Within your remit, do you think that this Bill goes far enough?

[164] **Mr Tyndall:** By and large, subject to what happens with the voluntary arrangements under secondary legislation, the answer is 'yes'. Coming back to it now, the one question that I have is to do with the fact that we have seen a decline in maladministration or in the number of cases that come to my office from local authorities. By and large, complaint-handling seems to be improving. The number of cases about breaches of the code of conduct has been static since the office was founded. You get a spike in the run-up to an election, which, hopefully, the arrangements for local consideration would address. So, I do not think that there are huge issues on either front—

[165] **Janet Finch-Saunders:** What about office maladministration?

[166] **Mr Tyndall:** The one thing that I was going to say is that one thing that I have been

slightly disappointed by the rate of take-up of the model complaints policies across local authorities in Wales. It seems to me that the arguments for having a consistent approach to handling complaints across the public sector in Wales does offer large benefits to citizens. Again, there is a model policy, there is a voluntary approach, but, frankly, the take-up has been slow by public service providers. It is not a matter for this legislation, but if you were to ask me what I would want, were there to be legislation in the future, I think that I would like to see that taken forward as something that we can do in Wales. We are small enough to actually lead in this. We have a head start and we just need to consolidate it.

[167] **Janet Finch-Saunders:** Do you think that that is something that we, as a committee, could look into in the future?

[168] **Mr Tyndall:** Yes, I think so. It is perhaps something that you could pick up. I was grateful to have the opportunity to discuss my annual report for last year, and it may be something that we can pick up again when there is next an opportunity.

[169] **Mike Hedges:** [*Inaudible.*]—advice going out, but we have councillors here today, who, if it had been the other way around and they had been discussing Assembly business, would have had to get up to declare an interest as an Assembly Member. Within the Assembly, as long as we have a written declaration, that counts as a declaration. I have been at council meetings where 70 of the 72 members have got up to say that they are members of a school governing body when the schools budget is being discussed. Would it not make life a lot easier, and council meetings slightly quicker, if you had a similar situation in local authorities, once something was on the public record? I am not getting at Peter Black, but he often gets up and declares an interest as an Assembly Member, as if there was anybody in the room who did not know that.

10.45 a.m.

[170] **Peter Black:** [*Inaudible.*]

[171] **Ann Jones:** I think that we are getting into a—[*Interruption.*] Yes.

[172] **Mike Hedges:** Would it not be easier if something that is already declared in writing did not need to be declared verbally as well?

[173] **Peter Tyndall:** My personal view is ‘yes’.

[174] **Mike Hedges:** Thank you.

[175] **Ann Jones:** Thank you very much for that. Do Members have any more questions for the ombudsman? No? I see that we are all content.

[176] I thank you both for coming this morning. It was a very short session, but no doubt useful. You know the drill; we will send you a copy of the transcript to check its accuracy. I am sure that what you have told us will feature in our Stage 1 report, so thank you, both, very much. Thank you for coming.

10.46 a.m.

**Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd o
Weddill y Cyfarfod**
**Motion under Standing Order No. 17.42 to Resolve to Exclude the Public from
the Remainder of the Meeting**

[177] **Ann Jones:** If the committee can agree, we will move into private session to discuss a couple of reports. I move that

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

[178] I see that Members are content.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 10.46 a.m.
The public part of the meeting ended at 10.46 a.m.*