



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

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

Dydd Mercher, 17 Ebrill 2013
Wednesday, 17 April 2013

Cynnwys **Contents**

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru)—Sesiwn Dystiolaeth Cyfnod 1
Social Services and Well-being (Wales) Bill—Stage 1 Evidence Session

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

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

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

Aelodau'r pwyllgor yn bresennol **Committee members in attendance**

Angela Burns

Ceidwadwyr Cymreig

Welsh Conservatives

Christine Chapman

Llafur (Cadeirydd y Pwyllgor)

Labour (Committee Chair)

Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
Rebecca Evans	Llafur Labour
Bethan Jenkins	Plaid Cymru The Party of Wales
Julie Morgan	Llafur Labour
Lynne Neagle	Llafur Labour
Jenny Rathbone	Llafur Labour
Aled Roberts	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Lynne Hill	Cadeirydd 'Sdim Curo Plant! Cymru, Cyfarwyddwr Polisi, Plant yng Nghymru Chair of Children are Unbeatable! Cymru, Policy Director, Children in Wales
Andy James	Cyfarwyddwr Cynorthwyol, Polisi, Barnardo's Cymru Assistant Director, Policy, Barnardo's Cymru
Vivienne Laing	Rheolwr Polisi a Materion Cyhoeddus, NSPCC Cymru Policy and Public Affairs Manager, NSPCC Wales
Des Mannion	Pennaeth Cenedlaethol Gwasanaethau yng Nghymru, NSPCC Cymru National Head of Services for Wales, NSPCC Wales
Peter Newell	Cydlynnydd, Cyngheiriau 'Sdim Curo Plant! y DU Co-ordinator, Children are Unbeatable! Alliance UK
Tim Ruscoe	Tim Ruscoe, Swyddog Datblygu, Barnardo's Cymru Development Officer, Barnardo's Cymru

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

Ffion Emyr Bourton	Dirprwy Glerc Deputy Clerk
Steve Davies	Cynghorydd Cyfreithiol Legal Adviser
Sian Thomas	Gwasanaeth Ymchwil Research Service
Claire Morris	Clerc Clerk

Dechreuodd y cyfarfod am 9.00 a.m.
The meeting began at 9.00 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **Christine Chapman:** Good morning and welcome to the Assembly's Children and Young People Committee. I remind Members that if they have any mobile phones or

BlackBerrys, they should be switched off, as they affect the transmission. The Assembly operates through the media of Welsh and English, and there are headsets for simultaneous translation on channel 1 and sound amplification on channel 0. As this is a formal public meeting, Members and witnesses do not need to operate the microphones themselves; they will come on automatically. We have not had apologies this morning.

9.01 a.m.

**Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru)—Sesiwn Dystiolaeth
Cyfnod 1
Social Services and Well-being (Wales) Bill—Stage 1 Evidence Session**

[2] **Christine Chapman:** Our first panel of witnesses today are representatives from Children are Unbeatable! Cymru. I welcome you all. I welcome Lynne Hill, policy director at Children in Wales, who is also chair of the Children are Unbeatable! Cymru group; Andy James, assistant director of Barnado's Cymru; Vivienne Laing, policy and public affairs manager at NSPCC Cymru; and Peter Newell, co-ordinator at Children are Unbeatable! Alliance UK. I welcome all of you here this morning. Our session this morning will last an hour. We have other witnesses afterwards, and there is a lot of ground that we have to cover. Thank you for your paper; Members will have read it, so, if you are happy, we will go straight into questions. I know that Members have a lot of ground to cover, so I ask that Members' questions and the responses are concise.

[3] I will start with a very broad question. We are, obviously, looking at this issue from the perspective of the social services and well-being Bill. Is there a risk that the inclusion of a section relating to the reasonable punishment defence within the Bill could impact upon the Welsh Government's significant aims for the Bill with regard to the broader issues of child wellbeing and safeguarding?

[4] **Mr Newell:** Thank you very much. I have been asked to start. Just as background, I will say that the Children are Unbeatable! Alliance UK was launched back in 1998 and it includes over 600 organisations and projects, all focused on trying to get the defence of reasonable punishment removed to give children equal protection under the law. That is the broad alliance where we are coming from. We were going to start by explaining why we hoped that it would be in this Bill, but if you would prefer to us to start by looking at the potential impact of including it in the Bill, we can do that. In that case, Lynne, do you want to—

[5] **Christine Chapman:** We are concerned that we could lose other parts of the Bill because of this. A brief answer would be okay.

[6] **Ms Hill:** We appreciate that there are concerns that this issue could dominate and delay the Bill. However, Assembly business is under the control of the Assembly and an amendment to remove 'reasonable punishment', which is what we would be looking for, or the defence of 'reasonable punishment' in relation to assaults on children, is not a complex one. There has already been an Assembly debate on it. An amendment could be tabled at a later stage of the Bill. From the debate and the vote in 2011, there is clearly cross-party support for it. There is a concern that if the removal of the defence is included in the Bill, it could be challenged at the Supreme Court or by the Secretary of State, and this could mean that the whole Bill is lost. We feel that that is not true, and that there are opportunities within the Bill and within the Assembly's procedures to address that. There is a four-week intimation period during which any questions about legislation can be referred to the Supreme Court or to the Secretary of State, or the Secretary of State can prevent a Bill from being sent for Royal Assent. If legislative competence is successfully challenged, then there is provision in Stage 4

for a reconsideration, and thus the Bill would not entirely fall. It would simply be that the provision in question would be removed.

[7] The other thing to emphasise from our perspective is that we are aware that the First Minister has taken legal advice and believes that the removal of the ‘reasonable punishment’ defence comes within devolved competence because it focuses on social welfare and the protection and wellbeing of children. Obviously, within that, the Assembly has the power to make those decisions.

[8] **Christine Chapman:** Thank you for that. That is an issue that we may pick up later on, but I just want to get into the principle of the issue. How would you respond to the view that a delay in changing the law on physical punishment would enable the Welsh Government to undertake better preparatory work with parents in respect of this issue?

[9] **Mr James:** There is a view out there that, to achieve that change, perhaps it would be better to have a softly-softly approach where you change attitudes and the approach to physical punishment through education and promoting positive parenting. That has been happening, and our agencies have been buying into that for a number of years. For us, that is not a view that we necessarily share—that it is the only way forward. We think that it is essential that there should be a change in the law that accompanies any educational programmes and public education campaign. Nobody would have argued, for example, that we should not change domestic violence laws because we need to educate men. The idea that the only way forward is through education is flawed and it undermines the position that we currently have about the protection of children. If you think of issues like seat belt laws, the smoking ban, drink-driving, driving while on the phone, all of those changes and major public education campaigns have been accompanied by a change in the law. It is the change in the law that changes attitudes and behaviour. There is lots of evidence for that, and certainly for this issue there is lots of evidence of that from countries in Europe that have changed the law. It is not enough to just go on the issue of public education and campaigning in that way.

[10] It is excellent that Wales has already made great efforts in this regard. We have had 10 years of encouraging parents to approach positive parenting programmes, and we operate quite a lot of those ourselves within Barnardo’s, and others here today do so as well. We think that those educational approaches are undermined by not having the law absolutely clear and unequivocal that it is wrong to hit children. In that way, we would certainly want the law changed. We would want it changed now, because this is an opportunity that may not arise again for a long time in Wales. It could be 2016 or beyond in another Assembly session before we have this opportunity again, and should children have to wait that long? The opportunity is here to put this in this Bill now, and we would argue that this is a great opportunity for Wales to lead in the UK and be the first country to do this. It has had lots of memorable firsts since the inception of the Assembly, and this could be another one. We think the Assembly could be on the right side of history on this. There is a good chance, I would think, that if we change the law today, in five or 10 years’ time we would look back and say, ‘Why did we take so long to do that? It was a no-brainer’. So, in our view, the change in the law is essential to accompany any public education campaigns, and they should go hand in hand.

[11] **Julie Morgan:** Just to follow that up for a moment, what about public opinion? There have been public opinion polls that showed that the public, in its answers to the questions that it is given, have not, perhaps, understood the issue.

[12] **Mr James:** Again, I think that the evidence from all of the countries that have changed the law on this issue and have prohibited smacking was that that was not accompanied by public opinion, either. However, what happens over time, when the law is enacted, is that people’s attitudes change and behaviour changes. As I said earlier, that is

consistent across such things as seat belt laws or the smoking ban; the law changes people's behaviour. There is evidence of that across all of the countries that have changed the law on this issue. Attitudes and parental attitudes change alongside that. I do not think that there is one country that has considered reversing the law since introducing it, and public opinion has generally gone with the change, and parents' attitudes and behaviour have changed with that.

[13] **Mr Newell:** I would like to add that, of the countries—and there are 33 across the world, 22 of which are in Europe—that have completely prohibited all physical punishment, in every case, they have gone ahead of public opinion and then public opinion has come around behind the change. The speed of that process depends on how much public education there has been. Obviously, Sweden, the first, has had the longest period and has made the most impact in terms of changing behaviour and practice. However, it is true of many social issues, discrimination issues and equality issues; Governments have to lead. They cannot see their role as following public opinion. This is a classic issue of that kind.

[14] **Julie Morgan:** The explanatory memorandum for the Bill does not include information about physical punishment as part of the due-regard assessment under the Rights of Children and Young Persons (Wales) Measure 2011. What are your views on this?

[15] **Mr Newell:** The explanatory memorandum makes it clear that the Rights of Children and Young Persons (Wales) Measure requires Welsh Ministers to give due regard to the UN convention in the development of all legislation and policy. It goes on to state that:

[16] 'The Bill takes forward Wales' distinctive and internationally regarded rights based approach to children's social care. The assessment of the impacts that the Bill will have on children and young people confirms the rights based approach that is taken'.

[17] However, the complete absence of any provision in the Bill to remove the reasonable punishment defence is not addressed in the assessment. It seems to me that assessments need to look not just at what is in legislation, but at what should be in legislation to fulfil the convention. I had assumed that that was the purpose. So, obviously, the point of the Rights of Children and Young Persons (Wales) Measure is to ensure that Wales, at least, is pursuing the convention and, as it is, I think, 10 years now since the Welsh Government first said that it accepted the recommendation of the Committee on the Rights of the Child—now three recommendations—to remove the defence and completely prohibit physical punishment, that is an obvious implication of the Measure. It could not be clearer in the Committee on the Rights of the Child's interpretation of the convention that it requires the complete removal of defences in order to completely prohibit physical punishment. The committee has reflected that also in a very detailed general comment on the right of the child to protection from physical punishment. So, it seems to us that the Measure is an added incentive or, indeed, obligation on the Government now to take action on this issue.

9.15 a.m.

[18] Perhaps this is a good moment to remind this committee of the extent of the human rights pressure that there is on the UK Government, including Wales, to remove the defence and completely prohibit physical punishment. The Committee on the Rights of the Child has recommended it three times—in 1995, 2002 and 2008. In 2008, the committee specifically commended the National Assembly for Wales on its commitment to removing the defence. It went on to note that, at that time, Wales did not have the devolved power to do so. The Committee on Economic, Social and Cultural Rights has recommended the removal of the defence twice, and the Committee on the Elimination of Discrimination Against Women has done so once. The United Nations High Commissioner for Human Rights has called for this reform. Furthermore, in the universal periodic review process that looks at states' whole human rights records, in the first and second cycles, many other states have recommended

that the UK should completely prohibit physical punishment. Again, in Europe, the European Committee of Social Rights has twice recommended that, in order to comply with the European Social Charter, we must remove the defence. The Commissioner for Human Rights in the Council of Europe, when he formally visited the UK in 2008, in a memorandum to the UK Government, has also said that this must happen, and that laws allowing physical punishment are not compliant with international human rights standards. He also commended Wales on its distinctive commitment to ban completely. Therefore, there could hardly be more intense human rights pressure, or a clearer interpretation of what the human rights obligation is, on the UK.

[19] **Christine Chapman:** Do you want to continue with this issue, Julie?

[20] **Julie Morgan:** No, thank you.

[21] **Christine Chapman:** Okay. Bethan Jenkins has the next questions.

[22] **Bethan Jenkins:** As it does not include information about physical punishment as part of the due-regard assessment, have you taken legal advice as to whether that could be challenged if this Bill went forward without taking that on board? I would be interested to know that, because, when that legislation went through first of all, it seemed to suggest that, if the Government did not take due regard, then cases could be brought against the Government.

[23] **Mr Newell:** We have not taken formal legal advice—that is something that we might do. However, we hope that the very long-term commitment of successive Welsh Governments on this issue, as well as the fact that Wales has led on so many of these related issues, such as being the first to ban physical punishment in all day-care settings, and so on, means that the Government will agree to include this measure, or will allow the Assembly to vote on this provision, in the Bill. So, we have not taken formal legal advice. From a commonsense look at it, given the absolutely clear interpretation of the convention by the Committee on the Rights of the Child—there is no hesitation or doubt there—to me it implies an extra pressure. The obligation in international law is clear to do this, and it looks as if Welsh law adds emphasis to the need to do it.

[24] **Bethan Jenkins:** That is why I am asking the question, really.

[25] **Christine Chapman:** As you said, there has been some informal discussion, but we need to look at this in further detail. Do you have a question, Jenny?

[26] **Jenny Rathbone:** As Lynne has already said, the First Minister has confirmed that it is within the competency of the Assembly. We understand that that is also the advice of the Assembly's legal advisers. However, we understand that the Attorney General—if not the Secretary of State for Wales—is likely to refer it to the Supreme Court. What legal advice are you getting about the possibility of challenging that in the Supreme Court, so that Wales can retain competency?

[27] **Mr Newell:** Again, we understand that there has been authoritative advice from the Assembly's own legal adviser. All the lawyers to whom we have talked about this have confirmed that advice, that, because the purpose of social welfare includes child protection, and so on, it looks like it is there. Whether the UK Government decides to challenge it is another issue.

[28] **Christine Chapman:** We are not going to know that today, obviously. *[Laughter.]* Bethan, do you have another question?

[29] **Bethan Jenkins:** No, thank you.

[30] **Christine Chapman:** Okay, you have covered that. Simon, do you want to come in on this?

[31] **Simon Thomas:** Yes, thank you. Just in passing, it does seem rather strange to me that we can deem that people have given their consent for their organs to be donated, but we cannot take this step to protect children. Nevertheless, that is the difficult legal situation that we are in. Are you doing anything as an alliance with regard to the Silk commission in putting forward the alternative reserved-powers model, for example, which would bring greater clarity to this area?

[32] **Mr James:** I think it is fair to say that our focus is on this Bill at the moment and that we have not given that consideration, but we would if we needed to.

[33] **Simon Thomas:** Okay. I would just make the passing comment that the more people say that we need for the devolution settlement to be crystal clear, and the fewer the referrals that go to the Attorney-General, the better this will be—so, more power to that particular campaign. There is an opportunity for everyone to have their say with the Silk commission.

[34] Turning now to the evidence that you have given the committee, do you think that public opinion in Wales would be different, and perhaps more favourable to what you are campaigning for, if there were more studies specific to Wales that showed the relationship between corporal punishment and harm to children?

[35] **Christine Chapman:** Who wants to answer?

[36] **Ms Hill:** If you want to start, Viv, then I will chip in.

[37] **Ms Laing:** Obviously, from the NSPCC's perspective and experience, we note that physical abuse is often done under the name of physical punishment. That is borne out by research, as you said—

[38] **Simon Thomas:** That is illegal now.

[39] **Ms Laing:** Sorry?

[40] **Simon Thomas:** When you talk about that level, it is illegal now.

[41] **Ms Laing:** Absolutely, but it is often physical punishment that has gone to extremes, and, because, as the research says, smacking does not work, parents have to hit harder and harder, and there is that danger of escalation, which is what faces parents who do use physical punishment as a means of disciplining their children. As you say, however, a lot of the research evidence is from outside the UK, from outside Wales. The problem, of course, is funding research such as this, but, yes, we think that it would be good if there was more research based in Wales and on Welsh parents and children.

[42] **Ms Hill:** I will say that, along with that, for parents, it is about having an opportunity, rather than hearing about research, even if that is Wales or UK-based, to explore that experience for them with other parents, and to do so in a supportive environment. I know from work that Barnardo's and Action for Children do around parenting groups that it is when parents have that opportunity to see how they can build a different relationship with their child when they do not smack—

[43] **Simon Thomas:** May I just ask something on that, because that was my next question, in a sense? A lot of the evidence is all about smacking as the gateway drug to

perhaps even worse punishment or violence and the relationship between that and harm to children. I know that there is good work going on, but we do not see the written research on the other side, which is what the positive outcomes are of an alternative parenting approach. I think that you were about to say a little bit more about that.

[44] **Ms Hill:** Yes, and I would echo Viv's point that we do not have that research evidence, but we do have a wealth of experience from organisations that provide parenting support, and actually from parents themselves. I know that it is anecdotal, but I think that there is a real sense that younger parents really just do not consider any sort of physical chastisement as part of their parenting regime: they make a very conscious decision, probably before the birth, in reality, that they will work in a non-violent way and they will use time out or the various techniques that they see, which are often promoted in the media. When they see that that works, there is no reason to change; if they feel that they have a relationship with their children in which they have the boundaries and they are able to influence good behaviour, reward good behaviour and address the behaviour that they do not feel is what they want to see, then they do not really need to change that, and I think that that is very positive. However, we do not have the written research that provides that evidence.

[45] Going back to your initial question about whether parents would be convinced, I think that parents are convinced by the experience of their own children and being supported by their peers. It is others, like us, who need to look at the research and consider why that works.

[46] **Simon Thomas:** Do you think that there is still a gap in information for parents in Wales about those alternative methods? If we are going to try to legislate here, we are challenged all of the time as politicians to have evidence-based approaches to legislation. Referring to studies in Australia and America is relevant, but they still appear to be remote to most people's daily lives here. In the short period of time that we have in which to discuss this, is there any other information that you can make available to strengthen that case?

[47] **Ms Hill:** There is a difference between parents having the information that they need to support their children and developing their way of parenting. There is a lot of that information around from many organisations and colleagues around the table here produce mountains of it. That is useful and parents use that.

[48] **Ms Laing:** All of the parenting courses that our organisation and other statutory organisations roll out promote positive parenting. No parenting course that is already being delivered will promote physical punishment.

[49] **Christine Chapman:** Do the other two witnesses wish to come in on that?

[50] **Mr Newell:** Just to say that, globally, UNICEF has done studies in around 37 countries, looking at the prevalence of physical punishment and interviewing primary carers, who are mostly mothers. Around 60% of parents across all countries—it is certainly true of the UK and Wales—know and say that physical punishment is not effective and does not work. Parents, when asked, say that it makes them feel bad and guilty. The problem of trying to change attitudes and practice and of trying to stop this traditional habit that goes on from one generation to the next is one of the law and inhibition. If the law says that it is okay, it is much more likely to go on. Until we have a completely clear legal position, the work on promoting positive non-violent discipline will be inhibited. The major parenting organisations in Wales and across the UK, which are part of CAU!, have made a statement saying that they want this law reform now. Of course, it will take time to change attitudes. Sweden still continues with this, 32 years on, but now less than 6% of parents believe in any level of physical punishment. However, until you have a clear legal statement and until politicians clearly support it, you will not change opinion—you will change it a bit, and it is changing,

but you will not change it dramatically.

[51] **Christine Chapman:** We have a few other areas to discuss and I know that Julie wants to come in.

[52] **Julie Morgan:** Is there any evidence from children themselves about the prevalence of physical punishment and its effect on them?

[53] **Mr James:** Save the Children did a report, specifically in Wales, interviewing children and young people to ask for their views and perspectives on the issue. The results of that were clear. Children saw smacking as hitting, and found it painful and hurtful. They were quite clear that they would have preferred other methods of discipline in the home, rather than being hit. That report is a few years old now, but we have also had contact, through our services in Barnardo's Cymru, with teenagers. Again, this relates to the discussion that Lynne mentioned about younger people having changing attitudes to this. The young people that we have spoken to certainly feel that it is wrong to hit children and do not intend to do so with their own. So, those are some of the messages that have come out both anecdotally and in the report undertaken in Wales. Among the young people that we spoke to, the views were pretty unequivocal.

9.30 a.m.

[54] **Ms Laing:** If any of you have seen our CAU! film, we have the ChildLine figures there. NSPCC's ChildLine receives calls from children from across the UK who are scared of physical abuse and of being physically punished. What children are saying is that they are hurt and scared by being hit. It also affects the parent/child relationship, and we have other evidence that says that, when positive parenting is used, the parent/child relationship is improved.

[55] The other thing that children and young people have said to us is that it is an equality issue, and that they should have equal protection under the law. They are the only group in Wales that can legally be hit by another person.

[56] **Julie Morgan:** What is the percentage of calls to ChildLine about that? Do you have any idea?

[57] **Mr Newell:** I think that it is a third.

[58] **Ms Laing:** We will double-check on the figures and send those to you.

[59] **Julie Morgan:** It is substantial.

[60] **Ms Laing:** Yes.

[61] **Christine Chapman:** Aled, did you have a question?

[62] **Aled Roberts:** To move the discussion on a bit, if the Government accepted the principle of including a section, or, alternatively, if the Assembly introduced an amendment to that effect, what does the international experience suggest is the main challenge as far as implementing an Act is concerned?

[63] **Mr Newell:** The country with the longest experience of this is Sweden, which is well-documented. Sweden has found that you need to sustain the promotion of positive non-violent discipline; if you do that, the proportion of parents, even with migration as a constant factor, who believe in or use physical punishment drops substantially. As I said, it is down to 6% or

less in Sweden now. In terms of the hoped-for effect, it will happen, but the rapidness with which it happens will depend on how much continuing public education is built into all contact with future parents, existing parents and so on.

[64] In terms of the fear—which is always raised by opponents of this reform—that it will lead to thousands of parents being prosecuted, sent off to prison or fined for trivial smacking, that is not the experience of any country. If you want us to talk about how we would see this being implemented, we can do it. However, in terms of the experience of other countries, nowhere has there been concern that the law has been interpreted in a way that is not in the best interests of children and families.

[65] **Angela Burns:** If you are not going to prosecute parents who do small smacks, and given that a child who has been hit or beaten is already covered under criminal law, what is the point of it? If we are going to put in this amendment, there must be some sanction. What type of sanctions do you envisage? Are we going to fine parents, lock them up or force them to go on parenting programmes, as is the case for those who have committed speeding offences? What other things would we do?

[66] **Ms Laing:** The biggest thing is that, if this legislative change is made, that changes behaviour, which, in turn, changes attitudes. Parents will seek ways of trying to comply with the law. Although we know that children have a right to equal protection under the law, the legislative change would mean that smacking a child is technically an assault, and therefore illegal. However, that is the same as with adults. It is not seen to be in the general interest to prosecute a trivial poke or smack of an adult in that way. Any trivial smacking of a child will not come before the courts, because the law does not concern itself with trivial issues.

[67] **Angela Burns:** Where does it go, though? That is what I do not understand. What about the child who goes into school a couple of times a term and says, ‘I got smacked on my bottom yesterday by my mum’? The teacher is going to say that that parent has broken the law. Is it then reported to the police? Where does it go? If we are going to do this, we have to have a clear understanding of what happens with the sanctions, going forward. Does the teacher say, ‘I’m going to ignore it’? In that case, we have laws that people are ignoring and that is pointless, too.

[68] **Ms Laing:** Let us start off with the significant harm threshold. The Children Act 1989 introduced the significant harm threshold, and removing the defence of reasonable punishment will not change that threshold. We are talking about things that fall below that threshold. I hope that you have seen the CAU! film, in which Gwent Police—Carmel Napier and her colleague—said that they would deal with matters that were reported to the police very sensitively and thoughtfully, and in the best interests of the child. It is clearly not in the best interest of the child to be heavy-handed on trivial smacking. Therefore, it would be dealt with in a multi-agency way and in the best interests of the child. Support would then be given to try to prevent reoccurrence of violence within the home.

[69] **Angela Burns:** I would like to see this progressed positively, but I think that we are being too woolly and too coy about what actually happens if this law is passed. That is where you guys have to step up to the plate with real clarity on this, because it is deceitful for us to go out to the Welsh parent and say, ‘Don’t worry, though; if you do a little smack on the hand, it won’t count’. That is not right. If you speed; you are fined. If you speed too many times; your licence is taken away. There is clarity, clarity, clarity on that. We are talking about human organ transplantation at the moment and we are seeking clarity, clarity, clarity on the issues. So, if we want this to happen, there has to be real clarity about what happens. You talk about a trivial smack, but if I smack my young daughter on the hand every morning for three years, two years, two months or even one week, it ceases to be trivial. There also has to be clarity regarding to whom it might get mentioned—your child’s friend’s mother or the

school teacher—and about what they should do and where it should go. That is why I worry about this amendment holding up what is, in essence, a Bill that has real strength and addresses some very important issues. I would like you to have a think about that, because I want to be able to look at this positively.

[70] **Ms Hill:** A change in the law will give everyone clarity that it is not legal to hit children. For example, I will give you a brief scenario explained to me by a friend: she saw a mum in a supermarket being quite physically abusive and rough with her child and pinching his cheek in an effort to control him. My friend raised this matter with the mum, saying ‘You really shouldn’t be doing that’, and was asked ‘Do you have any children?’ She replied, ‘Yes, I have four’, and the answer was, ‘You should be at home looking after them’. Her frustration was that she did not know what to do about that. If we have a clear line that parents, teachers, nursery staff, support staff and others understand, we can start to give the clear message that hitting is wrong. One of the important elements is that people who see incidents such as that one in the supermarket feel utterly at a loss as to how to deal with them.

[71] **Christine Chapman:** I want to bring in Peter, but Angela made a good point; there is no clarity at the moment. From other countries that have done this, do you have any examples, Peter, of how this work is carried out, on the legal side?

[72] **Mr Newell:** The first thing to say is that all good law is about preventing crime. That is the first purpose of law. From the child’s point of view, once an assault has happened, in one sense, it is too late. One wants law to be preventive. At the moment, the message that the law provides to everyone is that some arbitrary level of violence against children is acceptable and a lawful and reasonable punishment. When this law came into effect, when they reduced the scope of the defence so that only common assault can be justified, in 2004, *The Sun* headline was ‘Carry on smacking’. That was the basic message that people got. So, we feel that the fundamental change is in the message, as Lynne has said, and that message can then be transmitted by all those who are working with families and children, including the families that are at risk of seriously hurting their children. While what they are doing, or might do, is already against the law, that is not the point; this is helping prevention.

[73] In terms of how it will be implemented, there has been a lot of discussion about this among the organisations representing those who work in child protection—social workers, paediatricians, health visitors, nurses and so on. They have agreed a statement on how the law would be implemented. We all have to recognise that it is not in the best interests of children for their families to be disrupted, for their parents to be charged and, ultimately, prosecuted and so on, unless that is the only way of stopping significant harm. We say, ‘We don’t want the prosecution or charging of more parents’, and then some people ask, ‘What is the point of the law if you are not going to prosecute people?’ That is where we have to say that the purpose is clear: it is about having a clear message, which does not exist at the moment. It is about enabling those working on positive discipline to have a clear foundation for their work, which will make it much more effective.

[74] You also raised the matter of holding up the Bill, but I think that we covered that earlier, in a sense, in that it can tie in with regard to the way in which it is added to the Bill, and at what stage, and so on.

[75] **Christine Chapman:** I would like to go back, because I do not think that we have quite covered the point about the continuum of parents, from those who administer what we might say is a ‘trivial smack’ through to a really bad case of hitting. Are other countries dealing with it differently? This is unknown territory for us.

[76] **Simon Thomas:** In particular, common law countries, because there is a difference.

[77] **Mr Newell:** New Zealand is the only English-speaking country so far that has achieved a similar reform. There, it was achieved with some difficulty and a lot of controversy, and its results have been very closely monitored, including by the police who put out, I think, six-monthly reports. Once again, I could write to the committee with more detail about this.

[78] **Christine Chapman:** Yes, that would be helpful.

[79] **Mr Newell:** Again, part of it is about reassuring the opposition that the law has not led to parents being prosecuted for trivial smacking. On the other hand, it has begun to lead to a significant reduction in the use of physical punishment. This is a problem that is most raised before the law is changed. It does not appear to be a problem once the law is changed, partly because the law on assault exists in every country. We have to think of this and see this as an extraordinary exception and anomaly. We are not trying to put in a new offence for children; we are removing a strange exception from the law on assault that prevents children being equally protected.

[80] **Christine Chapman:** Okay. Angela is going to come in briefly and then Rebecca. We have a quarter of an hour left, so obviously we need to move on.

[81] **Angela Burns:** I would just like to say that any evidence of how other countries do it would be really helpful and I think that we need to have a look at it because this is not about opposing the principle, but making sure that we pass really good law.

9.45 a.m.

[82] For example, should my husband choose to bash me on the head when I go home tonight, I know exactly what my recourse would be, and I also know exactly what could happen to him. I think that we need to be very clear that, in talking about any human being, there is an understanding, so that, if I go home and wallop my youngest on the backside tonight, or if I wallop her every single day, a smack is still a smack, and we need to really understand where we are going with that in making sure that parents understand that. It would be really useful to know whether, for example, in Sweden, they say that it is three strikes and then you have to go on this or that course. That is, if you do this then you have to do that. It is basically about understanding clearly what we can put in place, because this is not just about sticking in an amendment and saying, 'Right, here we are; we've now got a Bill', and then asking the Government to decide what rules there are going to be for it; that is not how we should operate here. We should be very clear, if we are putting in an amendment, about the shape of the law that will come out of that amendment.

[83] **Mr Newell:** Detailed guidance will of course be needed, and the organisations involved in child protection want to be involved in that process and are confident that it can be done well and in the best interests of children. We all hate using the term 'trivial smacking' because, of course, it is not trivial at all. In a way, that is the message that we are trying to get across, but because most violence against children is not reported at the moment, we are trying to get this message into places where the law currently does not go at all, and doing it when, in fact, the message of the law is completely confused is hugely inhibiting, as well as being disrespectful of children's basic rights.

[84] **Christine Chapman:** Rebecca is next, and then Aled.

[85] **Rebecca Evans:** I want to ask you about the role of the child in prosecutions and how you envisage that. Would it be the case that children would have to provide evidence against the parent who had been smacking them? Also, how does the role of the child work in prosecutions in other countries?

[86] **Mr Newell:** What happens at the moment with more serious physical assaults would continue in terms of due process. You cannot deny perpetrators the right to challenge allegations. There is no way around that; if the allegations are denied, then it is likely that a child may need to give evidence, but of course, it can now do so through a video link and so on. None of that would change.

[87] **Rebecca Evans:** But if you give evidence through a video link, you will still have to go home to the parent at the end of the day. Would a possible unintended consequence of this proposed legislation be that relationships could deteriorate further, following these kinds of cases, to a point where even more serious abuse could take place?

[88] **Mr Newell:** Well, as we have said, the only way in which we would expect prosecutions to increase in this area is by violence against children becoming less acceptable, with more sensitivity amongst children and parents and others to it, and therefore more reporting of it, including the reporting of the more serious cases. Of course, some of those serious cases will justify further intervention and prosecution, and so there may be an increase in these things. However, it is not something new and the prosecutions are unlikely to be about a much lower level of violence, because, hopefully, they will be dealt with by diversionary means.

[89] **Rebecca Evans:** In other countries, when such cases are brought, do they come with some kind of positive family intervention as well as the prosecution—that is, afterwards?

[90] **Mr Newell:** I think that, the first time, they would of course come entirely with positive interventions. If a child is perceived to be at risk of significant harm, there are already powers for emergency intervention, but if we are talking about the proverbial parent who has been seen smacking their child in the supermarket car park, and someone has phoned social services, the investigation is bound to be extremely gentle and supportive, until anyone believes the child to be at serious risk of significant harm.

[91] **Aled Roberts:** One of the challenges of implementing any section is that criminal law prosecuting agencies are still on an England and Wales basis and the court system is organised on an England and Wales basis. Do you foresee any problem with regard to implementation because of that? Yesterday, we discussed the Human Transplantation (Wales) Bill in Plenary. There are issues in that Bill regarding the concept of ‘ordinarily resident’, when people move to Wales for holidays, et cetera. Have you had any discussions about the difficulty regarding some of the legal precedents in the defence of ‘ordinarily resident’, where people from within the UK move to Wales for short periods of time?

[92] **Mr Newell:** Our understanding from the legal advice that we have had so far is that the simple amendment that we would propose would remove the availability of the defence in relation to assaults on children who are geographically in Wales. So, it would protect English children and other children who were holidaying or were in Wales for other purposes. We will no doubt see again those cartoons of English children crawling towards the border as a new form of asylum seeking. [*Laughter.*]

[93] **Lynne Neagle:** I have always voted for a smacking ban in the Assembly, but I am aware from correspondence with constituents whenever we have discussed it that it is a very contentious issue, and that there is a very strong feeling among some parents that it is their right to decide how best to discipline their children. What would you say to those parents?

[94] **Ms Hill:** There has to be a line is the answer. You could argue about people staying out of family life, and on many levels we should, but in terms of looking at how children’s rights are protected, there is a role for legislation to draw that line and to be very clear. I am

not sure that you had been able to join us when I said that the line is there for everyone to understand. It is about parents learning or possibly relearning and understanding why different methods of parenting are more productive and better for children. It is about having a line, and it is incumbent on those who have the power to say, 'This is a children's rights issue; the line should be here' to take that forward.

[95] **Mr James:** It is an overriding issue as well that children have the right not to be hit, the same as we do as adults. If we look back in the past at challenges to domestic violence legislation, when it seemed to be okay to hit a servant, a woman or your wife, some of the same issues would have been raised then about interference in family life. It does not count when it is about physical integrity and giving people the right to hit their children. These children deserve the same rights that we have as adults, and all the legislation that has gone before, particularly on domestic violence, has faced the same arguments.

[96] **Mr Newell:** We all know that a particular minority of Christian parents believe that they have not just a right but a duty to use physical punishment. Quite a few of them wrote to you during the period around the debate in October 2011. We need to be clear that everyone has the right to freedom of religious belief, but that belief cannot lead to actions that breach the basic rights of others, including children, such as physical integrity and so on. In Wales and across the UK, there are now many strong mainstream religious leaders who are advocating this. The Methodist church and other non-conformist churches are supporters of CAU!. The Archbishop of Wales is one of many such leaders in Wales. He led a prayer vigil in Cardiff on 20 November last year, which some of you attended, praying for this reform to go through. Incidentally, there is one coming up in Brecon next week. If anyone is around the cathedral, we could send you details. So, religious belief must not be allowed to justify violence against children any more than violence against women.

[97] **Christine Chapman:** Suzy, did you have some questions?

[98] **Suzy Davies:** Yes, and apologies for coming late. Indeed, I would have been very interested to hear the answer to the first question. We talk about the 'defence of reasonable punishment' here. Obviously, there are many ways of punishing a child if you want to achieve a particular outcome; examples of which would be to stand on the naughty step or sending them to their room for half an hour to think about what they have done. However, if you did that to a child for a significant and extended period, would you be wandering into the area of neglect? Would you be causing some sort of mental harm to a child with this isolation idea? If so, are you not running into a complication with this argument? If you are talking about protection in terms of the prolonged physical hitting of a child, where is the equivalent protection for longer unintended mental harm to a child through non-physical means?

[99] **Mr James:** One of the methods that we use and advocate in the parenting classes and parenting support groups that we run is to offer parents a range of techniques—

[100] **Suzy Davies:** I understand your solutions to this, but I am talking about parents who might have taken on board that they should not hit their child, but abuse their child in a different way in the name of 'reasonable punishment'.

[101] **Mr James:** I am not quite sure what the answer is to that. In terms of the range of things that we offer, we would hope that the parents whom we have contact with, at least, understand that there are a range of techniques that do not necessarily involve an escalation to some degree of neglect of the child and that there are different approaches for different situations. We found that if we offer parents a menu of options to use in whichever circumstance fits for their family, parents are very appreciative, take that up and find that the relationships within the family improve. Certainly, the relationship with their child improves and their child knows where the boundaries are. So, I can only speak in terms of the contact

that Barnardo's has as an organisation with the parents whom we work with. We would not advocate extreme measures and say that only one specific method should be used to solve a particular issue or problem. We would offer a range of approaches that, hopefully, would not get to that point.

[102] **Ms Laing:** Positive parenting is not about punishing; it is about rewarding good behaviour. By rewarding good behaviour, children behave better more often, so there will be a reduction in the number of times that you need to use the negative types of punishment or ways of controlling their behaviour. In terms of isolation and the extreme use of things like the naughty step, that is already covered by child cruelty legislation.

[103] **Suzy Davies:** Are you certain that it is as strong?

[104] **Ms Laing:** Well, no—

[105] **Suzy Davies:** I am struggling to decide why parents who are parenting inappropriately through smacking will be treated more harshly than people who are parenting inappropriately but are not smacking?

[106] **Mr Newell:** This goes back to the aim of removing this defence, which is to lead to increasing sensitivity towards all forms of violence against children. I completely agree with you that parents can cause as much damage, if not more, by psychological means or isolation and so on. In some countries, such as Sweden, they have added explicitly to the law to prohibit humiliating treatment. As we have said, cruelty can be interpreted that way. My suspicion is that, once we have stopped having any acceptance of a level of 'reasonable' violence in our law, there will be a stronger interpretation of cruelty, which will lead to more intervention over things that are causing significant harm but may not, at the moment, be regarded as doing so. So, I think that it will get covered in that way.

10.00 a.m.

[107] **Suzy Davies:** I will ask one question that was recently put to me by a constituent. I know that you hate the word 'trivial'—and I agree with you—but we are not talking about beating children. We are talking about the odd smack. It was put to me that you can treat an odd smack in the same way that you would treat a vaccination, in as much as a younger child who cannot go through the full complicated argument about why something should not be done will understand in a very controlled and loving environment what pain can mean, and that a particular action can provoke a response from somebody in adulthood that you may not be anticipating. I think that where they were going with the argument is that you can walk down the street one day, perhaps be a bit rude to someone and end up being dragged into a corner and beaten to a pulp. I do not know if I quite follow the argument, but as it has been put to me, do you have any observations on that?

[108] **Christine Chapman:** We are running over now—

[109] **Suzy Davies:** I am sorry.

[110] **Christine Chapman:** That is fine; it is a good question. Perhaps Peter would like to finish off with the response, because we need to finish the session.

[111] **Suzy Davies:** We live in an unpredictable world is where they were coming from, I think.

[112] **Mr Newell:** We would like to make a fairly brief final statement—

[113] **Christine Chapman:** You will have to be very quick.

[114] **Mr Newell:** Clearly, vaccination—it is a dangerous issue to get into in Wales at the moment—has a positive and clear aim. We have to get away from thinking that smacking can be anything other than a lesson to the child in bad behaviour and is the sort of behaviour that we do not want that child to repeat with their younger sister or anyone else. It is not a positive thing for the child at all.

[115] On behalf of all of us, I would like to say that we see that the aim of our evidence—both our written evidence and this oral evidence—is to hopefully persuade this committee to recommend formally to the Government and to the Health and Social Care Committee—we are not sure of the relationship, but that is the lead committee for this Bill—that a provision to remove the ‘defence of reasonable punishment’ should be added to the Bill during its passage through the Assembly. We see that your remit as a committee is to hold the Welsh Government to account by scrutinising policy from the perspective of children’s wellbeing. So, to us, that seems a very logical step and we hope that you will do it.

[116] **Christine Chapman:** Thank you very much. Apologies for rushing you through, but our next witness is here. Thank you all on behalf of the Members. We have had a very good discussion today. We will send you a transcript of the meeting so that you can check it for factual accuracy. Thank you all for attending today. As we have said, whatever recommendations we make, we will be sending them to the Health and Social Care Committee. Thank you very much.

[117] Could the next witness come to the table, please? I know that Viv is staying.

10.03 a.m.

**Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru)—Sesiwn Dystiolaeth
Cyfnod 1
Social Services and Well-being (Wales) Bill—Stage 1 Evidence Session**

[118] **Christine Chapman:** For our next item, we will be taking evidence on the Bill from the National Society for the Prevention of Cruelty to Children Cymru. Viv Laing, who is its policy and public affairs manager, is still here, and I would like to welcome Des Mannion, the national head of services for NSPCC Cymru. Thank you for providing evidence in advance. Given that we have limited time, if you are happy, we will go straight to the questions. I see that you are.

[119] I will start with a broad question. You refer to the Bill creating a common set of processes for adults and children. You say that you have

[120] ‘very serious concerns about the needs of children and young people becoming downgraded’

[121] and that safeguards

[122] ‘must be built into the legislation to ensure that the needs of children and young people are prioritised.’

[123] What should these safeguards be?

[124] **Mr Mannion:** First, thank you very much for inviting me along. I was very keen to listen to your previous session, which was instructive. As you say, we welcome the proposed

legislation in terms of its aim and ambition in trying to bring together the arrangements around the responsibilities of social services departments and their parties. We welcome that. Running through the Bill is this issue around the integration of services for adults and children. That is reflected in things like an assessment model and the notion of combining safeguarding boards for both vulnerable children and vulnerable adults. Fundamentally, while we think that there are some benefits in that, potentially, in terms of aim and aspiration, the concern that we have around that is that, in practice, the agenda around adults may prevail over the agenda for children. One example of that is that while the arrangements for safeguarding children boards—even though there are some concerns about how they are evolving—are relatively well established, have a history and have processes and systems in place, those for adults are still relatively in their infancy. My worry is that we will end up in a situation where the agenda around adults will prevail. The other issue around that, because this is a social services Bill, not just a Bill around social services provision for children, is—

[125] **Christine Chapman:** Should there be a second Bill?

[126] **Mr Mannion:** I do not know. That is a matter for legislators. All we can say is that the volume issues around vulnerable adults are going to be significant. What we would like to see are specific arrangements, at least in the initial years of this legislation, so that we can see how things go. What we are urging is a bit of caution and pragmatism in terms of monitoring how these ambitions are translated into reality.

[127] **Jenny Rathbone:** It is interesting that you put it that way, because the society's regard to the abuse of children and our responsibility to prevent it is surely that the safeguarding boards for children can bring a lot of experience to enable us to know how to safeguard adults whom we have previously overlooked when they have been abused. So, is that not a strength of bringing them together?

[128] **Mr Mannion:** Potentially, it is. Potentially, there are lots of examples where combining the role of safeguarding boards, when we are thinking about issues around vulnerable adults and how issues around adults can impact on children, may—I use the word 'may'—be of benefit both for the provision for adults and the provision for children. So, there may be some combination—I am trying to avoid the word 'synergy'—of benefit there. There may be. However, I think that the overall thrust of our response to this proposal is that we think that the aspirations and the aims are great, but that the devil will be in the detail. There is a measure of caution on our part about how this might play out in practice.

[129] **Ms Laing:** I will just add that local safeguarding children boards are not all working perfectly at the moment. There was a joint inspection report in 2011 that highlighted lots of concerns around accountability, governance, funding and leadership, and those issues have not all been addressed. We would like those addressed. It will be more difficult when they are also developing an adult framework.

[130] **Jenny Rathbone:** Those are very important concerns, but are the issues that we are talking about not about competency, training and ensuring that people are in compliance with the regulations, rather than trying to rectify that in legislation?

[131] **Ms Laing:** Obviously, the regulations have a big part to play in rectifying those issues and we will be trying to influence those regulations as they are developed. It is just that the LSCBs are not working perfectly. We want continued improvement to children's safeguarding through safeguarding children boards and the national board that will be established. We just need to make sure that children's safeguarding continues to improve.

[132] **Bethan Jenkins:** I will ask my question in Welsh.

[133] Rwyf am ofyn eich barn am rywbeth, achos rwyf ychydig yn *confused* ar hyn o bryd. Mae'r memorandwm yn dweud y bydd y byrddau diogelu plant newydd yn cael eu sefydlu i ddiogelu plant ac y byddai wedyn fyrddau ar gyfer oedolion. O ystyried eich bod yn defnyddio gair mor gryf ag 'israddio', pam y credwch, gan fod y memorandwm yn dweud y bydd y byrddau diogelu plant yn bodoli, y byddant yn israddio sut y bydd plant yn cael eu trin? A allech chi esbonio hynny fel y gallaf ddeall o ble'r ydych chi'n dod?

I want to ask your opinion on something, because I am a little confused at present. The memorandum says that the new safeguarding children boards will be established to safeguard children and that there would then be boards for adults. Given that you are using a word as strong as 'downgrading', why do you think, given that the memorandum says that safeguarding boards for children will exist, that those will downgrade how children will be treated? Could you explain that so that I can understand where you are coming from?

[134] **Mr Mannion:** In practice, there are well-established local authority LSCBs that exist now. We are aware that there are steps towards greater regionalisation, and we think that that will bring some benefits in terms of effectiveness and efficiency and will bring together collaborative local safeguarding boards across the regions in Wales. So, we think that there is some benefit there.

[135] I must be clear about the fact that I am not an expert on adult safeguarding arrangements; those arrangements are there, but they are, relatively speaking, not as well-established. My concern is that, once you start to say that you will have one board that provides a multi-agency response to children and adults, the agenda around vulnerable adults will start to prevail. I think that that is a concern. Has that helped you?

[136] **Bethan Jenkins:** Yes, but from the perspective of the Welsh region, it seems to me that there would be a young person's board and an adult board within the national board. I did not read it as being an amalgamation of the two. That is where my confusion lies. You mention 'downgrading', but I am finding it hard to understand how it would be downgraded; that is all.

[137] **Ms Laing:** Are you talking in terms of the structure of the board or the regional and local boards—

[138] **Bethan Jenkins:** Within the structure of the national board.

[139] **Ms Laing:** We are concerned that the focus will be on developing the adult safeguarding boards—

[140] **Bethan Jenkins:** But we do not know that yet.

[141] **Ms Laing:** No, but we are suggesting ways in which the focus can still remain on children to ensure that we continue to improve.

[142] **Aled Roberts:** Rwy'n mynd i ofyn fy nghwestiwn yn Gymraeg. Mae eich tystiolaeth yn dweud yn glir nad ydych yn credu bod y Bil, fel y mae wedi'i ddrafftio ar hyn o bryd, yn cryfhau hawliau plant. Ar wahân i awgrymu cyfeiriad uniongyrchol at Gonfensiwn y Cenhedloedd Unedig ar Hawliau'r Plentyn, pa newidiadau eraill y byddech yn awgrymu eu gwneud os ydych yn credu bod cyfle yma i gryfhau hawliau plant?

Aled Roberts: I will ask my question in Welsh. Your evidence is clear in saying that you do not believe that the Bill, as it is currently drafted, does not strengthen children's rights. Other than suggesting a direct reference to the United Nations Convention on the Rights of the Child, what other changes would you suggest making if you believe that there is an opportunity here to strengthen children's rights?

[143] **Mr Mannion:** The voice of children's rights is not explicitly included and we think that that is an error. We think that there should be a reference in the legislation to the UNCRC. This takes us back to the discussion that you had this morning on chastisement and that not providing equal protection and not using this legislative opportunity to do so is also something that we are concerned about.

[144] **Ms Laing:** The defence of 'reasonable punishment', as we implied earlier, is one of the biggest violations of children's rights under article 19. So, one way in which the UNCRC can be better embedded in the Bill is to have the provision in the Bill to remove that defence of 'reasonable punishment'. However, the voices of children are not clearly seen in the Bill; it is very much drafted around services rather than around rights and outcomes, and we would like to see generally in the drafting more reference to rights and the different rights that children have.

[145] **Mr Mannion:** The aspect that we could touch on is that there is reference in the Bill to promoting the voice of service users and ensuring that their voices are listened to. We think that that should be thought through a bit more. Children and their families who receive social services are service users, so we think that some thought should be put into that because, at the moment, that seems pretty limited.

[146] **Ms Laing:** I also want to say that another way in which the voice of the service user can be clearly heard is via the provision of advocacy services. We think that there is a real opportunity in this Bill to strengthen advocacy services so that children and young people have wide access to easily accessible independent advocacy services rather than that service just being the complaints section. On children's voices and service users' voices generally being heard, we think that there is a need for co-production of services and for children, or the service user and the person who is providing the service, to develop the service together, so that there is true co-production of the services.

10.15 a.m.

[147] **Aled Roberts:** Ar wasanaethau mabwysiadu, fe wnaethom ni gynnal ymchwiliad i fabwysiadu. Mae adran 151 yn y Bil yn sôn am drefniadau ar y cyd rhwng awdurdodau lleol. Eto, mae erthygl 21 yn cyfeirio at hawliau'r plentyn i gael gwasanaethau yn lleol. A oes unrhyw bryderon gennych ynglŷn â'r ffaith ein bod yn symud tuag at y trefniadau hyn? A yw hynny yn gweithio yn erbyn hawliau plant yn y sefyllfaoedd hynny?

Aled Roberts: On adoption services, we held an inquiry into adoption. Section 151 of the Bill talks about joint arrangements between local authorities. Yet, article 21 refers to the right of the child to receive services locally. Do you have any concerns in relation to the fact that we are moving towards these arrangements? Does that work against the rights of children in these situations?

[148] **Mr Mannion:** We are not a provider of advocacy services, so we may want to submit something in writing in response to your question, if that is okay. What is important to comment on is the fact that a number of the changes, certainly in relation to a different agenda around local safeguarding boards, and those moves to greater regionalisation, which we would all welcome in terms of effectiveness and efficiency, are taking place in a context of an absence of guidance. People are being given a nudge to do that, but there is not much around that in terms of being clear about what the central Government requirement is around what those arrangements should look like.

[149] **Aled Roberts:** Do you have any evidence on those local arrangements—there was a joint inspection 18 months ago now—as to whether those arrangements are improving

locally?

[150] **Ms Laing:** Do you mean around adoption?

[151] **Aled Roberts:** Around the local safeguarding boards.

[152] **Mr Mannion:** It is probably more helpful to move the discussion on in terms of local safeguarding boards. Our concern remains with regard to the move to greater regionalisation—again, we would accept that there are some benefits and we can clearly see the benefits of having a greater regional footprint—and how that shift is taking place. It has largely been driven, for understandable reasons, by cost and effectiveness. However, we would like to come back to you on that if we may.

[153] **Christine Chapman:** A written response on that would be helpful.

[154] **Simon Thomas:** Rwyf eisiau bod yn glir ynglŷn â'ch ateb i Aled Roberts. Rydych yn sôn am y ffaith bod y Bil hwn yn ymdrin yn bennaf â gwasanaethau yn hytrach na dechrau o safbwynt hawliau, ac, wrth gwrs, byddwch yn gweithio gyda'r Bil beth bynnag. Fodd bynnag, yn y bôn, a ydych yn teimlo bod y ffordd y mae'r Bil wedi'i ffurfio yn cychwyn o ben anghywir y ddadl?

Simon Thomas: I want to be clear about your response to Aled Roberts. You talk about the fact that this Bill deals mainly with services rather than starting from the point of view of rights, and of course, you will work with the Bill regardless. However, essentially, do you feel that the way in which the Bill has been drawn up starts from the wrong end of the debate?

[155] **Mr Mannion:** What I would say is that it seems to me that one of the purposes of the Bill is to confirm that there will be something called a social services department and the provision of social care will be retained in local government and will not be taken over by health. That is absolutely clear, so, in that sense, it is a statement about structure and agency. In some ways, that is almost inevitable because that is the nature of what you draw up legislation about. Having said that, the points that we have made about children's rights, equal protection, the voice of service users and how that is promoted, both for children and for parents, are matters that need strengthening and need some thought as to what they are actually going to look like in terms of what is being proposed. I suppose that what I am saying is that it is almost understandable that you have a piece of legislation that focuses on social services, but I have a sense that what you said is correct.

[156] **Simon Thomas:** The legislation could do that, but it could still have some statement of principle on rights at the beginning of all that, could it not?

[157] **Mr Mannion:** Absolutely. The other thing that strikes us is that children, or certainly vulnerable children, do not just receive services from social services departments. They live in a world where they go to school, hopefully, and they may go to pre-school and experience those services, health services and so on. So, there is an issue as well about the extent to which all agencies are responsible for promoting the welfare and the wellbeing of both young people and adults.

[158] **Ms Laing:** One of the things that we put in our evidence was that we perceive that inconsistency in the drafting of the Bill, in that it is called the social services and wellbeing Bill and it aims to reform social services law, but most of the Bill is around the concept of wellbeing. With the rising demand for social workers to work with complex families, the skills of social services departments need to be with those complex families. Our concern is that if social services are then drawn into wellbeing, they might be spread a bit too thinly and provide more of the preventative services with larger numbers of children and their families, and others, of course. We are concerned; we want to make sure that the skills of social

workers are available to work with the most complex people, and improving the wellbeing of the wider population should be the responsibility of other partners. We want to make sure that the Bill effectively draws in other local authority departments and partners to deliver on the wellbeing objectives.

[159] **Mr Mannion:** I want to add that that is not to say that we do not support the concept of early intervention and preventative services; that is absolutely important—

[160] **Simon Thomas:** No, but there are some earlier principles that, perhaps, are not on the face of the Bill.

[161] **Mr Mannion:** Yes.

[162] **Christine Chapman:** We have about 25 minutes and quite a lot of ground to cover. Lynne, you are next.

[163] **Lynne Neagle:** Simon has touched on the issues around your concerns about universal preventative services. I want to ask you about neglect more generally, because you have said that you think that the Bill could do more to provide effective responses to child neglect. Children's organisations in Wales have been campaigning on that for a while now. Could you say a bit more about how you think that the Bill could do that?

[164] **Mr Mannion:** I will just say a bit about what we are doing in partnership with the Government and Action for Children. Child neglect is a subject that is crucially important in understanding the needs of vulnerable children. The overwhelming proportion of children who are placed on child protection plans are there because of reasons around neglect. So, it is a substantial agenda and, of course, it is a very complex matter in terms of trying to understand it and its causes and origins, and perhaps how you identify it, then do something about it, either as an individual, a group or a community.

[165] So, we have lobbied. We note that our colleague charity, Action for Children, has been involved in lobbying and we have been funded by the Welsh Government to do a piece of research, which we are doing with Cardiff University, into assessing, understanding and scoping the extent of child neglect. So, that is something that we are doing that we think will be fundamentally helpful.

[166] One of the things that we are interested in is the issue around thresholds and eligibility criteria. Again, this goes back to an earlier point that we made, which is that the devil is going to be in the detail around regulations and such things as eligibility criteria. However, it seems to me that eligibility criteria might actually set thresholds for intervention. There is always this tension between children in need, children in need who require and are eligible for services, and children who could go on to become neglected. So, there is a concern that we might need to think more about this issue and making it something that the Bill should consider as an issue in its own right, as it were. We need to think about how we address that. It is a difficult problem across the UK and, in fact, internationally, neglect seems to be a difficult problem, but that does not mean that we should shy away from it.

[167] **Ms Laing:** We want to see a spectrum of preventative services up to the social services intervention. So, we want to see universal preventative services, early help and provision of services for children in need. We want to see a spectrum, so that children do not fall in between gaps. We have recently done a survey of social services and social workers generally, and they struggle to identify neglect; they do not say that exactly, but they think that there is a problem with children who are neglected getting a timely response. The burden of proof is relatively great, so it is difficult to prove when a neglected child, because there are lots of incidents, hits that threshold, so that action is then taken. What we will be looking at in

our work with Action for Children and the Welsh Government is what can help professionals—not just social workers, but professionals who work with children more widely, so that they can better recognise that. That might mean that there need to be changes in the definition of ‘neglect’, which would come down to the guidance there. There might be a need for tools to help, and more responses. We are at the start of this work at the moment, but, as Des says, it is a big problem and neglected children often do not get the response that they need. We will be working with this Bill to try to improve that response.

[168] **Lynne Neagle:** Thank you for the answer. I just wondered what the timescale is for completing this work, and how will that fit with the passage of this Bill.

[169] **Ms Laing:** It is quite timely, because there are two stages to the research: looking at the tools currently in use and then looking at the services to respond, and the service path. That will all be undertaken over the summer, and an advisory group of all partners will be established. That will be meeting for 18 months, probably. In terms of the face of the Bill, it might be more problematic, but, in terms of regulations and guidance, we will be able to work with that.

[170] **Christine Chapman:** I have got Jenny and Aled, and again we have about 20 minutes, and there is quite a lot of ground to cover, so can we all be concise with questions and answers?

[171] **Jenny Rathbone:** I just wanted to pick up on the slow pace of reconfiguration that you mentioned in your written evidence. Obviously, that is really important in terms of ensuring that social workers deal with the complex issues that they are trained to deal with. Schools regularly complain about the disjuncture between social services and health. What can we do to fast forward that so that the team around the child really is there?

[172] **Ms Laing:** This Bill does have a big part to play with the focus on wellbeing, and therefore we need to have legislation that enables partners, or draws partners in, to focus on improving wellbeing, and then at delivery level we need exactly the same—we need arrangements that draw partners in so that they can recognise and do things that help respond to children at risk of abuse or neglect.

[173] **Aled Roberts:** I understand that you tell us what you would like to see, but we are responsible for good law that is clear. Is it possible for us to have a proper debate about what preventive and universal services might be achieved within a finite budget if we do not have either the eligibility criteria on the face of the Bill or the draft regulations provided to us at the time that we are actually passing this law?

[174] **Mr Mannion:** I will try to be concise on that. Our concern is that it is difficult to know what you are agreeing to for that very reason. We think that there may be some discretionary powers within the regulations that mean that these matters would never come under any further scrutiny. So, yes.

[175] **Suzy Davies:** Talking about the assessments of the needs of individuals, obviously the problem then with legislation, when it tries to cure a lot of problems, is that certain individuals might disappear through the cracks. One thing that has caused concern to the children’s commissioner is that children over a certain age, or parents, or people with parental responsibility for children of a younger age, can actually refuse to have a needs assessment conducted. The local authority can override that if there is any risk of harm, abuse or negligence. Is that threshold too high for the local authority veto to apply? The terms in the Bill are ‘care’ and ‘support’, which, as far as I can see, are undefined. Where do you think the local authority’s right to override comes in?

10.30 a.m.

[176] **Mr Mannion:** It is a difficult issue, really. I guess one of the points that comes to mind in thinking about that is that there are some differences, it seems to me, for some groups of children, in terms of whether they feel they are requesting a service or being required to take it up. One of the things that I would point to is that, often, for example, a respite service for a disabled child is something that lots of parents of disabled children would seek, and they would welcome that if it could be provided in a flexible enough way. Often, these things involve quite scarce resources, and are oversubscribed, so there you have a kind of voluntary request for a service, where someone is coming for a service, which is not so problematic. Characteristically, that is associated with a degree of lobbying and campaigning to get a service. I would contrast that with the sorts of services where we sometimes see an ambivalence about or a direct refusal to have the service because a parent does not think that there are any concerns around a child. Often, the most difficult thing for all agencies is for social workers or other agents to convince a parent, parents or a whole family group that things need to change. That is certainly the case around neglect. So, you are asking me where the threshold lies there, and that is quite difficult to determine, other than there should surely be a test around significant harm to a child. That would be the point at which I would lean more towards a mandated approach, if I can call it that.

[177] **Suzy Davies:** I think that we would agree that the things that I mentioned should certainly allow a local authority to intervene. However, part of the drift of this Bill is towards earlier intervention and prevention, and the very people whom it is aiming to protect are unlikely to be protected if this section goes through as it is. Can you give us any advice on how we might put forward amendments to reduce that threshold?

[178] **Mr Mannion:** The difficulty—I am trying to help here—

[179] **Suzy Davies:** I appreciate the time pressure as well.

[180] **Mr Mannion:** Most people would accept the notion that preventive services are a good thing, but the question that you might want to ask is, ‘What is that to prevent?’ The answer to that is either experiencing greater levels of harm or preventing further access to services that you do not really need. So, there is an issue about preventing escalation into higher levels of need. The other thing that always seems to me to be important is that we talk about preventive services, but there often needs to be some scrutiny of what we mean by a preventive service, in terms of what the evidence base is for that making any difference or at least not making anything worse in a child or a family’s life. I would point to those things.

[181] **Suzy Davies:** Okay, because, when that remains unclear, it is easier for a parent to refuse an assessment in the first place, because they will ask, ‘Why do I need it?’

[182] **Mr Mannion:** That is, actually, a characteristic experience that social workers have.

[183] **Ms Laing:** Would it be okay if we consider this further and write to you?

[184] **Christine Chapman:** Yes. Simon is next.

[185] **Simon Thomas:** Rydym wedi trafod un agwedd ar hyn, sef sut ydym yn cael y cydbwysedd rhwng cymhwyso ar wyneb y Bil a sut mae pobl yn gymwys ar gyfer gwasanaethau, ond hoffwn symud ymlaen, gan nad oes llawer o amser, i drafod rhywbeth penodol yn y Bil yr oeddwn yn **Simon Thomas:** We have discussed one aspect of this, namely how we strike the balance between qualifying on the face of the Bill and how people qualify for services, but I would like to move on, because we are somewhat short of time, to discuss a specific aspect of the Bill that I was surprised to see.

synnu i'w weld. Nid oes llawer o fanylion, ond mae'n amlwg bod Rhan 5 o'r Bil yn galluogi gosod ffi ar berson ifanc, achos mae person 16 neu 17 mlwydd oed dal yn berson ifanc o dan y confensiwn. Nid yw'n glir i mi sut bydd hyn yn gweithio ond maent yn agored i gael eu hasesu yn ariannol ac felly gellir gosod ffi arnynt. Beth yw eich barn am hynny o ran egwyddor ond hefyd o ran ymarferoldeb?

There are not a lot of details, but it is apparent that Part 5 of the Bill enables the imposition of charges on a young person, because a 16 or 17-year-old is still a young person under the convention. It is not clear to me how this will work, but they can be assessed financially and so a charge can be imposed upon them. What is your opinion on that in principle, but also in terms of its practicality?

[186] **Mr Mannion:** We have noted that the Bill contains the power to charge for services and we are aware that those arrangements may already exist for some groups. We would be concerned to see charges being imposed for support and information that people cannot afford. Having said that, we also have to acknowledge that there is a financial crisis and austerity, which is leading a whole range of agencies to look at their budgets in terms of what they can and cannot do. However, overall, as a general principle and in practice, this is a matter of significant concern if we are saying that the protection of vulnerable children is our top priority. They are incompatible.

[187] **Ms Laing:** We are concerned that there will be a disincentive for families to take up the support that they need.

[188] **Simon Thomas:** It is not clear on the face of the Bill how you would assess a 16-year-old, for example, for eligibility for financial charging. They might be independent of their family or they might not be. They might have a particular need, but the family circumstances would mean that they should be charged for that need, but that individual need would remain. If the family is of a particular kind, that means that the young person's needs are not met, surely.

[189] **Ms Laing:** Absolutely.

[190] **Simon Thomas:** Have you made any specific representations on this, having seen the Bill?

[191] **Ms Laing:** Not on this area.

[192] **Mr Mannion:** We have just expressed our concerns along the lines that you have identified, but we would agree with what you said.

[193] **Julie Morgan:** You have already mentioned advocacy; I was going to ask you about that. Have you anything to add about the importance of advocacy and what is said in this Bill?

[194] **Mr Mannion:** I suppose that there are two aspects to this, really. One is the whole issue of promoting the voice of the service user, be it a child or a vulnerable adult. That is the first thing. We think that there needs to be some thought given to that, and that has to be more than the ability to make a direct payment or to refuse a service, which is currently what it would look like in terms of the way that the Bill is framed. We believe that advocacy, co-production and participation in service design will be crucial in taking things forward, especially if we want to engage and work with individuals and families in some of the most vulnerable communities.

[195] We also think that, with independent advocacy services, there is an issue with extending them beyond social services departments and into other agencies. There needs to be some thought around that.

[196] Again, we welcome the intention for there to be a stronger voice—I think that that is the phrase that is used—but, actually, we worry about how that is going to be enacted and whether children’s voices will, in fact, be reflected, and whether their rights will be promoted in the way that we think they should. We think that this is an important issue, again, in relation to the implementation of the UNCRC. It is another matter to which there should be due regard in taking this agenda forward and whether the arrangements for advocacy have due regard to the UNCRC.

[197] **Ms Laing:** Yes, and I think that we just mentioned that, basically, advocacy is about a lot more than making an occasional complaint; it is about representing the child’s view, and we think that the Bill needs to strengthen that and give that access to advocacy.

[198] **Julie Morgan:** So, you think that there should be more in the Bill that defines how this type of advocacy would be delivered.

[199] **Ms Laing:** Yes.

[200] **Mr Mannion:** I think that there are two points, really. We are all aware of the children’s commissioner’s report of last year and the current hiatus in planning funding arrangements, which is leading to what is in effect a planning blight around existing arrangements. We will also be aware of the reinvestigation of the Waterhouse tribunal and the Pallial investigation. It does seem to me—and the children’s commissioner has said this—that if we want to avoid repeating some of the problems from that time, we need to make sure that, for this generation of children, advocacy services are there, are funded and are operational.

[201] **Christine Chapman:** I am very conscious of the time. Before our next witnesses arrive, we have some other areas to cover. Jenny, you wanted to come in.

[202] **Jenny Rathbone:** First of all, on Part 6 of the Bill, on looked-after and accommodated children, do you think that the regulations are strong enough to enable corporate parents, acting instead of the natural parents, to act as good parents? I know that Barnardo’s, for example, has had some concerns about the Bill not being drafted sufficiently to include the ‘When I’m Ready’—.

[203] **Ms Laing:** May we respond in writing to this question?

[204] **Jenny Rathbone:** Fine. So, in relation to Part 6, you would rather respond in writing.

[205] **Christine Chapman:** Given the timescale for all this, if you are happy to respond in writing, would you be able to send it to us before next week?

[206] **Mr Mannion:** Yes.

[207] **Christine Chapman:** That would be good, because there is a short timescale for this.

[208] Bethan, do you have questions?

[209] **Bethan Jenkins:** I would just lead to clarify something. Is that okay?

[210] Gan fynd yn ôl i’r pwynt a godais yn gynharach, yr ydych yn argymhell cadw’r byrddau diogelu plant a’r byrddau diogelu oedolion ar wahân. Felly, a ydych yn credu y dylid dileu’r pwerau hyn yn y Bil fel y mae’n
 Going back to the point that I raised earlier, you are recommending keeping the child safeguarding boards and the adult safeguarding boards separate. So, do you think that these powers to combine the boards

sefyll i gyfuno'r byrddau?

should be removed from the Bill as it stands?

[211] **Mr Mannion:** We are concerned about the likely evolution of this, if the Bill were to be enacted. That is our concern. I think that the notion of having separate boards is something that is unlikely to happen, really. We accept that, for reasons of efficiency and effectiveness, there are some difficulties around that, but we would urge a measure of caution and suggest that we should see how this situation evolves. Otherwise, we think that a rush to merge everything and outline the structure will mean that the agenda around children will get lost. So, that is our position, still. I am sorry that I am not explaining our concerns very well. It is obviously an issue that troubles you and it is troubling me, but we are not really able to answer your question.

[212] **Bethan Jenkins:** It is troubling me, actually, but I will sort that out myself.

[213] **Mr Mannion:** That is absolutely fine.

[214] **Bethan Jenkins:** It is because you have used such a strong word like 'downgrading' when you do not have the detail now.

[215] **Mr Mannion:** It comes from this: over the last 10 or 15 years, we have seen a progressive agenda develop around children, a huge agenda around children that has been very hard-fought and, perhaps, was long-overdue. My concern is that, in the name of doing something that we would all sign up to in terms of efficiency and effectiveness, and, indeed, in terms of integration, something gets lost.

[216] **Bethan Jenkins:** That clarifies it.

[217] **Mr Mannion:** What is lost is a focus on the welfare of children, because we start to talk about vulnerable people. While we accept these things as a proposal, we think that there needs to be a real measure of caution shown in a kind of rush to just say, 'This is a new structure, and everything will be great after that'. The world is not like that, and we need to be much more pragmatic. Really, restructuring all of these arrangements time after time is great in one sense, but my concern is that it leads to people taking their eye off the ball—if I can use a football analogy today—in terms of children. That is what concerns us more than anything else.

[218] **Christine Chapman:** We have been in the premier league until now with regard to children.

[219] **Mr Mannion:** That is right.

[220] **Angela Burns:** If we are in the premier league, you have been very clear in your evidence that you are worried that we will be relegated in terms of our provisions for children with disabilities.

[221] **Simon Thomas:** That is enough of the football analogy. [*Laughter.*]

[222] **Mr Mannion:** Yes, I am sorry about that.

[223] **Angela Burns:** Would you like to expand on that a little more, because obviously the explanatory memorandum says that the Minister can define 'disability', or can add to it if it is too wide or too narrow? You raise this as a very specific point, and I wonder if you could expand on that, please.

[224] **Mr Mannion:** We can in a moment, if that is all right. Just to go back a little, one of

our concerns regarding children with disabilities is their level of vulnerability, and their heightened level of vulnerability in some ways in terms of safeguarding concerns. There needs to be recognition of that. That is the first thing. We understand that the definition of ‘disability’ that is contained within the Equality Act 2010—this is quite complex; matchsticks may be needed, for which I apologise—is that a person has a disability if they have a physical or mental impairment and that that impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. That updates the Children Act 2004 legislation. That is the basis on which local authorities and other agencies act.

[225] What we understand from the legislation is that a slightly looser and slightly broader definition of what ‘disability’ means would be in place. We have some concerns—and, again, this goes back to another point in terms of regulations and matters that would not be subject to further scrutiny—that that might, unintentionally, lead to a different kind of approach being taken to disability in terms of young people being assessed in a slightly different way. So, we think that there may be some concerns about that.

[226] **Angela Burns:** Thank you ever so much for raising this point because, to be honest with you, I think that I had always assumed—in fact, I do not think that I actually assumed, but had not thought about how we define what is and is not a disability as I thought that the legislation had covered it. So, I was really surprised to read this analysis of the EM and I really appreciate your bringing it to our attention.

[227] **Mr Mannion:** Our understanding of this—and apologies once again, because there is a level of complexity to this—is that this will give some flexibility to Ministers to decide what categories of person could or could not be included. So, what we understand is that any potentially disabled person must satisfy the test and show that their illness has—not ‘would have’, but ‘has’—a substantial and long-term adverse effect on his or her day-to-day life, rather than just showing that they have a certain disability. Therefore, they fall automatically into the definition of being a disabled child and, therefore, they are a child in need. It is quite complicated, but we think that there is an unintentional sequence.

10.45 a.m.

[228] **Angela Burns:** Children also have some disabilities that are progressive, so you may not be disabled at three years of age, but you are disabled at 19.

[229] **Christine Chapman:** We are coming to the end of the session. Rebecca, do you have a question?

[230] **Rebecca Evans:** Staying on the topic of disabilities, we heard concerns in the Health and Social Care Committee from disability charities that although the Equality Act 2010 was a major step forward, it is unsatisfactory in that it reinforces the medical model of disability, whereby you are disabled by your impairments, rather than the social model that the Welsh Government has signed up to, which says that you are disabled by the barriers that society puts up. Do you share those concerns that this Bill, by relying on the Equality Act, could be detrimental to those with disabilities?

[231] **Mr Mannion:** On the point that you have just made, it is not so much about whether there is a medical or social definition, but that the way in which this is currently framed will give a different emphasis to how we define disability. We think that that needs further scrutiny, because it places a lot of power in the hands of Ministers to make decisions about that matter without any further scrutiny.

[232] **Rebecca Evans:** We also heard evidence in the health committee that we might need an entirely new definition for the purposes of this Bill. Would you support that?

[233] **Mr Mannion:** We have a concern with what we saw in the legislation, and that is why we have responded in the way that we have. The logical conclusion to that is that the definition of what being a disabled person means should be looked at again, because, at the moment, there is a change in what it would mean. To go back to the point made by Angela Burns, children's conditions can be identified over time. Through progress in medicine, science and technology, we are seeing an understanding of more complex conditions in ways that we perhaps did not see five or 10 years ago. Children with very complex conditions now live longer, so there is an argument about children's development that needs to be factored in. It takes us back to this argument about thinking about children and adults differently. Children are not little adults; they are children, and we need to think about them developmentally in that way. That is part of our overall response.

[234] **Christine Chapman:** Thank you. That would be a good point to finish on. Thank you for attending. We will send you a transcript of the meeting to check for factual accuracy. The committee will now take a short break and we will reconvene at 11.00 a.m.

*Gohiriwyd y cyfarfod rhwng 10.48 a.m. ac 11.01 a.m.
The meeting adjourned between 10.48 a.m. and 11.01 a.m.*

**Bil Gwasanaethau Cymdeithasol a Llesiant (Cymru)—Sesiwn Dystiolaeth
Cyfnod 1
Social Services and Well-being (Wales) Bill—Stage 1 Evidence Session**

[235] **Christine Chapman:** In the next part of the meeting we will take evidence from Barnardo's Cymru. I welcome back Andy James, assistant director for policy, Barnardo's Cymru, and Tim Ruscoe, development officer for Barnardo's Cymru. Thank you for providing evidence in advance. We will now go straight into questions.

[236] You say in your evidence that the Bill does not address some of the fundamental issues of funding and leadership, sectorial budgets and priorities. Could you further explain your concerns and outline how the Bill needs to change in that respect?

[237] **Mr James:** Tim has been our lead on this Bill and has drafted our consultation response. So, as you can understand, he will know about the technicalities of some of this Bill, but it is an enormous thing.

[238] I will give a general introduction. We are broadly supportive of the Bill's overall aims, which are to draw together all the relevant duties and functions of those who provide services to people in need. We recognise the need within that to update and pull together all the various elements of legislation that exist across the social care landscape. We do not underestimate the scale of that. We know that that is no mean task in its own right because there are rafts of social care legislation, and to make this Bill consistent, and to have consistent application across those pieces of legislation, is a significant task.

[239] However, we have concerns about the Bill, as you have alluded to, Chair, and we would welcome greater clarity around a number of things, which we will hopefully be able to discuss in the next 45 minutes. Those include how we ensure that the voice of service users is embedded and heard in this process, and how we reconcile the dichotomy of the universal versus the targeted. We would like clearer definitions of terms, such as 'prevention', 'assessment' and 'wellbeing', and in some places we think that it needs greater prescription, such as how the Bill aims to promote integration and co-operation between partner agencies. We obviously need to see the eligibility criteria when they are published and how those will fit. Also, as you have just asked, we think that we need a lot more detail on how it will be

financed. We are of the view that it is difficult to see how it will be cost-neutral. Would you like to pick up on some of those?

[240] **Christine Chapman:** We will be looking at those areas in particular. We will go into those details in due course. Tim, would you like to come in?

[241] **Mr Ruscoe:** The more specific answer to your question, Christine, is that the Bill requires significant partnership delivery at a local level. It requires the local operation to deliver, and much of that is cross sectorial, bringing sectors together to work together.

[242] In terms of leadership, it places the duty on the local authority, but it does not really prescribe what the relationships are, who needs to be in those relationships and what level of decision making those people need to have. Also, it does not prescribe how the funding will be arrived at. If we are talking about delivery by universal, cross-sector services with a single, sectorial, social-services budget, how will the funding be prescribed so that leadership, accountability, responsibility and the funding formula are clear? In our experience—you may well ask about safeguarding—local children safeguarding boards have suffered by not having a funding formula that is imposed. This piece of legislation requires board partners to fund, but it does not suggest what that funding might be, in terms of the percentages against responsibility and accountability. That was the point of our submission around leadership and funding.

[243] **Aled Roberts:** Looking at the due-regard duty to begin with, your evidence suggests that the analysis contained within the explanatory memorandum has been designed to support the Bill rather than to carry out an analysis under the convention. What key issues regarding children's rights are you concerned about as being not clear enough or ignored in the Bill?

[244] **Mr Ruscoe:** We had sight of the draft analysis, which was beyond the content in the explanatory memorandum, so that we were able to have some indication of what the process had been. It still suggested that it was an analysis against the Bill, rather than the Bill being analysed against the convention. So, the Bill was presented and then it was looked at in terms of which bits are covered. There are 42 articles that apply to children and their human rights, 15 of which are missing in that analysis, and articles 7, 8, 9, 10 and 11 all relate to issues around family, particularly around the relationships where families are not able to live together, cross-border, for example, if someone is placed in a different country or county or if there are difficulties with access to your family as a looked-after child. Article 13 is not considered, which is fundamental: it is a fundamental right to information. Information should be a basic need and principle within the Bill. That is an issue for us, because the Bill gives power to charge for information; it is a basic human right. We see that as a failing in the analysis and as clear evidence of an analysis that supports a Bill rather than one that finds how the Bill could be improved against delivering children's rights. Also, we argue that if you deliver it in terms of children's rights, it should be delivered in terms of human rights, because we are talking about children's human rights, which are not enormously different from those of any other person who is not a child.

[245] That leads on to the question around voice and control, which, again, are clearly basic tenets of a human-rights approach. If we are not analysing against children's rights and an international treaty of children's rights, how can we ensure that we recognise whether we are delivering what is internationally recognised as good-quality support of a basic inalienable human right?

[246] **Lynne Neagle:** In our earlier session, we heard evidence from the NSPCC, which is concerned about the plans to universally deliver preventative services. Do you have any comments to make about that?

[247] **Mr James:** This remains a difficult issue: how do you address the imbalance that the Government believes currently exists in service provision, to move towards a clearer focus on early intervention and prevention? The Government hopes that the change of emphasis will lead to savings and a more sustainable approach in the long run, but it does not necessarily account for or solve the issue of how we provide services at the more acute end currently for people who need them. To achieve any change of this nature, we would favour a gradual approach; you cannot change that process overnight, because people would be left without services that they may depend on.

[248] It is questionable whether this gradual approach would save money in the short term or in the interim period. If anything, a substantive shift of this nature is likely to cost more money, because of the preparation that is required for that.

[249] Another issue for us, which goes across other organisations as well, is that we are not absolutely clear what the Government means by 'preventative services'. People have many different interpretations of what that might be. So, we would welcome some definition of that on the face of the Bill.

[250] **Mr Ruscoe:** It is questionable how realistic it is to have a complete description on the face of the Bill of what 'preventative services' might be. As Andy said, we speak to a lot of people about it, and none of us has the same perspective on what might be considered a 'preventative service'. It is probably not realistic to have a complete description of it on the face of the Bill, but areas of the Bill hold descriptions. Section 88 describes the categories of looked-after children. That is a description. It is a list that enables people to understand who this applies to. It is not impossible, but it is not realistic to have it entirely described.

[251] One of the issues about the Bill is not only its universal nature, but that we are also talking about local delivery and local development in terms of national eligibility criteria and national outcome frameworks. So, the two aspects have to be melded to allow for that local development, so that people can cross borders and expect at least something similar. The Bill does not allow us to have our thinking gelled on what that will mean.

[252] **Mr James:** As well as the clarity that we seek on preventative services, there is also the question of how that aids the eligibility criteria, so that people are clear about, and understand in any given area, what they are entitled to and what services they can approach, and the level of support that they can expect. How that is pitched is important, so that people are clear about that.

[253] **Mr Ruscoe:** It might also emphasise another point around voice and control. The citizen-centred principle that the Government wants requires the Bill to be understandable at many levels. That includes quite a significant population of service users, so the Bill should be understandable and clear. There should be more direction and prescription, so that people who use services can look at the Bill and say, 'That is what it says; that is what must happen; that is what I am entitled to'.

[254] **Suzy Davies:** To take you back to a question that I asked the NSPCC regarding sections 12 to 14, I understand that you are nervous that the acute service level might suffer as a result of this, but the purpose of the Bill is to encourage early intervention. The local authority has a duty to assess needs for care and support that are not defined in the Bill, which is a problem, but a parent or child can override that duty. With the exception of extreme circumstances, the local authority has to live with it, so it is not reaching the people who are intended to be reached by this Bill. Do you have a view on how that could be overcome for people who are not quite at the abuse or negligence level of need?

[255] **Mr Ruscoe:** I am sorry, but I did not quite understand the question. Can you repeat

it?

11.15 a.m.

[256] **Suzy Davies:** At the moment, a parent can refuse permission for their child to even be assessed to determine what their needs are, and the local authority has to live with that decision unless it suspects negligence or abuse. If this Bill is aimed at early intervention and prevention, we are talking about reaching people before the negligence and abuse threshold, so the Bill is failing to do what it is trying to achieve, in my view, with these two sections. Do you have a view on how that can be overcome? Should there be a different threshold at which the local authority can override the parents' wishes?

[257] **Mr Ruscoe:** On the element of refusal of assessment, the duty does still remain with the local authority to ensure that, if the child is considered to be without capacity or the decision is in the best interest of the child, the assessment still happens. That duty remains and we would support that.

[258] **Suzy Davies:** I am not really talking about that; I am talking about parents saying, 'I don't see the point of this, so go away'.

[259] **Mr Ruscoe:** There are quite a lot of parents who now talk about services in those terms. I was thinking about this on the way in; I was talking to a grandparent who was a formal foster carer for his grandchild, whose responsible authority was the neighbouring one. We were talking about developments, particularly for that child who also had some learning disability, and about the process of recommendation and guidance, and he said, 'Don't talk to me about that; talk to me about what is law. Tell me what has to happen because it is law. Don't tell me about guidance that people might or might not have delivered.' So, on the Bill, and in terms of a greater understanding of what should be and the levels at which people can receive services, there is a lack of definition around preventative services. Are we going to include library services, leisure services and open-access youth services? Are we going to include those as preventative services? They are actually preventative services, but it is open and free access without any compunction; it is voluntary access. At which point do we talk about preventative services being things that we supply against need, which is identified through the duty in the Bill to do a local needs assessment? Are we talking about those as preventative services? How will we account for the ability of people to get to those services? Will we then consider transport as a preventative service, because it enables people to get to the support area that is required by them? We cannot really give a definitive answer, because we do not see the clarity in the Bill.

[260] **Suzy Davies:** You have answered my question—there is a lack of clarity about what a local authority can say you can do. Briefly, you mentioned in your evidence that insufficient weight is being given to the role of education and where that fits in with the role of assessment. Do you want to say a few words about that? You do not need to say too much.

[261] **Mr Ruscoe:** I take the point. [*Laughter.*]

[262] **Suzy Davies:** I will get shot by the Chair.

[263] **Mr Ruscoe:** If we look at other developments, such as the special educational need and additional learning need developments, there is a requirement for multi-agency assessment and multi-agency delivery against those needs that are assessed. There is no relation to that in terms of the assessment around wellbeing in this Bill. Both of those are actually wellbeing assessments.

[264] **Suzy Davies:** You would have thought so.

[265] **Mr Ruscoe:** Yes, but there is no apparent interface between them. We can do the same with the mental health stuff around outcomes. There is very considered work around outcomes in the Mental Health (Wales) Measure 2010, and we are talking about working together and developing outcomes here, but where is the interface?

[266] **Suzy Davies:** So, you think that there is a poor fit between those.

[267] **Mr Ruscoe:** Yes.

[268] **Rebecca Evans:** On the eligibility criteria and the national eligibility framework, do you believe that the creation of a national approach to this is workable and realistic?

[269] **Mr James:** Yes, to start with, because we would like some framework. Obviously, we want to see what the eligibility criteria look like; we are not quite sure at which point in the process they will be introduced and when you, as people who scrutinise the Bill, will have the chance to see those. We are hoping that they will be based on what support children and families need as opposed to what resources and services are actually available. So, we realise that that is probably aspirational, but if the Bill is to be committed to service users and to have a service-user-centred approach, then we think that the eligibility criteria have a significant role to play in that. We are hedging our bets a bit, because we want to see what the detail is on that and how it is then applied on a national level. It would give a framework for local areas to adopt and use in an appropriate way.

[270] **Rebecca Evans:** Section 19 of the Bill provides that a local authority must determine whether any support needs identified in an assessment meet that national eligibility criteria or whether they call for the exercise of powers or duties under the Bill, or under the Children Act 1989. Is there a potential for confusion there?

[271] **Mr Ruscoe:** There is a potential for confusion, because in reading it I was confused. *[Laughter.]*

[272] **Suzy Davies:** That is honest.

[273] **Mr Ruscoe:** Yes. It took me a long while. I had to go to the table of derivations and all sorts of things to understand where the interface was between the Children Act, which has largely worked as a piece of legislation, and what we are proposing. I read some of the sections in the Children Act again last night and, in comparing them, the Children Act, in some ways, is a lot clearer. It is a lot more directive than what is suggested in the social services Bill. Around looked-after children, in particular—that is where I will make the comparison, because that is where the majority of the cross-over between the two Bills is—I saw a weakening of the position. It covered most things, but in the way it was written, there were many more examples of the words ‘may’ and ‘might’, rather than ‘should’ and being more directive about timescales. I kept reading the Bill and thinking, ‘Where is the reference to section 17?’ There is no reference to section 17 of the Children Act, because I believe that it still applies. I could not find it anywhere in the table of derivations. We are not lawyers, so I was wading through what I felt was the right process; I am very confused about it.

[274] **Christine Chapman:** We will now move on to Simon.

[275] **Simon Thomas:** You have already referenced part of this, which is the power in the Bill to impose charges on 16 and 17-year-olds. You mention a charge for information, for example. However, the charge, as I read the Bill, is wider than a charge just for information; it is for services more generally as well. You mentioned information, but do you have wider concerns about how that fits in with the convention and how practical that might be in

practice? Would it stop 16 and 17-year-olds getting what should be the services to meet their assessed needs?

[276] **Mr James:** When we originally responded to the consultation, we responded in terms of charging primarily within adult service provision. We would have serious reservations if this applied across the provision for children, young people and their families. The majority of the families that receive services from statutory agencies are already on low incomes. So, we would be concerned that there would not be enough safeguards put in place to make sure that, for example, if a young person is admitted to voluntary care, the parents would not then be charged for that. What kind of safeguards would there be? How are we going to get into the mechanisms of gauging how much income people have and all of that process? That can be confusing in its own right. So, we would have real concerns about that. We could end up in a situation, for example, where it might be in the best interests of a young person to come into care for a period, for whatever family-related reasons—and they may be justifiable—but if there is a financial charge on the parents, then that may not happen, which may not always be in the best interests of that child.

[277] As regards the issue of access to information, again, we would have concerns about that. We see that as a right. The whole point of that is to enable people to access services and appropriate provision in the best way that they can. Particularly as regards children and families, we would be very reticent to agree to such an approach. What compounds this, just to finish, are the concerns that we collectively have about the impact of welfare reform and where that will leave some families. We have concerns that it may bring significant numbers of families into lower income groups or further into lower income groups. Again, how will they be safeguarded and protected in any charging system?

[278] **Simon Thomas:** So, in terms of the primary interest of the child—and, for the purposes of the convention, 16 and 17-year-olds are children—do you believe that this Part should be amended so that it is clearer that you cannot charge if that goes against the interests of the child?

[279] **Mr James:** Absolutely.

[280] **Mr Ruscoe:** We do. We generally support charging, particularly in terms of older people, but we see any charge that might limit the access or availability of services as wrong. That is the issue. If a 16 or 17-year-old living by themselves does not have the income, they require the service. The point that Andy made on the possibility of charging in care is not listed as a charge, but as a contribution under Schedule 1.

[281] **Mr James:** We do not quite know what the difference is on that.

[282] **Simon Thomas:** There is no difference in monetary value, I am sure. So, whether it is a charge or a contribution, is there clarity about how the different competing rights under the convention are met by this Part of the Bill?

[283] **Mr Ruscoe:** In our opinion, no.

[284] **Julie Morgan:** I will ask you about the users' voice, which we have touched on. You say in your evidence that

[285] 'The face of the Bill could carry more explicit requirements as to the place of children and families in their service design and delivery, evaluation and review, as well as developing their outcomes.'

[286] Are there any parts of the Bill where this is more of a priority?

[287] **Mr Ruscoe:** I can give you an example. Section 86 relates to review while in care and it lists the things that regulations may require, which include the involvement of people in the review process. We know from the application of the Children Act that they are beneficial to children's services. Surely that should say 'must' so that there is a greater requirement for that involvement.

[288] In terms of the local needs assessment, there is no requirement to involve communities and individuals from the locality. There is no duty there to do that. Where does the voice of the community sit in the local needs assessment if there is no duty?

[289] The section also touches on the way that language is used in enabling people's involvement. The Bill uses 'reasonably practicable' quite a lot in terms of where or how people should be involved, which means that we do not have to ensure whether it is 'reasonably practicable' with their current state, their current understanding and their current information and knowledge. Do we have a responsibility to ensure that we enable that understanding and knowledge so that they can take part with some degree of control around the service that is delivered for them?

[290] In terms of how the language is constructed, there is quite a lot of reference throughout the Bill, not to being 'of service', which is what we would like, but 'to service a need'. We would see a service as being 'of service' to somebody—putting the person at the centre. If it is 'to service a need', then the person has to fit the service, if you see the distinction.

[291] **Julie Morgan:** Yes.

[292] **Mr James:** It will still involve a significant cultural shift in the professional base, because, as Tim said, it is still very much about the service being provided to you, as opposed to you being clear about what your needs are and how you can help to design that service around your needs as an individual.

[293] **Julie Morgan:** This is linked to your views on the UNCRC.

[294] **Mr James:** Absolutely; it is the same. We have examples of the work that we have done in Barnardo's. We are a third sector organisation and perhaps we have some capacity to do this, but we take a lot of time in designing our services, wherever we can, to involve children and young people and families in helping us to design the structure—how they will look and how they will best suit those particular service users' needs when we deliver them. That goes into several branches, including the environmental design of a building, so that service users can feel as if these places are theirs. So, they have a real investment in designing, because it is directly addressing their needs. However, that is a significant cultural shift—

11.30 a.m.

[295] **Julie Morgan:** You do not think that that is built into this Bill; is that what you are saying?

[296] **Mr Ruscoe:** Not as explicitly as it could be. Probably, in terms of the social medical model as well, that is another indication of where their voice and control is not really enabled through the Bill. With regard to the language of the Bill, the independent living framework is really quite different and the language used in it is more enabling in terms of people's ability.

[297] **Julie Morgan:** It is not just about legal words.

[298] **Mr Ruscoe:** I do not believe it is just because of the need to write something that has to be interpreted by legal people. I do not think that that is the case.

[299] **Mr James:** There is intent there, I think, to somehow incorporate it; it is just not strong enough.

[300] **Christine Chapman:** Thank you. We have about a quarter of an hour to cover a few other areas, I think. Jenny?

[301] **Jenny Rathbone:** There is clearly a tension in this Bill between the philosophical desire to shift the relationship between the user and the state and anxiety about taking on new duties when there is no more money. I suppose what I would like to know is whether you think the Bill is the appropriate place to make a shift change in the integration of services and that cultural shift you have just been talking about, or whether this agenda needs pursuing in other ways.

[302] **Mr James:** It is the strongest opportunity we have. It is a major piece of legislation, probably the biggest that has gone through the legislative process in the Assembly, and it seems to me that it is sitting in the right place. It is about how we enable it and how we implement it. I would not necessarily feel that a separate piece of legislation should be required for this; I think it should be encompassed in this. I am interested to know what you meant by pursuing this outside of the legislative process.

[303] **Jenny Rathbone:** The integration agenda does not necessarily require legislation. We can have services working together and all of us ensuring that we have a duty towards our children, whether we are road sweepers, police officers or Assembly Members, but, clearly, we have some work to do in that regard.

[304] **Mr James:** Yes, there is a bit of a carrot-and-stick scenario at times.

[305] **Jenny Rathbone:** However, in the context of the shortage of resources in the current financial climate, I can understand the anxieties of the drafters of the Bill and the lawyers on their shoulders saying that if you put that in—

[306] **Mr James:** You may have seen an example of this in the media recently. The Welsh Government is trying to get local authorities to work more collaboratively across particular disciplines and is pushing for the merger of social services departments in certain geographical areas. I do not know whether you saw last week that the proposed merger between Blaenau Gwent and Caerphilly has been opposed by Caerphilly councillors because they feel that they would be absorbing what was perceived as an overspend within Blaenau Gwent. There are no guarantees that that collaborative approach, and that push without the stick of legislation to say that you must, will actually happen. It provides too many get-out clauses.

[307] **Jenny Rathbone:** Thank you for pointing that out. In relation to that whole section in Part 6 of the Bill on the impact on all those categories of looked-after children, you raise concern that the When I am Ready scheme is not enshrined in the current draft of the Bill. Is it necessary to have it enshrined in the Bill?

[308] **Mr Ruscoe:** We were surprised, rather than concerned, that it was not. We were expecting it to be referenced somewhere. The subsequent announcement of pioneer work seems to address that surprise. I was expecting something in the Bill. Subsequently, we have had the ministerial statement about pioneer work. That answered my questions about how it was and where it was going. When it was proposed that it would become a Government

scheme, and the Member-proposed Bill direction was withdrawn, there was talk, at that time, of it being incorporated into the social services Bill as it was then. So, we were surprised when it was not, but we have had the direction since and I think that that is as much as we can hope for.

[309] **Bethan Jenkins:** Ar gefn hynny, gwnaethoch chi ddatgan ei fod yn syrpreis i chi nad oedd ynndo, ond nid ydych wedi dweud a ydych chi'n credu y dylai fod yno yn awr. A allwch chi gadarnhau, er bod y Gweinidog wedi gwneud datganiad ychwanegol, eich bod yn credu bod lle i hynny ymddangos yn rhywle, os nad ar ddechrau'r Bil hwn, er mwyn imi ddeall eich barn chi'n gynhwysfawr?

Bethan Jenkins: On the back of that, you said that you were surprised that it was not included, but you have not said whether you think that it should be included now. Could you confirm that, even though the Minister has made an additional statement, you think that there is room for it to appear somewhere, if not on the face of the Bill, so that I can understand your opinion more comprehensively?

[310] **Mr Ruscoe:** I do not think that it needs to be on the face of the Bill.

[311] **Bethan Jenkins:** Right; there we are. Thank you.

[312] **Mr Ruscoe:** Is that enough? I can talk for a bit longer if you would like that, but it would only be talk. [*Laughter.*]

[313] **Bethan Jenkins:** I will not voice an opinion on that. Yes; that is enough. I will continue in Welsh.

[314] Mae Rhan 7 o'r Bil ynglŷn â diogelu yn cyflwyno byrddau diogelu plant a byrddau newydd i ddiogelu oedolion, gan gynnwys trefniadau posibl er mwyn cyfuno'r ddau fath o fwrdd yn y dyfodol. A allwch chi ehangu ar hynny? Beth yw eich barn chi am hynny?

Part 7 of the Bill regarding safeguarding introduces safeguarding children boards and new adult safeguarding boards, including arrangements for a possible merger of the two types of boards in the future. Could you expand on that? What are your views on that?

[315] **Mr James:** We are of the view that adult and children's safeguarding boards should not be merged and that the funding of safeguarding boards must be addressed and resolved. I sat for 12 months on the Swansea safeguarding children board and found that the agendas are enormous. We would have real concerns that if the boards were merged, the adult services agenda may begin to dominate and children's services might not be addressed appropriately. So, we would have concerns about the balance of that and, pragmatically, about how those meetings would be run, because they are huge.

[316] **Bethan Jenkins:** The NSPCC said that, but you are not basing that on evidence; you used the word 'may'. Why do you think that children's issues would not be prioritised over those of adults? Why is the spin always on the issue of children getting lost in this mix? We do not actually know whether that will be the case.

[317] **Mr James:** Yes. I do not know how, pragmatically, the meetings would be run. For example, on the Swansea board, we had something like five or six sub-groups just to administer the business of the main group. My concern would be that, somehow, it would be split, and then there would be half as much time for adults as there would then be for children, and we would be concerned about that.

[318] On the funding issue, there really needs to be clarity on this now, and there needs to be a funding formula for the responsible agencies that are members of safeguarding boards, because it is still too loose. Some safeguarding boards have struggled in terms of finance.

There is also the issue of how you fund an independent chair, which is a good practice model. There needs to be a much more prescribed approach to how those boards will be set up in future.

[319] **Bethan Jenkins:** Is it because there is currently a lack of detail about how it would look? That would come later. Are all these questions arising at this stage because you do not have access to that information?

[320] **Mr James:** Very possibly. We are not quite sure of the intent, either, so some clarity on that would be helpful.

[321] **Bethan Jenkins:** Okay; fair enough.

[322] **Angela Burns:** Do you have any concerns about the definition of ‘disability’ within the Bill, especially as it appears that the Bill gives the Minister the opportunity to prescribe what categories of people can be included or excluded under the definition of ‘disability’? You mentioned to my colleague Julie Morgan earlier your concern that this Bill reinforces the medical model of disability rather than the social model. Rebecca Evans raised the same point in our previous evidence session. Could you please expand on that as well?

[323] **Mr Ruscoe:** The paper that was submitted by an alliance of disability organisations and co-ordinated by Disability Wales contains a very good section on this and we would support that process. It has a very good section on the definition itself, which is used and which is a medical model. It is about fixing the disability and not fixing the affecting environment that people have to live their lives through. Having said that, pragmatically, it is a definition that is there. I do not really see that it will change. Yesterday, I was reading the section that you were referring to, about the power, and I was trying to work out whether I stood for or against. There might be instances where people are going to benefit from having an expanded definition by group. However, if you have a definition of ‘disability’, it should be pretty static and it should be generally accepted. If people have needs that require a service, that should not necessarily mean that they are designated or described as ‘disabled’. It is about the need that needs to be addressed. Does it need to be included in the definition? Probably not, so I am still a little unsure about the power. There are—sorry, I am just looking at my notes on this point—other instances where we would suggest that the language of the Bill around the social/medical model in Part 2, section 4, which is on the overarching wellbeing duties, should be rewritten in support of the social model of disability—as in the person, not the disability. There are a couple of other instances of that.

[324] **Angela Burns:** You also reference the fact that you think that benefit brought to children and young people under section 17 of the Children Act 1989 should be maintained within a people-in-need process. Could you evidence that a little bit?

[325] **Mr Ruscoe:** With some of the confusion around the Children Act and social services, we could not see where section 17 fitted in. Disabled children have benefited from the presence of section 17 in access to services and a broader breadth of services. We could not see how that process, particularly for disabled children, was still there. How could children and young people be properly supported through a people-in-need process? The children-in-need process worked. It could be improved. However, I could not see where it was. That was primarily my issue there.

[326] **Angela Burns:** Briefly, to make sure I understand this, you are concerned that this Bill is going to overwrite section 17 of the Children Act and negate it completely—they cannot co-exist.

[327] **Mr Ruscoe:** That was my original concern, and it remains a concern because I still

do not know for sure.

[328] **Mr James:** It is not explicit whether, in its absence, that will happen.

[329] **Angela Burns:** Okay; got it. Thank you.

[330] **Christine Chapman:** We have just a couple of minutes and I want to clarify a few things. You say that the right balance has not been struck between the powers on the face of the Bill and the powers conferred in regulations. Which are the key parts that you think would need a greater degree of clear, explicit requirement on the face of the Bill? I think that you mentioned the eligibility criteria, but are there any others that we may not have covered?

[331] **Mr Ruscoe:** With an awful lot of the references throughout the Bill, I would like them to be looked at in terms of whether there should be ‘must’ and ‘may’. We cited an example in section 86, which we think should start with ‘Regulations must’, then list some of the things that are already listed as musts, followed by ‘regulations may also’ and, inter alia, ‘include’ and ‘prescribe’. There are also examples where it is pretty good—it is pretty damned explicit. Section 38 is quite a short section, which includes the words ‘regulations must’, followed by three points, and everybody knows what it means. I would like there to be a review of all of the content on regulations throughout the Bill, particularly around children, because the Children Act has been prescriptive: we know what works, we have evidence for what works, so should it therefore be a ‘must’ as a minimum, as well as ‘may’?

[332] In terms of the affirmative and negative procedures and the regulatory impact assessment, I have revisited that. I do believe that there are too many decisions around families—not necessarily children—that are going to be subject to the negative procedure. The element of power to order local authorities to work together on adoption needs to go back to local authorities via the regulatory impact assessment, which we would generally support.

[333] **Christine Chapman:** Thank you. On that note, I am going to draw this session to a close. I thank you both for attending and for your evidence. We will send you a transcript of the meeting so that you can check the factual accuracy. Thank you for attending.

11.45 a.m.

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

[334] **Christine Chapman:** 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).

[335] Are all Members content? I see that you are.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11.46 a.m.
The public part of the meeting ended at 11.46 a.m.*