



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

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

**Dydd Iau, 11 Rhagfyr 2014
Thursday, 11 December 2014**

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of the Meeting

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

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

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

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Christine Chapman	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)

Alun Davies	Llafur Labour
Jocelyn Davies	Plaid Cymru The Party of Wales
William Graham	Ceidwadwyr Cymreig (yn dirprwyo ar ran Janet Finch-Saunders) Welsh Conservatives (substitute for Janet Finch-Saunders)
Mike Hedges	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
Gwyn R. Price	Llafur Labour
Gwenda Thomas	Llafur Labour
Rhodri Glyn Thomas	Plaid Cymru The Party of Wales

**Eraill yn bresennol
Others in attendance**

Nick Bennett	Ombwdsmon Gwasanaethau Cyhoeddus Cymru Public Services Ombudsman for Wales
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**Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance**

Sarah Beasley	Clerc Clerk
Chloe Davies	Dirprwy Glerc Deputy Clerk
Rhys Iorwerth	Y Gwasanaeth Ymchwil Research Service

*Dechreuodd y cyfarfod am 09:15.
The meeting began at 09:15.*

**Cyflwyniadau, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions**

[1] **Christine Chapman:** Bore da, and welcome to the Assembly's Communities, Equality and Local Government Committee. I remind Members that, if they have any mobile phones, they should be switched to silent. We have received apologies this morning from Mike Hedges. I have also had an apology from Janet Finch-Saunders, and I am very pleased that William Graham is substituting; welcome today, William.

09:16

**Adroddiad Blynyddol Ombwdsmon Gwasanaethau Cyhoeddus Cymru ar gyfer
2013/2014
Public Services Ombudsman for Wales Annual Report 2013/2014**

[2] **Christine Chapman:** The first item today is to consider the Public Services Ombudsman for Wales's annual report for 2013-14, and to have a look at whether the Public

Services Ombudsman (Wales) Act 2005 allows the ombudsman to work effectively. I give a warm welcome to our panel: first of all, Nick Bennett, Public Services Ombudsman for Wales and also to Susan Hudson, policy and communications manager. We will get you a name plate shortly, Susan. I welcome you both. We have had the report, Nick, so if you are happy we will go straight into questions. I know that you also wanted to talk about a piece of potential legislation, but we will cover that in the second half of the questions. We will deal with the main parts of the report first, and I know that Members will then want to talk to you about the potential legislation.

[3] If I can just start on the report, could you outline why you think that there has been an increase once again in the number of complaints about public bodies in 2013-14?

[4] **Mr Bennett:** Thank you very much for the invitation to be here. As you will be aware, I was not actually ombudsman during this year, but I am very grateful to my predecessor, Peter Tyndall, and also to the acting ombudsman, Margaret Griffiths. During the year in question, we can demonstrate that the office certainly did cope more than satisfactorily with an ever-increasing volume of complaints. The rationale behind why those complaints are on the increase is a source of constant reflection for us within the office. I think that there are a number of reasons. For example, complaints in the area of health have increased as a proportion of our complaints from 15% in 2005 to 36% last year. There will be a number of issues there. There is the fact that, with an ageing population, there are more complex procedures available, which inevitably means that there is scope, unfortunately, for more things to go wrong. There is the fact that, perhaps, people are more ready to complain as well. So, I am afraid that the only area where we saw a reduction in the overall volume of complaints was referrals when it came to the code of conduct for locally elected members. In the year in question, there were no local elections, so that trend could well be reversed when we see more elections come up.

[5] **Christine Chapman:** I know that Members will want to ask specific questions about that. Jocelyn, did you have a question?

[6] **Jocelyn Davies:** Putting health to one side, because I know that others will want to ask you about health a bit later, was there any sector where you were particularly concerned about the nature of complaints and so on?

[7] **Mr Bennett:** In terms of volumes, local authority services account for a further 40% of complaints. So, 80% of the complaints that we receive are health or local authority-related, but we need to analyse more in terms of where those local authority complaints are coming from, because they tend to reflect a broader range of different services; planning is certainly a key area, as are building regulations. Susan, do you have anything to add to that?

[8] **Ms Hudson:** One thing that we particularly drew attention to in last year's annual report was the increase that we had seen in the number of complaints about social services. Although they had grown from a much lower base compared with the number of health complaints that we got, there was an increase of 19%, and we were mindful that this was a significant increase. The one thing that I would say is that that sort of trajectory has not been repeated so far this year. Obviously, we have a period of time to go before the end of the year, but that pattern has not continued so far this year.

[9] **Jocelyn Davies:** Do you think that it is easier now for people to complain, not just that they are motivated but that it is easier? More people are online, more people can search the internet and find you and your phone number and so on rather than having to sit down and think about writing a letter and so on. Do you think that it is easier?

[10] **Mr Bennett:** It should be easier. I hope that one of the reasons we have had more

complaints is that the office has had a higher profile over recent years. The issuing of section 16 reports means that people know where to go, which is encouraging. Again, I pay tribute to my predecessors for the success that they demonstrated there and the good work of the staff within the office. However, when we do come to this latter half, there are still issues. I have some serious issues about some of the legislative barriers that, if removed, could make it easier for people to complain. I have been in post now for four months and I have had the opportunity to go around the other jurisdictions—Northern Ireland, Scotland and England—looking at legislative best practice. I am concerned that, in England, there has been legislative change and the Local Government Ombudsman no longer considers only written complaints. That opportunity does not exist in Wales.

[11] **Jocelyn Davies:** What I am asking is whether there are more things to complain about or whether it is just that those complaints should have been there anyway but that people just did not take that step to make the complaint. You said that you have been to visit the other jurisdictions. Have they found a rise in the number of complaints in the volume that you have?

[12] **Mr Bennett:** They have. Without wishing to second-guess everything he says, if the Northern Ireland Ombudsman was here, he would tell you that his postbag is growing much the same as the Welsh complaints postbag is growing. However, what concerns him is that there are still voices that he is not hearing. We analyse the socioeconomic background of complainants. There is some evidence—and we have certainly had further evidence this year—that is of concern about some people not coming forward because they are still not aware or are in a vulnerable setting and are very concerned about repercussions if they were to complain themselves or to complain about a family member, perhaps in a care setting. So, that is one of the reasons we would really like to explore on the legislative side. However, the other issue does come back. We have had look at some data. If you look at level 1 literacy—the lowest level of measurable, meaningful literacy in the UK—94% of the UK population hits level 1 or above. It is 87% in Wales. We have a higher cohort of the population that has difficulty putting in a written complaint, and I am pretty sure that, most of the time, those are the people we need to hear more from and who might be more dependent upon high-quality public services. So, I am really concerned that there are barriers that currently exist for them.

[13] **Jocelyn Davies:** On a number of occasions when we have had conversations with you, you have mentioned local authority code of conduct complaints. You said that it was not a big concern because there was no local election this year, but what are you going to do about the level of those complaints? It does seem from your report and from information out there that you have put in the public domain that some of this is just silly squabbling. As you have quite rightly said, it is a complete waste of public resources.

[14] **Mr Bennett:** Yes, absolutely. Since coming into the post, I have asked staff a lot about the most vexatious or ridiculous types of complaints they have received. I think that I have rehearsed some of these before, but there have been complaints such as, ‘A councillor wouldn’t shake my hand before the meeting began’, and ‘Somebody cracked a joke that my spouse didn’t find funny’. As I have said before, I am the ombudsman for public services, not the senses of humour. We are not going to use public resources to investigate that level of complaint, particularly given that, in that growing postbag, we get some very, very serious complaints. We are accountable for the resource that we receive from this Assembly. It is a set amount and we are in a period of ongoing austerity. Given a choice between devoting limited resource to those types of vexatious complaints and looking at serious issues where there has been something really amiss when it comes to cancer treatment and so forth, I think that you would expect me to look at the more serious complaints. So, following on from previous debates, including the one that we had in the Finance Committee, our legal adviser is proposing that we bring in an additional test. The previous sieves that we have had, if you like, in terms of considering complaints were ‘Has there been a breach?’ and ‘Is there a

sanction?’ There will be a third test now, which we want to consult on, which is a public interest test. It is very similar to what they do in the Crown Prosecution Service and other areas. Is there a public interest rationale behind our pursuing this? If there is not, I propose that we do not spend taxpayers’ moneys on it.

[15] **Jocelyn Davies:** That is good news, thank you.

[16] **Christine Chapman:** I know that Mark wants to come in, but, Gwyn, you have some questions first, and then I will bring Mark in.

[17] **Gwyn R. Price:** I just want to follow up on that. We will hear more from people with certain complaints. How confident are you that your office can continue to provide a service of the same quality if the increase in cases continues year on year?

[18] **Mr Bennett:** I am very confident that the office would cope, come what may, because of past performance. Productivity has doubled over the past 10 years, mainly because the number of complaints has doubled over that period. Certainly, in the last five years, complaints have gone up 117%. Health complaints have gone up 146% and, despite that, as you can see from the report, we have managed to hit our key performance indicators. My concern, coming in new, is that, if that trajectory does continue, we will have to be more innovative. We have had an internal innovation project, which has come up with a huge range of new ideas around where we could get rid of unnecessary procedures and do more. However, I am afraid—and without wanting to sound like a broken record—again, there is more that we can do here in terms of legislation. Having gone around the other jurisdictions, we have got a very, very clear steer from Scotland: what has been the most important tool for them was the additional power that they received from the Scottish Parliament when it came to being made a complaints authority. They actually have control and authority around the design of the complaints procedure for the whole of the public sector in Scotland. Their ombudsman is very clear that, without that power, they would have been in a much weaker position. So, it is not just about our coping with ever-increasing flows, as if we can stem some of those issues by ensuring and enforcing better complaints-handling from bodies within jurisdiction, then I think that that would help us reduce the number of complaints coming to the office, it would increase customer satisfaction for public service users across Wales, and we would be adopting some good practice that has been well tested in another part of the United Kingdom.

[19] **Gwyn R. Price:** What is coming across, Nick, really is that a lot of these complaints, the non-serious ones, should be sorted out at a lower level in a lot of the organisations. It is coming across that you are getting absolutely ridiculous complaints. Would you agree with that?

[20] **Mr Bennett:** Certainly, the most ridiculous, and certainly some of the more vexatious, complaints tend to be motivated around issues of code of conduct between different elected members. However, I would say that a significant amount of the complaints that we receive and that we uphold, particularly around health, are very, very serious. Again and again, particularly now in the last few years with the Putting Things Right process within health, for example, the truth is that there are cultural issues here. People have signed up to the policy. They have made a commitment to be better at complaints handling, but we are still seeing the same ‘dysfunction’, for want of a better term. So, I am really interested in our looking at having similar complaints authority powers to Scotland’s so that we can do something about this ever-failing and dysfunctional culture, which is really serious and tends to happen in the public services that the Welsh population values the very most.

[21] **Christine Chapman:** Peter is next and then Mark.

[22] **Peter Black:** Moving on to health, how confident are you that the Welsh Government's recent review of the complaints process within the NHS will improve its approach to dealing with complaints, especially at management level?

[23] **Mr Bennett:** In terms of the Keith Evans review, we had issues that we did respond to the Government on, in terms of one or two of the assertions that were included in the report. That said, overall, I think that it is really positive that the review took place and it gives us an opportunity to shine a light, if you like, on the whole culture of complaints and complaint handling in the NHS.

09:30

[24] We have seen these ongoing increases—as I said, from 15% to 36% this year. I hope that it is reaching a plateau now, because I think the rate of increase in the last few years has been slow—you know, 34%, 35%, or 36%. However, it is still far too high, and there is an awful lot more that we need to do. I am glad that there are different workgroups in the health sector looking at those recommendations for what needs to be done to improve the overall level of complaints handling in the NHS, but there is a lot more that needs to be done. There is a lot more that I need to do, as well. I would like to be in a position to have a conversation with all of the NHS and all LHBs at one time and in one place in terms of complaints handling, rather than it being an individual conversation with each one about complaints. I think that it is important that it is a higher-level issue for the local health boards for the future. I have had a conversation with the NHS Confederation, and I am hopeful that we would be able to do that, but, again, it is not just about another report and another set of recommendations; there is an opportunity to have some legislative change that would make a meaningful difference and give us some meaningful 'sticks', for want of a better term, to really drive through an improvement in NHS complaints handling.

[25] **Peter Black:** Do you think that this is a cultural issue? As an elected Member, I get people coming to me with health complaints that could have been sorted out much earlier on, and because they have not been, they escalate, and I am sure that you get exactly the same thing. Are you confident that the health boards are addressing it? I have had discussions with my own health board, which, as you know, has been subjected to the Andrews review in terms of the Princess of Wales Hospital, and it is trying to address this, but there does seem to be this cultural issue in the health service whereby it is in denial when people come to complain, and that just escalates the whole process.

[26] **Mr Bennett:** Well, some of that denial and fear of owning up, almost, is always going to exist, I think, in any setting where you have the element of human nature. I accept that. However, there are aspects of good practice that should be common to all, and that should include things like the fact that the chief executive has some ownership of complaints handling in every health board. I think it fair to say that that is still not a uniform corporate culture in the LHBs. So, that is one reason why I think that it would be more useful for us to consider complaints handling in a collective rather than an individual setting. You know the old cliché: good practice is a bad traveller. That is certainly true when it comes to this cultural stuff. So, it is not just about denial; it is other things that should help to empower the chief executive and executive directors, and, indeed, governance—you know, the boards themselves. They are boards and they are there to hold the executive to account. They should be receiving the data and they should be taking ownership of complaints, as well. Again, I feel that, right at that top level, in terms of governance and accountability, I am not convinced that there is a uniform level of satisfactory complaints handling across the LHBs in Wales.

[27] **Christine Chapman:** Mark, did you want to come in?

[28] **Mark Isherwood:** Yes. It seems that the increase in health complaints is paralleled

in, or even triggered by, the withdrawal of the independent element of the complaints process by the Welsh Government. Similarly, possibly, the increase in social services and local authority complaints parallels the removal of the level 3 independent complaint element from the social services complaints processes. Is that fair? Is there any correlation, and how should that be addressed?

[29] Secondly, and linked to this, given your previous comments, to what extent are the problems that you identify a consequence of a legalistic approach? That is, that the complaint almost finds its way to the lawyers first, and their process—their requirement—is damage limitation, particularly cost damage limitation to the organisation, rather than owning the problem and seeking a remedy by agreement.

[30] **Mr Bennett:** I think that the second point is absolutely right. On the first one, I am going to turn to Susan in a second. However, I am not so sure about the health complaints and the removal of certain procedures there, but certainly in terms of social services, we were, to be honest, expecting to be swamped by social service complaints this year, not least because we had an extension of jurisdiction on November 1 to include private care complaints. Evidence from England is that, when the jurisdiction was extended there, there was a significant increase, but it was on the public side, because it reminded people that there was a public route for complaints. For those of you who will have seen it—and it was quite a high profile report—there was a review of social care by the older persons' commissioner. There is something wrong there. It does not make sense to me. If there is that level of dissatisfaction—you know, the dry sandwiches and people not even being given the correct spectacles, and all the rest of it—within the care setting now, and we have only had an extra two or three complaints a month on the back of that extension of jurisdiction, something is not quite right there. I do not think that it is due to previous changes; I think that it is cultural. I have discussed it briefly with Sarah Rochira, and also with the children's commissioner, because both of them favour an extension of own-initiative powers, and the reason that they are really concerned is that, where people have complained, they have had, in a care setting, examples of illegal evictions being issued very soon afterwards.

[31] **Mark Isherwood:** I have represented cases where people—

[32] **Mr Bennett:** People are scared of complaining and people's families are scared of complaining, and that is why I want the power. It is not any power that I need for me; it is really about these issues. Having discussed this with other commissioners in particular, something does not quite ring true. You would expect that there would be a relationship between the dissatisfaction that was discovered in that report and our volume of complaints, and we have not really seen it, have we, Susan? I do not know whether you want to add anything.

[33] **Ms Hudson:** Taking up the issue in terms of the removal of the independent review stage, in terms of the health and social services complaints procedures, and certainly in terms of social services, that cannot be attributed to the increase that we have seen in social services complaints. The complaints procedure did not actually change until August of this year, so certainly in terms of the complaints to date that we are talking about, and the annual report that we are looking at now, that change had not actually happened, so we cannot attribute it to that.

[34] In terms of health, I think that you could attribute some of the increase to that, but not the vast majority of it, simply because what used to happen was, invariably, after somebody had gone through the stage 3 independent review, the complainant would then actually come to us subsequent to that. So, a small number of complaints, I would say, would be attributable to the removal of the independent review stage.

[35] **Mark Isherwood:** Good. You mentioned the older people's commissioner's report, and I did privately represent some of the cases involved with that, and I am aware of the situation that you describe because I have been very involved with a case exactly matching that description. However, to what extent was the problem that the inspectorate regimes in place were very much process driven and were building and resource driven rather than people driven? So, they were inspecting the processes within a care setting rather than the people's experiences within those settings. That seems to have been the source of the complaints that I have handled, some of which have also gone to the older people's commissioner.

[36] **Mr Bennett:** Certainly for the future, if we are looking at what is referred to blackly sometimes as 'the graph of doom' with reducing revenue—certainly in terms of the demographic, with an additional 30% of the Welsh population over 65 within the next 10 years—that is going to be a scenario where I think you are going to have to adopt a risk-based approach. Now, to some extent, that has to reflect the experience of the service user, but it cannot just be tick-box exercise. Some of us have had this discussion in other settings in terms of what makes for more appropriate regulation more generally. I think that there are certainly lessons that could be drawn from aspects of risk-based regulation, which need to be drawn more broadly, so that it cannot just be a tick-box exercise, and that there is the ability through regulation—and obviously, that is an issue for others, not for me. However, I would always favour a risk-based approach, where, increasingly, there is going to be greater demand and greater scope for something going wrong, and therefore, an impossibility to avoid risk, and an absolute compulsion then to make sure that you manage it.

[37] **Christine Chapman:** Okay. I have got Rhodri and then I think William wants to come in then, so Rhodri first.

[38] **Rhodri Glyn Thomas:** Yng nghyd-destun pobl sydd mewn cartrefi gofal, y gwir yw bod lleoedd mewn cartrefi gofal yng Nghymru erbyn hyn yn brin, ac os yw rhywun yn sicrhau lleoliad ar gyfer aelod o'r teulu, mae nhw'n gymharol hapus. Nid ydynt yn mynd i gwyno heblaw bod rheswm am hynny. Mae nhw'n mynd i boeni hefyd, pe baent yn gosod cwyn yn eu henw nhw, neu yn enw'r person sydd yn y cartref gofal, y gallai'r person yna ddioddef canlyniadau hynny. Oni fyddai'n well sefyllfa—ac rydych wedi awgrymu hyn yn gynharach yn eich atebion—pan fyddwch yn cael cwyn am y sector gyhoeddus ac am driniaeth o'r henoed yn ein cymdeithas ni, yn hytrach nac edrych ar y gŵyn penodol a dweud, 'Mae hyn yn annerbyniol yn y cyd-destun yma', pe baech chi fel yr ombwdsman yn gallu dweud, 'Y mae'r math hwn o ymddygiad o fewn y sector hon yn annerbyniol?' Byddai hynny hefyd yn fodd i leihau'r pwysau gwaith sydd arnoch chi oherwydd ni fyddai'n rhaid i chi ailedrych ar sefyllfaoedd oherwydd y byddech eisoes wedi dyfarnu, 'Mae hyn yn annerbyniol' yng nghyd-destun cwyn blaenorol yr oeddech wedi ei gael.

Rhodri Glyn Thomas: In the context of people who are in care homes, the truth is that places in care homes in Wales are limited by now, and if someone does secure a placement for a family member, they are fairly happy. They are not going to complain unless there is a reason to. They are going to be concerned as well that, if they did make a complaint in their name, or in the name of the person who is in the care home, that person could suffer the consequences of that. Would it not be a better situation—and you suggested this earlier in your answers—if, when you have a complaint about the public sector and about treatment of the elderly in our society, rather than looking at the specific complaint and saying, 'This is unacceptable in this context', that you, as the ombudsman, could say, 'This kind of conduct within this sector is unacceptable'? That would also be a way of reducing your workload because you would not have to look again at situations because you would have already made a determination that something was unacceptable in the context of a previous complaint that you had had.

[39] **Mr Bennett:** Rwy'n meddwl bod y prinder o leoedd sydd ar gael yn y maes gofal yn golygu bod pobl yn wir ofni cwyno, oherwydd maen nhw'n meddwl, 'Reit, os yw'r perthynas yn torri i lawr gyda'r cartref hwnnw, beth fydd yn digwydd wedyn? Ni fyddwn yn gallu mynd â'r aelod o'r teulu yr ydym yn ei garu i unrhyw le arall.' Felly, mae'n hollbwysig o safbwynt beth yr oeddwn yn trio ei ddweud am yr *own-initiative powers* neu pwerau hunan fenter. Maen nhw'n rhan o bwerau'r mwyafrif o ombudsmyn ledled yr Undeb Ewropeaidd. Rwy'n meddwl mai dim ond pump allan o 47 aelod o gyngor Ewrop sydd heb y pwerau hyn. Mae'r pwerau yn cael eu defnyddio rŵan yng Ngogledd Iwerddon—yr unig ran o'r DU i gael y pwerau hynny gyda chonsensws gwleidyddol. Felly, rwy'n gobeithio y gallwn wneud mwy ar yr ochr honno.

[40] Wrth gwrs, dyna pam yr ydym yn dibynnu ar adroddiadau ar hyn o bryd. Os ydym yn meddwl bod rhywbeth yn mynd o'i le sy'n systemig, rydym yn cyhoeddi adroddiad adran 16 sy'n dweud ein bod yn meddwl bod rhywbeth yn ddifrifol iawn, ein bod yn poeni, ac nad yw'n dderbyniol ac yn y blaen. Fodd bynnag, nid ydym yn mynd gam ymhellach a dweud, 'Reit, rydym yn teimlo bod tystiolaeth yn y fan hon a'i fod yn digwydd yn lleoedd eraill; nid ydym wedi cael cwynion o'r lleoedd eraill eto, ond rydym yn mynd i ymchwilio oherwydd ein bod yn meddwl bod rhywbeth gwaeth i'w gael.' Wrth gwrs, o safbwynt pwysau gwaith, byddai hynny'n golygu na fyddem yn ymateb trwy'r amser, byddem yn gallu bod yn fwy *proactive* trwy wrando a gweld beth sy'n dod i'r swyddfa, ond hefyd trwy siarad efo'r comisiynydd plant a'r comisiynydd henoed a thrwy edrych ar y dystiolaeth ehangach o bolisi cyhoeddus i sicrhau, os oes gennym ychydig o adnodd, ein bod yn targedu lle rydym yn meddwl bod diffygion mawr yn y sector gyhoeddus.

[41] **William Graham:** Could I ask you about consistency of approach to dealing with complaints by public bodies?

[42] **Mr Bennett:** Yes, I am pleased to say that there has been more consistency in terms of policy, but I am still not satisfied that there is a satisfactory level of consistency when it comes to practice, which is why I was making those points earlier. People have certainly signed up now across the public sector to a more common approach, but as was alluded to

Mr Bennett: I think that the shortage of places in the care sector does mean that people are afraid of complaining because they think, 'Well, if the relationship breaks down with that home, what happens then? We won't be able to take that family member whom we love to anywhere else.' So, that is vital in terms of what I was trying to say about own-initiative powers. They are part of the powers of the majority of ombudsmen across the European Union. I think that only five out of 47 members of the European council do not have these powers. The powers are being used now in Northern Ireland—the only part of the UK to have those powers with a political consensus. Therefore, I hope that we can do more on that side.

Of course, that is why we depend on reports at present. If we think that something is going wrong that is systemic, we publish a section 16 report that says that we think that something is very serious, that we are concerned and that it is unacceptable and so on. However, we do not take it a step further and say, 'Right, we feel that there is evidence here that it is happening in other places; we have not had the complaints from the other places yet, but we are going to investigate because we believe that there is something worse out there.' Of course, in terms of workload, that would mean that we would not be responding all the time and we would be able to be more proactive by listening and seeing what is coming through to the office, but also by speaking to the children's commissioner and to the older people's commissioner and seeing the broader evidence in terms of public policy to ensure that if we have few resources, those are targeted where we believe there are great deficiencies in the public sector.

earlier with the question from Peter Black and, indeed, the issues that Gwyn was raising as well, without that complaints authority, which is currently enjoyed by the Scottish ombudsman, it is difficult to really enforce that consistency. So, that is why I would be grateful for us to consider looking at those powers.

[43] **William Graham:** Is that the only way in which you think that you will achieve that?

[44] **Mr Bennett:** Certainly the evidence from Scotland is that it has been a very powerful force for good.

[45] **Christine Chapman:** Rhodri, did you want to come in again?

[46] **Rhodri Glyn Thomas:** Mae'r adroddiad blynyddol yn sôn am yr angen i oruchwylio cwynion yn well ac yr ydych wedi awgrymu rhai pethau yn barod a fyddai'n hwyluso'r broses, sef y gallu i edrych ar gwynion llafar ac nid cwynion ysgrifenedig yn unig. Yn ogystal â lefel llythrennedd, mae rhai pobl sydd yn ei chael hi'n anodd llenwi ffurflenni—nid wyf i'n orhoff o lenwi ffurflenni fy hunan—ac felly mae hynny'n gallu bod yn rhwystr, bod pobl yn meddwl, 'Nid wyf eisiau mynd trwy'r drafferth o lenwi'r ffurflen yma; nid wyf yn siŵr iawn beth y maen nhw eisiau'. Rydych hefyd wedi sôn am y gallu a'r pŵer y byddech yn dymuno eu cael i edrych ar y sector yn gyffredinol, yn hytrach na chwyn unigol.

Rhodri Glyn Thomas: The annual report mentions the need for better oversight of complaints and you have suggested some things already that would facilitate the process, namely the ability to look at oral complaints and not just written complaints. As well as literacy levels, some people find it difficult to fill in a form—I do not like filling in forms myself—and therefore that can be a barrier, because people think, 'I don't want to go to the trouble of filling in that form; I'm not sure what they want'. You have also mentioned the ability and power that you would like to have to look at the sector generally, rather than at specific complaints.

09:45

[47] A oes pethau eraill o ran y ffordd rydych yn casglu data ac yn delio â chwynion y byddech yn dymuno ei weld yn datblygu? Beth yw'r rhwystrau sy'n eich atal rhag gwneud hynny ar hyn o bryd?

Are there other things in terms of the way in which you collect data and deal with complaints that you would want to see developing? What are the barriers that prevent you from doing that at present?

[48] **Mr Bennett:** Buaswn yn licio gweld, yn gyffredinol, data gwell, yn sicr o ran cwynion yn y maes iechyd. Buaswn yn gobeithio y byddai mwy o ddata ar gael, eu bod yn cael eu dadansoddi yn well a'u rhannu'n well. Credaf fod rôl i ni wneud hynny o safbwynt y cwynion sy'n dod i'n swyddfa ni, ac rydym yn edrych i weld sut y gallwn wneud hynny. Rydym hefyd yn edrych i ryw raddau ar beth y gallwn ei wneud yn fwy anffurfiol i gydweithio â chyrrff sy'n dod o dan ein hawdurdodaeth ni i sicrhau eu bod yn dysgu'r gwersi. Eto, mae tystiolaeth sy'n dangos beth sy'n digwydd mewn awdurdodaethau eraill yn y Deyrnas Unedig. Rwy'n hapus i ni ddysgu'r gwersi

Mr Bennett: I would like to see us generally having better data, certainly when it comes to complaints in the health field. I would like to see more data available and that they are analysed better and shared better. I think that there is a role for us to do that in terms of the complaints that come into our office, and we are looking into how we can do that. Also, to a certain extent, we are looking at what we could do more informally to work with the bodies that come under our jurisdiction to ensure that they really do learn the lessons. There is evidence to show what is happening in other jurisdictions in the United Kingdom, and I am happy for us to learn those lessons. Some of them are informal, but certainly after

hynny. Mae rhai ohonynt yn anffurfiol ond, yn sicr, ar ôl bod o gwmpas Gogledd Iwerddon, yr Alban a Lloegr, rwy'n teimlo bod cyfle rŵan inni gael deddfwriaeth newydd o'r pwyllgor hwn a fyddai'n gallu gwneud gwahaniaeth mawr, a buaswn yn gobeithio na fyddai hynny'n ddadleuol, ychwaith.

being to Scotland, Northern Ireland and England, I feel that there is now an opportunity here for us to have new legislation from this committee that could make a big difference, and I would hope that that would not be controversial, either.

[49] **Christine Chapman:** Obviously, I want to make sure that we have enough time to explore the legislation. I know that we have touched upon it quite a bit, but are there any Members who want to ask any specific things on the annual report, before we move on to that, or are you content to move on to discuss specific things about the potential legislation?

[50] **Mark Isherwood:** I have a question on the code of conduct. In terms of lessons learned, we know that your predecessor introduced a £10,000 limit for local authorities involved with cases against members in relation to public expenditure, on both sides—he confirmed that to this committee previously. So, there was a £10,000 limit for the member if supported by the council, and £10,000 for the council if taking action against a member. How effectively is that being applied? Is it being monitored? I am conscious of the case that triggered that, up in north-east Wales, which has cost a huge amount of money, after the leading member of the opposition tried to scrutinise a senior officer in committee over a critical report. However, to what extent should cases like that, in retrospect, not have been dealt with by your office, and how much has it cost your office to have to deal with the legal consequences of that case?

[51] **Mr Bennett:** I am not in position to answer that question, for reasons that some Members will be aware of. Without trying to sound in any way arrogant and cagey, it is really not in the taxpayer's interest for me to go into any detail on the specifics of that particular case—although there will come a point when I am sure there will be lessons that can be learned more broadly. We are always in learning mode and are glad that that measure was put in place in terms of a limit on the overall level of costs that can be incurred in this type of case. Certainly, with ongoing public austerity, I do not think that anybody would support high levels of legal costs generally. I am sure as well that there is a point of fairness in terms of equality of arms in terms of the way in which different participants in particular disagreements are able to seek justice or resolution. So, that is a principle that, on an ongoing basis, we would support and one that we would want to monitor and see how it develops.

[52] **Mark Isherwood:** Are you monitoring compliance with that limit?

[53] **Mr Bennett:** In terms of compliance more generally, it is featured in terms of the innovative project that we have undertaken over the last few months, and we will have some further issues around compliance that I am sure we will want to introduce.

[54] **Mark Isherwood:** So, they may be spending more than £10,000 still.

[55] **Mr Bennett:** I cannot give you a definitive answer this morning on that question. I would expect, and I think that all the indications are, that the new policy is being adhered to.

[56] **Mark Isherwood:** However, you do not have evidence to corroborate that either way.

[57] **Mr Bennett:** I do not have any evidence with me this morning, but I am happy to write to you with a fuller answer, if that would help.

[58] **Mark Isherwood:** Thank you.

[59] **Peter Black:** Obviously, you cannot control code of conduct complaints when they come from non-councillors or outside the council, particularly at election time, but I know that there have been attempts, particularly by your predecessor, to try to reduce the number of code of conduct complaints between councillors on any individual council by introducing, effectively, local resolution mechanisms prior to referral to you. I am just wondering how consistently those are being applied across Wales, and how high profile they are. As a councillor on Swansea council, which is meant to be a pilot authority, I can say that that mechanism is virtually invisible. I am just wondering what your experience is of how that is working.

[60] **Mr Bennett:** I would say that the evidence of success would be that it is the only area of complaint where we have seen a decrease over the last few years. So, that is certainly welcome given the 10% or 15% increases that we have seen in other parts. It has been adopted now as policy by all of the 22 local authorities. That is very welcome. I am sure that there will still be some divergence, if you like, in terms of practice. I was encouraged. The other week, I was up in north Wales—in Anglesey—where there is a north Wales standards forum, which tends to exchange best practice and ensures that there is the appropriate level of expertise. Maybe that kind of regional working might work in other parts of Wales to make sure that there is a more consistent approach. However, 50% of our complaints were not from the 22 local authorities; they were from community councils.

[61] **Peter Black:** I understand that.

[62] **Mr Bennett:** There is certainly a variance in terms of the appetite for monitoring officers, I think, to get involved with community council complaints, but I have had some positive feedback from One Voice Wales, which represents the community councils, that there might be more appetite for more local resolution there. Certainly, wherever possible, we are keen to make sure that there is as much local resolution as possible.

[63] **Peter Black:** So, for example, if you get a complaint that might fall under that local resolution process from a council that has it in place, would you refer it back and ask, ‘Well, have you gone through this process?’, before you tried to deal with it, or would you deal with it yourself?

[64] **Mr Bennett:** Again, with the adoption of this innovative proposal, we have looked at all of our processes, including aspects of the code that need refining. So, we will be consulting on changes to the guidance as well as the process. So, in terms of the feedback that I have had so far, from a number of local authorities, including Swansea, I have to say that there was more appetite to settle more locally, which is clearly something that we would welcome. There are, on occasions, some areas of the code that could still be clearer. So, for example, the difference between a personal and prejudicial interest is one area that still creates some debate. We will be consulting on that, on additional referral back for local resolution, and also the introduction of this public interest test. So, that should be happening very shortly in the new year. I am keen that we are as fit for purpose as we can be, given that there will be ongoing stresses and strains in terms of public expenditure. However, also, when it comes to the code—and I think that I am right in saying that there will be a general election next year, Assembly elections the year after, and local authority elections in most areas, depending on where we are with mergers and other issues there—it is important that we are able to look at this and reform it next year before those other elections kick in.

[65] **Christine Chapman:** I want to move on, particularly if there is anything that we need to discuss about the suggestion of changes to the law. Nick, could you just outline, for the record, what amending you would like to this so that we are clear?

[66] **Mr Bennett:** I think that I have alluded to most areas during the previous conversation about the annual report. I have spent four months in post. That has given me the opportunity, as part of the induction, to go around and speak to other ombudsmen and to look at what is good and bad about the different Acts. I would say that the Public Services Ombudsman (Wales) Act 2005 will be 10 years old next year. It has been a good Act; it has stood up well; it has served the office well, and we are grateful for it. However, there are some issues that I feel require a review of this legislation. I am not precious about how that is done, but I think that it is more appropriate that it comes from an Assembly committee than from an Assembly Minister because I am appointed by the Assembly itself and there should be that independence from individual Ministers. That said, I am aware that any legislation next year, if it is to stand a chance, has to have Government support, given the significant amount of Government legislation that is on the timetable. I have spoken to the Minister's special adviser, and the feedback that I have had back is promising, in that both the Minister for Public Services and the Minister for business and finance are supportive, in principle, of a new Act, but they have told me that they would seek reassurance from the Assembly Commission that this would not have a negative impact on the Government's own legislative timetable.

[67] So, I would hope that there are four or five critical areas where we could make a real difference with a revising Act for next year. I have looked, and have been advised—I am grateful for the advice that I have had from the Assembly Commission—in terms of how long that could take, and if there was political consensus, it could be done in five months of next year. The issues where I am looking for reform are in own-initiative powers, which I alluded to earlier, in the conversation with Rhodri Glyn. Forty two of the 47 members of the Council of Europe have own-initiative powers. The only countries that do not are Belgium, Luxembourg, Azerbaijan, Kyrgyzstan and Lichtenstein. We are starting to see that change in the UK. Northern Ireland has those powers. It is only a question of time before other jurisdictions get them as well, so I would like to see Wales at the front of that queue. We have had the gross value added figures out this week; we know that we are the poorer part of the United Kingdom, and the evidence suggests that the poorer you are, the more dependent you are on public services. It really is vital that we do it for that reason.

[68] Also, in terms of demographic change, we know that there are people who will not complain now because, as Rhodri alluded, they are worried about repercussions, lack of care spaces available and so forth. Having spoken to the older persons' commissioner and to the children's commissioner, they were concerned about this as well. Children are not encouraged to complain. Older people physically cannot complain, and we are going to see an increase now, with this growing older cohort of the population, in sensory loss; it is physically difficult in some circumstances for people to complain. So, I think, in terms of futureproofing and making sure that we can have some clever legislation that puts us ahead of the wave, if you like, so that we are not just coping with issues that relate to last year's annual report, but things that could come up in 2020 or 2025, I would be really grateful if you could consider that issue.

[69] On private health, we do not have any powers currently on private health complaints. Over the summer, an issue came up—it was a very, very sad case in Llanelli, where, unfortunately, a gentleman passed away. The issue was raised by his local Member of Parliament, and redress for his bereaved family was difficult because he was treated in the NHS, then privately, then in the NHS again. I have the powers to investigate the complaints that the family have on both public sector sides of that experience, but not the private bit in the middle. Surely, if we are serious about citizen-centred services, you will give me the powers to investigate on behalf of the citizen or the citizen's family rather than a sector. So, that is the request there.

[70] In terms of access, I find it bizarre that 94% of the English population reach level 1 in literacy and do not have to submit a written complaint to the ombudsman in England, yet the figure is only 87% in Wales and currently we have a bar. I pay tribute again to my predecessors here, and to staff. I think that it is fantastic, because what they currently do if anybody has got a literacy issue is to record the complaint, then they will write it for them, they will send it back and hopefully get a signature—in 50% of cases, they get a signature, it is sent back and it is investigated. All of that though, as you can appreciate, is an additional process, and, if we can get rid of it, it will generate more value for money and a better service. This was the issue from England. They actually got quicker and smarter, and more proactive and more receptive to the people who need those services the most.

[71] So, this is the earnest entreaty, if you like. This is an opportunity to do something that should have cross-party support. If you can get cross-party support in Northern Ireland, given the fact that the Prime Minister and the First Minister have also cleared their diaries to resolve other issues in the north, then I think that we can get political consensus for it in Wales. This is really about improving on the Act and making sure, particularly with the other issue, which I referred to with Gwyn, in terms of the complaints authority. The complaints authority sounds very grand. Having been up to Scotland and visited the office of the ombudsman in Edinburgh, it is one a half full-time equivalent employees, but it is the power—the power of having the authority of Parliament—that has really meant that they have been able to enforce real compliance in Scotland. So, I would argue again that we could do it on a very good value-for-money basis. I am sure that my colleagues from those other jurisdictions would be very happy to come here and to give you evidence, so that you get it straight from the horse's mouth. Those are the main areas where I think we could have some really good legislation next year.

10:00

[72] **Christine Chapman:** Obviously, Nick, you have made a really good case for this. I know that the Members will want to discuss this to decide whether they agree and, if so, what we will do. What I am going to suggest is this: we have covered quite a lot of ground, so I am going to ask individual Members, because I want to make sure that everybody gets the chance, to ask what they want. Gwyn is first and then we will ask any other Members.

[73] **Gwyn R. Price:** You have touched on the powers going across different sections. What is your opinion on the powers with the courts? I think that Peter Tyndall was saying that he has no powers when it comes to certain court cases, and vice versa. He would like that to be eliminated. What is your opinion on it?

[74] **Mr Bennett:** That is the one area I did not allude to.

[75] **Gwyn R. Price:** I know.

[76] **Mr Bennett:** We have had some advice here, and there was a report done by the Law Commission. There is a statutory bar that can prevent me from considering complaints where the case is being considered by the courts. Currently, there is discretion to set that requirement aside, but the Law Commission certainly took the view that that could be removed. I would be grateful for advice from the Counsel General, the Assembly Commission, the Presiding Officer or wherever on how appropriate it would be to include that within the legislation, for the simple fact that I would welcome reform there as well. However, the four areas that I have concentrated on are to really keep it as simple as you can make legislation and to keep as much consensus as possible, because, clearly, on the ombudsman's legislative side, it is within your competence and I do not think that there is any dispute there about any legislative change. However, some of these changes might involve change in terms of the legal system in England and Wales, and that is where it might get a bit more confusing in terms of what is

and is not devolved or the interplay between the English and Welsh legal jurisdictions and what is devolved to Wales. So, I am nervous on that one. I am very keen for the powers to be considered. If it is not an issue of constitutional uncertainty, then I am very happy for it to be included. However, in terms of pragmatism, if it meant that we were to lose the opportunity to have own-initiative powers, to consider verbal complaints and to have the complaints authority, I would let it go.

[77] **Gwyn R. Price:** Yes, so you would like the four and maybe lose the one, rather than have one and maybe lose four.

[78] **Mr Bennett:** Yes, absolutely.

[79] **Gwyn R. Price:** Okay.

[80] **Christine Chapman:** I have Jocelyn next and then Peter.

[81] **Jocelyn Davies:** Of course, there is the issue that far fewer people are able to use the courts because of inability to access legal aid—

[82] **Mr Bennett:** Yes, sure.

[83] **Jocelyn Davies:** So, own-initiative powers, private health, complaints authority and no longer needing to submit written complaints—I think that is it. You said that you want a committee Bill. Fine. Would your office be able to assist in terms of preparation and so on if it was possible for this to go forward?

[84] **Mr Bennett:** Yes, we would, absolutely, and we will find the resource. It is difficult, but we have had this discussion internally and people are ready for that challenge, and we will find the resource for that.

[85] **Jocelyn Davies:** That is me done.

[86] **Christine Chapman:** I have Peter next and then Rhodri.

[87] **Peter Black:** I was just reflecting on the fact that, in terms of Northern Ireland, this is one of the least problematic areas to get cross-party support on compared with some of the other problems there. When this was raised earlier this year, the then Minister for local government wrote to the committee to suggest that one of the problems with some of the changes you are suggesting was that it could lead to you conducting whole-system critiques, which is the role of the Auditor General for Wales, rather than concentrating on individual service users. Obviously, that will come up as part of the scrutiny of any Bill, so I am just wondering what your response to that is.

[88] **Mr Bennett:** Well, I take on board the concern, but I think that the practical reality is that that is unlikely to occur. As I said earlier, the feedback that I have had from the current Minister for business and also the Minister for Public Services is that they are relaxed about the changes but want reassurance that it does not have a negative impact on their timetable. It would be the only area of powers that we would have that would be supply-led rather than demand-based, if you like. Everything else that we do is demand-based. So, the idea that I am going to be able to go back to Pencoed and find this huge resource—this hit squad that is going to be descending on different areas of the public sector—is unlikely. The reality is that we would be looking at certain systemic failures. We do that now, but we tend to report on them in terms of a section 16 report, hoping that that gets publicity and that it alerts other service providers. So, where we would be using those powers across those systems, there is no way that we would want to duplicate anything else that is currently being exercised by the

auditor general or by any of the commissioners in Wales. The only way—given that there would be a very modest resource, I am sure, that could be made available to operate this supply-based service—is through consultation, and I have already started that process, really, in terms of getting the support of the children’s commissioner and the older persons’ commissioner. So, for example, with the review into social care, I think that there is a period now where those bodies within the social care sector will respond. They are going to be saying what they are going to be doing and, over the next 18 months, that project might be live, but it might well be the case that, in two, three, four or five years’ time, you as a committee and the older persons’ commissioner would want reassurance that, with those general service failings, there had been a step change. That could be done through this type of power. I cannot do it now.

[89] **Peter Black:** All right. I understand the issues about resource. Clearly, this power would give you quite a significant change in terms of the way that you operate. If you decide that you want to investigate these complaints and you discover that there is a systemic failure that these complaints are highlighting as a result of your investigation, how would you then take that forward? Are you still just going to publish a report, or would you refer it to the suitable regulator? What would be the approach to that? That assurance is going to be necessary, as part of the Bill.

[90] **Mr Bennett:** Absolutely, but, first of all, to give you the assurance, I am in no hurry to be duplicating anything that could be better done by others or to do anything that would be very wasteful. I am also subject to auditor general value-for-money issues. However, certainly, the evidence is that, where this power was introduced—. One of the issues that generated the cross-party consensus in Northern Ireland was the fact that service failures were arising in individual local authorities. They were dealt with, the report was published and there was hope that there would be broader learning within the sector, and it did not happen. The ombudsman there was powerless to have that sector-wide review when they knew that there were similar failings in other parts, but the powers did not exist to have that pan-sector review.

[91] **Peter Black:** So, the ombudsman does pan-sector reviews in Northern Ireland.

[92] **Mr Bennett:** That is specifically why own-initiative powers are used under certain circumstances. So, there are a number of areas. First of all, as was alluded to previously, in terms of the care settings or other areas where people might be in a vulnerable position, certainly they are used, and this is by 42 of the 47 members of the Council of Europe. Often, there is a feeling that individual users themselves will not do so, because they are vulnerable, physically incapable or scared that they are going to lose the provision that is currently available. However, in the other important areas, currently, if there was a complaint from health board X that a particular form of cancer was not being treated correctly, I would have the powers to investigate. If we had strong evidence that something similar was happening in a neighbouring health board but there was no complaint to trigger an investigation, I could not do anything. With own-initiative powers, I could. So, that is really the rationale. However, as I say, we would have to be very focused. I would not envisage—. Certainly, in terms of the evidence from Northern Ireland, they are talking about perhaps one or two own-initiative investigations per annum. It is not something that you can turn on the whole of the £15 billion public sector across Wales at any one time. It is something that you have to really target and use where you think that there is a really significant issue.

[93] The other area, of course, is rural areas. There is some evidence and, certainly, the feedback that I have had from other jurisdictions is that the power has been used where, in some very rural areas, the impediment is the fact that the individual service user knows all of the service providers. It is almost socially embarrassing to make a complaint, you know; it is just that an area is so sparse that poor service is not going to be challenged by an individual

complainant.

[94] **Peter Black:** Going back to the example of health boards, a similar example came up in Plenary yesterday, when a Member raised the fact that a drug was available in one health board area, but not available to a patient 10 miles away in another health board area, for a particular treatment. That is a clear failing of the system on a pan-Wales basis, as opposed to a failing within a particular health authority. How would you approach that? Would you get involved in that, or would you say that that is a matter for the Minister, or is that a matter for the health inspectorate?

[95] **Mr Bennett:** To go back, my role here is in terms of the complaints, but, going back to the issue that arose there in terms of the availability of the drug, if there were a complaint that came into my office, I would be able to respond on the health board that was not providing it. I have no powers to do that for the neighbouring authority where the complaint has not been made. That is the issue. So, wherever something comes up that has a systemic implication, more broadly, then currently we use section 16 reports to say, 'Everybody should really take note of this; we are concerned', or 'It is unacceptable'. We would be able to pursue this if we really thought that there was evidence of significant, broader failings. Without that power, we cannot really go much further.

[96] **Peter Black:** I understand that. I think the issue here is whether that investigation leads to a wider, more systemic review that maybe the Wales Audit Office would be more appropriate doing, and how we have a check in the Bill to stop that from happening.

[97] **Mr Bennett:** Currently, in all honesty, if that was health based and there had been a complaint from one health board area, we would issue a section 16 report. We would make it available to Healthcare Inspectorate Wales so that, in terms of its regulation of the health boards, it would be aware that that issue had come up in that particular health board. So, we come back to this issue of risk-based regulation. I am sure that that might be a key piece of evidence that would inform the lines of inquiry for the regulation of that particular health board, and we would hope that it would inform others as well. However, going back to the earlier issue that we had in terms of the culture of complaints, best practice has not travelled well there and I am afraid it is other areas. That is why we think that this would be of real value.

[98] **Christine Chapman:** We are running very short of time and I want to make sure that every Member who wants to come in comes in. So, Rhodri, did you have a question?

[99] **Rhodri Glyn Thomas:** Mae dau gwestiwn gennyf, yn gyflym iawn, Gadeirydd. Mae gen i'r term swyddogol erbyn hyn am *own-initiative investigations*, sef ymchwiliadau o'i ben a'i bastwn ei hunain. Nid wyf yn siŵr a oes angen pastwn ar yr ombwdsmon, ond o'i ben a'i bastwn ei hun fyddai'r ymchwiliadau hynny.

Rhodri Glyn Thomas: I have two questions, very quickly, Chair. I have the official Welsh term now for 'own-initiative investigations'. It is '*ymchwiliadau o'i ben a'i bastwn ei hunain*'. I am not sure whether the ombudsman needs a truncheon, but '*o'i ben a'i bastwn ei hun*' is what those investigations would be.

[100] A yw'r pŵer hwnnw'n mynd i osgoi sefyllfa lle mae awdurdodau'n gallu defnyddio camgymeriad unigolyn fel esboniad am yr hyn sy'n digwydd, yn hytrach na chydabod bod problemau gyda'r strwythurau sy'n bodoli? O'ch profiad chi, a yw hynny'n tueddi i ddigwydd, eu bod yn dweud, 'Wel, ddylai hyn ddim digwydd, ond,

Will that power avoid a situation where authorities can use individual error as an explanation for what has happened, rather than acknowledge that there are problems with the structures that exist? In your experience, does that tend to happen, that they say, 'Well, this should not happen, but, unfortunately, this individual did not behave

yn anffodus, gwnaeth yr unigolyn yn y sefyllfa hon ddim gweithredu yn ôl y drefn rydym wedi gosod’?

in this situation according to the system that we have set’?

[101] **Mr Bennett:** Na, nid wyf yn poeni o’r safbwynt hwnnw. Un o’r rhesymau pam rydym eisiau’r grym hwnnw—a diolch yn fawr iawn am y gwasanaeth cyfieithu—yw ein bod yn gweld y niferoedd o gwynion yn cynyddu bob blwyddyn, ond nid wyf yn hapus o hyd ein bod yn cael digon o gwynion o’r rheiny sydd angen y gwasanaethau gorau, a hefyd y rheiny sydd yn dod o ochr mwyaf tlawd y sbectrwm cyhoeddus. Felly, mae’n hollbwysig bod y lleisiau hynny’n cael eu clywed hefyd. Dyna pam rwy’n teimlo ein bod angen arnom y pŵer ac nid wyf yn ei ofni am y rhesymau rydych chi wedi codi.

Mr Bennett: No, I am not concerned from that point of view. One of the reasons why we want those powers—and thank you for the translation service—is that we do see the number of complaints increasing year on year, but I am still not happy that we receive a sufficient number of complaints from those who really need the best services, and those who come from the poorest end of the public spectrum. So, it is vital that those voices are also heard. That is why I feel that we need the powers and I am not afraid of them for the reason that you have mentioned.

[102] Rwy’n meddwl ei fod yn deg i ddweud weithiau ein bod yn asesu o le mae’r cwynion yn dod o’r safbwynt oedran, dosbarth cymdeithasol ac yn y blaen. Mae’n hollbwysig i bawb, buaswn yn gobeithio, nad ydym jest yn cynnig gwasanaeth i’r dosbarth canol. Mae’n bwysig bod ein gwasanaeth ar gael i bawb yng Nghymru a dyna pam mae’n hollbwysig ein bod yn ymchwilio a sicrhau bod y gwasanaethau hyn ar gael.

It is fair to say that sometimes we do assess where the complaints come from with regard to age, social class and so on. It is all important, I would hope, to everyone that we are not just offering a service to the middle classes. It is important that our service is available to everybody in Wales and that is why it is vital that we look to ensure that these services are available.

[103] **Rhodri Glyn Thomas:** Nid fi oedd yn gyfrifol am y term yn y Gymraeg, gyda llaw; mae’n dod o’r nodiadau sydd gennyf o’mlaen, felly, mae’n rhaid diolch i’r ysgrifenyddiaeth am sicrhau hynny.

Rhodri Glyn Thomas: I was not responsible for the Welsh term, by the way; it came from the notes that I have in front of me, so I must thank the secretariat for that.

10:15

[104] Fe godoch chi achos o Lanelli yn gynharach lle’r oedd y person wedi mynd trwy’r gwasanaeth iechyd cenedlaethol ac wedyn i’r sector preifat ac yn ôl. Mewn llythyr oddi wrth y Gweinidog blaenorol, fe ddywedodd hi wrth y pwyllgor ei bod hi mewn egwyddor yn teimlo y dylai pobl sy’n derbyn gwasanaethau yn y sector preifat gael yr un hawliau â phobl sy’n derbyn gwasanaethau yn y sector cyhoeddus. Roedd hi’n dweud bod problemau ymarferol ynglŷn â hynny o ran ardollau, er enghraifft. Fodd bynnag, ni esboniodd beth oedd y problemau ymarferol hynny. A yw swyddfa’r ombwdsmon yn cymryd y farn y dylai’r un hawliau fod gan bobl ym mha bynnag sector y maent yn derbyn y gwasanaethau?

You raised a case from Llanelli earlier where the person had gone through the NHS and then the private sector. In a letter from the previous Minister, she told the committee that in principle she felt that people who receive services from the private sector should have the same rights as people who receive services through the public sector. She said that there were practical problems on that in terms of levies, for example. However, she did not explain what those practical problems were. Does the ombudsman’s office take the view that those rights should be the same for people, whichever sector they receive their services from?

[105] **Mr Bennett:** Rwy'n meddwl os yw rhywun yn mynd i ddefnyddio mwy nag un sector ar gyfer yr un driniaeth—a dyna'r hyn a ddigwyddodd yn Llanelli, wrth gwrs—mae'n bwysig bod y drefn y dilyn y dinesydd yn hytrach na'r sector. Weithiau, rwy'n meddwl ein bod yn poeni'n ormodol am ba sector ydyw, yn hytrach na phrofiad yr unigolyn sydd mewn angen. Dyna pam fod angen arnom dod dros y problemau hyn.

Mr Bennett: I think that if someone is going to use more than one sector for the same treatment—and that was the case in Llanelli, of course—it is important that the system follows the citizen rather than the sector. Sometimes, I think we are overly concerned about which sector it is, rather than the experience of the citizen in need. That is why we need to overcome these practical problems.

[106] Yn ddiddorol iawn, ar 1 Tachwedd, cefais bwerau newydd o ran gofal yn y sector preifat. Felly, rŵan, o ran unrhyw gwynion o'r sector cyhoeddus, y trydydd sector neu'r sector preifat ynglŷn â gofal, rwy'n gallu ymchwilio iddynt—dim problem. Fodd bynnag, nid wyf yn gallu gwneud yr un peth o ran iechyd. Os ydym yn sôn am ddiwygio gwasanaethau cyhoeddus ac integreiddio'r gwasanaeth iechyd a'r gyfundrefn ofal, oherwydd y faith bod y boblogaeth yn heneiddio, mae'n awgrymu ei bod hi'n amser inni edrych ar hyn hefyd, oherwydd ei fod ar hyd yr un trywydd â'r hyn sydd wedi digwydd o ran gofal.

Interestingly, on 1 November, I received new powers in terms of care in the private sector. So, now, in terms of any complaints from the public sector, third sector or the private sector in relation to care, I can investigate them—no problem. However, I cannot do the same thing when it comes to health. If we are talking about the reform of public services and integrating the health service and the care system, because of the fact that we have an aging population, that suggests that it is high time that we looked at this as well, because it goes down the same path as what has happened in relation to health.

[107] **Christine Chapman:** Mark, did you want to come in?

[108] **Mark Isherwood:** Briefly, yes. In terms of powers, do you need additional powers regarding what I call the David versus Goliath conundrum, not only where an individual is making a complaint against a public body, with all the resource and legal expertise to write very cleverly worded responses to you when you pursue matters with them, but also where a complaint is brought by the officers of a public body against an individual, for you to investigate whether that complaint might be vexatious and whether officers who have signed it may have been compelled to do so?

[109] **Mr Bennett:** I think that the whole ethos behind the ombudsman's role is what would be referred to as one of countervailing power, so that an individual citizen—and I mean this in no way as an insult towards the public sector ethos—is able to turn to someone and for there to be this countervailing correction of the imbalance of power, if you like. You know, that local authority or that health board can look huge to somebody who has got a real issue, so I think that is where the consensus is. The specific reform that you referred to takes us outside of that, and it might take us outside of the consensus as well. So, the specific areas that I have requested that you would consider, I hope would have broad support, because they are about making sure that we are fit for purpose, that we can handle future demographic change and that they actually strengthen the hands of the very weakest. I hope that that is something that everybody could support.

[110] **Christine Chapman:** I do not think there are any other questions. [*Interruption.*] Sorry, Jocelyn—

[111] **Jocelyn Davies:** May I just ask, as we have got a little bit of time, whether there are concerns that people have that you might forget about championing individuals and go off

doing these sort of sector reviews? If the legislation was brought forward, it could have exceptions in it. It could have restrictions and exceptions in it, and it could restrict that power so that it does not become ‘the’ thing that the ombudsman does, but rather that it becomes a case of, ‘The ombudsman does this on occasion’.

[112] **Mr Bennett:** Absolutely. This is very much about making sure that we are fit for the future, certainly. It is an additional tool to make sure that we could certainly speak up for those who are either scared of complaining or those who we have, inevitably, failed. Sometimes we see that failure. Further learning from these section 16 reports does not happen. We see again and again the same nature of complaints coming up in other areas. That should help to stem some individual complaints, but, primarily, our purpose will always be that countervailing power to champion the rights of the individual against large—

[113] **Jocelyn Davies:** You would still want to keep your section 16 ability in order that you could do that, but the legislation, if it goes through this Assembly, could have constraints on the ombudsman’s office in the use of this power.

[114] **Mr Bennett:** Absolutely. The constraint is there now—I do not have any own-initiative powers at all.

[115] **Jocelyn Davies:** However, we also have oversight of your budget and we would be able to control the proportion of your budget that was spent on such activities.

[116] **Mr Bennett:** Absolutely. It would be the only supply-based power that we have, so I think that there would have to be evidence there. Again, I have looked at this and have been informed by the experiences of Northern Ireland, where they have costed their proposals, and all of that went through the Northern Irish committee as well, I think. So, they had to be very, very clear about under what type of circumstances they would seek to use the power and what type of resource they anticipated using for this, even down to what level of official they would employ to investigate. So, the numbers are there and the evidence is there. So, this is not some kind of vague wish list issued from me in the run up to Christmas; there is real evidence to support this, not just in the UK, but across Europe as well.

[117] **Jocelyn Davies:** Well, we do know what he wants for Christmas now.

[118] **Christine Chapman:** I am going to close the session now. May I thank Nick and Susan for attending? I think that we have had a good airing of this subject and I know that the Members are keen to discuss their thoughts on this. So, we will send you a transcript of the meeting to check it for factual accuracy, but thank you for attending.

[119] **Mr Bennett:** Thank you all very much as well.

10:21

Papurau i’w Nodi Papers to Note

[120] **Christine Chapman:** Before we close the public part of the meeting, there are some papers to note.

10:22

**Cynnig o dan Reol Sefydlog 17.42(vi) i Benderfynu Gwahardd y Cyhoedd o
Weddill y Cyfarfod**
**Motion under Standing Order 17.42 (vi) to Resolve to Exclude the Public from
the Remainder of the Meeting**

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

the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order 17.42(vi).

[122] I see that Members are content.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 10:22.
The public part of the meeting ended at 10:22.*