



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

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

Dydd Mercher, 20 Mai 2015
Wednesday, 20 May 2015

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

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
Janet Finch-Saunders	Ceidwadwyr Cymreig Welsh Conservatives
John Griffiths	Llafur (yn dirprwyo dros Gwenda Thomas) Labour (substitute for Gwenda Thomas)
Mike Hedges	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
Gwyn R. Price	Llafur Labour
Rhodri Glyn Thomas	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Justin Bates	Cymdeithas Ymarferwyr Cyfraith Tai Housing Law Practitioners Association
Neil Buffin	Uwch Gyfreithiwr, Llywodraeth Cymru Senior Lawyer, Welsh Government
Lesley Griffiths	Aelod Cynulliad (Llafur), y Gweinidog Cymunedau a Threchu Tlodi Assembly Member (Labour), Minister for Communities and Tackling Poverty
Simon White	Rheolwr y Bil, Llywodraeth Cymru Bill Manager, Welsh Government

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

Jonathan Baxter	Y Gwasanaeth Ymchwil Research Service
Claire Morris	Clerc Clerk
Matthew Richards	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser

Sarah Sargeant Dirprwy Glerc
 Deputy Clerk
David Smith Cyngorydd Arbenigol
 Expert Adviser

*Dechreuodd y cyfarfod am 09:16.
The meeting began at 09:16.*

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

[1] **Christine Chapman:** Good morning and welcome to the National Assembly's Communities, Equality and Local Government Committee. Again, can I just remind Members that if they have any mobile phones that they are put on to silent, as the sound does affect the transmission? We've had apologies this morning from Gwenda Thomas and, again, John Griffiths is substituting. So, again, welcome, John. At this point, could I ask for any declarations of interest?

[2] **Alun Davies:** I declare an interest as a private landlord.

[3] **Christine Chapman:** Okay.

[4] **Rhodri Glyn Thomas:** I declare an interest as a tenant.

[5] **Janet Finch-Saunders:** I declare an interest.

[6] **Christine Chapman:** Right, okay.

**Y Bil Rhentu Cartrefi (Cymru): Sesiwn Dystiolaeth 10—Cymdeithas
Ymarferwyr Cyfraith Tai
Renting Homes (Wales) Bill: Evidence session 10—Housing Law Practitioners
Association**

[7] **Christine Chapman:** The first item today is on the Renting Homes (Wales) Bill. This is the tenth evidence session on the Renting Homes (Wales) Bill, and I would like to give a warm welcome to our first witness, Justin Bates, from the Housing Law Practitioners Association. So, welcome to you, Justin. Obviously, you've sent written evidence. Members will have read that, so we'll go straight into questions.

[8] **Mr Bates:** Please do. I'm sorry if the evidence was a bit dry and technical; it's something, unfortunately, that's beaten into us as lawyers.

[9] **Christine Chapman:** I know the Members enjoyed that. [*Laughter.*] Yes, okay. I just want to start off. It's a very complex Bill that we are scrutinising, but could you tell us why you feel the Bill is necessary and whether the Bill, as drafted, will meet the Law Commission's original intentions?

[10] **Mr Bates:** The Bill is necessary because, at the moment, as you've heard, as far as I can see, from just about every witness, housing law is incredibly complex. And, at the moment, housing law exists, it seems to me, largely for the benefit of lawyers. We do very well out of the fact that there are 18 different kinds of tenancy in existence. But, the law under which someone holds their home should be straightforward, accessible and designed so that landlords and tenants can understand it without the need to engage lawyers, whether on the landlord or the tenant side. And anything that leads to simplification is to be welcomed.

[11] As to whether it achieves the Law Commission's objectives, yes, it seems to me that largely it does. Plainly, the passage of time since the Law Commission's original report means you've had to make some changes to reflect developments in law and policy. But, for my part as the editor of the encyclopaedia of housing law, I'm much looking forward to having the adaptations to this one done than all the existing provisions in England. If you pass this in something vaguely approaching the form that it's in at the moment, I will be able to take my clients—landlord or tenants—to hopefully no more than one, possibly two, pieces of legislation and say, 'These are the source of your rights'. Whereas, at the moment, I have to take my clients through a mishmash of common law, statutory law and some bits tucked away in obscure statutory instruments. So, whilst I appreciate that, having read some of the evidence sessions you've had previously, some Members want to take a much bolder approach to it—leaving that aside, as it's not appropriate for me as a lawyer to comment on that—as a lawyer I would say that you will be doing an enormous service to housing law in Wales if you simplify it at this point.

[12] **Christine Chapman:** Can I just check with you—obviously, you've welcomed the fact that the Bill could make the law less complex, but if there aren't going to be any repeals, would it make the law less complex?

[13] **Mr Bates:** It should make the law less complex. It would be cleaner, from a legal policy perspective, for you to have repeals on the face, which then means I can cross-reference against existing statutes to see which ones have gone. That's probably a benefit for lawyers rather than occupiers, though. The benefit for occupiers comes in the simplicity. If you want to make it more difficult for me by making me do cross-referencing, that strikes me as less important than giving tenants the simplicity of having it all in one place.

[14] **Christine Chapman:** Any thoughts on whether there would be any practical difficulties in making landlords and tenants aware of these changes?

[15] **Mr Bates:** As we said in our submission, we respectfully think that you will need to set aside a significant lead-in period and have money set aside for a publicity campaign. You will have an advantage over any reforms in England, in that you could probably piggyback a lot of this on Part 1 of the Housing (Wales) Act—your landlord licensing provisions. So, you've got a mechanism for help getting to landlords already, but you will need to put significant sums aside for a campaign to raise the awareness of landlords and tenants. I'd suggest that you probably want to talk to both the Bar Council and the Law Society to ensure that there is a properly marked out training course for lawyers ahead of this, with a view to making sure that they know the changes that are coming into force and so they can see where it's going.

[16] **Christine Chapman:** Okay. Thank you. Jocelyn.

[17] **Jocelyn Davies:** I don't think anybody's going to be too sad about putting lawyers out of business. They can all probably take up training courses anyway, can't they? Thank you for your paper; it's very interesting. You mention in it that you've got concerns about the contract holder having to apply to the courts when they haven't been given a written statement of the terms of the contract. Do you think it just might be simpler, although it might make the Bill bigger, to have a default tenancy agreement as part of the legislation and say, 'If you don't have a written agreement, this is it', rather than having to apply to the courts?

[18] **Mr Bates:** Just on your first bit, please do put lawyers out of business—there are cases that need to be fought and cases that don't need to be fought. There will be some cases that have to go to court, come what may. What we're very keen to see you do is avoid cases that don't ever need to get near a court. Then you've got better use of public money and

private money.

[19] As to the form of the contract, our concern ties in with how people are going to enforce these rights. I appreciate that legal aid is not a devolved matter, but, as it currently stands, there would not be legal aid available for a tenant to make this application to the court to have the declaration as to what the contract says. If that remains so—and I don't think anyone anticipates there being a generous expansion of legal aid—then there is a very real access-to-justice issue. Could you have a default one that you fall back on? Yes. There is certainly some attraction to that. The analogy, for example, might be with how it works under the Mobile Homes (Wales) Act 2013 and the standard terms that are imposed there. I suspect that there would still need to be some scope—. What you might end up having a problem with is how you deal with the odd cases, where the standard term wouldn't be effective. For the majority of the private rented sector, I can't see it being a difficulty, but, say for the supported contracts, I could see that being more tricky.

[20] **Jocelyn Davies:** Yes, but you're unlikely to have been without a written statement in those situations, I suppose. It just occurred to me that, instead of having the situation where you have to apply to the courts and there's a monetary fine, for example, on the landlord, you said, 'If there is no written contract, this is it'. I guess I don't have a written contract in all the contracts that I get involved in on a day to day basis—because it's there.

[21] **Mr Bates:** Exactly. You don't need a written contract as a matter of law for there to be a contract. Every time you go and buy a sandwich from a sandwich shop you are entering into a contractual arrangement. You don't need to reduce it to writing. If the concern is ensuring that people know what their rights are without the need to go off to court, we'd be very supportive of that. I think the concern would be asking some of those slightly odder cases about how they would feel about that fitting in.

[22] **Jocelyn Davies:** Yes. What's your view on the potential effectiveness of a model contract—the ability of contract holders then to negotiate?

[23] **Mr Bates:** It won't happen. It requires there to be two equal players in the market place. Have a look, for example, at what happens in long leases, where, notionally, you have two more powerful parties—someone putting £200,000 or £300,000 up to buy a flat is notionally more powerful in the market than your weekly rental tenant. If you go to Barrett Homes, or the St George group or Wimpey and say, 'I'd like to negotiate the individual terms of my 125-year lease', they will laugh at you, because there is a standard model, and you take it or leave it. But that is simply how this will work.

[24] **Jocelyn Davies:** So, do you think the Bill materially improves the position of the tenant—the contract holder?

[25] **Mr Bates:** I think the Bill improves the position of the contract holder in the sense of a) making it easier for them and their advisers to realise what their rights are—there are individual bits that are definite improvements, so I suspect we'll come on to this, I think, having read some of your earlier evidence sessions. For example, the fitness for human habitation stuff; that is a significant improvement over the moribund state of law in England. The restriction on mandatory grounds is something that broadly improves the rights of the contract holder as well.

[26] There is no reason not to take this forward. There is more you could do, but I'm slightly cautious about being drawn too far into that, because I'm here as a lawyer giving evidence, not as someone with critical views on it.

[27] **Jocelyn Davies:** I didn't want to miss the opportunity of you being here, but I was

going to ask you: if you could change one thing, if you could persuade the Minister to change one thing, what would you think the most important thing would be?

[28] **Mr Bates:** I think the Bill as a whole does put too much emphasis, too much of an obligation, on tenants to vindicate their rights, e.g. by applying to the court to get a declaration, by applying to the court to quantify damages when information has been provided. That only works if you've got tenants who've got access to legal representation—and they will need lawyers for that. You've seen in the draft provisions that deal with applying to the court for declarations to the terms, the provisions that deal with that already envisage there might need to be argument about whether there was an agreement in any particular case, and has the tenant unreasonably defaulted in any way. Those are not going to be simple matters that can be dealt with by laypeople, or, if they are dealt by a tenant as a layperson, they're going to be disadvantaged, because landlords will find the money to defend these.

[29] **Jocelyn Davies:** Thank you.

[30] **Christine Chapman:** Thank you. Rhodri.

[31] **Rhodri Glyn Thomas:** Diolch yn fawr iawn, Gadeirydd. Rŷm ni wedi derbyn tystiolaeth sydd yn awgrymu bod pŵer y landlord i wahardd deiliaid contract dros dro yn torri hawliau dynol y deiliaid contract hynny. A oes gennych chi gydymdeimlad â'r farn honno?

Rhodri Glyn Thomas: Thank you very much, Chair. We've had evidence that suggests that the powers of landlords to exclude contract holders on a temporary basis breach the human rights of those contract holders. Do you have any sympathy with that view?

[32] **Mr Bates:** Are you talking about the supported standard contract?

[33] **Rhodri Glyn Thomas:** Ie.

Rhodri Glyn Thomas: Yes.

[34] **Mr Bates:** I do have a lot of sympathy with that view. There is not, so far as I am aware, currently any provision in the law of England and Wales that gives a landlord a unilateral right to exclude an occupier. There are powers for courts to do so. So, for example, magistrates' courts have powers to make closure orders for anti-social behaviour; there are injunctions that you can get that include excluding someone from their home; local authorities have some powers in relation to the Housing Act 2004, where there is a dangerous building, for example. But, in all of the powers to exclude, there is judicial input or oversight. So, in relation to the closure orders, the magistrates' courts have to make an order. In relation to the injunctions, a judge will make an order, and, in relation to the Housing Act 2004 powers, there's a right of appeal to a first-tier tribunal.

[35] A power to unilaterally exclude is a significant departure from the existing law. It's not just the human rights aspect; the human rights aspect arises in twofold: one, there is the article 8 right, which is the right to respect for the home, and there's a whole line of cases from the European Court of Human Rights that have said that, in principle, the right to respect for the home means an independent judicial determination before someone is required to leave. There's also the article 6 issue, which is the right to a fair trial. Effectively, you can't be a judge in your own cause, so, if you, as the landlord, decide to exercise this power and there's no appeal from you, you are a judge in your own cause. You can well see the difficulties there, but there will also be other concerns. You're dealing with quite a vulnerable client group, by the very nature of those who have been given these occupation agreements. There will plainly be Equality Act 2010 issues that will need to be taken into account.

09:30

[36] As a lawyer, and at the risk of making myself very unpopular, I think you're creating an area of litigation that may well be something that many of my colleagues enjoy, because they get to make money off it, but that will certainly lead to litigation. It's not an answer, in our view, to say that landlords can be trusted, which is the evidence that you've been given by lots of people. Because the problem is, although most of them can, cases go wrong. I don't want to dwell on it for too long, but there's a very famous Court of Appeal case called *Moat Housing v. Hartless*, all about a housing association that used the injunctions to exclude someone from their own home. And it was a disastrous case; they got it completely wrong. They'd messed up their evidence, they'd misunderstood the evidence and the result was that a family was excluded from their home over the weekend until the Court of Appeal got involved. Cases do go wrong; there will be mistakes. That's why you can't leave it to individuals to make the choice, because the bad case will happen—not through wilful abuse, but simply because mistakes happen. And if you don't have the oversight, that's where the problem arises. Sorry, that was rather a long answer.

[37] **Rhodri Glyn Thomas:** Na, diolch yn fawr iawn. Ateb cynhwysfawr iawn. Rwy'n credu eich bod chi wedi awgrymu o leiaf yr ateb i'r ail gwestiwn, eich bod chi yn teimlo y dylai fod proses o apêl neu adolygiad o'r math hwn o benderfyniad.

Rhodri Glyn Thomas: No, thank you very much. A very comprehensive answer. I think that you've suggested at least the answer to the second question, that you feel there should be an appeals process or a review of this kind of decision.

[38] **Mr Bates:** I wouldn't say a review or appeal, because the problem is going to be a time frame one. The proposal, as I understand it, is that this should be used more or less immediately in response to an incident with a very limited period. A review or an appeal isn't going to make any difference, because the problem is that the harm has been done by that stage. If it turns out that the power was wrongly used, you can't unwind the time. It is already possible to get injunctions from the county court on a very, very short basis for excluding people from their homes. You can do it as a social landlord under what's now Part 1 of the 2014 Act, what used to be sections 153(a) to 153(e) of the 1996 Act. There are powers in relation to domestic violence injunctions that can work on a similar basis. Courts are able to deal with emergency cases at very short notice. There's no suggestion that the county court system in Wales is unable to do what the county courts throughout the rest of England and Scotland manage to do. I would suggest that it's an area that does merit further consideration, because there will be cases where it goes wrong, and so, what do you do then?

[39] **Rhodri Glyn Thomas:** Diolch yn fawr.

[40] **Christine Chapman:** Jocelyn, you had a supplementary.

[41] **Jocelyn Davies:** Yes. Well, on a review after the event, at least in the case that you mentioned, obviously, the association was found to have made a wrong decision, even though I'm assuming that family was excluded from their home for a weekend. That family was then vindicated. So, it wasn't completely pointless to have a review after the event, was it?

[42] **Mr Bates:** It wasn't completely pointless, in the sense that they did eventually get back into their home; the Court of Appeal got involved and said, 'You've got this completely wrong', and they overturned it all. But for the weekend, they were in that position. I don't mean pointless in the sense of 'why bother'. It's in the sense of the harm that you're dealing with. The harm that's caused by being, for example, street homeless isn't vindicated by going back into your home two days later. That would be the difficulty.

[43] **Jocelyn Davies:** But the record shows the decision was wrong, even if it was reviewed later.

[44] **Mr Bates:** The record shows that the decision was wrong. There's an independent decision you can point to, where you can say 'Yes, you've served this notice on me excluding me; the court said you were wrong to do so'.

[45] **Christine Chapman:** Do you think it would be useful to take it out of the Bill? I mean are you saying that, or—

[46] **Mr Bates:** Nothing I have seen suggests that there is an evidential need for it, because it's predicated on there being a failing in the existing law. What failing is there? There are failings, for example, in relation to understanding the terms of your tenancy, hence we're really supportive of simplifying the terms. As far as I can see, from the evidence you've heard, and certainly, from the experience of our members, these aren't problems that are actually occurring. I have got injunctions for social housing providers at very short notice, even in very serious cases, to exclude someone from their home. You just have to be organised and work with your local court, and if you are a major provider of housing, the reality is that you do have a relationship with your court. You know who the listing manager is and you e-mail them and say, 'Could we have half an hour with a judge tomorrow?', and they find ways of doing it.

[47] **Christine Chapman:** Okay. Right, I want to move on now to Alun.

[48] **Alun Davies:** I was reading your evidence on potential contracts for 16 and 17-year-olds—children, as you described them. You seem very ambivalent; it would seem to be more of a narrative than a view. You made a statement that it would be useful for authorities—public authorities I presume you meant by that—

[49] **Mr Bates:** Yes.

[50] **Alun Davies:** But, you didn't make any comment about the private landlord sector at all. Was there a reason for that?

[51] **Mr Bates:** There was. The experience of our members is that tenancies for minors are, in reality, if not exclusively then certainly largely, being provided by local authorities as a way of discharging their Children Act 2004/homelessness obligations. The problem—. We don't come across, but I could find out from my members—. We don't find many private landlords wanting to grant tenancies to 16 and 17-year-olds. There are very few who've got the money to rent privately. The reality is that it is a way of meeting a social services obligation. The problem therein is that local authorities that understand that children can't hold estates in land are very limited, and so they don't understand what they've done. They think they've granted a tenancy. What they've actually done is granted a tenancy held on trust by them for the benefit of the child, and then when they try and bring possession proceedings, for whatever reason, they can't, because they're holding the tenancy on trust for the child. That would destroy the whole trust. They've got to bring the trust to an end first and then they can think about possession proceedings. They just don't understand it. There's no reason why they should—it is needlessly complicated. That's very much our take on it. In our experience, this isn't a private sector issue.

[52] **Alun Davies:** But the law, of course—

[53] **Mr Bates:** The law would apply across the board, of course it would.

[54] **Alun Davies:** What the Bill doesn't do is to make the distinction that you've just made there in answering that question. The Bill makes a very bold statement, you know—'You'd be able to do this.' It doesn't qualify, or provide any of the qualifications that you've

just done, or, I think I'm right in saying, in the explanatory memorandum it doesn't provide any of those explanations either. It simply makes the statement and leaves it at that.

[55] **Mr Bates:** The Bill simply empowers the creation and then leaves it thereafter. Yes; I agree. We are not aware of any reason why you'd want that, as a private landlord, and it may be that it's something you'd want to limit to public sector landlords.

[56] **Alun Davies:** Well, that's a matter for the landlord. It's not a matter for us to decide this morning, in many ways. What we're being asked to do is to either agree or not agree whether this provision should exist in law. Now, whether a landlord would wish to take advantage of this provision is, to some extent, a subsequent question, and not a question for us. The question for yours is: is it the right and proper thing to be in law, in an unqualified way?

[57] **Mr Bates:** The answer to that from the association's position is 'yes', because the reality is that landlords who you are responsible for are doing this already and they are getting it wrong, because they think the law is what you are proposing to change it to.

[58] **Alun Davies:** So, you think it's worthwhile to change the law for everyone in order to solve the problem in one sector—or a potential problem in one sector.

[59] **Mr Bates:** Well, if I had my way of doing it, I would educate local authorities so that, actually, what they granted were licences, under the older provision, rather than tenancies, because if it were a licence, then this problem would never arise. But, I recognise the reality, which is that most people don't sit down and read the encyclopaedia of housing law and work out what is the answer to these problems. The reality is, this is what they are doing. If you can't change their culture, and we don't think that's realistic, and if you can't change what they're doing, then far better is just to put it on a sound legal basis.

[60] **Alun Davies:** I would hope that somebody in a local authority somewhere is reading something about housing law—whether it's an encyclopaedia or not, I don't particularly mind. Okay. I think we've gone as far as we're going to with that. But, is it your opinion that this could create, or potentially create, further difficulties for 16 and 17-year-olds, in terms of their subsequent legal position in terms of holding other contracts that would be required to hold a tenancy, whether it be insurance, utilities or something else?

[61] **Mr Bates:** I know that's been troubling the committee. In law, there's no reason why it should. There is no reason, as a matter of law, why a child cannot contract with a utility provider. There is no prohibition on children contracting as a matter of law. It's just that, when they are minors, the contracts are what are called voidable, so they can choose to avoid the contract if they want to. That doesn't mean that they get it for free. They still have to pay for any goods and services received—see section 3 of the Sale of Goods Act 1979. They can do it already. There is an issue, I agree, as to whether the market wants to contract with them. I don't think you've heard any evidence from insurance companies or utility companies as to whether they want to enter into contracts with children, but as a matter of law, they can already do this.

[62] If I am right, and the reality is that this power is being used almost exclusively by local authorities, in discharge of their homelessness duties, then any problems with someone not wanting to contract with a 16-year-old can be dealt with—the authority does have powers to, effectively, underwrite the cost to the child to a certain extent. I think you discussed this at one of your previous sessions. They'd have power under the wellbeing powers, they'd have power under section 17(10) of the Children Act 1989. There are ways of doing it. But that's a market failure, which the authority then uses its powers to address—it's not a legal failure. The legal failure at the moment is they are already doing this, and because they are doing it,

and the law doesn't fit with it, it doesn't work.

[63] **Alun Davies:** We're back to social landlords again.

[64] **Mr Bates:** Yes, back to social landlords.

[65] **Alun Davies:** Would it be better, perhaps, if this provision were limited to social landlords?

[66] **Mr Bates:** I see no harm that would be done by that. But then—

[67] **Alun Davies:** Look, I'm a very simple sort of guy—is that a 'yes' or a 'no'?

[68] **Mr Bates:** Well, I'm slightly careful about this, because the problem is—. The cases that I see are where it's gone badly wrong.

[69] **Alun Davies:** Of course, yes.

[70] **Mr Bates:** And it's the big argument against myself—it's the big reason not to listen to what lawyers have to say, because we only see disasters. I am not aware of the private sector desperately crying out for the right to grant rights to 16 or 17-year-olds. I can't imagine that the RLA and the NLA are going to be gnashing their teeth in frustration if you limit this to social landlords. But, at the same time, I don't want to come out and say, 'It'll definitely be fine/It'll definitely not be fine', because I want to be very frank about the limits of the evidence that any lawyer can give you. I cannot see a problem. If I were in your shoes, I think I'd be tempted to do it, because you can always extend it later, whereas repealing it after the event is harder. So you could always start with social landlords, and extend later.

[71] **Alun Davies:** So 'yes'.

[72] **Mr Bates:** Probably.

[73] **Alun Davies:** Probably.

[74] **Christine Chapman:** Jocelyn, you had a supplementary.

[75] **Jocelyn Davies:** Why should we change the law to let local authorities off the hook, for goodness sake? We care a lot about the welfare of 16 and 17-year-olds, so why shouldn't that tenancy be held in trust by the local authority that's got a duty to them? What I'm wondering is: will local authorities use this as a way of getting out of a duty that they might have to a vulnerable young person?

[76] **Mr Bates:** I don't see how they'd be able to do that. The point is that a duty has arisen, whether under the homelessness legislation, or under the Children Act provision, and then they've got to think about how to discharge that duty. They can discharge it by providing accommodation through their own stock, but, increasingly, they provide it via the private sector. That duty to provide accommodation will have arisen, come what may. At the moment, what your fictional local authority does is simply arrange, through a private landlord, to offer a tenancy—sorry, your local authority offers a tenancy to the child, the child accepts it, the local authority thinks it's just part of the normal tenanted stock; they don't appreciate the legal difference. Is that getting them off the hook? I can't see that it is, because it doesn't affect the duty they owe. The reason they owe a duty is because of the homelessness legislation, or the community care legislation; how they discharge it is a different matter. If you were worried, in some way, about them using it to get off the hook, you've got plenty of powers to issue guidance to try and control them in that regard. The

reality is, at the moment, if they understood what they did, it wouldn't actually be that difficult for them to get off the hook anyway—you just apply to the county court to be released from the trust. It's not difficult.

[77] **Jocelyn Davies:** No. We don't have any powers in the legislature to issue guidance—the Government does; we are asked to approve legislation.

[78] **Mr Bates:** But you put power in the Bill requiring the Minister to issue guidance, for example, as you know. You've got various provisions in here where the Minister may issue guidance. You could always make it a mandatory duty—'the Minister must issue guidance'; that happens relatively frequently. So, the Minister can't just sit back and decide not to issue guidance.

[79] **Jocelyn Davies:** Not to do it.

[80] **Mr Bates:** There's no problem with that. From the association's point of view, it strikes us as another example of quite a helpful tidying up, to try and head off a problem that local authorities are falling into. We can't see how it would hurt the occupiers. It will probably save local authorities money, because they won't have to come and ask people like me, 'Blimey, what do we do? We've granted a tenancy to a 16 year old'.

[81] **Jocelyn Davies:** And now we can't evict them.

[82] **Mr Bates:** Yes—well, without bringing trust to an end. It's not very difficult—you just apply to the county court, the county court will bring the trust to an end. But they just don't think about it.

[83] **Jocelyn Davies:** Okay. Thank you.

[84] **Christine Chapman:** Okay. Just to remind Members, we've only got about a quarter of an hour left; we've got the Minister coming in then at 10 a.m. So, I would like to get the rest of the remaining Members in. Mike, you've got a question.

09:45

[85] **Mike Hedges:** I've got a question on retaliatory evictions. I come across more the threat of retaliatory evictions rather than them actually being carried out, where people are told that if they complain, 'You'll either be evicted or we'll end your tenancy at the end of the six months'. But what I'd like to ask you is which solution you prefer: the statutory presumption of retaliation if it is brought in after the complaint has been put in or the Deregulation Act 2015 approach, which asks for evidence of disrepair.

[86] **Mr Bates:** The Deregulation Act approach is going to be hamstrung by funding constraints in local authorities. It requires there to be, as you know, a notice served by the local authority. If the local authority is overworked and under-resourced, it's not going to work. Your way gets around that problem. Your way is better than the Deregulation Act provision. Your way still isn't a complete answer, but it's better than the Deregulation Act because you're limiting it purely to disrepair issues and retaliatory eviction occurs much more broadly than that.

[87] **Mike Hedges:** So, what needs to be added to it then?

[88] **Mr Bates:** Well, we would suggest that you actually need a general bad faith defence. If notices are served in bad faith, they should be held to be invalid. In our submission, the case we referred to—a case called *Chapman v. Honig*—is one of the few

reported retaliatory eviction cases. They were two tenants with the same landlord and different flats. Tenant A gives evidence against the landlord in an unrelated driving matter—I think it’s a road traffic accident—the landlord isn’t very happy that his tenant gave evidence against him, so he evicts him. The Court of Appeal says, ‘That’s fine’. One of them, Lord Denning, would have found a way to invalidate it, but the Court of Appeal said that it’s fine and that you can serve notices—that was a notice to quit because it’s an old case—even in bad faith; it doesn’t affect the validity of the notice because what you’re dealing with is a contractual right to terminate and the fact that you’re doing it in bad faith isn’t relevant to a contract. That is actually one of the few retaliatory eviction cases that made it into the law reports. That isn’t caught by you or by the Deregulation Act. As you all know, I’m sure, from constituency work, there are numerous other examples. I dealt with a case last year, where my client was threatened with eviction because she wouldn’t sleep with the landlord. The Bill doesn’t deal with these kinds of things. I appreciate that it’s a very, very small minority of landlords who do this, but when they do, it is outrageous and the law should be crushing this.

[89] **Christine Chapman:** Okay, Mike?

[90] **Mike Hedges:** That’s me done, yes.

[91] **Christine Chapman:** Janet.

[92] **Janet Finch-Saunders:** Back to fitness for human habitation: HLPAs make the general point that they are unclear as to whether section 94 will be used to issue guidance or an exhaustive list of factors that will constitute unfitness. They say that they also call for clarity as to what constitutes ‘reasonable expense’ for the purposes of section 95(1). How do you feel the proposals in relation to fitness for human habitation improve on current requirements?

[93] **Mr Bates:** Fitness for human habitation as a requirement already exists in domestic law—it is section 8 of the Landlord and Tenant Act 1985. The problem is that it’s irrelevant because the rent levels have never kept pace with inflation. Therefore, you are an enormous improvement in that you are updating a requirement that’s existed actually since the Artisans and Labourers Dwellings Act 1868. This isn’t some radical provision—this is old, old law—and the Westminster Government just hasn’t kept up to date with inflation. So, you’re doing very well there. Our concern is that you haven’t got an equivalent of section 10 of the Landlord and Tenant Act 1985. So, currently, section 8 says ‘fit for human habitation’ and section 10 gives the list of criteria you’ve got to take into account. What you’re proposing to do is say ‘fit for human habitation’ and then leave it to the Minister to issue guidance. What if they don’t? What happens if no guidance is issued? Then what’s your standard for fitness for human habitation? Under the existing law, there is a fallback: it’s section 10. What we propose is either (a) have a fallback or (b) put the Minister under a duty to issue the guidance. If you take that latter route of guidance and a duty to issue it and a duty to update it, that’s also how you deal with the fact that you might want to, over time, increase the minimum standard, because you would simply use the guidance to increase what is regarded as human habitation at any given time.

[94] As to ‘reasonable expense’, it’s the defence argument. Under your draft at the moment, the landlords have a defence if they can show that the property couldn’t be made fit for human habitation by reasonable expense. So, we want to know what ‘reasonable expense’ means. In particular, if you’ve got a landlord who is impecunious, but the repairs are actually quite limited in scope, is it reasonable expense for that particular landlord or is it objectively reasonable expense, because that’s where the fight will be? Lots of landlords will say, ‘I’ve got one property; I’m asset rich, but cash poor, so I can’t afford to do it’. Is that a defence or are you actually meaning to say, ‘I’m sorry that you’re asset rich, but cash poor; you have to borrow against your asset because there is a stark line of financial threshold’?

[95] **Janet Finch-Saunders:** Can I just ask, then, how they are likely to interact with the housing health and safety rating system, and whether there is any duplication? Apparently there's a LACORS guide on this that's excellent.

[96] **Mr Bates:** We don't know at the moment because, as the Bill is currently drafted, and the evidence you've had from, I think, the Minister, the plan is that the guidance that will be issued will be largely replicating what exists for Part 1 of the Housing Act 2004. Until I see that guidance, I don't really know. To be honest, Part 1 of the 2004 Act is quite good, and the LACORS guidance is quite good. If you based fitness for human habitation on that you would, I suspect, be bringing in a reasonably high standard of accommodation. Our concern is much more with what happens if no guidance is ever issued, which, sadly, is not uncommon. Then, it's the statutory defence you're creating. If you're creating a defence of reasonable expense, people are going to litigate what reasonable expense is.

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

[98] **Mr Bates:** Again, there's no need for that litigation because you can head it off here and now by simply defining reasonable expense, either objectively or subjectively.

[99] **Janet Finch-Saunders:** Thank you.

[100] **Christine Chapman:** Okay, Janet?

[101] **Janet Finch-Saunders:** Yes, that's great. Thank you.

[102] **Christine Chapman:** Okay. Mark.

[103] **Mark Isherwood:** Thank you. Local authority environmental health officers have made it clear that they won't be inspecting properties unless there's a complaint. We know the history of enforcement under the housing health and safety rating system shows that it is complex, costly and therefore rarely used, and is reactive only if a tenant complains, and that those with the biggest problems are probably least likely to complain, for the reasons that you outlined earlier. Equally, section 10 of the Landlord and Tenant Act is not an exhaustive list; there's no reference, for example, to heating and warmth or to food storage. So, these raise broader issues. So, how do you believe the Bill's proposals in relation to disrepair and fitness for human habitation will impact on the condition of dwellings, particularly in the private rented sector, given the legal reach of the proposals?

[104] **Mr Bates:** As I understand the evidence that you've received already, you've been told that there are a number of properties throughout Wales that wouldn't meet a fitness for human habitation standard. The effect of these provisions, certainly if you issue proper guidance and you limit them or you explain the defence, will be to create a new baseline below which people cannot fall. How many properties it relates to, I confess I don't know. I think you've had some evidence on that in various sessions. The point that the association would make is that, first, this is not new law. This has been the law since 1868. All that has happened is that no-one's ever updated the rent limits since 1985. Secondly, we find it very difficult to see how anyone can properly say that there's nothing wrong with renting a property that isn't fit for human habitation: (a) that has an obvious moral implication to it; (b) how can it possibly be right to give public money in the way, for example, of housing benefit payments to properties that are not human fit for human habitation? The reality is that this is a welcome development. It's not bold, revolutionary or radical, but it will have a significant—. It will make a difference for those at the very bottom of the market. Now, it may not be the answer to your question, but I suspect I don't have the answer in terms of the numbers it will affect. But the bottom of the market will be dragged up by this, or they will have to leave the

market, and they will have to sell to people who can bring it up to a certain standard.

[105] **Mark Isherwood:** I wish I had more time to challenge you on that because that's the objective we all seek, just when you're given the obstacles, some of which I referred to earlier, in the real marketplace at present, how that's going to happen, how those tenants are going to articulate their concerns and know how to do it without recourse to the courts and lawyers—

[106] **Mr Bates:** Well, the reality is, always, if you are seeking to enforce your rights, the chances are that you're going to need a lawyer. The difficulty that you're going to find here is that legal aid isn't within your remit. However, there is an awful lot of law on what fitness for human habitation means. It does go back a long time. Bring this in and I can well imagine that it shouldn't be that difficult for lawyers to help tenants push the standards up. These disrepair cases—I use 'disrepair' in the generic sense—are one of the few areas where there is a broadly functional no-win, no-fee market in housing law. So, it may well be possible that lawyers could work on a no-win, no-fee basis to try to work with tenants to drive up the standards. The elephant in the room is legal aid, and the more you put the duty on tenants, the more legal aid becomes important.

[107] **Mark Isherwood:** Finally, is there any merit in increasing landlords' repairing obligations, as happened in Scotland, or could that actually disincentivise investment by the better landlords, whilst not targeting those we seek to catch in the big net?

[108] **Mr Bates:** The Scots' standard, as I understand it, has only been in force for about 10 years, which by legal time frames isn't that long yet. I'm not aware of any evidence from Scotland that the market is collapsing. I confess that I only started looking for it last night, but I'm not aware of any evidence in Scotland suggesting that the bottom has fallen out of the rental market. I can't see that what you are proposing will cause any good landlord to leave the market.

[109] **Mark Isherwood:** Of course, the Scots did repeal some of their 2006 legislation, but that's—

[110] **Mr Bates:** I thought you were talking about the extension to the white goods, because Scotland extended their repairing obligations to include the white goods.

[111] **Mark Isherwood:** Yes.

[112] **Mr Bates:** As I understand it, it's about 10 years that's been in force. So, it's still very much working its way through the market to understand how that's going to pan out. Once you change the law, you won't get any important cases from the higher courts for two or three years, because it just takes that time for cases to get through. So, the reality in Scotland is you've only had five or six years in which there could be case law that we could draw any implications from.

[113] **Mark Isherwood:** Okay, thank you very much.

[114] **Christine Chapman:** We are running very short of time.

[115] **Mr Bates:** I know; I'm very sorry. I talk for too long.

[116] **Christine Chapman:** No, no; this is excellent, but I want to bring the remaining Members in. We may slightly delay the Minister. I'll take John, then Gwyn and then Peter.

[117] **John Griffiths:** Thank you, Chair. In terms of the absolute ground for possession

with regard to secure contracts, you state, then, that you don't believe that's necessary and that the reasonableness criteria that have existed for very many years are sufficient.

[118] **Mr Bates:** Yes.

[119] **John Griffiths:** Could you just briefly expand on that, as to why you think that's the case?

[120] **Mr Bates:** Absolutely. Reasonableness is the touchstone of security of tenure, because it means that tenants have that independent safeguard between their landlord and themselves. Reasonableness was a hard-fought battle, going back to the Increase of Rent and Mortgage Interest (War Restrictions) Act 1915. The moment you take reasonableness away, you change the power dynamic between landlord and tenant. It becomes much more at sufferance. There is also the difficulty that the landlord's perception of the seriousness of a problem is not necessarily the same as the objective assessment as to how serious a problem is.

[121] You can have reasonableness with heavily structured discretion. You can direct judges that they must take into account certain factors. You can direct them, even if necessary, that certain factors should be presumed to be of particular importance, unless the contrary is shown. But, reasonableness does provide that safeguard against the landlord who just gets it wrong. The landlord may feel that it's particularly serious, but objectively, it isn't. I'm not suggesting that you want to encourage anti-social tenants or enormous rent arrears to stay around forever; I'm not suggesting that you want to make it harder to get rid of bad tenants, but possession claims aren't only brought against the worst of the worst. There are lots of people who have simply made a mistake and are on the receiving end of possession claims, and that's where the judicial discretion is very important.

[122] **John Griffiths:** Okay. Just one other thing on that, Chair, and I know we haven't got much time. In terms of the available defence to that being based on convention rights, I think obviously you have issues with that as well, and you cite an example where, perhaps, somebody with a disability could be evicted because of that disability, which would breach the Equality Act 2010, but not necessarily the Human Rights Act 1998, and so they might not have a defence as this legislation is currently phrased. But, you also, I think, state that there are other defences that possibly could be available. Could you expand on that as well?

10:00

[123] **Mr Bates:** Sure. The easiest example is what's called a public law defence. So, imagine that you have a policy—this is a case called *Barber v. Croydon*, from about four years ago in the Court of Appeal—that before you seek to evict people with mental health problems, you will always arrange for an assessment to be carried out. Because of the apparent seriousness of the behaviour, you decide not to follow that policy. On the face of it, you are acting unlawfully, because you are deviating from your own policy, and your policy doesn't permit deviations. That is what's called a public law defence, when you're doing something that is contrary to your published position, and, in those circumstances, the courts have held, since a case called *Wandsworth v. Winder*, that that's a defence and the court can refuse a possession claim. If you limit it simply to one category of defence, the convention right defence, you invite the argument from me when I appear for a landlord, 'Oh, well, that's all they're allowed to run'. So, these public law defences, they may have existed since 1981, but Wales has abolished them. Or Equality Act defences, they may have existed since the precursor, the Disability Discrimination Act 1995, but Wales has abolished those defences. That is the problem you will get into, because when we appear in court on behalf of our clients, our job is to argue for the best result for the client, not the best result for the law. I don't for a second think you intended to do this, but I will argue it when I am for a landlord.

[124] **John Griffiths:** Right, that was fine, Chair. Thanks.

[125] **Christine Chapman:** Gwyn.

[126] **Gwyn R. Price:** Good morning.

[127] **Mr Bates:** Good morning.

[128] **Gwyn R. Price:** Just on abandonment, you touched on human rights and disabilities, but could we have your views on the proposals on abandonment and, in particular, how the Bill can ensure vulnerable people are not exploited as a result of the proposals?

[129] **Mr Bates:** The abandonment procedures. Well, I think on the question of abandonment, with respect to the evidence you've heard so far, I'm not clear what problem this is trying to address. As the law stands at the moment—and I would suggest this is unobjectionable as a matter of principle—if I'm paying my rent, but I want to leave the property empty for a period of time, why shouldn't I be allowed to? If I'm paying you for it, you're getting all you bargained for. So, as long as there are no rent arrears building up, we're not entirely sure why there's a need to deal with abandonment in this way. If there are rent arrears, you've got grounds for possession.

[130] You may be surprised—or you may not be, I don't know—at the number of times my landlord clients and, indeed, the association's members as a whole ask, 'Can we just change the locks; I think he's abandoned it?'. It's much, much higher than you might think. The advice that's always given at the moment is, 'No, because if you get it wrong, you've unlawfully evicted someone and the damages could be quite significant.' People who are coming to talk to my members are generally quite clued-up landlords. There is a tier at the bottom end of the market who don't come and talk to people like my members and who don't come and talk to any lawyers. They're going to see this as an opportunity and, again, you are inviting litigation, because the key fight will be around: did they take the reasonable steps? There are going to be all manner of cases identifying what are 'reasonable steps'. For example, if you know the tenant is not actually residing there at the moment and you've got a suspicion as to where they might be, but you can't be sure, is it reasonable steps to have to send it to that suspicion of an address, or is it enough just to put a notice on the door? If the tenant is hospitalised, unbeknownst to anyone—they've been out and they've been in a car crash; they are in a different local authority area, so no-one there knows who they are and they've lost all of their identifying material—how are you ever going to take reasonable steps? The reasonable steps there—what are you going to have to do? Are you going to make enquiries of the health authorities in your area, or are you going to have to make enquiries of health authorities nationally? The difficult cases are going to give rise to litigation.

[131] What I don't understand is what problem this is trying to address. If the problem is people going away and not paying their rent, just get possession for rent arrears. You say to landlords, 'I'm afraid you've got to engage in active tenancy management'. The moment the arrears start getting to a level that you regard as unacceptable, you should be starting possession proceedings. Landlords can't properly turn around and say, 'I've been the victim of abandonment: there was £40,000 of arrears.' The answer to that is, 'No, there weren't £40,000 of arrears. You let it get to £40,000 of arrears, but you must've been on notice of the arrears much, much earlier.' In any sensible person's mind, they would've reached a possession threshold some time ago. So, we would respectfully question what's trying to be achieved. Focus more on that and then look at what legislation you need, because, to come back to your question, the bottom end of the market will exploit this.

[132] **Gwyn R. Price:** Thanks for that explanation. Thank you.

[133] **Mr Bates:** That's all right.

[134] **Christine Chapman:** Thank you. Peter.

[135] **Peter Black:** Thank you. One of the features of this Bill is it puts a lot more into the courts that wasn't there before, particularly in terms of tenants—and you've already referred to the issue about legal aid. I'm just wondering what your view is on whether there might be an alternative way of doing this, in terms of maybe beefing up the residential property tribunal and the mediation services they might offer, as an alternative. I know it'll lose your profession money, but in terms of giving those tenants more rights and better access to deal with this—apart obviously from possession law, which I think needs to go to the courts.

[136] **Mr Bates:** Sure. The downside of the residential property tribunal is, one, there will never be legal aid for it. Just conceptually, there isn't legal aid for tribunals. It's just the divide that we strike as a matter of legal policy in this country. But, two, the reality is landlords are represented. The majority of my work in this jurisdiction is in the RPT, and it is for landlords. I can count on the fingers of a deformed hand the number of times that tenants are represented as well. It will end up being very one-sided, because of the absence of any prospect of legal aid.

[137] You would need to think, I would suggest, about resourcing the RPT more, because you've seen from their evidence they do a relatively limited amount of pure rent work in this jurisdiction. There is a further difficulty with appeals, because appeals from the RPT are to the Upper Tribunal (Lands Chamber). The upper tribunal is definitely not set up to hear an increase in appeals. There's already a one-year backlog on appeals to the upper tribunal, so they're not set up to deal with more of it.

[138] There's also a purely nerdy legal point. The Upper Tribunal (Lands Chamber) isn't actually binding on the county court, so decisions that the upper tribunal made wouldn't be binding on the court because there's no hierarchy between them. So, you actually risk creating a degree of legal chaos in there. You can overcome those, but I don't think they're devolved matters, so you'd need to be talking to the Westminster Assembly to deal with changes in the binding-ness of decisions—I know 'binding-ness' isn't a word, but you know what I mean.

[139] The final point, at the risk of sounding like a lawyer's advocate, is you do de-skill housing law if you do that. If the tribunal becomes the primary source of legal rights, you are going to see more and more cases where, at best, one side is represented, and that does diminish the quality of law. The system that we have depends upon two parties arguing their case, and a judge making a decision. For all of those reasons, we wouldn't be particularly keen on transferring to the RPT.

[140] Mediation, by contrast, absolutely. You may have seen earlier this week there was a piece in *Inside Housing* suggesting that there should be mediation introduced as a standard term into all contracts, particularly so for low-level anti-social behaviour cases. Mediation strikes us as much less worrisome because, ultimately, parties can always say 'no' to it, and the sanction is in costs when it ends up in a court. If you unreasonably refuse to mediate, the judge can award costs against you. But, you can't be compelled to mediate. If you feel there's too much of a power imbalance, you can always walk away. Mediation we would have no problem with, because that would lend itself towards helping resolve problems yet keeping people in their tenancies. But the RPT we don't think is set up for this.

[141] **Peter Black:** Right. So, if you were to move down the mediation route, would that need to be on the face of the Bill, for guidance, or just something that the Government needs

to set up separately from the whole thing?

[142] **Mr Bates:** We suggested back in 2013, in our response to the first draft of the Bill, that you could think about mediation as, effectively, a mandatory mediation clause that both parties must think about and give due consideration to in certain circumstances. You didn't take that forward, so I presume you weren't interested in it then, but it's certainly something you could think about. Mediation doesn't have the same warning signals for us that the RPT would do. Certainly, for lower-level neighbour nuisance cases, it's better than using a court.

[143] **Peter Black:** Can I just ask one other quick question? In terms of the abolition of the six-month moratorium, you'll know that the Housing (Wales) Act 2014 allows local authorities to discharge their homelessness duty to the private sector, but to a six-month tenancy. Do you see any conflict between what's in that Act and what's in this Bill?

[144] **Mr Bates:** I've read the explanations you've been given, and I understand the explanations. What I don't understand is why you feel the need to get rid of the six-month moratorium, because I don't see that you've been given any evidence to suggest it's causing a problem. Will it give rise? Look, it will give rise to a case. Someone will litigate it, it will go to the Court of Appeal, and they will decide the answer to it. You've been told by the Minister and the Minister's assistants what they think the answer is and why there isn't attention. If the Court of Appeal agree, then great. All that means is that some local authority will be out of pocket for having had to fund the case to the Court of Appeal. Whether you regard that as a necessary piece of litigation or not is a matter for you. There are some cases that always need to fight. That strikes me as one that doesn't ever need to go to the Court of Appeal, but it will do, given the way you're drafting it at the moment. It'll only go once, but it will go, and someone's going to have to fund it.

[145] **Christine Chapman:** Can I thank you, Justin? It's been a very, very interesting session. We will send you a transcript of the meeting so that you can check it for factual inaccuracies. Thank you very much for attending.

[146] **Mr Bates:** And delete the word 'binding-ness', which is not a word. [*Laughter.*]

[147] **Mark Isherwood:** It is now. [*Laughter.*]

[148] **Christine Chapman:** Don't worry. We'll have a very short comfort break of about two minutes, and then the Minister will come in then. Okay?

*Gohiriwyd y cyfarfod rhwng 10:11 ac 10:17
The meeting adjourned between 10:11 and 10:17*

**Y Bil Rhentu Cartrefi (Cymru): Sesiwn Dystiolaeth 11—Y Gweinidog
Cymunedau a Threchu Tlodi
Renting Homes (Wales) Bill: Evidence Session 11—The Minister for
Communities and Tackling Poverty**

[149] **Christine Chapman:** Okay. This is the final evidence session on the Renting Homes (Wales) Bill. Could I welcome the Minister for Communities and Tackling Poverty, Lesley Griffiths AM, and your officials, Minister: Neil Buffin, senior lawyer, Legal Services, Welsh Government, and Simon White, Bill manager, Welsh Government. Thank you, Minister, for coming in. We have a lot of questions for you. As you know, this is a very complex Bill. We've taken a lot of evidence from various organisations.

[150] I just want to start off with my question. How do you think the Bill will improve the

position of tenants in the social and private sector in Wales?

[151] **The Minister for Communities and Tackling Poverty (Lesley Griffiths):** I think there are two aspects to this. There are going to be general improvements, which will be brought about by having legislation that really focuses on the contractual relationship between the landlord and the contract holder, and obviously the Bill will make many specific changes to current law that will improve the position of contract holders, for instance about succession rights and joint tenancies. So, I think it's about that simplifying the situation. There's a lot of very complex housing law, and it's about bringing all that together in one place, so I think it will benefit both tenants and landlords. It's about getting the balance right, and I accept that, so that they each know what their rights and obligations are.

[152] **Christine Chapman:** So, you think that is the sort of big message for this Bill, because it's quite complex, but the main, fundamental value of the Bill is simplification.

[153] **Lesley Griffiths:** Yes, I think that would be—. If somebody said to me, 'What are you hoping to gain from it?' I think that would be the main message.

[154] **Christine Chapman:** Okay. Thank you. Jocelyn.

[155] **Jocelyn Davies:** I noticed the word 'tenant' will go, and anybody who's a tenant is going to be a 'contract holder', but you've decided—. I guess that's to make it clear that you are part of a contract—'contract holder'—you want to get away from the idea of being a tenant. But why keep the term 'landlord'? Because that sounds a bit grand, 'landlord'. Have you considered—it just occurred to me then, as I was listening to your answer to the Chair; have you considered changing the term 'landlord'? I don't expect you to answer now, but will you consider—

[156] **Lesley Griffiths:** The answer is 'no', I haven't considered it, but perhaps it's—

[157] **Jocelyn Davies:** But obviously there's been some discussion and thought gone into changing 'tenant' to 'contract holder', so, 'contract holder', and on the other side is this 'lord' person.

[158] **Lesley Griffiths:** I'll ask Neil if they'd thought about it. I certainly hadn't.

[159] **Jocelyn Davies:** Is there a reason why you're sticking to 'landlord'?

[160] **Mr Buffin:** I was going to come in on the tenant point, and why that's changed to 'contract holder'. That is because, in the Bill, the occupation contracts sit on top of tenancies and licences, so it will apply both to tenants and licensees. So, we needed there a neutral term, as it were, that covered both instances, hence the move to 'contract holder'. I think, in terms of 'landlord', we weren't minded to change what's a tried and tested term.

[161] **Jocelyn Davies:** I mean, it just gives the impression, you know—people will be given the impression that, as the old tenant or as the new contract holder, they are party to a contract. It just seems that the other person seems to have superior status, just because of the terms, and perhaps you'd like to consider that. Are you thinking of adding anything else to the Bill, now that it has gone through the scrutiny process and you've been following that, that could improve the position of tenants/contract holders?

[162] **Lesley Griffiths:** There's nothing specific that has come to mind. Clearly, there are things that we have discussed and that you've had evidence on. I've been looking at what evidence you've been receiving and I don't think there's anything specific that's come forward, but I'm very happy to have discussions. I'll be meeting with opposition

spokespeople again to see if there's anything specific. I don't think anything specific has come forward that isn't in the Bill. I think there are issues of things in the Bill that could change.

[163] **Jocelyn Davies:** But, obviously, you've got an open mind about that.

[164] **Lesley Griffiths:** Absolutely.

[165] **Jocelyn Davies:** Something that I've mentioned to you before, of course, is the read-across—I think the old term used to be 'synergy', but 'read-across' I used—to the housing Act and the interaction with the code of practice and so on. Have you given any more thought to that?

[166] **Lesley Griffiths:** Yes. Certainly, the code of practice, which was issued following the Housing (Wales) Act 2014, about the standards relating to letting and managing private residential rental properties, that code, will obviously have to be amended to reflect the requirements following the enactment of this Bill. So, we'll be looking at that very closely. The code will refer landlords and agents to existing obligations that they have to comply with as a matter of housing law. That will include health and safety requirements, and issues around tenancy deposits.

[167] In terms of the Bill and the obligations to be included in the occupation contracts, an amended code, I think, would have to include requirements around fitness for human habitation—I think that's very important—repairing obligations and requirements about providing written statements of contract, because, obviously, that's not the current position.

[168] **Jocelyn Davies:** So, we will see a read-across to—

[169] **Lesley Griffiths:** We'll definitely see a read-across, yes. Also, obviously, if a licenced landlord or agent breaches the code of practice, they could be at risk of having their licence revoked.

[170] **Jocelyn Davies:** Because of not being a fit-and-proper person, because of those—. Depending on what the breach is, I guess.

[171] **Lesley Griffiths:** Yes.

[172] **Jocelyn Davies:** I know you've been following proceedings here, so you'll know that Community Housing Cymru and Cymorth have called for temporary accommodation to continue to be provided under excluded licences, and we've got considerable concerns around that. Do you want to give us your view on it, or are you still considering that?

[173] **Lesley Griffiths:** About the supported standard contracts?

[174] **Jocelyn Davies:** Yes.

[175] **Lesley Griffiths:** Absolutely. I'm still considering it, because I think this is a really important area. We know that, currently, people are being excluded, outside of the law. So, for instance—. Because I'm told from supported housing providers that this practice is going on outside of the law, so I think it's very important that what we've set out here about the temporary exclusion of 48 hours is happening and worse. So, the reason for having it in is to ensure that there is that protection.

[176] One place I think I probably have moved in relation to this is that I think guidance will have to be there on the exclusions. I think it's absolutely necessary that we do issue

guidance to show what we mean in that. I know that some of the evidence that you've had has said that it's very difficult to get a court injunction in the middle of the night, so this will give the providers—if somebody is behaving in a way that they think is a danger to other people, it will give them that 48 hours to deal with it within the law, because it's certainly happening now outside of the law.

[177] **Jocelyn Davies:** I mean one of the things that has concerned us about this particular procedure—and, as you say, it's happening now—is that we haven't been able to hear the voice of the tenant. We've only heard the voice of the providers and that concerns me a great deal, because I think we'd all acknowledge that the sector cannot be the voice; they can't be the landlord and the tenant at the same time when they're on opposite sides of an argument. And it has been very difficult for us to get that information.

[178] **Lesley Griffiths:** Okay. I'll ask Simon.

[179] **Mr White:** Yes. We've been conscious of that as well, through the development process leading up to the Bill. We've had lots of discussions with providers. Actually, some of those discussions have actually involved some residents as well who've come along to take part in those discussions. So, we've done our best to try to hear that voice. I do recognise what you're saying about the concern. There are some supported housing providers that would like provision to be totally outside the scope of the Bill. We have a big concern around that. There were comments that came back as well. You'll be aware that the original Law Commission model was that a licence could only go on for four months and then there would be a requirement for the supported standard contract to kick in. Some of the feedback we had from the sector was, 'Actually, four months is a bit too short. Could we have six months?' We sort of yielded on that point, I suppose, and said, 'Yes, we can see an argument for why six months might be more appropriate', not least because it fits in with how supported housing works in terms of nought to six-months contracts and then it tends to be six months to two years. So, we felt we've made sufficient added additional flexibility into the Bill that actually should meet those concerns for people who are saying, 'We want something to be—'. We don't think there's a ground really to say that any sort of provision should be totally outside of the Bill in terms of supported housing because of the concern that you would have some individuals who would just have no rights at all and would stay on a licence for as long as the provider wanted them to. So, I do think we've been flexible to accommodate some of the concerns, but we still feel that it should apply across the board to all supported housing.

[180] **Jocelyn Davies:** Thank you.

[181] **Christine Chapman:** I've got a number of supplementaries on the points raised so far. Peter first, then John, and I wanted to ask a question as well.

[182] **Peter Black:** Yes, on what you've just said, Minister, in terms of issuing guidance on exclusions, it strikes me that there are two issues with that. One is how do you enforce guidance against a private landlord, and, secondly, given that the exclusion happens, effectively, instantly for 48 hours, you can only really apply guidance retrospectively and the damage has already been done in terms of the tenant who has been excluded, or the issue has already been resolved. So, I'm just interested in what impact that guidance is likely to have, given that it is very difficult to enforce in the private sector.

[183] **Lesley Griffiths:** I'm sorry, Peter, I missed your first question.

[184] **Peter Black:** You've just said that you wanted to apply—that you were going to issue guidance in relation to exclusions, so, I'm interested in how that is going to be applied in respect of private landlords. How can you apply guidance to a private landlord? I can see how you can enforce in the social housing sector, but not on the private landlords. Of course,

because it would be applied retrospectively, what impact will that guidance have in any case?

[185] **Lesley Griffiths:** Okay. In relation to the first issue, we're talking about supported standard contracts. So, that wouldn't apply.

[186] **Peter Black:** No, you were talking about exclusions. You specifically referred to exclusions in terms of—

[187] **Lesley Griffiths:** In supported standard contracts.

[188] **Peter Black:** Well, I was going for the exclusions; you talked about the exclusion costs.

[189] **Lesley Griffiths:** Yes, within supported standard contracts. So, they don't, obviously, apply to the private rented sector.

[190] **Peter Black:** Okay. Right. Okay.

[191] **Lesley Griffiths:** So, that's the first point. In relation to guidance, I accept what you are saying. If, in retrospect—. Somebody is excluded for 48 hours, and you're talking about if there had been a review, for instance, and it was proved that that was incorrect.

[192] **Peter Black:** Yes.

[193] **Lesley Griffiths:** Well, I accept that that could happen, but that would help to look at future practice going forward. I mean, you wouldn't want it to happen, but I accept that that would happen. As I say, it's already going on out there. I think this is something that we are told, and I accept what Jocelyn is saying: it is providers that we've spoken to mostly, because they're the ones having to deal with these issues. So, because, for instance, I think you've been told that to involve the police would not be the best way forward, it's more important that they have that situation. So, in relation to the guidance, we need to take account of what was coming—. I'm mixing my words up. You know, the decision would have to be taken to exclude somebody. Is that what you mean, about what the guidance would be?

[194] **Peter Black:** Well, you said you were going to issue guidance as to how those would apply. But, of course, if exclusion takes place and it's been found to be against the guidance and applied incorrectly, what use is it?

[195] **Lesley Griffiths:** Well, I accept that, but, because this is happening already, I think it's better to have it within the law than outside the law.

[196] **Peter Black:** Is it happening already? Where's the evidence it is happening, and is it being done through injunctions or just arbitrarily?

[197] **Mr White:** Shall I come in?

[198] **Lesley Griffiths:** Yes.

10:30

[199] **Mr White:** From talking to providers, they have indicated that, because a lot of this provision is purely just done under a licence-based arrangement at the moment, it is possible that, either they might just terminate the licence, or they could exclude. But, you could also have a situation where—this is one of the complexities about the licence/tenancy situation—whilst the landlord may think it's a licence, actually the way in which the accommodation is

being provided could, in law, mean it's a tenancy. So, they could actually be excluding someone under a licence, and be potentially committing a criminal eviction, because actually what they have in place is a tenancy. But, what they do say is they need the ability to temporarily exclude, in limited situations, where there is a real risk to other residents, or to staff, because somebody's engaging in threatening behaviour, et cetera, and there is a need just to remove someone from the property immediately. Allowing for up to 48 hours would allow time to get in place an injunction, for example, if a longer period of exclusion would be needed. So, it is time-bound to 48 hours.

[200] In terms of what would be included in the guidance, we have heard evidence—I think it was Shelter Cymru's evidence—that they'd like to see reference to housing options, for example, and that's something that we absolutely recognise. I think the Welsh Local Government Association, when they were appearing before committee, accepted that, if someone was excluded on a 48-hour basis, that individual could receive support from the local authority from its homelessness responsibilities. So, we do feel, taken together with other actions out there, that actually this can be managed in a sensible way.

[201] **Peter Black:** We've just heard evidence to say that, as to that 48-hour exclusion, there are other ways of doing it already within the law, and you don't really need this mechanism there. But, putting that to one side, I'm just interested to hear you say it's been done already, and that's presumably by social registered landlords.

[202] **Lesley Griffiths:** Yes.

[203] **Peter Black:** So, are there any incidences of references to the ombudsman, for example, in terms of where this has been done incorrectly?

[204] **Mr White:** I think one of the issues is, because you are talking about a vulnerable client group, they're not always going to come to light. So, what I would say is, I suppose it's hearsay, and some providers are aware of what's happening—in other areas, they've heard of this happening—but it's not the sort of thing that tends to come out, because individuals are not challenging it. So, what we want to do is enable it to take place within the law, but in very limited and defined circumstances, where it's absolutely essential for the protection of other residents and staff.

[205] **Peter Black:** So, could we see these cases where you're aware of this happening?

[206] **Mr White:** Well, as I say, it's more hearsay—

[207] **Peter Black:** There's no evidence.

[208] **Mr White:** I couldn't actually give you individual examples of it, because it tends to be people have heard this is what was happening with another provider. It's very hard to actually pin down that type of activity.

[209] **Peter Black:** So, what you're doing here is you're legitimising what you've heard in hearsay.

[210] **Mr White:** What I think we're doing is providing a mechanism to provide for the safety of residents and staff, where it's absolutely necessary to do so, and to allow that to happen within the law, for a very short time.

[211] **Christine Chapman:** I know John wants to come in, but, first of all, we had evidence from the countryside landlords association suggesting that rural tenancies to service occupiers should be excluded. I just wonder whether you could say anything about that.

[212] **Mr White:** Sorry, I didn't—

[213] **Christine Chapman:** Sorry, we had evidence from the Country Land and Business Association suggesting that rural tenancies to service occupiers should be excluded. I just wonder whether you could say anything about that. It was a few weeks ago.

[214] **Mr White:** Well, we wouldn't agree with that. One of the reasons for removing the six-month moratorium is actually to allow circumstances like service occupiers to actually be brought within the scope of the Bill. So, we don't feel they need to be excluded. We can understand how, under current legislation, where you have difficulty in getting possession within six months—you know, it may take more than six months—that that is a reason for exclusion. We don't think they need to be excluded under the Bill without the moratorium.

[215] **Christine Chapman:** Right, okay. John, you had one.

[216] **John Griffiths:** Just coming back to the 48-hour exclusion, I was going to ask to what extent we know whether or not people are actually ending up on the streets at the moment, under what's currently happening, but, if what we know is hearsay, perhaps I'd better not push that too far, if there isn't actual evidence. But, in terms of what would be put in place—the guidance, perhaps—could you reassure the committee then, Lesley, that under what you would establish, we can be confident that vulnerable people wouldn't end up on the streets—you know, that there would be some provision for them that put a roof over their head?

[217] **Lesley Griffiths:** The reasons, I think, we would have to have guidance is we need to make it very clear what should happen. So, for instance—and I appreciate that a lot of it is what you would call 'hearsay'—I've talked to Supporting People providers where one provider has assisted another provider, which I think is actually good practice. So, somebody has to be excluded, and they've taken that person into their Supporting People housing, for instance. So, I think, within the guidance, we could make that very clear, and what Simon was saying about—. I know people have given evidence to you that there should be housing options, and maybe it should be a matter of course that somebody in that situation should be referred to the local authority—homelessness services, for instance. So, I think that the reason for having guidance is that we can make it very clear what we think should happen. The 48 hours can only happen three times, and then if they wanted to go to court for an injunction at any time, they could do, but I think it's about dealing with something that's very instant. Probably, again, it's only hearsay, but it very often happens in the middle of the night, where it's very difficult to get a court in or to get a judge out, et cetera. I appreciate there are judges on call, et cetera, but I still think, from what I am being told, that it is difficult to go to court in the middle of the night, and, for the safety of other residents and staff, somebody has to be removed. As I say, we know it's happening outside the law, and I think this is about setting very specific boundaries. Within the guidance, we can do that as well and be very clear about what we expect to happen.

[218] **Christine Chapman:** Okay. Again, I know Gwyn had a supplementary to this, so I'll bring Gwyn in here.

[219] **Gwyn R. Price:** Just following on from the question I was going to ask, should the Bill require an excluded person to be referred to the local authority?

[220] **Lesley Griffiths:** That's something I'm very happy to look at.

[221] **Gwyn R. Price:** And whether the Housing (Wales) Act 2014 needs to be amended to ensure an excluded contract holder is entitled to temporary accommodation.

[222] **Lesley Griffiths:** Yes, presumably under section—

[223] **Mr White:** It's potentially something that could be addressed through the guidance.

[224] **Gwyn R. Price:** I think we need to look at it.

[225] **Lesley Griffiths:** I think it could be. I think we need to look at what we've currently got with other homelessness legislation, but, certainly, we'd be very happy to consider that.

[226] **Christine Chapman:** Okay, thank you. Before I move on to Rhodri, this is quite a while ago, but I did have one question. Neil mentioned this earlier, when he said that the Bill sits on top of tenancies and licences. I just wonder whether you could clarify this and how that would affect the common law.

[227] **Mr Buffin:** Thank you. I don't see it affecting the common law; really, the Bill is about the occupation arrangements. But, in terms of the way land is held, it will still be held under tenancies or licences, but the Bill will provide what the obligations of the parties are and what they can do. So, really, the Bill addresses the way that people occupy their homes under rental agreements.

[228] **Christine Chapman:** Okay, thank you. All right, I'll move on to Rhodri now.

[229] **Rhodri Glyn Thomas:** I ddychwelyd at y gwaharddiadau dros dro yma, o ystyried nad oes yna ddim tystiolaeth sylfaenol—rydych yn sôn am dystiolaeth sydd wedi ei seilio ar yr hyn sydd wedi cael ei ddweud wrthyhych chi—a ydy e'n eich poeni chi fod Cymdeithas y Gyfraith a hefyd yr ymarferwyr cyfraith tai yn anghytuno'n llwyr â chi ar y mater yma, ac yn credu nad oes angen y gwaharddiadau yma o gwbl?

Rhodri Glyn Thomas: To return to these temporary exclusions, considering the fact that there is no basic evidence—you talk about the evidence that is based on hearsay—does it concern you that the Law Society and housing law practitioners disagree with you entirely on this matter, and believe that these exclusions aren't needed at all?

[230] **Lesley Griffiths:** Clearly, I've listened to what they say, and we refer to hearsay, but you know when you're out there talking to providers—. I have spoken to residents within Supporting People, so I am fully aware that it is happening. So, whilst I accept I can't produce individual cases for you, I know it's happening out there. And, another thing is that without having this exclusion in the Bill, I think it's again less likely that these very vulnerable people will be offered a contract, and we have to be looking to support these people, who are some of our most vulnerable. As John mentioned, we don't want to see them homeless. So, whilst I of course listen to what they say, for me, personally, I think, based on the discussions I've had, and the discussions my predecessor had had—and, obviously, Simon and Neil, I hope, will support this—because I know it's happening, because I know it's happening outside the law, and because I know, because I'm told, that support providers are assisting each other in this area, I think to have this in the Bill—. As I said, I have moved, since we started scrutiny, to thinking that guidance is absolutely going to be necessary to set those boundaries and to be very clear what we're expecting in this area, I think it is right that it's in the Bill.

[231] **Rhodri Glyn Thomas:** Os felly, pam wnaethoch chi benderfynu peidio â chyfyngu'r hawl i weithredu fel hyn i aelod uwch o'r staff, oherwydd, yn ôl y geiriad fel y mae, fe allai unrhyw aelod o staff weithredu hyn?

Rhodri Glyn Thomas: If that's the case, why did you decide not to restrict the right to operate in this manner to a senior member of staff, because, according to the wording as it stands, any member of staff could act in this regard?

[232] **Lesley Griffiths:** Again, from my discussions, you know, out there in the sector, sometimes in the middle of the night it's not a very senior member of staff who's available. But, again, we can put in guidance who we think should be the person to do so. So, again, we can look at that.

[233] **Rhodri Glyn Thomas:** Mae yna beryg bod eich cyfarwyddyd chi yn mynd i fod yn fwy na'r Bil ei hunan, os ydych yn parhau i roi pob peth mewn cyfarwyddyd. Os yw hyn mor bwysig, pam wnaethoch chi benderfynu peidio â'i roi ar wyneb y Bil?

Rhodri Glyn Thomas: There is a danger that your guidance is going to be more extensive than the Bill itself, if you continue to put everything in that guidance. If this is so important, why did you decide to not put it on the face of the Bill?

[234] **Lesley Griffiths:** Well, I think I mentioned that I have moved greatly into thinking that guidance is necessary. I think, when I picked up this Bill, that wasn't part of it, but it's because of the scrutiny and the evidence that you've had, and the discussions I've had, that I think guidance is absolutely necessary.

[235] **Rhodri Glyn Thomas:** A ydych chi'n mynd i ystyried ei roi ar wyneb y Bil?

Rhodri Glyn Thomas: Will you consider putting it on the face of the Bill?

[236] **Lesley Griffiths:** Well, I can have a look at that, certainly. Although, I am told by the lawyer that details of this nature wouldn't usually be on the face of the Bill. But, it's certainly something I'm very happy to look at, because I have moved significantly in this area.

[237] **Christine Chapman:** Minister, I'm just wondering, obviously, whether you've got an assessment of how often this would happen. I know you say that, obviously, we've heard evidence that this sort of things does happen, but I just wonder about the frequency of it. Have you considered whether anyone should be excluded in the middle of the night, you know, with the implications of all that?

[238] **Lesley Griffiths:** I had a discussion at one setting I visited and I was told it had happened twice in a year, and that was just my discussion with one provider.

[239] **Christine Chapman:** With the same person or—?

[240] **Lesley Griffiths:** No; two different people.

[241] **Christine Chapman:** Right. Okay.

[242] **Rhodri Glyn Thomas:** Pe bai digwyddiad felly'n digwydd ynghanol nos, onid yr arferiad fyddai galw'r heddlu i ddelio â'r sefyllfa?

Rhodri Glyn Thomas: If such an event were to occur in the middle of the night, shouldn't the practice be to call the police to deal with the situation?

[243] **Lesley Griffiths:** Well, if it was that serious, but, I think you've had evidence saying that the last thing some of these—

[244] **Rhodri Glyn Thomas:** Well, it's got to be pretty serious if you want to exclude them.

[245] **Lesley Griffiths:** But, I think you've had evidence to say the last thing some of these people need is the involvement of the police. So, it's a cooling-off period. I think that's what we're trying to clarify here. But, sometimes, it's just a cooling off—. There's a suggestion that somebody could be moved to another part of the building, if the building was that big,

and, again, providers have said to me that that probably wouldn't be the best way forward. It would be better if that person could go to another supported housing unit.

[246] **Rhodri Glyn Thomas:** A ydych chi'n gwbl dawl eich meddwl nad oes modd camddefnyddio'r pŵer yma? **Rhodri Glyn Thomas:** Are you entirely content that there is no way of misusing this power?

[247] **Lesley Griffiths:** I think that's a very important point. I think the fact that it can only be used three times is to make sure that that doesn't happen, and that, you know, somebody isn't being victimised, for want of a better word, time after time. I think, again, that's why we do need guidance, to make sure that the boundaries are set very clearly and the reasons for doing so.

[248] **Rhodri Glyn Thomas:** Ocê, diolch. **Rhodri Glyn Thomas:** Okay, thank you.

[249] **Christine Chapman:** Thank you. Alun.

[250] **Alun Davies:** Thank you very much. We've discussed, Minister, the proposal to—and I think, perhaps, this is the best way to put it—address the legal obstacles to 16 and 17-year-olds from holding a contract under the Bill. The evidence we've received on this has been probably mixed, but usually heavily qualified, if you read through the transcripts, in that people said that this is a very good proposal. A lawyer this morning described clarifying the law for public authorities as an example of that. I think it's probably fair to say that it hasn't received unqualified welcome across the board, and particularly from landlords in the private rental sector. Are you sure that this is actually a means of answering a question rather than simply a gimmick?

10:45

[251] **Lesley Griffiths:** I certainly don't think it's a gimmick; 16 and 17-year-olds can get married, so where would they live? I think it's really important that we look at this age group. I think it was Mike Hedges who raised something yesterday with me in a different statement in the Chamber about people sofa surfing and I think that this age group, certainly from talking to local authorities, is an age group that, unfortunately, sofa surfs. So, again, it's about having a very new framework for 16 and 17-year-olds. I know there were concerns about whether they would be able to have contracts with utilities and Simon's met with both British Gas and, I think, Welsh Water—certainly water providers—to clarify this. There are no legal obstacles to them doing so, so I think that's something that I can reassure Members on because I know that was raised with me when I first came for a scrutiny session. I do think the provision has widespread support. Certainly I've looked at the evidence that you've received. I know that the National Union of Students were very supportive and I think the Welsh tenants were very strongly in support of it. I think that, without the Bill introducing that flexibility, there will never be any move to enable this to be taken any further. So, it's about having that very new framework for local authorities, for the private rented sector and for housing associations, in particular, to be able to give occupation contracts to 16 and 17-year-olds.

[252] **Christine Chapman:** Alun, before you come in—and I will come back to you—Rhodri, did you have a supplementary on one of the points raised?

[253] **Rhodri Glyn Thomas:** Beth sydd yn codi o'r dystiolaeth yw nad ydym yn gweld yn union lle mae'r alwad yma'n dod i sicrhau hawliau tenantiaeth i bobl ifanc 16 ac 17 oed. Yr awgrym rydym ni wedi ei dderbyn, ac fe'i **Rhodri Glyn Thomas:** What comes from the evidence is that we don't see exactly where this demand is coming from to ensure tenancy rights for young people of 16 and 17 years of age. The suggestion that we've

cafwyd yn y drafodaeth gynharach y bore yma, ydy bod hyn yn dod oddi wrth awdurdodau lleol sydd yn ymwybodol o'u cyfrifoldebau ar gyfer pobl ifanc o'r oedran yma ac mae'n ffordd rwydd iawn iddyn nhw drosglwyddo'r cyfrifoldeb hwnnw. Ai dim ond oddi wrth awdurdodau lleol y mae'r alwad hon wedi dod?

received, and that arose in the discussion earlier this morning, is that this comes from local authorities, which are aware of their responsibilities for young people of this age, and that it's an easy way for them to transfer that responsibility. Is this demand only coming from local authorities?

[254] **Lesley Griffiths:** No. I agree: I don't think the private rented sector has huge demands from 16 and 17-year-olds, but it's about giving them the ability to be able to offer 16 and 17-year-olds contracts, if that's what they needed. I think it is more local authorities, but, you know, there are very specific duties for local authorities in relation to children and, obviously, this is nothing to do with that—we're not seeking to change any other law. So, I'm not saying that there's a huge demand, but I just think that this is the right Bill in which to do it and if we don't make a move now, I don't know when we would.

[255] **Rhodri Glyn Thomas:** Ond a oes yna unrhyw berygl y byddai hyn yn arwain at fodd i awdurdodau lleol osgoi eu cyfrifoldeb statudol tuag at y bobl ifanc yma?

Rhodri Glyn Thomas: But is there any danger that this would lead to being a way for local authorities to avoid their statutory responsibilities towards these young people?

[256] **Lesley Griffiths:** No, absolutely not. It doesn't remove any responsibilities for care or housing a local authority may have to these people under any other legislation.

[257] **Christine Chapman:** Okay. On this point, Jocelyn—

[258] **Mr White:** Just to clarify one of the issues about the private rented sector, I think it was the Residential Landlords Association in their evidence—I think they talked about the fact that sometimes they will have students coming from Scotland and they will finish school at a younger age, so they would be under 18. So, yes, there isn't going to be a large number of cases, but there are some cases where just removing this barrier will enable something. So, ultimately, it will be down to a private landlord to decide if they wanted to go ahead with this, but at the moment, in a situation where it made perfect sense—and the NUS supported it—then it would allow it.

[259] **Alun Davies:** Surely, you're not arguing that the rationale for changing the law is to accommodate the needs of students coming down from Scotland.

[260] **Mr White:** That's an example.

[261] **Alun Davies:** My understanding, and I think the understanding of the committee, was that the NUS expressed some concerns about this. They used the word 'vulnerability' in discussing 18-year-old students taking on contracts and, by extension, if an 18-year-old exhibits vulnerability due to a lack of life experience and the rest of it, then a 17-year-old's and 16-year-old's vulnerability will be greater, not lesser. So, I would be surprised if a Government were reading evidence in that particular way.

[262] In terms of what we've heard, probably the median response has been that this would be okay if it's qualified and if it addresses issues of support for people entering into those contracts. The example that you've given, Minister, is mainly to do with young people coming out of care and young people who have particular backgrounds that mean that they do need to live independently at 16 and not later. So, if we are dealing with a group or a cohort of people who come from very difficult backgrounds and will have significant vulnerabilities, is it not wholly irresponsible then to give these people, or to enable these people to take on,

responsibilities for which they have little life experience, and to do that without qualification or support?

[263] **Lesley Griffiths:** No, I don't think it is. As I say, I don't think there's a huge demand, but I think this is the right Bill and the right vehicle to provide this ability. I mentioned in my opening remarks, people can get married at 16 and 17. We have to realise that we're looking at—the Assembly's got a consultation now on—voting for 16-year-olds. Things are changing towards 16 and 17-year-olds. So, I think it's about landlords and local authorities knowing very clearly what they're able to do for 16 and 17 year-olds. There is obviously provision for vulnerable 16 and 17-year-olds within the Supporting People programme. I'm not saying—. What I did say doesn't remove responsibilities for care or housing a local authority has for these people under any legislation. But, this is just something that will enable 16 and 17-year-olds, if they choose, to have a contract.

[264] **Alun Davies:** Or, if they're forced to choose that. You do not see any need for a qualification on the face of the legislation on the exercise of this right.

[265] **Lesley Griffiths:** It's something that we've discussed. We're happy with the way it's drafted at the current time. We could certainly consider—

[266] **Mr Buffin:** Really, it is an empowering provision. It is exercisable where, for example, a local authority felt that entering into arrangements—perhaps unwittingly as well, under the Trusts of Land and Appointment of Trustees Act 1996—was not the most appropriate way of dealing with things. So, it's introducing an alternative basis for enabling young people to access housing.

[267] **Alun Davies:** Okay. It would be useful, perhaps, if the Minister put on the record the conversations with, I think you said, Welsh Water and British Gas.

[268] **Lesley Griffiths:** Yes; happy to do that.

[269] **Alun Davies:** Could you put that on the record—the conversations that you've had and the responses from them?

[270] **Mr White:** Yes. My colleagues spoke to British Gas, and they confirmed that, yes, they can provide contracts to 16 and 17-year-olds. I personally spoke to Welsh Water yesterday and they confirmed the same—that a 16 and 17-year-old can have a contract with them for a normal contract.

[271] **Alun Davies:** Of course, 'can' is different to 'would'.

[272] **Mr White:** They would offer a contract to a 16 or 17-year-old.

[273] **Alun Davies:** So, that's different to your earlier—you said they 'can' have a contract. It's different. In law, you'd say there's 'no impediment'. But, whether they would actually offer a contract, of course, is different.

[274] **Mr White:** Yes, they would.

[275] **Christine Chapman:** I've got Jocelyn, then Mike.

[276] **Jocelyn Davies:** Just a clarification on that: is that a contract for a credit meter or a pre-payment meter, in terms of British Gas?

[277] **Mr White:** It may well be a pre-payment meter. I didn't have that discussion.

[278] **Jocelyn Davies:** Well, there you are. The most expensive, and you've got to pay for it upfront.

[279] **Mr White:** But, if it's the only option that was available, then—

[280] **Jocelyn Davies:** Well, there you are. I think that does make a huge difference. What we heard earlier was that allowing 16 and 17-year-olds to enter a tenancy would allow the local authority to evict them. That's what this does. It allows the local authority to be able to evict them without bringing the trust to an end. Is it local authorities that are pushing for this measure?

[281] **Lesley Griffiths:** Certainly, not local authorities; they haven't sort of pushed with me. I actually had a discussion with a private landlord about it, because I'd had no discussions previously. But, as I say, this isn't about removing any of the other responsibilities that local authorities have to this age group under any other legislation. In fact, care leavers is an issue that I have been very concerned about since I've been in portfolio, because—again, speaking to a young person—when they become 18, when they're in care, to me it should be a very smooth transition from being in the care of a local authority to then, at 18, go into housing. There doesn't seem to be that. Actually, I had a personal case in my own constituency as an Assembly Member where somebody was then made homeless. So, if anything, I would hope—. I can't see how local authorities would not recognise that this is not usurping any of the other previous legislation. I don't think that local authorities would push on that basis.

[282] **Jocelyn Davies:** Well, that's what we heard earlier from the housing law expert: that what this, in effect, would do is allow a local authority to evict somebody that they couldn't evict now for rent arrears until—

[283] **Alun Davies:** Neither private landlords nor local authorities are seeking this change in the law.

[284] **Lesley Griffiths:** I certainly haven't been pushed on it. I'll ask Simon to come in, who was obviously at the start of the process of this. But if I could just say: I think this is about enabling landlords and local authorities to provide housing for 16 and 17-year-olds. I think we all have to accept that there is a movement—I mentioned voting, and the consultation on voting—for enabling 16 and 17-year-olds to have far more legal sort of responsibilities. So, whilst I haven't personally been pushed, I think I'll bring Simon in to say about conversations with stakeholders, maybe, in the preparation of this Bill.

[285] **Mr White:** Absolutely. This is something that was in the original Law Commission proposals. So, it's not something that we've inserted as a proposal specifically from the Welsh Government's perspective. We consulted on this in the White Paper, and there was strong support for it in the responses that came back. Yes, local authorities support it, but we also have seen support from the National Union of Students, and Welsh tenants have supported it as well. So, we think—

[286] **Alun Davies:** [*Inaudible.*]

[287] **Mr White:** Well, that was my reading of the transcript of their evidence. So, we do think there is a case for including it, in line with the Law Commission's original recommendations. On the issue about landlords being able to end a contract, they could still end the contract. At the moment, they would just need to end the trust first; so, it doesn't sort of totally prevent that happening. So, I think it doesn't provide a huge degree of additional security in that sense. So, yes, I think it's something that has been generally welcomed in all the discussions that we've had. The office of the children's commissioner, in evidence to the

White Paper, did say that they wouldn't want to remove any other support or any other duties, and, clearly, we're not removing any other duties—duties under the Children Act, or duties under other homelessness legislation. Those for 16 and 17-year-olds will absolutely remain. So, we're not reducing any other responsibilities; we're just removing a particular legal impediment to this arrangement at the moment.

[288] **Christine Chapman:** Okay. Neil.

[289] **Mr Buffin:** Yes. Thank you. Just to add, as well, it does remove legal uncertainty in that, currently, there is practice where local authorities or others will think they're issuing tenancies for 16 and 17-year-olds when, in fact, they're not. There's legal confusion around that area. This helps to remove that legal confusion by giving a direct route for letting out properties under occupation contracts.

[290] **Christine Chapman:** Sorry; Alun, did you want to come in? No. Mike.

[291] **Mike Hedges:** The Minister said that 16 and 17-year-olds can get married, but they have to do that with parental consent, don't they?

[292] **Lesley Griffiths:** Yes.

[293] **Mike Hedges:** And you see things moving downwards towards 16 and 17-year-olds in terms of voting, but tobacco has moved the other way, hasn't it, up to 18? The point I was going to make, though, was: why is this better than the current system? I know that the lawyer has a view. I'll aim this at the Minister, because the lawyers' views are often legal. To somebody who is 16 or 17, who currently is living in either housing association, council or privately rented accommodation—. There's quite a lot of them, although not huge numbers, but it's certainly not unusual for them to be living in that accommodation, which is either supported by social services, which is probably the main supporter, but also, for those who have got married at 16 or 17, by one or more of the parents. Why would they be better off having their own tenancy rather than having one supported by the social services or by a parent?

11:00

[294] **Lesley Griffiths:** As I say, this is not about taking away any of the local authority's other obligations. This is about the ability for landlords, and local authorities, to provide 16 and 17-year-olds with tenancies, if required. I accept what you're saying about the fact you can only get married with the consent of a parent—I absolutely accept that. But, there are other issues, as well. What about if a parent dies? It's about succession rights; that's within this Bill also—16 and 17-year-olds could have succession rights, which they haven't got at the current time. I just think: this is the Bill, it's very progressive, and it's the right way to do it now.

[295] **Mike Hedges:** I'll finish on this. If a 16-year-old was left on their own, following a parental death, I'd much prefer social services to be intervening, social services to be holding the tenancy for them, until they reach the age of 18, rather than saying to those who've just a lost a parent, 'You've got the tenancy to this house—good luck'.

[296] **Lesley Griffiths:** Well, no, there would have to be support, I absolutely accept that, if that was the case. But I'm just trying to say that I think that this is a Bill that will enable 16 and 17-year-olds to be able to access housing in a way that they can't at the current time.

[297] **Alun Davies:** But that support is not in the Bill, or in the legislation.

[298] **Mr White:** It's in other legislation.

[299] **Lesley Griffiths:** It's in other legislation, though, isn't it, that's what I'm saying. There are other duties; the local authorities have other duties within care and social services legislation. This does not change any of the current legislation.

[300] **Alun Davies:** But this right isn't qualified in any way.

[301] **Lesley Griffiths:** On the face of the Bill?

[302] **Alun Davies:** Yes.

[303] **Lesley Griffiths:** No, but as I say, Neil—. And you're right, the lawyer has got a different view, it wouldn't be on the nature, but it's something that I'm very happy to consider.

[304] **Christine Chapman:** Okay. Now, I've got Mark wanting to come in on this point.

[305] **Mark Isherwood:** Yes, just a short point. Under current arrangements, where the local authority will hold the property on trust for the young person, the young person can repudiate contract, leave premises, stop paying rent. What advice have you received to indicate your proposals in this Bill would change that, and a young person could not challenge through courts, and take similar action?

[306] **Lesley Griffiths:** Do you want to answer that, Neil?

[307] **Mr Buffin:** The Bill provides that a young person can't repudiate the contract just on the basis that they entered into it as a young person. So, there is provision in the Bill dealing with that particular issue.

[308] **Mark Isherwood:** And you're confident that's not challengeable.

[309] **Mr Buffin:** That will be in the primary legislation.

[310] **Peter Black:** They can't repudiate the tenancy.

[311] **Mr Buffin:** They can't repudiate the occupation contract.

[312] **Peter Black:** Yes, but in terms of other contracts, they could.

[313] **Mr Buffin:** I'm sorry?

[314] **Peter Black:** But in terms of other contracts—in terms of utilities, et cetera—they could.

[315] **Mr Buffin:** Well, if their contracts are necessities, then they do have to meet those contractual obligations. I mean, if they did repudiate it, such that they were unable to occupy the tenancy, then some other step would have to be considered.

[316] **Christine Chapman:** Mark, have you finished?

[317] **Mark Isherwood:** Yes, thank you.

[318] **Christine Chapman:** Okay. John, I think you had some questions.

[319] **John Griffiths:** Yes, still on the subject of minors, the legal basis for obtaining an injunction against a minor, we've heard that courts have expressed reluctance to countenance such granting of an injunction. So, are you confident that there will be that solid legal basis in terms of obtaining an injunction against a minor, under this legislation?

[320] **Lesley Griffiths:** Yes, I am satisfied.

[321] **Christine Chapman:** Okay. I just want to move on to the six-month moratorium issues. Mark, I think you had some questions.

[322] **Mark Isherwood:** Thank you, yes. While witnesses such as Welsh Tenants expressed concern that removing the six-month moratorium could encourage shorter term lets and increase costs to the contract holders, the landlords' representatives indicated the contrary—that this would enable them to enhance supply for the harder to home, and that there's a disincentive for them to go for shorter term contracts, or quicker evictions, because that's additional cost to them and would add to the number of months before they'd start generating a return on their investment. So, what is your basis for believing that private landlords wouldn't simply offer shorter tenancies, if the moratorium is removed, in accordance with the concerns expressed by Welsh Tenants?

[323] **Lesley Griffiths:** The primary aim of removing the moratorium is to encourage landlords to rent to individuals who are unlikely to be able to rent at the present time, and to facilitate short-term renting. So, for example, for somebody in temporary work, and I think the rural issue that was raised before is a classic example, or for education purposes. Again, you've had very mixed reactions from the evidence that you've gained on this. The whole purpose for me in removing the six-month moratorium is to have that effect. I think what private landlords have said to us, and what they've said to the committee, absolutely reinforces that belief. I think that if this is enacted in the Bill, we would need to have very robust evaluation in place because I would hope to see a lot of impacts and benefits and I would want to see that demonstrated very clearly. Certainly talking to the WLGA, and I know you took evidence from the WLGA, I think they accept also that removing the moratorium will assist them in meeting their section 73 duties in securing accommodation for homeless people.

[324] **Mark Isherwood:** Thank you. The landlords' organisations told us that longer term tenancies are in their best interest. They, in an ideal world, will favour longer term tenancies because they are better for their own costs and the generation of profit for their businesses. How do you respond to the similar proposals made by both Shelter Cymru and the Residential Landlords Association that a six-month probationary contract, followed by fixed contracts of anything from a few months up to five years, might be a way forward here?

[325] **Lesley Griffiths:** I think you're right about the longer term; I certainly think landlords would prefer longer terms. They want to keep their tenants for as long as possible. When you look at the number of tenants who end a contract and the number of landlords—I think it's something like 90 per cent tenants and 10 per cent landlords—you can see clearly why they would. I'm very happy to consider the suggestions that have been made—they've been made to me also. Again, having spoken to opposition spokespeople, I know that Peter Black, particularly, is very keen on taking that point forward, so I am very happy to have further discussions now, in the scrutiny process.

[326] **Christine Chapman:** Peter wanted to come in on that point.

[327] **Peter Black:** I just wanted to clarify what you said about the WLGA saying that it would help section 73 obligations in terms of removing the six-month moratorium. My understanding of the Act—it is most probably in section 75, actually—that they have to have

a six-month tenancy when they discharge to the private sector under homelessness. How, therefore, is removing a six-month tenancy helping them to secure a six-month tenancy?

[328] **Lesley Griffiths:** In relation to—. They've got the section 75 duty and the section 73 duty and I think it's about a quarter of people are expected to receive support under section 75 and 75 per cent under section 73. So, you're absolutely right—that six-month tenancy for section 75 will remain.

[329] **Peter Black:** So, how does that tie in with the removal of the moratorium?

[330] **Lesley Griffiths:** It won't affect that.

[331] **Peter Black:** But you've just got rid of six-month tenancies.

[332] **Lesley Griffiths:** Sorry?

[333] **Peter Black:** You've just abolished six-month tenancies by taking away the moratorium.

[334] **Lesley Griffiths:** Not for them.

[335] **Christine Chapman:** Simon.

[336] **Mr White:** Just to clarify, the section 75 duty does require there to be a fixed-term contract of at least six months in place. That's written in section 75. So, therefore, that will still be a requirement. The Housing (Wales) Act 2014 will be amended, if this Bill goes through, to say that it will. Effectively, a section 75 duty would be met by a fixed-term standard contract of at least six months, instead of an assured shorthold tenancy of at least six months. So, that will apply in section 75.

[337] In terms of the section 73 duty, which, as the Minister says, will probably relate to about 75 per cent of the people who are coming through the homelessness prevention route, the section 73 duty requires there to be—I think the phrasing is that the local authority has to be content that the accommodation is likely to be available for at least six months. There is not the same requirement for section 73 for a six-month fixed-term contract. So, therefore, for three quarters of the people who are coming through the prevention route, not having the moratorium in place would actually make it more attractive to private landlords to give accommodation to the people who are being supported through the section 73 duty. For those who go on to the section 75 duty, for those in priority need, there will still be that protection of a six-month contract in place. Local authorities work with landlords and that is an area that I know colleagues are working on now with landlords, in terms of developing improved working relationships and developing links between local authorities and private landlords in order to meet the section 75 discharge duty. So, I think we can be confident that that will still be capable of being met.

[338] **Peter Black:** Is section 75 meant to be a follow-on from section 73 or is it meant to be an alternative to section 73?

[339] **Mr White:** It's a follow-on.

[340] **Peter Black:** Right. So, once someone has been housed under section 73 and that duty is then met, and that duty comes to an end, they then have to find them a six-month tenancy in the private rented sector. That's basically what it boils down to.

[341] **Mr White:** I don't think so because not everyone would be entitled to go through to

the section 75 duty.

[342] **Peter Black:** Right.

[343] **Mr White:** So, for those who are entitled, it's quite possible that the arrangements made under the section 73 duty will be successful and continue to last and they won't come back into the system at all. I think local authorities, in developing their approach to this, will obviously have regard to the fact that, if an individual is in priority need, they could well end up coming through for the section 75 duty, so they will be particularly alert to the need to make sure there is a strong likelihood of any solution under section 73 being a lasting solution. But they will come through section 73, potentially, to section 75 and get a minimum fixed term contract of at least six months.

[344] **Peter Black:** Did you just say that this Bill will effectively amend the Housing (Wales) Act 2014?

[345] **Mr White:** Only to the extent that it will change the reference to an assured shorthold tenancy—

[346] **Peter Black:** But there's actually a reference in here to amending it—

[347] **Mr Buffin:** We'd need to consider the amendments to the housing Act—

[348] **Peter Black:** Right. So, you're thinking about bringing an amendment forward, but it's actually to clarify the—

[349] **Mr Buffin:** We would need to consider it in the light of the Bill, yes.

[350] **Peter Black:** Right. Because, at the moment, you're relying on a contract as opposed to a standard tenancy in terms of section 75.

[351] **Mr White:** It would be a fixed-term standard contract for six months for section 75—

[352] **Peter Black:** But where the moratorium wouldn't apply.

[353] **Mr White:** The moratorium wouldn't apply, but there would be a requirement for a fixed-term standard contract of at least six months.

[354] **Peter Black:** So, they couldn't be evicted before the six months even though the moratorium has been disapplied.

[355] **Mr White:** No.

[356] **Lesley Griffiths:** No.

[357] **Peter Black:** Okay.

[358] **Mr Buffin:** The moratorium applies to standard contracts that are not fixed term and other periodic standard contracts. These fixed-term contracts will be fixed for six months and they will not be able to be brought to an end until the end of that term.

[359] **Peter Black:** So, given that the rationale behind getting rid of the moratorium is to encourage landlords to take on vulnerable tenants, why would a landlord want to take on a fixed-term contract, given that they don't have that incentive?

[360] **Mr White:** That's what I'm saying—local authorities are currently working with private landlords to develop relationships to discharge that duty. There's a lot of work going on under the implementation of the homelessness elements of the housing Act anyway. Local authorities, as I think they said to the committee, already have a pool of landlords that they work with in terms of housing individuals. So, we just think that it's a continuation of what's happening at the moment.

[361] **Peter Black:** So, there's already in existence a pool of landlords who work with vulnerable tenants who don't need that incentive of getting rid of the moratorium.

[362] **Mr White:** There are some who are working satisfactorily with local authorities. What we're saying is that there are a lot of landlords who will be encouraged who aren't currently providing accommodation to what they would see as higher risk tenants. I think the Association of Residential Letting Agents, in their evidence, referred to the sort of risk rating that letting agents do in terms of red, amber, green. Clearly, at the moment, with the moratorium in place, a landlord is less likely to take someone who is amber or red than they would someone who's green. Without the moratorium, there is a case that, actually, they would be more likely to take someone of a higher risk than they are at the moment.

[363] **Peter Black:** But the exception is, of course, under section 75 to that rule.

[364] **Mr White:** I'm just saying generally in terms of landlords taking on tenants, irrespective of the homelessness prevention duties.

[365] **Lesley Griffiths:** I also think that, in the discussions I've had with local authorities, they are of the opinion that, with the red, amber, green system that Simon referred to, if you're in the red category you're more pushed towards the poorer end of the housing market to those poorer landlords, shall I say?

[366] **Peter Black:** The ones who can't afford to get decent properties.

[367] 11:15

[368] **Lesley Griffiths:** Well, I just think that the removal of the moratorium will enable local authorities to work far more with landlords. The WLGA told you they have this pool of landlords, but it needs to be enlarged.

[369] **Peter Black:** Right. Enlarged so they take on fixed-term contracts for six months.

[370] **Lesley Griffiths:** I don't want to see vulnerable people in poorer housing, but I think that's what's happening at the moment. We believe, by removing the six-month moratorium, that will improve that situation.

[371] **Peter Black:** Okay.

[372] **Christine Chapman:** Okay? Mike, I think you had some questions.

[373] **Mike Hedges:** Two questions. How does the Minister respond to the suggestion the abolition of the moratorium could lead to either the perception or the reality that tenants in Wales have less security than those in England and Scotland?

[374] **Lesley Griffiths:** I think that that is something that we've just explained why. When I first started talking to Shelter Cymru, when I came into portfolio, they were very much of the opinion that we were removing that, but I think we've shown that removing it will improve the position of many who are currently excluded from the assured tenancy

arrangements. The vast majority of landlords do require fixed-term contracts of at least six or 12 months. I mentioned before, landlords don't want a continual churn, and they'll be able to rent properties that they only have available for a shorter period also. So, if you have someone who does want a shorter period, a shorter contract, for education or for work purposes, I think that will assist there. The moratorium does definitely make some landlords not want to give tenancies to people they deem as high risk, as I've said. So, I think it's about getting that balance. I do want to see people not being driven towards poorer housing.

[375] **Mike Hedges:** Can I ask a question on retaliatory evictions? We just heard evidence recently, from the person who gave us evidence just before you, of retaliatory evictions. One was of somebody who was evicted because they wouldn't sleep with the landlord, and one of somebody who—*[Interruption.]* They gave evidence earlier. You may not have heard it. Also there was somebody who, because they gave evidence against somebody in a court case regarding a car accident, was evicted. What's wrong with the bad faith defence?

[376] **Lesley Griffiths:** I'm going to bring Neil in here.

[377] **Mr Buffin:** Thank you. I haven't heard the evidence that was given, but potentially we would have to consider any such matter very carefully because you could be opening a can of worms, in that, on many occasions where a landlord sought to seek possession proceedings against a tenant, a tenant could bring up a bad faith defence. So, I think there is a potential for it opening the floodgates, and I would question how that would be controlled or limited.

[378] **Mike Hedges:** I just repeat—and all colleagues were here—the evidence we had from the fellow from the Law Society, who thought it was a good idea for a bad faith defence, and gave those as two examples of somebody being evicted on actions that they'd taken.

[379] **Lesley Griffiths:** The reason for having retaliatory eviction in the Bill is we know there are some tenants who are very reluctant to report repairs that are required because they're afraid that, if they do so, they'll be evicted. So, that was the main purpose of this.

[380] **Christine Chapman:** Alun, did you—

[381] **Alun Davies:** You did say in your earlier evidence, Minister, that one retaliatory eviction is one too many. I presume that, when you have the opportunity to review the evidence that was given earlier this morning, you would be prepared to review whether an amendment could be brought forward in order to cover those wider issues.

[382] **Lesley Griffiths:** Yes, absolutely. I'll certainly look at that as well.

[383] **Christine Chapman:** I think that would be good, because the evidence was very good. Mike, have you finished?

[384] **Mike Hedges:** I've finished, yes.

[385] **Christine Chapman:** Right, okay. I just want to move on now to another issue. Alun, you had some questions. Did you have any further questions?

[386] **Alun Davies:** In terms of the condition of a dwelling, the condition of a house, your current position is to introduce a test for fitness for human habitation. We've discussed this.

[387] **Lesley Griffiths:** Yes.

[388] **Alun Davies:** Your statement earlier this week on providing additional funding for

social housing I thought served to emphasise the difference in approach between social rented housing and private rented housing. You know, the Government is prepared to invest in social housing, to improve standards and improve quality, but, when it comes to the private sector, it would be inappropriate to make the same investments—I wouldn't argue that. But the Government doesn't either seem to be setting the bar especially high for tenants who live in private rented housing. Would this not be an area where the Government would wish to ensure that the quality standards were broadly comparable in the two sectors?

[389] **Lesley Griffiths:** Yes, we have had a discussion about this. The fit-for-human-habitation description, if you like, is very defined in law, so that's the first thing. I think it will make a difference, and you and I actually discussed a constituency case that you've had, and I think that absolutely sets out why this will make a difference, because, at the moment, tenants are having to rely on environmental health, for instance, which can take time, and there's local authorities' capacity et cetera, et cetera. I think, by having this 'fit for human habitation', it will enable a contract holder to go to Shelter Cymru, for instance. If they don't want to go direct to their landlord, they'll be able to go to an organisation such as Shelter Cymru and say, 'I don't think my house is within this fit for human habitation.' So, I absolutely think it will make a difference.

[390] I hear what you're saying about the Welsh housing quality standard. We can't impose that on the private sector, and neither, as you say, would it be appropriate to fund the private sector to do so, but I think 'fit for human habitation' does make a real difference to what's out there now. It's not going to be relying on environmental health to have to go out and do an inspection, and I think it will lead to a much greater improvement. I think it's a progressive approach as well. We can use the power progressively, and we will have the power under section 94, and that will set out what constitutes 'fitness' by reference to regulations, which will be issued.

[391] **Alun Davies:** And I presume those regulations will actually come to the Assembly.

[392] **Lesley Griffiths:** Yes—affirmative procedure.

[393] **Alun Davies:** The case we've described, of course, is where there's a small child who is ill and being made iller because of the condition of their home in the private rented sector. Now, you wouldn't want your child in that situation and I wouldn't want mine. I also guess that you wouldn't want any child in Wales to be in that situation. So, we have—or you have—the power here to actually change that, and what I would say is, surely this is the appropriate vehicle to not only change that child's life for the better, but also every child in Wales. Surely, this is what we would expect and anticipate a Government to be seeking to do, not simply establishing a bare minimum 'fit for human habitation', but a quality standard in a sector that is not under the same economic pressures as other sectors are under at the moment, and a sector where there is significant profit, to force regulation to improve the quality of what is being offered. I would've thought that's an entirely appropriate role for Government.

[394] **Lesley Griffiths:** Well, I think fitness for human habitation will improve. We will be improving conditions and situations. I think I said when I came to committee last time I will certainly consult on what the conditions are for that. I think it will be made easier, as I mentioned, for contract holders to demonstrate that something isn't fit for human habitation, without having to wait a long time for an environmental health inspection to go ahead. I really don't think, at the current time, I can impose quality standards on the private sector. It would be too costly. I can't, as you say, and it would be completely inappropriate for a Government to take that forward. But, with contract holders, if they consider that the requirement within their contract is not being met, it will be much easier for them to deal with it.

[395] **Alun Davies:** On the other side of this coin, of course, I hope that you will consider

that in more detail, because I wouldn't want the Government simply to take a defensive approach to this. We can't impose the Welsh quality housing standard, because that wouldn't be appropriate, and nobody's suggesting that, but to use that sort of Aunt Sally as a reason why we can't do something that is different but equally as important in the private sector—.

[396] The other issue, of course, is that of enforcement. I think this was something that a number of the landlord associations brought to us. At the moment, local authorities are not providing the sort of enforcement activity that would be required. Is there anything that Government can do to take the weight of enforcement away from a tenant who, as we've agreed previously, is in a rather difficult power relationship with a landlord, and then enable local authorities to provide an enforcement and regulatory regime that actually ensures that the standards that we want to see here are actually met, whether it's in Wrexham or Blaenau Gwent?

[397] **Lesley Griffiths:** Well, I mentioned Shelter Cymru and I do think, you know, the clarification and making sure that—. We've mentioned that housing law is very complex and having this, to me, very clear and concise law—although I accept that law by the very definition, isn't, but it is about making it clear and concise. I mentioned Shelter Cymru, who have, in my discussions with them, welcomed this aspect, because they think it will be better able to help them to advise contract holders who go to them for advice. So, whilst I accept what you're saying, that we don't want to burden local authorities any more, but I think they are burdened at the moment, because they have to have an environmental health inspection, whereas this will make it much easier for contract holders to receive advice and the next steps forward. They can pursue the landlord for breach of the occupation contract much easier than they can now.

[398] I also think, going back to what I was saying about being progressive, something that was raised with me the last time I came to committee, which I'm very happy to take on, is the example of implementing a requirement for electrical safety checks. So, again, I'm very happy to do that. So, I think, again, it's about getting the balance. Of course we want to see an improvement, and one of the reasons for putting so much funding into social housing is to try and increase the number of social houses that are up to that Welsh housing quality standard, but I can't impose that on the private sector.

[399] **Alun Davies:** But you can't deliver improvement by wishing for it, either. We need to legislate for it, and that's the key thing here.

[400] **Lesley Griffiths:** Well, I think we are trying to strike the balance. We can't say to the private rented sector, 'You have to—'. You know, we're trying to get more houses available in the private rented sector, and I don't think doing that will. As much as I accept what you're saying, I do think having 'fit for human habitation' will improve issues greatly.

[401] **Christine Chapman:** Okay. I've got Mike now with a supplementary. Sorry, I'll bring Neil in first.

[402] **Mr Buffin:** Could I just pick up on that? It's returning to something we discussed earlier, which is that we mustn't lose sight of the interplay between this Bill and Part 1 of the housing Act and the code of practice for licensed landlords. So, there will be a read-across there as well, in terms of potential enforceability of the provisions. Thank you.

[403] **Christine Chapman:** Okay. I've got Mike then Peter.

[404] **Mike Hedges:** Just quickly. As the Minister's aware, the Housing (Scotland) Act 2014 introduced mandatory carbon monoxide alarms and electrical safety checks. I know the Minister mentioned electrical safety checks. Will you look also at carbon monoxide?

[405] **Lesley Griffiths:** Absolutely.

[406] **Mike Hedges:** I say it as somebody who is—and I know other colleagues here are—very keen on having those implemented, if only because it will keep people alive.

[407] **Lesley Griffiths:** Yes, absolutely. We are doing work in Wales around this with the fire and rescue authorities, because I think most houses now, if they want them, have had the smoke detectors. They've been able to do that through the fire and rescue authorities. Certainly, in a previous portfolio, I was looking at carbon monoxide detectors. I'm very happy to do that.

[408] **Christine Chapman:** Simon?

[409] **Mr White:** Just to add, I have met with the electrical safety council, for example, and discussed the issue of five-year electrical safety checks, and they support the approach of doing it through regulations, because, for example, that's how the gas safety inspections are done. So, I think that's an example of how we can use this power to make regulations to actually take a progressive approach, to raise the bar.

[410] **Mike Hedges:** And carbon monoxide.

[411] **Mr White:** And carbon monoxide, yes.

[412] **Lesley Griffiths:** Yes, absolutely.

[413] **Christine Chapman:** Right. I've got Peter and then I'll bring Janet in.

[414] **Peter Black:** Minister, I understand your reluctance to try to impose a very high quality on the private rented sector, but there are small things you can do to improve that. I'm just looking at the British Gas response to your code of practice consultation, for example, where they say, in addition to providing a gas safety certificate and a current energy performance certificate, the landlord could or should be required to provide a tenant with proof of the electrical safety checks completed in the past five years with the contract at the start of tenancy and every 12 months during the life of the tenancy. That's a simple check that could be done, for example, which would enable the tenant to be assured that what they're using is safe. There are a number of other suggestions in there as well, so I'm just wondering whether you will look at those particular aspects to try and improve the quality of accommodation.

[415] **Lesley Griffiths:** Yes, I'm very happy to look at that.

[416] **Christine Chapman:** Okay, thank you. Janet?

[417] **Janet Finch-Saunders:** Just before I go on to my questions, I just endorse the point that Mike Hedges AM made about the carbon monoxide detectors. I know the fire authorities have done excellent work in terms of the fire alarms—

11:30

[418] **Lesley Griffiths:** Smoke detectors.

[419] **Janet Finch-Saunders:** Smoke detectors. But the problem with those is they're only as good as the batteries that are in them. I, personally, would like, and I've spoken to other people, to see carbon monoxide detectors and smoke detectors hardwired, so, you know, it's a

much safer option, and also the electrical safety testing that Peter mentioned is quite worthwhile considering. What are your views on co-regulation as a way of freeing up local authority resources for enforcement activity?

[420] **Mr White:** Could you expand on that a bit more in terms of how that would work?

[421] **Janet Finch-Saunders:** What your view is of co-regulation.

[422] **Mr White:** It's not something that we've considered. I'm not fully understanding—

[423] **Janet Finch-Saunders:** I think it's to do with enforcement, really. At the moment, if you can imagine, local authorities—those particular departments have not been well blessed with the funding increases that other departments within local authorities have seen, and I know enforcement resources are very tight. How do you expect to proceed with this Bill in terms of the enforcement process, if local authorities are doomed before they even start, because they simply haven't got the resources? How would you look at, maybe, working more collaboratively and, you know, co-regulation?

[424] **Mr White:** Well, I suppose, as the regulations came forward under this particular power, that would be when we would actually look at how they would be enforced, and, if there was an opportunity to explore co-regulation on particular aspects, that could be considered, but it's probably not something that would apply across the board, but it might be applied to particular aspects.

[425] **Janet Finch-Saunders:** Okay. And whether the Minister has discussed the feasibility of local authorities being able to retain a proportion of fines levied on landlords as a way to fund enforcement action. Have you considered—

[426] **Lesley Griffiths:** I certainly haven't had discussions—

[427] **Janet Finch-Saunders:** And what about fixed-penalty notices, where landlords simply refuse –. I mean, it's a question of whether there are any considerations of fixed-penalty notices for problematic landlords. Can I just place on record, because I do worry sometimes, when we're debating—. We have got some amazing landlords, even the accidental ones, you know, the very small, private landlords, and we've got very large, good landlords, but we do have—. It's like with everything, it's like when you did your mobile homes Bill—. There is a minority of landlords who are—it doesn't matter what you do, they will look for every loophole. So, I think we've got to just counter that balance, sometimes, and say that, you know, we have got some fantastic housing stock across Wales. It's how we can bring the others up, and it's not—. You know, I do worry, sometimes, when I hear comments against the 'private sector', because, at the end of the day, we have got some very good private landlords—many of them—across Wales, and they do own a lot—

[428] **Alun Davies:** On a point of order, this is a scrutiny of the Minister, not an opportunity to make speeches about—

[429] **Janet Finch-Saunders:** You get to say exactly what you say, so—

[430] **Christine Chapman:** Hang on, now. Wait, Janet and Alun—

[431] **Janet Finch-Saunders:** With all due respect, you know, it's not 'the Alun Davies show' here. [*Laughter.*]

[432] **Christine Chapman:** Janet. I'm giving Janet the point of putting the question to the Minister, so—

[433] **Janet Finch-Saunders:** I've heard language and tone used here that it's a case of private landlords, you know, we need more rented social landlords—we do, but, at the end of the day, unless this Government's going to build the houses—. That's one of the biggest problems we face here in getting the rented property market working well, because the more choice you provide for tenants, then you will squeeze out the problematic landlords, one would hope. So, you know, my question is: what are your views on fixed-penalty notices?

[434] **Lesley Griffiths:** Right. The short answer is: I don't think that's part of this Bill, and I haven't had discussions about fixed-penalty notices.

[435] **Janet Finch-Saunders:** All right, because that has been raised in evidence that we've taken.

[436] **Lesley Griffiths:** Well, my view is it's not part of this Bill, and I haven't had any discussions.

[437] **Janet Finch-Saunders:** Okay. And why the Bill contains no criminal penalties and whether that would enable more effective enforcement. That's been raised quite strongly when we've taken evidence.

[438] **Lesley Griffiths:** I'll bring in Neil.

[439] **Christine Chapman:** Minister or Neil.

[440] **Mr Buffin:** Thank you, Minister. In terms of the Bill, it's important to remember that this is dealing with the contractual relationship between contract holders and landlords; it's not about setting offences, fixed-penalty notices and what have you. There are other legislative means and there are other controls on landlords. Part 1 of the Housing (Wales) Act 2014, to return to that, is a significant piece of legislation setting out the requirements around licensing, the need for training, and the need to comply with codes, so there are other vehicles out there that deal with these specific matters.

[441] **Lesley Griffiths:** I think it's probably going back to the Housing Act 2004.

[442] **Janet Finch-Saunders:** One final question on that: are you convinced, then, that, with that piece of legislation working with this, you've adequately, with that Bill and this one—that there are no unintended consequences as regard the resourcing of the measures that will be needed when these Bills go through?

[443] **Lesley Griffiths:** Yes, absolutely. It's really important that we have that read-across all the legislation, and that will all have been taken into consideration in the drafting.

[444] **Janet Finch-Saunders:** So, there are definitely no concerns about the resourcing of this.

[445] **Lesley Griffiths:** That will all have been taken into consideration in the drafting of this Bill.

[446] **Mr White:** Just to add, I've spoken many times to environmental health officers and they're strongly supportive of the approach that we're taking in this by not having the reliance on inspections as part of the fitness-for-human-habitation assessment. It doesn't remove the ability of the contract holder to seek an inspection in any way at all, and all of that enforcement still exists, and will sit alongside the Bill, so they complement one another.

[447] **Christine Chapman:** Okay. We've got 10 minutes left, and I do need to close this session at 11.45 a.m., so, obviously there are some other Members who want to come in, but, if we get to 11.45 a.m. and we haven't quite finished the questions, we will write to you on some of these, Minister.

[448] **Lesley Griffiths:** Yes, no problem, Chair.

[449] **Christine Chapman:** John. No, sorry—Mark. Did you have any questions?

[450] **Mark Isherwood:** Yes, thank you. The lack of clarity on 'fitness for human habitation' has been expressed as a concern. When we debated and voted on the introduction of the secondary legislation on the housing health and safety ratings system some decade ago, we were told by the then Minister that it was at least as good, if not better, than the Welsh housing quality standard, but complexity, cost and its reactive nature—waiting for tenants to complain—has meant very poor enforcement. We heard earlier from the law practitioners the suggestion that section 10 of the Landlord and Tenant Act 1985 be used as a default position, but that excludes, for example, freedom from cold and safe food storage. So, what consideration are you giving to looking at the Scottish model beyond electrical safety, mentioned earlier, in terms of repairing standards rather than restating existing law and ensuring that that is done with the sector, recognising good landlords' concerns that, sometimes, the cause of the problem may be the other contract holder, i.e. the tenant, not always the landlord themselves?

[451] **Lesley Griffiths:** I think that's a very important point, that latter point. It is about getting the balance for both tenants and landlords. I don't think there's been a lack of clarity. What I've said from the outset is that we will consult widely on this issue. For instance, I know yesterday Mike Hedges raised with me water-proofing, so we need to consult widely to see what should be 'fit for human habitation'. It will definitely be an improvement. We've got the category 1 hazards. We've actually gone further than the Law Commission's recommendations to having 'fit for human habitation', so I think it's very important to state that there will be wide consultation, and the regulation-making power isn't only referencing health and safety rating standards.

[452] **Mark Isherwood:** Finally, could you provide clarity on what a 'reasonable expense' means under section 95(1), i.e. where a landlord can claim they can't make the property fit for human habitation at reasonable expense?

[453] **Lesley Griffiths:** I'll pass over to Neil for this.

[454] **Mr Buffin:** What's reasonable will depend on the circumstances, but, under the current arrangement of things, ultimately it would be a matter for the courts to decide if there was a dispute over what is or isn't reasonable, because it will depend on a multitude of circumstances.

[455] **Mark Isherwood:** Will that be covered at all in guidance?

[456] **Mr Buffin:** There's no actual provision in the Bill for issuing specific guidance in relation to that matter.

[457] **Mark Isherwood:** Should there be?

[458] **Lesley Griffiths:** I'm very happy to consider it.

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

[460] **Christine Chapman:** Jocelyn.

[461] **Jocelyn Davies:** I think what we heard earlier is, well, should it depend on the wealth of the landlord, so, if they said, ‘Well, I’m sorry, I’m broke, so it’s not reasonable to ask me to do that’—. It might be that some of these properties are listed, so the expense of that could be extraordinary. Again, it does seem that the courts are going to be—. In whose view—the subjective or the objective test—was something that we were asked earlier.

[462] **Lesley Griffiths:** I’ll have a look at that, Chair.

[463] **Christine Chapman:** I think as well there’s the earlier point of the power relationship between landlord and tenant, which is not exactly equal, so whether they would have recourse to the courts, then, as far as what is a reasonable expense, et cetera. So, there was a concern, I think, on that point as well.

[464] **Lesley Griffiths:** Okay. I’m very happy to look at that.

[465] **Christine Chapman:** Okay. John, you’ve got some questions.

[466] **John Griffiths:** Yes. On abandonment, Minister, we’ve heard concern that the abandonment provision might put vulnerable people at risk. Shelter Cymru felt that a four-week warning period was insufficient, for example. How do you respond to those concerns?

[467] **Lesley Griffiths:** Well, on the 28 days—I know there were some issues about whether it should be 28 or 31—in Scotland, they’ve had this 28-day period, I think, for about 10 years now and it’s working very well. So, again, we’re looking at good practice and best practice elsewhere. We’ve set out very clearly that the landlord has to make inquiries as to what’s necessary to be satisfied a contract holder has abandoned a dwelling. So, again, I think it was committee that raised with me about if someone’s in hospital. So, I think, again, we’ll have to lay out very clearly to landlords what sort of inquiries they need to be making to ensure that a property has been abandoned. There is a power within the Bill to vary the periods, but I think—. It’s not going to be very black and white. I think there are times when it’s very clear a property’s been abandoned—if somebody’s vandalised it, if everything’s been taken out of it, if the tenant has mentioned to a neighbour, for instance. So, I think, again, within the rental payments time, it’s not always appropriate to wait until the date of the next rental payment being due, for instance.

[468] **John Griffiths:** Okay. I’ve a supplementary question, Chair, in terms of the human rights of contract holders, because I think some people feel that these provisions adversely affect the human rights of contract holders. Allied to that, we’ve heard concerns that, in terms of the absolute ground for possession, that limiting the defence to convention rights could have consequences of inadequate protection for contract holders. For example, we heard that, if a disabled person was evicted because of their disability, that could be a breach of the Equality Act 2010, but not necessarily a breach of the Human Rights Act 1998, and might not then be covered by the defence, which is limited in terms of the reference to convention rights. How would you respond to those concerns?

[469] **Lesley Griffiths:** Well, I think there are enough safeguards in the Bill to prevent that, but I’ll ask Neil about human rights specifically.

[470] **Mr Buffin:** Well, I haven’t heard that evidence specifically, but I would envisage that, in those circumstances, convention rights would be engaged.

[471] **John Griffiths:** Yes, well we may have a difference of legal view, in that case, which is not entirely unusual, I know.

[472] **Lesley Griffiths:** Did you have that evidence this morning?

[473] **John Griffiths:** Yes.

[474] **Lesley Griffiths:** Okay. I need to look at the evidence you had this morning.

[475] **Christine Chapman:** We've got a couple of minutes. I was going to finish at 11.45 a.m., but I will try to take Mike—sorry, Peter and then Mike.

[476] **Peter Black:** Minister, in terms of the Residential Property Tribunal Wales, we had the president in front of us earlier this month, and he said that the residential property tribunal would not want to deal with possession claims, but do see an opportunity for a wide range of disputes under the Bill to be dealt with by the tribunal—for example, determinations relating to the fitness for human habitation standard, determining whether the contractual term has been modified in the contract holder's favour, et cetera, et cetera—and would also welcome the opportunity to offer an alternative dispute resolution service. Now, the Bill as it currently stands puts a lot more in terms of the courts at a time when legal aid, particularly, is being curtailed. So, I'm just wondering whether you are sympathetic to the views of the residential property tribunal to offer that alternative dispute resolution and to deal with some of those issues.

[477] **Lesley Griffiths:** I think there's certainly a role for mediation, but I don't think we would offer that to a sole provider. I think there are many different organisations that can offer mediation—

[478] **Peter Black:** A sole provider? You make it sound like a contract.

11:45

[479] **Lesley Griffiths:** Well, that's what I'm saying. I noticed in his evidence, you know, he was talking about they would be able to—. They were open to taking on a mediation role, shall I say, but I think there are other organisations that can do that. That what I'm saying about—. You know, I wouldn't just say that they were capable of doing that.

[480] I mentioned in my opening evidence to the committee in Stage 1 the complexities of building up the capacity of the Residential Property Tribunal Wales. I don't think, at the current time, it's—. I'm not convinced about expanding the role of it, shall we say, in its current form, and I don't think that's a way to achieve what we want here.

[481] **Peter Black:** I'm not quite sure what you want, then. Do you want that to be sorted out in the courts?

[482] **Lesley Griffiths:** Say that again, sorry.

[483] **Peter Black:** I'm not sure what you want. Do you want everything sorted out in the courts?

[484] **Lesley Griffiths:** No, absolutely not. I'm saying I do think mediation is a way forward, but I don't think that the Residential Property Tribunal Wales could be the only providers of that is what I'm saying.

[485] **Peter Black:** They're a statutory body which, you know—. Public sector—don't you think that's a—

[486] **Lesley Griffiths:** Yes, but I don't think they should be the sole provider; I think there are other organisations and other, you know—HM Courts and Tribunal Services. I think Shelter Cymru would probably have something to say as well.

[487] **Peter Black:** Shelter Cymru does not offer mediation services, does it?

[488] **Lesley Griffiths:** No, but they are very happy to offer advice, and I'm just saying you can't just have one sole provider.

[489] **Peter Black:** I'm not saying you should; I'm saying that the Residential Property Tribunal is there in existence already dealing with a number of these issues. They have expertise and they're able to offer an alternative dispute resolution if you're prepared to invest in them. What's the problem?

[490] **Lesley Griffiths:** That's a discussion that we can have, but I'm just saying they can't be the sole provider of it. And I know they said—I think it was them, but I might be wrong—about possession and disrepair claims being separated. I think they should be kept together.

[491] **Peter Black:** You'd rather it go to the courts, so if a tenant has disrepair they have to get legal aid and go to the courts.

[492] **Jocelyn Davies:** They can't get legal aid.

[493] **Peter Black:** Well, that's what it boils down to, isn't it?

[494] **Christine Chapman:** Shall I bring Simon in to respond?

[495] **Mr White:** I think it was the Law Society that made the point about making sure that the disrepair claims and possession claims are kept together in the courts system, because you'll frequently get a landlord who'll make a possession claim and a tenant who'll make a counter claim for disrepair, and that needs to be heard in a—

[496] **Peter Black:** And the Residential Property Tribunal recognise that and say they're happy to refer that back. It could do it as part of that.

[497] **Mr White:** In terms of the mediation point, absolutely, we would encourage mediation and mediation could be included as an additional term within the contract for the landlord and the tenant to actually resolve their problems in that way. What we didn't think was appropriate was to solely say that that has to be done through the Residential Property Tribunal; Her Majesty's Courts and Tribunal Service offer mediation, for example. So there are other bodies out there.

[498] In overall terms, we certainly could see advantages in moving to a more specialised housing court, but not necessarily achieving that through expanding the role of the tribunal in its current form.

[499] **Peter Black:** So, are you looking at this more specialist housing court?

[500] **Mr White:** Not as part of this Bill.

[501] **Peter Black:** My concern is that local authorities don't have the resources to enforce, particularly disrepair issues. The only way a tenant now has recourse is to go to the courts, which cost the tenant money. So, you're basically disadvantaging tenants who live in properties in poor conditions.

[502] **Mr White:** I think the Law Society also highlighted the fact that there wouldn't be any—. While I said legal aid is a diminishing resource anyway, there wouldn't be any legal aid for someone to go through the tribunal, but there would be through to the court system. So, in some ways, having things go through the courts does actually, potentially, give more support than would be available otherwise.

[503] **Peter Black:** You're saying that there's legal aid for a tenant to take a disrepair issue to the courts.

[504] **Mr White:** In certain circumstances. If it's serious disrepair, I believe there is.

[505] **Peter Black:** Serious disrepair.

[506] **Mr White:** I'd have to—. That's my understanding.

[507] **Peter Black:** Okay. Just one more question, then, Minister. You said when you were in front of last time that you would look at the issue of whether—I'm trying to find the section—the contract holder should be able to refer their rent to the Residential Property Tribunal, in terms of that. I'm just wondering whether you've done that.

[508] **Lesley Griffiths:** We're still looking at that.

[509] **Peter Black:** Okay, thank you.

[510] **Christine Chapman:** Okay? Mike.

[511] **Mike Hedges:** Just one question. The Law Society asserts that it would take two days for a lawyer to become familiar with the Bill. A view that's been expressed previously, under the regulatory impact assessment, is that it would take one day. Does the Minister accept it's now two days rather than one day, and would the Minister be prepared to share the calculations upon which the figures in the regulatory impact assessment are based?

[512] **Lesley Griffiths:** We put the one day because the assessment was based on the Judicial College's estimate of training required for judges. I think the Bill has a very clear structure, so I still stand by the one day.

[513] **Mike Hedges:** Will you share the calculations?

[514] **Mr White:** We can. And there is information in the explanatory memorandum, which we can—

[515] **Christine Chapman:** Okay. Any other questions, Mike?

[516] **Mike Hedges:** No.

[517] **Christine Chapman:** Okay. We will draw this session to a close. So, can I thank the Minister and her officials for attending this morning and answering the Members' questions? We will send you a transcript of the meeting so that you can check it for factual accuracy.

11:50

Papurau i'w Nodi Papers to Note

[518] Before I close the meeting, there are a number of papers to note.

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o Weddill
y Cyfarfod (Trafod y Dystiolaeth, ac Ystyried yr Adroddiad Drafft ar yr
Ymchwiliad i Dlodi**

**Motion under Standing Order 17.42 to Resolve to Exclude the Public from the
Remainder of the Meeting (Discussion of Evidence and Consideration of the
Draft Report on the Inquiry into Poverty**

Cynnig:

*bod y pwyllgor yn penderfynu gwahardd y
cyhoedd o weddill y cyfarfod yn unol â Rheol
Sefydlog 17.42(vi).*

Motion:

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

*Cynigiwyd y cynnig.
Motion moved.*

[519] **Christine Chapman:** The next issue then is to invite Members to agree to move into private session to discuss the evidence we've heard this morning and to consider the draft report on the inquiry into poverty. Yes. Okay.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11:51.
The public part of the meeting ended at 11:51.*