



Cynulliad Cenedlaethol Cymru The National Assembly for Wales

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol

The Communities, Equality and Local Government Committee

**Dydd Iau, 4 Mehefin 2015
Thursday, 4 June 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 ar ran Gwenda Thomas) Labour (substitute for Gwenda Thomas)
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
Bethan Jenkins	Plaid Cymru (yn dirprwyo ar ran Jocelyn Davies) The Party of Wales (substitute for Jocelyn Davies)
Gwyn R. Price	Llafur Labour

Eraill yn bresennol
Others in attendance

Jennie Bibbings	Shelter Cymru
Steve Clarke	Tenantiaid Cymru Welsh Tenants
David Cox	Cymdeithas Asiantaethau Gosod Preswyl Association of Residential Letting Agents
Douglas Haig	Cymdeithas y Landlordiaid Preswyl Residential Landlords Association
Gwilym Hughes	Prif Arolygydd, Cadw Chief Inspector, Cadw
Elle McNeil	Cyngor ar Bopeth Cymru Citizens Advice Cymru
Kenneth Skates	Aelod Cynulliad, Llafur (y Dirprwy Weinidog Diwylliant, Chwaraeon a Thwristiaeth) Assembly Member, Labour (Deputy Minister for Culture, Sport and Tourism)

Eifiona Williams Cyfreithiwr, Llywodraeth Cymru
Lawyer, Welsh Government

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

Jonathan Baxter	Y Gwasanaeth Ymchwil Research Service
Chloë Davies	Dirprwy Glerc Deputy Clerk
Matthew Richards	Cynghorydd Cyfreithiol Legal Adviser
Liz Wilkinson	Clerc Clerk
Robin Wilkinson	Y Gwasanaeth Ymchwil Research Service

Dechreuodd y cyfarfod am 09:17.
The meeting began at 09:17.

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

[1] **Christine Chapman:** Good morning, everyone, and can I welcome you to the National Assembly for Wales's Communities, Equality and Local Government Committee? Can I just remind Members that, if they have any mobile phones, that they are to be put on 'silent', because it does affect the transmission? We've had apologies this morning from Mike Hedges, Rhodri Glyn Thomas and Gwenda Thomas. John Griffiths will be substituting for Gwenda, and Bethan Jenkins for Jocelyn Davies, particularly for items 1 and 2. I don't think we've had any other apologies. At this point, can I also ask Members whether they have any declarations of interest?

[2] **Alun Davies:** Could I make a declaration that I'm a private landlord, and we will be discussing these matters later this morning?

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

09:18

Bil yr Amgylchedd Hanesyddol (Cymru): Sesiwn Dystiolaeth 1—y Dirprwy
Weinidog Diwylliant, Chwaraeon a Thwristiaeth
Historic Environment (Wales) Bill: Evidence Session 1—Deputy Minister for
Culture, Sport and Tourism

[4] **Christine Chapman:** If we can we move on now then to the first item, this is the first of several evidence sessions on the Historic Environment (Wales) Bill, and I would like to give a very warm welcome to the Deputy Minister for Culture, Sport and Tourism, Ken Skates, and also your officials, Gwilym Hughes, chief inspector, Cadw, and also Eifiona Williams, a lawyer from Welsh Government. So, can I welcome you all?

[5] Minister, if you're happy, we will go straight into questions. I know this is the start of the process for this Bill, so I know that Members will have a number of questions for you. I just want to start off, Minister. Why do you believe that the Bill is needed? We've had comments from the National Trust that the existing heritage protection system would, and I

quote, ‘deliver greater real benefits’ if it was properly resourced. So, I wonder whether you could comment on that as a starting point.

[6] **The Deputy Minister for Culture, Sport and Tourism (Kenneth Skates):** Yes. Thanks, Chair. Can I begin by just thanking the committee and also paying tribute to the work that the committee and Members have done over many years in examining how we can enhance the protection and intelligent management of the historic environment in Wales? Can I in particular pay tribute to my predecessor, John Griffiths, for the enormous energy and resource that he contributed to the Bill?

[7] The Bill and the suite of guidance, policy and advice will set Wales ahead of all the other nations in the UK. It was felt, during the three years of consultation, that the two Acts that we seek to amend, which are almost as old as me, are fundamentally robust, however there are deficiencies that the legislation and the guidance and policy and advice will seek to address. Your question refers also to the issue of capacity within local government. I would agree that local government is under enormous pressure. However, there are opportunities for local authorities and local planning authorities to collaborate and to share best practice and resources where possible.

[8] In terms of the necessity of the Bill, what it seeks to do is to, as I say, amend the two Bills of 1979 and 1990. In recent years, there have been incidents, such as at Offa’s Dyke in 2013, where damage has occurred to nationally important monuments where Welsh Ministers simply have not had the power to take necessary actions. There have also been cases in which historic buildings and sites under consideration for listing or scheduling have been deliberately damaged to prevent designation. So, the Bill is required to address these legal deficiencies, and it would be supported by the revised policy and new guidance to improve procedures and processes where no change in the law is required.

[9] **Christine Chapman:** Okay, and, obviously, with the comments the National Trust made, you’ve mentioned the issues about capacity as well—you’ve got no concerns about that at the moment.

[10] **Kenneth Skates:** We’ve been fortunate throughout the process to have the Welsh Local Government Association with us on the external reference group. And they have also been party—they’ve had access—to the impact assessment, and so we are confident that the provisions within the Bill can be dealt with by local authorities or local planning authorities.

[11] **Christine Chapman:** Okay. I’ll move on now to Bethan Jenkins.

[12] **Bethan Jenkins:** Thanks for your opening statement. I just wanted to touch on something you said with regards to looking back on the initial consultations that happened two years ago. It just dawned on me that you say that in terms of where it started, but also, in your comments recently to Plenary, you said that you’ve chosen the path to combine those two laws because of the legislative timetable, which suggests to me that there was difficulty in potentially finding time to develop a potentially different type of Bill—and also the resource intensity. So, my question is: would the Bill have looked different or perhaps would it have been wider in its remit had you had that time to develop something different? Because it seems to me that we’ve had quite a lot of time to discuss something that could have been perhaps wider and more radical than we are presented with today.

[13] **Kenneth Skates:** I think the Member refers to the potential of having had a consolidation Bill, rather than an amending Bill, essentially. It is something that has been considered. However, during the period of three years of consultation and engagement, it was felt that the two existing pieces of legislation are robust but the deficiencies need to be addressed. So, in this instance, it was felt that the Bill, as presented, was the most appropriate

way forward. That's not to say that a consolidation Bill couldn't be considered by a future Assembly, but, at this point in time, given the constraints on resources and time, the Bill that has been presented was believed to be the most appropriate and the best way forward.

[14] It's also worth saying that stakeholders and the general public are already familiar with the legislation, so, in amending the two Acts and in addressing those deficiencies, it's felt that the people of Wales and our stakeholders will be able to adapt to the changes relatively more easily.

[15] **Bethan Jenkins:** Okay, thanks. Obviously, we're waiting for people to fully respond to our consultation as a committee, but, in the consultation to the Welsh Government, the Royal Commission on the Ancient and Historical Monuments of Wales said that it was a missed opportunity and that there should have been more radical thinking. Can you tell us what you looked at, and what you didn't include, and if it was because of resource or whether it was timetabling that you didn't potentially do that? I'm feeling that some groups think that it doesn't go far enough, and, for us as scrutineers, I think it's important that we understand all of the elements surrounding your decision to go along the route that you have chosen.

[16] **Kenneth Skates:** Well, I think those comments from the royal commission actually relate to the consultation that took place at quite a contentious time for the commission, when consideration was being given to a potential merger with Cadw, and so it must be placed in that context. Since then, the commission have been on our external reference group throughout the process of devising the Bill and they are very pleased with provisions in the Bill, particularly those relating to historic environment records and placing them on a surer footing, a statutory footing. So, there is actually confidence in the Bill as presented from the commission, and, as I say, it was felt, as part and parcel of the consultation by stakeholders, that a consolidation Bill, whilst there is some merit in it, was not required at this moment, and, given the constraints on time and resources, was not practicable.

[17] **Bethan Jenkins:** So, just to confirm, and I'll finish there—just to confirm, you are satisfied in your mind that you think that the engagement with stakeholders and with groups has led to the conclusion whereby this is the Bill that people would support and be behind. Just so that we understand that as a committee moving forward.

[18] **Kenneth Skates:** Yes, I am satisfied. Gwilym, would you like to outline any considerations that were given?

[19] **Mr Hughes:** Yes. Just that there was a recognition that whilst some changes to the legislation were needed and required—and that was the feedback we got from stakeholders and consultees—there was also a recognition that many of the changes that were needed could be achieved through means other than legislation. And that was the reason why we developed in draft form, and we presented in draft form and published in draft form, the revisions to the planning documents, the planning policy and a new technical advice note for the historic environment and several management documents, which, together, can be seen as a kind of holistic suite of management tools for the historic environment. So, it was a recognition it was a combination of legislative change that was needed and amendments and changes to the way the system is managed more generally.

[20] **Bethan Jenkins:** Okay. Well, I'm sure we'll come back to that in future.

[21] **Christine Chapman:** There is a supplementary from John Griffiths.

[22] **John Griffiths:** Yes, and thank you for your kind remarks earlier, Ken. I think one of the aspects of concern, or at least exploration of whether it might be possible to arrive at more radical and imaginative solutions to issues, centred around situations that I guess all

Assembly Members are very familiar with, where you've got a very much valued building in the midst of a community that local people identify with very strongly and they want to protect, but the protection often seems to prevent anything very much in the way of work being carried out to the building and then it deteriorates over a long period of time and becomes a great eyesore and a great running sore for local communities. And I think part of the royal commission's opinions, for example, over whether there might be more imaginative and radical solutions was around addressing the practicalities of that situation, you know, rather than perhaps some longing for a solution of purity that didn't provide an alternative use for the building but magically restored it to its former glory. I just wonder if you could say a little bit, Ken, about how this legislation would help address those situations.

[23] **Kenneth Skates:** Thanks, John. You're absolutely right. There was no consensus that stemmed from the consultation on how legislative change to the listing system might take place. However, there are questions about the role of local lists, for example, in ensuring that there is enhanced community engagement. Now, local authorities already have the ability to create lists of historic assets of local interest and to take account of such lists through the planning process. So, there wasn't a need within the Bill to provide additional powers. However, what we are doing is providing a range of measures that will improve the way in which such lists are created, managed and used. So, new good practice guidance will encourage local communities, local authorities, and also third sector organisations, to work together to identify, manage and enhance historic assets of special local interest. Clear references have been included in 'Planning Policy Wales' and the new TAN on how historic assets that have been identified as being of local interest should be dealt with within the planning system and in local development plans. Alongside this, we also have the enhanced status of historic environment records, which will be used by local or planning authorities in the management and assessment of the historic environment. So, I'm satisfied that we've been able to enhance the degree, or we will be able to enhance the degree, of community engagement within the planning system and within the historic environment sector.

09:30

[24] **Christine Chapman:** Okay. John?

[25] **John Griffiths:** That's fine, Chair.

[26] **Christine Chapman:** I've got another supplementary from Alun Davies.

[27] **Alun Davies:** Yes, thank you for that. I'm interested in this particular area, because, rightly or wrongly, I regard this Bill as the sort of Tredegar general hospital protection Bill, and I'm concerned about how we use this statutory framework in order to create the circumstances and the conditions and the context for the regeneration of different communities. Quite often, and I use Tredegar as an example, but I guess there are a number of communities across Wales where we have significant historical assets. The general hospital in Tredegar is obviously one, but so would be the town hall or, for example, the truck shop. So, you've got those assets there, which need, I believe, the focus of wider regeneration for that community and for different communities. I would hope and guess that this Bill would provide a better statutory framework to enable us to first of all protect those buildings that aren't on national lists and national protection registers, but also then not just to do that—to list it and to file it—but then to enable us to be more proactive in how we use this historical and heritage asset as a means and a tool for creating regeneration opportunities.

[28] **Kenneth Skates:** The example that Alun identifies, I think, is symbolic of the situation across Wales, and that's why I think we need to look at this piece of legislation alongside the planning Bill, the environment Bill and, of course, the Well-being of Future Generations (Wales) Act 2015. It's worth saying, I think, at this stage that regeneration costs

and the availability of resources are fundamental to any consideration, but also, in some instances, the potential of a building that is not listed being listed and, therefore, a developer being deterred from purchasing or developing that building, is also very significant. So, we're bringing forward, for example, within the Bill, provisions around immunity from listing, which will enable development to take place, we believe, in cases where at the moment there is some hesitation to purchase and apply for permission to develop. So, section 27 of the Bill considers certificates of immunity from listing. The current situation is that you can only apply for a certificate of immunity from listing if you are applying for planning permission, or if you have already applied for planning permission. Relaxing the criteria will enable individuals or companies, third sector bodies and public bodies to apply for certificates of immunity, regardless of whether they're applying for planning permission. Now, this is significant, because it will enable applications to be dealt with in a way that can then offer surety to the owner or, potentially, a new owner on the status of that building for five years, and this will eliminate some of the risk that developers currently feel towards developing buildings that were constructed before 1919 and which they fear could be listed whilst they are applying for permission to develop them. So, in the case that Alun has identified, as in many other cases in, I'm sure, all of our constituencies, relaxing the criteria for certificates of immunity from listing, I think, will be a great benefit.

[29] **Christine Chapman:** Okay, thank you. I'll move on now, then, to another aspect of the Bill. Gwyn, you have some questions.

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

[31] **Kenneth Skates:** Morning.

[32] **Gwyn R. Price:** The proposed amendment to the existing definition of 'monument' broadens that definition considerably. Why is such a broad definition necessary, and what safeguards will you put in place to ensure that this broad definition is applied appropriately and consistently for the purpose of scheduling?

[33] **Kenneth Skates:** Okay, thank you, Gwyn. There are really two very important questions that you've raised there. Section 22 of the Bill, of course, proposes to extend what can be protected to include any site that evidences past human activity. It's well known that there are a small number of nationally, and in some cases internationally, significant sites that can't currently be scheduled for the reason that they are not based in a structure or building. So, for example, these could include scatters of artefacts from prehistoric times or from industrial activity, or could include scatters of munitions on a battlefield. For example, there are sites on the Wales coastline, such as at Nab Head in Pembrokeshire, where archaeologists have found artefacts that show groups of people began visiting that particular site in, I believe, the Mesolithic period.

[34] **Mr Hughes:** Mesolithic, yes—about 8,000 years ago.

[35] **Gwyn R. Price:** What day was that?

[36] **Kenneth Skates:** It was at Christmas. Oh no, that was pre-Christmas, wasn't it? *[Laughter.]*

[37] Essentially, though, under existing legislation, sites such as that can't be designated because there is no evidence of a building, a structure or works. So, in broadening the definition, we'll be able to offer protection to any area that has evidenced past human activity. But it must be stressed that only a limited number of areas will be able to meet the very high standard of evidence needed to secure recognition as a nationally important monument. So, we're confident that this won't lead to, for example, the whole of Wales being scheduled. It's

worth also saying that section 3 and section 4 will enable consultation so as to review proposed scheduling as well. So, there is that check and balance on the process.

[38] **Gwyn R. Price:** The safeguards are there.

[39] **Kenneth Skates:** Absolutely, yes. I think it might also be worth mentioning at this point that the existing scheduling criteria will be used, and so sites will only be considered if there is clear evidence from survey or excavation and if the extent of the site can be clearly defined with a boundary.

[40] **Gwyn R. Price:** Thank you, Chair. Thank you.

[41] **Christine Chapman:** Okay, Gwyn. Right, Peter.

[42] **Peter Black:** Thank you, Chair. The explanatory memorandum states that informal contacts have resolved almost all recorded cases of unauthorised works to scheduled monuments between 2006 and 2012. If that's the case, then what evidence do you have to suggest that new enforcement powers, aimed at preventing damage to scheduled monuments, are necessary?

[43] **Kenneth Skates:** Enforcement notices, as dealt with under section 12, are important because currently there are no powers available under the 1979 Act to require works to cease or for repairs to be carried out, short of seeking essentially an injunction or successful prosecution. The Member is right that, in most cases, negotiations will lead to unauthorised and potentially damaging works to cease. However, between 2006 and 2012, there were 119 recorded instances of damage to scheduled monuments. Cadw had to seek a voluntary cessation of work and, where necessary, also voluntary repair of those monuments. There were 17 cases of significant failures to comply with scheduled monument consent conditions, such as by failing to publish an excavation report, making the works unauthorised, but unlikely to ever reach prosecution. I believe that there's only been one case where prosecution has actually been progressed. The new powers will allow cases to be tackled effectively. The new powers will also act as a deterrent, we believe. But serving an enforcement order in circumstances where unauthorised works have taken place will allow Welsh Ministers to call for specified works to cease and for one of a number or several steps to be taken to restore the monument or the land to its former state to alleviate the effect of works carried out without scheduled monument consent, if restoration is not desirable. Then the other option is to require the conditions of a granted scheduled monument consent to be fulfilled. So, notices will be prepared and issued by Welsh Ministers, through Cadw.

[44] **Peter Black:** Okay. The defence available to those who are prosecuted for carrying out unauthorised works to a monument is to be limited. Then they'll have to show that they've taken all reasonable steps to find out whether a monument was present. Now, defences are limited in this way usually only for very serious offences like terrorism, it says here. Why do you believe it's proportionate to do it in this way?

[45] **Kenneth Skates:** Well, largely because ignorance defences in the 1979 Act have long been identified as a block to successful prosecution and its use as an effective deterrent. There was the case only two years ago in Chirk, where significant damage was caused to Offa's Dyke. That brought to light the deficiencies in current legislation and the need to deal with the ignorance defence claim. That said, it would not be appropriate to make unauthorised works to a scheduled monument a strict liability offence, like it is for listed buildings, because many scheduled sites are not obvious. They are not easy to identify on the ground, even by experts. They're sometimes below the surface of the ground. So, we have to ensure that the provisions in sections 15 to 17 are proportionate, and we are satisfied that they are.

- [46] **Peter Black:** I mean, Offa's Dyke, I would have thought is fairly obvious—
- [47] **Kenneth Skates:** Yes.
- [48] **Peter Black:** —but what would be reasonable steps, then, given that, as you say, some of these are very difficult to identify?
- [49] **Kenneth Skates:** Yes. The scheduled monuments will be available online on a mapping database. It's always difficult to present two hypothetical situations, but let's say, for example, there is one where the scheduled monument is below the surface of the ground and where tent pegs have been struck into the ground, for example. What would normally happen if it was found that this could be causing damage is that Cadw officials would then liaise with those responsible and work would stop, and that would be a reasonable course of action. However, were there standing stones that people were spraying paint on—
- [50] **Peter Black:** That's obvious, yes.
- [51] **Kenneth Skates:** That's pretty obvious.
- [52] **Peter Black:** So, what you're saying is that, if you go onto a site where there is no obvious sign or any obvious indication that there is a scheduled monument there, you are required to check online before you go onto that site.
- [53] **Kenneth Skates:** It would be expected if you were going to be carrying out works at that site, yes.
- [54] **Peter Black:** That's going to take a significant culture change, isn't it?
- [55] **Kenneth Skates:** It will to some extent, yes, but the information will be available.
- [56] **Peter Black:** And what would give someone the indication that they should be checking that? Are you expecting every builder, every developer, to check as a matter of course or would there be signs that say that they should be taking these steps as a reasonable way forward?
- [57] **Kenneth Skates:** Well it wouldn't take a huge amount of effort for a developer, for example, to check because it will be online and easily accessible. Gwilym, would you like to comment?
- [58] **Mr Hughes:** Yes. The information will be available on online searches as well. So, when you're purchasing a prospective piece of land, a check will be undertaken and you'll be able to identify whether there is a scheduled monument on it. The online database will have mapping that will depict the extent of the scheduled area. So, you should be able to identify whether or not the area you're actually proposing to do works on is part of the protected monument or not.
- [59] **Peter Black:** Are these scheduled monuments in land charges searches? Are they registered?
- [60] **Mr Hughes:** Yes.
- [61] **Peter Black:** So, if you're purchasing land, the land charges register will immediately highlight that to you?
- [62] **Mr Hughes:** Yes, they should do.

[63] **Peter Black:** So, that's reasonable, yes. So, that would be the first warning sign, then.

[64] **Mr Hughes:** Yes.

[65] **Peter Black:** Okay. I understand that. The Bill also seeks to remove the requirement for consent from the owner before entering land believed to contain an ancient monument that is at risk. What assessment has been made of the implications of this proposal for the human rights of owners? A very topical question there.

[66] **Kenneth Skates:** Yes. The power will be used exceptionally, probably less than once in five years or even longer. The purpose of section 19 is to ensure that important archaeological information is not lost when a monument is at imminent risk of damage or destruction and consent for excavation can't be obtained because the owner cannot be traced in time or is reluctant to agree to the work being carried out voluntarily. In particular, section 19 seeks to address cases where owners are not present—either alive or present in the UK. So, as I say, it would be in exceptional circumstances that that power would be used.

09:45

[67] **Peter Black:** I guess the Human Rights Act would only apply if it was inside someone's home.

[68] **Kenneth Skates:** Yes.¹

[69] **Peter Black:** You've done a—

[70] **Kenneth Skates:** There is consistency with the Human Rights Act.

[71] **Peter Black:** You've done an assessment of this.

[72] **Kenneth Skates:** Eifiona, would you answer?

[73] **Ms Williams:** Yes, we've considered the human rights implications, and we believe that we've struck the right balance between the need to protect these monuments and, obviously, the rights of owners. There are safeguards in there because this power can only be used if there's an imminent risk of damage or destruction. Obviously, there are compensation provisions in the 1979 Act itself—section 46—that would apply to this particular provision.

[74] **Peter Black:** I'm assuming that, if you've got to that stage, if the owner is present or would be aware of—. They would have had warning notices and all sorts of stuff.

[75] **Kenneth Skates:** Yes.

[76] **Peter Black:** Okay; thanks.

[77] **Christine Chapman:** Okay? Mark.

[78] **Mark Isherwood:** Thank you. Given the requirements for consultation introduced elsewhere in this Bill, why do you consider it reasonable to amend records on the register of historic parks and gardens of special historic interest without the consent of the owners?

¹ The Government wishes to note that: 'In paragraph 67 & 68 we believe the DM responded before the full question was asked and was answering "yes" to the question about the Human Rights Act applying generally rather than only if it was inside someone's house.'

[79] **Kenneth Skates:** Quite simply because inclusion on the register doesn't carry any obligation for owners to undertake any particular works or to take any action to maintain a path or garden.

[80] **Mark Isherwood:** What dialogue, if any, would be undertaken with owners?

[81] **Kenneth Skates:** Okay. In terms of dialogue, in reviewing inclusion in the register, informal talks would take place between officials and owners to ensure that the information provided on the register is up to date and correct.

[82] **Mark Isherwood:** Would there be any attempt to seek consent?

[83] **Kenneth Skates:** Consent wouldn't necessarily be required because it is going to be a statutory list. In the vast majority of cases, I think that parks and gardens are already on the register at the moment. I believe that it is something in the region of 14 sites and seven parts of sites that have been excluded from the voluntary register, so the numbers are very small indeed. It's worth saying that the current arrangement by which an owner or occupier can opt out of the register is neither fair nor sustainable. So, having a statutory register of historic parks and gardens will be a far fairer system, and it's worth saying that it was a recommendation by this committee back in 2013.

[84] **Mark Isherwood:** Okay, well, moving on, this committee has previously recommended changes to the listing system to simplify that. To what extent do you consider that the changes proposed in this Bill to simplify the listing system would achieve that goal?

[85] **Kenneth Skates:** In terms of the simplification of the system, several of the provisions in the Bill simplify processes for the sustainable management of the historic environment—in particular section 5, relating to scheduled monument consent, and sections 11 and 28, relating to heritage partnership agreements. They simplify the scheduled monument consent process and introduce partnership agreements on a voluntary basis. Given that the Bill is an amending Bill, I recognise that we've not been able to consolidate the structure of the historic environment in Wales, but we are offering a suite of guidance and policy that will enable the system to be simplified and better understood. For example, we are bringing together three outdated Welsh Office circulars that are now more than 20 years old into an integrated technical advice note. So, the system as a whole will be simplifying the method by which people are able to care for and manage the historic environment.

[86] **Mark Isherwood:** So, you're satisfied that, not only for yourselves—the Government—and those who will have to police the legislation, but for the owner and the end user, this will be a simplification.

[87] **Kenneth Skates:** Yes, and also for local planning authorities. The provisions in the Bill enhance the powers of local planning authorities and strengthen their powers without adding additional burdens.

[88] **Mark Isherwood:** Without any additional burdens. Okay, well, I'll come to that. Why do you believe that statutory consultation and review processes need to be introduced, noting, for example, the comments by Blaenau Gwent County Borough Council that this will,

[89] 'have enormous implications for capacity and resources'?

[90] I suppose that replicates concerns raised on other legislation considered by this committee where, whatever the intent of the legislation, the cost identified by the local authority enforcer is far higher than that indicated in the explanatory memorandum.

[91] **Kenneth Skates:** Okay. Well, first of all, consultation does take place at present although it's not a legal requirement. It does take place in local authorities. So, I do not believe that there will be an enormous additional requirement for resources. It's just that it would be formalised rather than the situation at the moment, where that consultation is informal. So, I don't agree with the comments that you attributed to—was it Blaenau Gwent? Yes.

[92] **Mark Isherwood:** This was Blaenau Gwent, but what action have you taken or will you take to establish the basis for concerns such as this to ensure that whatever legislation goes forward has at least understood and, if possible, addressed them?

[93] **Kenneth Skates:** We already have the Welsh Local Government Association on our external reference group providing us with advice and observations on the provisions of the Bill. So, we're already doing that. We've been doing that for three years.

[94] **Mark Isherwood:** Had they not indicated any concern, replicating the concern indicated here by Blaenau Gwent?

[95] **Mr Hughes:** The concern there appears to be around consultation and review. Of course, the actual process of consultation and review of a decision to list a building or to schedule a monument will be the responsibility of Welsh Ministers not of the local authorities. The implication for local authorities is simply that they will be formally consulted as part of that process as, in fact, as the Deputy Minister says, they are already informally consulted as part of that process. So, it doesn't, in fact, involve an additional burden, the process of consultation and review.

[96] **Mark Isherwood:** So, you're satisfied that this is based on perhaps a misunderstanding.

[97] **Kenneth Skates:** Can we get clarification on this, because I don't recognise it?

[98] **Christine Chapman:** Well, look: we've got the WLGA coming in next week to give evidence, so, we can tease that out then. So, if you're happy with that—

[99] **Kenneth Skates:** Okay. That will be very helpful.

[100] **Mark Isherwood:** I'll stop then. Thank you.

[101] **Christine Chapman:** Before I bring Alun in, Janet wanted to come in on a supplementary.

[102] **Janet Finch-Saunders:** Good morning, Deputy Minister.

[103] **Kenneth Skates:** Good morning.

[104] **Janet Finch-Saunders:** Within the Bill, how have you acknowledged this committee's concerns regarding—? You know, one of our recommendations was that the Welsh Government should explore options to introduce a system so that, where local authority searches show that a building is listed and/or in a conservation area, the new owner is provided by the local authority with clear guidance concerning restrictions. You know why I'm asking this question because, in my town of Llandudno, in my own constituency, we have found many business owners and residential property purchasers taking on properties where they've actually then been served, not knowing through the local search system that their properties were listed or were in a conservation area, and then having to revert—. If uPVC

double glazing has been fitted, they've then had to completely—. They've been served enforcement notices, and I think something like 800 enforcement notices went out to all the people who'd taken on properties where they didn't have wooden sash windows, single-glazed. Some are now in the process. I'm working on some and I've even challenged the planning inspector on two particular cases against this. The current Act does not protect people. So, we have people buying in and investing in our town only to find that they then get served an enforcement notice, and yet it's not been shown at the search stage that they're buying in to a property that could have a potential liability. I've got one in my constituency where it's £50,000 to actually revert back to the old, wooden, single-glazed sash windows because that's the requirement that the local authority is saying they need to revert back to. It's been an absolute nightmare.

[105] **Christine Chapman:** Minister?

[106] **Kenneth Skates:** Yes, the Member makes a very important point. I recall, back in 2013, one of the recommendations we made, which I actually thought was a very good recommendation, because I was a member of this committee, concerned the information that local planning authorities provide new owners with if their property is listed. The listed status should show up on a search, and instead of local planning authorities having 22 different sets of guidance and best practice to be able to then distribute to all new owners, we have actually produced, in draft form alongside the Bill, guidance on managing change to listed buildings in Wales. On page 4 of the guidance, there is specific reference to windows and glazing.

[107] **Janet Finch-Saunders:** So, you believe that with the Bill and the guidance, it will rule out any possibility, because we are talking—. This has happened not just once or twice; it is happening now. People are coming in saying, 'We bought a property three months ago and we now find out, having received an enforcement notice, that the double glazing that we bought the property with has to be ripped out and single-glazed wooden windows have to be fitted'.

[108] **Kenneth Skates:** I'd be very, very grateful for any information regarding this.

[109] **Janet Finch-Saunders:** I have a file.

[110] **Kenneth Skates:** Please do provide me with the information, and I'll certainly give it immediate consideration.

[111] **Christine Chapman:** That's useful, so you can give the Deputy Minister some further information. That's great.

[112] **Kenneth Skates:** Gwilym, do you want to say anything about conservation areas?

[113] **Christine Chapman:** Gwilym, did you want to come in?

[114] **Mr Hughes:** Well, just generally, I think that the combination of guidance, the new technical advice note, which actually articulates what having a listed building means in terms of the application process, and further documents that we are intending to produce relating to conservation areas, what that means and understanding what owning a listed building actually means—this whole suite of documents, I think, collectively—will support the provisions in the Bill.

[115] **Janet Finch-Saunders:** Okay; thank you.

[116] **Christine Chapman:** Peter.

[117] **Peter Black:** If I could follow up on that, because it sounds to me like one of the failings here is actually in the conveyancing process, because the solicitor, when they get the local search back and see that it is a listed building, should immediately advise the client, ‘Well, this is what the implications of this are; you need to check whether this building being changed, et cetera’. Would it be possible to actually ensure that when local authorities issue land charges searches, which actually identify a listed building, they also issue guidance with that search? That might be one way of making sure that the solicitor can pass that on to the client.

[118] **Kenneth Skates:** I’m very happy to consider that.

[119] **Christine Chapman:** Could you have a look at that?

[120] **Kenneth Skates:** Certainly, and I’m more than willing to consider the views of the committee in this particular area.

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

[122] **Alun Davies:** Thank you. Just following on from the earlier conversation, of course, Blaenau Gwent is very much and very strongly in favour of this legislation and what is being said in it, and I wouldn’t want the committee to be misled or to believe there is any significant concern there.

[123] In terms of taking this forward, I’m interested, Deputy Minister, as to how you believe local planning authorities will make use of the new powers available to prevent damage to listed buildings, as we know there are financial pressures within local government and we also understand that this could create a significant demand very, very quickly. So, I’d be interested to understand how you anticipate these powers being used in practice.

[124] **Kenneth Skates:** Well, for each and every local planning authority to exercise the powers that the Bill grants them, according to their desire. But, section 30, which I believe is what you’re specifically relating to—the joint works notices and the power to impose a land charge—seeks to address one of the primary reasons for local planning authorities being reluctant to carry out urgent work on a property, which is, of course, the lack of surety that they’ll be able to recover the costs. Current legislation provides the power to carry out urgent works—there are loopholes, though, which I’ll come to in a moment—but there is no specific mechanism for the recovery of those costs, which is why we are seeking to introduce provisions for a land charge. The loophole that I referred to is in relation to the status of the property, whether it is occupied or unoccupied, and there are cases where buildings that may not be in use in terms of inhabitants, but which are in use for the purpose of storage, are falling into a state of decay, and which should be given urgent attention. So, the provisions within section 30 seek to do that, but also to enable local authorities to recover the costs, which is the primary reason, at the moment, why they are sometimes reluctant to utilise those powers.

10:00

[125] If I can just go through a number of figures that highlight the seriousness of this issue, over 2,700 listed buildings in Wales—that’s round about 9 per cent of the total—have been identified as being at risk, and that’s often because they are unoccupied and the owner either doesn’t have the will or the means to bring them back into active use. Nearly 4,600 listed buildings—that’s 15 per cent—of the total are classed as vulnerable. So, consultation during the development of the Bill showed that there was a strong perception that local planning authorities were reluctant to use urgent works notices, because there was not an effective recovery mechanism for the costs that could be incurred.

[126] **Alun Davies:** I accept what you say. The recovery mechanism would be sale, or leasing—

[127] **Kenneth Skates:** It could be sale.

[128] **Alun Davies:** We debated here in the Chamber, yesterday, the human rights legislation. I'm presuming that you regard this as a proportionate use of these powers and that that wouldn't trigger any challenge under human rights legislation, on the protection of property rights.

[129] **Kenneth Skates:** Yes. Eifiona, do you—

[130] **Ms Williams:** Yes. Again, as part of developing the Bill, we've carried out that sort of balance between what we're trying to achieve and individual property rights, and we're satisfied that we've struck that right balance.

[131] **Alun Davies:** I'm content with that.

[132] **Christine Chapman:** Okay. If I can move on now to Bethan.

[133] **Bethan Jenkins:** Yes. Just in talking about the heritage partnership agreements, I just want to understand what your thinking is in going down this route. We've had—. Sorry, we haven't had evidence, but in previous consultations to Welsh Government, evidence has suggested from Bridgend County Borough Council that, in England, it's shown that they're not really used and they're not very effective. From the EM, I can see that they vary in cost when examples were used of the situation in England. So, I wonder if you could give us an explanation as to what that means for Wales.

[134] **Kenneth Skates:** Yes, thanks, Bethan. Sections 11 and 28 are effectively additional provisions to enable long-term safe management of the historic environment, but you're right to say it is difficult to predict the likely numbers and the likely demand for heritage partnership agreements. I would imagine that demand would increase over time, as more stakeholders become aware of the use of HPAs and the potential benefits of engaging in heritage partnership agreements. The intention of an HPA is to allow listed buildings and scheduled monument consents to be approved in advance to cover a designated period of time, usually between 10 and 25 years, to enable owners of multiple assets to be able to plan for the long-term maintenance of those structures.

[135] The Member refers to England. Following their full introduction in England—and it's still worth pointing out that it is still a recent introduction—there is now developing a good body of best practice guidance and model arrangements, which we are confident will be able to inform local planning authorities and stakeholders of the benefits of heritage partnership agreements and where they're arranged for the best purpose.

[136] During the consultation process, a number of stakeholders were very enthusiastic about heritage partnership agreements, including the Canal and River Trust and the National Trust, but I do accept that it is very difficult at this stage to predict the number of heritage partnership agreements that will be formalised.

[137] **Bethan Jenkins:** Can I just ask a small supplementary back?

[138] **Kenneth Skates:** Yes.

[139] **Bethan Jenkins:** Will there be a document? There is some weight to the detail in the

Bill, but in terms of guidance, will that come in line with that? Just for people who may not utilise them now, but may want to utilise them in the future.

[140] **Kenneth Skates:** Yes, absolutely. The Member's right. We will be drawing on the material that's emerging, particularly from England, to develop suitable guidance and resources for Wales.

[141] **Bethan Jenkins:** Okay.

[142] **Alun Davies:** Can I come in briefly on that?

[143] **Christine Chapman:** Yes, Alun.

[144] **Alun Davies:** I very much agree with you, and I think the point that's been raised by Bethan Jenkins is very fair, but, in my experience, what is necessary is certainly guidance—a book, or whatever, providing that help and support—but more than that is somebody, usually from Welsh Government, who is a person, an official, who is able to help people establish these partnerships, and then not to act as the secretariat—I'm not talking about that sort of support—but to act as a specialist who can help guide people through what can be very much a quagmire, sometimes. If Welsh Government wants to do this—and I think you should be doing this—then the provision of that level of support, I think, would be absolutely essential in making this come alive for communities across Wales.

[145] **Kenneth Skates:** Alun's absolutely right. We are going further. Gwilym, do you want to highlight the role of inspectors of historic buildings and monuments in this regard, and other support that we are able to bring forward?

[146] **Mr Hughes:** Certainly. The guidance will be really important, and I totally agree that, obviously, we do need to accompany this provision with an explanation of how it will actually work in practice. We're actually going further than England, as well, in that we're actually bringing scheduled monuments, potentially, into heritage partnership agreements. Of course, that consent process is the responsibility of the Welsh Ministers, rather than local authorities, so where scheduled monuments are involved, it will necessarily involve officials within Welsh Government.

[147] **Kenneth Skates:** That's particularly important to the likes of the National Trust, and to the Canal and River Trust, where there is a combination of listed buildings and scheduled monuments.

[148] **Christine Chapman:** Okay. Bethan, have you finished?

[149] **Bethan Jenkins:** On that, yes, but I'll come in on the next point.

[150] **Christine Chapman:** Okay. If we can move on now, then, to John.

[151] **John Griffiths:** On the proposal to put the historic environment records on a statutory footing through this Bill, could you set out the advantages of that compared with the current position?

[152] **Kenneth Skates:** Indeed. Thanks, John. Historic environment records are used during the development of local development plans as part of the evidence base. Now, it's necessary to place HERs, therefore, on a statutory basis, in my view. Through sections 33 to 36 of the Bill, we'll be meeting the recommendations, again, of this committee's inquiry in 2013 into the historic environment. The information contained within historic environment records provides local planning authorities and other decision makers with essential information.

They raise awareness of the historic environment at a local level and they provide a resource for public participation for research and for educational activities. But the importance of the HERs is not always adequately recognised by those involved in planning applications and decisions, so placing these records on a statutory footing, I believe, will enhance their status and provide them with a more secure future. We will also have a greater degree of consistency across Wales, and the statutory guidance that can be issued under section 36 includes benchmarks for HERs. The royal commission is currently auditing the HERs to see whether they meet the benchmarks, and some enhancement work may be required prior to the legislation on HERs actually coming into force.

[153] **John Griffiths:** Fine. Did Bethan have a supplementary on this?

[154] **Christine Chapman:** Yes, Bethan wanted to come in on this.

[155] **Bethan Jenkins:** Yes, this is the area where I've had quite a lot of concern from people, to me. I was wondering if you could just clarify to me why you've decided—and I don't disagree that it should be on a statutory footing—that each local planning authority should be accountable for their own. Could you explain how you got to that decision; i.e. could you not have a point, one body or one local planning authority, or an organisation that sits on top of that, which may co-ordinate the work in this regard? What I'm hearing is that they're currently under-resourced, understaffed, and are struggling to update the HERs as they stand. So, people need to understand that, moving forward, local authorities, yes, I know would still be maintained by the charitable trusts that are currently operational, but I think it's how this is done moving forward, given the fact that I'm told that some of the records are not up to date, that the data can't be recorded efficiently as things stand, and there are even people telling me that there need to be independent audits of them, as opposed to audits that are currently internal. So, these are all the issues—I don't know if they have been fully exhausted yet—before we come to this stage.

[156] **Kenneth Skates:** I'm happy to provide a comprehensive briefing on the current status of HERs if Members would like that, but just to say, I've tried to cover several points there. One, on the responsibility of local authorities, well, local authorities are the local democratic bodies representing the public. Two, the HERs are already undergoing a form of audit by the royal commission, so there is an audit taking place at the moment. In terms of resources, the Welsh Government already grants the four Welsh archaeological trusts funding to enable them to carry out work on HERs, and we are providing additional funding to make sure that HERs are meeting the benchmarks required for the implementation of the provisions in the Bill.

[157] **Bethan Jenkins:** Sorry if I said too much in one go. It was more to do with the first point as well with regard to how you came to the conclusion that each local planning authority should be accountable for its own system. What I'm hearing is that some people—I mean, we may get this in evidence—would've preferred for one point of accountability, because they believe, at the moment, it doesn't reflect what you say in terms of there being sufficient resource in the system to be able to do that, going forward.

[158] **Mr Hughes:** Well, that's why we've introduced section 35 of the Bill, which allows the discharge of those functions and explains that they can come together for the purpose of discharging that duty and, indeed, through another body.

[159] **Bethan Jenkins:** So, you believe that will be sufficient as it stands.

[160] **Mr Hughes:** That provides the opportunity for local authorities to do it in that particular manner.

[161] **Bethan Jenkins:** Okay.

[162] **Christine Chapman:** I've got a supplementary from Peter, and then we're back to John. So, Peter first.

[163] **Peter Black:** I'm just looking at the mechanism by which you achieve this, and it seems to me to be a bit contrived. From what I understand, what you're saying is that every local planning authority will have a statutory duty to create these historic environment records—that's 25 planning authorities in Wales—but you expect them to continue the arrangement whereby the Welsh archaeological trusts and historic environment record charitable trust manage them. So, why don't you just put the statutory duty on the Welsh archaeological trusts and cut out the middle man?

[164] **Kenneth Skates:** This was something that was raised throughout the consultation process with the external reference group, where we had representatives from both local government and the Welsh archaeological trusts. We won't expect local planning authorities to utilise the services of the Welsh archaeological trusts, but they will have the discretion to exercise—

[165] **Peter Black:** The explanatory memorandum says you do expect them to.

[166] **Kenneth Skates:** No, we're not saying they have to, but we do anticipate that they will utilise the skills of the four Welsh archaeological trusts. If they wish to exercise those duties themselves, they would have to meet the benchmarks set out in other provisions.

[167] **Peter Black:** If the local planning authority does decide they want to exercise those duties themselves, will the additional money that you've put aside for this be available to them?

[168] **Kenneth Skates:** Gwilym, do you want to just explain the funding?

[169] **Mr Hughes:** Well, a proportion would. At this particular moment, the funding for the creation and management of these records is provided by the Welsh Government. One would anticipate the arrangements for that funding would be proportionate to the number of local authorities.

[170] **Peter Black:** You've got an extra £80,000 per financial year put aside for this. Does that money currently go directly to the archaeological trusts?

[171] **Mr Hughes:** Yes, it does.

[172] **Peter Black:** But the duty's on the local planning authority. Surely, as the duty's on the local planning authority, you would be expected to give the money to them and they would then use that money to commission this work.

[173] **Mr Hughes:** Can I just say that this particular policy has been developed very much in consultation with the Welsh Local Government Association and with our colleagues in the royal commission and others, to come to a provision that is the most appropriate for Wales?

[174] **Christine Chapman:** We can ask them this next week.

[175] **Peter Black:** Okay, but going back to my question, though, is the money now going to be paid to the local planning authorities who have the statutory duty to actually do this? I would expect that to happen.

[176] **Kenneth Skates:** No, still to the Welsh archaeological trusts.

[177] **Peter Black:** So, even though the local planning authorities have the statutory duty, they're not going to be given the resources. Effectively, they have no choice, really, because they haven't got the extra resources.

[178] **Kenneth Skates:** Well, they do have a choice, but it would be for the local planning authorities to decide themselves. I'm more than happy to consider any recommendations that the committee may make.

[179] **Peter Black:** It just seems to me that, if you give the resources to the Welsh archaeological trusts, they should have the statutory duty.

[180] **Kenneth Skates:** I'm willing to consider any recommendation that you may have in that regard once you've scrutinised the WLGA, the royal commission and the archaeological trusts.

[181] **Peter Black:** We'll ask the WLGA what they think of that. I think I know the answer. *[Laughter.]*

10:15

[182] **Christine Chapman:** Okay, thanks. Right, I'm hoping to—. It's not scheduled, but I would like to have a very short break because, obviously, we've got quite a long session today. So, we've got a couple more questions before we finish this session. John wanted to come in.

[183] **John Griffiths:** Yes. I would like to move on to the advisory panel and the additional benefits that will bring, over and above the work that the historic environment group does in terms of support for the sector.

[184] **Kenneth Skates:** Okay. Sections 37 to 38 address the independent advisory panel, whose role will be fourfold in developing programmes of lifelong learning, skills development, public participation and monument development. Members of the advisory panel will bring technical expertise to Welsh Government Ministers, and also specialist knowledge. The panel seeks to complement the work of the historic environment group, which is composed of representative stakeholder groups, as opposed to individual experts offering individual technical expertise. Placing the panel on a statutory basis, as provided by section 37 of the Bill, will both futureproof the body and make it far harder for the body to become politicised, thereby ensuring that it remains independent. In terms of appointments, the aim of the panel is to advise Welsh Ministers, and so it will be for the Welsh Government to appoint the panel. However, should the National Assembly or, indeed, this committee wish to have appropriate access to the panel, I see no reason to object.

[185] **John Griffiths:** Just to make one or two additional points, if I may, Chair—there are no reporting requirements in place for the advisory panel. Could you state why that's the case. Also, in terms of monitoring the panel and ensuring that it delivers the desired outcomes and value for money, will any measures be put in place to ensure that there's ministerial oversight for that?

[186] **Kenneth Skates:** The panel will have to report against the agreed forward work programme whilst it's being delivered and upon completion. So, there will be a reporting mechanism there.

[187] **John Griffiths:** And you think that would also provide sufficient monitoring and

outcome delivery?

[188] **Kenneth Skates:** Yes. I am satisfied that the agreed forward work programme, which is essentially for Welsh Ministers to sign off, will be monitored. The work of the panel will be gauged against the forward work programme, and that ongoing process of monitoring and evaluation will lead to best value being achieved.

[189] **Christine Chapman:** Bethan, you had a supplementary on this.

[190] **Bethan Jenkins:** I just wanted to clarify how you perceive that AMs would be able to access the panel. I know from other instances where Government Ministers have set up panels that access to information from said panels is very difficult. So, if we could have some understanding as to—. I don't doubt what you say. It's just that we have to take your good word, and it may be a different Minister in the future, so I'd just like to clarify that point, and also a point that hasn't been raised by me but by people in the sector—and I've raised it with you in a briefing—in terms of that historic environment group and the panel is that we make sure that we understand fully those two separate roles. I think it's worth putting that on record in a question to you—how you see those two groups working, going forward. Thank you.

[191] **Kenneth Skates:** Would it be helpful if we were to provide the committee with, if you like, a table of the expectations and responsibilities of both the historic environment group and the independent panel that illustrates how they will be working in a complementary fashion?

[192] **Christine Chapman:** That would be very useful, Minister.

[193] **Kenneth Skates:** Yes? Okay. We'll do that. It's worth saying as well that the forward work programme will be accessible to the public. It will be published on the Cadw website.

[194] **Christine Chapman:** That's good. Okay; thank you. The next section I think we've sort of covered earlier on: protecting local heritage assets. So, I'm wondering whether Janet would like to ask her questions.

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

[196] **Christine Chapman:** We need to draw the session to a close then.

[197] **Janet Finch-Saunders:** Why does the Bill afford statutory status to the register of parks and gardens, but not equivalent registers for landscapes and battlefields?

[198] **Kenneth Skates:** Oh, okay. Right. The register of historic landscapes is actually unique to Wales. It's something that we should be quite proud of. Following the formal consultation on proposals for the historic environment, it was concluded that we should keep the register on a non-statutory basis. However, it was also agreed that we should review the way it's used within the planning system. So, this has been reflected in the draft 'Planning Policy Wales' and technical advice notice that state that local planning authorities should take into account the register in considering the implications of developments that meet the criteria for environmental impact assessment, or, if in the opinion of the Welsh Minister that they are of more than local impact. So, we'll be looking also to see whether the guide to good practice, and using the register of historic landscapes, requires updating and reviewing.

[199] **Janet Finch-Saunders:** Thank you. Moving on to another question, I for one am glad the merger hasn't come forward—Cadw and the royal commission. But, what are your views now on the future structure of historical environment services in Wales?

[200] **Kenneth Skates:** Okay. I've no plans to revisit the decision any time soon—the decision that was taken by my colleague and predecessor, John Griffiths. The decision was informed by the published responses to the consultation 'The future for our past' and by the evidence and analysis that was gathered by a project board established to consider a whole range of options for the future of the historic environment services at a national level in Wales. I know that some have looked to Scotland to see whether we should perhaps mirror what's happened there. I would have very grave concerns about the implications of moving to a Scottish system where there is a merged organisation that is outside of Government for a number of reasons, not least the significant additional costs that would be associated with such a merger outside of Government. But, also I feel that a merger outside of Government would reduce the influence that the historic environment has within Government, including the links that the historic environment has with other departments and other activities across Government.

[201] **Janet Finch-Saunders:** Okay. Why does the Bill not contain provisions relating to place names and other forms of intangible heritage?

[202] **Kenneth Skates:** Okay. That's quite simply because this is an historic environment Bill that reflects the needs of the historic environment in terms of maintaining and protecting the physical traces of our past, rather than intangible cultural traces.

[203] **Janet Finch-Saunders:** Okay.

[204] **Bethan Jenkins:** So, would you have any—. We've had a petition from Mynyddoedd Pawb—it's not on place names; it's on markers of areas of historical importance. Would there be any movement to do something else if you're not going to bring it forward in this particular legislation?

[205] **Kenneth Skates:** I strongly believe that the proposed provision to place historic environment records on a statutory footing and on a more stable footing will help to promote the connection and the preservation of information on place names. As I said earlier, historic environment records will inform the development of local development plans, and also enable Welsh archaeological trusts to offer accurate and consistent information. So, I do believe that provisions within the Bill will ensure that there is a better gathering of information concerning Welsh place names, and also the names of buildings that may be pubs or other important local assets.

[206] **Bethan Jenkins:** Sorry, it's just again how people can—. As long as that goes with publicity, because I think some people would struggle to know where they go and how they go about doing that, and how then they can have that level of protection that they want for their community.

[207] **Kenneth Skates:** Sure. This is something that I've been very keen to impress upon not just local authorities, but also the Welsh archaeological trusts—the value of engaging with communities at every level, particularly, as I've said, engagement within Communities First areas where heritage and culture can have a profound positive impact in terms of tackling poverty. So, it's an expectation that stakeholders will work with communities, and especially deprived communities, in terms of being able to identify heritage and to therefore better understand our heritage and ensure that heritage is something that everybody enjoys.

[208] **Christine Chapman:** Okay. Can I thank the Minister and Gwilym and Eifiona for attending this morning? We will send you a transcript of the Record of the meeting so that you can check for any inaccuracies. But, thank you for attending anyway.

[209] The committee will now have a short break till 10.30 and then we will move on to our

next session.

*Gohiriwyd y cyfarfod rhwng 10:25 a 10:37.
The meeting adjourned between 10:25 and 10:37.*

**Ystyried Cod Ymarfer Drafft ar gyfer Landlordiaid ac Asiantau y Sector Rhentu
Preifat—Sesiwn Dystiolaeth 1
Consideration of Draft Code of Practice for Private Rented Sector Landlords
and Agents—Evidence Session 1**

[210] **Christine Chapman:** If we can move on to our next item, I would like to welcome David Cox from the Association of Residential Letting Agents, and also Douglas Haig from the Residential Landlords Association. This is regarding consideration of the draft code of practice for private rented sector landlords and agents. Can I welcome you both? We've had time to look at the written responses, so if we could go straight into questions, that would be helpful.

[211] I just want to start off: regarding this code of practice, what is your view—do you think that it's fit for purpose?

[212] **Mr Haig:** From our perspective, probably not, no. There's still quite a lot of work that still needs to be done around it, both in terms of the structure, the presentation and a reasonable amount of the content to go forward.

[213] **Mr Cox:** We take a slightly different view, but that is predominantly because there are already an awful lot of codes of practice that exist within the lettings world. This code seems, in large part, to have been taken from the Property Ombudsman's code, the RICS Blue Book and last year's private rented sector code, as well as ARLA's old code of practice, which is very much based on and designed for letting agents. Therefore, we don't really have an objection to it because it is merely a high-level version of the much more detailed codes that we require our members and letting agents to adhere to. Therefore, we see it as being fit for purpose for letting agents, but not necessarily for landlords.

[214] **Christine Chapman:** I know that Members will have specific issues that they'll want to draw—. Sorry, Alun.

[215] **Alun Davies:** Sorry, can I just clarify something? I think you said that you have, or 'we have', I think you said, codes of conduct. You do mean the Association of Residential Letting Agents—your organisation. So letting agents, who are members, agree to abide by those individual codes.

[216] **Mr Cox:** Yes.

[217] **Alun Davies:** It might be useful if Mr Cox were to write to us with a copy of those codes, so that we could actually understand what they are.

[218] **Mr Cox:** Because there are already a number of codes within the sector—ARLA had its own code of practice until last year—at the end of last year, we decided to dispense with our code of practice to try and reduce the number of codes in the sector and merely replaced it with the Property Ombudsman's code. So, whatever the Property Ombudsman's code for letting is at any given time is our code of practice. So, ours is the TPO code.

[219] **Alun Davies:** Thank you; I appreciate that.

[220] **Mr Haig:** Just to add to that, Chair, the Residential Landlords Association had its own code as well for its members, but, obviously, given the percentage of members that we have, we want to be able to apply a much broader code. And I think what Dave has already mentioned about the sheer volume of codes that are out there is actually one of the major concerns that we have around the establishment of yet another code that doesn't quite blend with everything else that exists.

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

[222] **Jocelyn Davies:** Of course there are many landlords that are not a member of anything, so they won't be using any code, I suppose, at the minute, will they, only statutory requirements. So, what engagement have you had in the developing of the code? Have you had any direct engagement, other than responding to the consultation?

[223] **Mr Cox:** I think both of our organisations sat on the Welsh Government's working group.

[224] **Jocelyn Davies:** Right, okay. So, you were involved at the beginning. Is there anything that you would like to see taken out? Shall we start with you, David?

[225] **Mr Cox:** Actually, no. This is actually the highest level code that is being discussed at the moment. The private rented sector code, which we recommended should be the base for any Welsh code, which was developed by the industry and supported by the Department for Communities and Local Government, and launched actually in Newport by the housing Minister last September, should have been the basis of the code. Now, even that code is nowhere near as detailed as the Property Ombudsman's code and neither should it be for a high-level statutory code, and, therefore, because there's already probably in this code about 40 or 50 pages stripped out from the ombudsman's code, it's really the high-level 'musts' and 'shoulds', not the much more detailed work that goes in.

[226] **Jocelyn Davies:** Douglas, is there anything you'd take out?

[227] **Mr Haig:** Yes, I suppose. Well, it's the way that the code is designed that we're concerned about.

[228] **Jocelyn Davies:** Not the content.

[229] **Mr Haig:** Some of the content we do have an issue with and that does bring me back to some of the consultation process. But if I can answer the first question, really, I suppose what we see it as is that there is a lot of reference to already statutory obligations. We're concerned about the repetition of the statutory obligations and we feel that, really, the code should highlight what those statutory obligations are and refer them to alternative guidance as opposed to trying to repeat it all within the code and that, actually, we should be looking at what best practice is and bringing up the standards that way, as opposed to just repeating statutory obligations. There is another concern around—. And I think we have to understand that there's a big difference between a code that applies directly to a landlord and a code that applies to an agent. Now, I'm aware of the TPO code; I think it's a very good code of practice. I don't think—. It's not particularly—. It doesn't cover landlords specifically.

[230] **Jocelyn Davies:** That's not the audience for that code.

[231] **Mr Haig:** That's not the audience for that code. So, what we feel—. So, there's an area that's covered by the Competition and Markets Authority guidance, and there's an 83 or 93 page document around the CMA guidance, which allows coverage of the consumer protection regulations. What's happened is that a lot of those have been included in the code,

so it's codifying things that are really just guidance elsewhere. Now, the CMA guidance is an excellent document as well, so instead of again repeating a lot of work—and a lot more detail is in the CMA guidance than in the code—I think that we should actually be removing those items from the code and saying, 'This should be referred to in the CMA document'. So, actually what we're looking at is really, 'Here's where you find lots of information about what your statutory obligations are; here's lots of guidance for you around that, which is written and updated by the relevant bodies, and here's a list of best practice, which is very easy to understand.' So, that's how we would like to see the code structured.

[232] **Jocelyn Davies:** Okay. So, is there any other content, other than what you would be subject to that's found elsewhere, that you'd want to take out? Is there anything in there you don't agree with, then?

[233] **Mr Haig:** I think maybe some of the timescales and some of the corrections. There's a lot of detail. I could go through probably two or three pages of things where I would say, 'Well, actually, in practical terms, this is not practicable'—for instance, as an example, having to check a property within 24 hours of a property being made vacant. Now, if you've got one property, then that's okay, but if you've got 10 and they're all student properties and they all vacate on the same day, it's going to take you four hours or so to do one of the larger student properties, so there's just no way you can do that within 24 hours.

[234] **Jocelyn Davies:** Because the code tries to cover all sorts of different sorts of landlords, but there are some that would find this very practically difficult because of that, and that's one example—student accommodation and you may have several student flats.

10:45

[235] **Mr Haig:** I suppose what we would like to do is be able to actually—and we have fed it into our response, a number of the items—go through and discuss them with the committee that's bringing the code together and say, 'That's just not practicable as it stands; we would like to see this'. Like the landlord's address—if it's being managed by an agent, then it should really be allowable for the address to be of the agent, as opposed to the landlord's personal address. But that's not allowable within the code, the way it's written.

[236] **Jocelyn Davies:** So, you're saying that it might not be appropriate in every case for every tenant to know your home, personal address—that's the same as being contactable at any time. I noticed that.

[237] **Mr Haig:** Yes. So, it's not huge changes, but practical changes.

[238] **Jocelyn Davies:** But many—you've got many objections.

[239] **Mr Haig:** Yes.

[240] **Jocelyn Davies:** Okay, thanks.

[241] **Christine Chapman:** Okay. I've got a supplementary from Alun.

[242] **Alun Davies:** Thank you, that's quite interesting and an entirely reasonable point. It begs the question to me as to what the process was in drawing up this code, because what you've just said is perfectly fair and perfectly reasonable and I would have anticipated it would be part of this. So, I think, Mr Cox, you did indicate that you were involved in drawing up the code. Were you, Mr Haig?

[243] **Mr Haig:** Yes, there were two groups, there were—

[244] **Alun Davies:** So, you were involved. Could you describe to me the process of drawing up the code from the point at which you were first involved with it to where we are today?

[245] **Mr Haig:** It stemmed from the stakeholder groups that were meeting on a bi-monthly, quarterly basis. It got to the point where the code of practice was in discussion. There were quite detailed discussions that weren't particularly practicable for every member around the table. So, it was decided to split into two groups. One discussed the training provisions—I'm not a training expert, so I didn't attend that panel—and the code of practice was another group. That only met twice and the discussions were, really, broadly on the purpose of the code, as opposed to any detail of the code. It was decided to adopt a code, the RICS code, that had been drawn together just the year before, as a starting point.

[246] **Mr Cox:** The group met twice. It was very much the initial discussions. I think the last time it met was—

[247] **Mr Haig:** September.

[248] **Mr Cox:** I was going to October last year—September or October last year. We then have had no further involvement on any of the provisions relating to the Housing (Wales) Act 2014 since then. The Welsh Government went, I'm afraid, completely quiet on us. No further stakeholder groups were arranged. At that point, we were discussing the private rented sector code, which had just been launched a few weeks before. We were suggesting that should be the basis of the code. We've had no further direct discussions, and certainly no stakeholder groups, with the Welsh Government since that.

[249] **Jocelyn Davies:** So, did you ever, at any point, see a draft of this?

[250] **Mr Cox:** We saw a draft consultation document and commented on the draft consultation document.

[251] **Jocelyn Davies:** I see. Right. Okay. So, just a point, really, because when I asked earlier about your involvement, it sounded quite good. I'm sure when we spoke to the Minister she said, 'Oh, they were involved in drawing up the code'.

[252] **Mr Cox:** There were two. We had the initial discussion. Then, there was, I would say, probably about a six-month lag where we heard nothing. We got the consultation document for comments probably three weeks before the consultation was actually launched. I would note that the Welsh Government did take on board a lot of the points that I, certainly, made on the first draft—the draft that we saw. The consultation document itself did contain many of the points that I'd raised a few weeks before.

[253] **Jocelyn Davies:** Was it the same for you, Douglas?

[254] **Mr Haig:** We wrote to the Minister and the team working on it, and we had a response. It wasn't at that point on the detail of the document, it was more about how the document was going to be structured. I will say that, overall, as the Housing (Wales) Bill progressed, whilst there was consultation, I don't feel that very many of the points of view of many of the people around the table were taken on board through the whole process, which was disappointing.

[255] **Alun Davies:** You say you wrote to the Minister—to the Government. Would it be possible to have a copy of that correspondence?

[256] **Mr Haig:** Yes. As I say, it was less about the actual physical content of the code, and more about the purpose and how it should be structured. But, yes, certainly.

[257] **Alun Davies:** I'm grateful to you for that. Have you an alternative code or a list of amendments that you'd like to see to it?

[258] **Mr Haig:** We have, yes. It needs to be tidied up, but certainly—we've been working on it from this perspective, but we have proposed alternatives to that.

[259] **Alun Davies:** It would be useful, I think, if you were able to share that with us at the appropriate time.

[260] **Mr Haig:** Okay, no problem.

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

[262] **Mark Isherwood:** Thank you. I think you've largely, actually, answered the questions allocated formally to me of how the code will interact with other codes of practice—we've largely exhausted that. But how do you believe, if at all, the code will make any difference to agents who are already members of professional bodies and subject to codes of conduct, if at all?

[263] **Mr Cox:** I'm afraid to say it won't have any impact at all, because both RICS and ARLA hold their members to much higher requirements to that which is in this code. The RICS have their own blue book, which is their code of practice, which is equally detailed and very similar to the Property Ombudsman's code, which we hold our members to. So, for the actual professional bodies, I'm afraid it's not going to have any impact at all. Having said that, in England and, we are hoping, in Wales as well, there will become a requirement to join one of the three Government-authorised redress schemes, or however many redress schemes you choose to authorise in Wales. Only the TPO has a code of practice; the other two authorised schemes in England, which are the property redress scheme and the ombudsman's services property, don't have their own codes of practice and therefore use the high-level private rented sector code that was launched by DCLG last year, which is similar, although slightly more detailed, to this. So, it really is only the professional bodies that hold their members to a much higher standard.

[264] **Mark Isherwood:** Could I put the same question to Mr Haig regarding landlords?

[265] **Mr Haig:** Well, in terms of our personal members, it shouldn't make a huge amount of difference, because we have a code of practice in place already, but, as, I think, Jocelyn pointed out earlier, many landlords aren't members of professional bodies, therefore they're not currently complying with any sort of code of practice. I think that if it's made very clear that, actually, following the code of practice is part of your licence condition, it does tend to focus one's mind on making sure that some of these things are there to follow. So, really, actually, and we've said it before, if everybody was complying with what was laid out there, then we would have very few problems in this sector. It's about making sure that there is an education programme out there, and it's not just about the training, but it is about disseminating information that this exists in the first place, and that's our real concern, once this gets going. And then, of course, enforcement—it can't do anything if it's not enforced.

[266] **Mr Cox:** I couldn't agree more with you on that one. I suppose one point I would make is that, at the moment, the statutory guidance that the courts use to interpret housing law is the 2002 rent-only code. Now, by its very name, an awful lot of legislation has passed since the 2002 rent-only code came into force. It doesn't take account of anything in the Housing Act 2004 licensing and, again, it won't take into account the Housing (Wales) Act 2014. We

take the view that it is totally unenforceable at this point in time and totally inadequate. It's why we've been pushing the housing Minister in England to use the PRS code from last year and replace it as statutory guidance that the courts use to interpret housing law, as the overarching code for the sector, and the professional bodies use the more detailed RICS blue book or the TPO code to enforce against their members. In Wales, you are also using the 2002 rent-only code. So, something does need to be replaced, because it is just totally inadequate for what it is there to do.

[267] **Mark Isherwood:** On this theme, given the objectives of the code, will this make any difference specifically to the landlords who are creating the biggest problems—you know, the minority of bad or criminal landlords—given the existing codes that already apply?

[268] **Mr Haig:** In my opinion, not hugely, because it's about enforcing what's already there and educating and making sure people are aware of it. So, I suppose it makes it clear in terms of a reference point, which is a 'nice to have', but it's what you do with it. You will have the tool there; it's what you do with it afterwards.

[269] **Christine Chapman:** Could I just mention, because, obviously, you've just said, for the sort of worst end now it is a reference point—. So, obviously, I understand the enforcement, and it's always important to enforce these things, but you think that, for that end, this is a reference point and it could help. Is that what you're saying?

[270] **Mr Haig:** Yes, certainly as a document that brings together a lot of housing legislation and allows people to reference it and say, 'Right, okay, I need to comply with that and I need to comply with that'. It's quite a minefield trying to understand all of the areas that you are supposed to comply with. So, if that document exists, then that is certainly a good starting point, and, ultimately, a breach of the code means that you can revoke the licence, so there is a way of enforcement there.

[271] **Christine Chapman:** Okay. I've got John and then Jocelyn.

[272] **John Griffiths:** I was just going to ask David, actually, in terms of agents who are already members of professional bodies with their own codes of practice, would you have any idea of the numbers of agents in Wales that are not in that category?

[273] **Mr Cox:** I'm afraid I can't do Wales specifically. I'm afraid we break Wales up into three different regions for our membership statistics and it does, I'm afraid, pull into England as well in those three regions. So, whilst I have tried, I'm afraid, from me, it's purely an estimate. We have over 7,000 agent branches and over 8,000 members in the UK. Unfortunately, there are no stats on how many agents there are. Based on the portals' statistics—Rightmove, Zoopla and OnTheMarket—we estimate there are somewhere between 12,000 and 16,000 agent offices in the UK, which means we have about 50 per cent to 60 per cent of all agents within ARLA membership. Then, of course, there is RICS and the National Approved Letting Scheme, as the other two professional bodies. So, I would estimate that approximately 60 per cent to 70 per cent of all agents are members of one of the professional bodies.

[274] It's actually one of the reasons why we were extremely disappointed the Assembly removed what we thought was one of the most important clauses of the Housing (Wales) Bill at the eleventh hour. I think it was the day that the Bill passed last year. It removed a clause requiring agents to be members of one of the professional bodies. Now, we never really got to the bottom of why that was removed. The intention was in the Bill all the way up to the day the Bill actually passed. What that removed—. All of the professional bodies hold their members to specific standards—independent auditing of client accounts, client money protection, membership of a redress scheme, ongoing continuing professional development

and the training requirements that are still in the Bill. But that removed all of those, and therefore they are not on the face of the Act. Unless they are brought in by some other measure—and we are very much pushing that you bring them in by some other measure—all the safeguards that consumers, both landlords and tenants, have from agents of professional bodies that were on the face of the Bill, when it was introduced to the Senedd, were removed literally at the eleventh hour. And we would very much push, and we have pushed the Welsh Minister, to put those back in.

[275] **Christine Chapman:** I've got John and then Jocelyn and then Alun.

[276] **John Griffiths:** I just wondered, Chair, whether that's something then we could pursue with the Minister to find out what the rationale for that omission was and whether Welsh Government has any plans to introduce those requirements.

[277] **Christine Chapman:** Yes.

[278] **Alun Davies:** That's exactly the point I was going to make. It was removed by amendment to the Bill, was it?

[279] **Mr Cox:** Yes, it was.

[280] **Mr Haig:** Yes.

[281] **Alun Davies:** An amendment proposed by whom?

[282] **Mr Cox:** I think it was a ministerial amendment.

[283] **Alun Davies:** By the Minister. That's fine.

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

[285] **Peter Black:** Did you—[*Inaudible.*]

[286] **Jocelyn Davies:** No, we didn't oppose it. I just wondered whether, with the code, a bit like *The Highway Code*, if there is a dispute in the court or in a tribunal, if you're in breach of the code, liability is often found against you. So, even if this doesn't change day-to-day behaviour in a radical way, if there are disputes, won't this code be the thing that aids judges and magistrates and so on in deciding who's in the right and who's in the wrong?

[287] **Mr Cox:** This is where the statutory part of it comes into force. At the moment, unless this is made a statutory code, the courts will be interpreting housing legislation based on the 2002 rent-only code rather than this or whatever you choose to create. If you make this a statutory code, the courts will interpret housing legislation based on this, and something that is in the private rented sector code, which at the moment is guidance—it's not statutory guidance for the court—is that the best practice element will be expected by a court unless the landlord or agent can demonstrate—I can't remember the exact wording, but it's something like 'objective justification' for why they haven't undertaken the best practice requirement. Now, we would again say that any code that you produce should become statutory guidance for the courts to interpret.

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

[289] **Mark Isherwood:** Just an observation, given David's comments about the omission from the Bill on the final day. Some of those matters, such as continuous professional development, were also excluded from the regulations that the Assembly passed on Tuesday.

So, the implications have already fed down.

11:00

[290] **Mr Cox:** I'm afraid I didn't know that, but may I make one point on that one? Douglas and I were both sitting before you a few weeks ago on the renting homes Bill and, if there is no requirement under this piece of legislation for ongoing development and CPD, then agents and landlords are going to need to get trained in old law. We're talking probably about this coming in later in the year, with 12 months to get trained before enforcement starts. So, by the end of next year, agents and landlords will need to get trained on the law as it stands today, which is then likely to change if the renting homes Bill becomes the renting homes Act, at which point you will entirely change the legislative requirements of tenancy law with no requirement for the agents and the landlords to know what it is. It beggars belief, quite honestly.

[291] **Christine Chapman:** Yes. It's going to be interesting. Peter, do you want to go on to your main questions?

[292] **Peter Black:** Yes. I'm just trying to get to the bottom of this not being a statutory code, because this code was issued under section 40 of the Act. Given that it is actually a code issued under the Act, in what way is it not statutory?

[293] **Mr Cox:** I'm afraid I do not know the exact legal processes, but what we would advocate is that it needs to be made statutory guidance so that the courts are required to consider it when enforcing housing legislation. At the moment, even the PRS code, issued by DCLG last year, is not something that the courts will use to interpret housing legislation.

[294] **Peter Black:** So, it will actually have to say, 'this is statutory guidance' in the Act?

[295] **Mr Cox:** I'm afraid that you would need to ask a constitutional lawyer that question. I'm afraid that I don't know the answer.

[296] **Christine Chapman:** We'll try and get some advice on that.

[297] **Peter Black:** We'll get advice on that afterwards.

[298] **Christine Chapman:** Yes, we will get advice.

[299] **Peter Black:** Okay. My question relates to the Competition and Markets Authority, which we've already touched on, and how it interacts with the guidance for letting professionally. Can you expand on that—on the differences and the issues around that?

[300] **Mr Cox:** It's probably best if we talk about it from a landlord's and an agent's point of view. So, for an agent, the CMA guidance is required because they are dealing with consumers. Under the case the Office of Fair Trading v. Foxtons from a few years ago, if a landlord is using an agent, a landlord is classed as a consumer in that situation and, obviously, a tenant is classed as a consumer in that situation. The CMA guidance and the Consumer Protection from Unfair Trading Regulations 2008 wiped away the concept of caveat emptor—buyer beware. It is now a requirement for agents to tell prospective tenants everything they need to know in order to make an informed transactional decision. Now, the guidance from last year is almost 100 pages long. It's ambiguous in many ways. It's not clear, and it's one of the reasons we've actually created a primary authority scheme to try to assist agents in navigating and having regulatory certainty by being issued assured advice from their primary authority.

[301] **Peter Black:** And that's UK Government guidance, because it's to do with consumers.

[302] **Mr Cox:** No, it's from the EU; therefore, it applies across all—

[303] **Peter Black:** Okay. It's not Wales—

[304] **Mr Cox:** The guidance has come out of the Competition and Markets Authority. It is different for landlords because landlords—. There is no definition of when a landlord stops being a consumer and starts being a business in UK law at all. Therefore, does a landlord have to comply with the CMA guidance as a business or not? Are they a landlord, are they a consumer or are they a business? For agents, it does need to go in the code because it's a fundamental shift in law. Although it happened in 2008, it's not being enforced particularly well at the moment, but it does hold an unlimited fine. It's actually one of the few offences in housing law that holds an unlimited fine, and it is important that consumers are aware of what they are taking on.

[305] Just to give you an example of some of the assured advice—and it's something that I go and actually ask agents whenever I meet them at a regional meeting: do you need to tell a prospective tenant if somebody has died in the property? It's an interesting response because I start with 'yes', 'no' and then 'it depends'. The advice that we've had from our primary authority, which our agents use, is that it does depend. If somebody has been murdered or has committed suicide in the property, then, yes, you do need to. But our primary authority took the view that an awful lot of our housing stock is quite old and, therefore, it's reasonable that a few people have died of natural causes in a Tudor house over the centuries. Therefore, if they died of natural causes, you don't need to tell a prospective tenant.

[306] **Peter Black:** It's possible that they may have been murdered in Tudor times in that property. [*Laughter.*]

[307] **Mr Cox:** Exactly. It is very confusing. There's very little case law on the consumer protection regulations, but it's something that has to go into a code for an agent. Whether it has to go into a code for a landlord, I'm not sure. I would probably say that, in the vast majority of cases, it doesn't.

[308] **Peter Black:** So, in terms of the status of this guidance, presumably it sits alongside this code and, presumably, if the licensing requirements of the Housing (Wales) Act 2014 in terms of training—. That training will cover that particular code.

[309] **Mr Cox:** It would need to. It's a significant part of what an agent does. In fact, it pervades every part of what an agent does. If an agent makes a mistake and doesn't provide the necessary information, then that does bring the whole question of the legitimacy of the tenancy into account.

[310] **Peter Black:** How aware are landlords of this?

[311] **Mr Haig:** I think this is—. Something that has been missed throughout the development of the whole Housing (Wales) Act 2014 is really just how different the letting agent and the landlord markets are. They seem to be lumped together and I've constantly banged my head, saying that we need to be looking at them differently. So, what we've got is a mish-mash of requirements, which probably doesn't suit either market and really should have been treated independently. What David's talking about—. One of the relationships that hasn't really been examined through is actually the relationship between the landlord and the agent. Most of it has been landlord/agent and the tenant as a relationship and, actually, there's quite a complex relationship between the landlord and the agent, certainly when it comes to

responsibility and who is actually responsible for things. Throughout the whole process, this has been ignored. It comes down to training as well. I mean, we've got a whole section there that, predominantly, landlords don't need to know, except for enforcing their rights if they are dealing with an agent. That's trying to be lumped together as if you were the same people doing the same job, and you're absolutely not. There's such a difference. I think that's part of the problem with agents at the moment. A lot of agents start because they are landlords, thinking, 'Oh, I'll start managing other people's properties.' And they really don't realise the massive gulf there is between running properties for other people and running something for yourself. That's something that I would really like to see looked at as we progress this.

[312] **Christine Chapman:** Okay, if we can move on now to Janet.

[313] **Janet Finch-Saunders:** We've talked about the clarity of the draft code and how it could be improved. Anything further to add on that?

[314] **Mr Cox:** The only thing I would say on this is it is a well-drafted code. It is well written and it's clear and easy to understand, particularly when you think of something like the TPO code, which is much more detailed. Although it is exceptionally well written as well, I think a few tenants will find it difficult to navigate the TPO code, whereas this a tenant should be able to understand relatively simply, and understand their rights and the responsibilities of their landlords and their agents. So, from that perspective, I do actually think it's a very well-written document. One of the things that we put in the pre-consultation consultation was that—. It was originally two documents: a legal one and a best practice one. One of the things we suggested to the Welsh Government is that it should be one document so that everything is in the same place, which is what came out in the consultation document. So, that was one thing that I would probably have raised with the committee if they hadn't already acted on it.

[315] **Mr Haig:** I agree in the sense that, if you refer to the TPO code, this code is much easier to read. But I think that if we are talking about real consumers here understanding it—. Because we want tenants—not just landlords—to read this, to know what their landlords should be doing. I know we are looking possibly at how-to-rent guides and things like that. But, actually, we want to be able to encourage access to this code for tenants. So, I do think that it needs a lot of thought, certainly in terms of the layout. Some of the language is technical still, for both landlords and tenants coming into it—if you are a new landlord. If you are at an agent's level, you should be knowing these things by the time you're getting to the level of an agent. So, I can understand where David's coming from entirely, but, from the consumer level into the code—. The layout needs to be changed, certainly in terms of having two sections within it, where you keep bouncing backwards and forwards. I think it needs to be altered. I would like to see the agent obligations stripped and put in a section at the back so that, actually, the landlord is more clearly identifiable for tenants, landlords and agents—exactly who is responsible for what. Because sometimes it just says 'L', but who is the 'L' responsible to? Or it says 'A', and who is the 'A' responsible to? Actually 'A' is responsible to the landlord in this case and not to the tenant in this case, and it's a little complex like that.

[316] **Mr Cox:** Would it help to explain how the PRS code is created? The Secretary of State ordered RICS and a working group to create this code last year on behalf of the whole industry. So, we had a significant number of working groups and meetings and discussions last year, and that's actually exactly how the PRS code itself is now created. Each section—so viewings et cetera, property conditions—has the legal requirements at the top, followed by the best practice guidance and then followed by a sort of shaded area that says, 'For agents only'. So, it separates out what is required for landlords and agents in legal and best practice and then, for agents, you're expected to do this bit on top. Now, I would agree with Douglas that the entire industry, including the tenant groups—everybody who was involved in the construction of the PRS code that was signed off and launched by the Department for

Communities and Local Government and the housing Minister last year—thought that that was the most logical way of putting it.

[317] I can understand the fact that the Welsh Government has chosen to separate law and best practice into two sections. I can understand the logic, but I would probably agree with Douglas that it's probably more sensible putting the two bits together in each section.

[318] **Janet Finch-Saunders:** Is there a need to replicate statutory requirements in the code?

[319] **Mr Cox:** I would say yes, there is, because it's then that single reference source, with maybe links to more detailed information. I think on the consumer protection regulations, for example, what the PRS code says is that agents have to comply with the consumer protection for unfair trading regulations, the Competition and Markets Authority issued guidance, and the guidance is at this link. So, it's sort of a couple of lines, I suppose, to actually replicate the guidance in the code.

[320] **Mr Haig:** We'd rather see the statutory obligations referred to and then be pointed to guidance, because each of those sector obligations are going to be pretty hefty and I think that, actually, you either try to cover it all and it's going to be a huge document that no-one's going to read or you don't cover it enough and, actually, you give people the false sense of security that they're complying with everything, and that's my concern. If we abbreviate things to cover it all, then you're going to think, 'Right, this is it, this is everything I need to cover in this document' and you're far from it.

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

[322] **Mark Isherwood:** I have something referred to in your evidence about how complaints procedures should be accommodated within the code and the best practice.

[323] **Mr Haig:** Complaints procedures are covered in the codes for the letting agents when they are members of a professional body, and I will reiterate that I fully support David on the basis that we thought that agents should be members of a professional body as part of this Act, but there's nothing currently there for landlords. It's a bit more difficult for landlords because, obviously, there's not necessarily a redress scheme, or there are not many people in an organisation that you can escalate complaints to. So, you have to be a bit careful, because you can't assume the same availability of a redress scheme as is available for letting agents. But, we think that there should be both a complaints procedure and a repairs reporting procedure, which tie into the retaliatory eviction side of things for the renting homes Bill, so that both parties are aware of what's expected when a complaint is made or a repair obligation is made. I'm not saying it should tie people down to the moment they make one little mistake and that that's it, they've failed the process and are going to have things awarded against them, but that it should give guidance that, 'When this happens, you should be doing this'. And it allows education on both sides then, because you can say to the tenant, 'If you have an issue and something's not being repaired, have you followed this procedure? Because, if you follow this procedure, you can more easily get things done'. It will take a while but, through education and training, we can get this out into the sector.

[324] **Mark Isherwood:** And clarity for tenants.

[325] **Mr Haig:** Yes, and clarity for tenants.

[326] **Mr Cox:** And from the agent perspective, it actually goes back to what was on the face of the Act itself. There is no requirement for a complaints procedure for a letting agent in the Act, which is startling, but, at the moment, there should be, as far as we're concerned, an

internal complaints procedure within an agency. When that has been exhausted, there should be independent redress through an ombudsman service.

11:15

[327] We take the view with our members that if the ombudsman upholds a complaint against them, we have an entirely independent disciplinary tribunal that will then act on the member themselves, and can impose fines, additional training and termination. But, of course, termination from our membership doesn't remove them from the industry. They can still practice as a letting agent. Therefore, there does need to be a robust complaints procedure. But what was in the Bill was then taken out of the Bill, and therefore, at the moment, it's six months in England that all agents have to be a member of a redress scheme. There is no such requirement in Wales at the moment. Unless something changes, there is no requirement going forward either.

[328] **Christine Chapman:** We just have a few more minutes. I know that Alun does want to come in, but Gwyn, did you have a few questions? Then John.

[329] **Gwyn R. Price:** Yes, just on the best practice. Is it clear to you how the impact of the best practice section will be monitored? Is it clear how it's going to be monitored? And whether the issue of electrical safety checks, smoke and carbon monoxide detectors should be addressed through the best practice section or made a statutory requirement, for example, by amendment to the rented homes Bill.

[330] **Christine Chapman:** Douglas.

[331] **Mr Haig:** As for monitoring, there has been no proposal so far. We've had no information as to how, really, this is going to be monitored and enforced. So, I'm equally as keen to learn about that as you are. So, in terms of property standards, well, the purpose of this Act—the Housing (Wales) Act—was really around lettings and management standards as opposed to property conditions. There's an entire section on property condition in the Renting Homes (Wales) Bill, and I think that, actually, that's where we should focus on property conditions, not in a code of practice, because that's how you do things as opposed to what is the property.

[332] **Mr Cox:** Yes. I would agree with Douglas entirely on that one. I would say, in England we've got a mandatory requirement for smoke detectors and carbon monoxide detectors where solid fuel is burned coming into force on 1 October. It is probably sensible to replicate that. I might actually suggest that you go a little bit further because nobody is quite sure why England stopped at only solid fuel and why they didn't include gas, oil and LPG. Again, we've asked DCLG and they've not really provided us with any clarity on that one. I would imagine that carbon monoxide from gas appliances is probably more likely to be more prevalent to kill than coal.

[333] **Gwyn R. Price:** What about electrical safety checks? It's suggested that, every five years, a property should be revisited.

[334] **Mr Haig:** We, in principle, agree with electrical safety checks. So, my objection wasn't that I didn't want them to happen; I just don't think that the code of practice is the right place for them to occur or to be mandated. We agree with electrical safety checks, but not necessarily every five years. I think that should be an advisory of five years on the basis of what the electrician goes in and says. So, if you've got a low-risk property and it's a new installation, then, really, you should be looking at longer than that. If you've got a higher risk property then they might turn around and say every two or three years. If you look at every other part of the industry, you're doing it in terms of assessing the risk, and to start really

mandating time periods when the time period isn't necessary is something that I think we should examine.

[335] **Christine Chapman:** I've got Alun and then Peter on this point.

[336] **Alun Davies:** We already do that with gas, of course, every year. You need a certificate, and I think that's right and proper for the reasons that Mr Cox has referred to. It appears to me that if you say that you've got no objection to an electrical safety test, which is a very reasonable point of view to take, it's difficult then to say that you do have objections to doing that in a structured way. My view is that if you have a structure for that testing, and certification—and five years, to me, seems a reasonable period of time; I accept it could be shorter, but it certainly shouldn't be longer—then that provides a certainty and the guarantees that people require. I'd be surprised—. I'm assuming you don't want this in this code of conduct, and you'd have the same objection probably if it were to go into primary legislation.

[337] **Mr Haig:** In terms of having mandatory electrical safety certificates in primary legislation, I'm not sure that that's the right place to put them—in primary legislation—but that's—

[338] **Alun Davies:** So, where is the right place?

[339] **Mr Haig:** Well, in the regulations that come afterwards. But as far as I'm concerned, an electrician is trained to be able to tell me the status that that property is in and I'm not going to prejudge his competency other than by checking that he's got the right levels of certificates. Therefore—

[340] **Jocelyn Davies:** Or 'her'.

[341] **Mr Haig:** Apologies.

[342] **Jocelyn Davies:** Well, your electrician might be male.

[343] **Mr Haig:** My electrician is male, yes. My decorator is female.

[344] Therefore, I rely on the expertise of an electrician, because whilst I know a little bit about electrics, I certainly wouldn't start playing around with it or pretend that I can tell you how often that needs to be tested. If 10 years is appropriate for some new installations, then I will rely on the electrician to tell me that.

[345] **Christine Chapman:** Peter, you had—

[346] **Peter Black:** Two points. David, when you talked about the mandatory requirement in terms of solid fuel appliances, I thought I heard you say carbon monoxide detectors and smoke detectors.

[347] **Mr Cox:** In England, the law will be that you require a smoke detector on every floor of every property—

[348] **Peter Black:** Right, okay. That's a separate thing, yes.

[349] **Mr Cox:** —and a carbon monoxide detector in every room where a solid fuel is used.

[350] **Peter Black:** So, the smoke detector is slightly different.

[351] **Mr Cox:** Yes, sorry. Two different requirements.

[352] **Peter Black:** On the electrical safety checks, I think the issue—. Obviously, you have to make sure that the electricity supply and the fixed appliances that you supply are safe, but of course the tenant can introduce an electrical device at any stage that could be faulty and could cause a fire. I'm just wondering how you manage that process.

[353] **Mr Cox:** I think it's almost impossible to manage that process. You can tell tenants what they should do and that they shouldn't overload sockets. But, I think, when we talk about electrical safety tests, we're talking about the wiring of the property itself.

[354] **Peter Black:** Yes, obviously.

[355] **Mr Cox:** There should be portable appliance testing for anything that the landlord has in the property. It is very difficult to tell tenants what they can and can't put in, because it is their home. It's their choice what they bring in. Particularly for people coming from abroad using international adaptors and then attaching a television, a games console, a laptop, three or four lights all onto one and then using an international adaptor, that's the most dangerous thing and one of the commonest causes of fires in student houses. But there's a level of 'you can take a horse to water, but you can't make it drink' on things like that.

[356] **Peter Black:** So, when we're talking about electrical testing, we're talking about checking that the electrics are safe and that any goods that you supply, as a landlord, are PAT tested.

[357] **Mr Haig:** Yes. I mean, for us, we think residual current devices are actually one of the most important parts of that and that's what we would like to see, because, ultimately, if the appliance is faulty then the RCD would protect you. If the tenant wants to do the Christmas tree situation, then you've got some level of protection there. So, that's the sort of thing that we would support. But, on inspections, you can talk to a tenant and say, 'You can't have 17 different strip plugs with things plugged into them', and you can make them take them out reasonably on the grounds of safety, but the moment you leave, they'll just plug them back in again.

[358] **Mr Cox:** That's actually the same problem with smoke alarms. The law in England is that the smoke alarm will have to work at the start of the tenancy. Now, one of the common objections by the industry to a mandatory smoke alarm is, 'What if the tenant just takes the battery out the moment you close the front door?'

[359] **Peter Black:** They should be hardwired, shouldn't they?

[360] **Mr Cox:** In a lot of properties it's quite difficult. Certainly, in any new build, they come hardwired, but in a lot of older properties, that is quite a challenge, particularly in that the law in England is going to require one on every floor. So, for example, if you've got a two-storey property above a chip shop, it's going to need three, because the entrance will be at the chip shop level and you have to go up that first set of stairs. Again, it kind of comes back to the horse to water: you can put it in and make sure it works. It's the same with light bulbs, actually. If the tenant doesn't change the light bulb, there's nothing the landlord or the agent can do, but if the tenant doesn't change the battery in a smoke alarm, or deliberately takes the battery out of the smoke alarm to use it in something else, there's very little the landlord can do, because it is the tenant's home during the tenancy.

[361] **Peter Black:** But, hardwired is doable. I've got a 100-year-old house and I've hardwired my smoke alarm in there. It's just investment.

[362] **Alun Davies:** And, I've done the same.

[363] **Christine Chapman:** John, you had a final question.

[364] **John Griffiths:** Yes, just on enforcement, Chair, which we've touched upon already, really. Do you think it would be a good idea to include the penalties for landlords and agents in the code, in terms of effective enforcement?

[365] **Mr Cox:** I can't see it hurting, but we do want to make sure that the code doesn't get too long. A lot of what we've talked about today comes down to the issue of enforcement. How is this going to be enforced? Now, at no point throughout the entire process of this Bill up to today have we heard anything from the Welsh Government about how they're going to enforce it. Now, it's imposing an awful lot of requirements. One of the things I actually raised at a conference in Cardiff a few weeks ago, under the proposals for how they're going to regulate the scheme, is that I don't think the Government has fully appreciated the sheer volume of administration work they are going to have to do.

[366] Just to give you an example, I have 8,000 members. I have quite restrictive requirements on my members. I employ 27 full-time staff just to make sure that my members comply with my requirements, and I only make them do that on an annual basis, to confirm. In Wales, under the licensing proposals, if a member of staff in an agency leaves, for example, the agency that they're leaving will need to notify the Welsh Government that the member of staff is leaving. They will then need to notify the Welsh Government again that a new member of staff has come in to replace the leaving member of staff. The company that that member of staff is going to will need to notify the Welsh Government that that member of staff is coming, and will probably have to notify the Welsh Government that a previous member of staff has left. So, for one staff change, that's four notifications to the Welsh Government, which all have to be done within 28 days of the action happening. Every landlord that moves a portfolio from one agent to another agent, for every single property in that portfolio, will need to notify the Welsh Government that they're leaving agent X, and then notify the Welsh Government again that they're joining agent Y. The sheer administrative requirements I don't think have been appreciated at all, and with the best will in the world, they're going to need an army of staff to be able to actually comply with the requirements they have set themselves. I really do not think they have appreciated quite what they have set themselves up to do, and I'm worried that they've actually set themselves up to fail, because unless they employ hundreds of staff they are not going to manage what they've put in their own documents.

[367] Then, that comes down to enforcement. If they're spending catastrophic sums of money on administering the scheme, what is left for enforcement? How is enforcement going to work? It's the same with every scheme that we've seen of this kind: the administrative requirements have been way higher than they've ever expected, and therefore they've never got around to the enforcement. Sorry, if that was a bit of a negative to finish on.

[368] **Christine Chapman:** Douglas, have you got anything to add?

[369] **Mr Haig:** I think it's an example of how they've just not understood the agent market at all, and they've tacked it on to landlords. Actually, really, what they should've done is looked at agents, sorted that out, understood that, put everything in place, and then filtered it down to landlords. You would've had a much bigger impact by focusing on agents and the market anyway. In terms of your point, yes, I think it should be highlighted. I think, actually, there should be a bit more communication in that document—not reams and reams, but something quite simple, to say, 'This is your code of practice. This is what you should be following. If you do not follow this, then you can lose your licence. If you lose your licence, you may be in a position where you cannot actually operate or manage your portfolio anymore'. I think that needs to be made very clear.

[370] One of the other things I would like to see and I'd really like the committee to consider—and we have requested this via the civil servants; actually, it was discussed, but the focus seems to have changed on that—is, going forwards, after this starts, for there to be a stakeholder panel that supervises it, and measures and monitors the performance of the scheme, both in terms of financially operating it and that it's actually having an effective measure on the industry, with the right metrics put in place—metrics that are agreed by the stakeholders, not just the metrics that the Government thinks represent the best outcome for the scheme.

[371] **Mr Cox:** I would wholeheartedly support that one. I know that a task group or working group has been set up that involves the Welsh Government and local authorities, but it's actually not the local authorities that are going to be dealing with this on the ground; it's the agents and the landlords, so there should be some representation.

[372] **Mr Haig:** And we're paying for the scheme.

11:30

[373] **Mr Cox:** May I make one final point on the code? The code needs to be a living document. Law changes—case law, legislation changes. So, if it's going to be set in stone, it needs some mechanism to be updated as law changes; otherwise, what has happened with the 2002 rent only code will happen with this, and the moment the Renting Homes (Wales) Bill gets passed, this may become completely obsolete. So, it needs to be a living document.

[374] **Christine Chapman:** Okay, that's very, very helpful. Can I thank both of you for attending and giving us your views on this? It's very helpful for us. We will send you a transcript of the meeting so you can check for any inaccuracies.

[375] **Mr Haig:** No problem. Thank you for the opportunity.

[376] **Christine Chapman:** I'd now like to invite our next panel. Thank you very much, both.

11:31

Ystyried Cod Ymarfer Drafft ar gyfer Landlordiaid ac Asiantau y Sector Rhentu Preifat—Sesiwn Dystiolaeth 2
Consideration of draft Code of Practice for Private Rented Sector Landlords and Agents—Evidence Session 2

[377] **Christine Chapman:** Apologies to our next panel for the slight delay. Okay, we'll continue taking evidence regarding the draft code of practice for the private rented sector. I would like to welcome our advice section. Could I ask you to introduce yourselves for the Record? Steve, would you like to start?

[378] **Mr Clarke:** My name is Steve Clarke. I'm the managing director of the Welsh Tenants.

[379] **Ms McNeil:** Elle McNeil. I'm a policy officer for Citizens Advice Cymru.

[380] **Ms Bibbings:** I'm Jennie Bibbings. I'm campaigns manager for Shelter Cymru.

[381] **Christine Chapman:** Thank you very much for coming in. Obviously, we will be

following the same pattern as for the previous panel. I just want your views, really. We haven't got a huge amount of time this morning, but I just wonder whether you feel the draft code is a good idea or not a good idea. Just general responses to start. Jennie.

[382] **Ms Bibbings:** We've been very supportive of the whole landlord licensing proposal by the Government right from the start, and we think that the code has got great potential as a communications tool. So, to have something that is clear and that tells landlords and agencies exactly what their obligations are, and not only that, but also gives them ideas on what they can do to improve their practice as well, is a really important part of the scheme. So, I guess we were disappointed to see the draft as it is currently, because we're not convinced that it fulfils those basic requirements that a code should.

[383] **Christine Chapman:** Anything to add, either of you?

[384] **Ms McNeil:** Just echoing Jennie's point, really, in that it was a bit disappointing when it came out, really. We were hoping for something that would be aspirational and that would do what they said in the Bill in that it would set the standards for the sector. I don't think it does set the standards; I think it reiterates what statute already is.

[385] **Christine Chapman:** Steve.

[386] **Mr Clarke:** I'd like to echo those points as well. Specifically, I think you would've had a very different document if tenants were engaged in drafting the code as well. The code doesn't seem to present the vision as well, and I think that many of the elements within the code as currently drafted could've been provided in other documents. Essentially, it doesn't address, I think, what a code needs to address, which is to provide a vision and intent around the key elements of that.

[387] **Christine Chapman:** I know Jocelyn had a question about engagement.

[388] **Jocelyn Davies:** Yes. Perhaps you'd tell us, then, what was your input into the production of this document. Jennie, shall we start with you?

[389] **Ms Bibbings:** Okay. As for our own input, we're a member of the working group. The working group doesn't meet very frequently. Didn't you look back and see that the last meeting was September, and the one before that was quite some time before that? So, as for our input, we're there on the working group, but I think that it's—. We very much wanted to see not only the usual suspects in terms of the representative bodies, but to have direct tenant input as well. We've been talking to the Government officials for a long time now to say, 'Can we get some consultation and some engagement?', especially on the best practice elements, because landlords and tenants themselves are both best placed to tell us what best practice can be. I think that the team has been fairly inundated with requests from people to join that working group and to have an input on the code of practice, and some of those groups have been relatively narrow interest groups possibly, and so the officials have, I think, gate-kept membership of that group and gate-kept input into the work as a result. I think perhaps that gatekeeping has gone too far, particularly when we can see now that we've got a code here on best practice, which could be so much more if you listened to what landlords themselves say and what tenants themselves say. We worked with Mr Isherwood to propose an amendment to the Housing (Wales) Act 2014, which would've required the Government to consult directly with tenants, rather than just their representative bodies, in the development of the code. Unfortunately that didn't get through, which I think is a shame.

[390] **Jocelyn Davies:** So, has that been the experience of both of you?

[391] **Mr Clarke:** Yes. We don't sit on the working group, which I think is—. We haven't

had any input in terms of the pre-drafting of the code, so the only chance that we got to respond to it was in the consultation period.

[392] **Christine Chapman:** Okay. Before I bring Mark in, sorry—

[393] **Jocelyn Davies:** No, no, that's fine.

[394] **Christine Chapman:** Alun had a supplementary, and then I'll bring Mark in.

[395] **Alun Davies:** I think it's profoundly disappointing that neither tenants nor landlords feel that they've been involved in establishing this code. I think it's quite an extraordinary situation. You've explained very well the processes as played out from your point of view, but have any of your organisations sought to influence the code, because you all knew it was being drawn up? Have you written to the Minister or written to the Government? Have you contributed ideas? I presume that you went through a consultation process. Have you tried to influence the Government in any way outside of the formal process?

[396] **Ms Bibbings:** We have. Going back to 2011, we did some work on letting agents' fees, and we had an early meeting with the officials, and I felt that it was a really positive meeting and that they really took on board our thoughts, not necessarily around creating more regulation, but around transparency and guidance being very clear, but it hasn't come through to what's here today. If a tenant were to look at this and to look at what it says around fees and charges in particular, we know that's an area that's of great concern, so I think there's a lot more that could be done there, and we were hoping for a lot more.

[397] **Christine Chapman:** Okay. Steve or Elle?

[398] **Ms McNeil:** We tried to work with Welsh Government in terms of providing information and feedback through the working groups, and in that way working with the officials.

[399] **Alun Davies:** And you've done that in writing?

[400] **Ms McNeil:** In writing, yes.

[401] **Mr Clarke:** We were very much involved in the whole accreditation scheme in its conception et cetera, but unfortunately last year we lost a member of staff due to the reductions in funding, which meant that we had to curtail some of our involvement at that stage. So, while we were involved up to a point, when the code was actually being drafted and considered, then we didn't have representation at that point.

[402] **Alun Davies:** Did you correspond with the Government?

[403] **Mr Clarke:** No, we didn't, no.

[404] **Alun Davies:** Okay. Would it be possible for those of you who did correspond with the Government to share that correspondence with us?

[405] **Ms Bibbings:** Yes.

[406] **Christine Chapman:** If you could send us that, that would be very useful—any copies of correspondence. Okay, Mark, you wanted to come in?

[407] **Mark Isherwood:** Yes. How, for tenants, do you believe the code could more clearly outline the standards they can expect from landlords and agents?

[408] **Mr Clarke:** From my point of view, it's the structure and content of the document, I think. It needs to be readable. There are language issues there: words and phrases like 'mitigate', which people don't really understand. We need to be more explanatory. As we've said in our response, I think we need to use more action verbs in terms of 'should' and 'must' et cetera.

[409] In terms of tenants reading the code, as I said in terms of the layout as well, I think we would've liked to see landlords and agents split from the code with two specific elements. As I said, I think what the code needed to present was an aspiration for the sector to raise the standards. There's nothing about competency, development of staff, or people who interact around customer relations, mediation or arbitration. There's nothing in there in relation to prevention of eviction, et cetera. So, there's quite a lot that we would've liked to see in that. From my point of view, as it stands, as I said, it reads as a descriptive element of what you should do as a landlord when you're taking a long tenancy or whatever, but it doesn't actually aspire to what I think the code needs to aspire to, which is a vision document with clear intent, and then supplementary appendices that say 'These are to do with statutory processes, your rights and obligations et cetera'. In terms of the layout, we would have liked to have seen, as I've indicated on page 3 of my response, the statutory provision clearly listed, some ethical issues around what landlords and agents should provide, or landlords should provide, and then some consequences of non-compliance in there, so that the tenant, as well as the landlord, is aware of non-compliance and what that means for the landlord or agent, and then some indications of good practice so that the tenant could be signposted as to what to expect from a good landlord as well in relation to that obligation.

[410] **Christine Chapman:** Jocelyn, did you want to come in?

[411] **Jocelyn Davies:** It was just really that in a code surely the word 'must' implies—. If I see 'must' that's legal, that's the law. So, if we use 'must' in any other places, it's confusing then, isn't it? Do you think that the code could be confusing in terms of mixing up those words—'must' and 'should' and 'ought to' and so on?

[412] **Mr Clarke:** Yes.

[413] **Ms McNeill:** I think with the separation as they've got it at the moment, with the best practice and the statutory information at the beginning, you've got repetition of some of the information. In other points, it's written differently or uses different words, but kind of saying the same thing. So, that's very confusing as well, because is that the law or is that best practice, and isn't best practice beyond the law? And if it is beyond the law, then that should be quite clearly about these are the things that you could do or this is what we suggest you could do, or this is a 'should'. So, yes, I don't think it's an accessible document in terms of the layout, the language, even the structure of it in terms of the headings, because things about repairs are listed in the 'once you become a tenant'. Well, if you're visiting a property and there are issues with it at that point, how does that affect it? Yes, there are a lot of issues with it, I think.

[414] **Christine Chapman:** Mark, shall we go on?

[415] **Mark Isherwood:** On this, you may have heard in the previous session reference made by the Association of Residential Letting Agents to the code for PRS launched for England and the layout there, which seemed similar to what you were describing. Do you have any views on that as a model?

[416] **Ms Bibbings:** It's a better version of what we've got here. To my mind, it could be clearer and it could be more accessible. I'm thinking particularly in terms of tenants, but also

those landlords who are new to the market and haven't got the experience. So, the language could be clearer. The England code—. It also lacks that talking directly to the reader about why you should be trying to be the best landlord you could be. We haven't seen that in the code. You know, 'These are the benefits to your business for following the best practice that you can; these are the benefits to your tenants'—that kind of stuff, I feel, is missing. With the examples and the case studies and good practice, I think that a document like this should be able to inspire the reader to get them thinking about the kinds of things that they could do because there are loads of different aspects of best practice in the PRS, but unless you consult with tenants and landlords—and the tenant involvement in the England code wasn't as much as some of the other actors—I think that's a whole layer of information that you can't then get.

[417] **Mark Isherwood:** Finally, if I may, on this, how should this accommodate complaints procedures and redress?

[418] **Ms McNeil:** I think it's a glaring hole at the moment that there is nothing in there at any point about what happens if I break the code and what happens if, as a tenant, I want to talk to my landlord where there has been a breach of the code. There is nothing there. And whether you say, 'We have a separate complaints policy' and then they produce a separate complaints policy, is, I think, a matter for course. But I just think in terms of the whole structure, if you're just writing about complying with the law, these are already legal requirements, aren't they? So, you can have a catch-all statement saying that, as a member of the scheme, you will comply with all relevant housing, fire and safety and gas safety legislation, not to mention data protection, which isn't even in the code, but it should be more than that, I think, and I think it would be a much stronger piece from Welsh Government to push the sector forward as they're talking about, in terms of driving up standards and making it a real choice for people to live in the private rented sector. It's not going to achieve that, and if you haven't got any right to redress within the code, or a way for a tenant to look at it, or even a landlord in terms of challenging a letting agent—. If there's no way of challenging, then how is it going to be enforced, how will it be monitored and how will it work?

[419] **Christine Chapman:** Have you got anything to add to this, Gwyn?

[420] **Gwyn R. Price:** I was very concerned in terms of the three witnesses here today really. The paper says that Shelter do not support the code of practice in its current format and that there were missed opportunities in the code. With the two organisations that have written in, I don't know how long ago you wrote in. Have you had a response to that yet?

11:45

[421] **Ms McNeil:** I'm trying to think. It was when the working groups were happening, sending them information for proposals of what could be included—

[422] **Gwyn R. Price:** So, weeks ago? Months ago?

[423] **Ms McNeil:** Their last meeting that I attended was before Christmas.

[424] **Gwyn R. Price:** Before Christmas. Have you had a response from Government since?

[425] **Ms McNeil:** I'd have to check my records, sorry.

[426] **Gwyn R. Price:** Yes. Because, obviously, you've got some improvements you'd like to see here, and obviously we want to see improvements made as well, and we'd like to see both sides of the story. So, that's where I'm coming from. You're still waiting for a response

to your improvements.

[427] **Mr Clarke:** Could I also make the point that I think it's important to identify what is bad practice, so that there is a clear vision of what Welsh Government sees as bad practice as well—whether that's double charging, providing misinformation or intentionally misdirecting tenants as well? These are core vision issues, I think, that, if you're going to improve the sector, you would want to address, and, unfortunately, it doesn't. So, I'm concerned that it won't address the key issues that we're trying to address through the legislation and other means. As I said, it needs to be done in an accessible way. I think, as I said, that we need to go back to the drawing table and take out some of those principles and say, 'Right, okay, what is the vision? What are we trying to achieve here? Let's set those out clearly and simply'. The point was made earlier, I think, about common law changes. If you've been too prescriptive around what they should and shouldn't do in terms of the process and what to do if things go wrong, then that will need constantly updating. So, you will need to separate out certain elements of the code into a separate document that could be amended from time to time, due to developments in common law.

[428] **Gwyn R. Price:** Okay. Thank you.

[429] **Christine Chapman:** Shall we move on, then? Thank you, Gwyn. Janet, have you got any questions?

[430] **Janet Finch-Saunders:** I think you've already made it clear that there are a few omissions from the code, but it's about how you actually make it abundantly clear exactly what, apart from what you've already sent us in. Also, is there a need for the code to restate existing statutory requirements and does the draft code do that effectively? Now's your opportunity, in a way, to shape—to be clear and precise.

[431] **Ms McNeil:** As I've said, I think that, if you had a catch-all statement at the beginning about compliance with existing law, I don't think then it really needs to be within the code, because that is already set down in statute. There's already ample information about how that applies to people. The gov.uk website has some very clear information that links into the sites. Equally, if Welsh Government wanted to have their own versions and make it more accessible in terms of bilingualism, then you could echo that. You could have guides on what is the legal—. Or on being a new landlord. There are all sorts of options that could provide information about statute, in the same way that you could then separately provide information about best practice.

[432] For me, the code of practice is about saying your aspirations of the Government for what you hope for the sector to achieve. It's about making statements about working with people and equal opportunities, to not penalise people with vulnerability. It's about saying how you hope to shape the sector. I think it could be a very dynamic document in that way. I would expect John would be familiar with it—the code of practice for social workers. I know I referenced it in my evidence. That is quite clear. It doesn't iterate anything about the law, because you've already got to abide by the law. It's talking about what you expect from people on a one-to-one basis and between agencies. It's a very different code. Sorry, does that answer your question?

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

[434] **Ms McNeil:** Ish.

[435] **Janet Finch-Saunders:** Yes—ish. [*Laughter.*]

[436] **Christine Chapman:** Jenny.

[437] **Ms Bibbings:** We were talking about this before we came in, weren't we? We were talking about what you would do in an ideal world. Bearing in mind the need to be clear about the fact that, if you don't comply with the code—at least, it says this on the face of the Act—you're at risk of having your licence revoked, the code needs to be very clear about what the specific actions are that could lead to a revocation of the licence. Clearly, a lot of the best practice that we're talking about wouldn't be necessary to actually revoke a licence. So, we talked about the benefits of what if you had something similar to the Landlord Accreditation Wales current code. It's very short, it's very plain and it's written in the first person—'I will do this; I will not do that', you know—so, it's clear in that sense. It is quite short, of course, but it's very accessible. Then, of course, you've got this whole wealth of information about how to be a landlord and how to be the best landlord you can be. That could almost sit as a separate document—how to be a landlord. You know, if you don't do it, then you're not going to lose your licence, but at the same time it's still in your interest to do that. So, we talked about the benefits of having a dual approach.

[438] **Mr Clarke:** From my point of view as well, it's about monitoring and evaluating whether the code is working. It's not just about enforcement; it's about whether the code is making a difference. I think that one glaring omission within the structure for this is having some oversight to both the legislation and the code. You know, with all the changes that we're making in the private rented sector, who's having the oversight for that? Is there an independent regulatory board for the private rented sector? Is that regulator then responsible for looking at how enforcement through the local authority system is working, in terms of environmental protection and in both the practices locally in letting agents and other agencies? So, when you look at what's being tried to achieved, there seems to be a glaring omission about who is providing oversight. It's their responsibilities in oversight to develop the principles and the vision, and then for the regulators to look at how that's going to be put into practice—similar to what we do with the regulatory board for the social housing sector. So, for me, I think it needs to be better structured. Also, there needs to be that monitoring and evaluation to demonstrate that the vision is actually being achieved at strategic levels for Wales.

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

[440] **Christine Chapman:** Okay. Peter?

[441] **Peter Black:** Yes. Can we just go back to basics? I'm happy with one-word answers to this question. For all its flaws and for all its omissions, will the code of practice in its current form improve the private sector?

[442] **Ms Bibbings:** No.

[443] **Ms McNeil:** No.

[444] **Mr Clarke:** No.

[445] **Peter Black:** Okay. I think that's clear enough. Okay; this one's for Elle because, in the response from Citizens Advice Cymru, you say that the current practice reduces existing expectations on landlords and letting agents in Wales. Can you just expand on that?

[446] **Ms McNeil:** If you are already a member of LAW or if you're a member of RLA, if you've signed up to their code, which you have to do in order to be a member, then you make a commitment to have no category 1 hazards within your rental properties. You also make a commitment around the timescales applicable for when you will address issues. So, I think it's 24 hours for an emergency, three days for urgent, and then 20 or 28 days for other issues.

So, if you've already committed to that, and then you become a licensed landlord, okay, you might lose your membership to RLA if you then fail to do it, if it was taken up, but as LAW is going to be dissolved and you just become a licensed landlord, that commitment then goes. So, for the 3,000 people who are a part of LAW and for the however many members Douglas has already in Wales for the RLA, you could be lessening the standard of the service that they will be giving to individuals. I don't see how that's going to improve the sector.

[447] **Peter Black:** Okay. Thank you. Do the other two of you both agree with that? Yes. Okay. I think we've already covered the fact that the Landlord Accreditation Wales code of conduct would have been a better model, haven't we?

[448] **Ms McNeil:** Yes. Just to add on that one, I think it still also has a couple of things missing, like around continual professional development and a catch-all kind of thing on statements about applying, acting within the law and redressing complaints.

[449] **Peter Black:** I think the Minister would say that continued professional development is built into the licensing process.

[450] **Ms McNeil:** I don't think it is now. They took it out.

[451] **Peter Black:** Oh, yes, for landlords I'm thinking of, as opposed to agents. Is it not there?

[452] **Ms McNeil:** I thought it was in there and then—

[453] **Ms Bibbings:** I thought they dropped it.

[454] **Peter Black:** It's not in the regulations.

[455] **Ms McNeil:** It's not in there.

[456] **Christine Chapman:** We need to check on that.

[457] **Peter Black:** Yes. Okay. It wasn't in the regulations, was it?

[458] **Ms McNeil:** I don't think it's in there. Within the LAW code, they've got a bit about maintaining and improving,

[459] 'my knowledge of current relevant legislation and good practice.'

[460] So, that has got some notice for CPD, which isn't in the proposed code.

[461] **Peter Black:** Okay. Thanks.

[462] **Christine Chapman:** Okay. Alun, you don't want to come in.

[463] **Alun Davies:** I don't have any further questions on this issue.

[464] **Christine Chapman:** Okay. Gwyn?

[465] **Gwyn R. Price:** Yes, I'd just like to—. You've answered a lot on the codes, as far as I'm concerned, but should the issue of electrical safety checks, smoke and carbon monoxide detectors be addressed through the best practice section, or do you think it should be a statutory requirement, for example, through an amendment to the Renting Homes (Wales) Bill? Which one of those? Should it be the best practice or should it be—?

[466] **Mr Clarke:** I'll start off, if you like. We'd like to see a statutory commitment, so there's no ambiguity et cetera. We're a little bit concerned, within the code, as well in terms of repairs and improvements—where it does say about the siting of carbon monoxide detectors in rooms where there are boilers, but, of course, carbon monoxide poisoning can also be introduced through chimneys and things like that, in breast walls. So, I'm a little bit concerned about the advice that's been provided that just says, 'It should be sited here'. So, I'd like to check that. But, from my point of view, yes, I'd certainly like to see it in statute. There is no ambiguity, then; there's a clear statutory responsibility and that will drive up standards.

[467] **Gwyn R. Price:** You all agree, do you?

[468] **Ms McNeil:** Yes, I agree.

[469] **Gwyn R. Price:** I like it when they all agree; we can get on.

[470] **Christine Chapman:** Fine. John, you've got a question.

[471] **John Griffiths:** Yes, just a short question, really, Chair, and I'd be very happy with a short answer, as Peter Black referred to earlier. It's just about the absence of any reference to penalties for breaking the law for landlords and agents in the code. Do you think it would aid enforcement if such a reference was included?

[472] **Ms Bibbings:** I totally agree. It's about clarity isn't it? It's about just being honest and upfront with the reader and not pussyfooting around, and being clear about, you know—. Some of these are criminal offences, you know, and we ought to be notifying people about that. I don't think that the code would be any weaker as a result. In fact, the reverse.

[473] **Mr Clarke:** Yes, I totally agree. The consequences need to be put in there, so at least it's clear that, 'If I don't do this, what that means for me', and also information for the tenant as well, so they clearly understand what a breach of that would mean as well.

[474] **John Griffiths:** Okay. Thanks very much.

[475] **Christine Chapman:** I don't think there are any other questions, so can I thank the three of you for coming in this morning? It's been very helpful in our consideration and our comments that we will be wanting to make to the Minister on this. We will send you a transcript of the meeting so that you can check for factual accuracy. Thank you very much for coming in this morning.

11:57

Papurau i'w Nodi Papers to Note

[476] **Christine Chapman:** Before we close the session, we have quite a number of papers to note, so if we can do that.

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

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.*

[477] **Christine Chapman:** I would like to invite the committee to move into private session for the remainder of the meeting. Are you happy with that? Okay.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11:57.
The public part of the meeting ended at 11:57.*