



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

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

**Dydd Mercher, 13 Mehefin 2012**  
**Wednesday, 13 June 2012**

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

Angela Burns

Ceidwadwyr Cymreig  
Welsh Conservatives

Christine Chapman	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Jocelyn Davies	Plaid Cymru The Party of Wales
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
Rebecca Evans	Llafur (yn dirprwyo ar ran Keith Davies) Labour (substitute for Keith Davies)
Julie Morgan	Llafur Labour
Lynne Neagle	Llafur Labour
Jenny Rathbone	Llafur Labour
Aled Roberts	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

**Eraill yn bresennol**  
**Others in attendance**

Anna Brychan	Cyfarwyddydd, Cymdeithas Genedlaethol y Prifathrawon Cymru Director, National Association of Head Teachers Cymru
Michael Imperato	Cyfreithiwr Solicitor
Gareth Jones	Ysgrifennydd, Cymdeithas Arweinwyr Ysgolion a Cholegau Secretary, Association of School and College Leaders
Graham Murphy	Llywydd, Cymdeithas Genedlaethol y Prifathrawon Cymru President, National Association of Head Teachers Cymru
Tim Pratt	Llywydd, Cymdeithas Arweinwyr Ysgolion a Cholegau President, Association of School and College Leaders
Dr Alan Rushton	Arbenigwr Academaidd Academic Expert Witness
Dr Julie Selwyn	Arbenigwr Academaidd Academic Expert Witness

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

Stephen Davies	Cynghorydd Cyfreithiol Legal Adviser
Kayleigh Driscoll	Dirprwy Glerc Deputy Clerk
Claire Griffiths	Clerc Clerk
Sarah Sargent	Dirprwy Glerc Deputy Clerk
Liz Wilkinson	Clerc Clerk

*Dechreuodd y cyfarfod am 9.13 a.m.*  
*The meeting began at 9.13 a.m.*

## **Cyflwyniad, Ymddiheuriadau a Dirprwyon Introductions, Apologies and Substitutions**

[1] **Christine Chapman:** Bore da, everyone, and welcome to the Assembly's Children and Young People Committee. I remind Members to switch off their mobile phones and BlackBerrys as they can affect the transmission. We have received apologies this morning from Keith Davies, and Rebecca Evans will be substituting for him. I welcome Rebecca to the meeting. We have also had apologies from Simon Thomas.

9.14 a.m.

### **Bil Safonau a Threfniadaeth Ysgolion (Cymru): Cyfnod 1—Sesiwn Dystiolaeth 3 School Standards and Organisation (Wales) Bill: Stage 1—Evidence Session 3**

[2] **Christine Chapman:** We have a panel of witnesses today, and I now ask them to introduce themselves for the record.

[3] **Ms Brychan:** Fi yw Anna Brychan, **Ms Brychan:** I am Anna Brychan, director of cyfarwyddydd Cymdeithas Genedlaethol y the National Association of Head Teachers Prifathrawon Cymru. Cymru.

[4] **Mr Murphy:** I am Graham Murphy, president of NAHT Cymru.

[5] **Mr Jones:** I am Gareth Jones, secretary of the Association of School and College Leaders Cymru.

[6] **Mr Pratt:** I am Tim Pratt, president of ASCL Cymru.

9.15 a.m.

[7] **Christine Chapman:** Welcome to you all, and thank you for attending. Thank you, too, for submitting your paper in advance. The Members will have read it, so we will go straight to questions, if you are happy to do so. We are always tight for time, so I ask you to appoint a spokesperson to answer some questions, although, if there are things that you all want to say, please feel free to do so.

[8] I will start with a basic question. It is clear from your evidence that you have quite specific concerns about a number of the provisions in the Bill. We want to discuss the specifics later in the session, but it would be helpful if you would clarify for the record whether or not you support the general principles of the Bill and the need for legislation in the area of school standards and organisation.

[9] **Mr Murphy:** We do support the Bill, but there are a few 'however's', which will not surprise you. We have to be assured that the effects of the standards will be as they have been prescribed or advertised. We must also be aware of unintended consequences, in other words, some of the barriers that we could face through the Bill itself. Concerns about capacity and appropriateness need to be considered, especially with regard to intervention. Ultimately, although we are very supportive of any legislation that can genuinely make for an education system that is far more rigorous, we have to have the right type of focused support for schools and to look at how that is indeed focused on raising standards.

[10] **Christine Chapman:** We will look at the specifics in detail, but, for the record, you support the general principles of the Bill.

[11] **Mr Murphy:** Yes.

[12] **Aled Roberts:** Rydym wedi derbyn tystiolaeth gan y Gweinidog Addysg a Sgiliau a chan gynrychiolwyr llywodraeth leol yn awgrymu bod y ddeddfwriaeth bresennol yn ddryslud a bod angen—

**Aled Roberts:** We have received evidence from the Minister for Education and Skills and from representatives of local government that suggests that current legislation is confused and needs—

[13] **Christine Chapman:** Could you stop for a moment, Aled? I think that there is a problem with the translation feed.

[14] **Mr Murphy:** We did understand part of that.

[15] **Aled Roberts:** The part that you wanted to understand. [*Laughter.*]

[16] **Mr Murphy:** We still cannot hear the feed, though.

[17] **Christine Chapman:** You need your headset to be on channel 1.

[18] **Mr Murphy:** Oh, I had it on channel 0. Thank you.

[19] **Aled Roberts:** Rydym wedi derbyn tystiolaeth gan y Gweinidog a chan gynrychiolwyr llywodraeth leol yn awgrymu bod rhywfaint o ddryswch a chymhlethdod ynghylch y ddeddfwriaeth ar ymyrraeth. Efallai bod hynny'n esbonio pam nad yw cynghorau wedi bod yn awyddus i ymyrryd yn y gorffennol. A ydych yn credu bod angen atgyfnerthu'r ddeddfwriaeth yn y lle cyntaf er mwyn sicrhau y bydd ymyrraeth fwy amserol o hyn ymlaen, os nad yw'r safonau yn gwella?

**Aled Roberts:** We have received evidence from the Minister and from representatives of local government suggesting that there is some confusion and complexity with regard to the legislation on intervention. That perhaps explains why councils have not been keen to intervene in the past. Do you think that there is a need to strengthen the legislation in the first place to ensure that intervention will be more timely from now on, if the standards do not improve?

[20] **Mr Murphy:** Tim will answer this question for you, Aled.

[21] **Mr Pratt:** There is currently a lack of clarity, and the problems that we see at the moment are due in part to the fact that some local authorities are a little cagey about tackling their own schools, in that they like to keep them onside. There is always the issue of, 'Do I deal with this problem that may set groups of schools against the authority?' That has contributed to the problem that we have here. We do need greater clarity and there needs to be a sense in which there are clearer expectations about who does what, but the important aspect that we need in order to get to the bottom of the problem is not who does things, but how they are done.

[22] **Mr Murphy:** Could Anna comment on that too?

[23] **Ms Brychan:** Rwyf ond am ychwanegu fy mod yn credu ei fod yn syniad da i roi'r holl bwerau ynglŷn â hyn mewn un lle fel bod eglurder ynglŷn ag ymyrraeth mewn ysgolion. Fodd bynnag, byddwn hefyd yn dadlau nad yw pob awdurdod lleol bob amser, hyd yn oed o dan y ddeddfwriaeth bresennol, yn gweld hyn yn broblem. Felly,

**Ms Brychan:** I just want to add that I think that it is a good idea to put all the powers relating to this in one place so that there is clarity as regards intervention in schools. However, I would also argue that not every local authority, even under the current legislation, always sees this as a problem. So, perhaps it is a broader problem, and, if there

efallai ei fod yn broblem ehangach, ac, os bu diffyg ymyrraeth, efallai nad yw hynny oherwydd diffyg eglurder yn unig—o bryd i’w gilydd mae ffactorau eraill yn gyfrifol am hyn, megis y capasiti neu’r parodrwydd i wneud hynny. Felly, o gyflwyno’r Bil hwn, ni fyddwn o angenrheidrwydd yn datrys rhai o’r problemau mwy strwythurol yn y system sydd wedi golygu na fu ymyrraeth priodol yn y gorffennol.

[24] **Aled Roberts:** Mae’n swnio felly fel pe baech yn meddwl fod y ffactorau hynny yn bwysicach nag eglurder.

[25] **Ms Brychan:** Byddwn yn tueddu i feddwl eu bod, er bod eglurder i’w groesawu hefyd.

[26] **Aled Roberts:** Beth yw eich syniadau chi felly ynglŷn â’r ffaith y bydd consortia yn cael eu creu? Roeddwn yn rhan o’r trafodaethau ynglŷn â’r consortia yn y gogledd. Fy nealltwriaeth ar hyn o bryd yw na fydd y trefniadau lleol yn newid rhyw lawer, ac y bydd y timau lleol dal yn gyfrifol am drefniadau o fewn siroedd eu hunain. Felly, sut mae’r gwasanaethau gwella ysgolion yn mynd i wella’r sefyllfa os rydym yn sôn am y problemau mae Tim wedi eu trafod eisoes?

[27] **Ms Brychan:** Mae hwnnw’n gwestiwn da. Nid yw’n broblem sydd wedi ei chyfyngu i’r gogledd o angenrheidrwydd ychwaith; mae enghreifftiau eraill o wasanaethau yn aros yn debyg iawn i’r hyn ydynt ar hyn o bryd o symud i gonsortia. Yn amlwg, mae hynny’n destun pryder, achos y gobaith oedd cael gwasanaethau mwy effeithiol, mwy amserol a gwell ar gyfer gwella safonau mewn ysgolion. Byddai hynny’n rhywbeth y byddem i gyd yn dymuno ei weld.

[28] **Mr Jones:** Each of the four consortia seems to have evolved in different ways and in different directions, so there is no consistency. However, all of them seem to have gone for a model where school improvement is within the consortia, but a lot of the other issues are outside the consortia, and it is the other issues that are the cause of the underperformance. So, although the consortia may identify underperformance, the action in terms of intervention and dealing with the causes of it lies elsewhere. That is perhaps the issue. Statistics may indicate the existence of a problem, but they do not tell you how to solve it. At present, very few local authorities have staff with experience of senior leadership at secondary level. That has been a significant capacity issue. Given the way in which the consortia are evolving, that problem may continue, because they are very dependent on system leaders. We support the concept of

has been a lack of intervention, perhaps that is not just because of a lack of clarity—from time to time, other factors are responsible for it, such as the capacity or willingness to do it. So, in introducing this Bill, we will not necessarily resolve some of the more structural problems in the system that have meant that there has not been appropriate intervention in the past.

**Aled Roberts:** It sounds, therefore, as if you think that those factors are more important than clarity.

**Ms Brychan:** I would tend to think that they are, although clarity is also to be welcomed.

**Aled Roberts:** What are your thoughts about the fact that consortia are to be created? I was part of the discussions about the consortia in north Wales. My understanding at present is that the local arrangements will not change much, and the local teams will still be responsible for arrangements within their own counties. So, how are the school improvement services going to improve the situation if we are talking about the problems that Tim has already mentioned?

**Ms Brychan:** That is a good question. It is not a problem that is necessarily confined to north Wales either; there are other examples of services remaining very similar to what they are at the moment in the move to consortia. Obviously, that is a cause for concern, because the hope was to have more effective, more timely and better services to improve standards in schools. That is something that we would all wish to see.

system leaders, but the problem is whether they will be willing or able to step forward, given that governing bodies are going to be very concerned about the performance of their particular school. So, there is an issue there.

[29] The other issue is that most causes of underperformance lie in individuals; it is a personnel matter. We have complained and commented many times before about the decline of the education human resources support services. That problem will continue, because none of the consortia are planning to re-establish specialist HR services. That is perhaps outside the scope of this, but it leads on from your question.

[30] **Jenny Rathbone:** I want to probe you on why you think that local authorities do not have the capacity to intervene and be that critical friend when things are not going well in schools, because they are not bystanders. If they do not have the right people in place, they need to move people on and get others in who are the right people. Why are the LEAs not gripping this problem?

[31] **Mr Jones:** Size can be a factor, because you are talking about economies of scale.

[32] **Jenny Rathbone:** That is where the consortia might come in.

[33] **Mr Jones:** Yes, if the consortia are able to do so, but, as I have just indicated, in the way in which the consortia are developing at the moment, they have a much narrower focus than was originally proposed.

[34] **Mr Pratt:** There is a very practical reason as to why local authorities tend not to have people who are experienced at secondary leadership level, and that is because the salary that they pay their advisers is less than what headteachers earn. You are not going to get experienced headteachers moving into an advisory capacity if they have to take a cut in salary.

[35] **Jenny Rathbone:** You might.

[36] **Mr Pratt:** Well, all right, but it is less likely that people will do that, and you have to be realistic about that. In most local authorities, there are very few people who have any experience of leadership at secondary level, and that is a major concern when, as an experienced headteacher, you have somebody coming in to advise you who has never done the job.

[37] **Ms Brychan:** The plans that have been put up for the consortia, particularly the role of the system leaders, seem to us to offer an opportunity to increase significantly the capacity and expertise in our system. They mean, effectively, that you could second—that was the idea—a number of people, many of them headteachers, who have a demonstrable track record of sustained improvement in their school. They would be partnered with other schools, whose school improvement journey would be assessed, along with the support that they would need to improve their school and the kind of outside help that they might need. All that would be brokered by the system leader, who would also be involved in the performance management of that school. All these kinds of roles were envisaged. That seemed to us, on paper at least, to suggest a substantial step forward in the type and range of expertise that we have in the system in order to effect school improvement.

[38] What we are worried about now is that the system leadership roles that are evolving in consortia in large measure do not seem to look like that; they look like the reallocation of roles without perhaps studying carefully the role that now needs to be fulfilled, instead of the expertise that currently exists in the system.

[39] We also think that a great deal of work needs to be done to persuade governing bodies and headteachers that this is a worthwhile role to undertake, and that it would, effectively, be the pinnacle of their career to be selected as a system leader to share their hard-won expertise to improve the wider system. That should come with some acknowledgement of the significance of the role. That does not seem to be part of the conversation, and we are deeply worried that the aspect of increased capacity that we were hoping to see, which would have a definite effect on standards, is not developing as we had hoped.

[40] **Christine Chapman:** We have quite a lot of ground to cover, and it has been noted now that there are some issues about capacity and leadership. The Members will have noted that, so I am going to move on to another point, because there is quite a lot to get through. I therefore apologise to Members, but you can perhaps pick those points up later on, if we have time. Aled, did you want to complete anything?

[41] **Aled Roberts:** Mae gennyf gwestiwn o ran capasiti'r Llywodraeth ei hun, gan fydd rôl iddi, os yw'r consortia'n gweithredu mewn gwahanol ffyrdd, o ran gweld pa mor effeithiol y mae'r consortia hynny. A oes gan yr adran ddigon o gapasiti, neu ddigon o arbenigedd, yn y maes hwn?

**Aled Roberts:** I have a question about the capacity of the Government itself, because there will be a role for it, if the consortia work in different ways, in seeing how effective those consortia are. Does the department have sufficient capacity, or sufficient expertise, in this area?

[42] Gydag adnoddau dynol o fewn cynghorau, ai rhan o'r broblem yw'r ffaith bod adnoddau dynol yn awr yn rhan o gyllideb ysgolion a bod gan yr ysgolion eu hunain hawl i gontractio i mewn i'r awdurdod? Hefyd, a oes problem o ran y pwysau ar yr arian a ddirprwyir i'r ysgolion, oherwydd nad yw'n ymarferol i chi ddisgwyl i awdurdodau lleol gynnal gwasanaethau adnoddau dynol heblaw bod yr ysgolion yn talu mwy am y gwasanaeth hwnnw?

With regard to human resources within councils, is part of the problem the fact that human resources are now part of schools' budgets and the schools themselves have a right to contract in to the authority? Also, is there a problem in terms of the pressures on the funding delegated to schools, in that it is not practicable for you to expect local authorities to maintain human resources services unless the schools pay more for that service?

[43] **Mr Jones:** There are two issues there. In terms of central Government, the standards unit does seem to have pulled together a considerable amount of talent to develop the service, led by Brett Pugh. By and large, we have been impressed by most of the work that it has done. However, the role of the centre is perhaps in highlighting that there is a problem and in providing the information. It is at the local level that the problem needs to be resolved, and that is where we come to the HR issue—and that is a very detailed issue.

[44] When you talk about delegation, one of the issues has been that local authorities have delegated the money, schools have had to decide who is to provide the services, and the local authority has said, 'We'll provide the service, but it is a bundled service, and you take either all of it or none of it'. Therefore, many of the service-level agreements do not match up to commercial contracts.

9.30 a.m.

[45] Interestingly enough, in England, with the development of academies, you now have a whole range of private providers who are providing HR support more cost effectively. There is an issue there, but it is perhaps outside the Bill.

[46] **Christine Chapman:** Exactly. I think that we do now need to concentrate on the specific issues. Thank you for that.

[47] **Jocelyn Davies:** I have one or two questions on the grounds for intervention. In your paper, you make some suggestions about what the legislation ought to say. You do not like the phrase ‘in all the circumstances’. It could be that the Minister will explain what all the circumstances are. You think that that would muddy the water, because you think that everyone is used to this test of reasonableness. Still, I am not as offended by the term ‘in all the circumstances’ as you are. You mentioned that, where it says ‘where relevant’, it would be more helpful if that said ‘where statistically significant’. Do you not think that that would be more confusing? Have you ever heard two scientists argue over what is statistically significant? I am sure that teachers and lawyers—*[Laughter.]*

[48] **Mr Jones:** Well, I am an economist.

[49] **Jocelyn Davies:** Would the statistical significance be attainment compared with age or attainment compared with how everybody else is doing? I have heard it said that being a year or two years behind your chronological age is okay, because, statistically, it is not that significant. I wonder whether that would be more complicated than another measure.

[50] **Mr Jones:** Our response on this was guided by comments made by our legal advisers, who are looking at this from a legalistic point of view. They pointed out the issue as to whether the phrase ‘in all the circumstances’ was going to add anything when we already have an accepted custom and practice. I am sure that the lawyers in the room—I am not a lawyer—would tell us that it is already a tried criteria in courts and tribunals.

[51] **Jocelyn Davies:** You do not have to look to Suzy Davies for support on that.  
*[Laughter.]*

[52] **Mr Jones:** I will repeat what was said earlier on; our response on this is very much about asking questions so that we make sure that issues are considered carefully, rather than necessarily raising objections. I did raise the issue of who defines ‘all the circumstances’ because, once you put it in law, somebody could then use that power for purposes for which it was not intended. So, we need to have clarity on what ‘all the circumstances’ means. It may be that the guidance, as it emerges, may provide clarification on that.

[53] **Jocelyn Davies:** It could very well. It does say:

[54] ‘in all the circumstances reasonably be expected to attain’.

[55] On the issue of statistics—

[56] **Mr Jones:** The problem here is that the Bill proposes establishing powers for intervention based on a judgment as to whether standards are falling. In any school, pupil year groups will vary in ability, so you might have one year with 50% getting A-C grades, the next year it might be 52% and the next year 49%. Is a 1% drop significant or not? If there are other issues, the chief education officer could use that simple 1% drop, simply because of an ability range, as a reason for intervention. That is the concern. That is why, in England, they have used the phrase ‘statistically significant’ to try to get away from that, because they have had experience of a lot of cases going to court over the judgment that standards had fallen. That is why the advice was to make this point.

[57] **Jocelyn Davies:** I suppose that it would depend on what data you are using as to whether something is statistically significant. Do you have any views on the all-Wales core data set?

[58] **Mr Jones:** This is where we have to have confidence in the data produced by the



standards unit. This brings it back to the point that was made earlier that the quality of that central unit will be crucial—not just now in its development phase, but ongoing. We also raised concerns about ground 3—the actions of parents. That opens a can of worms. Are we potentially punishing children and staff because of the actions of parents? Was that intended?

[59] **Jocelyn Davies:** I suppose, Mr Jones, my question would be: why do you think that intervention is punishment?

[60] **Mr Jones:** If the intervention cost people their jobs, would that be regarded as punishment?

[61] **Jocelyn Davies:** If the purpose of the legislation is to raise standards, and the intervention is to raise standards, then I would not necessarily jump to the conclusion that intervention is punishment. What about the—

[62] **Christine Chapman:** Jocelyn, may I just stop you there? Aled, did you want to come in on this point?

[63] **Aled Roberts:** You mentioned the all-Wales core data. I was surprised that local authorities did not collect the same data when we had discussions within the consortia. Each consortium will have agreed what data it collects. Is there consistency between the four consortia with regard to the data that they will be reliant upon?

[64] **Mr Jones:** As I understand it, it is the standards unit—you will have to check this with the Minister—that collects the data and it then provides them to local authorities. There is consistency by having that central unit. That is the intention, as I understand it.

[65] **Jenny Rathbone:** On the point about data, would you not regard the family of schools data, which compare like schools with like schools, as robust data on whether a school is falling behind and causing concern?

[66] **Mr Jones:** I would certainly say that those data are reasonably robust and reliable. However, no single set of data will provide you with all the information. You need a profile of data across the board. It is not just on attainment in exams that you judge the quality of the service.

[67] **Mr Murphy:** It is just the fact that it is not a single measure. There is a paradox, in a way, in that when core data sets are looked at from the information that is fed through from pupil level annual school census returns, you end up with an agreed area as to where you should be, but the truth is that, in the smaller institutions in particular, it would need only a small change for that to be significantly changed. If you are, for instance, in a core data set of three years, the challenge—which is an appropriate part of it and a good vehicle—is the flexibility and the intelligent forensic analysis of where you are because of those changes. The concern, and what has happened in real time, is that that is not necessarily always the way in which the data are analysed. Instead, it has been a bit more of a crass undertaking of the fact that you are within a group of 10 or so schools and you should be fighting to be in the top place—quite rightly, but there are many impacts on that. That is particularly important for primary schools.

[68] **Jenny Rathbone:** What Estyn does when it goes into schools is to critically analyse the data. Why do you not think that the standards unit would also be capable of doing that, prior to thinking whether it would be appropriate to intervene?

[69] **Mr Jones:** It is not a question of criticising the standards unit; I think that it has made a good start. The only area where we would have considerable dispute with the standards unit

and what it has produced is in reducing the profile to a single band because that has had some very negative unintended consequences.

[70] **Jenny Rathbone:** Coming back to the Bill, why do you think that it is not possible for either the LEA or the Minister, supported by the standards unit, to analyse the data effectively?

[71] **Mr Jones:** I do not think that there is a problem with analysing. Sorry, we have had a misunderstanding.

[72] **Christine Chapman:** We will move on as we have a lot of ground to cover. I will now go back to Jocelyn who wants to finish off.

[73] **Jocelyn Davies:** On the general power of the Minister to give direction and intervene, you mention in your paper that there should be a reference to the evidence on which the Minister does so—would you like to see that on the face of the Bill? I would suggest to you that if you make a decision as a Minister, you have to give reasons for that decision. Nobody can make a public law decision and not give reasons. Does it need to be on the face of the Bill?

[74] **Mr Jones:** Does it need to be on the face of the Bill? Possibly not, but on the other hand, the concern is that, although the Bill may work for the current Minister, who is very capable, very honest and so on, you are putting in place a power that can be used by future Ministers. What is the protection? That is the question that has been asked.

[75] **Jocelyn Davies:** So, with regard to the general power of intervention, which I do not think is new—

[76] **Mr Jones:** No, no, those powers exist.

[77] **Jocelyn Davies:** So, you would like to see something on the face of the Bill or somewhere providing an explanation on what evidence would be used in order for the Minister to come to that decision because it is—

[78] **Mr Jones:** It may be on the face of the Bill or it may be in the guidance. It may simply be a requirement that guidance must clarify this.

[79] **Jocelyn Davies:** However, you would feel more comfortable if you could point to a piece of paper somewhere that said what the circumstances would be in which it would be reasonable for the Minister to intervene.

[80] **Mr Jones:** Yes, that would provide some protection.

[81] **Suzy Davies:** I wish to develop the same point. I detect a serious nervousness in your papers, if I may say that, about ministerial intervention. [*Laughter.*] You have raised the scenario of a case where the Minister may overstep the mark and asked what your redress would be aside from judicial review. Can you tell me a bit more about what you would expect an appeals process to look like if it were not a judicial review?

[82] **Mr Pratt:** What is important here is that, somewhere in the Bill, there is a right of appeal.

[83] **Suzy Davies:** To whom?

[84] **Mr Pratt:** If it is the Minister who is intervening, we need to be certain that, as

professionals, we are able to say, ‘We don’t agree with this and here’s the evidence for why we don’t agree with it’. On the surface of it—and there may be bits that we have not seen—there does not appear to be anything that would allow that to happen. The Bill appears to be saying that the Minister can intervene and that, for the school or local authority, it would be a case of saying, ‘That’s it. Tough’.

[85] **Suzy Davies:** I do not think that it quite says that. Jocelyn did make the point that any intervention would have to prove its reasonableness, and the test for that would be specific to the individual case. It is quite usual for an appeal against a Minister’s decision to be a judicial review, so I am just wondering what you thought the alternative could be.

[86] **Mr Jones:** To clarify, we are not just talking about the Minister’s power to intervene, but the power of the chief education officer or the local authority. The only redress, as you say, is to go to a judicial review, as the Bill is currently framed.

[87] **Suzy Davies:** Are you suggesting that the Minister should be the next stage—

[88] **Mr Jones:** I do not know. We are asking the question. We have had examples of this happening with chief education officers. A chief education officer contacted a headteacher by phone, as a result of the banding last year, and basically said, ‘We think it’s time you left’. That was out of the blue. In another case, a headteacher suddenly received a letter that basically gave her a warning, out of the blue. There was no discussion. The Bill gives the chief education officer or the local authority the power to intervene. The only redress, the only process of appeal, is via a judicial review. That involves a great deal of cost.

[89] **Suzy Davies:** However, if that is evidence of a dysfunctional council, the Minister has the power to intervene.

[90] **Jocelyn Davies:** I do not think that this legislation would allow an education officer to phone you up and sack you.

[91] **Christine Chapman:** Obviously, we understand that these are complex issues, but I think that we need to focus particularly on the standards and interventions and try to leave the other issues to one side, because that is not the purpose of today.

[92] **Suzy Davies:** In that case, perhaps I can put the question the other way round. The Minister has said that, despite the extensive powers that will be available to him in this Bill, he would use them only as a backstop. What are your comments on that?

9.45 a.m.

[93] **Ms Brychan:** Yes, we heard that. It is not unreasonable in such circumstances that a Minister would have a backstop power. Indeed, he and other Ministers would have similar powers to intervene should they feel that things have come to such a pass that no other course of action is possible. So, we have no objection to that. What we are worried about in the context of this entire Bill is that, given how extensively drawn it is, there is a possibility, although perhaps a remote possibility, should there not be a reasonable Minister in the future, of there not being proper scrutiny of the process. It is important that there is proper scrutiny, particularly in drawing up school improvement guidance and codes around reorganisation, because, at the end of this process, we want to see something that can actively improve standards and does not just create an awful lot more intervention that is not necessarily effective. There is a huge role for this committee and for the Assembly generally to ensure that the use made of these powers—clarified and hardened as some of them are—ensures that an effect on standards is the thing that we see at the end, without a lot of local difficulty that would have to be managed because of improper, ill-conceived or ill-prepared intervention.

That is why you were right to sound a distinct note of nervousness about the practical implementation of this Bill, rather than an objection to the idea of having it at all.

[94] **Suzy Davies:** Does it particularly concern you that there are a handful of opportunities for the Minister to intervene by Order without any reference to the Assembly at all?

[95] **Ms Brychan:** Yes, we have noted that. We worry that that might mean that the scrutiny we would like to see would not happen. If there is a possibility to change that so that there is some reference to this committee, for example, to ensure that there is a more active process, then we would welcome that.

[96] **Angela Burns:** Thank you for your paper. As Suzy has said, a disquiet emanates from your words. I want to return to the school improvement guidance. You state in your paper, in relation to paragraph 37, that

[97] ‘We are concerned that this provision allows Welsh Ministers to take on the function of the courts and decide that a school’s reasons for departing from statutory guidance are inadequate without any evidence. This clause assumes that there is one right way of doing things’.

[98] Could you expand on that a little?

[99] **Mr Pratt:** The issue here is that the context of an individual school is paramount, and if you provide a way of doing things for schools in terms of school improvement, that may not fit the context of that school. There have been local authorities—one of which I have worked for—that have issued to all of their schools a format for doing school improvement planning. That has been a blunt tool that has not always worked particularly well for certain schools in certain contexts. What worries us here is that if we have a ‘You will do it this way’ approach, then that may not fit the context of the school, and we may end up with something that does not really help the school to move forward as much as if they had had the flexibility to adopt a slightly different approach to it. We understand the need for ensuring that schools constantly look to improve, and we have endorsed that. However, it is just a matter of whether we have to have one way of doing it that is imposed on everyone that does not allow that flexibility.

[100] **Angela Burns:** I take your point entirely; it is an area that has concerned me. However, I understand the cleft stick that the Minister is in, because how else can he drive improvements into a recalcitrant school, into an LEA that just does not want to take it on or to a headteacher who says, ‘No, I’m doing well’. Some shocking statistics have been provided to us over the past year or year and a half by different organisations about the level of competence of schools, of LEAs and of pupils. So, do you have any other methods that you would like to propose that we might be able to incorporate into the Bill, which are failsafe so that the baby is not thrown out with the bath water and that good-performing schools, which may have different practices, are unable to flourish? How else could the Minister possibly bring those other schools to heel?

[101] **Mr Murphy:** Could Anna pick up this question?

[102] **Ms Brychan:** We wanted to help the Minister emerge from his cleft stick as well, because it is not where we want to be either. We accept that there is an argument for preparing statutory school improvement guidance to be used in some cases. What we are trying to avoid, by ensuring that there is a process for keeping an eye on all this, is some of the difficulties that England got into. It introduced its national strategy, which was a similar sort of direction to schools. It had some short-term good effects, particularly in the

development of English-language skills, for example, but they were relatively short-term and they had other consequences, in that children were reporting less of a love of reading. They could pass a test, but a love of reading is something that we think should be protected if at all possible. Ultimately, the fact that England concentrated so much on the strategies and pushing children through tests may have had an unfortunate effect on its Programme for International Student Assessment results. So, we want to ensure that introducing statutory guidance in schools is not a deadening thing and that it does not stop schools from continuing to make progress by using the strategies they currently have in place if they are going in the right direction. I know that the Bill makes provision for that, but once you have statutory school guidance in black and white, there will be a tendency to say, 'Right, you must do this and you must follow every dot and comma of it'. We need to be watchful that, even if short-term gains are shown, they are looked at consistently and regularly to ensure that they are maintained, because that is where it went unstuck in England, for example.

[103] **Christine Chapman:** I remind Members and witnesses that we have about 20 minutes left, perhaps less, and I am concerned that we need to cover a lot of ground, because this is a good opportunity today.

[104] **Angela Burns:** May I pick up one more point? You say that you believe that the introduction of statutory school improvement guidance is excessive micromangement of schools, and you also talk about the experience in England, which would suggest that this level of centralised prescription has been ultimately unsuccessful. Are you able to evidence that, please?

[105] **Ms Brychan:** It is a mixed picture in England. As I was saying, there is evidence of short-term gains, which were welcomed, but there are other aspects that were less fortunate, as I mentioned: the enjoyment of English and the PISA results. So, there is evidence that strategies have an effect for a time, but we need to ensure in the context of our Bill and our statutory school guidance that an eye is kept on the effects to ensure that it is still doing the advertised job, because leaving it and continuing to apply exactly the same thing may not necessarily work over time. That is our only point.

[106] **Angela Burns:** May I challenge you a little on that, Anna? You make a strong statement here:

[107] 'Experience in England would suggest that this level of centralised prescription is ultimately unsuccessful.'

[108] I can understand that you are perhaps uncomfortable with where this is going and with excessive micromangement. That is a debate to be had, but you then say that there is evidence that it is unsuccessful. I would like to really hear some evidence or have a note on what that evidence is, apart from gut feeling or opinion.

[109] **Mr Jones:** In terms of evidence, one of the sources of research has been the series of McKinsey reports. I think that we have made reference to those and quoted them in the submission. The key point was that a lot depends upon where you deem your education system to be. If it is deemed to be fair, the evidence in the McKinsey report identified that central prescription seems to make progress. However, when you move from good to great, that central prescription becomes a handicap. That, perhaps, is the difficulty here. You are putting in place a Bill that is geared to the current circumstances, but that will be on the statute book forever more.

[110] **Angela Burns:** That is why you have asked us that first question in your submission about where Assembly Members think we are on the journey of education in Wales.

[111] **Mr Jones:** That is the point we are making here.

[112] **Christine Chapman:** Julie wants to come in now, and then we will move on.

[113] **Julie Morgan:** I have a similar point to what Angela said. If standards need to be raised, surely it is essential that there is statutory school improvement guidance. I bear in mind that you are saying that it needs to be kept under review as it goes along, but surely this is one of the essential tools of improving standards.

[114] **Mr Jones:** Is there a right way of teaching is really what you are asking.

[115] **Julie Morgan:** How are we going to raise standards?

[116] **Mr Jones:** The concern of the profession is this: is there a right way of teaching? I do not have a primary school background, but if you talk to people who do, such as Graham, you will find that there are different ways in which you can teach reading, for example, and develop literacy. Who is to say which method is best? Who has that power of knowledge? That is the concern. Certainly, in England, they have had—

[117] **Julie Morgan:** But that is not a reason for saying that there should not be statutory guidance.

[118] **Mr Jones:** I accept that. It is perhaps a question of how the guidance is arrived at. Yes, it does note consultation with the profession and other interested parties. I am aware of that.

[119] **Lynne Neagle:** Turning to the issue of school improvement guidance, and specifically to the level of consultation provided for in the Bill, the requirement on Welsh Ministers to consult school authorities is likely to be affected by the guidance and other such persons as the Welsh Ministers think fit. Do you have any views on the appropriateness of that level of consultation?

[120] **Ms Brychan:** Yes. We welcome the fact that there will be consultation, because there is an awful lot of expertise out there that would benefit from being consulted in the drafting. Our only concern is one that we have raised before, and that is about provisions in the Bill that make it possible to introduce amendments that would not be subject to the scrutiny of this committee, for example, which is what we would like to see. Other than that, we think that the consultation process seems reasonable.

[121] **Lynne Neagle:** Estimates of costs are provided in the explanatory memorandum, to do with statutory school improvement guidance. Are you satisfied that those costs are reasonable?

[122] **Mr Murphy:** We would not know how to begin to start the process of looking at that, quite honestly. We would not know how to estimate it or even have an understanding of it.

[123] **Jenny Rathbone:** Looking at proposals for school organisation, could you tell us a bit more about your views on the appropriateness of categories of objectors? There is a general concern that where school organisation proposals are presented, it takes a huge amount of time and agony for them to get anywhere and that, meanwhile, the Minister is concerned that none of the local authorities has achieved a vacancy level of no more than 10%. We obviously have a problem, so does this Bill set out a strategy for improving the way that we do these things?

[124] **Ms Brychan:** I think that it sets out a strategy for improving some things, in that we

agreed that it was absurd that one objector who possibly has nothing to do with the school could trigger a referral to the Minister. Also, the fact that it seems impossible to close a school with no children in it at all in a timely fashion was a palpable absurdity. Furthermore, the development of a code for how you consult on school organisation proposals is a very sensible idea, because it does seem to vary considerably, and if we had a national way of doing that, it would be helpful.

[125] We are worried about the local determination panels, in that, given how difficult and fraught some of these decisions are, it is difficult to see how the panels could be created to be perceived to be as even handed and independent as will be necessary to manage the process, given that they will be drawn from a local authority to do it—I think five people is the proposed figure. There will probably be difficulties in ensuring that it simplifies and quickens the process that we have now and makes it less expensive. We have some doubts about that, and we have discussed whether expanding the membership to a consortium-based sort of panel might put some distance into the system. However, it will be difficult to show to those people who are concerned about reorganisation proposals that these people who form the local determination panel are genuinely independent and have no connection to the decisions, given that they might be drawn from the council.

10.00 a.m.

[126] **Mr Jones:** Just picking up on Anna's point on how the local determination panel is perceived, one of the criteria is that

[127] 'a person may not be a member of a panel...if that person has, or at any time has had, a relevant connection with (a) the appointing authority'

[128] and so on.

[129] It does specify in Schedule 4, I think, that no member of the local authority executive can be a member. What about other elected members from the same political party? Will that be sufficient? I am just asking the question; I am not making a judgment. That also raises questions. Something that needs to be taken into account is that school reorganisation impacts beyond local authority boundaries. For example, a few years ago, a Welsh-medium school opened in Bridgend that had a significant impact on a Welsh-medium school in Rhondda Cynon Taf, but because the two authorities were not necessarily collated there was a lot of discussion at the time as to whether there was enough strategic thinking on a regional basis. One wonders whether the local determination panels would not be better placed on a consortia basis rather than on a local authority basis. That may help to give some of that independence.

[130] **Jenny Rathbone:** That is an interesting idea. Evidence that we have had from other people suggests that it is impossible, or very difficult, to be both local and independent, given the heat that is always generated by these proposals.

[131] **Mr Jones:** We are just agreeing with the Minister, and trying to find ways of minimising the number of cases that have to go to the Minister, so as to speed the process up and yet ensure that local democracy prevails. We are just thinking about it.

[132] **Jenny Rathbone:** So, you are floating this idea that it should be drawn from a consortium rather than from the local authority.

[133] **Mr Jones:** Yes.

[134] **Jenny Rathbone:** Is there anything else that you wanted to say on this matter?

[135] **Mr Jones:** No.

[136] **Christine Chapman:** We have some other specific questions from Members. I think that Aled wants to come in now.

[137] **Aled Roberts:** Rwyf am symud ymlaen at drefniadau chweched dosbarth. Mae'ch papur yn eithaf pendant ei farn y dylai penderfyniadau ynglŷn ag ad-drefnu chweched dosbarth fod yn benderfyniadau lleol, ac nad ydych wedi cael eich argyhoeddi ynglŷn â rôl y Gweinidog o fewn y trefniadau hynny. Pam y safbwynt hynny? Mae gennyf brofiad personol o sefyllfa lle roedd yn amhosibl cael unrhyw benderfyniad lleol ar ad-drefnu chweched dosbarth, gan fod cymaint o gynghorwyr yn ymwneud â gwahanol ysgolion.

**Aled Roberts:** I want to move on to sixth-form arrangements. Your paper is quite settled in its opinion that decisions on sixth-form reorganisation should be local decisions, and that you are not convinced about the role of the Minister in these arrangements. Why do you have that view? I have personal experience of a situation in which it was impossible to get any local decision on sixth-form reorganisation, because so many councillors were involved with different schools.

[138] **Mr Pratt:** The sixth-form issue is a bit of a minefield, because we are not just dealing with one sort of provision—you have further education colleges and school sixth forms—and different people will take very different views on it. The local context is sometimes the only one with an in-depth understanding of the issues. It is further complicated at the moment by the fact that there is no clarity as to how sixth forms are funded. Until we have a new funding formula we are in this awkward situation where one local authority can choose to do one thing with the sixth-form funding and another authority can do a completely different thing. That makes it very difficult for anybody to have any certainty on this. However, in terms of where sixth forms should be placed, the local context is so important, and the opinions of parents are a vital part of that. It worries us that, if it is just a power that the Minister takes, we may not always have that reflection of local demand.

[139] **Aled Roberts:** Pam, mewn un achos, rydych yn sôn am yr angen i symud o drefniadau lleol i drefniadau rhanbarthol neu gonsortia am eich bod eisiau cadw'r cysylltiad lleol hwnnw—ond wedyn mae rheidrwydd i gael rhywfaint o annibyniaeth—tra bo'ch dadl o ran y chweched dosbarth yn awgrymu eich bod yn bendant o'r farn mai dim ond ar lefel leol y dylid gwneud y penderfyniadau hyn?

**Aled Roberts:** Why, in one instance, do you talk about the need to move away from local arrangements to regional or consortia arrangements, because of your desire to maintain local connections—but it is then necessary to have some kind of independence—when your argument on sixth forms suggests that you are definitely of the opinion that these decisions should always be made at the local level?

[140] **Mr Jones:** I think that the consortia argument would apply to sixth-form provision as well. So, by 'local' we mean that it should not be the Minister.

[141] **Ms Brychan:** Y rheswm dros gynnwys y pwynt hwn yw bod penderfyniadau lleol a deall y cyd-destun lleol yn rhinwedd yng ngweddill y Bil, ond mae'n cael ei weld yn llai pwysig yng nghyd-destun y chweched dosbarth, am resymau ariannu. Nid wyf wedi fy argyhoeddi bod hynny'n rheswm digonol dros fynd â'r pŵer hwnnw oddi ar awdurdodau lleol, yn unigol

**Ms Brychan:** The reason for including this point is that specific merit is attached to local decision making and understanding the local context in the rest of the Bill, but it is considered to be less important in relation to sixth forms, for funding reasons. I am not convinced that this is sufficient reason for taking that power away from local authorities, whether they act individually or



neu fel consortiwm.

as a consortium.

[142] **Julie Morgan:** My question is about free school breakfasts. I know that, in one of your responses, you said that you were concerned that free school breakfasts would be lost to some of the most deprived communities. Could you expand on that? Has that been sorted now and have your fears been allayed?

[143] **Ms Brychan:** Yes, this was a small concern that popped up in reading the Bill and the explanatory memorandum, which said that there would be greater detail on when local authorities could withdraw school breakfasts. It was to do with take-up and whether it was affordable, whether there were enough people to make it worthwhile and that kind of thing. It struck us that there is a potential danger there, given that free school breakfasts were originally to be specifically targeted at those communities where the benefit might be most felt. If there is a reduction in take-up there that leads to its withdrawal, that would be contrary to the original intention of the policy and contrary to what we want to see, because we have seen the benefits, particularly in those areas, of the introduction of free school breakfasts. So, we just wanted an eye to be kept on that, so that the right people continue to benefit to the maximum.

[144] **Julie Morgan:** So, you do not have any evidence to suggest that you think that this might happen.

[145] **Ms Brychan:** No, but it stated specifically in the Bill or in the explanatory memorandum that there will be triggers for its removal, and we think that care needs to be taken so that, if those triggers are reached, the question of where that happens is considered as well as the raw numbers.

[146] **Mr Murphy:** At a local authority level, I know that, in a number of authorities, there has been a review of the way that free school meals have been taken and the link to those children who receive free school meals or who are possibly considered to be in areas of deprivation. In Monmouthshire, for instance, I was part of the working group that looked at that. So, there is some evidence. I do not know what it is like throughout Wales, but, at a local level, I know that some things have been looked at.

[147] **Julie Morgan:** It has depended on the initiative of the school, to have the breakfasts, so that will still apply.

[148] **Mr Murphy:** Yes.

[149] **Julie Morgan:** So, you are just saying that we should keep an eye on it.

[150] **Mr Murphy:** Yes.

[151] **Rebecca Evans:** Thinking of sections 95 and 96 of the Bill regarding the annual meeting for parents, could you expand on your concerns over the proposals regarding the percentage of parents that would be required to trigger those meetings?

[152] **Mr Murphy:** First, we have to concede that this looks unduly pedantic—that is, the way that the system is at the moment—certainly to an outsider. However, in certain small schools, there could be a small number of parents who could make life very difficult with regard to wanting to put forward discussion points where there are other resolutions. It makes it a very difficult forum for schools and, dare I say it, an unmanageable forum in many instances. We also have a concern about the numbers and percentage issue. I will give you an example. In my own school, we have five parents belonging to one child. So, the sliding scale of how that would work in practical terms is one that would give us a challenge. I do not

know how we get around that. However, we know about the work that we have to put in at the moment to try to make that work—first, to try to get parents to the meetings, but also the percentage trigger that is given, to which governors pay great credence.

[153] **Mr Jones:** Generally speaking, we welcome the provision in this Bill; it is long overdue. I do not think that there are any objections to it; it is about trying to raise some technical issues that may cause problems in the future.

[154] **Rebecca Evans:** I was interested to read your concerns about the classification of a parent, because families come in all shapes and sizes nowadays. Do you have any suggestions as to how we can make that part of the Bill work?

[155] **Mr Jones:** I think that you need to consult a very friendly lawyer. [*Laughter.*]

[156] **Ms Brychan:** Some pupils have a number of parents; that is just the way their family is constituted. However, in a small school, that effectively means that one or two families could call repeat meetings to discuss issues that might be far better and more quickly resolved in another forum. That is the kind of problem that we are trying to get around.

[157] **Christine Chapman:** May I clarify that a definition of a parent would be as defined in the Education Act 1996?

[158] **Mr Davies:** Yes, and any reference to parenting in this Bill is to be read as referenced in the 1996 Act.

[159] **Jocelyn Davies:** Can we know what that is?

[160] **Mr Davies:** The definition of a parent is extensive in the 1996 Act. I can provide a paper for you on that. [*Laughter.*]

[161] **Christine Chapman:** We will have a note, I think.

[162] **Jocelyn Davies:** It might not solve the problem, though.

[163] **Ms Brychan:** It might even add to it.

[164] **Christine Chapman:** On that note, I thank our witnesses for attending today; it has been a very useful session. We will send you a transcript of the meeting for you to check for any factual inaccuracies. Thank you for attending.

10.12 a.m.

### **Bil Safonau a Threfniadaeth Ysgolion (Cymru): Cyfnod 1—Sesiwn Dystiolaeth 3 School Standards and Organisation (Wales) Bill: Stage 1—Evidence Session 3**

[165] **Christine Chapman:** I welcome our next witness. Could you introduce yourself for the record?

[166] **Mr Imperato:** My name is Michael Imperato. I am a solicitor with NewLaw Solicitors in Cardiff, although I want to emphasise that these are personal views that I will be giving to the committee today. For 20-odd years, I have practised in education law and I have been involved in several judicial reviews against the National Assembly and Welsh Ministers, so I have that background knowledge.

[167] **Christine Chapman:** Members will have read your paper with interest. If you are happy to do so, we will start with questions and I am sure that we will have a good discussion. What are your views on the assertion made by the Minister for Education and Skills and representatives from local government that existing legislation on intervention in schools is overly complex and has led to delays in authorities intervening in schools, which is causing concern?

[168] **Mr Imperato:** I would agree, in broad terms. It is almost endemic in education law that there is lots of provision scattered around various statutes and regulations, which means that people can fall into procedural traps, which blight the intention to get on with things and change things. I was involved in a school closure case a year or two ago in which the local authority had issued the wrong notice on the wrong day, and its plans unravelled just on that. It was because it used the wrong notice from a different part of the Act—it is all fun and games for some lawyers, but it defeats the objective of good justice and good government.

[169] **Julie Morgan:** Good morning. If there is a clear need to consolidate and clarify legislation, do you think that the proposals in the Bill are going in the right direction?

[170] **Mr Imperato:** I absolutely agree with that. However, I would add a caveat—this is also an issue for your sister committee, the Constitutional and Legislative Affairs Committee—that there is a constitutional issue about getting that out to people in Wales so that they understand that this is important Welsh legislation. That should be conveyed not just to local authorities and such organisations, but to the whole of Wales. We have a big problem in terms of the accessibility of Welsh legislation in Wales.

10.15 a.m.

[171] **Julie Morgan:** So, you think that this is going in the right direction.

[172] **Mr Imperato:** Yes, absolutely.

[173] **Julie Morgan:** Moving on to the school improvement guidance, do you support the powers provided to the Welsh Ministers to issue statutory school improvement guidance to school authorities?

[174] **Mr Imperato:** Yes, the role of Government must be to try to drive up standards. That is an issue that is highlighted in Wales—we are trying to improve standards because there has been criticism of standards in Wales. So one must be seen to be trying to do something in that respect; to do nothing would not be an option.

[175] **Julie Morgan:** You raise some queries about the guidance in your written evidence. Would you like to tell us what those concerns are?

[176] **Mr Imperato:** The principle is a good one, but, as one might expect, lawyers then look at details. It is in the practicalities and details of these things where good ideas can unravel, if you are not careful. My view on school guidance is that it is akin to painting the Forth Bridge. You might start off with good guidance in 2012, but, by the time you have consulted on it, rolled it out, had roadshows on it and so on, it is late 2013; then it is taken on board and the teachers and local authorities are given training on it and it is 2014, by which point, new bright ideas might have come around and it starts all over again. That is the problem with education. Two or three years in the world of education are a lifetime for an infant school child and it is difficult to keep on top of these things. It is easy for someone like me to say that it must not be too prescriptive and that it should be able to accommodate different contexts and scenarios, but that will be a seriously difficult challenge if it is to be worth the paper that it is written on. That is the point and that is a real challenge for those who

produce the guidance.

[177] **Julie Morgan:** Surely that can be overcome.

[178] **Mr Imperato:** It will be a real challenge to make it relevant every single year and every month of the year. Furthermore, the school improvement guidance can also be driven right down to a particular school or a particular governing body—it can be targeted that specifically. It will be interesting to see how—sitting in the Senedd or in Tŷ Hywel or wherever—you will be able to produce guidance that applies to school x, y or z in Anglesey or somewhere like that and make it spot on for that school and for those local issues and that local area. That will be a real challenge from a central-ish Government starting position.

[179] **Julie Morgan:** You support the general thrust, but you want those issues into account.

[180] **Mr Imperato:** I absolutely support the general thrust, but, as I say, it will be a big challenge to do it right and make it relevant and up-to-date all of the time. Painting the Forth bridge is, I think, a decent analogy for that.

[181] **Angela Burns:** I have listened with interest to your evidence. Given your experience in education over the last 20 years or so, could you suggest another way in which to approach this subject?

[182] **Mr Imperato:** As I say, it is a difficult thing to do. All I can say is that you would have to ensure that you are pulling from a wide pool of people and that the guidance is constantly being revisited. That is the point. Guidance is often produced and people breathe a huge sigh of relief and think that the job is done and it is put on the shelf and not revisited unless a problem occurs or someone kicks off about it. It would have to be a question of saying, 'Right, we have done it, now let us start again.' As I say, it is like painting the Forth bridge; as soon as you have finished it, you have to start again. So, that will also be a resource issue. You are opening the door to what is a very commendable idea, but it will not be effective—

[183] **Angela Burns:** I get that point, but do you have any ideas on how a Government might be able to get a closer feel for what is happening in a particular school in Anglesey, for example? Do you think that guidance should be set out for a number of, for example, organisations, people, areas or local education authorities, or whoever they might be, to look at their particular areas so that we have lots of mini guidance targeted to a particular type of school, a particular need or a particular area.

[184] **Mr Imperato:** There is an attraction to that. In education, context is very important and what might work in an inner-city school in Cardiff might not work in outer Holyhead or somewhere like that. I do not have an answer to that; I am not an educationist. I think that that will be a challenge.

[185] **Jenny Rathbone:** You expressed concerns about how quickly the Welsh Minister would be able to make an informed decision about a particular school. Given that Estyn goes into a primary school, spends three days there and makes some pretty informed decisions based on analysing data, why do you think that it is not going to be possible for the Welsh Minister to make similar quick analyses? They would be able to have access to all those sorts of data and draw on information from Estyn or the local education authority.

[186] **Mr Imperato:** As you said, Jenny, Estyn would have physically been to the school for several days, spoken to the people and got a feel for the place. There is no substitute for actually being there and getting the vibes of a place and its area, the community and the

streets around it. If the Welsh Minister is going to say, 'I'm on the first train to Anglesey and I'm going to look at this, I'm taking my team with me, we are going to book into the Old King's Head next door and we are going to sort this out and have a real good look', then fine, but I have my doubts whether that would happen.

[187] **Jenny Rathbone:** True, but it is hard to envisage the Welsh Minister wanting to intervene unless they had already had some causes for concern flagged up by Estyn or somebody else. There would have to have been some circumstances that would get the Welsh Minister wanting to intervene at that micro level, which could be because the local education authority had failed to intervene, but I find it difficult to foresee circumstances in which the Welsh Minister would intervene without that sort of ground knowledge having been presented to them.

[188] **Mr Imperato:** I am talking more about how he is going to intervene. It is all very well saying that there are warning lights on a school, but if the Welsh Minister is just taking as read what Estyn says the problem is and what Estyn says is the answer to the problem, then you worry whether the ministerial mind is being properly applied. I think that they should go there and see what is happening on the ground, form a view and then implement their view. It is the practicalities of it that I think that people would have to think about.

[189] **Christine Chapman:** Aled and Jocelyn are next. Please make it as brief as possible, because there is quite a lot of ground to cover. I note that there are still a lot of questions on this issue.

[190] **Aled Roberts:** Is the point that you are making that you accept the principle of the statutory school improvement guidance but that it would not be sufficient—this point was made by the previous witnesses—for a local authority to apply the local guidance to all circumstances and that it is the driving down of the detail to the individual circumstances in the individual school that is going to be the challenge of this legislation and the capacity of the school improvement services to identify the circumstances for improvement within individual schools?

[191] **Mr Imperato:** I agree with that to a large extent. The problem is that, if you give guidance to a local authority and say, 'All of your schools have to do this', then how easy is that? That probably could be done, but it will have to take into account the variations and local context. That is not easy. Otherwise, if it is just too general and too bland, it just defeats the whole object of the guidance. I have looked at guidance sometimes that is just two pages long and it is not worth the paper it is written on or the time that was put into it. If guidance is to work, it has to be really relevant and fit the circumstances. What would be really interesting is if you are trying to give guidance to a governing body of a particular school from here, which is one of the potential powers. In that situation, you really need to drive down into the detail and understand what goes on in that school.

[192] **Jocelyn Davies:** Obviously, you are an education lawyer and not an educationist. We should not be asking you questions about issues outside your area of expertise. Is it likely that there are cases that could arise from statutory guidance, based on the flaws that you have just identified?

[193] **Mr Imperato:** Well, what one would do would be to analyse every line and word of the statutory guidance. The more generalist it is, the more holes that you find in it, as a lawyer.

[194] **Lynne Neagle:** I will move on to the issue of school organisation. Could you say a little more about how effective the existing statutory guidance on school organisation proposals is? Could you also clarify whether you support the need for a statutory code on

school organisation, as provided for in the Bill?

[195] **Mr Imperato:** Yes, I would support the need for guidance. I am not sure whether this relates to this question or to another one, but I was particularly interested in the guidance on the consultation aspect of the process. That is a particularly thorny subject that needs to be addressed properly, and I would welcome good guidance on it. So, yes, good guidance is essential.

[196] **Rebecca Evans:** Thank you for your written evidence. Could you expand on why you think that there is a danger that proposers would be less likely to adhere to the statutory code under a system that uses the local determination panels?

[197] **Mr Imperato:** This problem was flagged up in one of the explanatory papers behind the Bill. I am sure that we will come on to this in a minute, but my concern is the independence of an LDP and the scrutiny that it will apply to the process. People tend to forget that the Welsh Minister is not only looking at the reasonableness, fairness and common sense of the proposals. The Welsh Minister is also looking at whether procedure has been followed correctly, whether the right boxes have been ticked and whether the consultation has been done properly. There is a scrutiny aspect to this. If there is a lack of independence, will one LDP want to conduct close scrutiny when it knows that, next year, the boot might be on the other foot? Also, who calls the LDP to account? Who picks it up and asks, 'Did you scrutinise that issue properly, and did you check that this and that were done?' That is the concern. As I said, it was flagged up in the papers that I read that are behind the Bill.

[198] **Rebecca Evans:** Picking up your answer to Lynne Neagle about section 39, and the requirement to consult such persons as the Minister sees fit, I note your comment that it is important that parent groups and solicitors who have been involved in cases in previous years are consulted. Given those comments, should the Bill include a requirement for the Minister to consult with specific stakeholders or groups of people?

[199] **Mr Imperato:** It is going to be very difficult to have a definitive list. However, that would be really helpful. The problem is in identifying groups of relevant parents. Obviously, there are parent-teacher associations and so forth. When a school reorganisation proposal happens, these groups emerge. They come out of nowhere and are created to deal with the issue at hand. Therefore, how do you tap into those people? They are the customer base, in a way. They are the people with whom you really need to engage. You need to ensure that they are happy with the processes that are being proposed and set out. I have used this phrase before, but it is a real challenge. My worry is that Governments in general—and I do not mean this to refer to the Welsh Government—can often consult with an incestuous group of consultees, and you do not get those slightly maverick or off-the-wall ideas coming in, which can be welcome. I am not calling myself a maverick, but I am very pleased that someone like me has been invited to give evidence to the committee.

[200] **Angela Burns:** I wish to build on Rebecca's question, if I may. You talk in your evidence about starting the trigger, and about the categories of people. You also say, when talking about small schools:

[201] 'As a matter of law, it could be seen as fettering discretion'.

10.30 a.m.

[202] Can you first expand on the categories of objectors and whether you think that they are too limiting—that is certainly the impression that I get—and tell us your views on how we can and cannot exclude those who have a direct interest? Secondly, could you talk about your concerns about how we might treat schools that have a very low number of pupils, for

example, and the notion of fettering discretion?

[203] **Mr Imperato:** Most people giving evidence will agree that the idea of one random person triggering the whole process seems absurd. The issue is how to have a sensible trigger threshold. In broad terms, I would agree with the suggestions. My concern is with the definition of a person who has a direct interest. You are trying to get a number of people with a direct interest in the school, and so what is the trigger for them? Who are those people? It would be wrong to define that tightly, which is interesting. In my experience, there is a wide range of people who you might not immediately think of but who have a genuine interest in the issue. It obviously refers to parents whose children may go to the school. So, if it is an infant school and their child is due to go to the school next year, they would clearly have an interest. However, what about a couple who had just moved to an area and given birth to a baby? What if they moved to the area because they wanted their child to go to that school? That could be four or five years away, but they bought that house and moved in for that reason, so they have a big interest in that school. What about the guy who owns the sweet shop next to the school that is to be closed? What about businesses? What about the people who will have a massive school built on their doorstep as a result of the idea? They all have a real interest in what is going on. Yes, we should try to exclude the random person who just wants to spout off about anything, but we must not draw the definition too tightly. A school closure or reconfiguration suggestion has a big ripple effect in communities, particularly in more rural areas.

[204] **Angela Burns:** Is there any way in which we could or should weight those types of people, so that the objection of somebody who has a child who is either attending or may attend carries more weight than that of the sweet shop owner around the corner, or a transport company that does not want to lose the bus contract of delivering the kids to the school, or whoever?

[205] **Mr Imperato:** My gut reaction is that that would be bureaucratic, and a bit false and divorced from real life. The sweet shop owner might be extremely exercised about the issue.

[206] **Angela Burns:** The main objective is not about keeping a sweetie shop open or a bus contract going, but about ensuring that children can access a really good education.

[207] **Mr Imperato:** Yes, but I hope that you would also like to make sure that the community is not disjointed and upset, or even holed below the waterline as a result.

[208] **Jocelyn Davies:** I have one or two questions about the local determination panel. It would be fair to say that you have not minced your words in presenting this paper. [*Laughter.*] You call it ‘a hugely flawed proposal’. You say that the LDP is ‘expensive’ and will not achieve its objectives, and say that this ‘kangaroo court’ of local worthies would likely face constant judicial reviews and claims of breaches of human rights. I do not think that you are fully behind this one, are you? [*Laughter.*]

[209] **Mr Imperato:** No. I think that it is an absolute shocker.

[210] **Jocelyn Davies:** You are not on the same page as the Minister. Do you not feel that the current system requires any modernisation at all? I guess that the feeling behind this is that the current system was set up when school reorganisations and closures were much rarer than they are now. So, do you think that it requires any modernisation?

[211] **Mr Imperato:** There is no such thing as a perfect system, but in the context of this highly contentious and emotive area—indeed, I have heard people call it a ‘toxic’ issue—the current system is probably the best solution, with a Welsh Minister as the honest broker and his office doing the legwork of looking into what has happened and what the arguments are.

[212] **Jocelyn Davies:** So, the attempt to solve—

[213] **Christine Chapman:** I will just bring Aled in on this point and then come back to you, Jocelyn.

[214] **Aled Roberts:** Rydych yn gweithio yng Nghaerdydd ond mae ardaloedd o Gymru lle mae'r trefniadau o ran ad-drefnu ysgolion wedi creu anawsterau enfawr i gynghorau ac, a dweud y gwir, mae etholiadau'r cyngor wedi bod yn hollol ddibynnol ar gynlluniau un blaid neu'r llall o ran ad-drefnu ysgolion. A yw'r gyfundrefn bresennol yn gallu ymdrin â sefyllfa felly? Mae nifer o ysgolion cynradd sydd â llai na 50 o blant ac ysgolion uwchradd â 300 o blant, ac mae arbenigwyr addysg yn dweud nad yw'r gyfundrefn yn gynaliadwy. Rwy'n gofyn yr un cwestiwn â Jocelyn, sef a yw'r gyfundrefn bresennol yn gallu ymdopi â sefyllfa felly, lle mae'n amhosibl bron i gael unrhyw benderfyniad drwy'r cyngor?

**Aled Roberts:** You work in Cardiff, but there are areas of Wales where the arrangements for school restructuring have created enormous difficulties for councils and, in fact, the council elections were completely dependent on the school restructuring plans of one party or another. Is the current system capable of dealing with such a situation? A number of primary schools have fewer than 50 children and secondary schools with 300 children, and educational experts say that the system is not sustainable. I am asking the same question as Jocelyn, namely is the current system capable of coping with such a situation, whereby it is almost impossible to get any decision through the council?

[215] **Mr Imperato:** You are raising resource issues there as much as anything else. The question comes down to whether you want a fair and just system that deals with these proposals in an efficient manner. If you do, you have to pay for it. I return to my view that the most able people to deal with it and those who are perceived to be the most honest people to deal with it are the people who do it at the moment.

[216] **Christine Chapman:** That is quite clear.

[217] **Jocelyn Davies:** I take that point, although I understood Aled's point. You do not work in Cardiff, you are based in Cardiff, but my impression is that you have extensive experience right across Wales

[218] **Mr Imperato:** Absolutely. I did the very first High Court action in respect of a school closure, and that was a small school in Pembrokeshire.

[219] **Jocelyn Davies:** So, your experience is not confined to the city. You mentioned that you feel that it is important to have this independence and you say that local determination panels will not have that. Perhaps you would like to expand on that. You also mentioned challenges under article 6 of the Human Rights Act 1998. Can you expand a little more on that? You feel that the panels would face 'considerable scrutiny' and that the threat of article 6 challenges will be 'routinely raised'. So, with that information, you are saying that the system will be more bureaucratic, more expensive and may involve more lawyers than is the case with the current system. So, can you say something about the independence and the article 6 challenges?

[220] **Mr Imperato:** The lack of independence is covered in page 4 of my submission. The concern is that you will have a group of local worthies of some sort or another, of five people, and they will look at the proposals of another group of local worthies who are next door to them or in the same vicinity. How will that be perceived as independent? I have looked very carefully at the disqualification criteria for the panel members. I can see some real fun and games with challenges as to whether a person is wholly independent. The whole *raison d'être*



of this idea is that it is local. It is an attempt to drive the appeal decision-making process into a local context. If you make something local, it will be more connected to the original decision and decision makers. You will find yourselves asking people, 'It is not just a question of your position on the LDP, Mr Jones; what about your wife? Does your wife have any connection with this panel? Have you ever worked for this other local authority? Do your children have anything to do with this local authority?' It will be very difficult. If you want people with expertise to be on the LDP, which is another issue altogether, you will be dealing with a relatively small pool of local people. It will not be easy to find people whom you could not somehow tie in to the local authority that is making the proposal. This will just be perceived as another group of local authority people rubber-stamping what another bunch of local authority people have done next door. It just looks terrible. It looks awful. It is a trite thing to say, but justice has to be seen to be done. I think that this looks like a very cosy club that is being initiated here.

[221] **Jocelyn Davies:** What about article 6?

[222] **Mr Imperato:** Okay, I will move on to the legal challenges. These LDPs, with the best will in the world, will make mistakes and not do things correctly. There will be lots of fertile ground for challenges, on the composition of the panel, on how it runs a case, and on its decision letter. Do not forget that decision letters in this area of education law are often 20 or 30 pages long. Is the LDP really going to write a bullet-proof decision letter, or is it going to spend thousands of pounds of taxpayers' money on meeting clerks and having them write the letters for it? That is the cost issue. Is the LDP really going to be able to write a 20-page bullet-proof letter on this? The answer to that is 'no'. There is an easy judicial review challenge there, on the poor decision letter. I have not even got to human rights yet. There are plenty of grounds for challenge, from the very first meeting, on the composition, right through to the work that the panel does and its decision. All that will have the potential for judicial review.

[223] Then, we move on to human rights issues. Human rights law has not actually taken off to the extent that the people at the *Daily Mail* feared that it would, in education law. However, it is out there, and there would be the potential for arguments, and not just under article 6, on the right to a fair trial. Do parents in a given area have a civil right? That is a good question in itself. If they have that right, is an LDP really an independent, impartial tribunal? That is one of the grounds for a challenge under article 6. There are other articles, such as article 8 on the right to respect private and family life. There is also article 2 of the protocols, on the right to an education. There could be very emotive arguments, with parents saying that they want a certain type or size of school, and you are doing away with it without giving the issue proper scrutiny or a fair hearing, so you are depriving them of certain rights. People will definitely try to make these challenges. It is an uphill battle in the world of human rights in education law. However, people will certainly have a go at those challenges.

[224] **Jenny Rathbone:** You have made a strong case for why it is difficult for 'local' to be also 'independent'. However, we heard earlier from headteachers' representatives, who said that they could envisage having more of a regional determination panel, made up of one of the four education consortia that are being developed. You can see that the intention of the Bill is to get local education authorities, in the general sense, to take a bit more ownership of a problem that has not been addressed, and that not to have everything always comes back to the centre with the Minister.

10.45 a.m.

[225] Do you not envisage regional consortia being able to have local independent panels that might include one person with local knowledge? Aspects such as transport routes are a significant issue, and if you are not local it is quite difficult to follow the detail on that.

However, I can see that you need to have people who will not endlessly pursue their own interests in that regard. Regional consortia of education authorities come from quite a wide area, and therefore would not need to be local in the main.

[226] **Mr Imperato:** You have just said it there, Jenny—they come from a wide area—so you immediately undermine the whole thrust of the first line of the idea of why we have local determination panels, because it is very local.

[227] **Jenny Rathbone:** However, there might be a way of not having a local determining panel, but of having one that was not always the Minister.

[228] **Mr Imperato:** That is possible, but are they going to be seen as honest brokers? It could still be seen as a local authorities club determining on other local authorities. It is still the same issue.

[229] **Christine Chapman:** I have just been reminded of a piece of evidence that we had from the Welsh Local Government Association—I believe that it was last week or the week before. When the WLGA attended, it said in its response to the idea of local determination panels that local authorities were used to establishing and operating similar types of panels and that monitoring officers were used to dealing with such issues. What would your response be to that? You have made your views clear, but the WLGA and local authorities do not see it as an issue.

[230] **Jocelyn Davies:** That is making his case. [*Laughter.*]

[231] **Mr Imperato:** I am reminded of the Profumo trial when Christine Keeler said, ‘Well, he would say that, wouldn’t he?’

[232] **Suzy Davies:** Sticking with LDPs, would it be fair to say that one of your main concerns is not necessarily the LDP itself, but the constituent parts of it? As a country, we are used to having amateur tribunals run by professional clerks—our jury system works like that, effectively. Is there an argument for saying that we should broaden the categories of people who can be in an LDP, but make sure that they have a professional qualified person controlling that and how it reports? Would that overcome your concerns about people not understanding the 30 page report at the end of something? I know that there is a cost issue.

[233] **Mr Imperato:** That is exactly what it comes down to. If you have top-notch people on the panel and a brilliant clerk who is doing tons of work to produce a bulletproof decision letter, in my view, that will cost more than the Welsh Minister’s decision.

[234] **Suzy Davies:** May I come on to my next point? In your evidence, you have asked why on earth are we thinking of adopting a quasi-judicial system when we have a perfectly effective administrative solution to this. However, right at the beginning of your evidence when you introduced yourself, you talked about those occasions when you have had to go to court against Welsh Ministers. One of the main concerns expressed by objectors to school closure programmes is that the plans have been subject to a procedure that the local authority has introduced, which may or may not be robust, the application has gone off to the Welsh Ministers and it has been passed anyway, regardless of their objections. That is where the real concern about disconnect comes from. Why are you convinced that having an apparently independent civil service or a collection of civil servants will be more convincing than having a semi-professional LDP, resources aside?

[235] **Mr Imperato:** You used the word ‘independent’ then, and that is the foundation.

[236] **Suzy Davies:** My point is that objectors do not feel that the Minister is independent.

[237] **Mr Imperato:** You would struggle to get a good judicial review off the ground if your only ground for challenge was unreasonableness, because to say that the Welsh Minister is behaving unreasonably—that he has effectively lost his marbles—is never going to run. So, you have to find a better ground for challenge than that.

[238] **Suzy Davies:** I am sorry to take a bit of time on this. I take the point that an administrative approach will involve checking whether procedure has been correctly followed, but you also say in your evidence, with regard to guidance, that local context is important. You were asking how on earth Ministers can talk sensibly about giving guidance to a school's governing body, for example, if the connection is not there. I would say that the same principle applies to this as well. Therefore, although the LDP may not be the answer, where is the third alternative?

[239] **Mr Imperato:** In my experience, the challenge one makes to the Welsh Ministers if you are in my position and you are launching a judicial review would be made because the law has been misapplied, because the Welsh Government's own guidance has not been properly followed by a Welsh Minister. The case I took of Eglwys Newydd Primary School was on that very point. That case went to the Court of Appeal this year. So, these are legal points. One is not unravelling a Welsh Minister's analysis of local needs and local issues. That is not what the legal objection comes to. My view is that you are going to have even more fertile ground for legal objections with an LDP, which is not going to have the background, experience and knowledge of the people in the Welsh Minister's office in applying the guidance, collating information and interpreting it correctly and independently.

[240] The interesting thing to consider about the LDP is how it could synthesise a huge amount of documentation, pull all that together, to then give it to five worthies, who are not full-time experts on education and law, day in, day out—certainly they would not all be. How is that going to be done? That is a huge job in itself. How, at the end of that process, are you going to come out with a considered letter? I do not think that local knowledge is a problem in the process. It has not been an issue that I have ever come across. No-one has ever said to me, 'The Welsh Minister doesn't know the bus routes of this school'. That has not been an argument that I have ever had to address.

[241] **Suzy Davies:** I think objectors would say that.

[242] **Aled Roberts:** However, is it not the case that the problem we are trying to address here is not those decisions that actually go through local authorities and reach the Minister's desk—not the legalities of that situation, which he is dealing with—but the inability of local authorities to deal with school reorganisation proposals due to the pressure brought to bear on locally elected representatives, who have proposals placed before them that are then thrown out at that democratic level? That is the problem that the Minister is trying to deal with, not the legalities of what arrives on his desk and goes through the councils. The problem is that, in his mind, a large number of authorities have not taken steps to deal with the surplus places issues due to reluctance on the part of democratically elected representatives because it is so politically toxic.

[243] **Mr Imperato:** That takes us back to the issue of school improvement guidance. You answer that by saying that if you are trying to drive up standards and reorganise and restructure Welsh education in a better way, that is the first part of the Bill; that is about guidance and improvement guidance. The process I am talking about is when a local authority says, 'Yes, we are going to do this; we are going to close this school and that school and merge this school and that school', and then people object to it. Someone has to be the honest broker in that process, and an honest broker with expertise in that process. It also has to be done on a reasonably cost-effective basis. What I say is that the LDP fails on all of those

grounds.

[244] **Suzy Davies:** What if that process has started because the Minister has intervened and told the local authority to do that? How can he then be the final arbiter if there is a complaint at the end?

[245] **Mr Imperato:** That is a good question. If the Welsh Minister has initiated the process, the argument would then be about whether the Welsh Minister's guidance and instruction was fair and reasonable. That is the battleground of that part of the process. If that is accepted as fair and reasonable, you are on to chapter 2. If local people object to that—

[246] **Christine Chapman:** Sometimes, when Ministers have interests in their own areas, another Minister would take this on. Might it be the case that another Minister would deal with such an issue?

[247] **Mr Imperato:** It might be tucked away in the Bill somewhere that if it is a Welsh Minister who has made the intervention, he would then fall back on a judicial review. I caught a little bit of the headteachers' evidence and there was talk of an appeal against intervention; if it is anything to do with the Minister making a direction, the best course of action is to say that it has to go through the High Court—it has to be a judicial review. It is a review of a ministerial power. I do not think you could then build in a layer of appeal above that.

[248] **Christine Chapman:** We will clarify that with the Minister. We have to move on now; we have just over five minutes and we have some other important issues to cover. Angela, did you want to come in here?

[249] **Angela Burns:** Yes, you have been very robust about the LDPs. You are probably even more forthright about the costs of the LDPs; the explanatory memorandum is really woolly on cost, and we have challenged the Minister on that. You describe it as being

[250] 'so far off beam, it's embarrassing'.

[251] You also make a comment that I think is absolutely spot on—that we are in danger of this being

[252] 'no more than a "rubber stamp", that indeed would be cheap but it is not, with respect, a proper process.'

[253] We want a proper process. I wonder whether you could expand on the cost element. I know that you have already talked about having bullet-proof opinions and legal clerks and so on.

[254] **Mr Imperato:** You could make the LDP very cheap; if everyone just turned up, had a meeting for an hour and said, 'Yeah, that's fine', that would be a cheap way of doing it, but it would be exposed as the total sham that it would be. It really would not stand up to any judicial scrutiny. The point is, if you are going to do this properly, how do you do it? I have made mention of the back office—there is a lot of back-office work that goes into checking whether the proposals are correct, whether there has been proper consultation and so on. Somebody will have to collate and synthesise all that information. Sometimes the objections can come in lever arch files, and someone is going to have to go through all of that and synthesise that down. There is a big cost to that alone, and then you are going to have to have the meeting, and the proposals are incredibly thin on the procedure of the meeting.

[255] I cannot quite get my head around whether it will be a closed committee, just having a chat and deciding what they are going to do, or whether it will ask for representations and

people to give evidence in person or by submission, and whether it will be open. The fact that it is called a panel and that there is a clerk makes me lean towards it being more like an admissions panel or an exclusions panel—I get the feeling it might be along those lines. However, if you are going to do that, it will be horrendously expensive, because people will want to turn up and have their say, and my experience is that if the objectors want to put in any kind of legal submission saying, ‘We think you’ve got the law wrong on this’, or if anything comes in with the name of a lawyer or a barrister on it on behalf of an objector, I guarantee you that the local authority involved will instruct a barrister straight away, and they will get a QC or somebody, and that will be expensive there and then.

[256] So, the costs are just escalating and escalating and, as I say, where do you get the clerk from? How are you going to get an independent clerk who knows education law inside out and back to front and is able to produce a bullet-proof letter? You would probably have to instruct a QC to do it, and that is more cost. Unless it is purely a rubber-stamping exercise—‘let’s meet over lunch and sign this off, lads’—if it is to be done even half properly, I think that it will be very expensive.

[257] **Angela Burns:** I take the point that you raised earlier that it will be quite tricky to get independent people with a knowledge of education for the LDP. They will always have to refer to outside sources. Could you give us a feeling—and I know that this is like asking ‘how long is a piece of string?’—for how much money is involved in these kinds of things? If you had to employ a QC or barrister to be the clerk, is that a day rate of thousands of pounds, or five-hundreds?

[258] **Mr Imperato:** Easily a thousand, yes.

[259] **Angela Burns:** I know that we have never had an LDP before, but when you have been involved in judicial reviews, have they tended to cost hundreds of thousands of pounds, or tens of thousands?

[260] **Mr Imperato:** It tends to be tens of thousands, but I will stress that those are normally the barristers’ fees, not the solicitors’ fees, because these are barrister-led matters of law.

[261] **Angela Burns:** You have made your point on costs extremely well.

11.00 a.m.

[262] **Aled Roberts:** Mae’ch tystiolaeth yn sôn am ysgolion bach, sef ysgolion o lai na 10 o ddisgyblion. Rydych yn dweud nad ydyw’n deg, i ryw raddau, eu bod yn cael eu trin yn wahanol i ysgolion mwy. A wnewch chi ymhelaethu ar eich pryderon? A gredwch y bydd mwy o heriau cyfreithiol yn sgîl y ffaith eu bod yn cael eu trin yn wahanol?

**Aled Roberts:** Your evidence mentions small schools, that is, schools with fewer than 10 pupils. You say that it is not fair, to some extent, that they are treated differently to larger schools. Could you elaborate on your concerns? Do you believe that there will be more legal challenges because of the fact that they are being treated differently?

[263] **Mr Imperato:** As I said, the very first case that I did was in respect of a small school. One of the arguments is that if you are grouping all small schools by a threshold—by saying that it is 10 or 20 pupils, or something like that—you are then not allowing due credence to those kinds of individual quirks or particular points. That is the danger of any threshold point. The ‘fettering discretion’ phrase that I use is a judicial review phrase; it means that you have removed your thinking process from this because you have put in this arbitrary line in the sand. That is the danger that I am flagging up. I understand the issue: having a complicated and potentially expensive process in relation to a school with a low number of pupils seems,

at first blush, crazy. However, as soon as there are pupils involved, and as soon as you start talking about a community, it starts to become a different kettle of fish. Can you draw a line? If you can, then who decides where? You must take that process forward very carefully. That is the point I raise. My first judicial review was based on a local authority that we were saying had a policy to close all small schools below x amount of pupils. That was the whole basis of our challenge, because we said that that was illegal because it was fettering discretion. So, I have done it once.

[264] **Aled Roberts:** Try to ensure that you do not do it again. [*Laughter.*]

[265] **Angela Burns:** [*Inaudible.*]—close a school near you. [*Laughter.*]

[266] **Christine Chapman:** We now move on to the next set of questions, which comes from Jenny.

[267] **Jenny Rathbone:** My questions are on your comments about removing the obligation on school governors to hold annual parents meetings. There seems to be quite a lot of unanimity that it is a sensible course of action to require that to happen. You raise the issue about how we empower parents to know that they have the right to demand a meeting and how we do that effectively. Could you elaborate on that and on how we can prevent the vexatious use of that power?

[268] **Mr Imperato:** It is important to ensure that if you are removing an entitlement, people are advised as to what the alternative is. A common problem with all Governments, whether that is in Wales, England, Scotland or Northern Ireland, is that people's rights are not often advertised enough. It is important to remember that this is an ongoing right as well. So, every child when they arrive at a school may be handed a bit of paper on the first day stating, 'You have the right to exercise this right as the parent of this child'. However, how are they consistently reminded of that term after term or year after year? That is the kind of thing that can easily slip through the cracks. If that happens, then the real and practical effect is that people have lost that right, because although it might be on the statute book, they have forgotten about it and it has gone. That is the problem with those kinds of things. So, there should be guidance or certainly something stating that schools must remind parents in the annual reports or whatever.

[269] **Jenny Rathbone:** The explanatory memorandum states that the governing body will be required to publicise new arrangements in their school prospectus, which they are obliged to have, and to make it clear that parents may request up to the three meetings—and I imagine that that is every a year. So, the governing body will have an obligation to do that. How they do it is hidden in a 15-page document, and I appreciate what you are saying on that. However, you say that the 10% threshold might be too high, but then, the headteachers' representatives pointed out that in a small school of 50 pupils, it would only need five appropriate adults, possibly even relating to one family, to insist on a meeting, whereas their concerns might be better dealt with in a one-to-one meeting with the headteacher.

[270] **Mr Imperato:** I can see that. I was probably thinking more about secondary schools, where the figure is 10% or 30, whichever is lower. I just wondered whether 30 was a bit high, frankly. My gut feeling is that if there is a particular year group causing a problem in the school, and that was infecting the whole school, would you get 30 parents from that year group all clubbing together to call such a meeting? I can see it being more of a problem in a secondary school. Thirty strikes me as being a bit high, and I am somebody who went to Whitchurch High School, which had 2,000 pupils in it. Getting 30 parents to challenge something would be a feat of organisation, even in a big school.

[271] **Jenny Rathbone:** That is an important point; secondary schools are different to

primary schools.

[272] **Christine Chapman:** We have come to the end of our session. Thank you, Mr Imperato, for your evidence today. It has been a really interesting and useful session for us. We will send you a transcript of the meeting, so that you can check it for any factual inaccuracies. Thank you once again for attending. The committee will now take a short break.

*Gohiriwyd y cyfarfod rhwng 11.06 a.m. a 11.19 a.m.  
The meeting adjourned between 11.06 a.m. and 11.19 a.m.*

### **Ymchwiliad i Fabwysiadu Inquiry into Adoption**

[273] **Christine Chapman:** We have two witnesses with us for this item today. I welcome you both. Will you introduce yourselves for the record?

[274] **Dr Rushton:** Shall I start? How much information do you want?

[275] **Christine Chapman:** Just a very small amount.

[276] **Dr Rushton:** My name is Alan Rushton. I worked for 20 years or so at the Institute of Psychiatry. I have a background in teaching social workers and in adoption research. I am currently semi-retired, but continue with some research work and have some involvement with the post-adoption centre in London.

[277] **Dr Selwyn:** I am Julie Selwyn. I am the director of the Hadley Centre for Adoption and Foster Care Studies at the University of Bristol. I worked as a social worker for 15 years, in the field of adoption practice. Since I joined the university, I have been involved in many adoption studies. I am currently a member of the English expert working group on adoption.

[278] **Christine Chapman:** Thank you, both, for attending. We have had some written evidence, so are you happy for us to move straight into the questions? I see that you are. I will start with a broad question. The research that you have carried out has shown that late-adopted children have had substantial difficulties many years after their placement. What are the implications of this for both pre-adoption and post-adoption services?

[279] **Dr Selwyn:** Would you like to start?

[280] **Dr Rushton:** Okay, I will start. On the first point, this came out of studies that had not really been done before, following up over the longer term what happened with these placements. We have both done such studies and have found some disrupted placements, some very successful placements and some that have continuing problems over time. This was very strong evidence that it was not sufficient to place a child; there had to be much longer-term involvement.

[281] You asked about preparation and post-adoption support. In terms of preparation, a lot more needs to be done to explain to prospective adopters the likely effects of serious maltreatment and how these might continue over time and be a feature of the placement, and might present all sorts of challenges to the adopters. They really need to know in some detail generally about maltreated children and, more specifically, about the individual child being placed. In terms of post-adoption services, there is a great deal to be said. We still have not got to an adequate service yet; it is still very patchy. If we are talking about child mental health services, there has been lots of criticism of these services over time regarding the fact that they do not adequately meet the needs of adopters, although I think that there has been an

improvement in some areas. In terms of the range of services, many adopters find it extremely hard to get access to services, for all sorts of reasons. Even when they do get services, they are not always properly attuned to this particular family or situation. I could say much more, but that is a start.

[282] **Christine Chapman:** We will pick up these specific issues. As you said, Dr Rushton, we have had a lot of evidence on this, so it will be interesting to hear the issues. Jocelyn, do you want to come in at this point?

[283] **Jocelyn Davies:** We have had evidence from the voluntary adoption agencies, which were concerned about the way that a local authority might structure its budget. We heard that the fostering budget is normally large, whereas the adoption budget is small, so children are fostered for much longer than they ought to be purely because of the structure of the budget. We heard that, typically, a small child who might have been abused and neglected, might be between the ages of one and two when taken from his or her birth parents and placed in foster care, and could stay there for up to five years or so before being placed for adoption, purely because of the way in which the budget is structured. We would like to know the damage that is being done through having a structure that does not place the child for adoption when he or she is ready but is rather governed by bureaucratic budget constraints.

[284] **Dr Selwyn:** The same has been found in England. There are several points that I would like to make. Social workers have been too focused on finding a placement for a child rather than thinking about finding a permanent family and permanent relationships for children. We know that delay increases the likelihood of moves for children in the care system. Children are moving around foster-care placements; it is not as though they are staying with one family. Those moves, by themselves, can trigger mental health problems in children. Research in Europe and the rest of the world has shown that the children are under incredible stress. There have been a number of studies where they have swabbed children's mouths to look at the corticosteroids in the children's systems. Children are highly stressed in foster care, and being stressed is linked to the development of mental health problems and other changes in the children's functions. Delay increases mental health problems, makes children stressed and makes the chances of adoption much lower. For every year of delay, the chance of being adopted reduces by about 20%. It makes the task of adoption much more difficult and the cost for children in the care system escalates. Ian Sinclair found that, once a child had been in care for 12 months, the chance of being reunified was only about 5%. Those children will grow up in the care system and they will not have the opportunities and outcomes that they could have had if they had been placed earlier.

[285] **Dr Rushton:** The core element is uncertainty: living for a long period of time in uncertain circumstances—whether you are going to stay or remain—and finally being transferred to a new environment, with a new school in a new neighbourhood with new siblings, which is a huge challenge. The less that is delayed, the better.

[286] **Aled Roberts:** Mae'r sefyllfa gyda chyllidebau cynghorau yn ddiddorol. Roeddech yn dweud bod yr un problemau wedi ymddangos yn Lloegr. A yw'r Llywodraeth ganolog yn Lloegr wedi cymryd camau i geisio cael cynghorau i ailystyried sut maent yn strwythuro eu cyllidebau?

**Aled Roberts:** The situation with council budgets is interesting. You said that the same problems have appeared in England. Has the central Government in England taken any steps to try to get councils to reconsider how they structure their budgets?

[287] **Dr Selwyn:** As far as I know, a consultation paper is due in September in England, which will look at how placements are commissioned and at the role of the voluntary sector. Budgets in England are used in similar sorts of ways. In England, children have been left in foster care for a further year, rather than being placed for adoption, because the budget for



that year had been spent. Adoptive parents have been lost as a result.

[288] **Lynne Neagle:** Dr Rushton, you talk in your evidence about the importance of pre-adoption assessment and screening of children. You have highlighted a number of tools that could be used to do that. Does that happen routinely at the moment?

[289] **Dr Rushton:** No, but I wish that it did. It has been recommended many times that people—social workers in particular—use a particular screening tool. When I have asked groups of social workers about that, I have rarely heard that it is used in a systematic and routine way. It is used occasionally. However, I do not have any evidence of that across the board. It is recommended, although it has not been used that much. Social workers need more training in how to use those scales, how to interpret them and what kind of decision making might flow from whatever the scale has to say.

[290] I said in my paper that people tend to use one particular scale, which is very useful but it was not really devised for this purpose. It does not really address all the behavioural, emotional and social problems that are pertinent to this group of maltreated children. We need better scales. New ones are coming on stream now. My wish, in time, is for better, more comprehensive and more reliable assessments on a routine basis.

11.30 a.m.

[291] **Dr Selwyn:** The evidence that we have seen from the Hadley Centre for Adoption and Foster Care Studies is that many assessments are descriptive—there are pages and pages of description and little analysis about what this means for the child.

[292] **Lynne Neagle:** Therefore, you would see social workers undertaking this pre-adoption assessment. Is it also the role of social workers to communicate those findings to potential adopters?

[293] **Dr Selwyn:** There is some evidence that children's social workers know little about adoption, because they may only deal with one or two cases in their careers. There is evidence in England that there is less delay when adoption teams take over the management of the case, once a recommendation has been made for adoption. It is the adoption team that then communicates those findings to the adoptive parents.

[294] **Lynne Neagle:** Finally, presumably some of these tools could identify children who have serious problems. We took evidence a few weeks ago from a professional who said that he felt that some children had such severe attachment problems that they should not be put up for adoption. The committee found that to be quite a shocking piece of evidence. What is your view on that?

[295] **Dr Rushton:** It is hard to predict the attachment pattern over time. Many children who start off with poor attachment can, over time in a stable and loving environment, become more attached. We certainly found that in our research. Other children may persist with social difficulties throughout the placement and that is a huge challenge for the adopters. In those cases, where there seem to be severe difficulties in this area, you need a carefully balanced presentation to the adopters to say that there are risks of it being a long-term problem, but that there are good prospects, in a stable environment, for the child to develop a fresh attachment, which is satisfactory for the child and the adopters.

[296] **Dr Selwyn:** I agree entirely with Alan. We know what the risks are, and those are about probabilities. We cannot predict for an individual child what their outcome will be. Both of us, in our studies, have encountered children who, on paper, you would think would stand little chance of a successful placement, but both of us have seen such children really

blossom in adoptive families. I can think of one child who was not placed until he was 10 years old; he had been sexually abused by his parents and grandparents and had been called the dog in his family—he had been made to eat out of a dog bowl—and rejected. You would wonder what chance that child had of being adopted at 10. I interviewed his adoptive parents and he walked into the room, looked at me and said, ‘I want you to know that adoption is the best thing that has ever happened to me’. For him, adoption had been a tremendous experience, but other children continue to have problems. However, we cannot predict with any certainty which ones will and which ones will not.

[297] **Dr Rushton:** We have some idea that some problems will go away more easily than others, such as enuresis, encopresis and temper tantrums. Those sorts of behaviours would probably improve over a period of time, such as six months or a year. Serious relationship difficulties might have a much longer course and might even continue through the adoption and into young adulthood and beyond. We hardly know the answer to that.

[298] However, on the question of assessment, whatever the child has experienced—children have experienced some horrendous situations—not all children respond in the same kind of way, so the level of behavioural and emotional difficulty at the point of placement is the most crucial indicator. The background information is also crucial, but it does not necessarily mean that a form of maltreatment will have a similar effect on all children. You need to treat the child’s range and profile of difficulties as uniquely as it is.

[299] **Dr Selwyn:** It really depends on when the maltreatment happened, at what point in their development, how long it lasted, who was doing it and what genetic inheritance they have. There are so many different variables.

[300] **Christine Chapman:** Your main point is that the information is vital in terms of the background information and the child’s circumstances and so on.

[301] **Dr Selwyn:** Yes.

[302] **Rebecca Evans:** I would like to look at the placement of large sibling groups. What more do you think can be done, and by whom, to improve the chances of placing large sibling groups successfully?

[303] **Dr Selwyn:** First of all, a belief that it is possible. It is viewed with suspicion by many social workers—that it is not really possible. Secondly, to reach out to non-traditional prospective adopters. It surprises me how many social workers are still looking for a two-parent family living in a detached house with roses around the door and a dog. [*Laughter.*] There is a whole range of people out there who have different motivations. We have done a small study of adopters who have taken three or more children, and it was the carers who wanted four or more right from the start who seemed to be the most successful.

[304] **Rebecca Evans:** Dr Selwyn, in your research, you also looked at the experience of social workers in recruiting, preparing and supporting adopters. What are the findings of your research there?

[305] **Dr Selwyn:** Taking a large sibling group needs a very detailed and careful support plan, and should not underestimate the amount of practical support that people may need. We found that there was some reluctance, for example, to put in home helps or offer that kind of practical support right at the beginning of the placement, when adopters needed to focus on relationship building rather than washing and ironing—particularly if you had a sibling group who were wetting the bed; there would be masses of washing and ironing to do. So, it is about the importance of practical support and financial help to allow an adopter to take enough time off work to really be able to focus on the relationships with children, to be able to feel that

they can come back and ask for help and not to feel that they are on their own.

[306] **Dr Rushton:** We have talked about assessing individual children, which is very important, but assessing the nature and quality of the relationships between the siblings is very important too. Is this a harmonious sibling group that wants to stay together and interacts happily together? Are there huge rivalries and animosities within the group? Has there been abuse between the children? All this ought to be part of the picture in helping to think about the level of challenge and whether the potential adopters can manage these sorts of difficulties. Do potential adopters have the right skills? What kind of support will they need to manage warring sibling groups? That can be extremely fatiguing, to say the least.

[307] **Dr Selwyn:** It is also important to prepare adopters. You may place a child singly into an adopting family, but you may know that the mother will, most likely, be pregnant again soon. You need to prepare adopters and ask them whether they are willing to take the next sibling. They are often not asked about that.

[308] **Rebecca Evans:** So, these things are not adequately assessed at the moment.

[309] **Dr Selwyn:** There is such a variety of social work practice. Some social work practice is superb and some is not. You have very different circumstances.

[310] **Angela Burns:** I have a question on cost, because we all know the expense of just one child, let alone suddenly having four or five given to you. You have talked about short-term home help with the washing and ironing and so on, but as a matter of course, if you adopt a large sibling group, are you offered a payment over and above the norm—to get a bigger house or to get a car that can seat six kids or anything like that—or does that tend not to come from social services?

[311] **Dr Selwyn:** I can only talk about the English experience. In our English study, most of the carers had been offered a lump sum to purchase a larger car, but many of them were already living in large enough houses to take the sibling group.

[312] **Angela Burns:** So, it takes away the opportunity for a person who does not live in a detached house with a dog, but who may have all those other skills required to take on a large sibling group, to be able to do that.

[313] **Dr Selwyn:** Yes.

[314] **Christine Chapman:** We are looking at evidence about the creation of a national adoption service for Wales. In terms of large sibling groups, are there advantages to having a national service for those groups?

[315] **Dr Selwyn:** Getting the kind of adopters you need requires very specific recruitment techniques. You need somebody who is focused on recruiting adopters for the harder-to-place children, including large sibling groups and older children.

[316] **Christine Chapman:** So, a national service would be beneficial, would it not?

[317] **Dr Selwyn:** Yes, it would be of benefit.

[318] **Julie Morgan:** In your experience, how do the recruitment and assessment processes of voluntary bodies compare with those of local authorities?

[319] **Dr Selwyn:** Again, it varies. There are some really good social work assessments in both sectors. Where the voluntary agencies score is in the level of support that they offer

adoptive parents: they visit more and they offer more intensive support services—historically, they have done.

[320] **Aled Roberts:** We have heard quite a lot of evidence on post-adoption support. Dr Selwyn, you were on the working group in England, I believe.

[321] **Dr Selwyn:** Yes.

[322] **Aled Roberts:** Dr Rushton, you refer in your written evidence to the concept of an adoption passport. What would be the advantages and disadvantages of that suggestion, if we were to consider it as part of our deliberations for a national service?

[323] **Dr Rushton:** Our surveys have shown that whether adopters get a relevant and prompt service is very variable indeed and depends on their location and the availability of local services. Anything that tries to address that, and anything that says that there should be some kind of guarantee of services, knowing the level of problems that exist, is to be welcomed. Having said that, there are a number of immediate problems. If you have some kind of guarantee of a service, is it just a fixed amount, and does it only last for six weeks or so? Also, is that relevant to each of the families? So, I would certainly like to see a guarantee of this kind being flexible, according to the level of need. If people are going to have this passport to take to services, we need other services there that are available and of sufficient capacity and quality to meet the need. In principle, this is driving in the right direction. A lot more needs to be done to make sure that the passport idea results in a more even access to services than we have had before.

[324] **Dr Selwyn:** I think that this is about changing mindsets as well, so that adopters do not feel embarrassed or that they are not good parents if they come and ask for help. It is about building an expectation from the very early days that it is quite normal to need some support, and an expectation among social workers that adopters are able to come and ask for support. So, this is a two-stage process.

[325] **Dr Rushton:** I would like to raise one interesting follow-up issue, if I may. Do adopters necessarily know what they want? When we ran our trial and offered this parenting programme to a wide range of adopters, we selected only those whose children had very severe problems. Not everyone wanted this service, even though it was home-based and free. That was a very interesting finding. On the one hand, perhaps people felt sufficiently confident to go ahead and parent those very difficult children, or perhaps they did not like the intrusion involved with people coming to their homes and knowing about their family circumstances. However, I would suggest that, among that group, were those who really had not taken on board the level of difficulty that they were going to face and the level of support that they might need. So, it is terribly important to really get to grips with this family and this child, and their anticipated needs.

[326] **Aled Roberts:** Part of the consultation process that we have involves whether the post-adoption support service should be constituted as part of the national adoption service here. Do you think that it is realistic for a national post-adoption service for a population of 3 million to meet these complex needs?

11.45 a.m.

[327] **Dr Selwyn:** That is a very difficult question. There would be some advantages in having the expertise because, at the moment, the expertise does not exist or it exists only in very small pockets. Being able to offer the same level of service across the whole of Wales would really be something to aim for. That would be a fantastic thing to be able to offer adopters. At the same time, whether you could meet the level of need is a different question.

We do not have much research evidence about what works for some of the entrenched difficulties that many children face. There is still a lot to learn.

[328] **Dr Rushton:** I can see a centralised professional advisory group being useful. Local practitioners could call upon it; it would know about research evidence and recent practice development; and it could provide consultation and supervision for difficult cases. However, I cannot see those people providing direct services—travelling would be the main obstacle. I cannot see any alternative to the services being provided to the adoptive families locally, maybe with some centralised back-up and support.

[329] **Suzy Davies:** My questions are related to what we are talking about at the moment, perhaps narrowed down to parenting. Dr Rushton, you have just said that any support delivered needs to and has to be local, but, more than that, your recent research suggests that programmes need to be specifically tailored to the individual set of parents—bespoke, effectively. Can you suggest whether there could be a minimum requirement, which could be generic, in any sort of national approach to this, or are we really looking at every individual family needing a different strategy?

[330] **Dr Rushton:** Do you mean a minimum requirement for service across the board?

[331] **Suzy Davies:** I meant something that you think would work in all situations. Or, is that just dreaming?

[332] **Dr Rushton:** I have brought something along because I thought that this might come up. I have brought along a copy of the parenting manual that we have been developing, 'Enhancing Adoptive Parenting'. We have tested it in a randomised controlled trial. It does not offer a solution to all the problems that adopters face, but it tackles the fact that these children have had very traumatic histories and may behave in all sorts of puzzling ways. It addresses the question of how to understand those behaviours. It gives practical and daily help on challenging behavioural problems. I would think that both prongs of this approach would be useful to all adopters. I would like to see it offered as a matter of course to all adopters taking on difficult children. However, there may be some families where the child does not have that level of difficulty and one does not want to waste resources. If families have been screened for the level of the challenge, then why not offer them some kind of standard parenting advice like this, and then make an assessment as to whether it is adequate? Many may say, 'Thanks, there was a lot I didn't know; I have a real handle on this now and am going to go away and use it'. Others, at the end of 10 weeks, will still be really struggling and in need of continuing services. I would prefer to see a standard roll-out of a practical and useful package, and then a review as to what the continuing problems are and how a different kind of approach, a more sophisticated therapeutic approach, might be required to follow up. The post-adoption centre where I am a trustee does a lot of work—not just with recent placements, but over the course of adoptive family life—with intervening in much more sophisticated ways with the whole family system. That is an area of expertise beyond, and more complex than, what the parenting manual has to offer.

[333] **Dr Selwyn:** There are different levels. There are some adopters whose children do not need that level of intervention—they only want to ring up and link to universal services. If you have been pregnant and had a child, you are already linked in with the health visitor and all those sorts of systems. If you have an adopted child placed, you are outside the system. Sometimes, adopters just need help to get into the ordinary things that are around and sometimes they just need to talk to somebody. There are the information services that adopters need, which social workers can easily provide. There is access to support groups and further training, which social workers should provide, and emotional support. Then, there is this kind of programme for adopters who are parenting the most difficult children.

[334] **Christine Chapman:** We took evidence from parents that, in some cases, schools were not very well equipped to deal with it. The same was possibly true of doctors' services. There was concern at that level as well.

[335] **Dr Selwyn:** Yes.

[336] **Christine Chapman:** Sorry to interrupt you, Suzy.

[337] **Suzy Davies:** No, that was a good point, actually; I was going to mention that. Dr Rushton, you say that resources are scarce and that we perhaps over-prepare some potential adopters when resources could be better employed in these more bespoke programmes. I want to ask you about that, particularly in the context of very young children who, on the face of it, may have very few problems but who, unknowingly, have already developed attachment disorders. You have parents who think that things are going swimmingly who suddenly face the reality that the child has greater challenges than anyone previously considered. How would minimum support work in those shock situations, so to speak—in those cliff-edge-discovery situations?

[338] **Dr Rushton:** It would help if adoptive parents felt that they had an anchor point, a place that they could return to where they felt that they would be understood. When they first come forward to think about adoption, they could be given the idea that they would not be abandoned after the first six months or so. There could be some commitment on behalf of the placing authority to respond to their needs, either directly or by referral at later points. I would agree that that is the sort of scenario one should envisage. Things may go swimmingly until a certain point in time but, with development and different sorts of challenges, all sorts of difficulties might surprisingly come to the surface.

[339] **Dr Selwyn:** It is important to link health services in here because it is often not until the age of seven, eight, nine or 10 that you will see the real effect of foetal alcohol spectrum disorders on children whose mothers drank during pregnancy. Those effects begin to emerge and get worse during that period. It is then that the adoptive parents might need further advice from health professionals. Very specific health assessments might need to be made available for adoptive parents. It is not just a social work issue.

[340] **Suzy Davies:** Just to wrap this up, we are talking about post-adoption services that are long term and that may not be needed for a while, but that suddenly become relevant. Is that the case?

[341] **Dr Selwyn:** Yes, and those services need to be multidisciplinary.

[342] **Angela Burns:** That leads me to the issue of child and adolescent mental health services. We have received evidence from an independent consultant psychotherapist who felt that the professional community needed far more training and that CAMHS needed far more training on specific issues in terms of attachment. That issue has come across very strongly and, in fact, I think that it has come across as the worst of the many challenges that adopted children could face—that is, not being able to make those attachments as they go through their lives. We have also received a lot of evidence that we ought to have a specialist service located outside CAMHS that adopted children could access. What are your views on that?

[343] **Dr Rushton:** Attachment theory has virtually taken over our field. It is the one bit of language that people use all the time. I wish that people did not think that everything is due to attachment issues. There are other things that happen to the child in their development, in utero, in their early experience and through all sorts of other environmental things that could be linked to current difficulties. Therefore, to think that attachment and attachment interventions are the be all and end all is a big mistake. However, that is not to devalue how

crucial it is for the child to begin to trust new parents or the level of satisfaction that that gives to the parents and the way that that mutually builds towards a satisfactory relationship. I am trying to say two things: attachment is crucially important, but it is not everything.

[344] **Angela Burns:** You refer to other things that can happen to a child, such as foetal alcohol syndrome disorders. When those manifest themselves, and, if I am entirely honest, I am not sure how they manifest themselves, would it be better for an adoptive parent who is just trolling along to access help for that at that point? If so, would that help come through CAMHS or would it be better for them to go elsewhere? We have a lot of evidence that CAMHS is perhaps not working as well as one would hope.

[345] **Dr Selwyn:** Adopted children face many of the same difficulties as the looked-after population. I think that it would be better—I do not know whether Alan agrees—to skill up CAMHS for all vulnerable children and not to put adopted children outside that system.

[346] **Angela Burns:** Dr Rushton, you make quite a strong point about CAMHS.

[347] **Dr Rushton:** It is variable, really. Our research found that if some of the staff in the CAMHS team had a particular interest in adoption, either personally or professionally, the families could get a very good service indeed, and there are some very good reports. However, we keep on hearing over time of families going to a CAMH service and of it just not being adoption aware. The family is treated like a troubled, struggling family from the community without the adoption component. I am sorry to say that that is still the case. So, adopters need good advice to ask a few pertinent questions when they go to the service, such as whether the practitioners will be genuinely aware of the kind of children who get placed and the kind of struggles that adoptive parents have.

[348] **Angela Burns:** I want to ask a very brief question, and I ask it from complete ignorance, so please forgive me, because it will probably sound slightly blasé. Let us say that you have two 14-year-old girls, one of whom is adopted, who develop eating disorders and they both go into CAMHS. Are you saying that the CAMHS professional needs to have additional experience or training to deal with the adopted child? Is it just not enough for that professional to be on the mark when dealing with a child who has an eating disorder? In an order of magnitude, how much does the fact of adoption increase that issue?

[349] **Dr Selwyn:** I do not think that it is necessarily the fact of adoption but the fact that the child has been previously maltreated. So, when adoptive parents go, they feel that they are being blamed as the parent. They are often faced with a CAMHS professional saying perhaps to the adoptive mother, 'Tell me about your childhood' or 'Tell me about how you were brought up', rather than asking how that child was parented at an early age and how might that example of an eating disorder be explained by what the child experienced at an early age.

[350] **Angela Burns:** Thank you. That has really clarified that for me, actually. In other evidence that we have heard, I have had a slight nagging concern about what the critical difference is.

[351] **Dr Selwyn:** I do not know whether Alan would agree with that.

[352] **Dr Rushton:** That sounds good. It seems to me that a whole range of behavioural, social and emotional problems are presented to services and so forth, and that is how things go. It is like a wedge. If there is a certain kind of difficulty in the life of a child, it can show itself in a whole range of different symptoms. In the case of the adopted child, you need to know the adoption context: what family that child was born into, the child's early experience and how many changes there were. That all contributes to understanding the meaning of the current symptomatology.

[353] **Angela Burns:** Of course, an adoptive parent does not have all the background, which is difficult.

[354] **Dr Selwyn:** There are a lot of unknowns.

[355] **Angela Burns:** Yes. What are your views on the Family Futures project? The therapeutic service sounds amazing, as does the consultation service to local authorities, CAMHS and the training service. However, there is a cost to that. I am ever so sorry, as I am sure that we are running out of time, but could you quickly tell me your view of that and the cost-benefit analysis? To be honest, if we spend a lot of money on a child but it saves them in the long term, that is money well spent, is it not?

[356] **Dr Rushton:** I take a rather critical view of organisations that claim a great deal. There are all sorts of practitioners doing interesting things and using innovative techniques and so on. However, some of them are rather wrongheaded, I think. If you look at their literature, you will often find that they like to claim that it is evidence based, and that is when I tend to bristle. 'Evidence based' could just mean that they have asked people whether they like the service or not, and people tend to say 'yes'. It is not an indication of effectiveness; it is just a nice indication of consumer satisfaction. That is absolutely crucial. However, they ought to be careful about saying that these interventions are seriously effective. That goes along with the cost. So, if they charging a great deal of money, but they do not have cost-effective evidence, I think that they are overstepping the mark.

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[357] If people say 'evidence based', it can mean a lot of things. There is a range of ways in which you can collect evidence, from the softest kind of evidence through to what I have been involved in, namely a randomised controlled trial, which is an extremely complex thing to do and is rarely done. That would be the only evidence that I would say shows that this particular intervention of itself has a beneficial effect compared with some kind of comparison.

[358] **Angela Burns:** This is perhaps not for now, but, for example, in the parenting support that we offer through Families First and so on, we have distinct evidence programmes that we deliver or that we have outside agencies deliver on our behalf, and they have been seen to work and the empirical evidence is good. We talk here about Family Futures, but I wondered whether there might be any other interventions that, in your experience, you might feel are more beneficial.

[359] **Dr Selwyn:** There is the KEEP programme, which is currently being trialled in England. It is very much based on the parenting programmes that you are talking about, with an added dimension for adoption. That has not reported yet, but it is looking optimistic.

[360] To add to Alan's comments about the Family Futures model, there have been some concerns about the use of holding therapy in that organisation and the diagnosis of attachment disorders for so many children. To go back to my example of a child suffering from foetal alcohol difficulties, that kind of treatment would not be effective for that sort of child. So, there is a danger, as Alan suggested, of all children's difficulties being labelled as attachment difficulties when there are other explanations.

[361] **Dr Rushton:** All these agencies are also beholden to try to produce some evidence of whether what they are doing is effective. I have advised the Post-Adoption Centre on this. All families do a series of questionnaires when they begin intervention, and they do another series at the end of it. It is not absolute proof of effectiveness, but it is an indication. If things are getting better for the family, it should show in some objective kind of way, and that can



genuinely be put forward as an attempt to measure the consequences of the intervention.

[362] **Aled Roberts:** Where is the KEEP programme being trialled?

[363] **Dr Selwyn:** In a number of local authorities, but I do not know whether the names of those local authorities have been revealed.

[364] **Christine Chapman:** We can try to find that out.

[365] **Aled Roberts:** It is interesting, because in its 2010 Wales report, which is feeding in to our process here, Adoption UK was quite clear in its view regarding Family Futures. Do you have any knowledge of the differences in funding CAMHS between England and Wales? The point has been made that services in England are more highly resourced.

[366] **Dr Rushton:** It is not an area of knowledge of mine, sorry.

[367] **Dr Selwyn:** No.

[368] **Julie Morgan:** I have a question about adoption breakdown. In Wales, we have little knowledge about the numbers and the reasons for that, and I know that you are doing research on that, Dr Selwyn. Can you indicate what your preliminary findings are?

[369] **Dr Selwyn:** We are a long way from that yet, but I can say that Nina Biehal at York conducted a study comparing children in foster care with children who had been adopted and found that children in adoptive placements were more stable than children in foster care. Both of us have done previous studies that also showed that children in adoptive placements were more stable than those in foster care. That is not to underestimate the impact of disruption on families, but we know that the commitment of adoptive parents is a key part of ensuring the stability of placements. We think that post-order disruptions are quite low and differ by the age of placement.

[370] **Julie Morgan:** So, the low numbers that we appear to be aware of could be correct.

[371] **Dr Selwyn:** Yes.

[372] **Julie Morgan:** Can you suggest ways in which the Welsh Government could monitor adoption breakdowns?

[373] **Dr Selwyn:** That is a difficult question. I do not feel that I can really answer that at the moment because we are still at a very early stage of our research and I would need to know much more before I could make recommendations. We will know by the end of this year.

[374] **Julie Morgan:** So, you are going to publish at the end of this year.

[375] **Dr Selwyn:** Yes, the first stage will be published.

[376] **Julie Morgan:** Do you think that what you find might be sufficient for us to use in Wales, or should we be commissioning our own research and study? Obviously, we do not want to do something new if we could just learn from what you find out.

[377] **Dr Selwyn:** Somebody who is more aware of the Welsh context would need to look at what we have published and see whether it fits the Welsh experience. Only then could you decide whether you needed to fund further research.

[378] **Julie Morgan:** Dr Rushton, do you have anything to say on adoption breakdowns?

[379] **Dr Rushton:** We have discussed this before, and the concept of adoption disruption is problematic. It is not just that some continue and some do not. Some continue but in a very unstable and unsatisfactory way. You would not want to not take those into account. You would have a disrupted group, a continuing but very unhappy group, and also other in-between examples. I am sure that you have others, Julie, but one could be when a placement gets so difficult that the child goes into some residential facility for a short time and it is not quite clear whether they are going back home or whether it is the end of the placement. There are a lot of grey areas. The outcomes have to be defined a little more precisely than whether it continues or fails.

[380] **Dr Selwyn:** Of course, it depends at which point you look, because we know that you can have a terribly difficult adolescence, and then, once you are into your late 20s, relationships get resolved and those young adults are reunited with their families. So, judging the success of a placement can depend on when you look at a family.

[381] **Julie Morgan:** Is your research looking that widely at it?

[382] **Dr Selwyn:** We are trying to. We are trying to contact adopted adults who were placed many years ago.

[383] **Julie Morgan:** Is your research geared towards improving practice?

[384] **Dr Selwyn:** Yes, very much so.

[385] **Jenny Rathbone:** I was delighted to read, Dr Selwyn, that you are the lead researcher on the London borough of Harrow's experience of concurrent planning with Coram. I remember going to a presentation on Coram's approach back in 2000-01, so one of the most basic questions that I have is how come it is only Harrow that is taking this up when it seems that such a child-focused approach is achieving the best outcomes in the best possible way? Before we talk about the specifics of the outcome of your research, I just wondered why Coram has not been more successful in getting everybody else to do this.

[386] **Dr Selwyn:** Are we talking about concurrent planning?

[387] **Jenny Rathbone:** Yes.

[388] **Dr Selwyn:** Cost is one of the key areas. The other is having the right kind of concurrent planning placement available when the social worker needs it. So, particularly in the London boroughs, for example, it might happen that an ethnic minority child becomes looked after and is placed with a temporary foster carer in that borough, and then the social worker is reluctant to move the child when a concurrent planning placement becomes available. They will prefer to leave the child. So, there are two issues: the right kind of concurrent planning placements and the costs.

[389] **Jenny Rathbone:** Looking at the specifics, I am shocked to read that one of the most frustrating and time-consuming tasks for Coram staff is gaining access to electronic records. It is the most basic thing. How is it that statutory authorities cannot collaborate on something as important as the future of a child? That is pretty depressing. What are the key issues arising from the evaluation of the service, and how can we get more local authorities to look at it seriously?

[390] **Dr Selwyn:** The Harrow experience was slightly different, in that this was a local authority that had very poor inspection reports. There was a very unstable staff group—most

of the staff were agency staff. There was no management. The authority was in a dreadful state, and it would have been the first to say so at that time. A new management team came in and started to make a big difference. One of the big differences is in the case management. It is not just about social workers' practice; it is about having a manager who is going to look at what the individual social worker is doing and make sure that the case is being driven so that permanency is being sought for all children.

[391] One of the key things that Harrow did was to establish a permanency planning management team. Coram sat on the management team, and managers were aware of every single child in their borough and aware of what the plan was. So, if plans were not being pushed for particular children, action would be taken. Individual social workers would be called to account. Through that management system, Coram was being alerted to children coming into the system very early on so that it could identify adoptive parents—the adoptive parents had already been identified, really, before decisions had gone to the full extent—so that there was little delay for children. Also through that system, children were reunited with their birth parents in a more timely manner. So, the drift for all children was reduced.

[392] **Jenny Rathbone:** So, why do not all local authorities have a permanency planning management team? Why are managers not managing?

[393] **Dr Selwyn:** That question needs to be asked. [*Laughter.*]

[394] **Christine Chapman:** That is something for us to comment on, I think. I just want to finish off on a point that we talked about earlier. The Welsh Government is proposing to develop a national adoption service. We are going to make recommendations. What would be your main areas for recommendations that you think are important for the Government in setting this up?

[395] **Dr Rushton:** To put a lot of effort into recruitment and to use the national resources to make clear the need for prospective adoptive parents to come forward, to provide an information service and easy access to information about the adoption process—the legal side, the practical side and the psychological side—and, as I said earlier, to have some sort of core group of expert professionals who can advise local services—those are the three things that I thought of.

[396] **Dr Selwyn:** I would like to see the national agency establish an approved set of literature that anybody who wants to be an adopter can read in advance. At the moment, people just go on Google, and there is a host of very unsuitable things out there on the internet. It would be nice to have a set of approved articles, books and DVDs, which adopters could read and watch, even before they went in for assessment. I think that that would be really helpful for adopters.

[397] There also needs to be a way for adopters to access assessments when they feel that they cannot get them from their local authority. I have complaints from adopters who say, 'I've rung my local authority and they've said there are no preparation groups for another year', or, 'I can't get an assessment at the moment'. Where there is not the capacity in a local authority to assess an adopter, we need to put them in touch with another agency that may be able to do the assessment for them. There also needs to be some kind of complaints procedure.

[398] **Christine Chapman:** Would you like to add anything else?

[399] **Dr Rushton:** I do not think so.

[400] **Christine Chapman:** Okay. I thank you both for attending today. It has been an

extremely useful session, and I know that Members have really appreciated your responses. We will send you a copy of the transcript of the meeting in due course to make sure that you are happy with the record. Thank you for attending.

[401] Before closing the meeting, I would like to advise Members that the next meeting will be held next week on Thursday, 21 June. We will continue to take evidence on the adoption inquiry at that meeting and the committee will meet all day. I now close the meeting.

*Daeth y cyfarfod i ben am 12.15 p.m.*  
*The meeting ended at 12.15 p.m.*