



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

**Pwyllgor Deddfwriaeth Rhif 1  
Legislation Committee No. 1**

**Dydd Iau, 21 Ionawr 2010  
Thursday, 21 January 2010**

**Cynnwys**  
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Session 3

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,  
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.  
In addition, an English translation of Welsh speeches is included.

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

Eleanor Burnham	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Rosemary Butler	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Bethan Jenkins	Plaid Cymru (yn dirprwyo ar ran Chris Franks) The Party of Wales (substituting for Chris Franks)
Val Lloyd	Llafur Labour
Nick Ramsay	Ceidwadwyr Cymreig Welsh Conservatives

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

Syr/Sir Roger Jones OBE	Cadeirydd Panel Adolygu Annibynnol Blaenorol Cynulliad Cenedlaethol Cymru Chair of the Former National Assembly for Wales Independent Review Panel
Barry K. Winetrobe	Ymgynghorydd Seneddol a Chyfansoddiadol Parliamentary and Constitutional Consultant

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

Claire Griffiths	Dirprwy Glerc Deputy Clerk
Bethan Roberts	Cynghorydd Cyfreithiol Legal Adviser
Alys Thomas	Gwasanaeth Ymchwil yr Aelodau Members' Research Service
Liz Wilkinson	Clerc Clerk

*Dechreuodd y cyfarfod am 12.59 p.m.*  
*The meeting began at 12.59 p.m.*

**Cyflwyniad, Ymddiheuriadau a Dirprwyon**  
**Introduction, Apologies and Substitutions**

[1] **Rosemary Butler:** Good afternoon, and welcome to this meeting of Legislation Committee No. 1. I have received an apology from Chris Franks. Bethan Jenkins is substituting for him, and will arrive later. Before we move on to the main item on the agenda, I remind everyone that the committee operates bilingually; you can use the headsets to listen to a translation of the Welsh contributions, or as an induction loop to hear proceedings more clearly. Please turn off all mobile phones, pagers, BlackBerrys and any other electronic device that you have with you, as they interfere with the broadcasting system. There is no fire drill scheduled for this afternoon, so if the alarm sounds, the ushers will escort you from the room; or they may choose to leave us in it, depending on how good we are. Please do not touch the microphones as this will disable the system, and they do come on automatically.

1.00 p.m.

**Mesur Arfaethedig Cynulliad Cenedlaethol Cymru (Taliadau)—Cyfnod 1,  
Sesiwn Dystiolaeth 3  
Proposed National Assembly for Wales (Remuneration) Measure—Stage 1,  
Evidence Session 3**

[2] **Rosemary Butler:** The purpose of today's meeting is to take oral evidence in connection with the Proposed National Assembly for Wales (Remuneration) Measure. Today, we will be taking evidence from Sir Roger Jones OBE, chair of the former independent review panel on financial support for Assembly Members. Later on we will be taking evidence from Barry Winetrobe, who is a parliamentary and constitutional consultant.

[3] I welcome Sir Roger Jones back to the Assembly. I am sure that you know this building very well. As I said, Sir Roger is the chair of the former independent review panel on financial support for Assembly Members—it is 'former', as the panel is no longer sitting. Sir Roger has kindly agreed to come in and answer some questions for us. I am sure that you are aware of the format, Sir Roger. I will start with the first question. Can you explain why there is a need for an independent board to determine financial support for Assembly Members?

[4] **Sir Roger Jones:** Chair, I would like to set the scene by saying that I am not here representing the views of the panel. As you said, the panel no longer exists. The views expressed by me are my own views only.

[5] **Rosemary Butler:** Thank you.

[6] **Sir Roger Jones:** In response to your question, I think that the public still has a great distrust of people who award their own salaries. No matter how much such people award themselves, I think that there is always a feeling that it is all too much and that they are feathering their nests and so on. The only way around that, in my opinion, is to have an independent board that has terms of reference and operates within those.

[7] **Val Lloyd:** My question is a variation on the question that you have just answered, but I would like to ask it. Why do you think that an independent board provides the most appropriate mechanism for determining financial support for Assembly Members?

[8] **Sir Roger Jones:** Why do I think it is appropriate?

[9] **Val Lloyd:** I said 'most appropriate'.

[10] **Sir Roger Jones:** To be honest, I cannot think of any other way of doing it. If you have comparisons with other bodies, for example, the link used to be with Parliament, that it is inappropriate, because the gross domestic product per capita in Wales is approximately half of that in London, so how much of that do you take into account in making those comparisons? I do not think that that is appropriate, and therefore I believe in having an independent body that knows the costs of living in Wales and what expenses are likely to be incurred in Wales. That is the most appropriate way of doing it.

[11] **Val Lloyd:** Are you content that the proposed Measure is drafted in such a way as to ensure that the board will deliver

[12] 'an open and transparent process for determining financial support for Assembly Members'?

[13] I would appreciate it if you gave us reasons for your answer.

[14] **Sir Roger Jones:** Clearly, I have been doing too much shooting this season; my hearing is not that good. Can we speak up, or turn up the volume?

[15] **Rosemary Butler:** The headphones provide amplification.

[16] **Sir Roger Jones:** Thank you; I can hear you properly now. I apologise.

[17] **Val Lloyd:** Not at all. I understand, as I use an earphone for amplification myself. I will repeat the question. Are you content that the proposed Measure is drafted in such a way as to ensure that the board will deliver

[18] 'an open and transparent process for determining financial support for Assembly Members'?

[19] Please give reasons for your answer.

[20] **Sir Roger Jones:** I do not have the terms of reference in front of me, but, from memory, it should be adequate. The reason is that well-informed people, who understand the employment market in Wales, will be able to come to a determination that is fair. That is all that we are looking for; the whole purpose is to ensure fairness.

[21] **Val Lloyd:** Thank you; that is quite a clear answer. To ask a supplementary question on that, do you think that the proposed Measure should contain a specific provision to ensure that the board operates in that open and transparent way?

[22] **Sir Roger Jones:** There is a slight difference between being open and transparent and being fair, because you can be unfair and still be open and transparent. I hope that all those characteristics will be taken up by the board, that is, fairness plus openness and transparency.

[23] **Val Lloyd:** Should there be a specific provision in the proposed Measure or not?

[24] **Sir Roger Jones:** Sorry—

[25] **Val Lloyd:** Should it be written down in a specific provision that it should act in an open and transparent manner, rather than it just being assumed that it will?

[26] **Sir Roger Jones:** Yes. I also think that the fairness of the conclusions should be part of that.

[27] **Rosemary Butler:** To clarify, what we are asking is: should there be a protocol written in the proposed Measure, or should it be assumed that it will be fair?

[28] **Sir Roger Jones:** We must differentiate between the process and the outcome. Having transparency is part of the process. What we want is the outcome of fairness.

[29] **Nick Ramsay:** The proposed Measure provides for a board of five members, including the chair. Do you think that that number of members is reasonable? We have had discussions previously about whether there could be fewer or more members. In terms of the make-up of the board, is five members, including the chair, a reasonable number?

[30] **Sir Roger Jones:** It is probably right, because there will be occasions when not all the members can make it. If you went down to three members and a chair, you would sometimes struggle, so four and a chair is probably right.

[31] **Nick Ramsay:** I was going to ask you whether you think that a board of four—we have to be clear as to whether we are talking about five members including or excluding the chair. Do you think that it could be done with four members including the chair?

[32] **Sir Roger Jones:** No, for the reasons that I gave. There might be unavoidable circumstances that meant that you ended up, on a particular date, with one or two members present, which would make the board inquorate. It would be safer to have four members and a chair.

[33] **Eleanor Burnham:** Mae gennyf gwestiwn ynglŷn â swyddogaethau'r bwrdd. Beth yw eich am yr hyn a nodir yn adran 2(2), sy'n pennu'r amcanion y dylai'r bwrdd geisio'u cyflawni wrth arfer ei swyddogaethau? Yn benodol,

**Eleanor Burnham:** I have a question about the functions of the board. What are your views on the contents of section 2(2), which sets out the objectives that the board must seek to achieve when exercising its functions? In particular,

[34] '(a) darparu lefel taliadau ar gyfer aelodau'r Cynulliad—

'(a) providing Assembly members with a level of remuneration which—

[35] (i) sy'n adlewyrchiad teg o gymhlethdod a phwysigrwydd y swyddogaethau y disgwylir iddynt eu cyflawni, a

(i) fairly reflects the complexity and importance of the functions which they are expected to discharge, and

[36] (ii) nad yw, ar sail ariannol, yn atal personau y mae ganddynt yr ymrwymiad a'r gallu angenrheidiol rhag ceisio cael eu hethol i'r Cynulliad,

(ii) does not, on financial grounds, deter persons with the necessary commitment and ability from seeking election to the Assembly,

[37] (b) darparu adnoddau ar gyfer aelodau'r Cynulliad sy'n ddigonol i'w galluogi i arfer eu swyddogaethau fel aelodau o'r Cynulliad, a

(b) providing Assembly members with resources which are adequate to enable them to exercise their functions as Assembly members, and

[38] (c) sicrhau priodolrwydd, atebolrwydd, gwerth am arian a thryloywder o ran gwariant cyllid cyhoeddus.'

(c) ensuring probity, accountability, value for money and transparency with respect to the expenditure of public funds.'

[39] **Syr Roger Jones:** Cychwynnaf gyda'r rhan olaf. Wrth gwrs ei fod yn bwysig bod—maddeuwch i mi, yr oedd y cwestiwn mor hir ac nid oes nodiadau gennyf.

**Sir Roger Jones:** I will start with the final part. Of course, it is important that—please forgive me, the question was so long, and I do not have any notes.

[40] **Eleanor Burnham:** Ailgychwynnaf os ydych eisiau.

**Eleanor Burnham:** I will start again if you wish.

[41] **Syr Roger Jones:** Na, ond beth oedd y rhan olaf?

**Sir Roger Jones:** No, but what was the final part?

[42] **Eleanor Burnham:** Yr oedd yn cyfeirio at

**Eleanor Burnham:** It referred to

[43] ‘sichrau priodolder, atebolrwydd, gwerth am arian a thryloywder o ran gwariant cyllid cyhoeddus’ ‘ensuring probity, accountability, value for money and transparency with respect to the expenditure of public funds’

[44] sef yr hyn y buoch yn siarad amdano gynnu. namely what you were discussing earlier.

[45] **Syr Roger Jones:** Dylid cael gwerth am arian, wrth gwrs. Mae'r cyhoedd yn deall hynny. Pan fo pobl yn prynu rhywbeth, mae arnynt eisiau gwerth am arian. Pan fyddant yn cyflogi pobl i'w cynrychioli, mae arnynt eisiau gwerth am arian. Mae'n rhaid cael hynny; mae'n hanfodol ein bod yn cael gwerth am arian. **Sir Roger Jones:** Value for money should be ensured, of course. The public understands that. When people purchase something, they want value for money. When they employ people to represent them, they want value for money. That must be ensured; it is vital that we have value for money.

1.10 p.m.

[46] Y cwestiwn wedyn yw sichrau bod y tâl yn ddigonol fel bod pobl sydd ag awydd cyfrannu i'r Cynulliad yn gallu gwneud hynny heb deimlo y byddant yn brin o arian os rhônt eu hamser i'r Cynulliad. Mae hynny'n bwysig. Serch hynny, mae llawer o gwestiynau i'w hateb, megis, a ydyw'r tâl a gaiff Aelodau'r Cynulliad yn uwch na'r gyfartaledd o ran tâl ar draws Cymru. Petai pob Aelod Cynulliad yn cael £100,000 y flwyddyn, gyda'r gyfartaledd o ran tâl ar draws Cymru hanner gymaint, credaf y byddai'r cyhoedd yn cwestiynu a yw'n werth am arian. The question then is ensuring that the remuneration is sufficient so that people who have a desire to contribute to the Assembly can do so without feeling that they will be short of money if they give of their time to the Assembly. That is important. However, there are many questions to be answered, such as whether the salary that Assembly Members receive is higher than the average across Wales. If every Assembly Member were to receive £100,000 a year, with the average salary across Wales being half as much, I think that the public might wonder whether it is value for money.

[47] **Eleanor Burnham:** Yn y cwestiwn a'r hyn a ddywedais ar y cychwyn—ac mae'n ddrwg gennyf ei fod mor hir—cyfeiriais at adlewyrchiad teg o gymhlethdod a phwysigrwydd swyddogaethau. O ran yr hyn yr ydych newydd ei ddweud, oni fyddai pobl hefyd yn gofyn pam mae llawer o weision sifil yn cael £150,000, er enghraifft? Nid yw'r cyhoedd yn deall hynny. **Eleanor Burnham:** In my question and my opening remarks—and I am sorry that it was long—I referred to a fair reflection of the complexity and importance of functions. With regard to what you have just said, for example, would people not also ask why many civil servants receive £150,000, for example? The public does not understand that.

[48] **Syr Roger Jones:** Yn hollol. **Sir Roger Jones:** Exactly.

[49] **Eleanor Burnham:** Maent yn deall ein bod ni'n cael £50,000 ond nid ydynt yn deall bod amryw o weision sifil yn cael teirgwaith gymaint neu fwy. **Eleanor Burnham:** They understand that we get £50,000, but they do not understand that many civil servants get three times that or more.

[50] **Syr Roger Jones:** Yr ydych yn llygad eich lle. Nid wyf yma i ddweud bod gweision sifil yn haeddu pob ceiniog a gânt. ‘Functionaries’ yw gweision sifil. Mae'r **Sir Roger Jones:** You are quite right. I am not here to say that civil servants deserve every penny that they get. Civil servants are functionaries. The public look to Assembly

- cyhoedd yn disgwyl i Aelodau'r Cynulliad Members to deliver results.  
ddod â chanlyniadau iddynt.
- [51] **Eleanor Burnham:** Yr unig reswm **Eleanor Burnham:** The only reason for  
dros grybwyll y pwynt hwnnw yw yng mentioning that point is in the context of  
nghyd-destun rhoi having something that
- [52] 'adlewyrchiad teg o gymhlethdod a 'fairly reflects the complexity and importance  
phwysigrwydd y swyddogaethau y disgwylir of the functions which they'—  
iddynt'—
- [53] hynny yw, ni— that is, us—
- [54] 'eu cyflawni'. 'are expected to discharge'.
- [55] **Syr Roger Jones:** Y cwestiwn y bydd **Sir Roger Jones:** The question that the  
y bobl yn ei ofyn—ni fyddwn i yn ei ofyn— people would ask—I would not ask it—is:  
fydd: a fyddai eu byd hwy yn dod i ben pe na would their world come to an end if 10, 20 or  
fyddai 10, 20 neu 30 Aelod Cynulliad yn cael 30 Assembly Members were not employed?  
eu cyflogi? Y gwir amdani yw na fyddai. The truth is that it would not.
- [56] **Eleanor Burnham:** Yr ydym yn creu **Eleanor Burnham:** We are creating  
deddfau. legislation.
- [57] **Rosemary Butler:** Eleanor, could you give Sir Roger time to answer before you chip  
in? You may come back with further questions.
- [58] **Syr Roger Jones:** Yr hyn yr wyf yn **Sir Roger Jones:** I am trying to say that their  
ceisio ei ddweud yw na fyddai'r byd yn dod i world would not come to an end if there were  
ben iddynt pe na bai gweision sifil ychwaith. no civil servants either. That is the  
'Perception' yw hynny. perception.
- [59] **Eleanor Burnham:** Diolch yn fawr. **Eleanor Burnham:** Thank you.
- [60] **Nick Ramsay:** Moving on to disqualifications from membership of the board, the  
panel made no reference in its report to the disqualification of persons from membership of  
the board. What are your views on the list of disqualified persons provided for in Schedule 1  
to the proposed Measure?
- [61] **Sir Roger Jones:** I smiled to myself when I saw that members of the panel were  
specifically excluded. Quite right, too—I am not suggesting that they should not be. The key  
is that it is not the people who you wish to exclude that is important, but those whom you  
wish to include. It is important to have people who understand the mood, and how much of a  
struggle it is in Wales to live on salary x or y. To exclude those people would be quite stupid.  
Anyone, probably, could live with the list of exclusions that you have. No-one has a  
monopoly on knowledge.
- [62] **Nick Ramsay:** I think that I am right in saying that, in your written evidence, you  
suggested that the disqualification of members of the review panel was not necessary. Why do  
you think that that was the case?
- [63] **Sir Roger Jones:** That was a bit churlish, was it not? It is not that I would have  
anything to contribute, even if I would want to contribute. I can see why you did it.  
[Laughter.]



- [64] **Rosemary Butler:** Sorry, could you explain why you think that that was done?
- [65] **Sir Roger Jones:** Some Members might think that this would disadvantage them.
- [66] **Rosemary Butler:** Members of what?
- [67] **Sir Roger Jones:** Assembly Members may consider that they would be disadvantaged by having members of the panel on the board. Some of them may feel that they have been harshly treated by the panel. I do not think that that is the case; I think that the panel contributed greatly towards restoring public confidence in the Assembly.
- [68] **Rosemary Butler:** We will not go into that debate at the moment. It was not the Members who made that decision; therefore, I think that you should take that on board.
- [69] **Sir Roger Jones:** I do, of course, take that on board, but perhaps the members of the Commission that took that decision were thinking of how Members would react. I do not know; I am speculating.
- [70] **Rosemary Butler:** Given that you do not know, perhaps it is best that you do not speculate.
- [71] **Sir Roger Jones:** I will refrain from any further speculation in that area, Chair.
- [72] **Rosemary Butler:** Thank you. The next questions are from Nick Ramsay.
- [73] **Nick Ramsay:** That has covered question 6(b), Chair, so I will move onto my final question in this section. We heard your views on Assembly Members, but what are your views on elected Members from other Parliaments and Assemblies? I think that I am right in saying that they are also disqualified from membership of the board? Do you think that that is reasonable?
- [74] **Sir Roger Jones:** That is probably right, for the reason that I gave earlier. The main consideration is income per capita, which is important within any legislature; however, someone from Scotland may not even understand what the cost of living is in Wales. After all, the gross domestic product per capita in Scotland is probably 30 per cent higher than it is in Wales. Therefore, comparisons would be invidious, and that is why I think that they should be excluded from the board.
- [75] **Rosemary Butler:** Of course, they are not excluded at present.
- [76] **Sir Roger Jones:** No, they are not.
- [77] **Nick Ramsay:** Sorry, I assumed—
- [78] **Rosemary Butler:** No, it is okay. It is interesting because I assumed that they were excluded, but they are not. Have you finished, Nick? I see that you have. We will therefore move on to Eleanor's questions.
- [79] **Eleanor Burnham:** You have probably covered the allocated question but I will ask it anyway. What are your views on the selection and appointment arrangements provided for in section 4 and Schedule 1? The panel recommended that an appropriate approach to the selection of the board would be by the Chief Executive and Clerk of the Assembly, the Auditor General for Wales and a Commission independent adviser. When questioned why the proposed Measure is not as prescriptive as the panel's report in determining those responsible for the selection of candidates for membership of the board, Keith Bush, director of legal

services, on behalf of the Presiding Officer, stated

[80] ‘the panel was quite specific about the kind of person who should be involved in selection, including the auditor general and a Commission independent adviser.’

[81] What are your views on that matter?

[82] **Sir Roger Jones:** It is about getting to the right result. At the end of the day, this is a sensitive issue and a great deal of propriety is required. The Assembly Commission and the Assembly itself would be well advised to protect themselves from accusations of jobs for the boys or jobs for the girls. Therefore, that was one way that I felt that that could be addressed.

[83] **Eleanor Burnham:** That seems to be what the next question is about. Are you content with the approach taken in the proposed Measure, which is less prescriptive in defining an appropriate selection panel? Please give your reasons for your views.

[84] **Sir Roger Jones:** Upon reflection, I felt that it was perhaps inappropriate to be that prescriptive. If you live in an adult world, you must live with the results of your determinations. It was more guidance than a prescription in my opinion.

[85] **Eleanor Burnham:** In your written evidence you suggest that

[86] ‘those versed in practical wealth creation at grass roots level’

[87] should be represented on the board. Can you clarify what you meant by that and why it is important that they should be represented on the board?

[88] **Sir Roger Jones:** Yes. This was an important point. Using other people’s money is very easy. Spending what is not yours, or recommending the expenditure of what is not yours, is fairly easy; there are no consequences.

[89] **Eleanor Burnham:** Yes, but the wealth belongs to all of us because we are all taxpayers, including Assembly Members.

1.20 p.m.

[90] **Sir Roger Jones:** I know that, but I am differentiating between the wealth destroyers and the wealth creators. I do not wish to be totally controversial in using emotive words like that, but wealth creators are important. Trying to bypass the people who create the wealth would be a foolish thing to do. That is why I said that we should involve people who are involved in practical wealth creation because they will know what value for money means.

[91] **Val Lloyd:** I understand the phrase ‘practical wealth creation’ and ‘wealth creators’, but I am not sure what you mean by ‘wealth destroyers’. I would like some clarification, please.

[92] **Sir Roger Jones:** I know; it is an emotive phrase and I probably used it inappropriately, but so much money is spent by the public sector for no purpose. It does not get anywhere; it does not achieve an objective. It follows a process, but does not achieve any outcomes. I think that many people, not just me, look askance at the amount of money that is wasted. It was in that context that I was using the words ‘wealth destroyers’. Once that money is gone, and has been wasted, it is not available for anything else.

[93] **Val Lloyd:** I still need clarification of who you mean. Are you saying that all public bodies are wealth destroyers?

[94] **Sir Roger Jones:** I would—

[95] **Val Lloyd:** You used the words ‘public bodies’.

[96] **Sir Roger Jones:** I did. Please allow me to answer. I read the report last week about the NHS computer system, which has been scrapped after an expenditure of something like £280 million. That, to my mind, is wealth destruction.

[97] **Rosemary Butler:** Nick Ramsay wants to come in here.

[98] **Eleanor Burnham:** Can I come back on my question?

[99] **Rosemary Butler:** Nick Ramsay wants to come in as well.

[100] **Nick Ramsay:** I just wanted to tease out a bit more about these ‘wealth destroyers’. I was intrigued to listen to your last answer, Sir Roger, identifying an area of waste in the NHS. I have my own criticisms of that in my role as shadow Minister for finance. However, I thought that people elected other people to take such decisions. Do you believe that these decisions about wealth destruction and wealth creation should be taken out of the hands of elected politicians?

[101] **Rosemary Butler:** This is an interesting debate, but we have strayed from our theme, and it is irrelevant to our business this afternoon. I accept that Sir Roger made a statement that some of us found intriguing, but we will not pursue it any further. Eleanor, you wanted to finish your question.

[102] **Sir Roger Jones:** Chair, I did not want to be offensive.

[103] **Rosemary Butler:** I am sure that you did not.

[104] **Sir Roger Jones:** I apologise if anything I said gave rise to offence.

[105] **Eleanor Burnham:** I wanted to come back to my question. Would you agree that the National Assembly for Wales has been at the vanguard of openness, transparency and fairness, and that much of the rancour about politics has misleadingly been blamed on us, whereas it emanated from another place, which perhaps I will not even mention? I have to say—as I am allowed to, while sitting on this important legislation committee—that some of your comments are rather sour. You are entitled to your views, as we live in a democracy, but people might be misled into thinking that we have been foul in this place, rather than others in another place.

[106] **Rosemary Butler:** There is no need to answer. I do not think that we will follow up that point.

[107] **Sir Roger Jones:** You asked me about the principle, and I tried to answer on that. I was not laying blame at any door or suggesting that this place was a worse offender than anywhere else. Chair, I will leave it at that.

[108] **Val Lloyd:** Staying with the appointment of members, the Parliamentary Standards Act 2009 specified that the Independent Parliamentary Standards Authority at Westminster must include certain categories of persons: for example, a former Member of Parliament from the House of Commons. Is there merit in including similar specifications for the board in this proposed Measure?

[109] **Sir Roger Jones:** Recent events suggest to me that to follow Westminster is, in many ways, to take the road to perdition. I would like to think that we would not follow Westminster's rules.

[110] **Val Lloyd:** The panel made no recommendations in relation to the appointment of members to the board. The proposed Measure provides that the chair and other members of the board are to be appointed by the Assembly Commission. The committee has received evidence that suggests that the process would seem to be more open and transparent if the appointments were made by the Assembly in Plenary rather than the Assembly Commission. What are your views on that?

[111] **Sir Roger Jones:** Quite frankly, I have no strong views on that. We are now discussing process, not outcomes. We live with outcomes, not with process.

[112] **Rosemary Butler:** Yes, but we need a good process to ensure that we get to a sensible outcome. That is why we are here: to look at the proposed Measure, which is about process.

[113] **Sir Roger Jones:** Exactly. We will know whether or not we have got it right by the outcome.

[114] **Rosemary Butler:** Fine.

[115] **Val Lloyd:** I will move on to the termination of membership of the board rather than appointment. Section 5(d) provides that a motion to propose the termination of membership of the board must be proposed on behalf of the Assembly Commission by a member of the Commission. What are your views on the arrangements that I have just outlined?

[116] **Sir Roger Jones:** It is well within the remit of the Commission and Assembly Members to do what they think is best. I would be a fool to rush in; we will leave it for the angels to tread that particular road.

[117] **Eleanor Burnham:** My question relates to the exercise of functions in general. I am sure that you are well versed in this, but I am making a point of making these things known, so that people watching will understand what I am talking about. Section 12(1) places a requirement on the board to have regard to the independent review panel's recommendations on the first occasion on which it proposes to make a determination in relation to any matter, so far as those recommendations are relevant to that matter. What are your views on the requirement on the board to have regard to recommendations made by your panel on the first occasion on which the new board proposes to make a determination?

[118] **Sir Roger Jones:** I would hope that the recommendations of the panel, which have been accepted, I believe, would form the basis—*[Interruption.]*

[119] Am I going to be hanged because my phone is ringing? I do beg your pardon. I have just killed it—die. I do apologise; I thought that I had switched it off, Chair, but electronic stuff is not my forte.

[120] **Rosemary Butler:** That is fine. Did you finish your answer?

[121] **Sir Roger Jones:** Could you ask me the question again?

[122] **Eleanor Burnham:** It is a question about the requirement on the new board to have regard for your panel's recommendations on the first occasion on which it proposes to make a determination in relation to any matter, so far as those recommendations are relevant to the matter. What are your views on the requirement on the new board to have regard to your

panel's recommendations when it makes a determination?

[123] **Sir Roger Jones:** I would hope that the board would read the report, understand its intent, which was to ensure that we restored the confidence of the electorate in Wales that things are under control. These are not bad people—*[Interruption.]*

[124] I do not know how to switch off my phone. I did say that I did not know how to do it. Could someone take it outside for me please? Could you throw it against a wall, please?

[125] **Eleanor Burnham:** It is fine; I think that you have answered the question.

[126] **Sir Roger Jones:** The board should look at it, because, if it follows the intent of the report, it will not go far wrong.

[127] **Rosemary Butler:** In your evidence, Sir Roger, you suggest that decisions made by the board will have a significant influence on the public's attitude towards the Assembly and its Members, and you reiterated that earlier on. Are you content that the objectives provided for in section 2(2) and the requirements on the board to have regard to the panel's recommendations will ensure that the board's decisions are fair and hold up to public scrutiny?

1.30 p.m.

[128] **Sir Roger Jones:** I would say 'yes' to that, would I not?

[129] **Rosemary Butler:** You obviously think that it is a very important board, so, in view of the amount of influence that you suggest the board will have and the level of responsibility associated with it—and it is very responsible—do you consider that it is equally important for the board to be held accountable for the decisions it takes? If so, what arrangements for accountability would you regard as suitable?

[130] **Sir Roger Jones:** Absolutely. The new world is all to do with accountability and any board that makes recommendations in a vacuum, where it wishes to avoid the responsibilities or the outcomes, is a very poor board indeed. I would strongly recommend that it looks before a decision is made, and tries to understand the consequences of that decision. Furthermore, subsequent to announcing that decision and letting it work its way through and judging public reaction, it should then go back and reflect again on that decision.

[131] **Rosemary Butler:** So, you think that it is through public reaction that it will be accountable.

[132] **Sir Roger Jones:** Yes.

[133] **Rosemary Butler:** I have one more point that I would like to take up. The documentation that accompanies the proposed Measure suggests that the remuneration board will meet twice in a normal year. That is obviously a year without a comprehensive review. Is that a realistic estimate of the time that will be needed?

[134] **Sir Roger Jones:** I am, above all else, an empiricist. The board should meet as often as it needs to meet. Twice a year is probably about right, but if there is a huge public outcry about something, then it may wish to meet more frequently. So, I would tend towards non-prescription and try to understand the needs.

[135] **Rosemary Butler:** Non-prescription might be a little difficult because it would have to look at the budget at some point. At the moment, you suggest two days. We heard evidence

from Mr Penn, who chairs the independent remuneration panel that looks at county council activities. We were all quite amazed about the amount of time that they had to give as members of the panel—they had something like 30 meetings a year. Admittedly, that panel deals with 22 organisations, while we are only one. Perhaps twice a year would not be enough, but we need to look at a budget. You are an experienced board member, so is twice a year realistic?

[136] **Sir Roger Jones:** Twice a year may well be light. You need one meeting to do the research or to commission research to obtain the information. Another meeting will be required to look at the information and make recommendations on it. There may well be other requirements. I would think three or four days, as a minimum.

[137] **Rosemary Butler:** The other point that was made was that for every day's meeting of the board, you would need three or four days' administration to bring the reports together, do the research and so on. Would you say that that is fair?

[138] **Sir Roger Jones:** Yes, I would think that that amount of preparatory work is probably about right. We do it faster in the private sector, but there we are—I would say that again, would I not?

[139] **Rosemary Butler:** Yes, but would you do it better?

[140] **Sir Roger Jones:** Probably.

[141] **Rosemary Butler:** Fine. Would you suggest that all members should have a mobile phone? [*Laughter.*] Eleanor, did you want to come back on this?

[142] **Eleanor Burnham:** Yes. I think that the question I wanted to ask has been half answered by Sir Roger. If something in the media or in the public's interest required a meeting of the board to be held almost instantaneously, could that happen?

[143] **Sir Roger Jones:** The board should not be reactive, but experience tells me that it is wise to have a provision to become reactive.

[144] **Eleanor Burnham:** Or proactive?

[145] **Sir Roger Jones:** No, not proactive, but reactive.

[146] **Rosemary Butler:** Does anybody else have a point to raise? I see that you do not. We have asked you quite a lot of questions. Thank you very much for answering them so openly. You will have a copy of the draft transcript to look at. Thank you for coming in this afternoon.

[147] **Sir Roger Jones:** Thank you all for listening and for the courtesy that you have shown me.

[148] **Rosemary Butler:** It was a pleasure. Thank you.

[149] We will now take evidence from Mr Barry Winetrobe, who is a parliamentary and constitutional consultant.

[150] Good afternoon, Mr Winetrobe. Thank you very much for coming to committee. In case you were not here at the beginning of the meeting, I will just repeat that simultaneous translation and amplification of proceedings is available through the headphones. I will start with the first question.

[151] It would appear from your written evidence that you have concerns about the establishment of an independent board to determine financial support for Assembly Members, as provided for in the proposed Measure. Can you confirm whether this is the case, and if it is, can you set out your reasons? I am not sure that ‘concerns’ is the right word.

[152] **Mr Winetrobe:** What I have concerns about is not the principle of an independent way of determining Members’ financial support. My concerns are about whether the process to come to this proposed Measure, and what is proposed in the proposed Measure, will actually do the job that those devising it want it to do and whether what they want it to do actually has the right priorities. I have concerns about the idea that just to decree that something is independent means that it is independent, without working out what it is independent of.

[153] I see from your discussions last week that many of these bodies use the term ‘constitutional watchdogs’. That usually means that they are independent of Government, and there is, therefore, a tendency to put bodies with a closer role to a parliament or an assembly to make them independent of Government. Here, we are in a different position, because you want something that is, effectively, independent of the Assembly. Some of it came out towards the end of your questioning of Sir Roger. You have to be dependent on somebody, if only for your pay and rations, budget, governance and so on. You must be accountable to somebody; you cannot just be out there. The requirement, therefore, is to determine that, to get it right, and to follow that through, because experience has shown that in Britain, if you do something on the basis of wishful thinking, it will not work out, because there will always be problems. They may be problems generated from within the Assembly, by the media, or, as we have seen in the past couple of years, from other parliaments, causing you to react, which means that the robustness and effectiveness of your model, your institutional design, might well be put under strain. The lesson that those of us who have been doing some research into these sorts of bodies over the past half dozen years or so have learnt is that it is best to think of these things first rather than having to deal with them when there is a crisis or a moral panic such as we have seen over the past year at Westminster.

[154] **Rosemary Butler:** Just to firm up on that, given that this proposed Measure is being brought forward by the Assembly Commission, and not the Welsh Assembly Government, and that the Member in charge is the Presiding Officer, do you have the same concerns about the autonomy of the Assembly in respect of self-regulation?

[155] **Mr Winetrobe:** That is a vast improvement on what is happening at Westminster. It is great, and it conforms in principle to one part of what I would regard as proper institutional design, which involves reflecting, maintaining and protecting the necessary autonomy and self-regulation of a democratic, accountable, parliamentary body such as yours. That in itself is not enough, however. It is a necessary, but not sufficient, factor.

1.40 p.m.

[156] **Rosemary Butler:** We will probably come on to what is enough.

[157] **Bethan Jenkins:** The committee has received evidence from Professor Laura McAllister stating that the operation of independent expert bodies with specific delegated responsibilities in areas such as remuneration is entirely consistent with parliamentary sovereignty. What are your views on this? Following on from what you said earlier, are there examples of any other countries who are seeking to do it this way, or do it better in other ways that makes you come to this conclusion?

[158] **Mr Winetrobe:** My quibble with Professor McAllister, whom I know well and with whom I have worked for many years, is about the terminology. She uses the term

‘parliamentary sovereignty’ in the way that I would use ‘self-regulation and autonomy’; she does not use ‘parliamentary sovereignty’ in the way that pedantic lawyers like me would use it in relation to the legal supremacy of parliament in the legislative sense. What I am arguing in my submission, which I also argued at the Kelly committee—the Committee on Standards in Public Life—is that parliaments need to regulate themselves in these types of areas, but they need to do it in a more robust and accountable way. What was wrong at Westminster, and possibly elsewhere, was that they did it in a very private, unaccountable, non-transparent and non-open way, and therefore when they were found out, it was a crisis. The moral panic and Executive-driven reaction to that at Westminster was ‘Take it away from them—make sure that their hands are not on it at all’.

[159] My view is that these things should be done at arm’s length, but on behalf of the parliamentary body or the assembly. In other words, we will come to a body which is perhaps very similar to this proposed remuneration board, which should be, on the face of it, accountable to the Assembly, but in a way that does not interfere with its operational independence. So, in effect, you are coming up with more or less the same model, but you are coming at it for a different purpose. I do not want to use emotive words like ‘naive’ or ‘simplistic’, but experience at Westminster and Holyrood have shown that this idea of putting a body out there and calling it independent does not make it so. Political bodies, parties or members will always want to be involved, especially when it is their own financial support that is involved.

[160] **Eleanor Burnham:** If one is to be as sanguine as the previous witness was, one might consider that we have not moved forward as I believe we have already. If you look at the Assembly Commission, more sceptical people might still consider that that is not independent enough. What is your view on that in the context of what you said?

[161] **Mr Winetrobe:** I argue that there must be some relationship between bodies of this nature. It may be in a unique and different way because it deals with Members and their financial support, as opposed to the type of body that is normally called a constitutional watchdog, standards commissioner, information commissioner, data protection commissioner or freedom of information commissioner or an auditor general. You have experience of that, and we have held seminars with various of these types of officers in Wales in our past research, and there are definitely these concerns among that type of community. However, how you define the relationship with the Assembly is very tricky, and I do not pretend to know the answers. One of our problems is that after six years of work, we are still asking the same questions, but we find that the questions still need to be asked.

[162] However you define it, we must take account of the relationship of this new body to the Commission, the relationship of the body to the Assembly, and the relationship of the Assembly to the Commission. I do not pretend to have any detailed knowledge of the day-to-day workings of the relationship between the Commission and the Assembly as a whole. I am more familiar with the relationship between the Scottish Parliamentary Corporate Body and the Scottish Parliament. I imagine, in some respects, that it is relatively similar. A lot depends on how the Commission operates. However, to say that the Commission is doing this once removed from the Assembly because it is a statutory body—strictly speaking, the Commission is not the Assembly, to lay it out formally—I have my doubts as to whether that approach works in reality. You have to accept that the Assembly Commission is a part of what the public would understand to be the Assembly in this respect, and that you therefore have to work that into the process.

[163] When we talk about independence and accountability, there is a simplistic idea that it is a case of either/or: you either have independence or you have accountability. We have discovered that this is not a zero-sum; it is a case of how you balance independence with accountability. With judicial bodies, you go a long way towards the independence end of the



spectrum and less towards the accountability end because of the nature of the judicial function. You have to distinguish between say, for the sake of simplicity, operational accountability and governance accountability. In other words, with a board like this, there is a difference between Members, committees and the Assembly as a whole having an interest, on the one hand, in what the board determines as levels or types of support and pay, which is where independence should kick in at its strongest, and on the other hand, having an interest in its governance accountability, as the board will be doing things such as determining its budget and providing its pay and rations. There are all sorts of provisions about giving the board instructions or requesting it to do things. It is, ultimately, making and terminating people's appointments. 'Exceptional circumstances' is a very nice thing to say but 'exceptional circumstances' have a habit of coming up whenever the first crisis arises.

[164] There is a relationship between independence and accountability. It is a case of, 'Are you doing your job properly?' or, 'Have you got enough money to do what you are supposed to be doing effectively?' and that sort of thing. That is different from operational accountability, which is a case of 'Why did you decide that this allowance or expense is to be set at this level rather than that level?' That is different. It is very difficult to separate it, but you have to try to make that distinction.

[165] **Rosemary Butler:** Nick wants to follow up.

[166] **Nick Ramsay:** Listening to what you eloquently said, are you implying that if we cannot prove that the board is totally independent—which it cannot be if it is ultimately responsible to a body like the Assembly—we will end up in a situation where all of us, the board and the Assembly, lose a lot of public faith? If that is not sorted out at the start when it is set up, somewhere down the line when something happens, the board meets and something then goes wrong there will be moral panic. Who then deals with that? There will be no-one left.

[167] **Mr Winetrobe:** That is exactly what I am saying. As I said at the beginning to the Chair, who mentioned this quite rightly, there is a fundamental difference between how the Scottish Parliament and the devolved assemblies and parliaments operate, and how Westminster operates, in the sense that they are far more autonomous and they are not so executive-driven in these internal, institutional issues. It is not the First Minister who is coming up, in theory or in practice, with solutions like this; this is coming through the Assembly process, which is right.

[168] **Nick Ramsay:** The public cannot get rid of it via an election, can they?

[169] **Mr Winetrobe:** In your exchanges with the Presiding Officer at one of the previous sessions, you asked about the criterion of effectiveness and how you hold the board accountable for doing its job properly, which I happen to think is the most important thing. The Presiding Officer's view was very much one of, 'We must bash away at having independence, openness and transparency'. They are the prime criteria, and effectiveness, doing the job and providing Members with financial support is almost secondary. I think that it is the wrong way around. I can understand why it has happened, and that is where my concerns lie. The motivations for some of what has been designed are reactions to aspects of the ethical standards scandal that have emerged over the last year or so, and that is perhaps misinforming the more straightforward line of travel in reforming your pay and expenses-setting mechanisms.

1.50 p.m.

[170] That came up in the earlier sessions, for example, where it is easy for someone to say that this is how it is done by the Independent Parliamentary Standards Authority and the

Parliamentary Standards Act 2009. However, when you ask a different question, they reply by saying that it is different from what is being done by IPSA and the Parliamentary Standards Act 2009 because they are dealing with standards and ethical issues and not just with pay setting. My concern is that with the critical issues—this is where I differ from your previous witness—process is fundamental. You must get the institutional design right, otherwise experience shows that you end up having to tidy all of the mess up, reactively, when there is a crisis again.

[171] **Rosemary Butler:** Your answers have sparked a lot of interest. Val wants to ask a supplementary question and then Eleanor can come back and wind up.

[172] **Val Lloyd:** I am pleased to be asking this question because I have not been on this committee since its inception so I may have missed something. We have been talking about the Assembly Commission and its role, but the Assembly Commission is made up of Assembly Members—there are four of them on it, are there not?

[173] **Rosemary Butler:** There are only Assembly Members on it.

[174] **Val Lloyd:** When we talk about the Assembly Commission, as a body, then that Commission has, in its make up, four people who are Assembly Members.

[175] **Rosemary Butler:** There are only Assembly Members on it Val, and no others.

[176] **Val Lloyd:** I know that.

[177] **Mr Winetrobe:** It is a statutory body that has its own legal status, and its obligations are not the same as the Assembly's obligations—it is not a committee of the Assembly. On the other hand, you could take that too far and say that if the board is accountable to the Commission, it is not accountable to the Assembly. It works both ways and you must be very careful to recognise the intimate link between the two.

[178] **Val Lloyd:** Thank you. I just needed to get that clear in my head.

[179] **Rosemary Butler:** That is an important point—we know that the Commission is independent, but no-one outside of the Assembly knows.

[180] **Eleanor Burnham:** My concern follows on from my question to Sir Roger Jones, who had an entirely different approach to you.

[181] **Rosemary Butler:** I do not think that the approach is relevant. Could you just ask your question, Eleanor?

[182] **Eleanor Burnham:** I meant in the same context. I am concerned that there is no benchmarking within this exercise with, perhaps, the civil service, and in particular in respect of our staff. After all, most people do not quite understand—although I know that you do—that we are also employers. Therefore, we have an employment obligation to our staff, and so often in another place, matters arose that seemed to bounce on us, where we did not really have a problem. I am particularly concerned that we are able to safeguard our staff, and also help them to develop a career—something that is very well serviced within the civil service—and I am just worried that many people who are watching and listening, and are aware of what has happened in another place, do not understand that we have those extra obligations.

[183] **Rosemary Butler:** I am not sure if this is within your field.

[184] **Mr Winetrobe:** I claim no expertise whatsoever, except as a former member of staff in two parliaments, and I used to work as a research assistant for a Member of Parliament when I was a student, many moons ago. The important thing is to get the structure right within which these decisions and determinations can be made. That needs to be determined by people who know far more about that sort of thing. Again, it must be robust enough for a board or somebody to be able to say that this is an issue or scandal in Holyrood, Belfast or London, but that our system, which the media may say is the same as the other parliaments, is not the same because there are subtle differences, and we should not be carried away by a tidal wave of emotion.

[185] **Rosemary Butler:** We will come back to the original question. Does anyone have anything else to say on that point?

[186] **Bethan Jenkins:** I have a small point on what you said initially with regard to how this came about and why we are sitting here today discussing this issue. Do you think that we have rushed into trying to put something together with regard to an independent panel? You said that this was based on a tide of emotion due to what was in the press about the MPs initially. The Assembly commissioned an independent body to look into it, which was led by Sir Roger Jones. You say that we need to look at this and that you do not have all of the answers, but what would you suggest is the best way forward with this whole concept of self-regulation? Could we be doing something that is better or more effective than what we are discussing today?

[187] **Mr Winetrobe:** I would go back to what I said originally—it is my fault, as my submission was very brief; I am used to committees asking for evidence in no more than two pages, for example—namely that it may well be that the institutional design that you have come up with is more or less right, or is on the way to being robust and is going in the right direction. I cannot remember how this process started, but I would be willing to bet that, if we were sitting here two years ago at this stage, the model would perhaps be fairly similar, but the justifications and declarations as to its purposes would not be the same. That is the layer that has been added as a result of the event of the last year. I am not saying that it has derailed it or sidetracked it—although it has sidetracked the motivation, and if you are at cross purposes with yourself what will the public measure you against? Although you are saying that it is fair, accountable, open and transparent, the fact that it does not provide Members with enough financial support to help the people of Wales properly is merely by the by. It is that sort of issue. This may be similar to what you have, because this process was in place before. I do not know what the position is in Scotland at the moment, but in Wales you had other concerns such as the percentage link formula with Westminster, and wanting to get rid of that. That was something entirely separate. We may well have arrived at something similar to what we already have. I would argue that a lot more needs to be on the face of the proposed Measure, but you will perhaps move on to that in later questions.

[188] The design is probably in the right ball park—although I do not claim to be an expert on institutional design. However, I am concerned that it is being projected for different reasons. That does not just muddle up the public; it muddles up the people who are trying to do the job as well.

[189] **Rosemary Butler:** We were due to go on to question 3, but I think that you have probably answered it. If you could run through it, Bethan, just in case there are some other points there.

[190] **Bethan Jenkins:** I will go into greater detail. You say that ‘modern conditions require a new form and culture of self-regulation’. Can you expand on this? What type of arrangements for determining financial support for Assembly Members would you like to see put in place? How would they differ from existing arrangements and from those provided in

the proposed Measure?

[191] **Mr Winetrobe:** I am not qualified to go into the mechanisms for setting pay and expenses. I was brought up in the era when the Senior Salaries Review Body did that. At the moment it is striking that the four parliamentary bodies in the UK are all doing their own thing for various reasons, and are coming up with slightly different arrangements. The SSRB used to do these things, but the problem was that it was accountable to Government and was triggered by it. It is a pity that the tide of political realities at the moment, especially in London, is such that no-one can sit back and say, 'Maybe there is an argument for a parliamentary-centred SSRB-type body that does this for all the Parliaments.' There would obviously have to be sub-committees or something that looked at each one, but the body would look at these things and would build up the expertise that the SSRB had for many years. It has been cast aside in the last few years, because Government, in London for example, wants to be seen to be doing something, and the definition of doing something is passing an Act and setting up a new body—it does not matter whether it works or not. It is busy right now trying to work out how to make the thing work. That does not instil the public with confidence.

[192] This goes back to what I was saying about the necessity of having Members' confidence, the difference between the official reaction to the Kelly committee and individual MPs' reactions to it, and what is happening now with Kennedy and the new IPSA. This idea that you can shunt Members aside completely does not stand up. It will not last; it cannot—we call it 'depoliticisation'. These things are inherently political—with a small 'p'—and it is about accommodating Members' legitimate interests, especially as they are the users.

2.00 p.m.

[193] There is nothing in here about Members being consulted about their own financial support. They seem to be the only people in the country who are not allowed to have a say in their financial support. Once again, these are matters that will probably come up in protocols and practice—perhaps with users' groups or official focus groups, or whatever. It would be nice to see more of a focus on the face of the proposed Measure, which it does have in the section relating to the functions, about providing sufficient resources. That is the main priority. There is too much on the need for openness, transparency and fairness and being seen to be squeaky-clean.

[194] **Rosemary Butler:** I do not think that there are any supplementary questions on that. *[Laughter.]*

[195] **Bethan Jenkins:** I have no rights; it is fine.

[196] **Val Lloyd:** We have probably touched on this, but I would like to ask the question in case there is anything else to tease out. You referred to the complexities involved in achieving a proper balance between independence and accountability. Do you think that the proposed Measure is drafted in such a way as to enable the board to achieve this balance? If not, how could it best be achieved?

[197] **Mr Winetrobe:** That is the \$64,000 question, is it not? I do not know. With one or two minor quibbles, there is the skeleton of a potentially robust design here. As I said, unfortunately, it is not being promoted in that sort of way, but the design is there. I am suggesting overlaying it with some flesh now before the proposed Measure is passed, either on the face of the proposed Measure, or parallel with it in standing orders or whatever, because that is what we learned in the Scottish Parliament. You need to work out how the Assembly in its various manifestations—the committees, the Finance Committee, the Commission, individual Members, whatever—will relate to the board, and where the

accountabilities run.

[198] You, as Members, will find ways to bring up these issues. That might as well be, and should be, done in proper ways that assist the board, rather than ways that come at it from a tangent. I do not know the exact details of how the Assembly Commission is accountable to the Chamber, for example, but I read on the Commission's part of the website that there are written and oral questions, for example, and there is obviously some budgetary scrutiny. Those are the occasions where, in Scotland, with such bodies, Members have brought up such issues and then they start asking about operational issues rather than what they should be asking about, which is whether it has the right amount of money to do the job properly. So, you are being accountable in the wrong forms. You do not want in, for example, a Finance Committee session on scrutiny of the budget to be arguing about the level of your financial support. You should be making sure that the board is set up properly with the right funding so that it can make the right decisions about financial support.

[199] That is the flesh on the bones of scrutiny and accountability. Whether on the face of the proposed Measure, in protocols, or in standing orders, from what I can see from the material in front of me, that has not been sufficiently examined. There is a lesson to learn from Scotland here. It was in a similar situation. I do not mean this in the sense of making progress or not making progress, but a lot of what has been said in the explanatory memorandum, by the Presiding Officer, and by others, is similar to much of what was said about similar bodies five or six years ago. From 2006 on, various reviews were required and there was a huge battle about tsars and so on in the public media to put the flesh on the bones, and the Scottish Parliamentary Corporate Body was saying more or less what the Presiding Officer here is saying, that is, 'We have nothing to do with it and cannot do anything, because if we make any approach to it, that will compromise its independence'. You have to find a way of engaging with a so-called independent body that does not compromise its independence and effectiveness, and you should be thinking about how to do that in advance.

[200] **Nick Ramsay:** Have another panel.

[201] **Rosemary Butler:** I am sorry, what did you say? I did not hear that.

[202] **Nick Ramsay:** I said that we should have another panel.

[203] **Mr Winetrobe:** You need to work out how you will differentiate between operational accountability, which you do not want Members to deal with on a daily basis because you might as well not have the body at all if you are going to argue in the Chamber about the level of financial support and the details of it. However, on the other hand, there may be issues about whether it is getting a proper budget to do its work. You talked about budgets before. If it turns out that there are many more meetings than were budgeted for, where does the request go? I presume that it would go to the Commission and then through whatever budget scrutiny process you have. So presumably, it would be looked at by your auditor general. So, there are those sorts of ways, and those points have oversight and scrutiny, but there are other issues that are not relevant to that and those are the ways that some of your colleagues will find to raise their concerns about, for example, not having enough money to serve constituents properly and having nowhere to say that because the body is independent.

[204] **Rosemary Butler:** Val, you also have the next question.

[205] **Val Lloyd:** Again, I think that we have covered this. The Presiding Officer made it clear, when he gave evidence to the committee, that as the board will be independent of the Assembly, it would not be accountable to the Assembly, which is an issue that we have touched upon. Do you have views on that?

[206] **Mr Winetrobe:** I think that that is wishful thinking. You cannot do that. It is like wishing the sun to stop moving across the sky. [*Laughter.*] You can declare that and say, ‘That is one of my objectives’, but I cannot see that that is true. You have got to be accountable to and dependent on somebody, if only for your pay and rations on a governance basis, and that somebody is the Commission, which is, as we have discussed before, intimately linked with the Assembly as a whole in complex ways. It is made up of Assembly Members, if nothing else, and is chaired by the Presiding Officer and, therefore, it cannot be totally free of the Assembly. It is best to get that right. I am talking about independence in the sense of operational independence—arm’s-length operation. However, I think that you should be more up front. My personal view would be that this is an Assembly-linked body, and you are setting it up and putting it at arm’s length to do things for you. It is a bit like contracting something out, rather than doing it in-house. You are asking it to do it rather than doing it yourselves.

[207] **Rosemary Butler:** I am sorry, but we are experiencing problems with the sound, so we will have to adjourn the meeting.

*Gohiriwyd y cyfarfod rhwng 2.07 p.m. a 2.23 p.m.  
The meeting adjourned between 2.07 p.m. and 2.23 p.m.*

[208] **Eleanor Burnham:** I wanted to ask you what your views are on the requirement on the new board to have regard to the recommendations of the previous panel on the first occasion that the board proposes to make a determination. In particular, there is a specific requirement about the salary.

[209] **Mr Winetrobe:** I can only answer in general terms, because I cannot pretend to know the details of the panel’s report, but if the issue is the extent to which a purportedly independent board is being circumscribed by too much detail in the direction in which it is being pointed, that raises issues about its independence and the value of its work. If it is just told to have regard to the report, its general principles and so on, that is fair enough, but if it is told to do nothing more than implement that report, and, in effect, to turn it into a set of rules, I do not suppose that the board would find that a congenial or worthwhile job to do. I do not imagine that that is the purpose of the board. I do not think that anyone expects that that was the purpose for which the board was set up. So, it is a balance of the extent to which you can point, at least in the initial stages, to the sort of things that you want it to have in mind or consider, but without saying, ‘We know the answers that we want you to give’.

[210] **Eleanor Burnham:** In your written submission, you suggest that the term ‘remuneration’ be removed from the title of the board. Can you explain that view?

[211] **Mr Winetrobe:** I notice that it is not something that has bothered anyone else, so, perhaps, it is just me. What has caused a lot of the fuss nationally over the past couple of years is this mix between pay on the one side and expenses/allowances on the other, so, to have this title of ‘remuneration’, which to me and many laypeople sounds like ‘pay’, might make things worse. There are other issues about what the board covers. Everyone has been talking about financial support, so I do not know why that is not in the title. However, as I say, it might just be me, and it might not bother anyone else.

[212] **Eleanor Burnham:** Do you mean that it is like a red rag to a bull? It is the same when we have to fill in a form about our ‘second home’—

[213] **Rosemary Butler:** I do not think that we should take this further.

[214] **Mr Winetrobe:** It is a minor point of mine.

[215] **Rosemary Butler:** Some of us cannot even say the word ‘remuneration’. [*Laughter.*]

[216] **Eleanor Burnham:** In your written submission, you emphasise the need for the board to operate openly and transparently. Do you think that the proposed Measure provides adequately for this? If not, why not, and how would you like to see this addressed?

[217] **Mr Winetrobe:** I do not think that it is a question necessarily of how the board operates; I imagine that it will operate openly and transparently. I just think that, given the emphasis on such criteria, all the open, transparent and accountable mechanisms should be there on the face of the proposed Measure and should be clear obligations for the board. I mentioned this simply because I did not know the answer, and whether the board itself, being a free-standing statutory body, would be subject to freedom of information requirements, to ombudsmen, the auditing procedure and so on. I did not know the answer, so I was just flagging it. The emphasis at the heart of the Presiding Officer’s proposal is that openness and transparency should be on the face of the proposed Measure, and for meetings to be open, for a website to be operated, for things to be published in advance of meetings so that the public can send in submissions, for evidence sessions to be in public, and for there to be an annual report that is debated. These are the practical and mundane details, but, given the climate, it seems strange not to put them on the face of the proposed Measure or attached to the proposed Measure.

[218] **Eleanor Burnham:** Thank you; that is interesting. In your written submission, you query why Members or former Members—

[219] **Rosemary Butler:** I believe that that is Bethan’s question. Sorry, Eleanor; we did change the order.

[220] **Bethan Jenkins:** In your written submission you query why Members or former Members of other assemblies in the UK are not disqualified from membership of the board. Can you clarify whether you believe that such persons should be disqualified and, if so, give reasons?

[221] **Mr Winetrobe:** If we were in a situation where all the Parliaments and Assemblies were setting up their own independent mechanisms and making themselves independent of their own Members, then it would seem like a loophole if you could say, ‘Well, the National Assembly for Wales can have Members of the Scottish Parliament on its board and the Scottish Parliament’s body has Assembly Members on it’. At the very least, that raises a suspicion among the cynical in the media and public that there is a ‘you scratch my back and I’ll scratch yours’ situation. That is the only reason why I was saying that; the argument is not about whether you should do without that expertise, but about whether you should have people with knowledge.

2.30 p.m.

[222] There is a difference between those who have expressed a view and those who know what they are talking about. That balance has been struck in a particular way in the proposed Measure, but the same test should be applied to this further category of people; whether you include them or exclude them is up to the committee and the Assembly, ultimately, but I just was not sure whether it had been thought about and discarded, or whether it had not been considered in the drafting of the proposed Measure.

[223] **Bethan Jenkins:** You also suggest that members of the various independent parliamentary remuneration bodies should be disqualified from membership of the board. Can you explain why? Perhaps these will be the same reasons as those that you just mentioned.

[224] **Mr Winetrobe:** Yes, it is the same point; perhaps I did not phrase it very well. I do not think that you want a perception—whether it is justified or not—that people have an ulterior motive in recommending something in one context because they think that it might help them in another. If a member of one body made recommendations in relation to one parliamentary jurisdiction, it should not rebound on them in another. I was really talking about elected members rather than other people on boards. If we were not in the frenetic state that we are in about all of this, particularly at the centre, it might well be that people sitting back would say that having an all-embracing parliamentary financial support body setting allowances for the whole UK and its constituent Parliaments and Assemblies should be looked at and could solve all these sorts of issues.

[225] **Rosemary Butler:** We will move on to the next question; I am not sure if it is from Val or Eleanor.

[226] **Val Lloyd:** I can take it; I do not mind. We have got somewhat confused with the order. This question is about appointments. The proposed Measure provides that the Chair and other members of the board are to be appointed by the Assembly Commission. We have received evidence from Richard Penn, the National Assembly for Wales Commissioner for Standards, to suggest that the process would be seen as more open and transparent if appointments were made by the Assembly in Plenary. Do you have any views on that?

[227] **Mr Winetrobe:** There is a difference between formal appointment and the question of who does the selecting. An awful lot of these constitutional watchdogs are appointed by the Queen, but no-one pretends that she does the selecting. If the idea is that the Assembly, in effect, rubber-stamps an appointment made through a selection process conducted by someone else, then that is one way to go. There would be a risk that some Members would challenge the appointment, and if it was the subject of a fraught debate and division in Plenary, then that might harm the public perception of the appointee's independence, and public confidence in them. Others would think it quite good to go to a debate and a vote, and to have a decision emerge from that process, even if some voted against the appointment, rather than it being nodded through. There are lots of different opinions, but you have to distinguish between selection and appointment. Personally, I would prefer the commission to make a recommendation on which the Assembly voted formally, but given the present criteria and the motivation behind this proposed Measure, perhaps that would not be seen as sufficiently independent. However, that is exactly what is proposed at the other end of this scale of termination.

[228] **Bethan Jenkins:** What would happen with a report by the independent review panel? Would it just be rubber-stamped, or would it come before the public? Would you need to bring it to the Assembly?

[229] **Mr Winetrobe:** Do you mean that there should be formal recommendations that the Assembly agrees to? In an ideal world, one would say 'yes', but the political reality is that that would be seen to be undermining the independent basis of the panel. If you get your system right, and there is enough input so that the proposals that come out are robust and effective, you can have a situation where the board is, in effect, making determinations that the Commission would carry out. If you start reopening it, you are back to square one. I think this is a case where there is a very fine balance.

[230] **Rosemary Butler:** If everyone is happy on that one, we will move on to the next question.

[231] **Val Lloyd:** You tell us that current thinking and practice is moving away from reappointment to public office towards longer, single-term appointments, and you suggest a single-term appointment of between seven and nine years for board members. Will you let us



know why you favour this type of appointment?

[232] **Mr Winetrobe:** In our research, conducted over the last half dozen years or so, we found that watchdogs, commissioners and ombudsmen—the people themselves—liked single-term appointments for a decent length of time. This is because it meant that they did not have this threat of not being reappointed hanging over them, so they could be fearless in what they were saying, especially if they were dealing with the very people who ultimately were appointing them. That was suggested by the House of Commons Public Administration Select Committee in 2007, when it held an inquiry into all this. I was a special advisor on that committee, and the Government accepted that recommendation. That is not to say that it has carried it out in practice in each and every case. However, the general consensus among those who are working in this area as actual practitioners and so on—and it is the same in Scotland—is that longer single-term appointments are better bulwarks of independence than reappointment, and the risk of non-reappointment. We have seen examples in Westminster, such as in the case of Elizabeth Filkin, the Parliamentary Commissioner for Standards. That was very messy and did not do the post any good in the long run.

[233] **Eleanor Burnham:** As you know, we have timed Assemblies and Scotland has timed Parliaments. Do you believe that it is even more beneficial for that system, because the appointment would perhaps have to be made in the middle of one to cover the period to the next timed Assembly?

[234] **Mr Winetrobe:** I have no firm views about the length of appointments, and so forth. Originally, I was not going to put down a figure; I was just going to say ‘long’. However, you would then have asked me, ‘What do you mean by ‘long’?’ So, I was sort of guessing, and, with seven to nine years, one is just under two complete terms and the other is just over two complete terms. It is whatever is best. Other ways of doing it might include having rolling membership, for example, where people drop off at different times so that you are not starting anew all at once; you would maintain continuity and refresh at the same time.

[235] **Nick Ramsay:** Staying with the appointment timescale issue, in the case of this type of board, do you think that it would be best for all members to be appointed for the same period, or do you think there would be merit in rotating the membership and having appointments at different stages?

[236] **Mr Winetrobe:** That is a difficult issue. Once a board is up and running, the idea of rolling membership and having different terms ending at different times is okay. However, you have to start somewhere, which might mean that you have to start with different people being given different periods for their initial terms, which might be difficult. There may be an argument for a longer—or even shorter—period for the chair of the board than for ordinary members, for example. Or, if people are members due to a particular expertise—if they are there because they are people with a political background or whatever—perhaps they should have a different term to those who are there because they are management consultants or people who know about levels of pay and remuneration and so on. From what I was reading, I do not know what was intended by that number of members; is the intention to have a mix according to gender, skills or geography, or is it just a number plucked out due to the need to have a number that functions properly in terms of quorums, as you discussed earlier. In respect of having members with particular skills, the Independent Parliamentary Standards Authority went down that road because there was all the stuff about judges and things like that. In that context, you could give different categories of people different periods of membership, though I am not suggesting that I am recommending it. I am just saying that these are possibilities.

[237] **Nick Ramsay:** I will stay with the difficulties of having a rolling process, and the situation of everyone starting at one point. I suppose the argument for it would be that if

people had been in office for seven years and an issue were to arise just after the entire membership was changed, you would not have the experience of those who had been through the process.

2.40 p.m.

[238] **Mr Winetrobe:** However, if you maintain continuity at the same time, I do not see that as an insurmountable problem. With bodies such as the Committee on Standards in Public Life—even though they have a much bigger membership—people come on and off them all the time and I assume, from what I know of it, that the essential continuity is maintained, but refreshed at the same time. Of course, these are Government appointments so it is not quite the same, but the principles are the same.

[239] **Eleanor Burnham:** You might find that people's personal situations change and they would have to resign.

[240] **Mr Winetrobe:** Yes, as the body runs, in practice, people will come on and off it for many reasons. You would therefore get in-term changes to membership. It is a question of whether you want to build that into the beginning or not.

[241] **Nick Ramsay:** Schedule 2 makes arrangements for selecting candidates for appointment as members of the board, and for the Assembly Commission to appoint those persons selected. You have suggested that this system is 'opaque'. Can you expand on why you think it is opaque, given that the principle of transparency has a role in this and 'opaque' is quite a harsh word?

[242] **Mr Winetrobe:** It is not deliberately opaque. It is to do with what we talked about earlier—if you have standard procedures for this sort of appointment, they should be publicly available and published. I understand from your earlier meetings, if I understood them correctly, that there are proposals to have a standard selection panel appointments process for people such as commissioners, ombudsmen and auditors general, and, however it is modified, it can be applied to that. I do not know whether the proposal is for these to be incorporated into Standing Orders in the way that they are in Scotland. I just think that the idea of somebody, say, for example, the Presiding Officer, standing up in the Chamber one day and announcing that the Commission has appointed x, y or z following a process is not terribly open and transparent. It does not mean that everything should take place in the open as normal rules of employment and public appointments would have to be applied, and you would want to adopt best practice.

[243] **Nick Ramsay:** On that point, you mentioned that the Presiding Officer has said that the Assembly Commission is being consulted on a standard appointment procedure at the moment. He said that it could be modified suitably.

[244] **Mr Winetrobe:** That is right. I meant that it should be promulgated in some way. I am not totally familiar with the different ways in which you promulgate things, other than in Standing Orders. It does not have to be in the proposed Measure or Standing Orders, as long as there is something official out there from the Assembly that everybody knows—

[245] **Nick Ramsay:** Should the proposed Measure be clear on that?

[246] **Mr Winetrobe:** That is just a drafting point of whether it should be in the proposed Measure or somewhere else, promulgated by the Measure. I am sure that there are plenty of other types of formal guidance, rulings, procedures and processes, which are official and binding on the Assembly that are not either legislation or Standing Orders. I think that is a matter for the legal people to say where is the best place to put something. Lawyers do not

like making legislation overlong if the promulgation can be included somewhere else.

[247] **Rosemary Butler:** Thank you very much. We have asked you a lot of questions this afternoon. I would just like to make one point. You mentioned the accountability of the board and I just want to remind Members that the Presiding Officer said that the board would be accountable in audit terms. When the Presiding Officer comes back next week, we can pursue that point. I understand that you have a few more points that you would like to make on issues that we have not quizzed you on. If you have not, that is fine; if you have, you could either mention them now or put them in writing.

[248] **Mr Winetrobe:** I have a couple of minor points to raise. One was about audit terms, which you mentioned, and the point is answered to some extent by the explanatory memorandum and your earlier session. However, it is not always entirely clear in what capacity the Chief Executive and Clerk of the Assembly is acting in these various relationships with the board. You are giving the chief executive and clerk the powers to do things in her own right, in her own name, but it is not clear whether that is on the instruction of the Commission or whether that is in her separate capacity as accounting officer. Some things are mentioned in the memorandum, and so on, that she is acting as accounting officer, which is a totally parallel and separate process, but again, that is not something that is generally understood. It might be safer to make it clearer in which capacity she is acting at the various points where she is mentioned.

[249] I wish to go back to one other thing that I mentioned earlier regarding its inclusion in the proposed Measure. It is just a minor point, but it is something that has narked me for years. In Schedule 3, all of the amendments to the Government of Wales Act 2006 are in the explanatory memorandum and I just wish that the full new text was in the proposed Measure so that someone looking at the proposed Measure could see everything that they need to know about. The lawyers call that ‘killing Schedules’, when you reproduce the new Measure and the new terminology, as amended. It will make it longer, but given that it has been included in the explanatory memorandum, I am just suggesting it so that someone who wants to know about it would only have to go to one place. It would then be a one-stop shop. It is a minor point.

[250] My last point is a technical one. In the Schedule 5 determination, I just wonder whether the emphasis on the independence of two thirds of the total number of votes cast is a high enough hurdle. It is far more common nowadays to say two thirds of all the membership. I do not know whether your Standing Orders have rules about minimum percentages for a vote to be valid and so on, but if you have very few people voting in the Chamber and it is agreed by two thirds of the total votes cast, it is not exactly a ringing endorsement. To require the support of two thirds of all the Members is more common nowadays for these sorts of sensitive appointments.

[251] **Rosemary Butler:** That is within our Standing Orders. We require the agreement of two thirds of all Members.

[252] **Mr Winetrobe:** That is all that I really wanted to add.

[253] **Rosemary Butler:** Thank you very much. It has been very interesting and illuminating. If you have any further points to raise, please do so in writing. You will be sent a copy of the draft Record for your comments before it is finalised, but we thank you very much for coming. I am sorry that we had to move from one room to another.

[254] **Mr Winetrobe:** I have enjoyed it. Thank you very much for listening to me.

[255] **Rosemary Butler:** I remind Members that the Presiding Officer will be coming back

on 28 January to answer more questions and to give more evidence. That brings today's meeting to a close. Thank you.

*Daeth y cyfarfod i ben am 2.47 p.m.*  
*The meeting ended at 2.47 p.m.*