



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

**Pwyllgor Deddfwriaeth Rhif 3
Legislation Committee No. 3**

**Dydd Mercher, 4 Chwefror 2009
Wednesday, 4 February 2009**

Cynnwys
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The National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009: Evidence from the Welsh Local Government Association and the Association of Directors of Social Services Cymru

Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynddi 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

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Alun Cairns	Ceidwadwyr Cymreig Welsh Conservatives
Christine Chapman	Llafur Labour
Janice Gregory	Llafur Labour
Helen Mary Jones	Plaid Cymru The Party of Wales
David Lloyd	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)

Eraill yn bresennol
Others in attendance

Beverlea Frowen	Cyfarwyddwr y Gwasanaethau Cymdeithasol a Gwella Iechyd, Cymdeithas Llywodraeth Leol Cymru Director for Social Services and Health Improvement, the Welsh Local Government Association
Moyna Wilkinson	Cyfarwyddwr Corfforaethol, Gwasanaethau Cymdeithasol a Thai, Cyngor Sir Mynwy Corporate Director, Social Services and Housing, Monmouthshire County Council

Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol
Assembly Parliamentary Service officials in attendance

Fay Bowen	Clerc Clerk
Carolyn Eason	Gwasanaeth Ymchwil yr Aelodau Members' Research Service
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Joanest Jackson	Cynghorydd Cyfreithiol Legal Adviser
Gareth Williams	Clerc Clerk

Dechreuodd y cyfarfod am 9.17 a.m.
The meeting began at 9.17 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **David Lloyd:** Bore da i chi i gyd. **David Lloyd:** Good morning to you all. I Croesawaf bawb i gyfarfod diweddaraf welcome everyone to this, the latest meeting Pwyllgor Deddfwriaeth Rhif 3. Nid ydym of Legislation Committee No. 3. We have not wedi derbyn ymddiheuriadau. O ran y received any apologies. Turning to the rheolau cadw tŷ, os bydd y larwm tân yn housekeeping rules, if the fire alarm sounds,

canu, dylai pawb adael yr ystafell drwy'r allanfeydd tân penodol a dilyn cyfarwyddiadau'r tywyswyr a'r staff; nid ydym yn disgwyl prawf y bore yma. Dylai pawb ddiffodd ei ffôn symudol, ei alwr, a'i 'mwyar duon', gan eu bod yn amharu ar yr offer darlledu.

everyone should leave the room through the identified fire exits and follow the instructions of the ushers and staff; we do not expect a test this morning. I ask that you all switch off your mobile phones, your pagers and your BlackBerrys, as these interfere with the broadcast equipment.

[2] Mae Cynulliad Cenedlaethol Cymru'n gweithredu'n ddwyieithog. I'r perwyl hwnnw, mae clustffonau ar gael i glywed cyfieithiad ar y pryd, a gall y sawl sy'n drwm ei glyw eu defnyddio i chwyddleisio'r sain. Ni ddylid cyffwrdd ag unrhyw ran o'r meicroffonau gan y gall gwneud hynny ddiffodd y system. Dylid sicrhau bod y golau coch yn dangos cyn ichi siarad. Mae'r cyfieithiad ar y pryd ar gael ar sianel 1, a'r darllediad gair am air ar sianel 0.

The National Assembly for Wales operates bilingually. To that end, headsets are available to hear the simultaneous translation, and those who are hard of hearing can use them to amplify the sound. Do not touch any part of the microphones as that can disable the system. Please ensure that the red light is on before you speak. The simultaneous interpretation is available on channel 1, and the verbatim on channel 0.

9.19 a.m.

**Gorchymyn Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol)
(Lles Cymdeithasol) 2009: Tystiolaeth Cymdeithas Llywodraeth Leol Cymru a
Chymdeithas Cyfarwyddwyr Gwasanaethau Cymdeithasol Cymru
The National Assembly for Wales (Legislative Competence)
(Social Welfare) Order 2009: Evidence from the Welsh Local Government
Association and the Association of Directors of Social Services Cymru**

[3] **David Lloyd:** Diben y cyfarfod heddiw yw clywed tystiolaeth lafar ynglŷn â'r Gorchymyn arfaethedig ynghylch gofalfwyr. I'r perwyl hwnnw, mae'n bleser gennyf groesawu Beverlea Frowen, cyfarwyddwr gwasanaethau cymdeithasol a gwella iechyd Cymdeithas Llywodraeth Leol Cymru. Bore da, Beverlea, a chroeso. Mae hefyd yn bleser croesawu Moyna Wilkinson o Gymdeithas Cyfarwyddwyr Gwasanaethau Cymdeithasol Cymru, a chyfarwyddwr corfforaethol gwasanaethau cymdeithasol a thai Cyngor Sir Mynwy ydyw. Bore da a chroeso i chithau, Moyna.

David Lloyd: The purpose of today's meeting is to hear oral evidence with regard to the proposed Order on carers. To that end, it is my pleasure to welcome Beverlea Frowen, the director for social services and health improvement of the Welsh Local Government Association. Good morning, Beverlea, and welcome. It is also my pleasure to welcome Moyna Wilkinson from the Association of Directors of Social Services Cymru, and she is also the corporate director for social services and housing of Monmouthshire County Council. Good morning and welcome to you, Moyna.

9.20 a.m.

[4] Yr ydym wedi derbyn eich papur, a diolch yn fawr am eich tystiolaeth ysgrifenedig. Mae gan Aelodau gyfres o gwestiynau i'w gofyn i chi, felly awn yn syth atynt, os yw hynny'n iawn. Mae'r cwestiwn cyntaf oddi wrthyf i fel Cadeirydd—mae rhyw fath o rym yn perthyn i'r swyddogaeth.

We have received your paper, and thank you very much for your written evidence. Members have a series of questions to ask you, therefore, we shall go straight to them, if that is okay. The first question comes from me as Chair—there is some power to my position.

[5] O gofio'r gwaith sydd eisoes yn mynd ymlaen ymhlith awdurdodau lleol i gefnogi gofalwyr a'r gwelliannau a amlinellwyd yn adroddiad blynyddol Arolygiaeth Gofal a Gwasanaethau Cymdeithasol Cymru, a allwch egluro i ba raddau y mae'r pwerau sydd gennym eisoes i gefnogi gofalwyr mewn Deddfau megis Deddf Gofalwyr (Cydnabyddiaeth a Gwasanaethau) 1995 a'r Ddeddf Gofalwyr a Phlant Anabl 2000 ac mewn canllawiau polisi cyfredol yn annigonol i lawn gefnogi a hyrwyddo lles gofalwyr a pham ydych yn credu bod angen deddfwriaeth bellach?

Given the work that is currently being undertaken by local authorities to support carers and the improvements that were outlined in the Care and Social Services Inspectorate Wales's annual report, can you clarify to what extent the powers that we already have to support carers under such Acts as the Carers (Recognition and Services) Act 1995 and the Carers and Disabled Children Act 2000 and in current policy guidance, are insufficient to adequately support and promote the wellbeing of carers, and why you believe that further legislation is necessary?

[6] **Ms Frowen:** I will start by giving a political view, and then Moyna will come in with the professional view. This is joint evidence, and we are delighted to come here today so that you can receive at first hand the political view from the 22 councils, and also the professional view of the 22 directors for social services.

[7] To respond to your question, there is already a lot of legislation for carers, and there are several strategies, but the important thing from our point of view is that, increasingly, care, support and advice to carers should be provided on a multidisciplinary and multi-agency basis. The first port of call for carers, in the main, will be the national health service; it will not be local government and councils. We have, as you know, a significant number of carers in Wales, and that number is likely to increase. We can see why we have the highest number of carers in all of the regions of the UK, nevertheless, that means that we need to put greater effort into ensuring that we meet their needs. So, local government welcomes the proposed LCO and its development, but only if it is developed to take account of the vital contribution that the NHS must make. We also recognise the independent sector, but we feel that it can be taken into account and addressed under the existing framework. However, it is crucial that, as more and more services are provided on a multi-agency basis, the responsibility is viewed on a multi-agency basis.

[8] Only a few days ago, we came across NHS professionals who said, 'Carers? That is for social services, isn't it?'. We want to work more on service integration, with partners, and yet the legislation just puts the duty on councils. It is too easy, in times of stress and pressures, to disregard the fact that it should be a multi-agency responsibility. We feel that the additional powers that an LCO would give would enable us to reconcile the growing gap in terms of a lack of partnership and ownership with regard to carers. That is where we are coming from in terms of addressing the broad, positive steps of the proposed LCO.

[9] **Ms Wilkinson:** As a general point, I know that everyone here understands how much carers do. In a sense, anything that we can do collectively to support and recognise that is worth doing. Local authorities try hard to work with carers in all sorts of ways, but it would add an extra oomph and prioritisation that would help us to deliver our tasks and roles as well as we can. However, as Beverlea has just said, we need to do that work with others. This is not to criticise other people, necessarily, but we would want it to be recognised as a shared responsibility—a shared partnership—as we can do more if we work together than we perhaps can as one agency. Beverlea and I were talking about this just before we came in. We have a carer support worker that goes into our surgeries; she is in 11 out of 14 surgeries, for example. That was a very definite choice to try to find people and say, 'Look, there are carers' groups. There are things that we can do', and also to work with the primary care team. There is a willingness to do this. Everyone has the day job but, for the Association of Directors of Social Services, this is also the day job. We want it to be everyone's day job.

[10] **David Lloyd:** Diolch am yr atebion hynny. Felly, i gadarnhau, a gredwch mai cymhwysedd deddfwriaethol o'r fath yw'r unig ffordd i gywiro'r diffygion presennol, fel yr ydych wedi ei hamlinellu?

David Lloyd: Thank you for those answers. Therefore, just to confirm, do you think that legislative competence of this kind is the only way to remedy the current deficiencies, as you have outlined?

[11] **Ms Frowen:** I think that it is an essential part of a toolkit and we have to constantly ask for balance. I do not think that we should lurch straight into having legislative competence Orders for everything when there are perfectly good mechanisms, but it is a useful mechanism and I think that the Welsh Assembly Government should consider it if things are not being achieved as one would like. Again, going back to my earlier point, they need to be well-crafted and developed in consultation, and the agencies on which those duties will fall need to be able to implement them adequately. Otherwise, it will fail again. In this instance, as Moyna said, we would like to see anything that will share the responsibility, and we do not have other mechanisms. Increasingly, we have a dilemma; we want to develop partnerships where, perhaps, the influence of the local authority is reduced, because people think that partnerships are too heavily slanted towards the local authority. We want to make partnerships more inclusive, but often the only partners mentioned in statute are local authorities. In this case we have to see it as a positive way forward, but it is part of the toolkit.

[12] **Ms Wilkinson:** You asked what else would help. You will not be surprised to hear that resources also help. I speak as I find; I think that sometimes there is a concern about being overwhelmed because we know just how much carers do. My experience, and that of a lot of people who work with carers, is that when you talk to people, you find that their requirements are much more modest than some people fear. It is to be listened to properly, and for it to be seen by the people coming into their home that it is their home and that that is negotiated. It is often for a degree of emotional support. The other thing is to be involved at the very beginning of a plan. A number of us have been working on the autism strategy and have found that getting the parents involved at the very beginning, so that they are equal partners in determining matters, makes a huge difference. I have to be honest and say that, in local government, we manage on fixed budgets and we have to make the cake meet a number of different needs. Therefore, we would certainly not refuse dedicated resources for carers.

[13] **David Lloyd:** Diolch yn fawr. Bydd Helen Mary Jones yn gofyn y cwestiwn nesaf.

David Lloyd: Thank you. Helen Mary Jones will ask the next question.

[14] **Helen Mary Jones:** It is rather interesting that you mentioned dedicated resources, because local government on the whole does not like the Assembly dedicating resources. On the whole, you like the Government to give the money to you and then you decide how to spend it. However, since we are not here to talk about resources but about the law, we will not nail you down on that one—at least, I will not do so; my colleagues might.

[15] As you both are well aware, our concern is that the existing legislation is limited because it does not place an explicit duty on local authorities to provide services to carers. I accept what you have said, that it also does not place that specific duty on all of the other bodies with whom carers come into contact. However, I will focus on the local authorities here. It is clear that there is a huge variation in performance with regards to supporting carers among local authorities. To what extent do you feel that the proposed legislative competence Order will enable the Government to bring forward legislation that could address those variations in service provision?

9.30 a.m.

[16] **Ms Wilkinson:** I will start on that one. We have relatively new measures, and they take a bit of time to bed in. When I looked at 2006-07, I saw a huge variation. That means that we are all measuring different things, so I do not think that we know enough about how many services are going in. Certainly, it is proving difficult to define services. For example, we and many others work well with the voluntary sector, in groups, and so on, but it is difficult to define that because, statistically, voluntary agencies are not set up to undertake all the measurements that we are. We need to agree on the measures. We are still in negotiations as to how to define 'respite', so what you have in the figures is an increase in the assessment, and what appears to be a not particularly corresponding increase in the services.

[17] I would just defend variation for a moment. The local authorities are all different—different areas with different patches and different people. Most of us will be working with the carers' support groups on identifying their needs. It is not surprising that there will be different developments in different areas. I come from quite a rural area, where it is quite important to have services available near home, but it would be different if people could get to one central point more easily. We find that carers' groups need a lot of support to keep them going, because carers have so much to do themselves. So, local variation is needed, but the issue that you have raised is whether there is consistency in the level of engagement. In that sense, I think that they have developed in different ways. We do not always learn from the good examples, but there are good examples of what works in particular areas. So, I would support some variation, but we need consistency in the level of engagement, and so the issue is whether carers say that they feel supported. I would be the first to say that we could all do more.

[18] **Ms Frowen:** I want to focus on the variation issue. At what point is variation acceptable? That is the question that we all ask. There is no doubt that we need to monitor variation constantly and ask that question. A certain level is right and will always be there. At the end of the day, you have to account for the fact that these are very much people's services, and you cannot legislate for these areas. In developing the measure, we would ask that you pay due regard to the collection, the equality and the mechanisms by which we will constantly seek ways of understanding what is happening out there, and be realistic and consistent. It is right that partnerships keep that under review, along with the user groups and the inspectorates, but we should all use the same measurements in a consistent way, and continue to challenge variation after a certain point. We have areas where we have to ask questions, but there are lots of other areas in which services are really good, and carers will say, when they are asked independently, that they feel supported.

[19] **Helen Mary Jones:** Just to nail this down a bit, on the variation in services, I do not think that anyone would disagree for a minute that you need different services in different parts of the country, but when I was doing the research for my proposal for an LCO, which was the predecessor for this one, I found that a major city in south Wales had identified and given assessments to fewer than 100 carers in a city of hundreds of thousands of people.

[20] To be specific, because we are talking about the law, do you feel—and I think that you do, picking up on what Beverlea said—that, if the right Measures were introduced as a result of the competence given under this proposed Order, they could help to address the unacceptable variations, as long as they do not end up being written in such a way that they are too rigid and do not allow for that variation of services?

[21] **Ms Frowen:** Absolutely.

[22] **Ms Wilkinson:** I would just plead for a bit of patience in getting measures embedded so that you get good consistent data, because, in my experience, it takes a little bit longer. You want to see it straight away, but you must wait a little bit longer because we are measuring slightly different things.

[23] **Peter Black:** You state in your evidence that a policy group of the Association of Directors for Social Services Cymru is undertaking work on national performance indicators. Can you provide further details on the issue of inconsistency in recording these data?

[24] **Ms Wilkinson:** I have started to talk about that, particularly with regard to services and what is defined as 'respite'. This is not unusual, I have to say. Sometimes, there is quite vigorous debate about what it is. We are talking about inconsistencies, and you will get inconsistency because one person will be counting something while another person is not. So, you have no idea what a valid measure is, and I take your point about certain issues. Assessments have improved, and that is quite a good measure. ADSS Cymru is relatively new. I am one of the co-chairs, looking at the interface between older people's issues, such as sensory impairment, physical disability and health. So, I have quite a wide brief, but we have chosen to focus particularly on carers. My colleague, Liz House, is leading on that. We are trying to get it embedded so that it is proper and reasonable. This measure will help to highlight that and galvanise everybody to do this.

[25] **Peter Black:** In what way would you say that the Assembly's having powers to deal with carers would galvanise people to address this issue? Do you think that we would have to legislate for that, or do you think that the fact that we had the powers would motivate you to work harder, for want of a better expression?

[26] **Ms Wilkinson:** First and foremost, it is about recognition for carers. That is the most important thing.

[27] **Peter Black:** There are concerns that the provision of carers' assessments varies greatly across Wales, and we have touched on that already. Do you share those concerns, and is acquiring legislative competence via this proposed LCO and passing future Measures under it the best means of achieving greater consistency?

[28] **Ms Frowen:** As we have said before, it is one of the measures for addressing this. It will raise the profile of the issue generally and across all agencies. Not all assessments need to be done by a single agency, as there are families involved and a great deal of information may need to be taken into account. We feel that the proposed LCO, as the Welsh Local Government Association has already stated, is a good measure to take, provided that it is developed consistently and along the lines that we have already stated. It would be part of the toolkit.

[29] **Peter Black:** How prescriptive do you think the Assembly Government should be?

[30] **Ms Frowen:** I think that that is a matter for debate as we develop this, because everything must be crafted according to what it needs to achieve. Until we have further details, we must err on the side of flexibility without its being so wishy-washy that it would not do the job. At this stage, I think that that is all you could say. You need to start by talking about basic high-level principles, as opposed to the detail.

[31] **Peter Black:** You have largely answered my other questions already. However, on multi-agency working, you have said on a number of occasions that local government seems to get most of the flak when it comes to responsibility for carers, and that other agencies are getting off lightly. You say that that is part of the problem and that having competence in that area will enable the Assembly to give responsibilities to other bodies such as the NHS. I think that we all recognise that. In addition to that, as well as those powers for the Assembly, are responsibilities that would force you all to work together a part of that agenda? How could the Assembly Government do that? Would it require legislation or guidance or coercion?

[32] **Ms Frowen:** The proposed LCO will result in legislation, and it is always helpful for legislation to be supported by clear guidance. However, the important thing is to use it within the partnerships and within your inspectorate and the regulatory regime, because having that status gives it extra emphasis. Making it the partnerships' responsibility to respond to that gets away from this being a one-agency worry and no-one else's. That is also a challenge for the inspectorates and the regime because, that being the case, everything would have to be joined up, including the collection of performance data.

9.40 a.m.

[33] That is a big challenge and is why I said earlier that we need to approach this carefully, because we are too quick to assume that agencies have the infrastructure to work well together. They may have the willingness and, in many areas, they manage to do it. However, there are still some huge barriers preventing agencies from working together effectively and economically. The collection of data, common information sets and performance data is still a huge challenge across health and social services in Wales.

[34] **Peter Black:** Responsibility for other agencies is a power that the Assembly Government needs to acquire. However, do we not already have the power in Wales to improve partnerships and to compel the collection of data?

[35] **Ms Frowen:** Not that I am aware of. We have very little joint performance data across health and social care. We have completely different IT systems. Progress has been extremely variable on things such as the common assessment process. We are still a significant way away from adequately being able to provide timely data. That has to be taken into consideration here.

[36] **Peter Black:** So, you are arguing that the Assembly should have legislative competence to force you to have common IT systems, and to force the Care and Social Services Inspectorate Wales to collect data on a common basis, are you?

[37] **Ms Frowen:** No, I am not arguing that at all. I am saying that all those things have to be taken into account when you make the proposed Order.

[38] **Peter Black:** That was my previous question. Can that not be done now without the legislation?

[39] **Ms Frowen:** There is a wide variation between what we think is going on and what is feasible at the coal face. That is what we need to consider.

[40] **David Lloyd:** Helen Mary fydd yn **David Lloyd:** Helen Mary will ask the next gofyn y ddau gwestiwn nesaf. two questions.

[41] **Helen Mary Jones:** You have already told us—and I agree very much—that an advantage of the proposed Order is that it would enable the Assembly Government to place duties on local authorities, but also education authorities, housing authorities, and NHS trusts, and those powers could also apply to other organisations that have a role in addressing carers' needs and concerns. Do you agree that the proposed Order, as currently drafted, would permit the imposition of duties on those bodies? Do you believe that that is an appropriate range of bodies on which such duties should be placed? Are there any bodies that you think ought to be covered by future Measures under this proposed Order that are not covered as it is currently drafted?

[42] **Ms Frowen:** We considered that and did not come up with any real firm suggestions to widen it. However, we ask that this be kept constantly under review as any Measures

develop. It is a significant step forward just to put it out across the public sector, aligning it with what is already there. So, we cannot think of anything specific at this moment, but we ask that you keep it under review.

[43] **Helen Mary Jones:** That is fine; thank you. There is a specific set of concerns about young carers, many of whom would not come into contact with, for example, local authorities' social services departments, but they would be in a school that a local authority was running, or in a youth club. The Deputy Minister for Social Services has told us that this proposed Order would enable the Assembly to legislate to ensure that young carers are proactively identified and that their needs are addressed, and it will also allow the Assembly to legislate for carers who are in transition from children's services to adult services, whether the young person is the carer or whether a parent is caring for a child who is moving into adult services. Do you agree that there is a need to address the needs of that group? Do you believe that the proposed Order would allow the Assembly Government to legislate to achieve better and more consistent services for young carers?

[44] **Ms Frowen:** We wholeheartedly support the greater profile for younger carers. We know that we have a problem, for all of the reasons that you have identified, but they will also require support for a long time. We have to get it right for them, particularly the younger carers who are our future generation. We have a raft of evidence that shows that we should do more for them, so we welcome it.

[45] **Ms Wilkinson:** I can speak from the experience that I have had in my county, but I do not know of all the examples, because a lot of the young carers work is done by Crossroads. Sometimes in these fields, as you have said, it is better that it is not statutory agencies that are doing the work, and Crossroads has been able to attract charitable grants and so on. So, whereas we had a list of young carers who wanted support, that list has actually gone down. It is about using what is there and what infrastructure is in place, particularly the non-labelled voluntary sector that can help to find support. It will then start to snowball. Again, it is partly about talking to the people themselves, because, as always, the situation is so varied. I found some young carers who felt that they were labelled at school—they were having difficulties at school and they felt that that was because they were carers. It is partly about talking to the school. On another occasion, a young carer had been saying how wonderful the school had been about understanding that she might be late in and so on, but it was the same school. So, when we talk about variations—I know that we are talking about a legislative competence Order and the rest of it—it is about allowing for sensitivity and listening. Sometimes, the quality of the response is the most important thing. I think that the more services go out to the youth service, the voluntary sector and so on, the more accessible they are to the young carers whom I have talked to.

[46] **David Lloyd:** A ydych yn hapus, **David Lloyd:** Are you happy, Helen? I see Helen? Gwelaf eich bod. Symudwn ymlaen that you are. We will now move on; Christine yn awr ac mae'r cwestiynau nesaf dan ofal Christine Chapman has the next questions.
Christine Chapman.

[47] **Christine Chapman:** I would like to press you on some of the definitions and terminology. Helen Mary has already asked about young carers, but I just want to talk a little bit about terminology. Regarding the definition of 'carer' in the proposed Order, you say in your evidence that,

[48] 'if the LCO were to proceed, young carers, as the most vulnerable group are explicitly referred to and thus the definition in the proposed order should be amended to read: In this matter 'carers' means individuals including those aged under 18 who provide or intend to provide a substantial amount of care on a regular basis.'

[49] Can you give us further details as to why you feel that the definition of carer, as outlined in the proposed Order, needs to be amended as you suggest?

[50] **Ms Frowen:** When we were discussing this particular aspect, again it was brought to our attention that carers are defined in different ways by different Government departments, in different pieces of legislation, in different items of literature and, indeed, out there, on a daily basis. So, we would appreciate anything that would improve the consistency of that definition—I think that that is where we were coming from. There are gaps when different departments look at young carers, depending on whether they stop at 18 or 25 years of age, and there are issues about transition. We placed great emphasis on ensuring that having succeeded in getting young carers a profile in this proposed LCO, it would not then be undermined by not having a consistent definition because that would deflect people from getting on with the business and the core purpose of having them defined in the first place. We recognised that there was a need for extra consistency. We do not offer a definition in our evidence; we just hope that one will be worked up as the proposed LCO progresses.

[51] **Ms Wilkinson:** This is slightly off the point, but it is just about recognising that it depends on what stage someone with caring responsibilities is at in terms of education and employment and there are particular issues when they shift from one to the other. Let us just say that they have had a really good and supportive experience at school that has been helpful, but when they move on to higher education or work, they have got to start again. You were talking about how you could widen it, but there is a conflict at the moment. We know what the economic circumstances are like and that jobs are scarce and so on, but you can imagine that that will put more pressure on people who are entering the job market who may also have caring responsibilities. A number of large organisations and most of the local authorities have family-friendly policies and so on that recognise such needs, but that is not true across the board. So, when thinking about the needs of younger people who will often be in lower paid, lower status jobs, or trying to get work, or still in education, those transitions from one to the other can be really difficult when you have caring responsibilities. We are not telling you what you have to write in a legislative competence Order. The lawyers have to look over this to see what is possible. We are trying to give you an idea of some of the issues that come up for us that would be helpful for it to encompass, however that is possible to draft.

9.50 a.m.

[52] **David Lloyd:** Do you have a supplementary question to ask on this point, Janice?

[53] **Janice Gregory:** Yes; I have a brief question. Listening to what Beverlea has said, my understanding is that young carers are covered in the proposed LCO in any case. Obviously, you feel quite strongly about this. I am just surprised that, with the WLGA feeling as it does, you are not offering a definition. I think that you said that you hoped that it would be worked up on the way through. I would have thought that, given the strength of feeling, the WLGA might have offered a definition.

[54] **Ms Frowen:** During the course of the consultation and the development of the Measure, we would want to participate in that. I think that we are currently in the position of recognising the reality of the process, but it might now be slightly unwise or premature. However, we would certainly like to be considered and we will contribute to any proposed definition that comes through the process. We did not address this specifically, but we will do our best to respond to that. We have a consistent policy line across all party groups here on this particular proposed LCO.

[55] **David Lloyd:** That is great. We will now come back to Christine.

[56] **Christine Chapman:** Obviously, as you are talking about consistency, have you

thought about the advantages or disadvantages of including a definition of carers? Can you think of anything else on that?

[57] **Ms Frowen:** Not at this stage other than just to repeat what we have said: it must be clear, consistent and properly worked up with consensus.

[58] **Christine Chapman:** Do you think that the existing legislation excludes any group of carers at the moment? Do you have anything to add to that?

[59] **Ms Frowen:** No. I do not think that we did. We thought that it was fairly wide—it was wide enough to pick up most things.

[60] **Christine Chapman:** To move on, I will look at the term ‘substantial’. In paragraph 1.14 to 1.15 of your written evidence, you suggest that it would be:

[61] ‘prudent to define what is meant by ‘substantial’

[62] and go on to say:

[63] ‘More clarity on this would reduce any ambiguity or misinterpretation across the different public sector agencies involved in supporting carers’.

[64] Could you provide further details of why you feel that it would be prudent to define what is meant by ‘substantial’ and what you feel could be the potential difficulties arising from any ambiguity and misinterpretation? Do you have a suggestion?

[65] **Ms Wilkinson:** I will have a shot. You will appreciate that because local authorities operate under the law, definitions can sometimes be the subject of some dispute over what is meant. In that sense, the clearer it is, the easier it is to operate and implement it. Considerable work has been done in terms of a range of definitions within social care in order to look at things such as eligibility criteria, continuing healthcare guidance and so on. It includes a number of areas, such as what are known as ‘domains’. Therefore, when we look at terms like ‘regular’ and ‘substantial’, it is important not necessarily to be able to completely define it, but to recognise that some of these areas are particularly emotional, for example. It is not just hours; it is the cost in terms of emotional state and so on that can be important. In that sense, we were just anxious that, in such a helpful Order, putting it there means that it comes up. We then wonder, ‘Does that mean that I will not get an assessment or a service because people think that I am doing enough that is substantial? I think that I am doing so, and it means this to me.’_So, it is something that needs to be consulted on with the lawyers.

[66] I have shelved the idea of giving you a definition, because I deliver it and do not necessarily define it. I wanted the issue to be highlighted because I think that it could be a very important message that you would be sending out to carers. That could be something for the consultation. As you know, carers themselves will have quite strong views on what that means.

[67] **Helen Mary Jones:** I would like to pursue this matter a bit. We raised this issue with the Deputy Minister and her lawyers last week. She was arguing against a prescriptive definition of the term ‘substantial’. She was saying that that should be a matter for individual assessment and the example given was that what would constitute substantial care if provided by an eight-year-old would be very different to what would constitute substantial care if provided by a healthy 40-year-old. Again, at the other end of the spectrum, if you were a carer in your 80s, caring for a partner with dementia, the kinds of things that you would be doing might not be substantial if they were being done by a healthy 40-year-old, but they would be substantial for you because of your age. She was suggesting that a prescriptive definition of

the term ‘substantial’ might lead to the exclusion of some carers and might make it difficult to provide support. In a sense, that argues against what you have asked for in the written evidence, but I think that it does go with what Ms Wilkinson has just said.

[68] **Ms Wilkinson:** We have to accept that there is also the wish that we started off with, which was to try to get some idea of consistency—we obviously accept that there will be variation, but we want some degree of consistency—in service levels across the patch. It is an issue that I think is worth examining. I agree with the heart of what the Deputy Minister was saying, that what is substantial to an 80-year-old is different to what would be substantial to a 40-year-old. A lot of our carers, as you know, are in their 80s or 90s, so it is about what is substantial in terms of what they can do.

[69] **Helen Mary Jones:** I can see the point that you are making about the need for clarity and the need to use the word ‘substantial’, because we all care for each other on a daily basis and we do not all need carers’ assessments. Do you feel that that needs to be on the face of the competence Order that brings the power down to the Assembly to make the law or should it be included in the later stages when the Ministers bring forward Measures—the Assembly laws—as a result of this LCO, or perhaps in the guidance arising out of those Measures? Would that be a better place to explore, not a prescriptive definition of ‘substantial’, but to give practical guidance along the lines of, ‘If an eight-year-old is providing it, this is substantial and this is not; if a 40-year-old is providing it, this is substantial and this is not’?

[70] **Ms Wilkinson:** Guidance sounds like a good idea. At the end of the day, we want to be able to assess as many of those people as possible and provide as many services as we can. We do not want to get into an argument about whether someone who is doing the odd phone call should get an assessment—I am exaggerating, but only for a purpose because we want to be able to direct the service at the people who need it most. That is what we try to do.

[71] **Ms Frowen:** If I could just supplement that point, I think that it is horses for courses and guidance would definitely be a pragmatic and realistic way of dealing with the tensions in the system. There is also an issue that when guidance is issued and implemented, I think that agencies have a duty to come together to share best practice on how they are implementing that guidance. We are getting better at doing that and working collectively and sharing good practice and difficulties that arise when implementing guidance. We are also working quite closely with the Assembly and saying, in the development of guidance, ‘Are you aware that it is drafted in a way that might have an untoward effect?’ We have some quite good examples of where we have worked collectively on guidance—on both its drafting and issuing, but also its implementation—that we need to look at for this. Otherwise, we will miss a trick.

[72] **Helen Mary Jones:** Just to be clear, because this is slightly different to what was suggested in your written evidence, you seem now to be putting it to us that perhaps the guidance might be the place for those definitions, rather than the face of the legislative competence Order, so that you could participate in generating and reality checking some of the things that might need to go into the guidance.

10.00 a.m.

[73] **Ms Frowen:** With this specific issue, and in that context, yes.

[74] **Peter Black:** Clearly, the word ‘substantial’ in the proposed LCO defines the competence of the Minister as opposed to the Measure and the issues that you apply. The guidance may be a way forward. Helen Mary reminded us that the Minister said last week that we rely on individual assessments to decide what is substantial and what is not. Is that a potential loophole in the way that the legislation will be applied?

[75] **Ms Frowen:** I do not want to get into an even longer debate about continuing healthcare, and all of that, as it would turn my hair greyer than it already is. However, that is a classic instance where we need consistent guidance, but also need to put a lot of effort into supporting the professionals who have to implement that guidance, and do it in a consistent way.

[76] **Peter Black:** My other point on this definition was the reference to a ‘regular basis’. Are you happy that that is sufficiently defined in the proposed LCO? Would you be content for that to be left to guidance?

[77] **Ms Frowen:** We have put the two issues together and see them going hand in hand. We expect them to be considered in guidance.

[78] **Christine Chapman:** My final question is on the terminology. The proposed Order states that matter 15.9 would encompass:

[79] ‘Supporting the provision of care by carers and promoting the well-being of carers’.

[80] Are you comfortable with the term ‘promoting’? Is it appropriate?

[81] **Ms Frowen:** I was aware of some debate about the use of the term. We have decided that we are comfortable with it, and we see it as an essential element of this.

[82] **Janice Gregory:** The scope of the proposed LCO regarding carers of children is limited by the use of the term ‘a child with physical or mental impairment’. Do you think that this is a sufficiently broad definition? Should it include long-term illness or substance misuse problems? Would the current definition exclude the carers of any groups of children?

[83] **Ms Frowen:** When we considered this, we went back to the Children’s Act 2004 and used that legislation. Our oral evidence is no different from our written evidence, in that we think it is sufficient as long as it follows the Act.

[84] **Ms Wilkinson:** In reality, at present, there are a number of long-term conditions for which some care will be provided, and that would enter into the definition. The outcome is to help people—the ‘substantial’ care on a ‘regular’ basis—and that is the important point, and if an assessment cannot do that sensitively and appropriately, then it is failing.

[85] **Janice Gregory:** Is the term ‘an individual aged 18 or over’ appropriate for the Order?

[86] **Ms Frowen:** I would have to say ‘yes’, but we did not discuss it in great detail. I do not think that we referred to it in our evidence.

[87] **Janice Gregory:** Finally, the additional learning needs LCO, which I am sure you know, applies the criteria ‘physical or mental impairment’ to all persons—that is, both children and adults—whereas the proposed LCO on carers applies these criteria to children only. Can you envisage any issues that might arise from that?

[88] **Ms Frowen:** We did not come up with significant issues, but recognised that there is a need and potential for inconsistent interpretations. When we were discussing the crafting of our evidence, there was nothing specific that we wanted to raise at this moment in time.

[89] **Ms Wilkinson:** Obviously, terminology changes, but the proposed LCO will then be set in stone. You may get a number of comments back about whether people are comfortable with the word ‘impairment’. In making the recommendation for it to be consistent with the

Children's Act, we have to recognise that it is not necessarily consistent as it moves through into the adult field, and that could be an area requiring debate.

[90] **Alun Cairns:** The explanatory memorandum to the proposed Order defines social care services as,

[91] 'any of the following provided in connection with the well-being of any person:...non-residential care services; information, advice, counselling or advocacy services; or any other assistance'.

[92] Is this an appropriate definition of 'social care services' for the purposes of the Minister and the Order?

[93] **Ms Frowen:** In our written evidence, we refer to the fact that we would like to see the definition widened to include NHS organisations. While acknowledging the specific emphasis on social services in the drafting, wherever possible, we would want to see that widened to include the NHS.

[94] **Alun Cairns:** Will you expand on that? Why is that, and what would it achieve that the current definition would not?

[95] **Ms Frowen:** It is in the context of trying to change the profile that suggests that this is just for local authorities so that it is seen as a partnership in which, increasingly, a range of services is delivered by a multi-agency approach.

[96] Where the drafting needs to refer specifically to social services, as appropriate, then it should, but our fundamental aim is for this to be seen as a partnership for carers and not just a social services responsibility.

[97] **Alun Cairns:** Mrs Wilkinson, do you have anything to add to that?

[98] **Ms Wilkinson:** I agree, because we often say 'health and social care services'. We should promote a whole-system approach. That is more terminology, but it means that individuals are not defined in one chunk. They are not defined in one chunk generally—they are people with lives on which all sorts of other bits and pieces have an impact. Such a blunt definition can mean that other services do not always put some of the identified needs of carers on their agenda, and it also means that, in their definition, they can take an 'Oh well, that is their business' attitude. From this proposed LCO, we want and hope for it to be everybody's business. That is a very easy thing to say, but the more we are able to do it, the better the outcome. In that sense, I would argue against any definition that is too tight because of the potential, although possibly unintended, effects.

[99] **Alun Cairns:** The Assembly, effectively, has no power to legislate on the excepted matters referred to under the heading 'Social welfare (field 15 of Part 1)' on page 3 of the proposed Order. Do you have any comments to make on the excepted matters included in that field?

[100] **Ms Frowen:** We do not, actually. We saw this coming on through the process, but did not consider it. I have no comments on the excepted matters.

[101] **Alun Cairns:** Thank you; that is useful. Do you have any further general or specific comments to make?

[102] **Ms Frowen:** By way of summing up, I would say that I hope that you will have seen today that we have presented a political and a professional view. The view is commonly held

as regards local government's approach to this issue. We would offer our help and support through the passage of this proposed LCO so that it does, we hope, what is needed.

[103] **David Lloyd:** Diolch yn fawr. A oes cwestiynau atodol eraill? Gwelaf fod pawb yn fodlon. Felly, deuaif â'r sesiwn gwestiynau i ben. Diolch i'r ddwy ohonoch, Beverlea Frowen a Moyna Wilkinson, am eich cyfraniadau, am eich cyflwyniadau ac am ateb y cwestiynau mewn modd bendigedig.

David Lloyd: Thank you very much. Are there any other supplementary questions? I see that everyone is content, in which case I will draw this session for questions to a close. Our thanks to you both, Beverlea Frowen and Moyna Wilkinson, for your contributions, for your presentations and for answering the questions in such an exceptional manner.

[104] Wrth gloi'r cyfarfod, hoffwn hysbysu'r Aelodau y cynhelir y cyfarfod nesaf ar ddydd Mercher, 11 Chwefror, a bydd y pwyllgor yn clywed tystiolaeth Cynghrair Cynhalwyr Cymru, Comisiynydd Plant Cymru, a Chomisiynydd Pobl Hŷn Cymru. Diolch yn fawr i chi i gyd, a diolch am y cyfieithu. Mae'r cyfarfod yn awr ar ben.

In closing the meeting, I inform Member that the next meeting will be held on Wednesday, 11 February, when the committee will take evidence from the Wales Carers Alliance, the Children's Commissioner for Wales, and the Commissioner for Older People in Wales. Thank you all very much, and thanks for the interpretation. That brings this meeting to a close.

*Daeth y cyfarfod i ben am 10.10 a.m.
The meeting ended at 10.10 a.m.*