



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

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

**Dydd Iau, 4 Mehefin 2009
Thursday, 4 June 2009**

Cynnwys
Contents

- 4 Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions
- 4 Y Mesur Arfaethedig ynghylch Addysg (Cymru)—Cam 1: Sesiwn Dystiolaeth 3
The Proposed Education (Wales) Measure—Stage 1: Evidence 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. Mae hon yn fersiwn ddrafft o'r cofnod. Cyhoeddir fersiwn derfynol ymhen pum diwrnod gwaith.

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. This is a draft version of the record. The final version will be published within five working days.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Christine Chapman	Llafur Labour
William Graham	Ceidwadwyr Cymreig (yn dirprwyo ar ran Alun Cairns) Welsh Conservatives (substituting for Alun Cairns)
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

Lindsay Brewis	Aelod-riant ac Is-gadeirydd SNAP Cymru a Chynghorydd Addysg Penodol SCOPE Cymru Parent Member and Vice Chair of SNAP Cymru and Designated Education Adviser SCOPE Cymru
Peter Hosking	Swyddog Polisi, Comisiynydd Plant Cymru Policy Officer, Children's Commissioner for Wales
Denise Inger	Prif Gyfarwyddwr Gweithredol, SNAP Cymru Chief Executive Director, SNAP Cymru
Dr Chris Llewelyn	Cyfarwyddwr Dysgu Gydol Oes a Hamdden, Cymdeithas Llywodraeth Leol Cymru Director of Lifelong Learning and Leisure, Welsh Local Government Association
Mark Provis	Cyfarwyddwr Addysg, Cyngor Bwrdeistref Sirol Tor-faen (yn cynrychioli Cymdeithas Cyfarwyddwyr Addysg Cymru) Director of Education, Torfaen County Borough Council (representing the Association of Directors of Education in Wales)
Daisy Seabourne	Swyddog Polisi Dysgu Gydol Oes, Cymdeithas Llywodraeth Leol Cymru Policy Officer Lifelong Learning, Welsh Local Government Association
Keith Towler	Comisiynydd Plant Cymru Children's Commissioner for Wales

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

Fay Bowen	Clerc Clerk
Gwyn Griffiths	Cynghorydd Cyfreithiol Legal Adviser
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Owain Roberts	Dirprwy Glerc Deputy Clerk

Siân Thomas

Gwasanaeth Ymchwil yr Aelodau
Members' Research Service*Dechreuodd y cyfarfod am 9.30 a.m.
The meeting began at 9.30 a.m.***Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions**

[1] **David Lloyd:** Galwaf y cyfarfod i drefn. Croeso i chi oll, gan gynnwys aelodau'r cyhoedd yn yr oriel. O dan eitem 1, gan nad oes unrhyw ymddiheuriadau, nid oes ond angen i mi wneud y sylwadau cychwynnol trefniadol. Os bydd larwm tân yn seinio, dylai Aelodau adael yr ystafell drwy'r allanfeydd tân penodol a dilyn cyfarwyddiadau'r tywysyddion a'r staff. Nid ydym yn disgwyl prawf ar y larwm y bore yma, felly os bydd sŵn uchel, bydd angen inni adael ar frys. Dylai pawb ddiffodd eu ffonau symudol, eu galwyr a'u mwyar duon, gan y gallant amharu ar yr offer darlledu. Bydd pawb yn ymwybodol bellach fod Cynulliad Cenedlaethol Cymru yn gweithredu yn ddwyieithog. Mae clustffonau ar gael er mwyn clywed y cyfieithiad ar y pryd a gellir hefyd addasu lefel y sain arnynt ar gyfer y sawl sy'n drwm eu clyw. Peidiwch â chyffwrdd â'r botymau ar y meicroffonau gan y gall hynny ddiffodd y system. Cofiwch sicrhau fod y golau coch i'w weld ar y meicroffôn cyn ichi ddechrau siarad. Mae'r cyfieithiad ar y pryd ar gael ar sianel 1 a'r darllediad gair am air i glywed y sain yn well ar gael ar sianel 0.

David Lloyd: I call the meeting to order. I welcome you all, including the members of the public in the gallery. Under item 1, as there are no apologies, I need only make the opening procedural remarks. If a fire alarm sounds, Members should leave the room through the marked fire exits and follow the instructions of ushers and staff. We are not expecting a test of the fire alarm this morning, so if there is a loud sound, we will need to leave the room immediately. Everyone should switch off their mobile phones, pagers and BlackBerrys, as they may interfere with the broadcasting equipment. Everyone will be aware by now that the National Assembly for Wales operates bilingually. Headsets are available to hear the simultaneous translation and it is also possible to adjust the sound level on them for those who are hard of hearing. Do not touch the buttons on the microphones as that can disable the system. Remember to ensure that the red light on the microphone is illuminated before you start to speak. The simultaneous translation is available on channel 1 and the verbatim broadcast, to amplify the sound, is on channel 0.

9.31 a.m.

**Y Mesur Arfaethedig ynghylch Addysg (Cymru)—Cam 1: Sesiwn Dystiolaeth 3
The Proposed Education (Wales) Measure—Stage 1: Evidence Session 3**

[2] **David Lloyd:** Diben cyfarfod y bore yma yw cymryd tystiolaeth lafar am y Mesur Arfaethedig ynghylch Addysg (Cymru) gan Gymdeithas Llywodraeth Leol Cymru. Yn ystod ail hanner y cyfarfod, bydd cwestiynau i Gomisiynydd Plant Cymru a SNAP Cymru.

David Lloyd: This morning's meeting is to take oral evidence from the Welsh Local Government Association on the Proposed Education (Wales) Measure. During the second half of the meeting, there will be questions for the Children's Commissioner for Wales and SNAP Cymru.

[3] Felly, hoffwn groesawu Dr Chris Llewelyn, cyfarwyddwr dysgu gydol oes a hamdden Cymdeithas Llywodraeth Leol Cymru, Mark Provis, cyfarwyddwr addysg

Therefore, I welcome Dr Chris Llewelyn, director of lifelong learning and leisure, Welsh Local Government Association, Mark Provis, director of education at Torfaen

Cyngor Bwrdeistref Sirol Tor-faen sy'n cynrychioli Cymdeithas Cyfarwyddwyr Addysg Cymru, a Daisy Seabourne, swyddog polisi dysgu gydol oes Cymdeithas Llywodraeth Leol Cymru. Croeso i'r tri ohonoch.

County Borough Council, representing the Association of Directors of Education in Wales, and Daisy Seabourne, policy officer on lifelong learning for the Welsh Local Government Association. Welcome to the three of you.

[4] Paratowyd nifer sylweddol o gwestiynau. Yr wyf yn disgwyl i'm cyd-Aelodau fod yn weddol gryno wrth eu gofyn a gofynnaf i chithau hefyd fod yn gryno gyda'ch atebion achos mae'r amserlen yn dynn iawn. Gan fod cynifer o gwestiynau, yr wyf yn siŵr y bydd pa sylwadau bynnag yr oeddech am eu gwneud yn dod i fyny mewn cwestiynau yn nes ymlaen beth bynnag. Felly, gyda hynny o ragymadrodd, trown at y cwestiynau. Mae'r cwestiwn cyntaf yn draddodiadol yn nwylo'r Cadeirydd, felly myfi fydd yn ei ofyn.

A substantial number of questions have been prepared. I expect my colleagues to be brief in asking their questions and I also ask you to be quite brief in your answers, because time is very tight. Given that there are so many questions, I am sure that whichever comments you would have liked to make will come up in the questions later on anyway. So, with that much of an introduction, we come to the questions. The first question is traditionally the responsibility of the Chair, so I will ask it.

[5] Yn gyffredinol, yn eich barn chi, a oes angen cyflwyno deddfwriaeth i ganiatáu i plant gael yr hawl i wneud apeliadau a hawliadau i Dribiwnlys Anghenion Addysgol Arbennig Cymru? Os oes, pam?

Generally, in your opinion, is there a need to introduce legislation to allow children to have the right to appeal and to make claims to the Special Educational Needs Tribunal for Wales? If so, why?

[6] **Dr Llewelyn:** I will come in on the first part of the question and then I think that my colleague, Mark Provis, will also come in and address the second part. We are here to represent the WLGA and the Association of Directors of Education in Wales. Mark Provis is representing ADEW as the director of education for Torfaen, but he has also been advising the WLGA as an educational psychologist. I suspect that he will probably be able to answer more of the committee's detailed questions than I can.

[7] That said, on whether there is a need for this legislation, may I turn it around a little and say that we welcome the aims of the proposed Measure? Anything that enables children and young people to participate and to articulate their views on decisions that affect them is clearly to be welcomed. We welcome the fact that the proposed Measure is rooted in the UN Convention on the Rights of the Child, as are all Assembly Government policies in relation to children. Additionally, they are rooted in the seven core aims. So, we welcome all those facts.

[8] It is also an area in which we think that significant progress has been made in recent years. Authorities have done a considerable amount of work in this area, and that is probably reflected in the number of appeals made in recent years. However, it may also be a consequence of that and because of work being conducted elsewhere, such as the piloted approaches to statementing in Carmarthenshire and Torfaen. As this work progresses, it needs to go hand in hand with other developments. At this point, perhaps Mark will come in to explain how it relates to what is going on in Torfaen.

[9] **Mr Provis:** First, the principle behind the proposed Measure is to be welcomed. I think that it would be anti-inclusive of us not to listen to children with additional learning needs when we listen to all other children. So, I think that the principle is correct and well grounded. However—and there is always a 'however' in these things—I would not underestimate how difficult and challenging it is to make this operational, to make it robust and safe. In that, as the manager of a system and as a specialist practitioner, I have significant

anxieties that to do this properly will be no small challenge.

[10] I therefore think that the principle, the wish, or the drive to do it is wholly correct. It sits within an inclusive approach to embracing all children and their views and is to be applauded. However, given that we are piloting a fresh approach to meeting statutory needs for two years, I would welcome this being placed at the front end of that process, so that, as you elicit what a child's needs are, you have to elicit the child's views. That should be a formal requirement of the pilot schemes, because to do so is quite difficult. I will give some operational detail as to why it is difficult. If my child were to be seen by an educational psychologist, I would be present. I would not entertain the notion of someone seeing my vulnerable child alone, if I had a child with such needs. If that is the person who is assessing the child's view, the parent will be cueing the child's communication. The parent may be the child's key communicator, so what you are actually getting is one view. So, there is a technical difficulty in getting a child's view alone.

[11] Many of the children whom this will embrace have both communication and cognitive difficulties, and you cannot ascertain their view during a one-off event. The assessor will have to be someone who knows the child well, who understands their moods, their level of communication, and their preferred way of communicating. Again, we need to develop the front end of the system so that that is brought into the identification of need and then spend a window of time learning how to do that well, ironing out any problems, and then framing robust legislation that can take account of the methodology required to do it.

[12] The basis of an appeal would be to find out whether the child's view has been ascertained and whether that view has been taken into account. You then have a robust system to test whether that has happened. That is my anxiety about this issue. In a wholly principled way, the approach is entirely correct, but we have a two-year window in which to learn how to do this properly for you so that you end up with a more robust Measure.

[13] **David Lloyd:** Diolch am hynny. **David Lloyd:** Thank you for that. We shall be dealing with several of those points later on. The next question is in the hands of William Graham.

[14] **William Graham:** For the sake of consistency and having regard to the Chair's direction, I will read the question to you. Please bear with me. The explanatory memorandum states that the proposed Measure has been introduced as part of a suite of initiatives aimed at increasing child participation in decision-making processes relating to tribunal appeals and claims. Given that these initiatives include a review of the current tribunal regulations and a partial revision of the SEN codes of practice for Wales, do you think that the introduction of the proposed Measure is timely, and, if so, why?

9.40 a.m.

[15] **Mr Provis:** It is two to three years ago since I was last in this building, giving evidence on the future of statementing. My view, and that of local government collectively, is that statements are rather dead documents; they are not live documents that track a child's needs and progress. Thanks to the new media, we can now do that; we could make a live, ongoing partnership with parents as opposed to, every five years, when you get a huge bundle of papers that do not really make sense six or 12 months later. So, there is a new way of meeting needs that we need to look at, within which this question sits. I would like to see a situation where a parent, if they thought that their child had made progress in a six-month window, or that they had stalled, could have it changed quickly and collectively, and that everyone engaged with that child was aware of that change. I think that that is doable. So, personally, I would rather have the legislation but, speaking on behalf of the directors of

education, have it framed within that consistent change, so that all of it tied together coherently.

[16] **William Graham:** What types of implementation issues do you anticipate in creating a universal right of appeal and claim for children, which does not take into account their age and capacity?

[17] **Mr Provis:** We are walking into a legal minefield, and it has been interesting to try to get a very tight legal view on this. With other legislation, we hit the issue of the child's competence. Children are deemed competent when they are about 13 years of age if they are of average ability, average awareness, can explain their experience and why they want to decide to do whatever it is that is coming forward. With a special needs child, that judgment of competence is much more difficult to make, because of their cognitive and communication difficulties. So, what is the status of their opinion in their participation in this process, judicially as opposed to inclusively? That is quite difficult to unpack in this regard.

[18] We also came across all sorts of tensions. I have worked with many parents who have experienced a real challenge in having a child with additional learning needs. They work passionately and with commitment on that child's benefit, but there comes a stage in their life where the child does not want them to be as protective, and a gap will open between the wishes of the family and the wishes of a teenager. We will then come across some issues when we start to articulate that to a family that may be the lifetime carers for a young person, but the young person does not want what their family wants for them. Therefore, there are consequences in this regard that we need to explore and work through. Some casework examples would be very useful for people to understand how to take this forward. Hence, I would support a piloting of it so that we can give some tested examples.

[19] **William Graham:** Is there any evidence that the proposed Measure might result in parents seeking to use their children to make proxy appeals in order to access advocacy support or funding?

[20] **Mr Provis:** This is going to make me sound like a monster, so I will try to answer it in the best way that I can. [*Laughter.*] The vast majority of parents just want the very best things for their child, and, to be fair, provided you work in close partnership with them, from the local authority's point of view and from health's point of view, that is what you are dealing with. The difficulty in many cases is that a significant proportion of parents do not know their rights and entitlement. That is an unseen problem. The articulate and professional classes can secure it, but I am not sure that we have enabled everyone else to do so, in the wider legislation. That is the beginnings of a concern.

[21] The discomfort in this regard is that I can give some examples where a parent has wanted something that we, collectively, felt was disproportionate and unreasonable; we could now run into a child saying that they wanted the same thing. An example would be a child wanting to go to a highly specialised residential school 180 miles away, which would cost an enormous amount of money. I cannot conceive how the child would be self-aware enough to understand the consequences of that, and what it means. You are left in a really uncomfortable position, as a practitioner professional, of having to interview the child to reveal that the child has been grossly over-rehearsed in saying this. Therefore, there are some painful things to do in terms of dealing with it, and that is a very uncomfortable position in which to be placed, although it is a very necessary position. You run into such examples in exceptional circumstances. The vast majority of people do not even begin to do that, but we need to be mindful that that will be an issue in some instances.

[22] **David Lloyd:** Gan Helen Mary **David Lloyd:** Helen Mary has the next mae'r cwestiynau nesaf. questions.

[23] **Helen Mary Jones:** That is why we have a formal system for appeals, so that that is taken out of the hands of interested parties, namely you or the parents.

[24] You have already touched on some aspects of this issue, but in your written evidence you state that the legislation could have significant implications for home/school and home/local authority relationships. Can you tell us more about your evidence for those concerns? You have touched on what those concerns are, but from where is that coming?

[25] **Mr Provis:** I will try to bring it down to a couple of small examples and work upwards from there, because they give reality to my answer. A severely cognitively traumatised child had an advocate who claimed that the child was literate and could express an opinion, which was expressed by gazing at letters on a see-through board with the communicator on the other side interpreting the child's wishes. This came forward with some heavy-weight evidence that the parent was relying upon and understandably got very emotional about—do you see what I mean? It was completely understandable. When tested properly, it was shown that what we were getting was this interpreter's wishes for this child and that that level of functioning did not exist at all. We were left in the unhappy position of having to report back to the parent what this child's real level of functioning was. It was awful, because we were almost revisiting the trauma that had happened some time before. Therefore, the question of who interprets the child's wishes is where it becomes technically difficult; it cannot be done by the parent-advocates, so we need a third service, in a sense, which is very discreet and highly trained, in order to provide that objective opinion. That is a casework example of where I would find the system difficult to manage.

[26] In terms of the wider issue, the tension is that, if the parent can appeal—parents should appeal; I absolutely uphold the idea of going to a referee to secure an arbiter, as it is really helpful that we have a robust and healthy system in Wales—does the child appeal consecutively? Do you run another appeal? If that appeal is on the same grounds, will that be allowable? What if the appeal is on different grounds, because the child wants something different? It is not inconceivable, given the nature of adolescence, that the child will want something very different to a parent. That can happen. The consequence is that we may go through a formal process and make plain a deep rift within a family. That would be the case in a small number of cases, but it is one of the unforeseen possibilities of this. The legislation needs to capture whose duty of care it is to heal a rift within a family and to keep working with that family until that repair is made. It is putting that kind of thing into operation that should be piloted, so that we put those safety nets in at the front end of this process, rather than try to play catch-up when we realise that it is not quite right.

[27] **Helen Mary Jones:** The next question has been answered. In a way, however, I do not think that those tensions are unforeseen. The child would only need to appeal if he or she did not have parents with capacity or if they wanted something different. To extrapolate from what you said, you would like the piloting system to test out, when those rifts arise, who will be responsible for carrying on with that and how that will all be addressed.

[28] **Mr Provis:** I would welcome it if the piloting was required to do that, because we would all gain from it.

[29] **Helen Mary Jones:** That is helpful. The proposed Measure would allow for a child to appeal against a refusal to make an assessment of their special educational needs at the request of the child's parent. However, the child is not able to request that assessment in their own right. Do you have a view as to whether the proposed Measure should take into account this potential anomaly of the rights? It seems slightly strange that you can appeal, but that you cannot make the original request.

[30] **Mr Provis:** Before that, there is a question of how we enable children and young people to know that they have the right of appeal and to understand what that means. I think that that is a question beforehand, and we need to do a great deal of work with schools and with leading professionals in schools, special schools and special educational needs coordinators, in order to give them a clear understanding of how they educate children about their rights. That is where it must come from: it needs to come from the system as much as from a parent. That is the starting point. I would not underestimate how difficult that is, but it is really important.

9.50 a.m.

[31] You then have the difficulty—and this is why you almost inevitably go towards this, with the need for another third party to be brought in here—as to if parents make appeal against a refusal to make a statement, provided that you put eliciting the child's view at the front end, it is all one simple process, because that evidence comes to the tribunal. By putting it right first, some of these questions get resolved. If we went with what is currently fairly loose guidance about eliciting the view of a child, I think that we would get into all sorts of difficulties, as your question implied.

[32] **Helen Mary Jones:** In her evidence to us about this, the Minister outlined that this was a legal provision that does not have to be used and that such potential circumstances could be identified during the pilot phase. Do you envisage any circumstances in which regulations might be required that precluded a child from appealing? There is a specific clause in the proposed Measure that gives Ministers the right to do that through regulation, which has been a matter of concern for this committee.

[33] **Mr Provis:** There comes a point where we would have to be careful that there were no perverse appeals, so that the child was being loaded repeatedly. One can imagine that that could happen. There needs to be just that caveat that states, 'you cannot keep doing this through the child'.

[34] **Helen Mary Jones:** Obviously, that would be something that would need to be addressed in individual cases. However, as the proposed Measure currently stands, Ministers have the right to exclude categories and groups of children and young people from the right to appeal. Would you have a view about that?

[35] **Mr Provis:** If it is a principles-led Measure, it needs to be inclusive. It is difficult to imagine who you would debar from it. To widen it slightly, we do hit an issue where, for instance, the prison population is made up of around 70 per cent of young people who have unidentified needs by the time they are incarcerated. They lose their entitlement in secure settings. There is something about maintaining that entitlement through a secure setting. It is a slightly worrying issue but that might be a vulnerable group that is different in some way.

[36] **Helen Mary Jones:** It might end up excluded by default.

[37] **Dr Llewelyn:** It seems that there is a lack of clarity on that issue as far as the proposed Measure is concerned. I was looking at some of the evidence and discussion that you have had and there seems to be ambiguity. There does not seem to be the clarity in terms of whom and why.

[38] **Helen Mary Jones:** Thank you. You have touched on this issue, Mr Provis, but how could the proposed Measure deal with circumstances where parents and children both wanted to exercise the right to appeal? Is this something that should be tested through the pilot phase, or is there something that needs to be set out?

[39] **Mr Provis:** It needs to be tested in a pilot phase. Will you run them in parallel, at the same time, or put parents through the trauma of two meetings two months apart, two formal issues, two formal tribunals, two formal outcomes and so on? It takes an awful lot of emotional energy for a family to drive two such big events. In some way, it would be good to see them brought together, if it can be done.

[40] **Helen Mary Jones:** If those appeals are conflicting, would you have a view about who should have the overriding right of appeal, or do you think that that would be something that the Government should address, perhaps through regulations after the pilot phase?

[41] **Mr Provis:** If I may, I will move that slightly and come back to that point. There is an interesting issue where, for instance, the local authority is the corporate parent. Do you see what I mean? That third-party service issue becomes paramount there, because we would be appealing against one of ourselves, against ourselves, and then the child would be appealing. It gets quite complicated and messy. We would need to almost walk through that scenario in the pilot phase to see how to make this family-friendly and accessible to people, and how not to create a Measure that will only be used by an elite group of people. That would be my anxiety about it.

[42] **David Lloyd:** Mae'r cwestiynau **David Lloyd:** Janice has the next set of nesaf gan Janice. questions.

[43] **Janice Gregory:** I will move on to section 2, which is about the notice and service of documents. Given the varying needs of children with SEN across a wide range of age groups, how do you think that the requirement to give notice and serve documents can be delivered in practical terms to ensure that the individual needs of children are met?

[44] **Mr Provis:** If we are to be formally asked to consult and seek the child's view, and we put this at the front end of the process, then it all starts with how the child communicates, and the level at which he or she communicates and understands. We will be dealing with some children and young people who are communicating at primary preference level, and perhaps not much more than that: 'I like it loud', or 'I like it quiet', or soft or hard. Do you see what I mean? It will be that level of communication. Those young people will be embraced by this proposed Measure.

[45] In my experience of working with young people like that, I have always had to work through a familiar person who is working with that child on a regular basis—be that a family member or a teaching assistant in a school setting. It is always mediated communication that you get anyway, in cases of extreme need; someone is having to articulate it for you. The requirement to do it is healthy, but you are reliant upon that communicator, and that has to be factored into the Measure—how we do that, and how we do that well.

[46] Some authorities have looked at person-centred planning and trialled it. It would need a lot of development to take it to the point where it was helping the child to articulate its future preference. At the current state of play, it is their primary preference, and a lot more development is needed for it to be robust. Let us say that a cognitively needy child at 14 is planning for their adulthood; a lot of development would need to be done to get to the point where we could do that well. I think that we should have to do that, but it is a developmental path rather than something that is already there.

[47] **Janice Gregory:** On the serving of notice documents to parents, can you expand a little on the implications for LEAs if they take on that additional duty?

[48] **Mr Provis:** It goes back to an earlier point in that, currently, the legislation requires us to send out formal notice documents. In Torfaen, where we have a high level of literacy

need, many of those documents would stay on the doormat. They have to be followed up by a visit. Meeting the statutory requirement is a minimum; it is just not good enough, because it does not give entitlement and opportunity to people. If that is true for the parents, where you may have multigenerational literacy needs, and then you have a child with additional learning needs, there will have to be a visit, which involves time and expense. In a sense, that does not matter—we would have to accommodate that in some way, and work out how to do it, but it would have to be done in discourse with a child. You could not do it by formal notice.

[49] **Janice Gregory:** I move on to sections 3 and 10, which deal with case friends. In the Minister's evidence, which I am sure that you have read, she outlined that the proposed Measure would not allow children and young people to choose to appeal or make a claim, with the assistance of a case friend or any other representative, without parental consent. What would be the implications for the child in progressing their appeal or claim?

[50] **Mr Provis:** Can I make a personal declaration? It will make my answer more honest. I am pro-inclusion. Special needs and disabled children have the same rights of participation as the rest of us. However, for some parents, that is a long journey, because they start in a highly protected milieu with a vulnerable child, and doing inclusion properly is expensive and difficult, and society is not tooled up to do it properly everywhere. So, there is a journey going on, and we have to take people with us.

[51] In a year's time, we will open a brand new disability-adapted mainstream school that will host most special needs, and the one coming after that will host all special needs. However, it is a great step change for a parent to understand that that can be made to happen. You hit a tension there; if a child has been at a mixed playgroup, including some children with special needs, and wants to remain with that group, but the parent wants them to go to a closed setting. I think that there is an issue there, and this proposed Measure comes right up against that. Formalising it will not be simple. I will walk away from giving an answer, if that is all right, because I would like to work through it some more. It is difficult.

10.00 a.m.

[52] **Janice Gregory:** On the appointment of case friends—and case friends are in the proposed Measure—you have given us a practical example, but I wonder about the practical issues and any barriers to implementation arising from the appointment of case friends. There are many things that we can think of, of course. Could or should any of the potential issues or barriers be addressed in the proposed Measure?

[53] **Mr Provis:** I think the question sits within a broader context really. In Wales, we have an ambition to develop a well trained workforce, but our teaching assistants, who support some of the most vulnerable children are relatively untrained and underdeveloped in those skills. Therefore, in a sense, we are talking about a third party coming in, who is going to need to be trained to a high standard. However, they are going to need to be trained only to the same high standard that everyone else should be trained to anyway, if you see what I mean. I would like both questions to be put if we could. Is that okay?

[54] **David Lloyd:** Yes, that is fine.

[55] **Janice Gregory:** Staying with case friends, do you think that regulations should require child protection checks?

[56] **Mr Provis:** I am lead director for children and young people, so I have no option but to answer 'absolutely' every time. We also need to look at frequency in relation to that, because we are talking about the most vulnerable young people, who may not be able to articulate that something was wrong in the contact they had—that something was not right or

was inappropriate. Therefore, the protection levels need to be ramped up here.

[57] **Janice Gregory:** Your answer is no surprise to me or anyone else around a table, I must say. Clearly, it must be done and it must be done properly, so have you given any thought as to which agency should undertake these checks? I also take your point that these checks should be done regularly.

[58] **Mr Provis:** Despite all the incidents and all the failures in systems that have been highlighted, in my authority, we are still having to drive home the issue that this applies to volunteers. This applies to people you know who come in on a regular basis. We still have a long way to go on getting that deeply embedded in our culture. The Assembly is doing all the right things, and the message is being sent out, but it still needs to be driven further and more firmly. Criminal Records Bureau checks are essential. However, there is another issue: with regard to trying to elicit a child's view—and I have worked with a whole range of needs—different technical skills are required to elicit a hearing-impaired child's view, as opposed to an autistic child's view, as opposed to the view of a child with severe learning difficulties. So, how do you get a skilled group to be able to do all of this? Then, the issue that goes beyond that, which again is operationally challenging, is how you get proper supervision and development of those people. Therefore, it is not just about training, but about the ongoing supervision of their work. I think that that would need to be built into the requirement on practitioners—they would have to go for supervision, much like a social worker has to.

[59] **Janice Gregory:** In his written evidence, the children's commissioner stated that children might be likely to choose a teacher to act as a case friend. Do you see any conflict of interest for the teacher or any implications for the local education authority should this be the case?

[60] **Mr Provis:** In a sense, in the world of special educational needs, teachers would accept that as a prescribed role, but I can imagine some teachers not wanting to do this, so there is an issue there. We would hit a wider issue in the development of this field, which is where we look at the role of the key worker, the person who is most in contact with the child and family, and at the role of the lead professional, the person with legal accountability. So, which of those two roles are we prioritising for getting this job done? I think that the lead professional would be charged with ensuring that the child's view was accessed, heard and understood. In most instances, it is likely to be the key worker who does it, and, in truth, in most instances, that is a teaching assistant. So, working through some casework examples, you hit a tension. We have had conversations with parents in which they have said that, although they know that we have said that a certain person is the key worker, that person is not the key worker they want for their family. Therefore, you come to the issue of whether parents can nominate a key worker, and we hit all sorts of problems. Generally, we say, 'No, you cannot'. Unless that can be grounded in a particular objection about an incident or a piece of mismanagement, we would have to say, 'No, there are employment rights here too'. So, one thing is bumped up against another in how this works through.

[61] **Christine Chapman:** I want to move on to sections 4 and 11 on advice and information. Those sections require local education authorities to arrange for children with special education needs or disabled children as well as their parents to receive advice and information about matters relating to their needs. What types of support do you think should be given to children and young people to ensure that this is achieved, and are there any practical implications arising from this?

[62] **Mr Provis:** It sounds like I am a postpone, postpone, postpone man, but in a sense, some of the things that we are doing in Wales are really good. We are about to embark on early years support, which empowers families. It is coming into Wales now, and it has a two-year development track almost sitting alongside, trialling a new approach to meeting statutory

need. Early years support is about securing the parent's voice and empowering parents and enabling them to challenge the process to ensure that their child's needs are understood and met. So, I think that we are going to see a step change at the bottom of the system that is going to work through, and we will have more rights-aware parents coming into schools and the education system. I welcome that, because the system needs to be challenged by everybody as opposed to just being challenged by a small group. Again, I would like to see the impact of that over the next two years and test whether it really empowers those parents. If we find that it does, we will be in a changed position, and we will know that within two years. So, there is another really useful piece of information coming our way in this context.

[63] **Christine Chapman:** In your evidence, you state that it is challenging to imagine how local authorities would inform children of their right of appeal in a consistent way that would be objectively defended under judicial challenge. You also state that, without a clear evidence base, there is a risk of unintended consequences coming from this legislation. Can you provide more information about what those consequences might be?

[64] **Mr Provis:** I will take an example from the realm of psychology. My personal practice would always be to assess a child's needs in the presence of the parent, because that is a vulnerable child and there are things about which a parent may want to cut across me and say, 'That's not appropriate', but other people do not do it that way; it is just a personal preference. If someone tried to assess my child without my being present, there would be hell to pay. I would expect to be present when that assessment is made. If we assess Daisy here and come up with a view of her that the parent is not comfortable with, the parent is going to go out and pay for another opinion or secure a second opinion. You then already have a tension between these two measures of a child's competence and capability. If someone who is a paid—and hopefully an objective—professional says, 'The child is functioning at this level', that guides your communication with that child. So, explaining to the child what his or her entitlement is has to be level with the child's level of understanding. If someone comes behind that and says, 'No, actually the child's level of understanding is up here', or, 'The child's level of understanding is down there', you should have reshaped your communication. That is another practical, operational thing: how do you create legislation that takes proper account of that? I do not think that it is simple. I think that it can be done—I am very positive about the idea—but let us get it right, rather than have to tidy up afterwards.

[65] **Christine Chapman:** I will move on to sections 5 and 12, which are to do with the resolution of disputes. The proposed Measure will place a duty on LEAs to reconfigure their existing services or arrangements to take into account children's appeal and claim rights. How do you think this short-term arrangement will work as part of the pilot project?

10.10 a.m.

[66] **Mr Provis:** If you do it from the front end and partner with the child and parent and that is properly tested, by the time you come to a dispute, you all know and understand that there is a dispute. Personally, my way of expressing that to parents is to say, 'We just need a referee. We just need to think differently about it; it is not win or lose, and we are not head-butting each other. Let us just have a conversation with an arbiter to tell us what the answer is'. When we paid for a disagreement resolution service collectively—21 local authorities in Wales commissioned a disagreement resolution service—it went unused. It went unused because by the time that you come to the point of understanding that you disagree, parents want a third-party referee. It is parents who did not take up the entitlement, even though we offered it, and I completely understand that. If you are trying to actively partner and it is not going to work because you have such divergent views, stay friends, stay close, stay partnered, and go and get help from the tribunal. Frame it in that way. Introducing some sort of intermediate layer looks, to parents, like a delay. It looks like you are postponing and making them go through another step. Some parents would be very cynical if we tried to force it on

them.

[67] **Christine Chapman:** In your evidence you state that, given that SNAP is now the parent service provider, a new provider may need to be commissioned to supply the service for children in order to secure confidence regarding independence. Can you provide examples of where such independence might be compromised?

[68] **Mr Provis:** Denise will probably have a very strong view and slaughter me for saying this. In a sense, SNAP is a tremendous organisation; it does great work for us in relation to our partnership with parents, and in giving parents confidence that they have someone who can test and challenge us as to whether we are partnering with them. It is a really robust organisation, which is doing that job. However, this job has to be done with a child-oriented approach: you are advocates for children. There is an issue about separation, in order to make it transparently child centric. That is what the evidence was alluding to, really. In a sense, we turn to SNAP, because it does so well and it is so good. I would endorse it at any time. However, there is a transparency issue here, so that we are not talking to an organisation that we commission. There may be a third player, who is not the person that works for us, but who comes from another authority. However, it is not clean enough in terms of proper due process.

[69] **Helen Mary Jones:** I want to refer to sections 6 and 13, which are about independent advocacy. It follows on neatly from what you have been saying. I will ask my second question first if I may, Chair, as I think that it follows on from the point about independent advocates, that is, who we will commission to be these advocates. The proposed Measure places a responsibility on children and young people's partnerships to lead the commissioning of advocacy in line with the new national model of advocacy provision. It will not be any surprise to you, knowing the views of the Children and Young People Committee, which I chair, that we are worried about the level of independence that that provides and, going back to what you just said, Mr Povis, about whether we should really be getting the children's advocate from an organisation that the local authority pays for.

[70] In your view, will this measure on commission advocacy ensure sufficient independence, given that the authority itself will be defending the appeal and that, although the commissioning will be through the children and young people's partnership, in reality it is the local authority that will be commissioning the advocacy services? The same set of issues comes up with looked-after children, for example.

[71] **Mr Povis:** I understand that point about objectivity, but whoever you commission it from—whether it is commissioned locally or by a consortium, and I think that it would be a more sensible model to have it commissioned at by local authority consortia, because you have people working across authorities and who will therefore not have that local identity, which gives some protection of objectivity—the key thing in respect of commissioning is to define the remit of the organisation very clearly, and to insist that it is developed to a level at which it can do this properly. There may be an opportunity in relation to the pilot projects, as they could test the commissioning of that. There is a window of opportunity; try it. It would probably take six months to get to the take-off point, but you can trial some of this and therefore have a rich evidence base upon which to legislate.

[72] **Helen Mary Jones:** My concern is that the evidence base from children and young people has been ignored so far, and when young people tell my committee things such as, 'I cannot really trust my advocate because, in the end, she works for the same people as my social worker,' I do think that we need to begin to listen to that. However, that is not a matter for you; it is for the Assembly Government.

[73] With regard to how the advocacy service might be accessed, historically two thirds of

all special needs appeals concern children of primary school age. You have also talked, very rightly, about capacity issues and young people who have problems communicating. Would you expect the tendency for it to be children of primary school age to be replicated in child-led appeals? Would we still expect it to be primary school-aged children making those appeals? If so, what do you think are the implications of this situation on the nature of the advocacy that would be provided? In a way, you have touched upon this by saying that you would need people with specialist skills.

[74] **Mr Provis:** We are also facing another challenge, which this unpacks and opens up as a question. We have had the special educational needs legislation, which has given parents the right to secure inclusion, to secure a preferred place, and so on. It is working, to a degree. It has got a bit stuck in that it is paper-heavy as opposed to action-heavy, but it has worked. If you think back to 1980, it has transformed. It is so much better and so much healthier. Where I think that we have a difficulty—it is self-evident—is that primary schools can become inclusive, and you can get a comprehensive school to become inclusive and then, at the age of 19, the young person falls off the end to somewhere where an inclusion culture does not exist. In a sense, you would be planning for young people like this through to the age 25. Their adolescence is well through to the age of 25. So, there is another technical issue there. If I am a disabled young person, and have been included and I have been with friends right up until the age of 19, there are people on my street who know me, greet me, treat me well and understand me, and then suddenly my next option is a training centre, with people up to the age of 60, I am not being ageist, but that is an awful, traumatic change. There is an opportunity to ask whether we should take this up to the age of 25 and does that, therefore, shift where the advocacy comes in? I think that advocacy is needed there. A step-change in service awareness about inclusion needs to be addressed.

[75] **Helen Mary Jones:** That is interesting.

[76] **David Lloyd:** Peter Black sydd â'r **David Lloyd:** Peter Black has the next questions.

[77] **Peter Black:** Following on from that, in terms of SEN appeals relating to children of primary school age, what are the implications for the proposed Measure in ensuring that children of that age can meaningfully participate in tribunals?

[78] **Mr Provis:** I do not think that they can. Many of them cannot actively participate. You can secure their evidence, and we are now using technology in many ways to secure children's evidence and views, filming and so on with consent. Many children would find it awful and truly challenging. You can see that from the current position on reviews, where young people have an entitlement to come into reviews and express their view. In my experience, even in the most inclusive school, children come and express their view, but do not want to stay. So, even with a group of familiar people, they can be coached, they can be enabled and you can lift them up to come and say what they thought about school this year, or communicate at a fairly core level what they have experienced, but the step-change to go to a group of strangers is huge.

[79] **Peter Black:** The SEN Tribunal for Wales, in its written evidence, stated that the tribunal has seen an increase in the more complex types of appeals. The concern here is that we are giving a right to children that they may find difficult to exercise because of that complexity. Do you have any views on that?

[80] **Mr Provis:** If we start at the front end of it, you come up against the issue of whether a child can give informed consent to whatever it is that happens to them. Legally, that rests with the parent for most of these children. So, even if they are in their mid-teens, where, in other areas of activity, young people can give consent, these young people probably cannot.

That is what this is walking into: that tension with regard to the parents still being the ultimate arbiter. That is what we have to face in this. That is the challenge of it. So, in that sense, the issue is how you carry that from informed consent to informed opinion.

[81] It has taken a long career for me to have an overview of all of the options available to children and young people. So, how does a child get to know what choices are available to them when they are cognitively challenged? This is hard, so getting this into the child's voice, at a child's level, in such a way that we have a proper, informed statement of the child's opinion, is a skilled task.

10.20 a.m.

[82] **Peter Black:** Do you think that it is possible?

[83] **Mr Provis:** Yes, but it is a long development task. I would not underestimate the difficulty. Anyone who says that this could be up and running within 18 months or two years is a better person than I, because of the complexity of this field. It must be given due gravity. We must not do this trivially, but properly.

[84] **Peter Black:** That takes us on to the pilot schemes. Given the relatively small number of parental appeals, do you think that the pilot schemes will provide sufficient evidence to allow for a full roll-out?

[85] **Mr Provis:** It will not provide comprehensive evidence, because the pilot schemes are relatively small and we are talking about a relatively small population. However, they will give you casework examples from which you can extrapolate operational disciplines, principles and practice. You need to transplant what is learned in one area to another area of need and ask what the implications are. If something has happened, for example, with an autistic child, what are the implications of that? What learning do we take across when working with another communication-needy child? So, I do not think that you will get a comprehensive outcome in that you will cover and understand it all, but I think that you will get a fairly robust set of exemplars, on the basis of which you can say, 'We can build a code and regulations that are consistent and that make sense'.

[86] **Peter Black:** In your written evidence, you say that if the proposed Measure is not based on clear evidence, then it has the potential to do 'immense harm'. Can you clarify what you mean by that?

[87] **Mr Provis:** I would like public sector money to be spent on meeting children's needs and not on officers' and headteachers' time in appeals processes and, ultimately, court proceedings. I would rather that the money were focused on meeting needs. If we create gaps in this process, we will all be taken to tribunal and, beyond that, we will face wider legal challenge, which is hugely costly. We can avoid much of that if we get it right at the front end. That is what we were trying to say in our written evidence.

[88] **Peter Black:** So, do you think that the proposed Measure is missing the point?

[89] **Mr Provis:** No. I think that the proposed Measure needs to be within the context of wider change to put everything right.

[90] **Dr Llewelyn:** May I add to that, Chair? We know from other Welsh Assembly Government initiatives over recent years that the better and fuller the evaluation of the pilot schemes, the more successful the roll-out is likely to be. The issues dealt with here are particularly complicated and have quite significant implications and ramifications. While it is important in every instance to evaluate pilot schemes fully, in this case, it is absolutely

essential.

[91] **Ms Seabourne:** Mark has already mentioned that we should consider linking the pilot schemes for this proposed Measure with the pilot schemes on statementing that are about to start. They are essentially tied up in the same issue, because the danger is that we will be back talking about another piece of legislation when we have completed the pilot schemes on statementing.

[92] **Helen Mary Jones:** I wish to briefly explore the reference to ‘immense harm’. That is a very serious term to use, Mr Provis. What you described sounded to me more like a waste of resources and a bit of a nuisance. ‘Immense harm’ is strong language to use. It would be worth getting on the record what exactly you mean by that, because you will not have used those words lightly.

[93] **Mr Provis:** It is that the child is left in a waiting room, with anxious parents who want something else, and the child possibly wanting something else, a judicial process takes over and everyone is hanging in limbo for 15 months. That is on top of the parent having to deal with the child’s needs every day. That is what I mean by harm. Parents need confidence and assistance and certainty of outcome and they need to be able to make a quick challenge within a framework that they can see and understand. If it has holes in it, the case will go to court, which is where the harm will come about. It is about delay. Does that make sense?

[94] **Helen Mary Jones:** That makes a lot more sense than it being about it costing a lot of money.

[95] **Mr Provis:** I am sorry that we did not express it better.

[96] **David Lloyd:** Mae’r ddau gwestiwn **David Lloyd:** The two final questions are olaf yng ngofal Janice Gregory. from Janice Gregory.

[97] **Janice Gregory:** As you know, we have had written and oral evidence from the Special Educational Needs Tribunal for Wales. In its written evidence, the tribunal states that its decision and order is legally binding. It goes on to say that, where the decisions are not implemented, the tribunal does not have any powers of enforcement and there are currently no formal mechanisms for dealing with such issues. Do you have any evidence on the extent of the non-implementation of tribunal orders?

[98] **Ms Provis:** I cannot conceive of an instance in which that would happen. If a tribunal has told you, as a senior officer in authority, to do something, I cannot conceive of anyone saying that they will not do it. If someone has an example, I would like to hear it, but if you reach that stage and decide not to do what you are told to do, it is time to wake up, smell the coffee, and go off to do something else.

[99] **Janice Gregory:** That is good news, but does every witness feel as you do? Should there be a strengthening of the tribunal’s powers of enforcement?

[100] **Mr Provis:** To widen the context for you, the legislation places a duty on overview and scrutiny committees to check that this is happening. There is a device by which you can bring it before the parents’ advocates, namely the members of the local community. You could build that in so that they would test that within the system. That would be very healthy, and would not mean a challenge for local authorities.

[101] **Janice Gregory:** One issue, if I remember rightly, is not the fact that tribunal orders are not being implemented but that they are not implemented within the prescribed timescale. I am sure that you would comply with such an order 100 per cent if you were ever issued with

one, but should it be included, in case orders are not implemented within the prescribed timescale?

[102] **Mr Provis:** Absolutely. There must be a time horizon. I just mentioned immense harm, and if that applies to a judicial case, it has as much relevance to a tribunal finding. If parents have won and got a result, they will want to see that translated into action. So, I do not think that it is an impediment for local government more widely to be given a timeline for that. I just do not think that it is problematic.

[103] **David Lloyd:** Diolch yn fawr iawn. Byddwch yn falch o glywed mai dyna ddiwedd y cwestiynau i Gymdeithas Llywodraeth Leol Cymru. Diolch i chi am eich cyfraniadau a'ch atebion cynhwysfawr. Bydd y clerc yn anfon trawsgrifiad drafft o drafodaethau'r cyfarfod er mwyn ichi gadarnhau eu cywirdeb. Yn naturiol, nid ydym am ichi mynd i'r cwrw hanes a newid pethau, dim ond cadarnhau eu cywirdeb. Bydd wedyn yn bwydo i mewn i adolygiad y pwyllgor. Diolch eto am eich cyfraniad.

David Lloyd: Thank you very much. You will be pleased to hear that we have reached the end of our questions to the Welsh Local Government Association. Thank you for your contributions and for your comprehensive answers. The clerk will send a draft transcript to you so that you can confirm its accuracy. Naturally, we do not want you to rewrite history and to change things, only to confirm the accuracy of our proceedings, which will then feed into the committee's review. Thank you again for your contribution.

[104] Disgwyliwn yn awr am ein tystion nesaf.

We will now await our next witnesses.

10.30 a.m.

[105] Galwaf ail ran y cyfarfod hwn i drefn. Yr ydym eisoes wedi cael tystiolaeth gan Gymdeithas Llywodraeth Leol Cymru am y Mesur addysg anghenion arbennig arfaethedig, ac yr wyf yn awr yn croesawu at y bwrdd Denise Inger, prif gyfarwyddwr gweithredol SNAP Cymru, Lindsay Brewis, rhiant aelod o SNAP Cymru, Keith Towler, sydd yma'n wastadol fel Comisiynydd Plant Cymru, a Peter Hosking, swyddog polisi yn swyddfa Comisiynydd Plant Cymru.

I call the second part of this meeting to order. We have already taken evidence from the Welsh Local Government Association on the proposed special educational needs Measure, and I now welcome to the table Denise Inger, the chief executive director of SNAP Cymru, Lindsay Brewis, a parent-member of SNAP Cymru, Keith Towler, who is here regularly as Children's Commissioner for Wales, and Peter Hosking, a policy officer in the office of the Children's Commissioner for Wales.

[106] Mae nifer helaeth o gwestiynau wedi'u paratoi o flaen llaw a byddwch wedi clywed y trafodaethau cynharach. Gobeithiaf y bydd y cwestiynau a'r atebion yn gryno neu byddwn yma drwy'r dydd. Yn ôl ein harfer, y Cadeirydd sy'n gofyn y cwestiwn cyntaf, sy'n un cyffredinol am y Mesur arfaethedig. Yn eich barn chi, a oes angen cyflwyno deddfwriaeth i ganiatáu'r hawl i blant wneud apeliadau a hawliadau i Dribiwnlys Anghenion Addysgol Arbennig Cymru? Os felly, pam?

We have prepared a vast number of questions to put to you, and you will have heard the earlier discussions. I hope that the questions and the answers will be succinct, or else we will be here all day. As is our custom, the Chair asks the first question, which is a general question on the proposed Measure. In your view, is there a need to introduce legislation to allow children to have the right to make appeals and claims to the Special Educational Needs Tribunal for Wales? If so, why?

[107] **Mr Towler:** Yes, there is a need for legislation. It is a child's right. Article 12 of the United Nations Convention on the Rights of the Child applies, which you would expect me to say. In addition, article 13 on information and children and young people receiving

information and understanding the process applies. Therefore, the requirement for legislation is pretty clear to me.

[108] **Ms Inger:** I fully agree with Keith, but I believe that the involvement and engagement of young people is best achieved by speaking to them, because they have a lot to offer and we need to get better at listening to children.

[109] **David Lloyd:** Grêt. Mae'r gyfres **David Lloyd:** Great. The next set of nesaf o gwestiynau gan Christine Chapman. questions comes from Christine Chapman.

[110] **Christine Chapman:** Do you have evidence that children and young people want the right to appeal to the tribunal?

[111] **Mr Towler:** Yes. I will ask Peter to answer that.

[112] **Mr Hosking:** We run an advice and support service in our office, which young people do use—largely because it is the only place they can phone to get such advice. We know of a young person with cerebral palsy who needed a communications device that was not forthcoming from the local authority. He wrote to us, although he could easily have written to the tribunal. In fact, his parents had been to the tribunal but it had not awarded the communications device. However, if that young man, who wrote and spoke to us, had been present at the tribunal, I am fairly certain that it would have seen his potential and found in his favour.

[113] On disability, we had a young girl aged 10 phone our office because she was in a wheelchair and had to go to school half an hour after and leave school half an hour before her friends. She saw that as disability discrimination, although she did not use those words. We spoke to the school and found alternative arrangements that suited everyone. However, in that case, the parents were happy with the original arrangement because they felt that their child was being protected by it, and the school did not see the need for change, but the young person did. So, there is a need for children to be able to raise their voices independently of their parents.

[114] **Christine Chapman:** You have given some really good examples. What about the ages of children? Do you have any comments on that? Do children of various ages contact you or is it just one group?

[115] **Ms Brewis:** The youngest child who has phoned me in my position at Scope—and, although I am vice-chair of SNAP Cymru, I am the head of early years in Scope—was seven years old. She phoned up our helpline to ask for someone to go into her school to try to effect change. Again, that was a child who had a statement but it was not covering her needs and she wanted to challenge some of the practices there. That is the youngest independent child whom I have dealt with, and she was very clear about what she wanted. Her mother was highly embarrassed that she had done that. In fact, there needed to be quite a bit of parent support before we could support the child. We needed to help the mother to understand that her child could have a different view. She was thinking that it was best not to rock the boat, and best not to go into school and change things because the school had accepted her, so it was all right. However, it was not all right for the child. So, if they are given a voice, very young children can express views that are different from those of their parents, and which might modify their parents' views once they are out in the open.

[116] **Christine Chapman:** What types of implementation issues do you anticipate in creating a universal right of appeal and claim for children that does not take into account their age and capacity?

[117] **Ms Inger:** Again, that is a difficulty for us as professionals. Yes, we will be challenged when it comes to deciding how best we can support children, particularly those with communication needs, but that is the change that we have to make. We have to get better at that. The main issues will be about public awareness for professionals and children and young people to effect change. I think that the biggest implementation issue that we will have is moving forward and saying that children do have rights, we must listen, and we must consider their wishes and feelings in addition to their needs. Within education, we look at needs and the evidence of needs, but we first need to consider the emotional wellbeing of children and look at their wishes and feelings, and deal with those even if they do not correlate with their needs. For that reason, I think that this proposed Measure is correct.

[118] **Christine Chapman:** In its evidence, the WLGA states that there is clearly a need for an ad litem service or similar to provide an objective third-party view of individuals' views and how grounded in reality they are. Do you agree with that?

[119] **Ms Inger:** I can see that there may be a need for a guardian ad litem if there is conflict between the parent and the child. However, what is needed generally is impartial, evidence-based, objective advice and support. Merely having an independent view allows you to disassociate yourself from the issues; it is the impartiality that is important, not the independence. It is about being impartial, objective and looking at the evidence and considering the wishes and feelings of the child. Saying that, where there is conflict—and despite all the efforts of organisations such as SNAP Cymru, it is not new for us to deal with differing views and conflicts between families—the tribunal may find that it has three different views. There could be one from either parent as well as the child's, so it is about looking at the ethos of the practice and maintaining impartiality.

[120] **David Lloyd:** Keith, do you have any other views there?

[121] **Mr Towler:** I have just a couple of points. One thing that we have been thinking through is the flexibility of tribunals. They will have to think about how they behave to make this happen. Dealing with children with communication difficulties and who might have all kinds of different ways of communicating means that tribunals will have to be much more flexible. So, there are some very practical things for tribunals to take on board, including a range of advocacy services and providers to support children to get their wishes and feelings across. That could be quite challenging.

[122] **Mr Hosking:** Is the suggestion for there to be a third-party, objective view an opportunity to dissuade the child from making an appeal? If we do not have that for the adults who make an appeal, why are we suggesting that we have it for children?

10.40 a.m.

[123] **David Lloyd:** That is a useful question for the Minister next week, I would suggest. *[Laughter.]*

[124] **Christine Chapman:** Is there any evidence that the proposed Measure might result in parents seeking to use their children to make proxy appeals, in order to access advocacy support or funding?

[125] **Mr Towler:** Possibly. I wonder whether that matters, actually. If an appeal is not going to happen, for whatever reason, and if that should happen by proxy, I would feel quite relaxed about it if the result is a tribunal that takes in the best interests of the child.

[126] **Ms Brewis:** I can see a scenario in which there would be concern, but it is not so very different from what happens now. Parents can already manipulate children's wishes,

regardless of whether they are going through a tribunal. They may see that they could, somehow, garner more support for their case by getting their child to put it up, but having talked about it with colleagues in SNAP Cymru, we feel that that is a role for a family partnership service to ask, ‘If you are in favour of the appeal, why is the child making it and not you? Don’t you realise that you can access support, and the child could still get advocacy?’, and it should just go through those issues with them to try to resolve them. In fact, if the parent and the child are in agreement, then I agree with Keith; it does not matter who takes it forward.

[127] **Christine Chapman:** The explanatory memorandum states that the proposed Measure has been introduced as part of a suite of initiatives aimed at increasing child participation in decision-making processes relating to tribunal appeals and claims. Given that these initiatives include a review of the current tribunal regulations and a partial revision of the SEN code of practice for Wales, do you think that the introduction of the proposed Measure is timely, and if so, why?

[128] **Mr Hosking:** I think that it is timely. We made the original proposal in 2005, and the current reorganisation or re-evaluation of SEN processes was not happening then. We are aware that a lot of changes are afoot in SEN, but you have to start somewhere. Having the ultimate right of appeal at the top of the process has already begun to focus people’s attention on how to involve children and to allow them to participate at much lower levels. In the years that we have been discussing this with professionals from around Wales, we have seen a change in attitude. That change in attitude will come through when the SEN code of practice is revised.

[129] **Ms Inger:** I agree entirely with what Peter said. It is a shame that the code of practice, as guidance, did not improve children’s engagement and participation in the decisions that affect them. Having said that, there is good practice in Wales, but it is very much a postcode lottery, to say the very least.

[130] I think that this proposed Measure will be used as a lever—it will show people that this is important and that it is what we expect.

[131] **David Lloyd:** Symudwn yn awr at **David Lloyd:** We will now move to William Graham.

[132] **William Graham:** The proposed Measure would allow for a child to appeal against a refusal to make an assessment of their educational needs at the request of the child’s parent. However, the child is not able to request an assessment of their needs on his or her own right. Do you have a view on whether the proposed Measure takes into account this potential anomaly in the rights of the child to then make an appeal, and if it does not, should it?

[133] **Ms Inger:** I believe that the proposed Measure needs to go as far as the child requesting a formal statutory assessment.

[134] **Mr Towler:** I would agree with that.

[135] **William Graham:** It gets slightly technical now. Section 1(4) of the proposed Measure states—

[136] **Mr Towler:** This is where I hand over to my colleague. [*Laughter.*]

[137] **William Graham:** Of course. Section 1(4) states that Welsh Ministers may provide, by regulation, for circumstances in which a child may not appeal. In her evidence, the Minister outlined that this was a legal provision that does not have to be used and that such

potential circumstances could be identified during the pilot phase. Do you envisage any circumstances where regulations might be required that preclude a child from appealing, and is there potential for excluding groups of children with specific needs?

[138] **Mr Hosking:** I think that it was put in for thoroughness, and to be changed later. Obviously, we will be learning from the pilot phase. I can envisage that, in some cases, it may not be wise to allow certain children to appeal. For example, there would be no point in allowing a child in the secure estate to appeal against a placement. There would be possible child protection issues for some looked-after children to appeal against the contents of their statement. We need this provision to allow for what we might learn from the pilot phase.

[139] **Ms Inger:** I am not quite sure that I would agree. The access to the tribunal is about the issue. The issues are the same whether it is a child or a parent that is appealing. Although I understand what Peter has said, I believe that the tribunal can hear what the child wants to say at that point, bearing in mind that I do not think that many should get to the tribunal, because we should be doing our work with children and young people beforehand. Nevertheless, I am not entirely sure that we agree. We have not really thrashed that one out. I may be misunderstanding slightly, but I am not quite comfortable with saying that there is a reason to preclude a child from appealing. That might give out the wrong message. Either a child has a right or not. The tribunal is based on legislation. There are only certain issues that you can appeal against as a parent; the same applies to a child.

[140] **David Lloyd:** Do you still want to ask a supplementary question, Helen?

[141] **Helen Mary Jones:** Yes. I am really surprised by Peter's answer. If you look at section 18 of the proposed Measure, you will see that it gives Ministers what some of us feel is a slightly too broad and potentially draconian powers to use regulation to redefine this proposed Measure. We will have further discussions about whether the committee would support those powers. I have a concern about including, right up in the first few paragraphs on something that relates to children's rights, a power that gives Ministers the right to take that away. I do not think that any of us question the intention of our Minister, and she has made very clear that she does not intend to use this right. If she does not intend to use it, the question that some of us have is, what is it doing there? If it stays there, does that not give the right to potential future Ministers, who might take a very different view, to use that very broadly to exclude, for example, whole groups of children and young people with communication needs on the grounds that it is all too difficult and we do not really know what they are thinking in any case?

[142] **Mr Towler:** That is very interesting. Without challenging the view of my colleague, I confess that I had not thought of that. Therefore, in terms of the issues that you have outlined, let us ask questions about why it should be there.

[143] **Ms Brewis:** When the matter of who should have the right to appeal came up, I had concerns about children appealing without an understanding that they might not get what they want. I see this as a role for the case friend to explore and to take time to make a child understand that sometimes you get things and sometimes you do not. Even very young children who develop mentally at two years old can understand that sometimes they get things and sometimes they do not. I think that it is the role of the case friend, rather than the role of legislation, to help children. Taking what Peter said, for example, you could be in a secure unit and you could appeal that you would like to be in a mainstream school but, in fact, it will not happen. Someone needs to explain that to the young person. If we provide mechanisms of support that are robust and highly professional, we should not need that particular part of the legislation.

[144] **David Lloyd:** Okay. We will have some questions later on case friends.

10.50 a.m.

[145] **William Graham:** How would the proposed Measure deal with circumstances where the parents and the child both want to exercise their right of appeal? Is it clear who would have the overriding right of appeal?

[146] **Ms Inger:** Does anyone need to have an overriding right of appeal? They both have the right to appeal, so they can both appeal. Our experience in practice is that parents sometimes differ in their opinions, and sometimes differ from the child. It requires skilful handling, but you can get through it, and I am sure that the tribunal will manage to hear all appeals together in a single case. That is part of the process of the family getting together. Let us not work towards creating more problems in the family. If it gets to tribunal, and the family is still in conflict, then the tribunal can help us all out, because we have to deal with these issues. The family must be able to communicate afterwards. The process is the same. It is not about having one appeal against another; it is an equal right.

[147] **William Graham:** I have a supplementary question, if I may, Chair. In your evidence, you state that lack of parental co-operation with a child taking the lead in this area can mean possible further mistrust and deeper levels of conflict between families, young people and the services that support them. How could the proposed Measure address the issues that you have raised?

[148] **Ms Inger:** Giving equal access to the tribunal is the right way forward, to ensure that there are resources for work to be completed with children and young people, and within families, because we would expect families to work together, and try to reduce that conflict. There will be some very difficult cases, but those are, hopefully, in the minority. It is about working together on issues like family conference, advocacy for children and so on. The best service would be to reduce conflict, particularly within families, and between the families and the services. After the tribunal, our work does not stop; our experience in SNAP Cymru is that, if you have not tried to reduce that conflict before then, you still have a battle on, and you may find yourself back in tribunal. It is about trying to work within that partnership, and it will be the same process where the child's view differs from the parent.

[149] **Mr Hosking:** One of the concerns is that, if a child exercises his or her right of appeal, it will cause family conflict. However, the plain fact is that, if they are in a situation that they do not want to be in, there is already family conflict, so giving them the right of appeal will not add to that.

[150] **Janice Gregory:** I will move on to section 2, and the serving of notice documents. This question is to Keith and Denise. Given the varying needs of children with special educational needs across a wide range of age groups, how do you think the requirement to give notice and serve documents can be delivered in practical terms to ensure that the individual needs of children are met?

[151] **Mr Towler:** The issue about merely writing to the child—that is just not going to happen. [*Interruption.*] I would not say ‘barmy’, but you might. It would not make a lot of sense. We will have to have a range of communication and, with children, that means face to face communication that clearly informs the child of the opportunities to appeal and have their voice heard. Although the SEN process is an LEA responsibility, I have to say that, in practical terms, it will be people working in schools who will have that task. That needs to be a human, face to face dialogue supported by a range of communication materials—but, nevertheless, a very clear discussion.

[152] **Ms Inger:** I fully agree with that. The first option that springs to mind is the SENCO,

or the ALNCO. It could also happen within the community education centre for children with a statement. What is important is that the proposed Measure ensures that that person is named, and that there is a clear duty upon them. It should be up for discussion with headteachers, other professionals and local education authorities as to who that person may be, but it is important that it is there. I would hope that, as part of that discussion, they would be identifying the case friend and creating a referral system. We need more rigorous referral protocols for children and young people to access specialist support and help.

[153] **Janice Gregory:** You say in your written evidence that

[154] ‘It may well be that the measure should place a specific duty on the school Special Educational Needs Coordinator (SENCO) to check both receipt and understanding.’

[155] I quite understand what you say about that, and it is a particular concern to me. However, do you think that this particular requirement should be included on the face of the proposed Measure?

[156] **Mr Towler:** Yes, I do.

[157] **Janice Gregory:** Denise, you say in your evidence that, for the right of appeal to be enacted,

[158] ‘consideration should be given to specific responsibility to ensuring understanding, better still ensuring access to a case friend.’

[159] There will be questions on case friends after my questions. You have stated that

[160] ‘This duty of responsibility could be placed with the SENCO.’

[161] Should that be included in the proposed Measure?

[162] **Ms Inger:** Yes.

[163] **Janice Gregory:** Thanks for the succinct answers.

[164] **Mr Towler:** I will make it a bit longer then. [*Laughter.*] There may be legal difficulties with placing duties on special educational needs co-ordinators. The duty may have to be placed on school governors rather than on SENCOs, but I am sure that your lawyers can advise you about that. The school governors would then delegate the powers to SENCOs.

[165] **Helen Mary Jones:** I have some questions about sections 3 and 10 and the whole issue of case friends. In her evidence, the Minister outlined that, under the proposed Measure, children and young people could not choose to appeal or make a claim with the assistance of a case friend or any other representative without parental consent. What is your view on that? What do you think the implications would be for the child in progressing their appeal or claim, given what Peter has already said about the fact that the child probably would not be making a claim if there was not already a disagreement?

[166] **Ms Inger:** In the first instance, the child either has the right or they do not. If the child has the right, I refer again to the public awareness and education programme in order that we, as adults, can understand that the child has a right under our legislation, which supports the United Nations convention and so on. That is the first thing: the child has the right. What is important is that we do not move forward without involving the parents. I would be very annoyed as a parent if someone went ahead and contacted my child. It is about involvement and acceptance that the child has this right—it is a case of saying ‘Let’s work

together on this', rather than an issue of whether to act with or without parental consent. Parental consent should not be an issue if a child has a right.

[167] **Helen Mary Jones:** What if the child strongly disagrees with the parents and does not want that level of involvement and wants to take it ahead themselves? Would you then inform the parents that this is going to happen? If the child says, 'Look, I have discussed this with mum and dad until I am pink in the face; they want me to go to a residential special school 500 miles away, but I want to stay with my mates', do they have the right to say that the discussion has already been had and that they will go ahead without their parents?

[168] **Ms Inger:** The child would still have the right to present that appeal to the tribunal, and the child would need support to understand that their parents have an equal right to a place there. It is about working together and using that situation to try again to resolve the issues at the earliest possible opportunity, and to reduce stress and anxiety for the child and for the family.

11.00 a.m.

[169] If we fail—and it will be our failure—the tribunal will arbitrate, and it is about having support for the child or young person and the family, because we have situations where the child's cognitive ability is far above that of their parents, so there are issues. It is about understanding—these are the ethos and values—and it is about trying to resolve conflict, first in families and then between families and services and young people, but the tribunal will be there to arbitrate and to look at that. It is a difficult piece of work, but I do not see it as an issue.

[170] **Mr Towler:** I agree with everything that Denise has said. What strikes me is that you cannot determine best interest—and this goes back to the wishes and feelings point—unless you really understand what the child is thinking and saying. So, when Denise talks about resolution and parental involvement, all that is absolutely true, but the right for the child to be there making those points in the way that he or she wants is critical for the tribunal to have a good assessment of what is in the best interests of that child.

[171] **Mr Hosking:** Parents have a right to know that the person acting as a case friend is a safe person, and we need to build that into the arrangements, but they should not be able to deny the child any case friend—after all, they cannot choose who the teacher is; they just need to know that the child's teacher is a safe person.

[172] **Helen Mary Jones:** That is a very useful point. What do you think might be the practical issues and barriers to implementation arising from the appointment of case friends? How easy is it going to be to work out who these are going to be, and so on? Do you think that these issues need to be addressed in the proposed Measure, or should they be dealt with through regulations after the pilot has been completed?

[173] **Ms Inger:** You can regulate too much. The majority of children and young people are supported by their parents. If they are at a tribunal, they are supported by their parents. The issue of raising the child's right to appeal will mean that more parents will be supported to bring their children and young people to appeal with them, in that sense. I do not think—I have lost my train of thought now—

[174] **Helen Mary Jones:** It was about whether we should regulate who the case friend is.

[175] **Ms Inger:** The regulation could be too tight. It is important that the child has a right to choose his or her case friend, but where there is no conflict over who the case friend might be, why do we need to regulate?

[176] **Mr Hosking:** I think that it would be counterproductive to regulate at an early stage when we might have lessons from the pilot schemes that we would want to build in at a later stage.

[177] **Ms Brewis:** Just to add a complexity—and it is important that we consider complexities, because they will arise—there will be a need to regulate, not necessarily to legislate, who a case friend can be. The statement contains hugely personal information, not just about the child but about the family, and the family may well have a view about who has access to that. Statements and the advice to statements can be hugely personal, and we would not wish to dumb down the submissions to statements on the grounds that somebody else who is not, in your words, safe might read them. Aspects of safeness and confidentiality need to be addressed in how we regulate who an appropriate person to be a case friend is.

[178] **Helen Mary Jones:** I would assume, from what you have said, that one of the ways in which we could ensure safety is to ensure that anybody who is a case friend is subject to child protection checks. Would you have a view about whose job it ought to be to administer those checks?

[179] **Mr Hosking:** I am not sure, because a case friend could be an aunt. Would we require an aunt to have a CRB check, given that she already has substantial access to the child? Would we require a teacher or social worker, who have already had CRB checks, to have further CRB checks to do this, because they would still be acting in their original roles? So, I am not entirely sure that CRB checks are going to be a necessary requirement for most of the people who we currently envisage being case friends.

[180] **Helen Mary Jones:** That is interesting.

[181] **Ms Inger:** That is not to say that if an agency would be appointing a case friend—speaking from SNAP Cymru’s experience—we would not have to vet that person fully. It is about the appointment; if you are making an appointment through an agency, absolutely, that should happen. I agree with what Peter is saying. The normal route might be that a family would go to a tribunal together. There needs to be a strong message in the proposed Measure that you would expect a case friend to be checked unless appointed by the family. I say that with some real concerns, because we know that child abuse can occur with family members who are known to the child. It is difficult. However, if we are looking at actual practice and what currently happens, I would be looking for the agency to ensure that that happens.

[182] **Mr Towler:** I agree completely. The only thing that we need to be very clear about, and which everyone needs to understand, is the role, function and responsibilities of the case friend, so that we have a common understanding of a case friend and that we do not add additional bureaucracy relating to child protection if we do not need to. We need to be very clear as to what the role of the case friend is.

[183] **Helen Mary Jones:** This is a question for Keith and Peter, which follows on from your written evidence. You say—and it seems quite right to me—that if the child is choosing someone other than a parent, they may well choose a teacher, and it has been put to us this morning that the child might choose the special needs assistant. You go on to say that that might then place the teacher or the assistant in the difficult position of supporting the child in making an appeal against the LEA, and we have had references to the fact that social workers might be in a similar position. Do you feel that that is something that the proposed Measure needs to mitigate? Do you think that there needs to be some protection in the proposed Measure for someone in that situation, or would that be something best dealt with by regulation?

[184] **Mr Hosking:** It probably does not need to be in the proposed Measure, but guidance and regulation need to come out that is similar, in some senses, to the Public Interest Disclosure Act 1998, whereby whistleblowers can be reassured that they will not be victimised if they were to support someone as a case friend. In the past, social workers have told me that they have been highly dissuaded by their employers from supporting young people in this kind of circumstance. So, it is something that we need to address at some stage. There may be lessons to be learnt from the pilot projects.

[185] **David Lloyd:** Helen Mary, did you have a question for SNAP Cymru?

[186] **Helen Mary Jones:** That is really helpful.

[187] **Mr Towler:** May I add one thing? I know that we are being succinct. The only thing that bothers me, from our experience as an office, is when a statutory authority views an action as a disloyal act, without thinking about the interests of the child. That is why we need the protection for people who might be perceived as whistleblowers. This goes back to the role and function of the case friend, and that everyone needs to understand and accept that. Peter makes a good point about social services, but increasingly, we see social services having much greater levels of understanding of an advocate, who will support a child to express their view. We are seeing some of that beginning to emerge, but it is, again, about clarity as to the role and function of the case friend.

[188] **Mr Hosking:** It has long been established within social services that the independence of the advocate is recognised, and it does not—

[189] **Helen Mary Jones:** In theory.

[190] **Mr Hosking:** It has been doing this for a very long time; the educators have not. There is a need for education of the educators in this role.

[191] **Helen Mary Jones:** It is a cultural change. With regard to your views, Denise and Lindsay, about case friends, in your written evidence you say that you are not confident that one-off advocates, teachers or social workers will be appropriate in the case friend role. I can see where some of that is coming from, but can you tell us who you think would be appropriate to undertake the role? Are there ways in which the proposed Measure should be amended to reflect that? Should we have a list of who can and cannot be a case friend in the proposed Measure?

11.10 a.m.

[192] **Ms Inger:** There needs to be recognition of what is required of the case friend. Understanding the wider picture, gathering the evidence and supporting the young person to put a case file together for a tribunal is quite a significant piece of work. We have parent partnership and we have supported parents who have successfully been to tribunal and have represented themselves, but they have needed that support in terms of the knowledge and understanding of the system and the legislation. So, the case friend will need to have time. We all know that time is limited in the professions.

[193] I have less confidence than Peter in any of the statutory services being able to take on the role of case friend. However, teachers and learning support assistants in particular have knowledge of the child and could be the people who would help the case friend in gaining the child's view, particularly where there are complex communication problems. It is not about understanding the legislation and the issues; it is about being able to communicate with the child. There is a good opportunity here to work together on services. I may be biased, because I believe that SNAP Cymru does take on this role. There are no issues between children and

families; we are very clear that the child's needs, wishes and feelings are paramount, and they always have been placed above those of the parents. However, we have to deal with the wishes and feelings of parents as well, because the child has to live with them. In that sense, we have to be realistic about what we are doing here.

[194] The same is true of schools. There is a role here, but it is a little bit mixed up. The case friend needs the support of the staff in statutory services who have day-to-day contact with the young person: they know what they are saying. They do not need to present the options because they do not know them, because that is not their job. They know only their bit. It is pretty difficult to understand what is available across 22 counties in Wales, never mind anything specialist from outside. So, there is huge knowledge and understanding and it moves. Whether we like it or not, if the placement that the young person requires is full, that is the reality of the situation. A social worker or whoever might not know that. I would know it, because that is what I would be looking for in dealing with the issues, because you have to deal with the reality of the situation. To really be able to present options, you have to know them. However, you also have to be open to innovation. I think that can only come from the child.

[195] **Ms Brewis:** I will, once again, add a layer of complexity. I am concerned that the case friend role is so intimate that it is not an appropriate role for someone such as a learning support assistant or a teacher. The involvement with the family and with the young person and the delving into the young person's background is outside of their normal role—it is completely different from the role that they normally perform. In a way, if they want to perform that role, they have to do so in a volunteer capacity. If we were to place that on them as part of their role in a school—I cannot talk about social workers; they have a different role with the family—the high degree of involvement, intimacy, and alignment with the child's wishes could make that inappropriate to the role of the practitioner or the professional working in education; it is a very intimate relationship.

[196] **David Lloyd:** Janice, you have the next questions.

[197] **Janice Gregory:** I would like to move on to sections 4 and 11, which are the sections that deal with advice and information. The question is to both organisations. What types of support do you think should be given to children and young people to ensure that advice and information is provided about matters relating to their needs? Are there any practical implications arising from this?

[198] Do not all rush to answer at once.

[199] **David Lloyd:** Stumped, are we, team?

[200] **Ms Inger:** I think that they need information about legislation, policy, practice, provision and about the reality of whether or not there is a place available, the reality of resources and whether or not we have enough speech therapists. We need to have these discussions with children and young people, because that is what we are dealing with. I think that they need to see the whole in order to make an informed decision. Children and young people can take on board these issues. As I have said, they may well have some really good solutions for us, so that we can actually do it.

[201] **David Lloyd:** That goes back to your earlier point, Lindsay, about not expecting anything in this world.

[202] **Mr Towler:** What that requires is, again, face-to-face discussion, otherwise it is not possible.

[203] **Janice Gregory:** I would imagine that it also requires a real dose of honesty from the statutory bodies to say, ‘Look, there is this option, but you have to understand that we cannot deliver it if it is not there’.

[204] **Ms Inger:** It is about impartiality and objectivity, and about really dealing with the issues.

[205] **Ms Brewis:** I will give you an example. It is an English case, but it is relevant. A young lady, at her transitional review at a special school, decided that she wanted to go back into mainstream education. That was taken forward and enacted, without the need for a tribunal. However, no-one had explained to her what mainstream education was like: the pace, the numbers and the distance she had to travel. No-one had explained that, because there was no requirement to do so. She asked for it and everyone thought, ‘Yes, let’s give it to her; she’s a bright child, let her go back to mainstream school’. No-one had a duty to sit down with her and go through the complexity of what she was requesting. This sort of legislation makes it a requirement that that is done. I think that in the pilot phase we need to develop toolkits for children who perhaps have lower levels of developmental understanding, but still have strong opinions, and higher levels of communication need. I think that there will need to be toolkits including all sorts of devices for different ways in which to impart this information.

[206] **Janice Gregory:** The next question is for you, Denise. In its evidence, the WLGA stated that given that SNAP is now the parent service provider, the service for children may need to be commissioned from a new provider in order to secure confidence regarding independence. Can you tell us what your view is on that?

[207] **Ms Inger:** My view, again, would be that the issue is not about the independence of the service; it is about being impartial, objective and really dealing with the issues. Also, SNAP Cymru is a ‘parent partnership’—that is what legislation called us at the time. I think that we call them SNAP Cymru services now, but we have been a parent partnership, named persons, independent parental supporters, but what we are really there for are the wishes, feelings and needs of children. So, I do not share that view. I understand the perception, but again I try my best, in an educative programme, to share what SNAP Cymru is about, and it is about children.

[208] **Janice Gregory:** I will not say what Mark Provis said, but you can read it in the transcript.

[209] **Ms Inger:** I know what Mark Provis says; I have heard it many times. It is a shame really that I was not on the floor with him.

[210] **Janice Gregory:** I think that that is probably why he said it. [*Laughter.*]

[211] **Ms Inger:** He would have been relieved that I was not there.

[212] **Janice Gregory:** He did look relieved, yes. I will move on now to sections 5 and 12, which is on the resolution of disputes, as I am sure that you are aware. Again, this question is to both organisations. The proposed Measure will place a duty on local education authorities to reconfigure their existing services or arrangements to take into account children’s appeal and claim rights. How do you think that this short-term arrangement will work as part of the pilot phase?

[213] **Ms Inger:** Again, I do not think that there will be issues: it is about public information and communication with authorities to move that forward. Disagreement resolution is part of that conciliatory process, and it needs to be at the forefront. We want

early resolution.

11.20 a.m.

[214] **Mr Towler:** The joy of the pilot phase is that there are some things that we cannot predict. With regard to some of the practical things that will flow from the pilot schemes, for the pilot schemes to be meaningful, we should be in a much better position to answer questions such as this. It is okay for us at the moment to not really know, because that is the territory that we are in.

[215] **Mr Hosking:** One of the good things about giving children the right of appeal and having advocacy and case friends available to them is that it will get the tribunal back more to what it was always intended to be, which was less legalistic, with less of a requirement for legal representation. From speaking to one lawyer, we are aware that lawyers do not recommend to parents who are going to appeal to enter into disagreement resolution. That is a very negative step. With these changes, it is more likely that disputes will be resolved at an earlier point.

[216] **David Lloyd:** Right, we really need focused questions and answers now. Helen Mary has the next three.

[217] **Helen Mary Jones:** I will skip the next prepared question, Chair, because I think that it is self-evident.

[218] The next question is to do with independent advocacy services under sections 6 and 13. The proposed Measure places a responsibility on the children and young people's partnerships, led by county councils, of course, to lead the commissioning of advocacy in line with the national model for advocacy provision. In your view, will this ensure that advocacy provisions are independent, given that the authority itself will be the body defending the appeal?

[219] **David Lloyd:** Yes or no? [*Laughter.*]

[220] **Mr Towler:** It is not really a 'yes' or 'no' answer, but local authorities already commission advocacy services for looked-after children and for children who receive other services, do they not? In practice, I do not see that as being a major issue at the moment. I am sorry, Chair, but it is not as easy as giving a 'yes' or a 'no'. Denise made the point about the impartiality and fairness of a process being different from its independence. The point that you are making is that it is not truly independent. However, the issue is whether the impartiality of the service is understood and respected and whether it is delivered in that way. So, the question about independence gets a 'no' answer, because they are not independent in that sense.

[221] **Helen Mary Jones:** Your office is on record as preferring nationally commissioned advocacy services that would be independent of local authorities.

[222] **Mr Towler:** Yes. We have not changed that view.

[223] **Helen Mary Jones:** I just wanted to get that on the record.

[224] You have already touched on some of this, Denise, but your written evidence says that your experience of advocacy leads you to say that while it represents the views of the child accurately, it does not undertake to offer impartial, objective advice or to discuss options. However, is it not the role of an advocate to represent the child's wishes, while it is somebody else's job to do the reality check?

[225] **Ms Inger:** Yes, I would agree with that. My understanding from speaking to the advocacy providers around the table is that all they want to do is ask the question and get the answer. I think that these are very complex situations that we are talking about, so that is a very small part of the job. I can see the need for specialist advocates, particularly if they are more highly skilled than I am, in that sense, with regards to communication. It is about the person who can best get the view, rather than the person who understands the issues. The difficulty that may then arise is that we might get just an advocacy service, and, as such, it will ask the question without the child understanding the options. It is a difficult one, is it not? My worry is how people will interpret advocacy. I have heard some of your colleagues speak about the role of advocacy as giving advice, presenting options, and so on. There is also pure advocacy, which is to elicit the views of a child on a particular question. This is a far more complex matter than just getting that answer, and that is my worry.

[226] **Helen Mary Jones:** I completely understand that, and it is a valid point. However, if a child has the right to say 'This is what I want' and to have that heard by the tribunal, even if there are a load of practical issues about the supply of speech therapists or of placements where they want to go, do you agree that the child also has a right to stand up in front of the tribunal and say, 'I do not care about the practical issues; I want that now, so create another place for me at that unit'? The advocate's job is to ensure that the child can do that, but there must be someone else to give a reality check, and talk about the options.

[227] **Ms Inger:** It does not necessarily have to be anyone else because if that someone is impartial and objective, there is no reason why you cannot take the child's view as well. We have to be realistic about the cost of this service and what we can say.

[228] **Helen Mary Jones:** Yes, and about children being involved with too many people.

[229] **Ms Inger:** I see a role for specialist advocates when they are needed, but we also need to be mindful of how much they cost.

[230] **William Graham:** On tribunal procedure, there are two issues of which you will be aware. Two thirds of all appeals concern children of primary school age, so perhaps you could address that. Secondly, how can a child meaningfully participate in the tribunal given the procedure for written evidence, and the fact that more and more cases are becoming increasingly complex?

[231] **Ms Inger:** I hope that the proposed Measure will be a lever for children's engagement and participation from as young an age as possible. I hope that we will see that in time. However, it tells us something that tribunals involve children from a young age. Maybe it is that parents run out of steam by the time they get older, or they may feel that they have done all that they should. However, that is not the message that we are getting from children and young people. They may not be able to express themselves as well at a primary school age, but we are talking about different ages and different needs, such as cognitive and emotional needs. Age does not really come into it, but, until now, children have not had the right to appeal, so we do not know, do we?

[232] **Mr Towler:** The role of the case friend is also significant to all those issues.

[233] **David Lloyd:** William, did you want to come back on that? No, I see that your points have been covered. Janice, do you want to round things off for us?

[234] **Janice Gregory:** Yes, and I will move on to the pilot scheme. Given the relatively small number of parental appeals, will the pilot scheme provide sufficient evidence to allow for the full roll-out, given how crucial the pilot will be?

[235] **Ms Inger:** We have some views on that, and we need to give full consideration to the rural areas of Wales, the language, and other needs. We really need to think about that, because if we pick just one area, it might not be the right one, so we need to leave it open. We could focus on a particular area, and perhaps we could have an urban and a rural example.

[236] **Mr Towler:** We had a discussion on this while we were waiting to come into the room. One issue is that the numbers could be very low in the pilot area, so we need to be more flexible when thinking about its terms of reference. We should not confine it to a geographical area that might show only one case. So, there should be some flexibility and some thinking about how the pilot would work.

[237] **Ms Inger:** I would also like it to consider the engagement and participation of children and young people, who may not necessarily want to appeal but may wish to engage in and understand the process, so that we can have their views.

[238] **Janice Gregory:** I will move on to my next question. What are your views on the WLGA's evidence, which stated when referring to the initial pilot phase that, if the proposed Measure is not based on clear evidence, it has the potential to do 'immense harm'? That is not just harm, but 'immense harm'.

11.30 a.m.

[239] **Ms Inger:** There is the potential to do immense harm now, even without the proposed Measure. I do not see any difference. In fact, I believe that the proposed Measure will be a significant lever to improve the safeguarding of children across the board, if we are clear on what a case friend is.

[240] **Mr Towler:** If the question is asking whether I agree with the WLGA's assessment of whether this will do immense harm, the answer is that I do not agree.

[241] **Mr Hosking:** To add to that, in discussion with SENTW user groups over the years, SEN managers around Wales see great benefits in being able to concentrate more on the needs of the child than on the demands of the parents. They see that this will cut through a lot of issues.

[242] **Janice Gregory:** Finally, on section 18 of the proposed Measure, on the powers of Welsh Ministers, do you have any evidence about the extent of the non-implementation of tribunal orders? To roll it into the next question, do you think that the proposed Measure should be strengthened to include powers for the tribunal to monitor whether its orders are implemented within the prescribed timescale?

[243] **Ms Inger:** Yes, I do. The proposed Measure should include enforcement powers, although I would hope that the tribunal would not need to use them. However, there is no point in having the powers to monitor if it cannot enforce decisions when it finds something wrong. To give a quick, anonymous example, I know of a family that went to the tribunal in July 2007 over a refusal to assess a statement, and the last correspondence before SNAP Cymru became involved was on 12 April 2008 from an additional learning needs co-ordinator, who said that they would get back to the family because they had not received the proposed statement. The proposed statement was returned to the LEA in May 2008, and the review of the schedule for the child's future placement was on 20 June. That means that the final statement was drafted 11 months after the tribunal decision. So, there is a need for that provision. In addition, our experience is that things are getting better, but this kind of thing is still happening and that is the issue. That is why the enforcement powers are needed.

[244] **Mr Towler:** We had a quick discussion on this, too, before we came in, and the question that I asked Denise and Lindsay was whether tribunals get feedback and they said that, in their experience, they do not. So, thinking through enforcement, the flexibility of tribunal hearings, and the responsibility of the people sitting on the tribunals, you would want them to get feedback about how those things worked.

[245] **Janice Gregory:** I am thinking about Mark Provis's evidence, which you must have seen while you were waiting. He was pretty robust in saying that, if a tribunal issued an order, no-one in their right mind would fail to implement it. However, that is clearly not your experience, although you say that things are getting better.

[246] **Ms Inger:** That is not our experience right across Wales, not yet. Having said that, some are very expedient and act immediately.

[247] **Mr Hosking:** You were saying that that is usually the case, but we have known tribunals to specify speech and language therapy and local authorities to say, 'Sorry, but we cannot employ them as there are not any around'.

[248] **William Graham:** To return to the previous point on feedback to the tribunal, the tribunal chair gave us evidence that the user groups provide that feedback. Is that not your experience?

[249] **Ms Inger:** They do, but user groups can provide only the feedback that comes to them. There may be children and young people who do not complain. We do not know.

[250] **David Lloyd:** Diolch yn fawr i bawb am ateb ein cwestiynau y bore yma. Yr oedd yn berfformiad bendigedig gan y pedwar ohonoch. Yn ogystal â diolch ichi, hoffwn eich hysbysu y bydd y clerch yn anfon trawsgrifiad o drafodaethau y bore yma ichi eu darllen. Fel yr wyf wedi'i ddweud wrth bawb, nid yw hynny'n gyfle i wyrdroi cwrs hanes, dim ond gwirio bod yr hyn a gofnodir yn ffeithiol gywir a sicrhau fod y cofnod hanesyddol o'r hyn a ddigwyddodd y bore yma yn gywir. Byddwch yn cael llythyr gan y clerch. Diolch hefyd i'm cyd-Aelodau. Daw hynny â'r cyfarfod i ben.

David Lloyd: I thank you all for answering our questions this morning. It was a wonderful performance by all four of you. As well as expressing my thanks to you, I also inform you that the clerk will send you a transcript of this morning's proceedings for you to read. As I have told everyone, it is not an opportunity for you to change the course of history, rather to check that what you have said is accurately reported, to ensure that the historical record of what happened this morning is accurate. You will receive a letter from the clerk. I also thank my fellow Members and, with that, declare the meeting closed.

Daeth y cyfarfod i ben am 11.35 a.m.

The meeting ended at 11.35 a.m.