



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

**Y Pwyllgor Cynaliadwyedd  
The Sustainability Committee**

**Dydd Mercher, 24 Mehefin 2009  
Wednesday, 24 June 2009**

**Cynnwys**  
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cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

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

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

Lorraine Barrett	Llafur Labour
Mick Bates	Democratiaid Rhyddfrydol Cymru (Cadeirydd y Pwyllgor) Welsh Liberal Democrats (Committee Chair)
Angela Burns	Ceidwadwyr Cymreig Welsh Conservatives
Alun Davies	Llafur Labour
Lesley Griffiths	Llafur Labour
Rhodri Glyn Thomas	Plaid Cymru The Party of Wales
Darren Millar	Ceidwadwyr Cymreig (yn dirprwyo ar ran Brynle Williams) Welsh Conservatives (substitute for Brynle Williams)
Leanne Wood	Plaid Cymru The Party of Wales

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

Claire Bennett	Pennaeth yr Is-adran Newid yn yr Hinsawdd a Dŵr, Llywodraeth Cynulliad Cymru Head of Climate Change and Water Division, Welsh Assembly Government
Jane Davidson	Y Gweinidog dros yr Amgylchedd, Cynaliadwyedd a Thai The Minister for Environment, Sustainability and Housing
Justin Jacobs	Cymdeithas Yswirwyr Prydain Association of British Insurers
Dr Peter Jones	Pennaeth, Rheoli'r Perygl o Lifogydd a'r Perygl i'r Arfordir, Llywodraeth Cynulliad Cymru Head of Flood and Coastal Risk Management, Welsh Assembly Government
Olwen Minney	Cynghorydd polisi dŵr, Llywodraeth Cynulliad Cymru Water policy adviser, Welsh Assembly Government
Arthur Philp	Cymdeithas Yswirwyr Prydain Association of British Insurers

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

Dr Virginia Hawkins	Clerc Clerk
Meriel Singleton	Dirprwy Glerc Deputy Clerk

*Dechreuodd y cyfarfod am 9.07 a.m.*  
*The meeting began at 9.07 a.m.*

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

[1] **Mick Bates:** Good morning. Welcome to this morning's meeting of the Sustainability Committee. I have the usual housekeeping announcements to make. In the event of a fire alarm, you should leave the room by the marked fire exits and follow the instructions of the ushers and staff. There is no drill forecast for today. Please ensure that all mobile phones, pagers and BlackBerrys are switched off as they interfere with the broadcasting equipment. The National Assembly for Wales operates through the media of the Welsh and English languages. Headphones are provided through which the simultaneous translation may be received. For any who are hard of hearing, they may also be used to amplify the sound. The interpretation is available on channel 1 and the verbatim proceedings are on channel 0. Please do not touch the buttons on the microphones as that can disable the system.

[2] I have received apologies from Brynle Williams and I welcome Darren Millar, who is substituting for him. There are also apologies from Karen Sinclair and Lorraine Barrett, who will be late this morning.

9.08 a.m.

### **Y Mesur Drafft ynghylch Llifogydd a Dŵr: Sesiwn Dystiolaeth The Draft Flooding and Water Bill: Evidence Session**

[3] **Mick Bates:** We will continue our scrutiny of the draft flood and water management Bill this morning, and we have our final session with the Minister and her team. We will conclude this meeting by taking evidence for our flooding inquiry from the Association of British Insurers. It is now my pleasure to welcome the Minister and her team here this morning. Minister, would you like to introduce your team and make your opening remarks before we move to questions on the Bill?

[4] **The Minister for Environment, Sustainability and Housing (Jane Davidson):** On my left is Claire Bennett, who is head of the Climate Change and Water Division. On my right is Dr Peter Jones, who is head of flood and coastal risk management, and on his right is Olwen Minney, who is a water policy adviser in the department.

[5] I am very pleased to be with you today to discuss the provisions contained in the draft flood and water management Bill and our proposals for flood and coastal erosion risk management and water policy in Wales. The recent events of the weekend of 6 June are an unwelcome reminder of how devastating floods can be. I mentioned in the Assembly yesterday that, in my constituency, some 40 properties were flooded and, just days later, Newtown experienced floods that led to roads being blocked and an industrial estate cut off. Last week, as we discussed yesterday, we unveiled the UK Climate Projections 2009, which set out the impact that climate change will have on Wales in the coming years. Our sea levels are predicted to rise by about 20 cm by 2050, and winter rainfall is set to increase by 14 per cent according to the medium-emissions scenario. More frequent flooding will be a consequence of these changes, and we must act now if we are to ensure that Wales is prepared for those changes.

9.10 a.m.

[6] The draft flood and water management Bill is a large and detailed document. The paper that I have presented to committee summarises the key provisions as they affect Wales. All of the Bill applies to Wales and England. With the exception of Part 1, all of the clauses make changes to policy in both countries. The clauses in Part 1 make changes to policy only in England at this time. The corresponding policy in Wales is subject to consultation within annex A of the consultation document that accompanies the Bill. We would be very interested to hear the views of the committee on the questions outlined in that consultation—very particularly, in paragraph 28 of that consultation, which is about roles and responsibilities.

[7] Parts 1 to 3 of the Bill are all concerned with flood and coastal erosion with risk management. I have previously stated that we want to develop a holistic system for Wales that moves beyond the traditional definitions of 'defence and drainage' as advised by Sir Michael Pitt. The provisions within these parts of the Bill are integral to that move. Those provisions must be read in parallel with section 2 and annex A, which set out our thinking as Welsh Ministers on matters including the allocation of roles and responsibilities between the various operating authorities, the management of the risks posed by surface water run-off and the importance of mapping and planning risks accurately.

[8] The proposals on sustainable drainage systems contained within Part 5 of the Bill sit between flood and coastal erosion risk management and water policy. Sustainable drainage plays a critical role in managing and reducing flood risks, including those posed by surface water run-off, and will be increasingly important for the delivery of water and sewerage services across the UK.

[9] Parts 4, 6, and 7 are concerned with water policy. All of the provisions here are consistent with the principles of our strategic policy position statement on water, which we issued in March. These measures are important if we want to ensure the appropriate management of our water resource and protect the interests of consumers in Wales. Members will also be aware that there are some matters raised in sections 3 and 5 of the consultation document that are not currently included in the Bill. These are areas where we are developing policy with a view to including provisions within any final Bill. Any views or opinions on these areas are important if we are to develop appropriate policy for Wales. Those relating specifically to the reviews by Martin Cave and Anna Walker will also be subject to separate consultation.

[10] **Mick Bates:** Thank you, Minister, for the papers. As you are aware, there is considerable interest in this Bill and particularly in the Cave review. We have not received a copy of the Walker review yet. As you are well aware, we have already taken evidence. I would like to start by looking at Part 1 of the Bill. When we took evidence from the Environment Agency on 10 June, it expressed some concern because, for England,

[11] 'the consultation is about what is already in the Bill. For Wales, the consultation is about what might be in the Bill. Therefore, we are one step behind.'

[12] Minister, could you start this morning by explaining why, for example, flood and coastal erosion risk provisions for Wales have been omitted from Part 1 of the Bill? According to the Environment Agency, as a result of this, we are one step behind England in the process of consultation.

[13] **Jane Davidson:** We would certainly see it differently. As you know, we do many consultations in the Welsh Assembly Government, but we do not normally have a habit of consulting twice on the same thing. This is a consultation. This Bill and our policy proposals are a consultation. If we had included the provisions in Part 1 as well, it might have suggested that there was no opportunity to amend them. We want to make sure that we fully take account of people's views on our policy document on what is contained within the Bill and we will be submitting a full response from the Assembly Government and working that up with Ministers and officials in the Department for Environment, Food and Rural Affairs.

[14] **Mick Bates:** Do you recognise that the Environment Agency was concerned that, in England, the process is well under way, whereas here, we have to wait for your consultation to appear?

[15] **Jane Davidson:** That is not the case, because everything that is contained in the final

Bill will be a result of consultation on this Bill. So, there is absolutely no problem in that context. We are in line for the timetable for the final Bill. That is the one that counts.

[16] **Mick Bates:** I shall draw those remarks to the attention of the Environment Agency, in that case.

[17] **Lesley Griffiths:** Concerns have been raised that the Bill does not incorporate the recommendations of the Cave review. You mentioned in your opening remarks that you will consult on the inclusion of those recommendations. At what stage will you be consulting?

[18] **Jane Davidson:** The final report of the Cave review was only published on 22 April. We are looking at its recommendations in detail. It is worth pointing out that, if you go back to our strategic policy statement on water, we have expressed a caution on issues about competition in the water industry. We were interested in looking at potential for innovation. We are now working with DEFRA to consider the implementation of the recommendations and we will hold a joint consultation with the UK Government on taking forward the recommendations in the Cave review in due course, including those that might be appropriate for inclusion in the draft flood and water management Bill, because not all the recommendations would be appropriate for inclusion in that Bill. In doing so, our consultation will reflect our priorities for Wales. We intend for the consultation to go out before the summer recess.

[19] **Lesley Griffiths:** What are your views on the recommendations of the Cave review and do you support the implementation of that review in Wales?

[20] **Jane Davidson:** The Cave review contains a series of recommendations, including abstraction and water rights as well as recommendations relating to innovation and promoting competition. As I said, we have been clear with Martin Cave throughout this process that we have reservations about increased retail competition in the water sector. We have also been clear that we would not want to see any changes that would undermine the Glas Cymru model. In my discussions with Martin Cave and with my colleagues in DEFRA, it was clear that that would not be the case. Last week, Huw Irranca-Davies, the Minister responsible for the draft flood and water management Bill in the UK Government, and the Assembly issued a joint statement that there would be no threat to the Glas Cymru model in the context of the Cave recommendations. That was an important assurance.

[21] **Lesley Griffiths:** Have you had any discussions with Anna Walker on Wales's position in relation to her forthcoming review?

[22] **Jane Davidson:** Yes. The critical thing in terms of the Walker review is the focus on affordability, because it looks at charging and metering for water and sewerage services. We have had close dialogue with Anna Walker. I organised a charging and metering workshop with the Walker review team in January 2009. The interim Walker review report will be published shortly. I met with Anna Walker so that she could tell me what will be included in that report and our officials are in regular contact with the team to ensure that all our Welsh responsibilities and interests have been fully taken into account in that review.

[23] **Lesley Griffiths:** Do you think that there will be significant changes in the Bill in light of the Walker review?

[24] **Jane Davidson:** The issue with the Walker review is probably the PR09 process. However, it is important that that review, which is crucial in terms of household charging and metering, is undertaken before the final Bill comes before the House of Commons.

[25] **Mick Bates:** Sorry, Minister, but what is PR09?

[26] **Jane Davidson:** It is the price review 09.

[27] **Alun Davies:** I am interested in this Cave review. It was announced by you and DEFRA in February 2008. What processes led you to make that announcement? That announcement was made by DEFRA on behalf of Welsh Ministers. What led you to say that we would embark on the Cave review? What led you to make that decision?

9.20 a.m.

[28] **Jane Davidson:** The Cave review, as I said, was about both competition and innovation. We made it clear at the outset, in discussions with Phil Woolas, who I think was the Minister at the time, that we were not interested in retail competition, but we were interested in innovation. We were prepared to align ourselves with the review so that we could look at what might come out in terms of innovation.

[29] **Alun Davies:** That appears to me to be quite a curious way of approaching this subject. The Welsh Assembly Government has a clear philosophical point of view about collaboration rather than competition in the provision of services. This approach appears rather curious to me, if one of the purposes of the Cave review was to look at how you can increase competition in the provision of water services, which runs counter to the prevailing policy direction of the Welsh Assembly Government.

[30] **Jane Davidson:** That is absolutely right and that is why we made it clear from the outset that we were interested in the innovation aspects of the Cave review, not the competition aspects. That is why our strategic policy statement for water also makes that clear.

[31] **Alun Davies:** I understand that, Minister. The question was: why did we go down the Cave review route to achieve that? Why did you not look at something in your own department, saying, 'We will look at innovation in water, rather than competition'? In terms of what was published in April, competition certainly appears to be the main thrust of what Cave has produced.

[32] **Jane Davidson:** I think that there were two things there. The first one is that the water industry is very complex, because there are different arrangements in the context of the delivery of water systems in Wales. It depends on whether the industry is wholly or mainly in Wales in terms of where we have the lean. I thought that it was important to make sure that we were enabling people to respond to issues that might subsequently appear in consultation on legislation. I thought that it was also important that we retained the dialogue across England and Wales, because the Environment Agency has the main functions on this and it operates across England and Wales. We were clear about the policy imperative of the Assembly Government and we have protected that at all points. I do not operate a Stalinist department and I think that it is appropriate to ask for views on areas that have not previously been considered; innovation in the water industry had not previously been considered.

[33] **Alun Davies:** I will now conclude this section of questions. Are you saying that you made a reasoned and proactive decision to jointly sponsor the Cave review and that in no sense were you dragged along by DEFRA in doing so?

[34] **Jane Davidson:** We could have chosen not to participate in the Cave review, but the important thing in this context is that, if we had not participated in the Cave review and, subsequently, there had been legislation that we disliked, we would not have been in a position to argue effectively. I think that it is important that we participate in processes that enable us to give a reasoned view, based on evidence, and we have done that.

[35] **Alun Davies:** May I follow the same sort of line of questioning in terms of the draft flood and water management Bill? I would be grateful if you could describe the processes by which you and your officials have been involved in the development of the Bill.

[36] **Jane Davidson:** For me, it has meant both letters and meetings with Ministers, but I will ask Claire to comment in terms of the officials.

[37] **Ms Bennett:** There has been a very close working relationship with the DEFRA team that is working on the Bill, at all levels. We sit as members of the executive panel, which is a senior-level panel from DEFRA and other Government departments that oversees the strategic direction of the development of the Bill. We have been involved at every stage. There has been interaction between our Bill manager and the Bill management team at DEFRA, and also at policy level, with the relevant people in the flood and water team talking to their counterparts who work in the relevant teams in DEFRA, on the policy instructions that are sent to the lawyers, the legal instructions that the lawyers send to counsel for drafting and on the comments on the clauses as they come back. That is a process that is gone through during the development of the Bill.

[38] We are now starting to think about responding to the consultation and preparing the scrutiny sessions here in the National Assembly for Wales and in Parliament, contributing to the briefing for relevant Ministers looking at how the clauses work and starting to think, as we begin to get feedback from people, about the contents of the consultation, what we need to do to take it forward and what aspects of the Cave review recommendations need to be taken forward. It is the normal arrangement that one would have for a Bill. Representatives from DEFRA were up here last Friday or the Friday before for a meeting. We had most of the Bill team here in Cardiff, just talking through the planning for the next phase of the work. So, it has been a good process.

[39] **Jane Davidson:** It is worth adding one more thing. My most recent formal meeting with Huw Irranca-Davies on this matter was on 21 April, at which we discussed the handling for the final Bill. We agreed that we would replicate the arrangements that were put in place for the Bill, since the dialogue between our departments worked so well.

[40] **Alun Davies:** Thank you for that. Are you confident that the policy approaches that the Welsh Assembly Government has pursued to date are reflected in the current structure of the Bill?

[41] **Jane Davidson:** Yes, I am. This is where it is very important that you look at annex A, where we have laid out the policy position in Wales. Subject to the responses to the consultation, that policy position will be translated into appropriate clauses in the Bill. With regard to the key areas of policy, we have made a number of statements on flood and coastal erosion risk management as part of the New Approaches programme, which Dr Peter Jones leads. They are fully reflected in the Bill. We have our water strategic policy statement, which we published in March. That is fully reflected in the consultation that we have here. In our climate change strategy, as it were, there are all the principles underpinning that. We will launch the next stage of that tomorrow. That is fully incorporated in the Bill. The only other major document is the environment strategy that was published back in 2006, and the principles of that are fully reflected. All of that is under the overarching principle of sustainable development.

[42] **Alun Davies:** Are you happy that the Bill—how shall I put it—gives you the space to take decisions? That is, it does not encroach on the powers available to you to implement these policy directions.



[43] **Jane Davidson:** We have had no concerns. Quite the opposite, in fact. The readiness of our colleagues in DEFRA to look at slightly different arrangements in the context of the Environment Agency in Wales has been important. That has taken account of the different size of administration and, therefore, the different delivery opportunities. A number of powers will come to Welsh Ministers in the Bill to ensure that the decisions taken here are the appropriate ones. So, we are content.

[44] **Alun Davies:** Thank you for that, Minister.

[45] **Mick Bates:** Alun, I want us to move on.

[46] **Alun Davies:** Can I just finish this line of questioning?

[47] I am one of the Subordinate Legislation Committee's victims, so I worry, perhaps unduly, about some of these matters. You said that powers will go directly to Welsh Ministers. Will powers move directly to the National Assembly at the same time?

[48] **Jane Davidson:** Claire?

[49] **Ms Bennett:** In what context?

[50] **Alun Davies:** In the context of the Minister's last statement. She said that powers will go directly to Welsh Ministers.

[51] **Ms Bennett:** Are you talking about framework and Measure-making powers, as opposed to executive functions?

[52] **Alun Davies:** I am also asking whether the National Assembly will have an opportunity to comment on or scrutinise the powers that will be transferred from one democratic institution—Parliament—to the Assembly executive without going through our democratic institution, namely the National Assembly.

[53] **Ms Bennett:** In terms of a formal legislative consent motion—

[54] **Alun Davies:** That is not what I mean. The power to be transferred from the legislature to the executive would normally go from the Assembly to the Assembly Government.

[55] **Ms Bennett:** Oh, I see what you mean.

[56] **Alun Davies:** In this case, it appears that the powers will move from the UK Parliament to the Welsh Assembly Government without going through the National Assembly for Wales. The National Assembly for Wales will be bypassed, so that it cannot scrutinise the powers being accrued by the executive.

[57] **Ms Bennett:** I think that it is more a case of executive functions that are currently with the Secretary of State coming to the Welsh Ministers, and not functions from Parliament. We can check that, but I cannot think of any that are coming from parliamentary functions.

9.30 a.m.

[58] This is the Bill, and it is a matter for the National Assembly for Wales to consider how it wants to scrutinise the powers. When the final Bill is introduced in Parliament, there will be a further opportunity to scrutinise that as it passes through and additional provisions will be clarified and included at that stage, so it may be more fruitful to look at it at that point.

[59] **Alun Davies:** May I suggest that we return to this issue in due course? Part of our role is to supervise the executive, and an essential part of that is to understand and agree the powers that are available to the executive, and that any powers that come to the executive should come to the legislature before moving to the executive. That is an important principle, but that is something to which we can return.

[60] **Mick Bates:** I do not think that there is a need to respond to that. We will make sure that that is recorded.

[61] **Rhodri Glyn Thomas:** Returning to the Cave review, you differentiated very neatly between innovation and competition as if they were two separate aspects of the review. Martin Cave is very clear on this—he talks about the scope to deliver benefits and drive innovation through developing competition and contestability in all aspects of the water supply chain. It is part and parcel of innovation, as far as he is concerned, to introduce a competitive market, but you are saying that you do not want to do that. In that sense, from the line that he is taking with his review, he says that he does not see any difference between Wales and England—he is on the record as saying that. He said that innovation is based on competition—if you do not have competition you do not have innovation as far as Cave is concerned.

[62] **Jane Davidson:** Martin Cave has moved on with his review. Initially the review looked at whether or not there could be increased innovation in the water industry alongside competition. In a sense, I have nothing further to add other than to say that during the initial process of the review, we were interested as to whether or not there could be additional innovation that we would not otherwise be party to if we had not participated in the review. I have had a number of fairly robust discussions with Martin Cave about the fact that the Assembly Government maintains its commitment to the Glas Cymru model. We are very keen for him to look at whether or not that model could be used more widely elsewhere.

[63] **Rhodri Glyn Thomas:** So, is the Cave review irrelevant to Wales?

[64] **Ms Bennett:** It is important to make the distinction between the different aspects that the Cave review looks at. There are specific recommendations about innovation that have nothing to do with any form of competition—they are around innovation funds and duties on Ofwat, the economic regulator, to promote innovation. So, there are those types of aspects.

[65] **Rhodri Glyn Thomas:** That is still based on his basic recommendation that you need to increase competition within the market.

[66] **Ms Bennett:** There are also different aspects of that form of competition. You have retail competition, which is the area that causes us the greatest concern. Cave makes very specific recommendations, to which the Assembly Government will respond and that response will be based on increasing vehicles of competition. The Minister has made clear what the most likely response will be to those. Some of the other issues are around the trading of water rights and other factors that provide opportunities for Wales. They will not affect the Glas Cymru model or retail competition, but they provide other means, such as trade emission permits in the climate change concept, and provide other opportunities. So, it is important to look at the recommendations as a whole to see what is useful and relevant—and there are some useful and relevant points—and to look at the recommendations that are not as relevant in the context of the policy position, and take a view on them.

[67] **Rhodri Glyn Thomas:** We could probably discuss this for a long time. The basic question is: will you assure us, Minister, that competition will not be introduced in the water supply chain in Wales?

[68] **Jane Davidson:** I can assure you that the Assembly Government remains cautious about retail competition, and that we will not take any action that will threaten the Glas Cymru model.

[69] **Rhodri Glyn Thomas:** That was not quite a 'yes', was it?

[70] **Jane Davidson:** The questions today are being asked ahead of the consultation. I thought that we were here to discuss the draft flood and water management Bill, which is a big enough subject on its own. You will have an opportunity to look at the consultation regarding the Cave review when it is published.

[71] **Mick Bates:** We accept that, but there is an intense amount of interest in this and I must point out that the Cave review only refers, at this stage, to non-household customers, of which there are 110,000 in Wales. Our concern is that, once competition is introduced, that model will undermine what Glas Cymru currently stands for, as a fully integrated industry.

[72] **Ms Bennett:** I will clarify that, if I may. It is also important to note that there are existing systems in the current structure that allow water supply licensees to introduce and provide services. It is completely true that some of the recommendations of the Cave review would lead to an expansion of that, and Martin Cave talks about a phased approach, but it is not as though these provisions do not already exist in some form in the existing regulatory system. It is important to recognise that it is not as though there is one system and then it is suddenly something completely different. There are existing provisions that enable other operators to come into the market and offer services in a limited number of circumstances. His first phase of recommendations are, as you stated, about non-domestic customers and allowing scope for a certain number of additional operators to come into that area.

[73] **Mick Bates:** We all have concerns about the separation of the business from the infrastructure too. At the moment, we take the view that an integrated water industry in Wales is for the benefit of customers. However, we will return to this again when the Cave review is published.

[74] **Jane Davidson:** That is the point—to return to this when you have something concrete in front of you. It would be wrong of me to make any statement now other than the fact that, as most people around the table know, I think that water should be a public industry, and a public service, at any rate. So, I start from that position.

[75] **Mick Bates:** We back you on that, at the moment. Let us return to the Bill and some issues that we have encountered about words and cross-border issues.

[76] **Leanne Wood:** We have taken evidence from Dŵr Cymru, which raised a number of concerns about the Cave review. It also told us that it feels that safeguards should be in place to ensure that control of large infrastructure projects, such as new reservoirs in Wales, should remain in Wales. You have received a letter from Mick Bates, on behalf of the committee, asking for clarification on who would be responsible for giving consent for large water infrastructure projects and also on the question of the difference between 'wholly and partly' and 'wholly and mainly in Wales'. What steps are you taking to ensure that no major conflicts occur with regard to cross-border issues that arise from the Bill?

[77] **Jane Davidson:** We are being careful in the context of cross-border issues generally, because water does not respect geographical or political boundaries. There is a close working relationship with the UK Government on those issues. Discussions of the provisions in the Bill are ongoing and will continue throughout this process. In addition, several aspects of European legislation are linked to the provisions in the Bill, including the floods directive and

the water framework directive, which require cross-border working for their successful delivery, and they are built into our systems. We will respond in writing to the specific letter from the Chair, because the lawyer who has the expertise on the Planning Act 2008 is available next week, and we want to put that in front of that particular lawyer.

[78] The general principles, which I hope may be helpful to you, Leanne, are that the provisions in relation to large infrastructure projects contained in the Bill are not intended to change the responsibilities of Welsh Ministers. They were designed to address a gap in existing legislation that prevents Ofwat from regulating such endeavours. That is why they are in the Bill. The provisions in the Bill that relate to reservoirs are concerned with revising the safety regime and we want to bring the system in line with the principles of risk management to ensure that safeguarding human life is at the centre of all proposals on reservoir safety. That specific recommendation came from Sir Michael Pitt, and, when I met him, we had some discussions about it, because you will remember that in the dreadful floods of 2007 a number of communities were dramatically put at risk due to the level of water in the reservoirs and the potential problems with the infrastructure.

9.40 a.m.

[79] Nothing within the Bill relates to planning law or roles or responsibilities in that area because the remit of the Bill does not extend to planning legislation. In terms of the difference in description in the context of ‘wholly or mainly in Wales’, as opposed to ‘wholly or partly in Wales’, water policy in relation to water companies is devolved on the basis of areas wholly or mainly in Wales. However, planning legislation is devolved in line with geographical boundaries and we retain overall responsibility for planning matters, which will be involved in any application to develop major infrastructure items. The language in the Planning Act 2008—it parallels provisions for gas and electricity—is ‘wholly or partly in Wales’. Therefore, we will seek a legal Government view on this for you because it may be very helpful for you to make a recommendation on this issue in the context of the final Bill.

[80] **Leanne Wood:** Are you saying, therefore, that the Bill does not change any of your current responsibilities, or the responsibilities of Welsh Ministers, for the construction or extension of infrastructure, such as a dam or reservoir in Wales?

[81] **Jane Davidson:** Would you like to pick that up, Claire?

[82] **Ms Bennett:** We will absolutely clarify that in the letter, but the provisions in the Bill are around the regulation. Ofwat regulates water undertakers and water supply licensees. The provisions in the Bill are intended to enable it to have a role in the regulation of a different formulation of a company—basically, a public consortium company—to build very large projects. The provisions were specifically intended to address a major project in the south-east of England, which cannot be delivered by a single company. Therefore, a consortium approach is needed, but Ofwat would not have the right kind of regulatory powers to enable it to regulate that. It might have longer-term implications, but it was intended for a specific purpose.

[83] **Leanne Wood:** Okay. We look forward to further clarification on all of these issues.

[84] **Mick Bates:** You understand our interest in this particular point.

[85] **Jane Davidson:** Absolutely.

[86] **Mick Bates:** It is in view of your opening remarks and the precious nature of water. The south-east of England may require much more water, so surely at some stage people will be saying, ‘In Wales, we have plenty of it. Let us have some more reservoirs or even raise the

height of certain dams.’ I assume, from your answers to Leanne, that the Ministers here will be in control of that decision.

[87] **Ms Bennett:** As far as the Planning Act 2008 is concerned, the decision to consent a reservoir in Wales would be a matter for the Welsh Minister.

[88] **Mick Bates:** So that decision would in no part be overruled by a demand from England for water. For example, take the particular issue of the south-east of England and a shortage of water there. Could a decision be made by the Infrastructure Planning Commission that infrastructure has to be built in Wales to cater for that need? Would that happen?

[89] **Jane Davidson:** No. The decisions of the IPC will be governed by national policy statements. The decision over reservoirs in Wales is a Welsh planning Minister’s decision. However, this issue of ‘wholly or mainly’ or ‘wholly or partly’ is definitely worth further investigation. I am grateful for your bringing it to our attention. We will give you the legal response on it.

[90] **Ms Bennett:** On water resource planning, there is quite a comprehensive system in place for the planning of major infrastructure. Water companies are required to produce water resource management plans that look at forecasting 25 years and beyond in terms of their needs. It is not as if there will be a surprise, where people will say, ‘Blimey, we need a new sort of infrastructure’. There is quite a comprehensive system of planning and understanding of the nature of demand and the resource. Much of the work on that is ongoing at present.

[91] **Leanne Wood:** I would like to clarify what I think that you are saying. If there is a planning application for a reservoir that is entirely in Wales, then Ministers here make that decision, but if an application involves a reservoir that is partly in Wales and partly in England, or mainly in Wales but with a little bit in England, it is unclear who would be responsible for making that decision. We will have clarification on that in the legal note, is that right?

[92] **Ms Bennett:** Yes. I am not a planning expert, so rather than me trying to guess, it would be best to provide a note. More than one type of consent would be needed; you would need an impoundment consent, which is a sort of planning consent to build a reservoir.

[93] **Leanne Wood:** So different consents could be for decisions in different places?

[94] **Ms Bennett:** That is the other reason why we would prefer to set this out in a letter.

[95] **Darren Millar:** If I may come in on this issue of planning, Chair, I think that it is a major flaw in the Bill that it does not have sufficient impact on the planning regime, either in England or Wales. The Sustainability Committee’s inquiry showed huge inadequacies in the Welsh planning system in taking into account flood risk among the range of statutory consultees. There were particular problems with assessing surface water drainage as a flood risk, inadequacies around patents, and the need for flood risk impact assessments on smaller developments; these can have a major impact on flooding, but not perhaps on the wider environmental issue, and therefore do not meet the threshold for a major assessment. I appreciate that flood consequence assessments have to be done as part of the TAN 15 process, but we have seen in Wales that many communities outside the TAN 15 areas and categories have been hit by flooding. That is particularly relevant if there is a flash flood because of the inadequacy of the drainage systems; often, it is caused by a new development that has been tacked on to the edge of a town or village. Why is the Welsh Assembly Government not lobbying for the Bill to increase the range of statutory consultees and to reduce the threshold at which a flood consequence assessment is required on new planning applications? Is that not something that would sensibly be incorporated into a flood and water management Bill, given

its huge impact on flood risk?

[96] **Jane Davidson:** If the committee has concerns that it would like clarified in the context of planning, I would be very happy for a note from the Chair to be passed on to the chief planning officer about the way that the planning functions are dealt with. In fact, we have some strong planning policy decisions that are already made in this area, and they sit wholly in Wales; that is the issue. They do not need to be in this legislation, because it is not looking to take on functions that can already be delivered in-country. This legislation was most necessary in the context of roles and responsibilities, since it became absolutely clear in the floods of 2007 that there was insufficient clarity on that in the context of all types of flooding. The previous flood legislation is, I think, some 30 years old. Therefore, we needed new legislation.

[97] Peter can talk about the work that has gone on around surface water. A dramatic amount of work has gone on around that issue, and I have always said that, if it turns out as a result of the new mapping functions around surface water, as well as around flood risk from rivers or the sea, which give us our evidence base, that we need to change our main planning guidance in TAN 15, then we will do so. In a sense, it would be for the committee to demonstrate that there is a major gap that would need to be met by additional legislation that could not be dealt with in Wales. That is what is mostly being dealt with through the flood and water management Bill.

[98] **Darren Millar:** There are concerns that it is not a holistic Bill, and does not look at all of the potential areas of flood risk, which add to the complications that might exist within Wales and elsewhere in trying to reduce the impact.

9.50 a.m.

[99] I will just come back on cross-border issues, if I may. What about borders within Wales? I am thinking of local authority borders in particular, across which there are different responsibilities—you touched upon the roles and responsibilities issue. So, for example, a river such as the River Clwyd, which borders my constituency, is also the boundary between local authorities—two local planning authorities. Where is the joined-up thinking? Is there anything in the Bill that will guarantee joined-up thinking between those two local authorities when it comes to making a planning decision that could reduce the flood-risk impact on one side of the river but perhaps add to problems on the other side of the river? I think that you are aware of a planning application made recently in the Rhyl area that would add to flood risk elsewhere.

[100] **Dr Jones:** The Bill will encourage and facilitate the more strategic management of flood risk across the whole of Wales and across catchment areas. We have recently completed a series of strategic plans in Wales based upon catchment areas. The Environment Agency leads and develops on those and seeks input from all interested parties, including local authorities. Those catchment plans set the high-level policies for the way in which flood risk is managed. They ensure that any issues on a particular river, if it crosses local authority borders, are considered in the round, taking into account both local authority areas and ensuring that a piece of work on one part of the watercourse would not adversely affect communities on other parts of the watercourse.

[101] **Darren Millar:** One thing that I am particularly interested in is the possibility of local flood-risk management boards that could straddle local authority areas where the biggest risks might be. Coming back to the issue of the planning process, there would perhaps be a need for such boards to be made statutory consultees to ensure that flood risk is taken sufficiently seriously. I keep coming back to this point: it is not just the TAN 15 areas, but areas outside the areas of serious flood risk that have already been identified that are

potentially still at risk during heavy downpours in particular.

[102] **Mick Bates:** I am mindful of the time.

[103] **Jane Davidson:** May I just ask Peter to say a little about surface water management, because that is a critical issue here?

[104] **Mick Bates:** Well, Lorraine wants to come in on drainage systems, but I will just bring Angela in first.

[105] **Angela Burns:** I want to follow up your response to Darren Millar's comments about statutory consultees. As you are aware, Dŵr Cymru has asked to be listed as a statutory consultee in the Bill. Are you giving an emphatic 'no' and saying that it will not be granted that request?

[106] **Jane Davidson:** No, not at all. You did not ask me the question.

[107] **Angela Burns:** In response to Darren, you gave the impression that you were not looking at any more statutory consultees—

[108] **Jane Davidson:** No I did not, and please do not put words in my mouth.

[109] **Angela Burns:** I would not dream of doing that, Minister.

[110] **Jane Davidson:** I did not respond in any way on that issue. I was making the point that the planning function is devolved to Wales and that how we deal with the planning system is therefore a matter for us here. What the Bill is not designed to do is take account of every decision that we might want to make to support this agenda in the context of decisions that we can make wholly in Wales. If you are asking me whether it is appropriate for Dŵr Cymru to be a statutory consultee, it has not raised the issue with me personally, and I would be very happy for it to have a discussion with the chief planning officer and for me to receive advice on that issue.

[111] **Angela Burns:** I am surprised that Dŵr Cymru did not copy you in on the paper that it submitted to us. I am surprised that your team is not aware of the work of the Sustainability Committee on this Bill, because Dŵr Cymru's paper to us, which is on the public record, states very clearly and emphatically that it would like to be, and believes that there is a requirement for it to be, a statutory consultee. Chair, may I suggest that we write to Dŵr Cymru and ask it to write to the Minister to make that point while she is carrying out the consultation on the Bill? Perhaps then you will consider it, Minister, because I know that, in my constituency, the fact that it is not a statutory consultee with regard to water, drainage and sewerage provision is an enormous problem for many of my constituents. It has made a very clear case here for why it should be considered in the context of this Bill. Given that it is our chief water provider and manager in Wales, I suspect that you might find it of interest to understand its case before you make your decision.

[112] **Jane Davidson:** I am perfectly happy to say that the dialogue will have to be between Dŵr Cymru and the chief planning officer and that there should be a recommendation to me. I am perfectly happy for that to take place, as I said in my initial answer.

[113] **Lorraine Barrett:** On sustainable drainage systems, in your paper, you make the point that local authorities or any other body selected by Welsh Ministers would be required to adopt and maintain new SUDS. Do you believe that it should be local authorities that do that? Have you come to a decision? If not, when might you come to a decision or a view? Do you think that local authorities would have sufficient expertise at this time to take

responsibility? I am not sure how they would resource that responsibility, or where that money would come from.

[114] **Jane Davidson:** There are two things to say in response to that question. I referred earlier to paragraph 28 of annex A, which gives the policy position in the Welsh Assembly Government on roles and responsibilities. One thing that came out very clearly in discussion with communities that have been affected by flooding is that they want a clear understanding of who takes which role. In the proposition, it is clear that the Assembly Government makes policy in Wales, the Environment Agency has the enhanced function for flooding that is not local, and local authorities have the function for local flooding, so that shows where the responsibilities lie. Therefore, sensibly, one would look towards local authorities being the body responsible for operating and maintaining the sustainable urban drainage systems. However, there are already some SUDS operating in Wales, and a body such as Dŵr Cymru has the appropriate expertise. Therefore, we did not want to limit it and say that it should always be the local authority operating the SUDS in a particular context. There will be occasions when it will be better for them to be operated by another one of the partners. So, in that sense, there is an opportunity for us to appoint another body as appropriate, and we will be considering that very carefully.

[115] **Lorraine Barrett:** So, could you still have two bodies, with one responsible for one bit and the other responsible for another? It is just that it is the council that people always look to. No matter what kind of flooding it is, where it has come from, or whose responsibility it is, people still think that it should be the council who deals with drains and sewers and everything these days. I may have missed something, but I am still not quite—

[116] **Jane Davidson:** Perhaps Peter could explain the circumstances under which we might do something different.

[117] **Mick Bates:** I am very concerned about the co-ordination of all this work and how people will work in partnership. In your response to Lorraine, perhaps you could give us a picture of where you think the Government is going on this and how it will be co-ordinated, particularly with bodies like the internal drainage boards that exist, because they have a significant function in keeping the water level at the right level. They also collect money from large industries, so they are partly self-funded.

[118] **Dr Jones:** It is important that everything is co-ordinated. Confusion was the issue that came out of the Pitt report in 2007, and it applies equally to Wales as to England. As for a model for how it could work, it is important that we have a clear lead on local flooding issues. Pitt was pointing strongly to local authorities for that, particularly as a part of their community leadership role. The provisions of the Bill suggest that local authorities would be the lead on local flooding issues, in determining what an appropriate SUDS should be, and in ensuring that a proposal for such a system is to the right standard. That is the first issue: the local authority leading and being clear on the need for SUDS.

10.00 a.m.

[119] The next requirement is to ensure that that particular system is maintained in the long term. In England, it is clear that the local authority should take that forward; in Wales, we are looking at options. One option would be for local authorities to take it forward for the long term. Other options are that other organisations could do it, such as Welsh Water or a modified internal drainage board, which could also act as a management company. So, there are options. As a part of the consultation, we are looking at those options before deciding on the way forward.

[120] The Environment Agency also has a part to play in this. The advantage in Wales is



that we have the Assembly Government to provide a strategic overview of the entire system and to ensure that it is all co-ordinated and works together. There is an opportunity for the Environment Agency to support that strategic overview by being a technical expert on flood risk and its management and having a national role, and it can ensure that that co-ordination takes place.

[121] **Mick Bates:** One issue that arose was confusion over who is responsible for what. It was very often related to the maintenance of culverts, drains and so on. The local authorities, through their highways departments, have this responsibility, but it does not seem to operate very well at a local community level. How would you envisage better communication from communities to a local authority? Very often, it comes down to simple issues such as having someone who is responsible for a certain area, but all the local authorities have dismantled that local management system. How do you envisage that growing again, because it is most necessary?

[122] **Dr Jones:** Prior to the 2007 floods, in fact, flowing from the environment strategy, the previous Minister identified that the way forward was to move from a defence-dominated approach to a risk-management approach. To deliver that, it was important that we had strong partnership arrangements, and a focus on public engagement and on risk management. That was the drive that came out of the environment strategy.

[123] Partnership arrangements are the key to this. As part of a number of initiatives, we have encouraged that partnering of organisations. We have a number of studies around Wales through which we are exploring how the agency, Welsh Water and local authorities can work together to improve the way in which we manage the risk. Importantly, we are looking at options to have the public represented as part of those studies, so that there is a clear understanding among the community of what the public bodies are doing to help them to manage the risks that they face.

[124] **Jane Davidson:** May I add two things? I understand that you have taken evidence from the National Flood Forum, from Mary Dhonau. The work that it has done on looking at how the community can be encouraged to become more resilient is important. There is also an important role for the third sector. In one of my regular meetings with the third sector two days ago, we discussed the role that it could play. In some parts of Wales, we are piloting the responses, in a sense, by including committees, which have representatives from each street, and which work with the local authority to look at warnings, changes to infrastructure, sandbag distribution, and other issues. Those will be important models as we develop the community resilience element. That is not needed in the Bill, but it is important in the delivery of this when we know that we will face more flooding.

[125] **Mick Bates:** I want to move on, Minister, as I am mindful of the time. Darren has a brief question and then I will bring in Rhodri.

[126] **Darren Millar:** Sorry, Dr Jones, but I have no confidence whatsoever that confusion will not still reign after the implementation of this Bill. If you are suggesting to the committee that a range of people could be responsible for drainage systems, there will be utter confusion in many communities. One street might be the responsibility of the local authority, but the street next door might be the responsibility of the internal drainage board, and the street further beyond might be the responsibility of Welsh Water or a range of other organisations. This has been a major issue that absolutely has to be addressed. I have no confidence whatsoever, listening to your response on behalf of the Minister, that this will be tackled in Wales. At least the Bill is clear about who will have the responsibility for drainage systems in England.

[127] Who is responsible when a combination of events leads to a flood, for example,

fluvial flooding or tidal flooding and drainage problems? Does that not underscore three, four, even five times the need for a single flood risk management agency in Wales, a single port of call for the public in the event of flooding? They will then know that they will not be passed from pillar to post and will know who to contact.

[128] Briefly, because I know that time is short, public communication is not being addressed properly in the Bill either. A big issue, identified as part of the inquiry in the evidence taken, is that there is no proper communication with the public before or after a flooding event. Some people are registered with Floodline—and the Minister and I have chatted about this—and others are not. We need to ensure 100 per cent coverage, particularly in areas where lives are at risk from flooding. What are we doing to address that?

[129] In addition, how can we ensure that when people first move into an area, they are aware that their property is at risk of flooding? As part of the premises or home-buying process, research is done by lawyers on all sorts of things, but there is no statutory responsibility for a solicitor or anyone else acting on behalf of a purchaser to make them aware of a flood risk. Is that not a great opportunity to capture people's attention and say, 'There is a flood risk in your area, which you need to be aware of, and this is what you should do in the event of a flood'?

[130] **Mick Bates:** Darren, I will have to cut you off there.

[131] **Darren Millar:** And finally—

[132] **Mick Bates:** Go on, then.

[133] **Darren Millar:** What about areas where tourism is a huge industry? There could be many visitors to a community annually who are unaware of flood risks. How are we communicating these issues to them? Are there any such provisions in the Bill? I do not see any, but I wonder whether these issues will be addressed in the final version of the Bill given that they have already been identified.

[134] I am sorry to go on. There are so many things on record. I am sure that you can write to us if you cannot provide the answers to all my questions today.

[135] **Dr Jones:** Clearly, there are many issues there. On the first on clarity and lack of confusion among the public, that was highlighted by Pitt and by us prior to that review. The proposals in the Bill are for local authorities to take the lead on local flood risk issues.

[136] **Darren Millar:** But what is the difference between a local flood and a non-local flood?

[137] **Dr Jones:** A flood that occurs locally is a local flood. We are looking to establish—

[138] **Darren Millar:** Do not all floods happen locally to someone, though?

[139] **Dr Jones:** Let me expand on that. The local authority is the first port of call for the community affected by flooding. The important point is that the local authority does not have the powers to address all sources of flooding, so it relies on others, which support the local authority by providing technical advice and support. So, the Bill will set the local authority as the lead authority on any flooding issue that occurs in its area, and the local authority will be the first point of contact.

[140] **Darren Millar:** As we know, water and floods do not recognise local authority boundaries. We have just been discussing that. If there is a bit of a spill on both sides of the

boundary, who is responsible then, and how do the public differentiate because they do not differentiate between boundaries either, frankly?

[141] **Dr Jones:** If a community located in a local authority area has a problem, it would look automatically to its local authority as its lead and support body. It would go to that authority. So, wherever that community is located indicates the lead authority.

10.10 a.m.

[142] **Jane Davidson:** You have to look at are the recommendations of Sir Michael Pitt for clarity. It does give clarity because in relation to the big rivers, which are the responsibility of the Environment Agency, there are a number of mechanisms in place that we have discussed. I hope that the committee will return to this issue of Floodline Warnings Direct and flood warnings, in which both you and I are very interested. When we are talking about local water courses and surface water flooding, the local authority will be the first point of contact. The issue is to make sure that you can have the remedy within the same agency. That is a very important principle. Your proposal of having one agency, which then would not have the power to remedy, would separate the warning systems and so on from the remedy.

[143] **Darren Millar:** With respect, Minister—

[144] **Jane Davidson:** Excuse me, may I finish the point? That is why the Environment Agency is going to have enhanced powers under this Bill. That is very strongly supported by Sir Michael Pitt and others in the recommendations on the bigger elements of flooding, in relation to the sea or major rivers. There is a whole range of maps and plans in place for dealing with that. The local authority will have the functions at the local level, so there will be that clarity for consumers. I think that we are just going to have to leave that there.

[145] **Darren Millar:** But, people—

[146] **Mick Bates:** Darren, I think that we have made the point. I am certain that one of our recommendations will bring this to the attention of the Government. We understand the clarity issue. For me, all great strategies still need good maintenance, at the end of the day. We started with the Minister mentioning the flooding in Newtown and the only reason for that massive flood in Newtown was that somebody had not cleaned the culvert.

[147] **Jane Davidson:** I think that it is important, Chair, to say that, in relation to the flooding in Rhydyfelin, the culverts had been cleaned the day before. The culverts are no longer able to cope with the amount of water in many places, so it would be completely wrong if this committee was to make recommendations about cleaning culverts when, in actual fact, cleaning culverts is only part of the issue when we are talking about the surface water flooding that we are likely to face in the future.

[148] **Darren Millar:** I would like to put on record, Chair, that if the homes of members of the public are being flooded, it may not be clear where the water is coming from—it may be the overtopping of a river bank, it may be the collapse of a sea defence, or it could be a result of surface water drains. They very often do not know, but when they pick up the phone to the local authority, they are told, ‘Actually, it’s from the river and that’s the Environment Agency’. They do not want to be fobbed off; they want somebody to be able to give help, advice, guidance and assistance immediately, rather than being passed from one place to another.

[149] **Jane Davidson:** They will get that.

[150] **Mick Bates:** That is one of the aims of the Bill.

[151] **Darren Millar:** Yes, but with respect, it does not address the problem and the Minister has, again, not given me any confidence whatsoever that the Assembly Government is going to crack this nut. What is clear is that the Environment Agency is to have responsibility for river flooding and coastal flooding and the local authorities are to have responsibilities in other areas. The public will not know the difference; they just want help when they need help, and it is always an emergency when a flood is taking place.

[152] **Mick Bates:** Minister, the final word is yours on this.

[153] **Jane Davidson:** I would return to the point that this Bill has been brought forward based on expert advice from across the UK on the most appropriate division of responsibilities to give clarity to the public.

[154] **Darren Millar:** If you had ever lived through it—

[155] **Mick Bates:** Darren, please.

[156] **Jane Davidson:** I am happy to listen to expert advice.

[157] **Mick Bates:** Thank you. It is obviously a controversial issue and we need to take further evidence on these issues of clarity. The Bill makes it clear: it suggests that the local authorities have total control. There are issues for me about co-ordination and partnership through those agencies. I thank you and your team, Minister, for your responses this morning and for your written evidence to the committee. You will receive a transcript of this session. You will also receive some correspondence on the nature of consultees—an issue that was raised by Angela—and possibly some on the clarification of roles.

[158] **Jane Davidson:** Thank you.

10.15 a.m.

### **Ymchwiliad i Lifogydd: Sesiwn Dystiolaeth Inquiry into Flooding: Evidence Session**

[159] **Mick Bates:** For this item, it is my pleasure to welcome Justin Jacobs and Arthur Philp of the Association of British Insurers. As you are aware, we are undertaking an inquiry into flooding in Wales. At the same time, we have been scrutinising the Bill, which is the cause of a lot of interest for us. Also, as part of our evidence gathering, we have gone around our communities to talk to people who have been affected by flooding. Your attendance this morning is, therefore, of particular interest to us given some of the issues that we have learned of from people who have been directly affected by flooding. I thank you for your written paper, and I invite you to introduce yourselves and make very brief opening remarks.

[160] **Mr Jacobs:** Many thanks for inviting us to give evidence to you today. My name is Justin Jacobs, and I am an assistant director at the Association of British Insurers with responsibility for flooding and climate change issues.

[161] **Mr Philp:** I am Arthur Philp, a policy adviser on flooding.

[162] **Mr Jacobs:** I will start by stating that insurers want to be able to offer affordable flood insurance to as many customers as possible. We are unique in the world in offering private insurance against flood risk as a standard part of home insurance. We agree with the Government that this approach works in the best interests of our customers and society generally. However, the challenges to offering affordable insurance in the future are clear. We

have the Foresight Future Flooding report of 2004, which showed the annual economic cost of flooding in Wales increasing from £70 million in 2004 to £1.235 billion by the 2080s, which is an eighteenfold increase. Then we have last week's UKCIP projections, which show sea level rises and rainfall increasing in Wales by the 2050s. As flood risk goes up, if no action is taken to mitigate it, insurers will have no choice but to increase the cost of cover accordingly. In some cases, there is the risk of cover becoming unaffordable. I will therefore briefly outline what we believe needs to happen to mitigate the increasing flood risk.

[163] First, we want to see the framework for managing flood risk improved. You talked about this in your session just now. It needs to be clear which body is responsible for strategic oversight—

[164] **Mick Bates:** I think that we all agree with that. [*Laughter.*]

[165] **Mr Jacobs:** Yes.

[166] In turn, those bodies need the right powers and funding. It is not enough to allocate responsibility; they need proper funding to carry out their job and have the right powers to do it. We do not want to continue in this position where surface water flooding, in particular, is not being properly managed by any one body.

[167] Secondly, we want to ensure that we fully understand flood risk. It needs to be clear who will map flood risk, and this needs to be brought together in one flood map to which everyone has access.

[168] Thirdly, there needs to be a clear strategic view on which areas can and cannot be defended from flood risk in the long term. We accept that it is unlikely ever to be possible to protect everyone from flood risk, particularly given the impact of climate change. It is important to debate this long-term point now, because we need to think creatively about how to support the people and communities that will be affected. If we ignore the problem or put it off, we will just cause more pain; this needs to be resolved.

[169] Fourthly, the planning policy needs to be used creatively to help to reduce flood risk and to ensure that new developments do not increase flood risk. This means not allowing buildings to be built in high-risk areas or where they will increase flood risk elsewhere. It also means ensuring that where redevelopment takes place in flood risk areas, the buildings are designed to reduce that risk rather than increase it.

[170] Finally, we want to ensure that everyone is aware of flood risk and the steps that they can take to protect themselves. In particular, we want to ensure that low-income households are not left unprotected, as they will be the people who will be most vulnerable to the impact of flooding.

[171] We welcome the Bill that you have been discussing. It makes important steps forward in most of these areas for Wales. There are two main areas where we would like to see further progress. We think that it makes sense to include targets on the face of the Bill, and long-term protection targets for Wales, and we also think that there needs to be some sort of long-term strategy, as the Environment Agency has recently published for England. We would also like to ensure that the public are given full information, so that they can hold the bodies responsible for tackling flood risks to account. Otherwise, it is very difficult to know until the flood has happened, and by then it is too late to prevent it.

10.20 a.m.

[172] Finally, we recognise that insurers have an important role to play in encouraging

customers to manage their flood risk better, and in helping customers to recover after flooding. We think that the overall response to the 180,000 claims made after the summer floods of 2007 shows that we can rise to the challenge, and this is recognised in the Pitt review. However, we are not complacent and we are working closely with organisations such as the National Flood Forum to help improve this aspect. We are also very pleased to be holding a workshop in Cardiff on 7 July to work with local authorities and housing associations to discuss how we can all do more to help tenants in social housing to access low-cost tenants' contents insurance. Those are just some opening remarks.

[173] **Mick Bates:** Thank you; that was very interesting. I noted in the paper that you provided that you are in the final stages of discussing a statement of principles for flood insurance with the Welsh Assembly Government. Can you provide more information about the statement of principles? When do you expect it to be published? Will it cover any new developments?

[174] **Mr Jacobs:** There was originally a statement of principles that was agreed in the early part of the decade with the UK Government on behalf of the whole of the UK, but after the summer floods of 2007 we asked for a review, because we wanted reassurances that lessons would be learned from those summer floods, and that a long-term approach would be taken to reducing flood risks. We were locked in short-term debates with the UK Government about what should be spent in the following year, which ignored the fact that we needed to have a debate about the long-term outlook for flood risk.

[175] We also thought that, as it is clear that the four different parts of the UK are developing their own approaches to flood risk, it would make sense to have separate agreements with the four parts of the UK, so that we can reflect the local differences and different approaches to managing flood risk. We are now in the final stages of those discussions with the Welsh Assembly Government. We reached agreement in Westminster, covering England, last July, and with Edinburgh for Scotland last December. The approach looks at various commitments around mapping and reducing flood risk, and putting in place a long-term strategy. In return, insurers will continue to offer insurance for the vast majority of their customers until 2013. By 2013, we need to see the long-term strategies being developed, so that we can understand the future outlook and come up with the right solutions going forward.

[176] New developments were never intended to be covered, but it became clear that there was some confusion over that in the original agreement. We need to be explicit that, when new developments are built, there should be no assumption that they would automatically get insurance. Rather, each developer should have to consider, as part of their proposal, whether what they are building will be insurable in the long-term. That puts the onus on developers to take that into account, and it will hopefully help organisations such as the Environment Agency to ensure that its advice is followed.

[177] **Mick Bates:** On your last point, if you are involved in discussions about changing the planning system, and so on, it seems strange that you cannot give an assurance that new developments, since they would meet all the planning criteria that you have signed-up to, would receive insurance.

[178] **Mr Jacobs:** If we look at planning policy in Wales, we think that it is in a relatively good place, and we saw in the Environment Agency's report that around 97 per cent of planning applications reflect its advice. We are concerned about the 3 per cent that do not. No regime will ever achieve 100 per cent, and we want to ensure that developers know that, if they manage to have an application accepted against the agency's advice, it is a short-term approach, because they will not be able to guarantee their customer's insurance. So, we are trying to help the Environment Agency and local planning authorities to ensure that

developers do not try to force their arm.

[179] Earlier this year, we published a guide on our website on insurance issues for new developments, and we are discussing this with developers at the moment. The vast majority of developers are very happy with this approach, because it enables them to say ‘We are following the planning policy statements, so we can feel comfortable that what we are doing will be insurable’. It also helps to distinguish them from the minority of developers trying to force through things that would not be sensible.

[180] **Darren Millar:** It would be sensible to engage with developers, particularly the National House-Building Council, for example, to ensure that consultation with you by developers is part of the accreditation programme, so that properties can be registered with the NHCBC for their insurance purposes, as well as yours.

[181] You touched on the statement of principles for flood insurance and the concordat or agreement that you are currently trying to establish with the Assembly Government. Why is Wales the last part of Great Britain to be signed off? Why has progress been so slow? Can you also tell me whether the statement of principles, which is not a legally binding document—I know that some of your insurers ignore it completely and will not offer insurance in some areas where others do—should be a legally binding document? We are all interested in trying to help people. When I say a legally binding document, I do not mean only on your part, I also mean legally binding on the Assembly Government’s part and the UK Government’s part to ensure that they do what they said that they would do to roll out investment in flood risk management.

[182] **Mr Jacobs:** In answer to your first question of why it has taken longer, it is partly the nature of the discussions—

[183] **Darren Millar:** Did you start the discussions with each Government at the same time?

[184] **Mr Jacobs:** Yes, we did. They kicked off at the same time. We are also still in discussion with the Northern Ireland Assembly about arrangements in Northern Ireland. It has partly been a question of at what stage the Welsh Assembly Government is able to say exactly how it will do things. We have had some discussion on that this morning. The Assembly Government has not previously been in a position to say clearly how it will do things, but it is now more or less able to do so, so that is why we are hoping that we will be able to get that through quickly. The UK Government had the Pitt review coming out last year and it was in a position to respond to that immediately, setting out how it would take it forward. That might explain part of the difference.

[185] On your second question, what the statement says for our members is that they offer insurance as a standard part of home insurance, provided that the risk is no worse than one flood every 75 years. Where it is worse than one flood every 75 years, they will continue to offer it to their existing customers where the Environment Agency has said that it will defend those homes in five years. As far as we are aware, that has been followed and no-one has brought any specific examples to us of where that has not been followed.

[186] As to whether it should be legally binding—

[187] **Darren Millar:** However, the insurance premiums just make homes unaffordable, do they not? The insurance companies attach huge excesses to them, which makes it totally impractical for people—

[188] **Mick Bates:** We will come to that in a moment. Carry on.

[189] **Mr Jacobs:** That is a separate issue. There is nothing on premiums or excesses in the agreement. As to whether it should be legally binding, I do not think that that is necessary, not least because there is no real mechanism in place to make it legally binding on the part of the whole industry. In addition, having it as an agreement means that there is constant dialogue between all sides about how we are progressing and how we are ensuring that we are taking forward our respective commitments. I would like that dialogue to continue and to strengthen, but I would worry that, if it was seen as a legally binding contract, we would end up taking separate parts and not have the same dialogue that seems to happen when it is a partnership.

[190] **Darren Millar:** Is there not a bigger risk of you going in different directions if it is not a legally binding document? Surely, if it is a legally binding document, you both know that there are responsibilities on both sides and you ensure that you offer insurance or that your members offer insurance, and the Government ensures that it delivers the flood defences that it says it will deliver. You mentioned the five-year rule for a one in 75 year flood risk event. What if, in year four, it says that it will still do it within five years? Frankly, it is not worth the paper that it was written upon, is it?

[191] **Mr Jacobs:** We think that it is and that it has helped to provide a clear direction for the Governments and what the industry feels that it can deliver in response to that. We are reasonably happy with the way that the agreement has worked. I just have concerns that a legally binding document might end up creating conflict rather than partnership.

[192] **Angela Burns:** To be honest, Mr Jacobs, I am still reeling in shock from your statement that planning policy in Wales is in a good place, because, if I were to take you down to my constituency of Carmarthen West and South Pembrokeshire, I could probably show you a dozen instances of where people are flooded up to six times a year, let alone once every 75 years, and find it impossible to get any decent form of insurance. I would like you to define a flood, from the insurance point of view, because I know of people whose homes were flooded, even though the roads outside were not, simply because there is so much surface water that it sinks into the water table and pushes the sewage back out through their loos, ruining their carpets and their floors. They are not technically flooded as in, 'Here comes a catastrophic tidal wave, whizzing down the high street', but they are still flooded and have not been able to get insurance.

10.30 a.m.

[193] I am very keen to understand this figure of 3 per cent because if you were to look at my patch, as I said earlier, I could probably give you a figure of more than 3 per cent, and I am quite sure that that is replicated in other areas of Wales. I would like to have clarity on the definition of a flood.

[194] When you talk about the statutory consultees, or the overarching remit, the Minister was very emphatic—not that I would wish to put words in her mouth—about the fact that she does not necessarily follow that rule. How will that impact on this?

[195] **Mr Jacobs:** On planning policy, I am not saying that it has always been in a good place, but if we look at its current position in technical advice note 15, it has improved. We rely on the Environment Agency's reports and its expertise; therefore, if it says that only 3 per cent of the applications that it has opposed will go through, a figure of 97 per cent, on the face of it, looks good. We certainly agree with the Environment Agency that there should be more onus on local authorities, through the Bill, to produce strategic flood consequence assessments because we think that there is a concern that no-one is recognising that surface water risk exists, and therefore the planning application is not seen as problematic because it has not recognised that there is a risk in the first place. The main way that I would like to see



the Bill strengthened is to include the requirement for local authorities to produce these strategic flood assessments, which will help to increase awareness of surface water.

[196] **Angela Burns:** If I may quickly interrupt you, I will cite, by name, one particular area. If you were to go down to Llanddowror, you will see that it is not a floodplain per se. A part of it, near a little village called Backe, is on a floodplain, but the rest of it is not included in any strategic analysis as a floodplain. If you were to ask any of the souls who have lived in that village for more than one minute which fields flood in the winter, every winter, year in, year out, they would tell you, 'That one, that one and that one'. Guess where they will build all of those new houses—it will be in those fields. Where are the common sense and the logic? That is not a strategic, consulted way of identifying a floodplain, because it does not fall into whatever definition that makes up a floodplain, but the man on the ground knows exactly where the water sits. Those houses will be built and their water will come up into their doorsteps the winter after they are built.

[197] **Mick Bates:** That is an interesting point and it is one for the planners, of course. I will leave that there. I now call on Lesley.

[198] **Lesley Griffiths:** In your paper, you refer to the number of claims that you received following the major floods of 2007, and you give us a breakdown of property, vehicles and so on. You also state that the estimated insured damaged is £3 billion. How much is still outstanding of that £3 billion?

[199] **Mr Jacobs:** I do not have that specific figure to hand, but I think the majority of it would have already been paid. Where there are claims that would not have been paid, it is often related to the business interruption element of commercial property insurance where businesses might not yet have been able to calculate the cost to the interrupted business. Therefore, that cannot be paid yet. We estimate that there are around 50 homes, for which there are claims, where people are still out of their homes as a result of the floods. We have seen a new phenomenon of what is being called 'secondary flooding', which is not a phrase that we particularly like. They are late-reported flood claims where the flood damage has only become apparent some time after the floods. As the water sat below the house it caused dampness, and it has become apparent that that was caused by the summer floods. Therefore, they are what we would still call 'summer floods claims', although some of them might have been reported earlier this year. In those cases, people will still be out of the home as their claims would not have been paid yet.

[200] **Lesley Griffiths:** To clarify, are you saying that there are 50 families still living in alternative accommodation?

[201] **Mr Jacobs:** Yes; but I would not use the word 'still' because some of the families did not move out until very recently because they did not know that their homes had suffered damage. Once the damage became apparent, the insurers helped them and put them in alternative accommodation.

[202] **Lesley Griffiths:** In relation to the families who moved out at the time of the floods, how many of those are still out of their homes?

[203] **Mr Jacobs:** It is literally a handful or so. There is a variety of reasons but the most common is because people have taken the opportunity to undertake additional work on their house, such as an extension or loft conversion. There are a couple of cases where people have chosen to use their own builders and the work has not gone well, and the insurers have gone beyond what they need to do to fix the not-so-good builders' work.

[204] **Lesley Griffiths:** Are you able to give specific figures and claims for Wales?

[205] **Mr Jacobs:** I do not think that we have those.

[206] **Lesley Griffiths:** Would you be able to provide them in a note?

[207] **Mr Jacobs:** We could look to do so. The insurers would not normally capture that information separately, so it might be that some will be able to give us a rough indication of how many have Welsh postcodes.

[208] **Mr Philp:** They may be able to do it. I would be surprised if there are many at all, given that the 2007 floods did not affect Wales more than England.

[209] **Rhodri Glyn Thomas:** Yr ydym wedi derbyn tystiolaeth bod amrywiadau pan fydd pobl yn cyflwyno ceisiadau i gwmnïau yswiriant. Er enghraifft, os yw pobl wedi yswirio gyda dau gwmmi—gydag un ar gyfer yswiriant adeiladau ac un arall ar gyfer yswiriant cynnwys—mae dadleuon yn codi ynglŷn â phwy sy'n gyfrifol am beth, a gellir gweld amrywiadau yn y taliadau. Sut y gallwch chi, fel Cymdeithas Yswirwyr Prydain, sicrhau bod cysondeb a thegwch mewn sefyllfa felly?

**Rhodri Glyn Thomas:** We have received evidence that there are variations when people make insurance claims. For example, if people have taken out insurance with two companies—buildings insurance with one and contents insurance with another—arguments arise as to who is responsible for what, and there can be variations regarding the payments. How can you, as the Association of British Insurers, ensure that there is consistency and fairness in those a situations?

[210] **Mr Jacobs:** Arthur, do you want to answer that?

[211] **Mr Philp:** Those people will have chosen two separate contracts with different insurers, and one is responsible for the building insurance and one is responsible for the contents insurance. The two insurers would normally liaise over that. You could ask whether it is a recommended practice. It would be better if people insured the two together, as that can avoid problems. Where it happens, the two insurers liaise to try to resolve the situation. There are not many differences. A contents policy will cover carpets, whereas a buildings policy will cover laminate flooring, for example. So, there are slight differences there, but the contract may be on an entirely different basis, and that can create difficulties. If there are items that are covered under both, for example, alternative accommodation, the insurers would share the costs of that.

[212] **Mr Jacobs:** We would normally encourage insurers to talk to each other, and there are some examples of good practice, which are the ones that I would suggest should be followed, that have worked. This is one story from after the summer floods. An elderly couple had mistakenly bought two buildings policies when they had meant to buy one buildings policy and one contents policy from different insurers, and the two insurers talked to each other. The couple did not know which policy they had meant to buy from which insurer, so the two insurers agreed that they would treat the matter as though they had bought buildings and contents insurance and just share the cost 50:50 and provide that cover so that that couple were not disadvantaged by their unintentional mistake.

[213] **Mr Philp:** Often in such situations, the two insurers will appoint one loss adjustor to act on behalf of both insurers and that would be advantageous. That will not always happen because insurers handle claims in different ways and that is a service that they provide. When they buy insurance, people should differentiate between companies on the basis of the claim service provided more than on the price of the policy but that, sadly, is not the case. People's decision to buy is based on price mainly.

[214] **Rhodri Glyn Thomas:** Yn sicr, byddai pobl yn edrych ar bris y polisi ond ni chytunaf gyda'r awgrym y dylai pobl yswirio'r adeilad a'r cynnwys gyda'r un cwmni, oherwydd byddai hynny'n rhoi mantais annheg i gwmni gan y byddai'n gallu cynnig un polisi yswiriant yn rhad iawn ac yna godi pris y polisi arall er mwyn gwneud elw. Byddwn i yn awgrymu y dylech edrych ar y syniad o gael un person i ddyfarnu'r golled—un *loss adjuster*—fel arfer da ac fel rhywbeth y gallwch awgrymu i gwmnïau yswiriant. Mae tystiolaeth bod gwahaniaethau yn codi yn y broses hon. Mae pobl sy'n byw yn yr un stryd, sydd wedi'u heffeithio yn yr un ffordd, yn derbyn dyfarniadau gwahanol gan wahanol gwmnïau. Wedyn, oherwydd eu bod wedi gwneud cais, maent hefyd yn canfod bod y tâl-dros-ben ar eu polisi yn cael ei godi i lefel eithriadol o uchel a'u bod yn gorfod paratoi asesiad a lefel y risg i'w tai o lifogydd a thalu am hynny eu hunain.

**Rhodri Glyn Thomas:** Certainly, people would look at the price of the policy but I do not agree with the suggestion that people should insure the building and the contents with the same company because that would give a company an unfair advantage as it could offer one insurance policy very cheaply and then raise the cost on the other policy to make a profit. I would suggest that you look at the idea of having one loss adjuster as good practice and as something that you can suggest to insurance companies. There is evidence that differences arise in this process. People living in the same street, who have been affected in the same way, receive different awards from different companies. Then, because they have made a claim, they also find the excess on their policy being raised to an exceptionally high level and they have to prepare an assessment of the level of flood risk to their houses and pay for that themselves.

10.40 a.m.

[215] A gredwch fod lle yn y broses hon i gysoni'r ffordd y mae cwmnïau yn ymateb, a phan fydd llifogydd mewn ardal arbennig, sicrhau bod cwmnïau yn siarad â'i gilydd er mwyn sicrhau bod pobl yn cael yr un math o ddyfarniad yn hytrach na gweld, wrth gymharu, bod rhai'n cael ymateb llawer gwell gan eu cwmnïau yswiriant?

Do you believe that there is a place in this process for ensuring consistency in how companies respond, and that when there are floods in certain areas that companies speak to each other to ensure that people receive a similar judgment instead of seeing, in making comparisons, that some people have a far better response from their insurance company?

[216] **Mr Jacobs:** Different approaches work better for customers overall. Ultimately, insurance is about paying claims and helping customers through difficult times. It is when these events happen that insurers see an opportunity to distinguish themselves from their competitors and to go that extra mile to be seen as the good insurer and, hopefully, attract business through that route. So, the claims service is a key way that insurers can compete with each other. That drives innovation from insurers. Different insurers have different practices in doing what they think is most attractive for their customers.

[217] I will give you a few examples. It is now increasingly common for insurers to make outbound calls to their customers. If they know that there is a flood in a particular part of the country, they will see how many customers they have in those areas, they will get their details and phone them to ask them whether the flood in their locality has affected them and whether they need any help. So they make a call to invite claims rather than passively waiting for their customers to dig out their insurance details and give them a call. That is something that was started by a couple of insurers and is increasingly becoming the norm, as it is seen as good practice.

[218] Another example is that some insurers will have single points of contact, so one person will handle your claim from notification through to the claim being closed, because

many customers like to know that one person will know about their claim throughout. Other insurers do not do that. It is a matter of working out what customers like. Insurers innovate and try different things. When it is clear that something has proven to be popular, insurers will copy each other. It is that competition that drives innovation. If you ended up with a committee of insurers sitting together to decide how they should treat claims, you would end up risking having the lowest common denominator and stifling the innovation that we believe is in customers' interests.

[219] **Angela Burns:** I have a brief supplementary question. How do you think the current consolidation of the players in the insurance market will affect that?

[220] **Mr Jacobs:** I do not think that it is a threat to that. It is still an incredibly competitive market and there are still many insurers out there competing for business. Different insurers compete for different parts of the business. Some will go for all aspects of the home insurance market, while others will specialise in elderly customers—such as SAGA, for example. So, there are all sorts of different business models. I do not think that there is a risk that competition is being reduced.

[221] **Angela Burns:** Although all of the brands are still sitting on the high street, it would only require a few insurers to come up with draconian policies on flooding for those who are victims of flooding to find it very difficult and/or expensive to get insurance if there were a cartel—I hate to use that word, but I probably mean 'cartel'.

[222] **Mr Jacobs:** I do not think that we are even close to getting to that position.

[223] **Mick Bates:** It was a good point, though, Angela. Rhodri has a brief question and then Leanne.

[224] **Rhodri Glyn Thomas:** It is natural that you will highlight good practice—that is your job—and that the evidence that we would get as part of an inquiry would highlight bad practice. That is where we are at. I am not saying that there is no good practice, but there are examples of bad practice. Is there any evidence or suggestion that companies, in the present financial climate, are less generous in their decisions about insurance? I have certainly heard that anecdotally.

[225] Secondly, have you had any evidence to suggest that people are not claiming insurance because they are afraid that their properties will be blighted and that that will have serious implications for them in the future in terms of selling on their property or insuring it?

[226] **Mr Jacobs:** To pick up on your very first point, you are right to say that that is inevitable with these inquiries—or with the media generally. Insurers deal with hundreds of thousands of claims, and the vast majority of customers are satisfied or very satisfied. Unfortunately, in any organisation, things will sometimes go wrong. It will be a very small percentage of claims that will go wrong, but when you are dealing with hundreds of thousands of claims, it may mean that there are hundreds or even low thousands of examples where things did not go as insurers would like. Then it is a matter of putting things right as soon as you can. Inevitably, the media likes to focus its attention on where things go wrong. That is something that we will all be familiar with—

[227] **Mick Bates:** Oh, yes.

[228] **Mr Jacobs:** Unfortunately, it is a fact of life, but we think that those situations represent a very small minority, and, where things go wrong and insurers find that out, they do their best to put things right as soon as they can.

[229] On the impact of the recession, normally, in a recession, we would expect to see an increase in, for example, theft claims, sometimes arson claims and so on. I think that there may be early signs of that coming through, but I do not think that we have seen anything dramatic yet.

[230] **Mr Philp:** No, we have not. Equally, I am not aware of people not submitting claims because of the fear of blight. However, there is no doubt that, in some instances, policyholders do not make claims for small amounts because they do not want it to have an impact on the premium structure—the no-claims discount factor. So, there is that issue, but I would not think that would apply to any serious flood claim, because they tend to be very expensive, and it would not be in people's interest not to claim.

[231] On blight, if a property is at very high risk of flooding, it will be difficult to insure, and it will be expensive unless something can be done to manage that risk. It is in all of our interests to encourage what can be done to manage the risk, and I would acknowledge that there are difficult cases.

[232] **Rhodri Glyn Thomas:** The one thing you did not cover in your original answers was the question about excesses being increased dramatically and people being asked to carry out risk assessments on their properties at their own cost. Is this becoming common practice?

[233] **Mr Jacobs:** No, it is not becoming common practice. It applies to a very small minority of cases. Where insurers have discovered—perhaps following the summer floods or due to improvements in understanding flood risk—that there are customers at very high flood risk, there are a few options. They could say to the customer, 'I'm sorry, you're such a high risk, we don't think it's possible to insure you' or they could say that the risk was so high that they would have to charge a high premium or that they will keep the premium down but that there will be an excess for flood risk. It is generally some combination of the second two options. Insurers rarely or never want to say that they will not insure someone, so the alternatives are premium increases or excesses.

[234] I will give you an example to put it into context. For a serious flood claim, you could easily be talking about a sum of £30,000. If you are at significant risk, which, according to how the Environment Agency defines it, means that you are likely to be flooded at least once every 75 years, that would suggest that you would need a premium of £400 every year just to cover the flood risk. In addition, of course, home insurance covers you for theft, fire and a whole load of other things. Therefore, you can see how high the premium would have to be for someone who is at a once-every-75 years flood risk. There are many people who are insured who might be at a once-every-50-years risk or a once-every-25-years risk. That is the challenge that we have to make things affordable. The average premium across the UK is around £300, so you can see that, inevitably, those at a very high flood risk end up paying more than the average.

[235] **Mick Bates:** What is the excess on such policies?

[236] **Mr Jacobs:** It varies, because different insurers will take different approaches. Some will charge a higher premium and keep the excess down; others will charge a lower premium and increase the excess. Across the market, as far as we are aware, the numbers of people who will have an excess of £5,000 or £10,000 are in the low hundreds.

[237] **Mr Philp:** Yes, that would be the case. Such excesses would be where the frequency of flooding, as opposed to the cost, is high. If it is going to happen very regularly, excesses would be applied, and it is partly to make the policyholder responsible for managing the loss—they are a co-insurer in that sense. Large excesses are exceptional, and, effectively, if there are such large excesses, the property is almost becoming uninsurable for flood risk, but

the policy would still provide cover for all the other aspects.

10.50 a.m.

[238] You mentioned risk assessments. Those are common with other forms of loss. If a house is at serious risk of subsidence or suffers from subsidence, for example, the insurer may ask for a structural engineer's report in order to assess that loss fully. There was a scheme in Wales, and there is currently a scheme run by the Department for Environment, Food and Rural Affairs to fund local authorities in England, trying to encourage policyholders to build resilience into their homes. A compulsory part of that is obtaining a risk assessment to understand how the property can flood and what can be done to mitigate that. Stopping water getting in is a complex business. Walls can be porous, and water can come up through the floor in the case of rising ground water flooding; it can also come up through drains. It is a complex area, and people need to take professional advice. That is why risk assessments are used—to help to inform the policyholder about what they can do themselves, and then enable them to have a meaningful discussion with the insurer about what will happen if certain action is taken. Insurance can then be made available on those terms. It is in our interests for that to happen, and for people to fully consider the risk.

[239] **Angela Burns:** That sounds so sensible, but in practice it is just unworkable.

[240] **Mr Philp:** It is a difficult area.

[241] **Angela Burns:** It is more than difficult. I cite the case of Whitland, where the centre of the town floods on a fairly regular basis, with surface water running down a street that comes down the hill. The water comes down and goes into people's homes because the drains are blocked, and the drains are blocked because the council, for whatever reason, does not have a sufficiently regular maintenance programme to unblock them. I have constituents there, including an elderly lady who gets flooded about three times a month. She cannot put sandbags in front of her door, because she is frail, and the floodwater comes racing down the road, whizzes down her pathway, which is nicely porous—we have done everything that we can—and into her house. I do not believe that she is insured at all for her contents now. She does not bother to tell people about her flood problems any more—her son-in-law turns up and clears the house out. I have other constituents living in houses where floodwater comes up through the floors because of porosity; they can undertake all the risk assessments in the world, but the management of that risk is outside their influence. They cannot impact on that; they cannot go to the council, or whoever else, grab them by the lapels and demand that they come and fix the problem.

[242] These people's houses are blighted by flood. I know of a gentleman who lives in the middle of St Clears. He cannot live on the bottom floor of his house anymore because the house is flooded regularly, every month, with sewage. He and his wife have turned the upstairs of their house into a flat. They cannot sell their house, they cannot get insurance for it, and no-one will come and sort out their problems; they are having a miserable life, and, again, they are fairly elderly. Where do such people go? I know that you are not here to give the answers, you could not possibly do that, but when you comment that blight only happens to a few people and so on, I just do not accept that.

[243] I would like to end with a question. When someone phones you up and asks for insurance, and you spot that they are in Whitland, you tend to whack up the premiums, and yet the particular house—even though it may be in a postcode area with flooding problems, which is the tick box that tends to be used—may be on the top of a hill. So that property is being blighted just for being in the proximity of flooding, even though, unless there was a tidal wave of catastrophic proportions whizzing through the area, it would never get flooded, because the property is flood-safe. There seems to be no ability to look at individual

circumstances, and so houses are blighted by their proximity to flooding. Are there any plans to look at how that could be addressed?

[244] **Mr Jacobs:** On your first point about blight, we agree that for some people, unfortunately, insurance is not the answer, and to be honest, it is not an insurance issue—as you say, it is a much bigger issue about how people are being looked after, whether that is by Welsh Water, or the local authority, or whoever. That goes back in part to my opening comments: either there needs to be more pressure on these organisations to put in place appropriate safeguards, or, where there cannot be, there needs to be a discussion about how we help these people. I agree that leaving people blighted is not an answer, but there is only so much that we can do about that, unfortunately. However, we would be very happy to be part of those discussions, and help to put pressure on people to resolve these issues.

[245] On your second question, insurers predominantly use information about geographic location when assessing flood risk. They largely rely on organisations such as the Environment Agency for their information, which is reasonably accurate, but limited in that it will not be property-specific but will cover a grid area. So, you are right that, within that, there might be the top of a hill or the bottom of a hill.

[246] **Angela Burns:** They do not deal with contours.

[247] **Mr Jacobs:** No, not really. Again, partly, it is to do with competition: some insurers will go further and try to understand the risk in that area. As an insurer, if you know that someone is living at the top of a hill, it is in your interests to undercut all your competitors and get good business because that property is low risk. Many insurers spend money trying to invest in that capability. So, in those circumstances, you are better off shopping around and trying to find insurers that can do that.

[248] **Mr Philp:** I agree with Justin that insurance does not provide an answer for people who face regular flooding. However, if it is genuine sewer flooding because the sewer system cannot cope, as opposed to surface water flooding, the water authority is obliged to tackle it. It has an obligation to ‘effectually’—and that is their word—drain property. A best practice note from Ofwat, the water services regulation authority, states that water authorities should consider compensating people for uninsured losses. That happens with some water authorities.

[249] The judgment in *Marcic v. Thames Water Utilities Ltd* related to a property that flooded regularly. The law lords determined that if people live at the bottom of the hill and suffer intolerable flooding because the people at the top of the hill are putting water into the system, it seems sensible that those who pay water rates compensate for that. That is the basis of it. However, it is difficult, because there is surface water flooding as well as sewer flooding, which are slightly different. The surface water cannot drain away and comes back out of the sewers.

[250] **Angela Burns:** As an insurance body, do you have any clout with other bodies such as councils or water companies? Could you lean on them by saying that certain areas flood constantly and you constantly have to pay out claims? Do you have the power or right to go back to them and say that you will now start defraying some of the compensation costs that you have to pay out, because they simply will not come along and clean out the culverts even though they know full well that that is the root cause of the problems?

[251] **Mr Jacobs:** At an industry level, we cannot do that that specifically. We work closely with organisations such as Ofwat or Water UK, individual water companies and with the Local Government Association on managing flood risk generally. However, individual insurers sometimes have such discussions when they have suffered losses.

[252] **Mr Philp:** Insurers will consider legal liability, which could fall on a local authority. For example, there was a case this year in which the local authority did not manage an attenuation pond effectively. Water was meant to drain away at low tide, but the sluice gate was left at a fixed level, so the water drained away and, as a result, properties flooded. A judgment of negligence and strict liability was given against the local authority because of *Rylands v. Fletcher* on water maintained in a reservoir. If you maintain water in a reservoir and it escapes, you are strictly liable for the damage caused. So, there are incidences—

[253] **Mick Bates:** I am sorry to interrupt you, Arthur, but I think that litigation will ensue in Whitland because of the time. [*Laughter.*] I need to move on to complete this session. Leanne, you are next.

[254] **Leanne Wood:** We have taken evidence from Mary Dhonau from the National Flood Forum. She raised the point about people's insurance excesses being increased, and she gave an example of someone whose excess had increased from £10,000 to £30,000 in a year. However, she also told us of people who had been informed by their insurance company that if they took steps to make their property resistant to flooding, the excess or the cost of the premium could be reduced. What steps can householders take to make their properties more resilient and so more resistant to flooding to reduce their premiums?

11.00 a.m.

[255] **Mr Jacobs:** That would partly depend on individual properties. However, I have a couple of examples to illustrate what can be done. Somewhere in Carlisle, there was a significant flood claim of £150,000 and so the insurer was going to set a £10,000 excess, similar to that in your example. The flood risk was caused by the River Eden bursting its banks and there were problems with drains that overflowed. In that example, the insurer helped the customer to get removable sealed flood barriers installed in the property, replaced a wooden floor with a concrete one because that would not suffer as much damage when flooded, and had air bricks removed to make the construction as watertight as possible. In addition—and, again, this is property-specific, but all these cases tend to be—the drainage problem had been caused by the fact that, next door, a school had been replaced with houses, which had put more pressure on the water drainage. The builders acknowledged that that had caused a problem and the builders took steps to improve the drainage system, working with the water company. As a result of those changes, which took place over a year, the £10,000 excess was removed. I know that that is quite specific, but they all tend to be quite specific because, in these areas, as Arthur said, you need to look at the flood risk for individual properties and then design specific measures to address it.

[256] **Leanne Wood:** The problem that Mary pointed out to us was that, in the same street, with the same flood and exactly the same issues, people can be treated very differently by different insurance companies. She told us that she raised this question with somebody from ABI at a conference and was told that if people did not like the way they were treated, they could go to find another insurer. However, she pointed out to us that you are married to that insurance company until it chooses to divorce you, if you are in the situation of facing regular flooding. So, it is not that easy for people in that situation to shop around, is it?

[257] **Mr Jacobs:** For those who are at significant flood risk, it becomes more and more difficult to shop around; that is true. Again, what insurers would normally do is work with their customers to understand the nature of the flood risk and see what steps could be taken. They might help them and tell them how to get individual flood risk surveys done, and then look at how they can install the necessary measures to bring down the risk. It will vary. The cost of a claim will vary dramatically between two identical houses, simply because if you have a £20,000 kitchen as opposed to a £5,000 kitchen, there will be a difference in the claim



cost of £15,000, which has a significant impact. It is partly about trying to get customers to think more about these things when repairing their houses. It is about trying to encourage customers to think about it by saying that, if you are at a significant risk of flooding, it is not necessarily the most sensible thing to have a really expensive kitchen that gets damaged by floods, and perhaps they should have a kitchen that is less expensive and that is less prone to flood damage. We try to have those conversations with customers, but they often think that it is about trying to bring down the cost of the repair and they just want their home back as it was, and I can understand that. Trying to get customers to understand flood risk and how it works and that, in the longer term, they are better off trying to take steps to reduce the risk is a difficult challenge.

[258] **Leanne Wood:** We are all gaining a better understanding of the risks of flooding and new data will show us which areas are at risk of surface water flooding, in line with the EU floods directive. Could that new mapping exercise push up premiums in new areas?

[259] **Mr Jacobs:** I doubt that it would have any impact on average premiums. It may have an impact in that there may be a few winners and losers, but I do not think that it will have a huge impact. Surface water flooding is not necessarily the most expensive sort of flooding, because it tends to be relatively low depth, which causes less damage.

[260] **Mr Philp:** Yes, that is true. If there are areas where surface water flooding is occurring regularly and nothing can be done about it, they are much more of a problem. The problems in low-lying areas, particularly low-lying coastal areas, are getting worse because of the rise in sea levels, effectively, at the mouths of rivers. That presents a challenge for local authorities, but the flood Bill is all about trying to address that. Our view is that, in the longer term, if these issues are addressed, there should not be an issue for the vast majority of people.

[261] **Lorraine Barrett:** Could you just say something briefly about the rent schemes for tenants in social housing? You welcome the Welsh Assembly Government's approach to working with local authorities to promote insurance with their rent schemes. I presume that that covers the contents only, because councils or social landlords would be responsible for the buildings insurance.

[262] **Mr Jacobs:** That is absolutely right. It is what we call low-cost home contents insurance for the tenants of social landlords, whether local authorities or housing associations. Briefly, policies tend to charge low premiums of £1 a week or less. There is no excess, and the level of cover is relatively low, reflecting the customers' needs. Flexible payments are offered: weekly, fortnightly, or whatever suits the customers. No bank account is needed, because we are trying to avoid excluding people from the system. This work is funded in part by the UK Government to help to pursue this initiative. As I said, we have something coming up on 7 July. Cardiff Council will be there, along with various other local authorities and housing associations. There are some good examples of best practice in which housing associations have spread awareness so that there is a very high take-up. In other areas, take-up is lower, and that is a concern, because it means that these people are not protected.

[263] **Lorraine Barrett:** You have given some examples of good practice with regard to dealing with customers' needs. If you feel that there is something else to show how insurance companies deal with customers' needs during and after flooding, could you send it to us later? You have already touched on some of the suggestions that they give to householders.

[264] Finally, there is the fact sheet for insurers and loss adjusters that is being drawn up between your organisation and the National Flood Forum. When will that be available? Do you think that the insurers and loss adjusters have the adequate knowledge to advise customers on the most appropriate resilience features? You have touched on this, too, but can

you say something about the fact sheet?

[265] **Mr Jacobs:** Sure. A couple of years ago, we produced a guide with the National Flood Forum. It was intended to be used with customers to explain what so-called ‘resilient repair’ is. That is, putting sockets higher up the walls and so on. What we learned from the summer floods and subsequent discussions was that it is not enough to tell customers what it is; we need to explain to them why they should consider it. In feedback from some of the floods, we find that customers say things like, ‘Well, now that I have been flooded once, the Government will protect me, so I do not need to worry’, or, ‘If I am lucky enough to have a flood only once every 100 years, does that not mean that I am now safe for 99 years?’. Things like that sound flippant, but people do not understand risk. When this kind of event happens to you, your focus is on getting your house back to how it was. We thought about producing some question-and-answer fact sheet to explain these sorts of things, with the National Flood Forum so that we would be talking to real flood victims, to address the common issues that people raise when we try to promote resilient repair and deal with them head on. We propose to use the fact sheet when loss adjusters go into people’s homes.

[266] **Mr Philp:** As for whether insurance staff and loss adjusters have the expertise, if it is in determining how water can get in and what can be done to keep it out, I would say that they probably do not. They do know, however, how to determine which properties it would be correct to get advice on and to consider the possibilities. With the fact sheets, they can advise policy holders on what they can do and how they can get expert advice.

[267] **Mick Bates:** How will the fact sheet be distributed?

[268] **Mr Jacobs:** It will sit with organisations such as loss adjusters, insurers and the National Flood Forum. Then, when we go into people’s homes after a flood, we can sit down with customers and use the form to talk them through the options and try to explain to them why it is in their interests to consider some of these resilient repair features.

[269] **Mick Bates:** It strikes me that it may be worthwhile sending it as standard practice to all customers before flooding happens.

[270] **Mr Jacobs:** Possibly. We can certainly look at that. To be honest, we find that customers get a lot of information already as part of their insurance paperwork, and it is quite a struggle to get people to read these things. I agree with you, but part of this is about targeting people at the right time, so that we know that they will read it and think about it.

[271] **Mick Bates:** Thank you. I draw this session to a close. Thank you for your written evidence and your answers to questions. You will be sent a copy of the transcript for you to look over to see whether any corrections are needed. If you wish to send us any further information, please do. Thank you both very much.

11.09 a.m.

### **Ymchwiliad i Fynediad i Ddŵr Mewndirol: Trafod Cwmpas ac Amcanion yr Ymchwiliad**

#### **Inquiry into Access to Inland Water: Discussion of Scope and Objectives**

[272] **Mick Bates:** Members will have received the scoping for this item. We will meet to launch our consultation at the Royal Welsh Show on the Tuesday.

11.10 a.m.

[273] There is already a great deal of interest in this, as I am sure that you are aware. It is

my intention to use the same format as we have used with the flooding inquiry, namely to go out to gather evidence from places that are affected. I am certain that, in most of our constituencies and regions, there are issues of access to inland waterways. I hope to follow the same format, but we will evaluate that next week. It would be good if we could get the bus. Are there any comments on this?

[274] **Rhodri Glyn Thomas:** I wish to apologise, Chair, but I will not be available during the week of the Royal Welsh Show; that is equally true for the Rural Development Sub-Committee event.

[275] **Mick Bates:** I am sorry, could you repeat that?

[276] **Rhodri Glyn Thomas:** I will not be available during the week of the Royal Welsh Show.

[277] **Mick Bates:** You mentioned the Rural Development Sub-committee event.

[278] **Rhodri Glyn Thomas:** Yes, because it is launching something as well.

[279] **Mick Bates:** That is in the afternoon; ours is in the morning.

[280] **Rhodri Glyn Thomas:** I will not be available for either.

[281] **Mick Bates:** I see. That is okay. Are there any comments on the scoping paper? I see that there are none.

11.11 a.m.

### **Papurau i'w Nodi Papers to Note**

[282] **Mick Bates:** We have the work programme and the written consultation responses to the draft flood and water management Bill to note. Are there any comments on them? I see that there are none. The next meeting will be on Wednesday, 1 July, when we will consider the evidence that we hope to have gathered at our public meetings and how we will deal with that. Thank you for your attendance this morning. I will see you next week.

*Daeth y cyfarfod i ben am 11.11 a.m.  
The meeting ended at 11 .11 a.m.*