Cynulliad Cenedlaethol Cymru

Pwyllgor Archwilio

The National Assembly for Wales

Audit Committee

Adfywio Bae Caerdydd
The Regeneration of Cardiff Bay

Cwestiynau 171-218
Questions 171-218

Dydd Iau 18 Gorffennaf 2002
Thursday 18 July 2002

Aelodau o'r Cynulliad yn bresennol: Dafydd Wigley (Cadeirydd), Eleanor Burnham, Alun Cairns, Janet Davies, Janice Gregory, Alison Halford, Ann Jones, Helen Mary Jones, Val Lloyd.

Swyddogion yn bresennol: Syr John Bourn, Archwilydd Cyffredinol Cymru; Frank Grogan, Swyddfa Archwilio Genedlaethol Cymru; David Powell, Swyddog Cydymffurfio Cynulliad Cenedlaethol Cymru.

Tystion: Syr Jon Shortridge, Ysgrifennydd Parhaol Cynulliad Cenedlaethol Cymru; David Richards, Prif Swyddog Cyllid Cynulliad Cenedlaethol Cymru.

Assembly Members present: Dafydd Wigley (Chair), Eleanor Burnham, Alun Cairns, Janet Davies, Janice Gregory, Alison Halford, Ann Jones, Helen Mary Jones, Val Lloyd.

Officials present: Sir John Bourn, Auditor General for Wales; Frank Grogan, National Audit Office Wales; David Powell, National Assembly for Wales Compliance Officer.

Witnesses: Sir Jon Shortridge, Permanent Secretary, National Assembly for Wales; David Richards, Principal Finance Officer, National Assembly for Wales.

Dechreuodd y cyfarfod am 2 p.m.
The meeting began at 2 p.m.

[171] **Dafydd Wigley:** Croesawaf bawb i'r cyfarfod hwn o'r Pwyllgor Archwilio.

I draw visitors' attention to the fact that simultaneous translation is available. Members and witnesses have the right to speak in Welsh or English. If anyone is hard of hearing, you may find that you can follow proceedings more easily by listening through the headsets.

I formally welcome our guests from the Scottish Parliament: Andrew Welsh MSP, the convenor of its Audit Committee, who was a colleague of mine in Westminster for about 20 years; Bob Black, the Auditor General for Scotland; and Seán Wixted, the committee's deputy clerk. I hope that you will find our inquiries and procedures of some interest.

Mae Jocelyn Davies yn ymddiheuro na all fod yma. Bu'n derbyn triniaeth yn yr ysbyty, ac yr wyf yn siwr yr hoffai'r Pwyllgor ddymuno adferiad llawn a buan iddi. Mae Helen Mary Jones yn eilio ar ei rhan. Croeso i'r Pwyllgor, Helen. Nid oes ymddiheuriadau eraill.

[171] **Dafydd Wigley:** I welcome everyone to this meeting of the Audit Committee.

Tynnaf sylw ymwelwyr at y ffaith bod gwasanaeth cyfieithu ar y pryd ar gael. Mae gan aelodau a thystion hawl i siarad yn Gymraeg neu Saesneg. Os oes unrhyw un yn drwm eu clyw, efallai y canfyddwch y gallwch ddilyn y drafodaeth yn haws wrth wrando drwy'r clustffonau.

Estynnaf groeso ffurfiol i'n gwesteion o Senedd yr Alban: Andrew Welsh ASA, cynullydd ei Phwyllgor Archwilio, a fu'n gyd-aelod i mi yn San Steffan am ryw 20 mlynedd; Bob Black, Archwilydd Cyffredinol yr Alban; a Seán Wixted, dirprwy glerc y pwyllgor. Gobeithiaf y bydd ein hymholiadau a'n gweithdrefnau o ddiddordeb ichi.

Jocelyn Davies apologises that she cannot be present. She has been undergoing hospital treatment, and I am sure that the Committee would like to wish her a full and speedy recovery. Helen Mary Jones is substituting on her behalf. Welcome to the Committee, Helen. There are no other apologies.

Yr ydym yn dychwelyd at bwnc bae Caerdydd, y bu inni gymryd tystiolaeth yn ei gylch eisoes. Yn y sesiwn cymryd tystiolaeth ar 16 Mai 2002 ar adroddiad Swyddfa Archwilio Genedlaethol Cymru, 'Parhau i Adfywio Bae Caerdydd', fe gofiwch inni benderfynu gwahodd yr Ysgrifennydd Parhaol yn ôl ger ein bron heddiw i'n diweddaru ar y sefyllfa. Croesawaf Syr Jon Shortridge—llongyfarchiadau ichi ar yr anrhydedd—a David Richards yn ôl i'r Pwyllgor. A wnewch chi gyflwyno eich hunain, os gwelwch yn dda?

We return to the issue of Cardiff bay, on which we have already taken evidence. In the evidence-taking session on 16 May 2002 on the National Audit Office Wales report, 'Continuing the Regeneration of Cardiff Bay', you will remember that we decided to invite the Permanent Secretary back to the Committee today to update us on the position. I welcome Sir Jon Shortridge—congratulations to you on that honour—and David Richards back to the Committee. Will you please introduce yourselves?

Sir Jon Shortridge: I am Jon Shortridge, the Permanent Secretary of the National Assembly for Wales.

Syr Jon Shortridge: Jon Shortridge wyf fi, Ysgrifennydd Parhaol Cynulliad Cenedlaethol Cymru.

Mr Richards: I am David Richards, the National Assembly for Wales's principal finance officer.

Mr Richards: David Richards wyf fi, prif swyddog cyllid Cynulliad Cenedlaethol Cymru.

[172] **Dafydd Wigley:** I briefly seek clarification on three matters. You will recall, Sir Jon, that, on 16 May, you indicated to this Committee that you would be prepared to make available to us copies of all correspondence relating to this issue. That discussion can be seen in questions 42 and 43 on page 18 of the transcript of that meeting. We received some letters with your letter of 24 June, which was sent to the clerk. Do those letters reflect the entirety of the correspondence that is available? Has the entirety of the correspondence been made available to us?

[172] **Dafydd Wigley:** Gofynnaf am eglurhad yn fyr ar dri mater. Fe gofiwch, Syr Jon, ichi ddweud wrth y Pwyllgor hwn ar 16 Mai y byddech yn barod i ddarparu copïau inni o'r holl ohebiaeth ynglyn â'r mater hwn. Gellir gweld y drafodaeth honno yng nghwestiynau 42 a 43 ar dudalen 18 y trawsgrifiad o'r cyfarfod hwnnw. Cawsom rai llythyrau gyda'ch llythyr dyddiedig 24 Mehefin, a anfonwyd at y clerc. Ai'r llythyrau hynny yw'r cyfan o'r ohebiaeth sydd ar gael? A ydym wedi derbyn yr ohebiaeth yn ei chyfanrwydd?

Sir Jon Shortridge: That is certainly my understanding, Chair. There has certainly been no suggestion that we should be withholding anything from the Committee, so I believe that I can give you that assurance. However, I will double-check.

Syr Jon Shortridge: Dyna fy nealltwriaeth i, yn sicr, Gadeirydd. Yn sicr ni fu unrhyw awgrym y dylem ddal unrhyw beth yn ôl oddi wrth y Pwyllgor, felly credaf y gallaf roi'r sicrwydd hwnnw ichi. Fodd bynnag, fe wiriaf hynny.

[173] **Dafydd Wigley:** I was not suggesting for one moment that you were withholding anything. I simply wondered whether anything had happened since 24 June.

Sir Jon Shortridge: I sent to the clerk this morning a copy of a letter that I sent to the chief executive of Cardiff County Council on 4 July.

[174] **Dafydd Wigley:** We have not seen that letter. Is it likely to be material to today's discussions?

Sir Jon Shortridge: I thought that it would be relevant, which is why, when I was reviewing the position this morning, I asked for it to be e-mailed across. I have a copy here if you need it.

[175] **Dafydd Wigley:** Perhaps the deputy clerk could arrange for members to have copies of that letter.

I want to establish a couple of other points of fact before we move on to questions on the substance of the matter. You stated during the last meeting that you were taking legal advice as to what constitutes reasonable access. You have indicated in the general reporting back that you have made to this Committee that you have been in touch with the Counsel General on that. Are you in a position now to tell us whether you have received any legal advice?

Sir Jon Shortridge: Yes. I have certainly received substantial legal advice. The letter that I sent to Byron Davies reflects the advice that I have received.

[176] **Dafydd Wigley:** Is that the letter that we are about to see now?

Sir Jon Shortridge: Yes.

[173] **Dafydd Wigley:** Nid oeddwn yn awgrymu am un funud eich bod yn dal dim yn ôl. Dim ond meddwl yr oeddwn i tybed a oedd unrhyw beth wedi digwydd ers 24 Mehefin.

Syr Jon Shortridge: Anfonais gopi at y clerc y bore yma o lythyr a anfonais at brif weithredwr Cyngor Sir Caerdydd ar 4 Gorffennaf.

[174] **Dafydd Wigley:** Nid ydym wedi gweld y llythyr hwnnw. A ydyw'n debygol o fod yn berthnasol i'n trafodaethau heddiw?

Syr Jon Shortridge: Yr oeddwn yn meddwl y byddai'n berthnasol, a dyna pam, pan oeddwn yn adolygu'r sefyllfa y bore yma, y gofynnais iddo gael ei e-bostio atoch. Mae gennyf gopi yma os oes arnoch ei angen.

[175] **Dafydd Wigley:** Efallai y gallai'r dirprwy glerc drefnu i aelodau gael copi o'r llythyr hwnnw.

Hoffwn sefydlu un neu ddau bwynt arall o ffaith cyn inni symud ymlaen at gwestiynau ar sylwedd y mater. Dywedasoch yn ystod y cyfarfod diwethaf eich bod yn ceisio cyngor cyfreithiol ynghylch beth yw mynediad rhesymol. Yr ydych wedi nodi yn eich adroddiadau cyffredinol yn ôl i'r Pwyllgor hwn eich bod wedi bod mewn cysylltiad â'r Cwnsler Cyffredinol ynglyn â hynny. A ydych mewn sefyllfa'n awr i ddweud wrthym a gawsoch unrhyw gyngor cyfreithiol?

Syr Jon Shortridge: Ydwyf. Cefais gyngor cyfreithiol sylweddol, yn sicr. Mae'r llythyr a anfonais at Byron Davies yn adlewyrchu'r cyngor a gefais.

[176] **Dafydd Wigley:** Ai dyna'r llythyr yr ydym am ei weld yn awr?

Syr Jon Shortridge: Ie.

[177] **Dafydd Wigley:** Therefore, when you are responding to questions of substance now, it is against the background of the full legal advice that you were expecting to have?

Sir Jon Shortridge: Yes.

[178] **Dafydd Wigley:** Thank you. Thirdly, you said in reply to question 45 on page 20 of the transcript that you would be writing to me to let me know the position that you have taken. Clearly, you have not reached that position yet, but I presume that you will be hoping to do so before too long?

Sir Jon Shortridge: Certainly. Once I had heard that I was being invited today, I thought that that had—certainly temporarily—overtaken a formal letter to you on the issue, particularly because, as I will be able to explain, I have not yet reached a full and satisfactory conclusion in my discussions with Cardiff.

[179] **Dafydd Wigley:** That request remains in force. I turn to the Auditor General's letter of 4 July, of which you are obviously aware and of which Committee members have copies. That letter makes it clear beyond doubt that the Auditor General believes that he should have full rights of access to Cardiff Harbour Authority's accounts and that the present provisions fall short of that requirement. We therefore assume, Sir Jon, that you will have informed Cardiff Harbour Authority's accounting officer of this and informed him that you needed his reply by this meeting and that, in the absence of a reply or in the case of the inadequacy of such a reply to meet the Auditor General's requirements, you will, no doubt, have resolved in your own mind what steps you would be advising this Committee and the Government of Wales that you propose to take. Are you in a position to tell the Committee today what those steps are and

[177] **Dafydd Wigley:** Felly, pan fyddwch yn ymateb i gwestiynau o sylwedd yn awr, ai yn erbyn cefndir y cyngor cyfreithiol llawn yr oeddech yn disgwyl ei gael y gwnewch hynny?

Syr Jon Shortridge: Ie.

[178] **Dafydd Wigley:** Diolch. Yn drydydd, dywedasoch wrth ateb cwestiwn 45 ar dudalen 20 y trawsgrifiad y byddech yn ysgrifennu ataf fi i adael imi wybod beth yr oeddech wedi'i wneud. Yn amlwg, nid ydych wedi cyrraedd y sefyllfa honno eto, ond cymeraf y byddwch yn gobeithio gwneud hynny cyn hir?

Syr Jon Shortridge: Yn sicr. Unwaith y clywais fy mod yn cael fy ngwahodd heddiw, yr oeddwn yn meddwl bod hynny—dros dro, yn sicr—wedi goddiweddyd llythyr ffurfiol atoch chi ar y mater, yn enwedig gan nad ydwyf, fel y gallaf egluro, wedi cyrraedd casgliad llawn a boddhaol eto yn fy nhrafodaethau gyda Chaerdydd.

[179] **Dafydd Wigley:** Mae'r cais hwnnw'n dal mewn grym. Trof at lythyr yr Archwilydd Cyffredinol dyddiedig 4 Gorffennaf, yr ydych chi'n amlwg yn ymwybodol ohono ac y mae gan aelodau'r Pwyllgor gopïau ohono. Noda'r llythyr y tu hwnt i bob amheuaeth fod yr Archwilydd Cyffredinol yn credu y dylai gael hawliau llawn i archwilio cyfrifon Awdurdod Harbwr Caerdydd ac nad yw'r darpariaethau presennol yn bodloni'r gofyniad hwnnw. Tybiwn felly, Syr Jon, y byddwch wedi hysbysu swyddog cyfrifo Awdurdod Harbwr Caerdydd am hyn ac wedi dweud wrtho y byddai angen ichi gael ei ateb erbyn y cyfarfod hwn ac, os na cheid ateb neu os byddai'r ateb hwnnw'n annigonol i ateb gofynion yr Archwilydd Cyffredinol, y byddwch, heb os, wedi penderfynu yn eich meddwl eich hun pa gamau y byddech yn dweud wrth y Pwyllgor hwn a Llywodraeth Cymru y bwriadwch eu cymryd. A ydych mewn sefyllfa i ddweud wrth y

what the position is?

Sir Jon Shortridge: I certainly agree with everything that the Auditor General has written in his letter to me, so there is no disagreement between us on our understanding of the position. I have spoken on the telephone to the chief executive of Cardiff and, as I have said, I have written this letter. Perhaps I should just correct one thing that you said. Cardiff council's chief executive is not an accounting officer in the conventional sense. That goes back to a point that I made the last time that I was before this Committee. My relationship with the chief executive of Cardiff is significantly different to the relationship that I have with the chief executive of an Assembly sponsored public body. I am not able to assert my will over the chief executive of a local authority in the same way that I am in the case of a sponsored body. So that is a relevant consideration.

Going back to the main thrust of your question, yes, I am very clear about what I should be doing. As I said, I have written to the chief executive explaining to him the position that you have taken and setting out my views on how this matter should now be resolved. I have sought to do it in a helpful way, and certainly in such a way that, if there is any misunderstanding of the source of the problem that we have, that can be cleared up. I will explain in a minute just how I have sought to do that.

Pwyllgor heddiw beth yw'r camau hynny a beth yw'r sefyllfa?

Syr Jon Shortridge: Yn sicr, cytunaf â phopeth a ysgrifennodd yr Archwilydd Cyffredinol yn ei lythyr ataf fi, felly nid oes anghytundeb rhyngom ar ein dealltwriaeth o'r sefyllfa. Yr wyf wedi siarad ar y ffôn gyda phrif weithredwr Caerdydd ac, fel y dywedais, yr wyf wedi ysgrifennu'r llythyr hwn. Efallai y dylwn gywiro un peth a ddywedasoch. Nid yw prif weithredwr cyngor Caerdydd yn swyddog cyfrifo yn yr ystyr gonfensiynol. Aiff hynny yn ôl at bwynt a wneuthum y tro diwethaf imi ddod gerbron y Pwyllgor hwn. Mae fy mherthynas â phrif weithredwr Caerdydd yn wahanol iawn i'r berthynas sydd gennyf â phrif weithredwr corff cyhoeddus a noddir gan y Cynulliad. Ni allaf orfodi fy ewyllys dros brif weithredwr awdurdod lleol yn yr un modd ag y gallaf yn achos corff a noddir. Mae hynny'n ystyriaeth berthnasol felly.

Gan ddychwelyd at brif ergyd eich cwestiwn, ydwyf, yr wyf yn glir iawn ynghylch beth y dylwn fod yn ei wneud. Fel y dywedais, yr wyf wedi ysgrifennu at y prif weithredwr yn egluro eich safbwynt chi iddo ac yn rhoi fy marn i ar sut y dylid datrys y mater hwn yn awr. Yr wyf wedi ceisio gwneud hynny mewn ffordd fuddiol, ac yn sicr yn y fath fodd fel, os oes unrhyw gamddealltwriaeth ynghylch ffynhonnell y broblem sydd gennym, y gellir clirio hynny. Egluraf mewn munud sut yn union yr wyf wedi ceisio gwneud hynny.

However, in terms of process, the chief executive received the letter on 5 July, I imagine, and I am due to see him next Wednesday, when we will discuss a range of matters, including this one. I certainly hope that that meeting will enable me to bring this to a satisfactory resolution. If it does not, then I will have to consider invoking the dispute resolution arrangements, which are set out in the section 165 agreement. Those arrangements essentially go from a reasonably informal mediation through to a more formal arbitration. I want to avoid that if I can, and that is why I have been seeking to engage the council in dialogue, not just with me but also with colleagues in the National Audit Office. I certainly hope that the proposition that I have put in my letter will be one which enables the council to understand that what I am seeking is, really, for it to comply with the contract—comply with the section 165 agreement—as opposed to imposing a second set of auditors on it. That is the distinction that I have sought to make as a way to bring this issue to a satisfactory conclusion.

Fodd bynnag, o ran y broses, derbyniodd y prif weithredwr y llythyr ar 5 Gorffennaf, fe dybiaf, ac yr wyf i fod i'w weld ddydd Mercher nesaf, pryd y trafodwn amrediad o faterion, gan gynnwys hwn. Yn sicr, gobeithiaf y gwnaiff y cyfarfod hwnnw fy ngalluogi i ddatrys y mater hwn yn foddhaol. Os na wnaiff, yna bydd yn rhaid imi ystyried gweithredu'r trefniadau datrys anghydfod, a amlinellir yng nghytundeb adran 165. Yn y bôn, mae'r trefniadau hynny'n amrywio o gyfryngu gweddol anffurfiol i gyflafareddu mwy ffurfiol. Mae arnaf eisiau osgoi hynny os gallaf, a dyna pam yr wyf wedi bod yn ceisio cael y cyngor i ymuno mewn trafodaeth, nid yn unig â mi ond hefyd â chydweithwyr yn y Swyddfa Archwilio Genedlaethol. Yn sicr, gobeithiaf y bydd y cynnig yr wyf wedi'i roi yn fy llythyr yn un a fydd yn galluogi'r cyngor i ddeall mai'r hyn yr wyf yn ei geisio, mewn gwirionedd, yw iddo gydymffurfio â'r contract—cydymffurfio â chytundeb adran 165—yn hytrach na gorfodi ail set o archwilwyr arno. Dyna'r gwahaniaeth yr wyf wedi ceisio'i nodi er mwyn datrys y mater hwn yn foddhaol.

[180] **Alison Halford:** I did not quite understand what you were saying, Mr Shortridge, but that is my fault, not yours. You do not have responsibility or power over the chief executive to make him open his books to either you or the Auditor General, and you are the accounting officer for money given by the Welsh Assembly to the harbour authority?

[180] **Alison Halford:** Ni ddeallais yn iawn beth yr oeddech yn ei ddweud, Mr Shortridge, ond fy mai i yw hynny, nid eich bai chi. Nid oes gennych gyfrifoldeb na grym dros y prif weithredwr i wneud iddo agor ei lyfrau i chi nac i'r Archwilydd Cyffredinol, a chi yw'r swyddog cyfrifo dros arian a roddir gan Gynulliad Cymru i'r awdurdod harbwr?

Sir Jon Shortridge: I have an agreement, and I can seek to invoke that agreement. There are procedures in place to ensure that that agreement is satisfactorily implemented. I can certainly do everything in my power to ensure that the agreement is implemented and, to the extent that there are problems in its implementation, that I invoke the dispute resolution arrangements. The point that I was making is that there is a difference. Were this the accounting officer of an ASPB, who has a formal accounting officer relationship with me, I would be in a much stronger position to assert my will over that person and, in effect, instruct them, than I do in the case of the chief executive of a democratically elected local authority.

[181] **Alison Halford:** I understand that, but you are the Permanent Secretary and you were the Permanent Secretary at the time when the harbour authority came into being. We know very well, from having taken evidence previously, that this is a unique set-up. So you could argue that, as the guardian of public money in Wales, you have allowed a system to be set up which gives you precious little control over how money is being spent. Could I have an answer to that?

Sir Jon Shortridge: Yes. I think that I would refer you to the first page of Sir John Bourn's letter, which says,

'When the agreement was being prepared, Assembly officials consulted the National Audit Office about this issue and ensured that the section 165 agreement included what was then a standard formula for providing the Comptroller and Auditor General and the National Audit Office access to UK bodies receiving public funds.'

Syr Jon Shortridge: Mae gennyf gytundeb, a gallaf weithredu'r cytundeb hwnnw os y mynnaf. Mae gweithdrefnau wedi'u sefydlu i sicrhau y gweithredir y cytundeb hwnnw'n foddhaol. Yn sicr gallaf wneud popeth yn fy ngallu i sicrhau y gweithredir y cytundeb hwnnw ac, i'r graddau bod problemau wrth ei weithredu, fy mod yn troi at y trefniadau datrys anghydfod. Y pwynt yr oeddwn yn ei wneud oedd bod yna wahaniaeth. Pe bai hwn yn swyddog cyfrifon corff cyhoeddus a noddir gan y Cynulliad, a chanddo berthynas swyddog cyfrifon ffurfiol â mi, byddwn mewn sefyllfa lawer cryfach i orfodi fy ewyllys ar y person hwnnw ac, i bob diben, ei gyfarwyddo, nag yr wyf gyda phrif weithredwr awdurdod lleol a etholwyd yn ddemocrataidd.

[181] **Alison Halford:** Deallaf hynny, ond chi yw'r Ysgrifennydd Parhaol a chi oedd yr Ysgrifennydd Parhaol pan ddaeth yr awdurdod harbwr i fodolaeth. Gwyddom yn iawn, o glywed tystiolaeth o'r blaen, fod hon yn sefyllfa unigryw. Felly, gellid dadlau eich bod chi, fel gwarcheidwad arian cyhoeddus yng Nghymru, wedi caniatáu sefydlu system nad yw'n rhoi fawr ddim o reolaeth ichi dros sut y caiff arian ei wario. A gaf fi ateb i hynny?

Syr Jon Shortridge: Cewch. Yr wyf yn meddwl y byddwn yn eich cyfeirio at dudalen gyntaf llythyr Syr John Bourn, sy'n dweud,

'Pan oedd y cytundeb yn cael ei baratoi, ymgynghorodd swyddogion y Cynulliad â'r Swyddfa Archwilio Genedlaethol ynglyn â'r mater hwn a sicrhau bod cytundeb adran 165 yn cynnwys fformiwla, a oedd yn safonol ar y pryd, fel byddai'r Rheolydd ac Archwilydd Cyffredinol a'r Swyddfa Archwilio Genedlaethol yn cael mynediad i gyrff sy'n cael cyllid cyhoeddus.'

Therefore, I would take the view that, throughout this process, we have acted responsibly, professionally, using precedent, and what we have found ourselves in is, to the best of my knowledge and certainly in my experience, a totally unprecedented situation whereby I have a contract and there has been a difference of view, in this case with the local authority, as to what it means.

Felly, fy marn i fyddai ein bod, drwy gydol y broses hon, wedi gweithredu'n gyfrifol, yn broffesiynol, gan ddilyn cynsail, a bod yr hyn yr ydym wedi ein cael ein hunain ynddo, i'm gwybodaeth i ac yn sicr yn fy mhrofiad i, yn sefyllfa gwbl unigryw lle mae gennyf fi gontract ac y bu gwahaniaeth barn, gyda'r awdurdod lleol yn yr achos hwn, ynghylch beth y mae'n ei olygu.

[182] **Alison Halford:** Do you know how many times the harbour authority has met since it came into being?

[182] **Alison Halford:** A wyddoch sawl gwaith y mae'r awdurdod harbwr wedi cyfarfod ers ei sefydlu?

Sir Jon Shortridge: No, I do not.

Syr Jon Shortridge: Na, ni wn.

[183] **Alison Halford:** How much money have we given to the harbour authority since it was set up?

[183] **Alison Halford:** Faint o arian yr ydym ni wedi'i roi i'r awdurdod harbwr ers ei sefydlu?

Sir Jon Shortridge: I cannot give you an accurate figure for that either.

Syr Jon Shortridge: Ni allaf roi ffigur manwl gywir ichi ar gyfer hynny ychwaith.

[184] **Dafydd Wigley:** Are we talking about millions of pounds?

[184] **Dafydd Wigley:** A ydym yn sôn am filiynau o bunnoedd?

Sir Jon Shortridge: Yes, we are talking many tens of millions of pounds.

Syr Jon Shortridge: Ydym, yr ydym yn sôn am lawer o ddegau o filiynau o bunnoedd.

[185] **Dafydd Wigley:** The point is that, if this clause was being invoked and followed, as was the intention, and as we believe is the legally binding position, you would be getting access to this information. Therefore, the question that arises is, if the procedures for arbitration are laid down in the agreement, and we have taken the best part of a year to get to this position, why have we not used those procedures of arbitration before now?

[185] **Dafydd Wigley:** Y pwynt yw, pe bai'r cymal hwn yn weithredol ac yn cael ei arddel, fel a fwriadwyd, ac fel y credwn ni sy'n rhwymedigaeth gyfreithiol, byddech yn cael gweld y wybodaeth hon. Felly, y cwestiwn sy'n codi yw, os yw'r gweithdrefnau cyflafareddu wedi'u hamlinellu yn y cytundeb, a'n bod ni wedi cymryd bron i flwyddyn i gyrraedd y sefyllfa hon, pam nad ydym wedi defnyddio'r gweithdrefnau cyflafareddu hynny cyn hyn?

Sir Jon Shortridge: I think that there are two points. The first thing to say is what I explained to the Committee last time, that, in terms of Assembly officials getting access to all the information and records that they require to do their monitoring work, we have never had any problem with that. Therefore, as I explained last time, we as officials do not have any evidence that there has been any misuse or misappropriation of Assembly funds. We have very elaborate procedures in place, and they have been working. The issue, and I will not seek to understate it, is obtaining access for the National Audit Office so that it can satisfy itself, independently and separately, that the way in which the procedures have been operating and the judgments that we have been making are accurate. That is the issue.

Syr Jon Shortridge: Credaf fod yno ddau bwynt. Y peth cyntaf i'w ddweud yw'r hyn a eglurais wrth y Pwyllgor y tro diwethaf, sef nad ydym erioed wedi cael unrhyw broblem gyda sicrhau y caiff swyddogion y Cynulliad fynediad at yr holl wybodaeth a chofnodion sydd eu hangen arnynt i wneud eu gwaith monitro. Felly, fel yr eglurais y tro diwethaf, nid oes gennym ni fel swyddogion ddim tystiolaeth y bu unrhyw gamddefnydd ar arian y Cynulliad. Mae gennym weithdrefnau cymhleth iawn ac maent wedi bod yn gweithio. Y broblem, ac ni cheisiaf ei bychanu, yw sicrhau y caiff y Swyddfa Archwilio Genedlaethol fynediad, fel y gall honno fodloni'i hun, yn annibynnol ac ar wahân, fod y modd y bu'r gweithdrefnau'n rhedeg, a'r ffordd yr ydym ni wedi barnu'r sefyllfa, yn gywir. Dyna'r broblem.

[186] **Dafydd Wigley:** There is no dispute about that. I was asking why have we not used the arbitration process before now, if you have known of this since July last year.

[186] **Dafydd Wigley:** Nid oes dadl ynglyn â hynny. Gofyn yr oeddwn i pam nad ydym wedi defnyddio'r broses gyflafareddu cyn hyn, os ydych yn gwybod am hyn ers mis Gorffennaf y llynedd.

Sir Jon Shortridge: As I said last time, I have been seeking to proceed by agreement rather than by taking an adversarial stance. I did explain last time that I was particularly interested to hear the views of the Committee on that so that I could decide how I was going to position myself.

Syr Jon Shortridge: Fel y dywedais y tro diwethaf, yr wyf wedi bod yn ceisio symud ymlaen trwy gytundeb yn hytrach na thrwy herio. Fe eglurais y tro diwethaf y byddai gennyf ddiddordeb arbennig mewn clywed sylwadau'r Pwyllgor ar hynny fel y gallwn benderfynu sut yr oeddwn am ymagweddu.

[187] **Dafydd Wigley:** I think that you had those, did you not?

[187] **Dafydd Wigley:** Credaf ichi gael y rheini, onid do?

Sir Jon Shortridge: In response to those views, what I have done since that last meeting is to take further legal advice and I have shared this advice with the Auditor General. He wrote to me on 4 July, and, on the same day, I wrote to the chief executive of the county council, and he is coming to see me next Wednesday.

Syr Jon Shortridge: Mewn ymateb i'r sylwadau hynny, beth yr wyf wedi ei wneud ers y cyfarfod diwethaf yw cymryd cyngor cyfreithiol pellach, ac yr wyf wedi rhannu'r cyngor hwn â'r Archwilydd Cyffredinol. Ysgrifennodd ataf ar 4 Gorffennaf, ac, ar yr un dydd, ysgrifennais innau at brif weithredwr y cyngor sir, a bydd hwnnw'n dod i'm gweld ddydd Mercher nesaf.

[188] **Alun Cairns:** Can you share with us—I do not have a copy of the section 165 agreement—the mediation process, or the dispute clause that is contained in the contract? What are those different steps? You have spoken of informal mediation through to more stringent action. Can you tell us what each step is?

[188] **Alun Cairns:** A allwch rannu â ni—nid oes gennyf gopi o gytundeb adran 165—y broses gyfryngu, neu'r cymal anghydfod sydd yn y contract? Beth yw'r camau gwahanol hynny? Yr ydych wedi sôn am gyfryngu anffurfiol drwodd i weithredu mwy llym. A allwch ddweud wrthym am bob cam?

Sir Jon Shortridge: It is a three-page part of the agreement, so, if you will forgive me, I will just try to take you through it quickly. The agreement states:

Syr Jon Shortridge: Mae'n rhan tair tudalen o'r cytundeb, felly, os maddeuwch imi, mi geisiaf fynd â chi drwyddi'n gyflym.

'The parties will use their best efforts to negotiate in good faith, and settle any dispute that may arise out of, or relate to, this agreement or any breach of it. If any such dispute cannot be settled amicably through ordinary negotiations by the council's head of service responsible, the dispute shall be referred to the senior representatives nominated by the chief executives. If the dispute or difference is not resolved as a result of such meeting, either party may propose to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator.'

Dywed y cytundeb y bydd y carfanau yn gwneud eu gorau glas i negodi'n ddiffuant, a datrys unrhyw anghydfod a fo'n codi o'r cytundeb, neu a wnelo ag ef, neu o unrhyw dor-gytundeb. Os na ellid datrys anghydfod yn gyfeillgar drwy negodiadau arferol gan bennaeth gwasanaeth y cyngor sy'n gyfrifol, cyfeirir yr anghydfod at yr uwch-gynrychiolwyr a enwebir gan y prif weithredwyr. Os na ddatrysir yr anghydfod neu wahaniaeth barn o ganlyniad i'r cyfarfod hwnnw, gallai'r naill garfan neu'r llall wneud cynnig ysgrifenedig i gychwyn ar negodiadau strwythuredig gyda chymorth cynghorydd neu gyfryngwr amhleidiol.

It then goes on with a whole series of clauses about the procedure for appointing a mediator and then, if the mediation process cannot come about or is unsatisfactory, at that point there are arrangements for appointing an arbitrator. It goes on to say that, if the arbitration relates to a matter of law or a matter of interpretation of the agreement, the president of the Law Society at the time shall appoint the arbitrator. So that is just a very quick run through it, but I am very happy to let you have a copy.

Wedyn aiff ymlaen â chyfres gyfan o gymalau ynglyn â'r drefn ar gyfer penodi cyfryngwr ac wedyn, os na all y cyfryngu ddigwydd neu os yw'n anfoddhaol, bryd hynny mae trefniadau ar gyfer penodi cyflafareddwr. Â ymlaen i ddweud, os yw'r cyflafareddiad ynglyn â phwynt o gyfraith neu gwestiwn o ddehongliad y cytundeb, yna llywydd Cymdeithas y Gyfraith ar y pryd fydd yn penodi'r cyflafareddwr. Felly dyna fynd drwyddo'n frysiog iawn, ond byddaf yn hollol fodlon rhoi copi ichi.

[189] **Alun Cairns:** I am grateful for that. I noted four or possibly five steps that we could follow from your brief summary. At which step are we now?

[189] **Alun Cairns:** Yr wyf yn ddiolchgar am hynny. Nodais bedwar neu efallai bum cam y gallem eu dilyn o'ch crynodeb byr. Ar ba gam yr ydym ni'n awr?

Sir Jon Shortridge: I think that we have reached the point where I will meet with the chief executive, and, if that is not satisfactory, I will be looking to move to more formal mediation.

Syr Jon Shortridge: Yr wyf yn meddwl ein bod wedi cyrraedd y pwynt lle byddaf fi'n cwrdd â'r prif weithredwr, ac, os na fydd hynny'n foddhaol, byddaf yn edrych i symud tuag at gyfryngu mwy ffurfiol.

[190] **Alun Cairns:** So, for how long have we been in this situation where Sir John Bourn has not been allowed access to the information that he requires on behalf of the Committee?

[190] **Alun Cairns:** Felly, ers pa hyd yr ydym wedi bod yn y sefyllfa hon lle nad yw Syr John Bourn wedi cael gweld y wybodaeth y mae'n gofyn amdani ar ran y Pwyllgor?

Sir Jon Shortridge: He has been seeking this information for about a year, but I think that that needs to be put into context. He and I have been working to find a satisfactory resolution to this matter, short of following more formal procedures, and that has, I think, had regard to the nature of the dispute and its relative seriousness.

Syr Jon Shortridge: Bu'n ceisio'r wybodaeth hon ers rhyw flwyddyn, ond yr wyf yn meddwl bod angen gosod hynny yn ei gyd-destun. Bu ef a mi'n gweithio i ganfod ateb boddhaol i'r mater hwn, heb fynd i weithredu'n fwy ffurfiol, ac mae hynny, gredaf fi, wedi ymwneud â natur yr anghydfod a'i ddifrifwch cymharol.

[191] **Alun Cairns:** Cadeirydd, may I suggest a course that the Committee might want to take as soon as we have finished—

[191] **Alun Cairns:** Gadeirydd, a gaf fi awgrymu cwrs y gallai'r Pwyllgor ddymuno ei ddilyn cyn gynted ag y byddwn wedi gorffen—

[192] **Dafydd Wigley:** May we come back to you on that? Perhaps Eleanor would like to ask her question and I know that Helen also has a question.

[193] **Alun Cairns:** I have one final question.

[194] **Dafydd Wigley:** Okay. We will take that question first.

[195] **Alun Cairns:** Let us put this into context, Sir Jon. In your response to Alison Halford, you said—and I made a note of this—that there is no evidence of inappropriate use of funds. I suggest that that is what we are seeking to ensure. It is the Committee that makes the judgment as to whether there has been appropriate or inappropriate use of funds. Therefore, we are asking your help in allowing us, or Sir John Bourn on our behalf, access to that data, so that we can make an appropriate judgment, which, I hope—and am sure will—back up your statement. However, it is for the Committee to make that judgment.

[196] **Dafydd Wigley:** I wish to make it clear that we have no reason to believe that there has been an inappropriate use of funds, but we want to give the Auditor General the fullest possible support in obtaining the information that he deems appropriate. I know that that is also the position that you take, Sir Jon—it is a question of time and how we get there.

[192] **Dafydd Wigley:** A gawn ni ddod yn ôl atoch ar hynny? Efallai yr hoffai Eleanor ofyn ei chwestiwn, a gwn fod gan Helen gwestiwn hefyd.

[193] **Alun Cairns:** Mae gennyf un cwestiwn olaf.

[194] **Dafydd Wigley:** Iawn. Cymerwn y cwestiwn hwnnw yn gyntaf.

[195] **Alun Cairns:** Gadewch inni roi hyn yn ei gyd-destun, Syr Jon. Yn eich ymateb i Alison Halford, dywedasoch—a gwneuthum nodyn o hyn—nad oes dim tystiolaeth o ddefnydd amhriodol o arian. Awgrymaf mai dyna'r ydym yn ceisio'i sicrhau. Y Pwyllgor sydd i farnu a fu defnydd priodol neu amhriodol o arian. Felly yr ydym yn gofyn am eich cymorth i ganiatáu i ni, neu Syr John Bourn ar ein rhan, weld y data hynny, fel y gallwn ffurfio barn briodol, a fydd, gobeithio—ac yr wyf yn siwr y gwna—yn cefnogi'ch gosodiad. Fodd bynnag, mater i'r Pwyllgor yw gwneud y dyfarniad hwnnw.

[196] **Dafydd Wigley:** Hoffwn ei gwneud yn glir nad oes gennym reswm i gredu y bu defnydd amhriodol ar arian, ond mae arnom eisiau rhoi'r gefnogaeth lawnaf posibl i'r Archwilydd Cyffredinol i gael y wybodaeth sy'n briodol yn ei farn ef. Gwn mai dyma'ch safbwynt chithau hefyd, Syr Jon—cwestiwn o amser ydyw, a sut yr awn ati.

[197] **Eleanor Burnham:** I just have a brief question. We are dealing with devolved Assembly matters, and it would appear that a fortnight is a long time to wait for a reply. If anybody is listening to or watching this—because people do take a keen interest in the Audit Committee—they would probably understand why it has taken such a length of time if it appears that you have not received a reply to a letter you sent to the chief executive of Cardiff County Council a fortnight ago. Has no reply come back since then?

[197] **Eleanor Burnham:** Dim ond cwestiwn byr sydd gennyf. Yr ydym yn delio â materion a ddatganolwyd i'r Cynulliad, ac mae'n ymddangos bod pythefnos yn amser hir i aros am ateb. Os oes unrhyw un yn gwrando ar hyn neu'n ei wylio—oherwydd bod gan bobl ddiddordeb brwd yn y Pwyllgor Archwilio—mae'n debyg y deallent pam y cymerodd gyhyd os yw'n ymddangos nad ydych chi wedi cael ateb i lythyr a anfonasoch at brif weithredwr Cyngor Sir Caerdydd bythefnos yn ôl. Onid oes ateb wedi dod i law ers hynny?

Sir Jon Shortridge: I have not had a reply, and I have made the judgment, rightly or wrongly, not to press too hard for a reply under the circumstances. I think that he needs to have time to reflect on what I have written and to undertake any necessary consultations he needs to make within his authority. However, I do have a meeting with him next week.

Syr Jon Shortridge: Nid wyf fi wedi cael ateb, ac yr wyf wedi penderfynu, yn gam neu'n gymwys, beidio â phwyso'n rhy galed am ateb dan yr amgylchiadau. Credaf fod arno angen amser i fyfyrio ar yr hyn a ysgrifennais a gwneud unrhyw ymgyngoriadau angenrheidiol y mae angen iddo'u gwneud o fewn ei awdurdod. Fodd bynnag, y mae gennyf gyfarfod ag ef yr wythnos nesaf.

[198] **Eleanor Burnham:** Surely that is the whole point, if you have been waiting for a year, and have been trying to press the matter, surely these are the manifestations of the difficulties that you obviously face.

[198] **Eleanor Burnham:** Siawns nad dyna yw'r holl bwynt, os ydych chi wedi bod yn aros am flwyddyn, ac wedi bod yn ceisio gwthio'r mater, siawns nad yw hyn yn dangos yr anawsterau yr ydych yn amlwg yn eu hwynebu.

[199] **Dafydd Wigley:** It is no doubt frustrating for you, Sir Jon, and it is frustrating for this Committee, because we thought in May that we would come to a conclusion in this session before we went down for the summer.

[199] **Dafydd Wigley:** Mae'n siwr ei bod yn peri rhwystredigaeth i chi, Syr Jon, ac mae'n peri rhwystredigaeth i'r Pwyllgor hwn, oherwydd inni gredu ym mis Mai y deuem i gasgliad yn y sesiwn hwn cyn inni dorri am yr haf.

[200] **Helen Mary Jones:** Forgive me, Sir Jon, if these are questions that have already been answered in the previous session on this matter. I want to take you back to the dispute resolution mechanism to which Alun Cairns has already referred, and this also concerns the appropriateness or rigorousness of the original agreement, to which Alison Halford referred. Does this dispute resolution mechanism have specific timescales? Considering the various dispute resolutions with which I have been involved, such as grievance procedures at work, letters must be answered and meetings set up within so many days. Do we have these timescales? I understand what you have said about giving people time to respond, but the council has had a year to decide its position on this. Do we have the timescales, and if so, can you accurately predict, if it comes to a worst-case scenario and you have to invoke the mechanism, how long it will take? If we do not have the timescales, how long do you think that it is likely to take? If it has taken a year and the auditor still does not have the information, then my experience of this kind of mechanism suggests that, if you have to invoke the formal procedure, it could be another six months before he gets that information. I hope that you will not have to do that and that it will be resolved well. However, in terms of any future problems, it is important for the Committee to understand what the mechanism is.

[200] **Helen Mary Jones:** Maddeuwch imi, Syr Jon, os yw'r cwestiynau hyn yn rhai a atebwyd eisoes yn y sesiwn blaenorol ar y mater hwn. Hoffwn fynd â chi'n ôl at y peirianwaith datrys anghydfod y cyfeiriodd Alun Cairns ato eisoes, ac mae a wnelo hyn hefyd â phriodoldeb neu drylwyredd y cytundeb gwreiddiol, y cyfeiriodd Alison Halford ato. A oes gan y peirianwaith datrys anghydfod hwn derfynau amser penodol? O ystyried y gwahanol brosesau datrys anghydfod y bûm i'n rhan ohonynt, fel gweithdrefnau cwynion yn y gwaith, mae'n rhaid ateb llythyrau a threfnu cyfarfodydd o fewn hyn-a-hyn o ddyddiau. A oes gennym ni'r terfynau amser hyn? Deallaf yr hyn a ddywedasoch ynglyn â rhoi amser i bobl ymateb, ond cafodd y cyngor flwyddyn i benderfynu ar ei safbwynt ar hyn. A oes gennym y terfynau amser, ac os oes, a allwch ragweld yn gywir, os daw i'r sefyllfa waethaf bosibl a bod rhaid ichi weithredu'r peirianwaith, faint o amser a gymer? Os nad yw'r terfynau amser gennym, pa mor hir y tybiwch y mae'n debygol o'i gymryd? Os yw wedi cymryd blwyddyn a bod y wybodaeth yn dal heb gyrraedd yr archwilydd, yna awgryma fy mhrofiad i o'r math yma o beirianwaith y gallai fod yn chwe mis arall, os oes raid galw ar y weithdrefn ffurfiol, cyn iddo gael y wybodaeth honno. Gobeithiaf na fydd yn rhaid ichi wneud hynny ac y caiff ei ddatrys yn dda. Fodd bynnag, o ran unrhyw broblemau yn y dyfodol, mae'n bwysig i'r Pwyllgor ddeall beth yw'r peirianwaith.

Sir Jon Shortridge: The formal procedure does lay down timescales, but I would need to work out a critical path for you because—and you are clearly experienced in these things—if something does not happen then there is more time for it to happen, and then you return to the core path. However, the timescales that recur in this document, which I am happy to make available to you, are 14 days for different stages, and there is one case where, if parties fail to reach agreement in the structured negotiations within 30 days, then something will happen. So it is those sorts of timescales.

Syr Jon Shortridge: Mae'r weithdrefn ffurfiol yn pennu terfynau amser, ond byddai angen imi feddwl am lwybr critigol ichi oherwydd—ac yn amlwg yr ydych yn brofiadol yn y pethau hyn—os na fydd rhywbeth yn digwydd yna ceir mwy o amser iddo ddigwydd, ac wedyn eir yn ôl at y llwybr craidd. Fodd bynnag, y terfynau amser a welir dro ar ôl tro yn y ddogfen hon, y byddaf yn fodlon ichi ei gweld, yw 14 diwrnod ar gyfer y gwahanol gamau, ac mae un achos lle, os na fydd y partïon wedi dod i gytundeb yn y negodiadau strwythuredig o fewn 30 diwrnod, y bydd rhywbeth yn digwydd. Felly dyna'r mathau o derfynau amser.

[201] **Janet Davies:** I have quite a lot of sympathy for you in struggling to make progress on this, Sir Jon. It is an issue of timescales again. What has occurred to me while I have been listening is that we now have a long recess period and it will be three to four months before the Audit Committee meets again. To what extent will you pursue this rigorously throughout the summer recess, and would it perhaps be possible for you to contact the Chair, because the Committee will not be meeting, in order to keep him informed of progress?

[201] **Janet Davies:** Mae gennyf gryn dipyn o gydymdeimlad â chi wrth ichi geisio symud ymlaen â hyn, Syr Jon. Mae'n fater o derfynau amser eto. Yr hyn a'm trawodd i wrth wrando oedd bod gennym yn awr gyfnod hir o doriad ac na fydd y Pwyllgor Archwilio'n cwrdd eto am dri neu bedwar mis. I ba raddau yr ewch ar ôl hyn o ddifrif drwy gydol toriad yr haf, ac a fyddai modd ichi efallai gysylltu â'r Cadeirydd, gan na fydd y Pwyllgor yn cyfarfod, i roi gwybod iddo ef beth sy'n digwydd?

Sir Jon Shortridge: Yes, certainly. Indeed, it is helpful, if I can put it this way, to know that the Committee is pressing me hard for an outcome and I will take that into account. I can certainly ensure that, either directly through the Chair or, if he prefers, through the clerk, you are kept regularly informed on how matters are progressing.

Syr Jon Shortridge: Byddai, yn sicr. Yn wir, mae'n ddefnyddiol, os caf ei roi felly, gwybod bod y Pwyllgor yn pwyso'n galed arnaf am ganlyniad ac fe ystyriaf hynny. Yn sicr, gallaf sicrhau y cewch wybodaeth reolaidd, un ai'n uniongyrchol drwy'r Cadeirydd neu, os yw'n well ganddo, drwy'r clerc, ynghylch y modd y mae pethau'n dod yn eu blaen.

[202] **Dafydd Wigley:** If you channel information through the clerk, it will reach me wherever I may be. That is probably the formal and appropriate way to do it. I would be grateful for that information.

[202] **Dafydd Wigley:** Os sianelwch wybodaeth drwy'r clerc, gwnaiff fy nghyrraedd i lle bynnag y byddaf. Dyna'r ffordd ffurfiol a phriodol i wneud hyn, mae'n debyg. Byddwn yn ddiolchgar am y wybodaeth honno.

[203] **Ann Jones:** This point is aimed at the National Audit Office rather than Sir Jon. When Assembly officials consulted the audit office about what was being built into the section 165 agreement, did you not feel that it was necessary, other than just to accept the standard formula, if you had wanted access to records, to have written that in at the time?

[203] **Ann Jones:** Anelir y pwynt hwn at y Swyddfa Archwilio Genedlaethol yn hytrach na Syr Jon. Pan ymgynghorodd swyddogion y Cynulliad â'r swyddfa archwilio ynghylch yr hyn a gâi ei gynnwys yng nghytundeb adran 165, oni wnaethoch deimlo ei bod yn angenrheidiol, os dymunech gael mynediad at y cofnodion, eich bod yn sicrhau y câi hynny ei gynnwys ar y pryd, yn hytrach na dim ond derbyn y fformiwla safonol?

[204] **Dafydd Wigley:** Our questioning is aimed at Sir Jon at the moment.

[204] **Dafydd Wigley:** Yr ydym yn anelu ein cwestiynau at Syr Jon ar y funud.

[205] **Ann Jones:** I will ask Sir Jon, then. Did you think that such a clause should have been written into the section 165 agreement, and were you surprised that the audit office did not ask for it to be written in?

[205] **Ann Jones:** Gofynnaf i Syr Jon, felly. A wnaethoch chi feddwl y dylasid bod wedi cynnwys cymal o'r fath yng nghytundeb adran 165, ac a oeddech yn synnu bod y swyddfa archwilio heb ofyn am ei gynnwys?

Sir Jon Shortridge: The clause that we have written in is one that emerged through a process of consultation with the National Audit Office and one which we mutually felt fully safeguarded everyone's position. It certainly fully safeguarded our position in relation to the identical section 165 agreement, or the type of section 165 agreement, with the Vale of Glamorgan Council. I could say, to help the Committee perhaps, that, in the light of this experience, which, to the best of my knowledge is unique—it is certainly unique to Wales—we have refined the formula we would use in future to avoid a recurrence of this situation. However, in fairness to everyone concerned, I do not think that the situation we are in at present is one that we could reasonably have foreseen.

Syr Jon Shortridge: Mae'r cymal sydd gennym yn un a ddeilliodd o broses ymgynghori gyda'r Swyddfa Archwilio Genedlaethol ac yn un, yn ein barn ni i gyd, a warchodai sefyllfa pawb yn llwyr. Yn sicr yr oedd yn gwarchod ein sefyllfa o ran cytundeb adran 165 unfath, neu'r math o gytundeb adran 165, gyda Chyngor Bro Morgannwg. Gallwn ddweud, er mwyn helpu'r Pwyllgor efallai, ein bod, yng ngoleuni'r profiad hwn, sydd, hyd y gwn i, yn unigryw—yn sicr mae'n unigryw i Gymru—wedi gwella'r fformiwla a ddefnyddiem yn y dyfodol er mwyn atal y sefyllfa hon rhag codi eto. Fodd bynnag, er tegwch i bawb a fu'n ymwneud â hi, nid wyf yn meddwl bod y sefyllfa yr ydym ynddi ar hyn o bryd yn un y gallem yn rhesymol fod wedi'i rhagweld.

[206] **Dafydd Wigley:** I wish to press you a little further on that, in order to reassure the Committee. You said earlier that you have now had the benefit of legal advice from the Counsel General. Are we right in interpreting that the Counsel General reaffirms that we have a cast-iron case in law for the provisions of that agreement to be enforced?

[206] **Dafydd Wigley:** Hoffwn wasgu ychydig ymhellach arnoch ar hynny, er mwyn tawelwch meddwl y Pwyllgor. Dywedasoch yn gynharach eich bod bellach wedi cael cyngor cyfreithiol gan y Cwnsler Cyffredinol. A ydym yn iawn i ddehongli bod y Cwnsler Cyffredinol yn ailddatgan bod gennym achos cwbl gyfiawn yn llygaid y gyfraith dros orfodi darpariaethau'r cytundeb hwnnw?

Sir Jon Shortridge: It is not my practice, Chair, to share legal advice publicly, particularly in circumstances where we may need to apply it to a third party, if you can understand me. I have certainly received advice, which is reflected in the letter that I sent to Byron Davies and which emphasises that what I am seeking is to use the National Audit Office as our agent, in accordance with the section 165 agreement. So what we are saying to it very clearly is, 'This is simply a question of your implementing the agreement that you have signed with us. It is not me imposing a further set of auditors on you, it is using the National Audit Office as our agent, in accordance with the agreement.'

Syr Jon Shortridge: Nid yw'n arfer gennyf, Gadeirydd, rannu cyngor cyfreithiol yn gyhoeddus, yn enwedig mewn amgylchiadau lle gallai fod angen inni ei gymhwyso i drydydd parti, os ydych yn fy neall i. Yn sicr, yr wyf wedi cael cyngor, a adlewyrchir yn y llythyr a anfonais at Byron Davies ac sy'n pwysleisio mai'r hyn yr wyf yn ceisio'i wneud yw defnyddio'r Swyddfa Archwilio Genedlaethol fel asiant inni, yn unol â chytundeb adran 165. Felly, yr hyn yr ydym yn ei ddweud wrtho'n glir iawn yw, 'Mater syml yw hyn o sicrhau eich bod yn gweithredu'r cytundeb yr ydych wedi'i lofnodi gyda ni. Nid fi sydd yn gorfodi set pellach o archwilwyr arnoch, ond defnyddio'r Swyddfa Archwilio Genedlaethol fel ein hasiant yr ydym, yn unol â'r cytundeb.'

[207] **Dafydd Wigley:** In our last session you referred to the legal interpretation of 'reasonable access'. I do not want to pursue the detail of the legal advice that you have been given, but are you confident that we are in the right in pressing for this?

[207] **Dafydd Wigley:** Yn ein sesiwn ddiwethaf cyfeiriasoch at ddehongliad cyfreithiol 'mynediad rhesymol'. Nid oes arnaf eisiau mynd ar ôl manylion y cyngor cyfreithiol a roddwyd ichi, ond a ydych yn hyderus ei bod yn iawn inni bwyso am hyn?

Sir Jon Shortridge: We are certainly in the right to seek what I have sought from the chief executive of Cardiff County Council on the basis of the letter that I have sent to him. So that we are clear, what I have suggested is that the most satisfactory way through this for both parties is that, when we have our regular meetings with Cardiff Harbour Authority officials in future to satisfy ourselves on financial matters relating to the section 165 agreement, we have, where Sir John Bourn wishes it, an NAO official present at those meetings so that those meetings can be used to give the NAO the assurance that it requires. I am satisfied with that.

Syr Jon Shortridge: Yn sicr mae'n iawn inni geisio yr hyn a geisiais gan brif weithredwr Cyngor Sir Caerdydd ar sail y llythyr a anfonais ato. Er mwyn bod yn glir, yr hyn a awgrymais yw mai'r ffordd fwyaf boddhaol i'r naill garfan a'r llall i'w dilyn, pan gawn ein cyfarfodydd rheolaidd gyda swyddogion Awdurdod Harbwr Caerdydd yn y dyfodol i'n bodloni ein hunain ar faterion ariannol yn ymwneud â chytundeb adran 165, y dylai fod, lle dymuna Syr John Bourn hynny, swyddog o'r Swyddfa Archwilio Genedlaethol yn bresennol yn y cyfarfodydd hynny fel y gellir defnyddio'r cyfarfodydd i roi'r sicrwydd y mae'r swyddfa archwilio yn ei geisio. Yr wyf yn fodlon ar hynny.

[208] **Dafydd Wigley:** From your discussions with Sir John, are you satisfied that what you have asked Mr Byron Davies for in your letter meets fully the requirements spelt out by Sir John in his letter?

[208] **Dafydd Wigley:** Yn sgîl eich trafodaethau â Syr John, a ydych yn fodlon fod yr hyn yr ydych wedi gofyn i Mr Byron Davies amdano yn eich llythyr yn llawn fodloni'r gofynion a amlinellir gan Syr John yn ei lythyr?

Sir Jon Shortridge: It is certainly my understanding that Sir John would be sufficiently satisfied if that was to be the case.

Syr Jon Shortridge: Fy nealltwriaeth i yn sicr yw y byddai Syr John yn ddigon bodlon pe bai hynny'n wir.

[209] **Dafydd Wigley:** Sir John assents to that, which is good. I want to bring this session to a close, and I know that Alun has a question to ask at the end.

[209] **Dafydd Wigley:** Mae Syr John yn cydfynd â hynny, sy'n beth da. Mae arnaf eisiau dwyn y sesiwn hon i ben, a gwn fod gan Alun gwestiwn i'w ofyn ar y diwedd.

[210] **Alison Halford:** I have one more question, Chair.

[210] **Alison Halford:** Mae gennyf fi un cwestiwn arall, Gadeirydd.

[211] **Dafydd Wigley:** Ask it quickly, before I call Alun.

[211] **Dafydd Wigley:** Gofynnwch ef yn gyflym, cyn imi alw ar Alun.

[212] **Alison Halford:** There was some correspondence between Byron Davies and David Richards, dated 20 July 2001, which indicated that the chief executive preferred to be audited by the district auditor. That was another item that we had to stumble over. It is my understanding that Cardiff County Council is at odds with its auditors and is critical of the aggressive manner of the Audit Committee, and the minutes of its meetings seem to indicate that the district auditor is asking too many tough questions. Bearing in mind that Sir John has not been able to have access, and this minute indicates that the district auditor is also in disagreement with Cardiff council, why is the council not opening up its books? Why would the chief executive of a major county council not make available financial information based on financial money?

[212] **Alison Halford:** Yr oedd gohebiaeth rhwng Byron Davies a David Richards, dyddiedig 20 Gorffennaf 2001, yn dweud bod yn well gan y prif weithredwr gael ei archwilio gan yr archwilydd dosbarth. Dyna eitem arall y bu'n rhaid inni faglu drosti. Fy nealltwriaeth i yw bod Cyngor Sir Caerdydd benben â'i archwilwyr ac yn feirniadol o ffordd ymosodol y Pwyllgor Archwilio, ac mae cofnodion ei gyfarfodydd fel pe baent yn awgrymu bod yr archwilydd dosbarth yn gofyn gormod o gwestiynau anodd. O gofio nad yw Syr John wedi gallu cael mynediad, ac mae'r cofnod hwn yn awgrymu bod yr archwilydd dosbarth yn anghytuno â chyngor Caerdydd hefyd, pam nad yw'r cyngor yn agor ei lyfrau? Pam na fyddai prif weithredwr cyngor sir mawr yn darparu gwybodaeth ariannol sy'n seiliedig ar gyllid ariannol?

[213] **Dafydd Wigley:** We can but speculate on that, Alison. I do not think that it is reasonable to ask Sir Jon to speculate on it. The questions will be answered when we get full, unfettered access to this information.

[213] **Dafydd Wigley:** Ni allwn ond dyfalu am hynny, Alison. Nid wyf yn meddwl ei bod yn rhesymol gofyn i Syr Jon ddyfalu yn ei gylch. Atebir y cwestiynau pan gawn fynediad llawn, dilyffethair at y wybodaeth hon.

In considering how we handle this issue between now and when we meet next, time clearly is of the essence. Equally clearly, there are questions of how this can be enforced. Before we could consider taking any draconian steps, which includes steps at law, the provisions of the section 165 agreement, particularly the provisions for arbitration, have to be exhausted, otherwise one would not be able to go to the next step of law. I hope that those steps will be taken urgently if next week's meeting does not resolve the issue. If it resolves the issue and Sir John Bourn is satisfied, fine. If not, there are questions of what further steps could be taken. I think that Alun wants to come in on this.

Wrth ystyried sut yr ymdriniwn â'r mater hwn rhwng yn awr a'n cyfarfod nesaf, mae'n amlwg nad oes gennym amser i'w wastraffu. Mae yr un mor amlwg bod cwestiynau ynghylch sut y gellid sicrhau y gweithredir hyn. Cyn y gallem ystyried cymryd unrhyw gamau diarbed, sy'n cynnwys camau cyfreithiol, rhaid mynd drwy holl ddarpariaethau cytundeb adran 165, yn enwedig y darpariaethau ar gyfer cyflafareddu, neu fel arall ni ellid mynd ymlaen at y cam cyfreithiol nesaf. Gobeithiaf y cymerir y camau hynny ar fyrder os na ddatrysir y mater yng nghyfarfod yr wythnos nesaf. Os datrysir y mater bryd hynny a bod Syr John Bourn yn fodlon, gorau oll. Os na, mae cwestiynau ynghylch pa gamau pellach y gellid eu cymryd. Yr wyf yn meddwl bod Alun am ddod i mewn ar hyn.

[214] **Alun Cairns:** Sir Jon, by when would you think it reasonable for us to expect access to those figures?

Sir Jon Shortridge: I hope that my meeting on Wednesday will be successful and that that will be the end of it.

[215] **Alun Cairns:** So it would be reasonable for us to expect access after the meeting on Wednesday?

Sir Jon Shortridge: I am certainly hoping that that will be the outcome, but I would not want to raise false hopes among the Committee. I have already had some challenging questions about the length of time it has taken so far. My views on this are very clear and robust, and you have been equally clear and robust in expressing your views, which I will take into my meeting next Wednesday.

[216] **Alun Cairns:** If you experience resistance at each and every stage of the four or five steps that you highlighted, before we look to the courts, what sort of timescale would you expect to pass before we reach the penultimate step of legal action?

Sir Jon Shortridge: To give you an authoritative answer, I really would have to go through this carefully and make sure that I am not misleading you but, subject to that, I would certainly hope that, by the time you come back after the recess, we will have completed this matter one way or the other. What I would say to caution you, though, is that the dispute resolution procedure is there so that any subsequent recourse to the courts would be on a very narrow matter indeed, so I do not think that the Committee should be assuming that this is something that would necessarily end up in a court. I think that both parties would be obliged, in the first instance, to

[214] **Alun Cairns:** Syr Jon, erbyn pa bryd y tybiech y byddai'n rhesymol inni ddisgwyl cael mynediad at y ffigurau hynny?

Syr Jon Shortridge: Gobeithiaf y bydd fy nghyfarfod ddydd Mercher yn llwyddiannus ac mai dyna fydd diwedd y mater.

[215] **Alun Cairns:** Felly byddai'n rhesymol inni ddisgwyl mynediad ar ôl y cyfarfod ddydd Mercher?

Syr Jon Shortridge: Yn sicr yr wyf yn gobeithio mai dyna fydd y canlyniad, ond ni hoffwn godi gobeithion gwag ymhlith y Pwyllgor. Yr wyf eisoes wedi cael cwestiynau heriol am yr amser a gymerodd hyd yn hyn. Mae fy marn ar hyn yn glir a chadarn iawn, a buoch chithau yr un mor glir a chadarn wrth fynegi'ch barn chi, ac fe gofiaf hynny wrth fynd i'm cyfarfod ddydd Mercher nesaf.

[216] **Alun Cairns:** Os profwch wrthwynebiad yn ystod pob un o'r pedwar neu bum cam a enwyd gennych, cyn inni edrych tua'r llysoedd, pa fath o amserlen fyddech chi'n disgwyl ei dilyn cyn cyrraedd y cam olaf ond un, sef dwyn achos cyfreithiol?

Syr Jon Shortridge: I roi ateb awdurdodol ichi, yn wir byddai'n rhaid imi fynd drwy hyn yn ofalus a gwneud yn siwr nad ydwyf yn eich camarwain, ond, yn amodol ar hynny, fy ngobaith yn sicr fyddai, erbyn ichi ddychwelyd wedi'r toriad, y byddwn wedi cwblhau'r mater hwn y naill ffordd neu'r llall. Yr hyn a ddywedwn fel rhybudd wrthych, fodd bynnag, yw bod y drefn datrys anghydfod yno i sicrhau mai ar fater cul iawn y byddai unrhyw ymgyfreitha wedi hynny, felly nid wyf yn meddwl y dylai'r Pwyllgor fod yn rhagdybio bod hyn yn rhywbeth a fyddai o reidrwydd yn cyrraedd llys barn. Yr wyf yn meddwl y byddai

accept the conclusions of an arbitrator.

[217] **Alun Cairns:** We could have thought of that, Cadeirydd; we thought that each party would have been obliged to do that before now. May I suggest that, if all of the steps have been followed through by the time we return after the summer recess, the Committee might want to take a view at that time to pursue this matter through the courts if it is necessary and if that is the advice at the time?

[218] **Dafydd Wigley:** May we include it on the agenda for our first meeting next term? I apologise that this is becoming a perennial item on our agenda but I think that you will understand why we need that, Sir Jon. We must come to a determination on the next steps when we have the detailed report back. I take the point that is made that, in pursuing matters through arbitration, that may involve some compromise. However, the compromise will only be acceptable to this Committee if it is acceptable to the Auditor General, and the Auditor General is satisfied that he is getting access. If he is not satisfied—whatever those proceedings have involved—and if there are further steps that can be taken, it may well be that this Committee would be minded to take them. I think that that should be clearly understood. In the meantime, I hope that you will use all the endeavours that you can to try to use this procedure to its ultimate potential to get a satisfactory outcome before we come back. Whatever happens, perhaps you will keep us posted of the situation. When we come back, if necessary—if this issue has not been resolved—it will be an item on the agenda of our next meeting.

rheidrwydd ar y ddwy ochr, yn y lle cyntaf, i dderbyn casgliadau cyflafareddwr.

[217] **Alun Cairns:** Gallasem fod wedi meddwl am hynny, Gadeirydd; yr oeddem yn meddwl y buasai'r ddwy ochr wedi gorfod gwneud hynny cyn hyn. A gaf fi awgrymu, os bydd yr holl gamau wedi eu cymryd erbyn inni ddychwelyd wedi toriad yr haf, y gallai'r Pwyllgor ddewis bryd hynny i ddilyn y mater hwn drwy'r llysoedd os bydd angen ac os mai dyna fydd y cyngor ar y pryd?

[218] **Dafydd Wigley:** A gawn ni ei rhoi ar agenda ein cyfarfod cyntaf y tymor nesaf? Ymddiheuraf fod hyn yn mynd yn eitem flynyddol ar ein hagenda ond yr wyf yn meddwl y gwnewch ddeall pam y mae angen hynny, Syr Jon. Rhaid inni ddod i benderfyniad ar y camau nesaf pan gawn yr adroddiad manwl yn ôl. Deallaf y pwynt y gall dilyn materion drwy gyflafareddiad olygu y bydd yn rhaid wrth ryw gyfaddawd. Fodd bynnag, ni fydd y cyfaddawd ond yn dderbyniol i'r Pwyllgor hwn os yw'n dderbyniol i'r Archwilydd Cyffredinol, a bod yr Archwilydd Cyffredinol yn fodlon ei fod yn cael mynediad. Os na fydd ef yn fodlon—beth bynnag y bydd y trefniadau hynny wedi'u golygu—ac os oes camau pellach y gellir eu cymryd, efallai y byddai'r Pwyllgor hwn o blaid eu cymryd. Credaf y dylid gwneud hynny'n glir. Yn y cyfamser, gobeithiaf y gwnewch bopeth a allwch i geisio defnyddio'r weithdrefn hon i'w llawn botensial i gael canlyniad boddhaol cyn inni ddod yn ôl. Beth bynnag a ddigwydd, efallai y sicrhewch y cawn y wybodaeth ddiweddaraf am y sefyllfa. Pan ddychwelwn, os bydd angen—os na fydd y mater hwn wedi'i ddatrys—bydd yn eitem ar agenda ein cyfarfod nesaf.

Diolchaf i Syr Jon a David Richards am ddod ger ein bron heddiw. Byddwch yn sylweddoli bod y Pwyllgor yn cymryd y materion hyn o ddifrif calon. Mae cyfrifoldeb arnom i roi'n cefnogaeth lwyr i'r Archwilydd Cyffredinol, i'w alluogi i wneud ei waith. Dyna pam y buom yn pwyso mor galed ar hyn. Cynhyrchir trawsgrifiad o'r trafodaethau hyn, a byddwch yn derbyn copi ohono er mwyn ichi gywiro unrhyw gamgymeriadau ffeithiol. Bydd wedyn yn ymddangos fel rhan o'n cofnodion. Diolch yn fawr iawn ichi. Gobeithiaf y cewch haf llewyrchus a chynhyrchiol, a chyfle i gael egwyl hefyd.

I thank Sir Jon and David Richards for appearing before us today. You will realise that the Committee takes these issues very seriously. We have a responsibility to give the Auditor General our full support, to enable him to do his work. That is why we have pressed so hard on this matter. A transcript of these discussions will be produced, of which you will receive a copy so that you can correct any factual errors. It will then appear as part of the minutes. Thank you very much. I hope that you have a prosperous and productive summer, as well as an opportunity to have a break.

Daeth y sesiwn cymryd tystiolaeth i ben am 2.36 p.m.
The evidence-taking session ended at 2.36 p.m.