



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

## **Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol** **The Constitutional and Legislative Affairs Committee**

**Dydd Llun, 2 Mehefin 2014**  
**Monday, 2 June 2014**

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included.

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

Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
David Melding	Y Dirprwy Lywydd a Chadeirydd y Pwyllgor The Deputy Presiding Officer and Committee Chair
Eluned Parrott	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales
Joyce Watson	Llafur (yn dirprwyo ar ran Julie James) Labour (substitute for Julie James)

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

Peter Black	Aelod Cynulliad, Democratiaid Rhyddfrydol Cymru Assembly Member, Welsh Liberal Democrats
Dr Emyr Roberts	Prif Weithredwr, Cyfoeth Naturiol Cymru Chief Executive, Natural Resources Wales
Sarah Rochira	Comisiynydd Pobl Hŷn Cymru The Commissioner for Older People in Wales

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

Stephen Boyce	Y Gwasanaeth Ymchwil Research Service
Gwyn Griffiths	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Ruth Hatton	Dirprwy Glerc Deputy Clerk
Dr Alys Thomas	Y Gwasanaeth Ymchwil Research Service
Gareth Williams	Clerc Clerk

*Dechreuodd y cyfarfod am 14:45.  
The meeting began at 14:45.*

### **Cyflwyniad, Ymddiheuriadau, Dirprwyon a Datganiadau o Fuddiant Introduction, Apologies, Substitutions and Declarations of Interest**

[1] **David Melding:** Good afternoon, and welcome to this meeting of the Constitutional and Legislative Affairs Committee. I have received apologies from Julie James, and I am delighted to welcome Joyce Watson, who is a regular attendee as a substitute at these meetings; you are very welcome, Joyce. I will just make the usual housekeeping announcements. We do not expect a routine fire drill, so, if you hear the alarm, please follow the instructions of the ushers, who will help us to leave the building safely. Please switch off all mobile phones and other electronic equipment as, even on 'silent', they will interfere with our broadcasting equipment. These proceedings will be conducted in Welsh and English. When Welsh is spoken, there is a translation available on channel 1, and channel 0 will amplify our proceedings.

### **Offerynnau nad ydynt yn Cynnwys Materion i Gyflwyno Adroddiad arnynt o dan Reol Sefydlog 21.2 na 21.3 Instruments that Raise No Reporting Issues under Standing Order 21.2 or 21.3**

[2] **David Melding:** There are two items, and they are listed. Are we content? I see that we are.

14:46

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

[3] **David Melding:** We have a series of papers to note. The first is a written statement from 21 May relating to the welfare of animals at the time of killing. You will see the statement from the Minister. Gwyn, do you wish to make any comment or update us on this?

[4] **Mr Griffiths:** Nid wyf am wneud hynny yn benodol ynghylch y datganiad hwn, ond dim ond nodi hwn yng nghyd-destun y memorandwm cydsyniad deddfwriaethol yr ydym wedi ei dderbyn yn ddiweddar, lle mae darpariaeth yn cael ei chynnwys yn y Bil dadreoleiddio, gyda'r pŵer i gychwyn yn cael ei roi i Weinidogion Llundain—yn yr un adran, rwy'n meddwl—tra bod y rheoliadau yng Nghymru. Felly, mae hwn yn adlewyrchu pa mor bwysig yw hi bod materion felly yn cael eu defnyddio'n gywir ar yr yn pryd, gan fod hyn yn gallu arwain at broblemau. Fodd bynnag, down yn ôl at hynny pan fyddwn yn ystyried yr adroddiad ar y memorandwm cydsyniad deddfwriaethol.

**Mr Griffiths:** I do not wish to do so specifically on this statement, but just to note it in the context of the legislative consent memorandum that we recently received, whereby provision is included in the deregulation Bill, with the commencement power given to Ministers in London—I think it is in the same section—while the regulations sit within Wales. This, therefore, reflects how important it is that such issues are used correctly at the same time, as this can lead to problems in future. However, we will return to that when we consider the report on the legislative consent memorandum.

[5] **Suzy Davies:** I understand that the Minister was put in a very difficult position on

this, bearing in mind what happened at Westminster. However, we do run the risk again of being presented with some legislation, albeit technical, which is being prepared urgently, and a shorter timetable will possibly be required. Have we had any information that that is likely?

[6] **David Melding:** I do not think we know how this is going to proceed at this stage, and we will take that fence when we get to it, I guess, but it could well raise issues, as you indicate.

[7] **Mr Williams:** The committee has already considered some regulations on this.

[8] **David Melding:** Do you have the detail, because I am not quite sure that I understand some of the complexities?

[9] **Mr Williams:** The committee considered the Welfare of Animals at the Time of Killing (Wales) Regulations 2014 at the meeting on 28 April 2014 and a clear report was laid before the Assembly.

[10] **Suzy Davies:** This suggests that there may be further work.

[11] **Mr Williams:** Yes.

[12] **Suzy Davies:** It says that urgent work is now under way, so we can anticipate something further.

[13] **Mr Williams:** Yes.

[14] **David Melding:** The other paper to note is a letter from the First Minister to me in reply to a letter I had sent outlining the inquiry into disqualification of membership and how the Order had been formed in the past and what principles were operational. It is quite interesting, from the First Minister's correspondence, that he thinks that we should be very much focusing on the principles that should inform the Order. I think that we are already at that point where we see how exhausting it would be if we tried to draft an Order ourselves, but focusing on the principles is clearly something that we can give advice on and help the Government in its drafting.

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o'r  
Cyfarfod ar gyfer yr Eitem Nesaf  
Motion under Standing Order 17.42 to Resolve to Exclude the Public from the  
Meeting for the Next Item of Business**

[15] **David Melding:** I move that

*the committee, under Standing Order 17.42 (vi), resolves to exclude the public from the meeting for the next item of business.*

[16] **David Melding:** I do not see any Member objecting, so we will now go into private session. Please clear the public gallery and turn off the broadcasting.

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 14:50.  
The public part of the meeting ended at 14:50.*

*Ailymgynullodd y pwyllgor yn gyhoeddus am 15:00.  
The committee reconvened in public at 15:00.*

**Tystiolaeth mewn Perthynas â'r Ymchwiliad i Anghymhwysio Person rhag bod yn Aelod o Gynulliad Cenedlaethol Cymru**  
**Evidence in Relation to the Inquiry into Disqualification of Membership from the National Assembly for Wales**

[17] **David Melding:** Good afternoon, and welcome back to this meeting of the Constitutional and Legislative Affairs Committee, which is now again in public session. We are conducting the fourth oral evidence session in our inquiry into the disqualification of membership from the National Assembly for Wales. I am delighted to welcome our Assembly Member colleague, Peter Black. I do not need to give you a lecture, Peter, on how we are going to conduct these proceedings. We have all read your written evidence, so, unless you want to add to it very briefly now, I suggest that we move straight to questions.

[18] **Peter Black:** That is fine.

[19] **David Melding:** Simon Thomas will start the questioning.

[20] **Simon Thomas:** Yn gyntaf, mae'n amlwg o'ch tystiolaeth ysgrifenedig eich bod o'r farn bod datgan buddiant personol ac ariannol—ar lefel cyngor, neu ar lefel Cynulliad—yn ddigonol i ddiogelu rhag unrhyw ddrwgdybiaeth yn y cyd-destun hwn. Pam ydych yn meddwl ei fod yn ddigonol, ac a ydych o'r farn ei fod yn digwydd yn ddigon clir ar hyn o bryd?

**Simon Thomas:** First of all, it is clear from your written evidence that you are of the opinion that declaring a personal and monetary interest—at council level, or at Assembly level—is sufficient to safeguard against any suspicion in this context. Why do you think that that is sufficient, and are you of the opinion that that happens clearly enough at present?

[21] **Peter Black:** Thank you for that question. I think that the first point that I would make is that if it is not sufficient, then why bother? They are clearly in place to deal with conflicts of interest, and I think that, in terms of a local councillor, the actual regime is actually more strict, if you like, than the one that Assembly Members have to endure. Anyone who has sat through a council meeting and has seen the number of declarations of interest, and the contortions that many councillors go through in terms of what interest they should declare and whatnot, and the discussions they have with legal officers, I think would understand that, actually, it is an issue that is very strongly observed by all councillors. I think that there is a very good standards regime in place to deal with anybody who ignores that regime and actually produces a conflict of interest. I am not aware of any conflicts of interest, particularly in terms of me as an Assembly Member and as a councillor, in the time that I have been on that council, and certainly other Assembly Members who have been councillors as well.

[22] **Simon Thomas:** Rwy'n cael trafferth cofio un achlysur lle mae unrhyw gynghorydd sydd hefyd yn Aelod Cynulliad wedi datgan diddordeb yn y fan hon. A yw ein rheolau ni yn rhy llac, felly?

**Simon Thomas:** I am struggling to remember one occasion when any councillor who is also an Assembly Member has declared an interest in this place. Are our rules too lax, therefore?

[23] **Peter Black:** Well, the Assembly's declarations of interest rules are much freer—I think that that is the word—than those of local councils. In a council, you really are under an obligation to declare virtually everything, either personal or pecuniary; here, you only tend to declare an interest if you would benefit in a greater way than somebody else who is in your

position, which really leaves quite a lot of latitude, I think. It is a matter for Assembly Members, and for the Standards of Conduct Committee, as to whether that is too lax a regime. However, I think that, in terms of the conflict—or lack of conflict—between being a councillor and an Assembly Member, I cannot think of a single occasion where you would want to declare that you are a councillor in the Assembly, though I do occasionally mention the fact that I am a councillor when I am making contributions on local government, or even in terms of asking questions, and I think that other councillors do the same thing as well.

[24] **Simon Thomas:** Neu, o bryd i'w gilydd, bydd rhywun yn gweiddi mas, i atgoffa'r Cynulliad eich bod yn gynghorydd, efallai.

**Simon Thomas:** Or, occasionally, somebody will shout out, to remind the Assembly that you are a councillor, maybe.

[25] Os felly, ac rwy'n derbyn y pwynt yr ydych yn ei wneud ynglŷn â'r rheolau sefydlog, onid yw'n golygu y gallai pobl sy'n gwyllo'r Cynulliad weld Aelod o'r Cynulliad hwn yn siarad dros ardal arbennig, ac efallai'n dadlau dros fwy o arian cyhoeddus i'r ardal arbennig honno heb wybod bod yr Aelod Cynulliad sy'n dadlau dros arian ychwanegol—dywedwch, i Bowys; wna i ddim dewis eich ardal chi—yn aelod hefyd o Gyngor Sir Powys, ac felly'n dadlau o ddau safbwynt, a heb ddatgan hynny? Onid yw hynny, felly, yn mynd i galon y ddadl ynglŷn â'r ffaith na ddylech chi gael dau fandad, ac un o'r mandadau hynny yw goruchwyllo llywodraeth leol, fel sy'n digwydd yn awr ar lefel Cynulliad?

If that is the case, and I accept the point that you make regarding standing orders, but does that not mean that people watching the Assembly could perhaps see a Member of this Assembly speaking for a particular area and perhaps arguing for more public money for that particular area without knowing that the Assembly Member who is arguing for additional funding—say, for Powys; I will not choose your area—is also a member of Powys County Council and is therefore arguing from two perspectives, and had not declared that? Does that, therefore, not go to the heart of the debate in terms of the fact that you should not have a dual mandate, with one of those mandates being to oversee local government, as happens now at the Assembly level?

[26] **Peter Black:** I think that there are a number of issues there. First, I think that, in terms of whether an Assembly Member who is also a councillor should be arguing for more money, you have a general interest as an elected Member in any case, and I think that other Assembly Members—

[27] **Simon Thomas:** But should the public know that you have a specific interest, as a member of an authority as well?

[28] **Peter Black:** I think that that is possible, and, as I said, I would tend to mention that if I felt that it was particularly pertinent, and other Members have done the same. However, you could equally make the same argument in terms of farmers, and other professionals. I think that there are 12 Assembly Members who have band 1 declarations and eight who have band 2 declarations, in terms of other jobs that they do, in addition to being Assembly Members. You could equally make the same argument in respect of them as well.

[29] With regard to the issue of whether the Assembly oversees the performance and financing of local government, I would argue that it does not. Local government is accountable to its own local electorate. There is an executive role within the Assembly that resides within the Cabinet, and there is a different position in terms of being an ordinary Assembly Member and being a Cabinet member. In terms of an ordinary Assembly Member who does not hold an executive role within the Assembly, there is no conflict in terms of the decisions that are taken by the Government in relation to the financing and performance of local government. Even the Welsh Government does not have an oversight role in relation to

local government, apart from in terms of the money that it gives authorities and what is in statute. Local councils are accountable to their local electorate. They go up for election every four years—or every five years, as it will soon become—and that is where their accountability lies.

[30] **Simon Thomas:** Looking at it from the other side of the telescope, is there any issue with Assembly Members acting on local authorities, with the kind of influence or perceived influence that they might bring in that role?

[31] **Peter Black:** Only in the sense that most councillors and most officers do not understand the difference between Assembly Members and the Assembly Government, which you often have to explain. It is an advantage, because you often end up explaining to the councillors, members and officers what exactly is going on, and you often give them help in terms of lobbying on behalf of the council. I did that in relation to the planning Bill. When the planning committee had a discussion about the planning Bill, I explained the procedure to the members and they felt that they had another opportunity to go through the committee. So, I am not aware of any conflict in that regard, but I think that there are advantages.

[32] **Eluned Parrott:** Peter, I would like to go back to the statement that you just made, which was that there is a difference between being a member of the executive in the Assembly—a Welsh Minister—and being an ordinary Assembly Member. Why is there different potential for conflicts of interest between being a Minister and being somebody whose role is clearly to hold Ministers to account?

[33] **Peter Black:** Well, that is simply because of the powers that are vested in Ministers. I will give you an example: if the then Minister had been a member of the Isle of Anglesey County Council, it would have been difficult for the Minister to put Anglesey council into special measures. That was a decision taken by the Minister, not by the Assembly. So, clearly, there is more potential for conflict between being a Welsh Minister and being a councillor, simply because Ministers have specific executive roles. As an Assembly Member, there are very few opportunities for conflict. Both roles can be performed adequately and without any potential problems.

[34] **Eluned Parrott:** Can you think of any circumstances under which you could anticipate a conflict arising between your role as an Assembly Member and your role as a councillor?

[35] **Peter Black:** In the 15 years that I have been in the Assembly, I have not come across one yet.

[36] **Eluned Parrott:** Okay, thank you. I want to ask you about specific roles, in terms of the council side of things as opposed to the Assembly side of things. You talked in your written evidence about how, through time management, you can ensure that you are able to complete both roles adequately. Can you tell us how you manage that and whether you believe that your attendance at either the Assembly or the council has been impacted by your membership of the other body?

[37] **Peter Black:** First of all, before I was an Assembly Member, I was a civil servant, and I served on Swansea council from 1984 to 1999 while doing a full-time job. I found that particularly difficult because I had to get time off work and had to work around a full-time employer. As an Assembly Member, I am more in control of my own diary, I am responsible to myself and my electors, and so I am much more able to better manage my time as a result of that, simply because I have more control over my own movements and what I need to do. In Swansea council's case, for example, half of the councillors have a job, and a number of them find difficulty in attending. As an Assembly Member, I do not have that same problem.

Clearly, there are going to be some conflicts in terms of meeting times. The way that I handle that is that I try to serve on committees that are not going to conflict. There are some council meetings that I am not able to attend. However, meeting attendance is not the only part of being a councillor. A large part of being a councillor is the work that you do for your constituents, and with officers, and the work that you do in terms of policy development outside formal meetings as well. I am able to contribute to that by arranging my diary accordingly. I work about 60 to 70 hours a week as an Assembly Member, but there are a lot more hours in a week than that, and I do work in addition to that to make sure I get the job done in both cases. So far, the electorate has not punished me for that.

[38] **Eluned Parrott:** Finally from me, do you hold any additional council responsibilities? If you do not, do you think that it is possible to complete the role of an Assembly Member and be a councillor with additional responsibilities, other than being a member for a ward?

[39] **Peter Black:** I do not currently hold any additional responsibilities on the council. I have, in the past, chaired a committee on the council, for which I did not take remuneration. As I was the chair of the committee, I was able to organise the meetings around my own diary, so that was not a particular problem. It was a scrutiny committee, so, again, there was no conflict in terms of executive roles. At the moment, I do not have any additional responsibilities.

[40] **David Melding:** We will move to Joyce on this point of additional responsibility, or another.

[41] **Joyce Watson:** No.

[42] **David Melding:** Do you want to wait until I call you for your general questions? If you want to develop other points, you can do so then.

[43] **Suzy Davies:** May I come in?

[44] **David Melding:** It is with you now anyway, Suzy.

[45] **Suzy Davies:** Nicely segued. It is on this issue of non-executive powers, where you might have some role or responsibility on a scrutiny committee, both here and at council level. When scrutiny works effectively, it can actually persuade the executive to change its mind. Can you not see that there is potentially a conflict of interest there, or do you perceive it more as an opportunity to use this expertise that you say you acquire by being in two places, and for it to be valuable rather than a hindrance?

[46] **Peter Black:** Let us not overdo the expertise that I have acquired. I have experience and knowledge from both. I think the role of scrutiny is a key role for both Assembly Members and councillors. I have learned a great deal from scrutinising here in the Assembly, which I have been able to take into the council and improve my performance as a councillor as a result. I do not think that there is a conflict. I think that scrutiny is about influencing, as you say, but Assembly Members who are not councillors would seek to influence local councillors in any case, on a whole range of issues. In your region and mine, Suzy, we have both attempted to influence the council in terms of remuneration for staff, planning applications and a whole range of other issues. As an Assembly Member, I have to be careful what I take on. For example, if I make a comment as an Assembly Member on a planning matter, I am not able to sit on the planning committee. So, I am very careful in how I manage that, to make sure that I do not create a conflict. I turned down the role of lord mayor as well, because I would never have been able to accommodate that within my own timetable. You have to be careful what you choose to do. However, I do not think that there is any conflict in

terms of applying your scrutiny role on the council and in the Assembly.

[47] **Suzy Davies:** Well, there is an essential difference between us, of course, in as much as when I am having a go at our local authority, I am not a councillor. Potentially, you might say that my influence is less, because I do not have the—

[48] **Peter Black:** I do not run the council.

[49] **Suzy Davies:** I appreciate that. That is the point. You were not on the executive of the administration at the time.

[50] **Peter Black:** I think that I would argue that my influence is less from being a councillor, actually.

[51] **Suzy Davies:** To extend Simon's point, the position at the moment is that we are all different colours when we are trying to influence the local authority that we are talking about, but that was not always the case. I am sure that it is part of the Labour Party's way of thinking that, because they hold so many councils in Wales, they restrict people doing both jobs at once, possibly on the grounds of there being a level of influence. For opposition parties, that influence is less, but where you do have a meeting of parties, if you like, do you not think that there is a chance to have at least backroom influence, or a perception of it? I am not pointing at you in this, but might there be a perception?

[52] **Peter Black:** I would argue that it is my job to influence and that it is my job to try to change things for the benefit of my constituents. In the Assembly and on the council, I have the same constituents and I have a combined interest to try to influence there. However, I would not argue that I have any additional influence as a result of being an Assembly Member, or additional influence here as a result of being a councillor.

[53] **Suzy Davies:** Can you give us some examples of where you think it has worked well, apart from the planning application example you gave us?

15:15

[54] **Peter Black:** In terms of the Assembly, I have worked very closely on housing issues with officers. From those discussions, I have been able to bring experience—that is an incidental benefit by the way; it is not the main benefit—and ideas to the Assembly, in terms of empty homes and empty dwelling management orders. Also, even around my mobile homes Bill, I was able to have access to officers to get into more depth than some other councillors, and I was able to get some ideas as a result of that. So, those are advantages that I have been able to take as an Assembly Member, which I have been able to bring to my job here. As an Assembly Member, I have been able to go to council meetings and have a greater knowledge of the perspective in which the councils are discussing particular issues, particularly consultations from the Welsh Government and on wider issues, because I have that wider perspective as an Assembly Member, which I think has benefited the council.

[55] **Joyce Watson:** Good afternoon, Peter. Do you agree or disagree that, when you go for election with a dual mandate, accountability to the electorate becomes unclear and fuzzy?

[56] **Peter Black:** No, but mandates are very difficult issues, are they not? Governments always go into power and say that they have a mandate for something that might be tucked away in a footnote on page 250 of their manifesto, and it is unlikely that most electors would have read that particular part of the manifesto. So, mandates are fuzzy, but, in terms of a dual role, all my electors are aware that I am an Assembly Member as well as a councillor. As a councillor, I have been re-elected on that basis on a number of occasions. Equally, my

electorate knows that I am a councillor for the most part, and that may be to a lesser extent in a wider area, but my party is certainly aware of that when it comes to re-select me on the list. So, I do not think that there is any confusion among the electorate, in terms of my roles or what mandates I hold.

[57] **Joyce Watson:** Let us take an example of people coming to you with an issue that is predominantly Assembly related, how do you make it clear to them that it is an Assembly issue—because you are a regional Assembly Member, which means that you hold sway over a much larger area than the Swansea city council—and that you are carrying out a function as Peter Black Assembly Member, and not Peter Black council member?

[58] **Peter Black:** First, I do not think that it really matters to people who come to me with problems in what function I am helping them. Secondly, I will explain to anyone who comes to me with a problem the process that I will take, in terms of trying to deal with their problems. So, I will explain to them that, in this particular instance, this is a matter that relates to the Assembly and that I will make representations to the Welsh Minister about this particular issue, and we will deal with correspondence accordingly. So, people are always clear what process I will undertake, in terms of taking on a particular issue. I do not just take on Assembly issues; I also take on UK issues occasionally, as do a lot of Assembly Members. We have benefit hotlines et cetera, which Assembly Members have access to. So, that confusion is wider, because sometimes Assembly Members will deal with benefit issues too for people, although that is not devolved.

[59] **Joyce Watson:** While we are talking about confusion, may I ask how you manage resources? You are paid, and you have resources, as an Assembly Member, which are for you to use as an Assembly Member, and, likewise, you would have resources, whatever they are, for being a county councillor. How do you manage those?

[60] **Peter Black:** You do not get many resources as a county councillor, but I do a lot of work in my own time as a councillor. I try to make sure that there is division there, but, sometimes, you do have a blurring. For example, I have an e-mail address as a councillor, an e-mail address as an Assembly Member and my personal e-mail address. Even I cannot manage three e-mail accounts. So, I tend to do everything through the one e-mail account. However, I make it clear to officers in what capacity they are being lobbied or approached. So, there is some blurring of the lines, but, by and large, I use the resources that are appropriate to the relevant case.

[61] **David Melding:** I have one question, just to clarify an issue. We have spent a lot of time talking about possible conflicts of interest and the demands of both roles and the time. As I understood it, you thought that it would be inappropriate for a member of the Welsh Government to sit on a council—you gave the example of Anglesey. You also indicated that, if a member of the legislature here had a special responsibility—among the ones that are listed—you thought that they could be combined. I am just wondering whether you think that someone could do the full-time job of an Assembly Member with the notionally full-time job of a member of a cabinet at local authority level, or would you put that in a different category again? I am less interested in the conflict of interest, which possibly could be managed by the various standards regimes, but this issue does seem to me quite important—that you are notionally doing two full-time jobs.

[62] **Peter Black:** Yes, I think that it would be more difficult to be a cabinet member and an Assembly Member, or a cabinet member here and a councillor there. There would be some conflict of interest. That is a matter that needs to be dealt with separately from the issue that you are scrutinising here, of course, because you are looking at whether you should bar councillors from becoming Assembly Members, which I think is a slightly separate issue. Of course, we have had an issue where we have had members of a cabinet serving as Assembly

Members. We had the leader of Rhondda Cynon Taf council at one stage, who was an Assembly Member for four years. I think that Pauline Jarman managed because she controlled the council and was able to manage her time around that. I thought, at the time, that doing that was very difficult. This is not about allowances: it is about time management. It is about responsibilities and how those responsibilities conflict. Clearly, there is more scope for a conflict of responsibility when you hold an executive role in either the Assembly or the council than if you are a normal backbench AM or councillor. I would not try to do an executive role on either body at the same time as serving on the other.

[63] **David Melding:** Do we have any other points? Is there anything else that we have not covered that you think is material to our considerations, Peter?

[64] **Peter Black:** I just want to add one thing, which I also covered in my evidence. In terms of the disqualification rules, I think that I made the point that it would be beneficial to Welsh democracy and the Assembly if we made those rules more permissive, rather than less permissive. I just wanted to underline that point. It seems to me that the whole point of the Assembly—or one of the rationales behind it—was to increase accountability and transparency and enable people to have a much greater say in terms of their own Government and running affairs in the Assembly. I think that it is important, therefore, in terms of the disqualification rules, that we try to ensure that as many people as possible are able to stand for election to the Assembly. I was a civil servant when I first stood and I had to resign from my job before nomination. I actually got it the right way round. I had to resign from my job before nomination even though the Land Registry, where I was working, still has no devolved responsibility. It seems to me that we need to look at that particular issue.

[65] **David Melding:** You are not the first witness to make that point about the primacy of the right to stand for elected office being at the front of our minds and that it is only if there is an overwhelming reason for disqualification that that infringement should occur.

[66] **Suzy Davies:** I have one very short question. Does it matter that backbench councillors are paid now, in a way that they were not before? Do you think that that affects the answer to this in any way?

[67] **Peter Black:** It certainly can affect some people's perception, but of course backbench councillors are paid on a part-time basis, effectively—

[68] **Suzy Davies:** I know that it is a small amount.

[69] **Peter Black:** It can affect people's perception, but I do not think that it has a bearing on their role here.

[70] **Suzy Davies:** The only reason that I ask is that, in other bodies, there is a de minimis payment allowed for certain jobs, is there not?

[71] **David Melding:** Thank you, Peter. That was very helpful; we are most grateful.

[72] **Peter Black:** Thank you.

[73] **David Melding:** We will have a short break before the next witness, who is due at 3.40 p.m., if people want to refresh themselves or attend to other matters briefly.

*Gohiriwyd y cyfarfod rhwng 15:24 ac 15:44.  
The meeting adjourned between 15:24 and 15:44.*

**Tystiolaeth mewn perthynas â'r Ymchwiliad i Anghymhwysu Person rhag bod  
yn Aelod o Gynulliad Cenedlaethol Cymru**  
**Evidence in relation to the Inquiry into Disqualification of Membership from the  
National Assembly for Wales**

[74] **David Melding:** This is our fourth oral evidence session on the disqualification from being a Member of the Assembly Order. I am delighted to welcome Dr Emyr Roberts, who is chief executive officer of Natural Resources Wales. Welcome. I suggest that we dive straight into questions, because we have read the note that you were kind enough to prepare for us and then, if we have left anything out that you want to bring to our attention, we will deal with that right at the end. I will ask Eluned Parrott to start.

[75] **Eluned Parrott:** Thank you, Chair. If I might, I would like to refer to the guiding principles that you set out in your letter to us and the first of those that any barriers that are put up through this mechanism should be proportionate. Could you tell us where you think that the balance might lie between proportionate and disproportionate?

15:45

[76] **Dr Roberts:** Okay, thank you. As I understand the way in which the disqualification Order works, it affects both the nomination and the taking up of the post if elected. I agree with the Electoral Commission paper, in that I think that there needs to be a distinction drawn between the two. So, in terms of being proportionate, in my view, there should not be a bar either on members of the board or members of staff of Welsh Government sponsored bodies being nominated to posts or, if they would like, standing for posts. On the other hand, I can see an argument why members of the board or members of staff should not hold both posts at the same time. So, that was what I was trying to get at: being proportionate with the two stages, if you like.

[77] **Eluned Parrott:** Do you think that there is also a question of proportionality when it comes to, for example, staff and members at different levels within an organisation—not just your organisation—and that perhaps a disqualification Order should affect executive officer level, but not administrative staff within an organisation?

[78] **Dr Roberts:** I have thought about this. For Welsh Government sponsored bodies, staff are not civil servants and we are principally delivery organisations. So, the amount of interaction with the political system is fairly small, and, mainly, it is through me and, obviously, the chairman. So, I do not see a distinction based on the level of grade. I think that someone from any grade within a WGSB should be allowed to stand to be an Assembly Member. Personally, and it is a personal view, I would not distinguish between various grades on that. So, it is different from the local authority situation, from my understanding.

[79] **Eluned Parrott:** Okay, thank you very much.

[80] **David Melding:** I call on Simon.

[81] **Simon Thomas:** Diolch, Gadeirydd. Os caf, gofynnaf ymhellach ynglŷn â rhai o'r canllawiau roeddech chi wedi eu gosod yn eich llythyr i ni, achos roeddech chi wedi dweud y dylid bod rheolau i ddelio ag achosion o wrthdaro buddiannau gwirioneddol, lle mae gwrthdaro go iawn, a rhai sy'n cael eu gweld fel rhai lle mae

**Simon Thomas:** Thank you, Chair. If I may, I will ask further questions about some of the guidelines that you set out in your letter to us, because you said that there should be rules to deal with cases of genuine conflicts of interest, where there are real conflicts, and those where there are perceived conflicts. The question that I have in this context is:

gwrthdaro. Y cwestiwn sydd gennyf fi yn y cyd-destun hwnnw yw: pwy sy'n dyfarnu, felly, os oes gwrthdaro yn cael ei weld gan rai, achos mae pobl yn gallu gweld cysgodion lle efallai nad oes dim?

[82] **Dr Roberts:** Fel rwyf wedi dweud eisoes, rwy'n meddwl, ar y cyfan, mai'r hyn rydym ni'n ei wneud ydy delifro pethau. Nid ydym ni'n ymwneud â pholisi ac yn y blaen ac, yn arbennig, nid ydym yn lobïo'r Llywodraeth na phleidiau eraill. Felly, eto, buaswn i'n gwahaniaethu rhwng pobl yn cael eu henwebu, gyda'r hawl i sefyll i fod yn Aelodau Cynulliad, a phryd fyddant yn cael eu hethol. Yn fy nhyb i, nid oes problem os ydynt yn cael eu henwebu. Wrth gwrs, fel corff, byddai'n rhaid i ni wneud yn siŵr eu bod yn sefyll i lawr fel aelod o staff neu aelod o'r bwrdd, ond, yn ei hun, nid wyf yn meddwl bod hynny'n broblem. Yr unig broblem yw os ydyn nhw'n cael eu hethol ac wedyn mae yna wrthdaro, yn fy marn i, beth bynnag.

[83] **Simon Thomas:** I fod yn glir, felly, yr hyn rydych chi'n awgrymu yw—gan eich bod wedi dweud eisoes bod yr hawl i sefyll yn rhywbeth a ddylai fod yn eithaf agored, os yn bosibl—fod modd i gyrff penodol, megis eich corff chi, ddelio yn fewnol ag unrhyw wrthdaro buddiannau sydd yn digwydd os yw rhywun yn ymgeisydd. Pan fydd y person hwnnw yn cael ei ethol, dyna'r adeg y byddai'n rhaid i'r rheolau cyfreithiol, fel petai, cicio mewn. Byddech am gadw'r maes mor agored ag sy'n bosibl i bobl gael o leiaf ymgeisio i fod yn Aelod Cynulliad.

[84] **Dr Roberts:** Byddwn. Jest i ddweud hefyd, mae gennym ni'n barod restr o fuddiannau neu enwebiadau mae aelodau o staff yn ymwneud â nhw. Felly, os ydyn nhw'n aelod o unrhyw gorff, mae rhestr ar gael lle maen nhw'n gallu datgan hynny, ac mae honno'n rhestr gyhoeddus. Felly, rydym ni'n gwybod beth sy'n mynd ymlaen ac, fel roeddwn i'n dweud, oni bai bod gwrthdaro yn hynny, buaswn i'n gadael i bob aelod o staff gael y rhyddid i wneud hynny. Os yw'n golygu eu bod nhw'n methu gwneud eu gwaith, buaswn i wedyn yn dweud, 'Na, chewch chi ddim gwneud hynny,' ond ar faterion fel hyn, nid wyf yn gweld bod achos o wrthdaro.

who decides, therefore, whether a conflict is being perceived, because people can see shadows where they may not exist?

**Dr Roberts:** As I have already said, I believe that, generally speaking, what we do is act as a delivery organisation. We are not involved with policy and so on and, particularly, we do not lobby the Government or other political parties. Again, therefore, I would draw a distinction between people being nominated, having the right to stand as an Assembly Member, and the point of election. In my view, no problem arises as a result of their candidature. As an organisation, of course, we would have to make sure that they would stand down as a staff member or a board member, but in and of itself I do not see that as a problem. The only problem is if they are then elected to office and then there is a conflict, in my opinion, at least.

**Simon Thomas:** So, to be clear, what you are suggesting is—as you have already said that the right to stand is something that should be quite open, if possible—that it is possible for specific bodies, such as yours, to deal internally with any conflicts of interest that occur if somebody is a candidate. When that person is then elected, that is when the legal rules, as it were, must kick in. You would like to keep it as open as possible so that people can at least be candidates to become Assembly Members.

**Dr Roberts:** Indeed, yes. If I may also say, we already have a list of interests or nominations that staff members deal with. So, if they are a member of any particular body, there is a list available where they can make that declaration, and that is publicly available. So, we know what is happening within our organisation and, as I said, unless there is a conflict implicit in that, we would allow each and every member of staff to have the freedom to do that. If it means that they are unable to carry out their duties, then we would say, 'No, you cannot do that,' but on issues such as this, I do not see that there is a conflict.

[85] **Simon Thomas:** Er enghraifft, a oes aelodau o'ch staff sy'n aelodau o gynghorau lleol?

**Simon Thomas:** For example, are there members of your staff who are members of local councils?

[86] **Dr Roberts:** Nid oes hyd y gwn i, ond eto buaswn yn disgwyl y byddent wedi datgan hynny ar y rhestr. Yn bersonol, fodd bynnag, nid wyf yn ymwybodol o hynny.

**Dr Roberts:** Not to my knowledge, but then again I would have expected them to have declared that. Personally, however, I am not aware of that happening.

[87] **Simon Thomas:** *Okay.* Yn deillio o'r egwyddorion hynny, rydych hefyd yn dweud bod angen gwahaniaethu rhwng unigolion sydd ynddynt eu hunain yn anghymwys i sefyll fel Aelod Cynulliad a phobl sy'n dal swydd, fel petai. Rydych yn rhoi'r enghraifft o aelodau bwrdd ac ati yn eich cyd-destun chi, ond a allwch chi ymhelaethu tamaid bach am sut yr ydym yn adnabod y gwahaniaeth rhwng unigolion a deiliaid swyddi?

**Simon Thomas:** Okay. Stemming from those principles, you also say that there is a need to distinguish between individuals who are disqualified from standing as Assembly Members and officeholders. You provide the example of board members in your context, but could you expand a little on how we can recognise the difference between individuals and officeholders, as it were?

[88] **Dr Roberts:** Byddwn yn awgrymu, pe bai aelod o'r bwrdd yn cael ei enwebu yn y lle cyntaf, y dylai sefyll i lawr o fod yn aelod o'r bwrdd am y cyfnod hwnnw. Os yw'n cael ei ethol, rwy'n meddwl bod rhaid iddo sefyll i lawr beth bynnag a dyna fyddai diwedd y mater, oherwydd nid wyf yn meddwl y medrwch fod yn aelod o fwrdd y mae'r Cynulliad yn craffu arno; rydym yn atebol i'r Cynulliad, wrth gwrs. Mae hynny'n glir, rwy'n meddwl.

**Dr Roberts:** I would suggest that if a member of the board were to be nominated, I believe that they should stand down from board membership for that period. If they are then elected, I think that they would have to stand down entirely, and that would be the end of the matter, because I do not believe that you can be a member of a board that is scrutinised by the National Assembly; we are accountable, of course, to the Assembly in that regard. So, that is quite clear, I believe.

[89] O ran aelodau o'r staff, yn fy marn i, maent yn rhydd i gael eu henwebu. Am gyfnod yr etholiad, rwy'n meddwl y byddai'n rhaid iddynt sefyll i lawr mewn ffordd—byddent yn cadw eu cyflogaeth, ond heb dâl, er enghraifft. Os ydynt yn cael eu hethol wedyn, yr hyn rwy'n ei awgrymu yn y llythyr yw eu bod yn mynd ar ryw fath o *break* o'u gyrfa, ond wedi meddwl am y peth, mae tipyn o broblem, oherwydd, o dan y rheolau sydd gennym ni, dim ond hyd at dair blynedd y medrwch gymryd *break* o'ch gyrfa. Felly, pe bai'r rheolau'n newid, byddai'n rhaid inni gael sgwrs â'r undebau ynglŷn â'r cytundebau hynny. Ond, yn ymarferol, dyna sut y byddwn i'n awgrymu y dylem ddelio â'r sefyllfa.

In terms of staff members, in my view, they are eligible to be nominated. For the period of the election, I think that they would have to stand aside—they would retain their employment, but without being remunerated, for example. If they are then elected, what I suggest in the letter is that they should be given some sort of career break, but having thought about it, there is a problem implicit in that, because, under the rules that we have, it is only for a period of up to three years that you can take a career break as such. Therefore, if the rules were to change, we would have to have a conversation with the unions about those contracts and agreements. But, on a practical level, that is how I would suggest that we deal with the situation.

[90] **Simon Thomas:** Felly, eto, rydych yn gweld bod y rhan fwyaf o'r ffordd o ddelio â hwn yn digwydd y tu mewn i'r corff penodol yn hytrach nac fel rheol haearnaidd

**Simon Thomas:** Therefore, again, you see that, for the most part, this should be dealt with within the specific body rather than as a strict rule that says, 'You should not stand as

sy'n dweud, 'Cewch chi ddim sefyll yn y lle cyntaf', fel petai.

a candidate in the first place'.

[91] **Dr Roberts:** Rwy'n credu hynny, ydw.

**Dr Roberts:** I believe so, yes.

[92] **Simon Thomas:** Sut y byddai'n effeithio arnoch chi fel corff pe bai rhyw fath o reol? Wrth gwrs, un o'r problemau yw bod pobl yn sefyll mewn etholiad ac efallai eu bod yn rhoi'r swydd o'r neilltu ond yn dal i fod mewn cyflogaeth, ond heb ennill cyflog, ac wedyn maent yn cael eu hethol, ac wrth gwrs mae'n rhaid iddynt ddechrau i fod yn Aelodau Cynulliad yn syth, ond efallai eu bod i fod i roi tri mis o rybudd i chi o ran eu contract. Ym mha ffordd y byddech chi'n delio â sefyllfa fel honno? A fyddech chi jest yn dweud, 'O, wel, cerwch chi ymlaen felly i fod yn Aelod Cynulliad'?

**Simon Thomas:** How would it affect you as a body if there were some sort of rule? Of course, one of the problems is that somebody may stand for election and they may put their job to one side, but remain employed, although not remunerated, and then they are elected, and of course they have to start being an Assembly Member immediately, but maybe they are supposed to give you three months' warning in terms of the contract. How would you deal with that situation? Would you just say, 'Okay, go ahead; become an Assembly Member'?

[93] **Dr Roberts:** Rydych yn hollol gywir; fel arfer, mae tri mis o rybudd, a llai ar gyfer staff is. Mae rhyddid i ni fel cyflogwr ddo i gytundeb â'r aelod o staff os ydyw am orffen y cytundeb yn y man a'r lle, neu, os yw'r unigolyn yn parhau â gwaith sy'n hollbwysig i ni, efallai y gall weithio inni am ryw ddau ddiwrnod yr wythnos neu rywbeth am gyfnod penodol. Felly, eto, rwy'n meddwl y buaswn yn medru delio â hynny hefyd yn fewnol yn eithaf rhwydd.

**Dr Roberts:** You are quite right; it is up to three months' notice, but less for staff at lower grades. However, we as an employer can come to an agreement with the staff member if they want to annul their contract immediately, or if an individual continues with crucially important work for us, then perhaps they could work for us for some two days a week for a specific period. So, I do think that we could deal with that internally quite easily.

[94] **Simon Thomas:** Ond, ni fyddai'n ymarferol i unrhyw un fod yn Aelod Cynulliad a dal yn gwneud hyd yn oed diwrnod yr wythnos i chi.

**Simon Thomas:** But, it would not be practical for anyone to be an Assembly Member and to do even a day of work a week for you.

[95] **Dr Roberts:** Byddai'n anodd iawn. Beth y byddwn i'n dychmygu y byddai'n digwydd yw y byddai cytundeb fel y câr unigolyn *break* o'i gyflogaeth am y cyfnod neu y byddai'n ymddiswyddo, a'r realiti yw, rwy'n meddwl, mai hynny a fyddai'n digwydd. Ond, efallai ei fod yn gwneud prosiect sy'n dod i ben o fewn pythefnos ac felly y byddem am ei gadw ymlaen, ac efallai bod achos wedyn am ei gadw ymlaen am ychydig ddyddiau neu wythnosau.

**Dr Roberts:** It would be very difficult indeed. What I imagine would happen is that there would be an agreement, either that the individual would be given a career break for that period or would resign entirely, and, in reality, I think that that is what would happen. Perhaps he or she would be working on a project that is coming to an end in a fortnight and we wanted them to continue, and there may be a case then just to keep them on for a few days or weeks.

[96] **Simon Thomas:** Felly, byddech yn leicio gweld yr hyblygrwydd hwnnw yn gorwedd gyda'r corff yn hytrach na gyda'r gyfraith.

**Simon Thomas:** So, you would like to see that flexibility lying with the body rather than in law.

[97] **Dr Roberts:** Byddwn. **Dr Roberts:** Indeed, yes.

[98] **Simon Thomas:** Diolch yn fawr. **Simon Thomas:** Thank you.

[99] **Joyce Watson:** My question is on the criteria for determining disqualification. We have had evidence already, before yours today, from the Electoral Commission and the Electoral Reform Society, and they say that it is unclear. Do you agree with that?

[100] **Dr Roberts:** I must admit that, having never looked into this issue before your inquiry, until I read the Order, I had not fully realised that it affected board members and staff until I actually looked into that. So, that was a bit of an ambiguity in my mind. Also, I had not appreciated that it affects the nomination period as well as the actual election period. I think that the Electoral Commission makes both of these points. I agree with it; on the first reading, that was not clear to me. So, I think that they are unclear.

[101] **Joyce Watson:** Do you have any comments to make about making them clearer?

[102] **Dr Roberts:** I think that the point that the Electoral Commission raises about distinguishing between the nomination period and the actual election is important. There may be a case for differentiating between board members and members of staff, although in our case I do not see that distinction. However, it could be that you wanted separate rules for those. Under the legislation that established Natural Resources Wales, that would be possible.

[103] **David Melding:** Let us put aside board members, where there are perhaps some grounds for seeing a greater difficulty once you are nominated. If you had a staff member, for example, who was nominated six months before—is that possible, or is it three months before the actual legal nomination process? If he or she is selected, then—let us just say that—to stand a year before the Assembly election, which is not at all uncommon, and then will have a political personality from that point, and campaign, and may be in a seat that they could well win, or whatever, would you seek to manage a staff member, or at that point do you feel that they should be put on some sabbatical leave? How would you seek to manage that?

[104] **Dr Roberts:** I think that it would be very difficult for the staff member to continue, having had a nomination. I think the way that we would handle it is that we would probably enter into a discussion with the individual to continue his employment but without pay. So, effectively, it would be a sabbatical or deferment of employment for a period. That is probably the way that we would deal with that. Otherwise, I could see a conflict arising if that nomination had already taken place.

[105] **David Melding:** You said earlier that you did not really see much merit in distinguishing in terms of seniority where rules may be different. Would that be the case? You would expect that a fairly young person in a graduate-level job, aged 30, who had been selected, might find it quite difficult to live for a year without a salary. Would you see any differences there because they would be at the beginning of their career and unlikely to have seniority at that level?

[106] **Dr Roberts:** There are two issues, I think. One is that you would probably run into complications around which grades were eligible and which were not. So, that is a complexity issue. Also, we are a very dispersed organisation, so we have quite junior members of staff who regularly liaise with Assembly Members and Members of Parliament. Again, it would be quite difficult, I think, for them to continue in their job if they had a formal nomination to stand in an election. It is possible to do it that way, but I think that it would lead to complexity and probably not answer the issue.

[107] **David Melding:** That is fair enough. Suzy is next.

[108] **Suzy Davies:** That was, essentially, my question. However, I did want to ask you this: if you were to compare NRW with an organisation like the police, or perhaps even the court service, where there is a very obvious reason as to why any member of staff, really, should not be standing, would you put NRW in the same category? I am just repeating the question, in a way. When you have very junior staff that are simply just doing the photocopying, shall we say, should they be restricted at all?

[109] **Dr Roberts:** I would not put NRW in the same category as the court service. Fundamentally, we are not civil servants. We are an employment body in our own right. As I said, we are at arm's length from the Government, usually delivering things.

[110] **Suzy Davies:** The lower grades of the police are just delivering on Government policy also. Obviously, it is a different Government, but—

[111] **Simon Thomas:** They are officials of the Crown.

[112] **Dr Roberts:** I do not really want to comment for another organisation, but it just does not seem right to me, really, in that, as I said, we are not trying to influence policy or anything like that. The principle I am coming from, really, is that as many people as possible should be able to stand in these elections. We are 2,000 people. If you add up the whole of the Welsh Government sponsored bodies, you are into several thousand so there are big numbers involved there. I do not put us in the same category as civil servants, if I can put it like that. It goes back to your question about levels of seniority. I think that you could get yourself in a bit of a tangle on this. All of our staff really are on the delivery side, so I think that it has to be one rule for the whole of the organisation.

16:00

[113] **Suzy Davies:** So, you would have no issues about probity and perceptions in those circumstances about perhaps a fairly senior member of your operational system who might simply be on sabbatical standing for a party that might possibly be different from the party in Government. Do you think that the sabbatical period would be enough to satisfy that probity question?

[114] **Dr Roberts:** I think so. I would be perfectly willing to accept a member of my executive team leaving the organisation for that period in order to stand for a political party, and I would expect them to be completely impartial when they came back.

[115] **Suzy Davies:** If they came back, obviously.

[116] **Dr Roberts:** I would be comfortable with that.

[117] **Suzy Davies:** Okay, thank you.

[118] **David Melding:** Gwyn, did you want to put something to the witness or clarify anything?

[119] **Mr Griffiths:** I just wanted to clarify, for the purposes of drafting the report subsequently, that the process, usually, is that a candidate is selected by a party as a prospective candidate, which can happen at any time. However, the nomination is something like three weeks before election day. I think that you referred to selection, Chair, but the answers came in terms of nomination, so I wanted the clerks to have the best opportunity of being clear that we are actually talking about the period from selection as a prospective candidate and not just for the three weeks from nomination day.

[120] **Dr Roberts:** I really meant nomination, to be honest with you.

[121] **David Melding:** But then you are back—. These are difficult issues, and I appreciate that you may not have thought about all the permutations. However, what is likely is that a first-time candidate would normally be selected between 18 months and a year before the election they would stand in. Then they are nominated, I think, about three months before, but, sometimes, it is really just when the campaign starts. So, it is that longer period when everyone knows that they are a candidate but they are not officially nominated as such—they just have the endorsement of a party that this person will be the nominated candidate unless something very untoward happens—that is the issue. That is why I am a bit interested for younger people in particular because being off work for 12 to 18 months is probably not going to be a practical proposition for people.

[122] **Dr Roberts:** If they are—what is the phrase? If they are accepted by the political party—

[123] **David Melding:** It is ‘selected’.

[124] **Dr Roberts:** Selected. If they are selected, I guess that what would have to happen would be that we would have to discuss with that individual what their time commitment was going to be on their political activities. That would be the same in any situation. For instance, if someone had caring responsibilities, if a member of their family was ill or whatever, they would need to cut back on the amount of work. So, we would have that process there. I think that I am still of the view that the sort of activities we do are sufficiently detached from Government that we could handle the situation where somebody was selected during that period. However, at nomination, there would have to be a formal standing back.

[125] **David Melding:** One thing you are very clear on is that there should not be a formal disqualification, although you would expect organisations like yours to have arrangements in place to manage this sort of situation. I think that that is helpful. Do we have any other questions? Have we covered all the ground you wanted us to cover anyway?

[126] **Dr Roberts:** I must say, Chair, that I am representing largely my own views on this. This has not been discussed by the board or anyone else. Personally, what is driving me is that I think we want to make it as attractive as possible for as many people as possible in Wales to stand for election. That is what is driving me. What I am saying, in essence, is that we could probably find internal mechanisms to make sure that there is no conflict.

[127] **David Melding:** Thank you very much, Dr Roberts. That was most helpful.

16:05

**Tystiolaeth mewn Perthynas â'r Ymchwiliad i Anghymhwysio Person rhag bod  
yn Aelod o Gynulliad Cenedlaethol Cymru  
Evidence in relation to the Inquiry into Disqualification of Membership from the  
National Assembly for Wales**

[128] **David Melding:** I now invite the next witness, Sarah Rochira, the Commissioner for Older People in Wales, to come to the table. May I just say, commissioner, that we are conducting these proceedings in Welsh and English? There is a translation on channel 1 when Welsh is spoken. Should you need amplification, you can get that on channel 0. We are most grateful to you for your attendance this afternoon.

[129] I suppose the first question ought to be: what do you think about the fact that you are disqualified from seeking membership?

[130] **Ms Rochira:** Well, I have to say that it came as a—. Well, in a sense I did not know that I was disqualified, in that nobody had ever told me that when I took up the post of commissioner, but it does not come as any surprise. It is probably right and proper. However, I also was not aware that my staff are disqualified from standing as well, and I suppose that that did come as quite a surprise to me. You could argue that I could have thought, when I was appointed as commissioner, about looking back to check on that, but it did not occur to me, and it was not raised with me. I think that it is right and proper that I and my deputy are barred from standing; I am sure that we will come on to the topic of my staff.

[131] **David Melding:** You may have just caught the end of the last session when we were talking about this issue of which staff should be disqualified. You have taken the view that your staff are in a different category to the office you hold, which is either an Assembly appointment or a Government appointment—I cannot remember which now, but, anyway, it is obviously deeply related to the political process that we are responsible for scrutinising. Looking at your staff, would you say that some of them, perhaps the more senior ones, should be disqualified, or would you feel that that was an imposition?

[132] **Ms Rochira:** My view would be that the only two posts that should be barred or disqualified automatically would be mine and that of the deputy commissioner, because of the type of posts that we hold. I do not hold the view that any of my other staff should automatically be barred from standing. I did catch the tail end of what Emyr was saying, and I think the reason for that is that we want to encourage as many people as possible to be part of the democratic process and to have an interest in politics with a small ‘p’ and the whole political debate. I think that it is something that we should try to generate among people, that interest. I would find it very difficult to distinguish between what is a junior and what is a senior member of staff in terms of day-to-day activity.

[133] **David Melding:** So, you would probably have a process to manage staff who were politically engaged and seeking election, and would prefer to proceed in that way so that you could respond to the particular post—sometimes, particular posts are a little more politically sensitive than others—and deal with it pragmatically as an organisation rather than relying on a blanket disqualification, with all the disadvantages for participation that that brings.

[134] **Ms Rochira:** I think it requires an element of judgment both in terms of what the individual’s interests and activities would be and the potential for those to impact on the perception of me as an independent commissioner, and also the practicalities of me being able to release people, as well. I think one has to be as flexible as possible in wanting to be a good employer, while recognising my role as an independent statutory commissioner as well. One of the things I have is a code of conduct that I go through with staff on induction, and staff are required to update every year. That explicitly covers such things as political activities. So, I recognise the real world, really—people do not walk through the door, work for me, and stop all interest in politics completely. However, it has to be proportionate to their role with me as commissioner. That is why the issue of the seniority of the staff does not really work. I have some—. I do not like to use the phrase ‘junior staff’, but I have some who might be called junior staff who are out and about all the time engaging with people, and are possibly more front of house than staff who might be classed as being more senior staff. So, it does not really work like that. So, I cover it in my code of practice with staff so that they are very clear and they know that they can come to me to discuss those issues with me in order to get the balance right—namely encouraging people to want to be a part of debates and to take an interest, but not to cross a line that would impact upon my role as a statutory, independent, apolitical commissioner.

[135] **David Melding:** Do you have a follow-up question, Simon, on this particular point?

[136] **Simon Thomas:** Hoffwn ofyn cwestiwn penodol. Rydych wedi bod yn eithaf clir eich bod yn meddwl na ddylai'r staff gael eu hanghymwyso o dan y Ddeddf, fel y cyfryw, ond eich bod yn gweld bod modd i wneud hynny o ran eich swydd chi a'ch dirprwy hefyd. Hoffwn ddeall pam rydych yn cynnwys eich dirprwy, oherwydd, yn ôl yr hyn rwy'n ei ddeall, nid yw eich dirprwy yn mynd drwy'r un broses benodi â'r comisiynydd, felly mae'r dirprwy fel aelod o staff hŷn, fel petai, yn y mudiad. Gofynnaf y cwestiwn hwnnw oherwydd, rhywbryd, bydd yn rhaid i rywun dynnu llun ac rwyf am ddeall yr egwyddorion o ran y llun hwnnw.

**Simon Thomas:** I would like to ask a specific question. You have been quite clear with regard to the fact that you believe that staff should not be disqualified under the Act, as such, but that you see a way to do that with regard to your role and that of your deputy. I would like to understand why you include your deputy, because, according to my understanding, your deputy is not subject to the same process of appointment as the commissioner, so the deputy is almost a senior member of staff, as it were, within the organisation. I ask that question because, at some point, someone will have to draw a picture and I want to understand the principle with regard to that picture.

[137] **Ms Rochira:** I talked about this with some of my colleagues earlier, and we were thinking especially about the deputy commissioners, because this is quite a hard one to work out. The reason that I came down on the side of including both myself and the deputy commissioner was, first, that I am required by law to appoint a deputy commissioner—it is in the Act, so it becomes a statutory post as part of that. Secondly, the deputy commissioner is very closely aligned to me. So, I will speak as the commissioner, but often, when I cannot do so, the deputy commissioner will go and, by inference, is being me, in a sense. That is not to take away from her own voice and views, but she is often being me. Thirdly, one of the reasons that I have to appoint a deputy commissioner is that, if something happens to me and I am unable to fulfil my functions, she then steps into my shoes. That could be, potentially, for quite a considerable period of time. So, she could be me at short notice, and unexpectedly. So, those are the reasons for that.

[138] **Simon Thomas:** Thank you for that; it is helpful. If you are doing this on the basis that you can follow your responsibility in statute, from yourself down to a deputy, would you apply that as a wider principle when we are looking at disqualification Orders as a whole? At the moment, the statute mentions you and your staff, which you have said in your evidence is far too wide and we need to rethink that. Would you suggest that we look at areas where we can identify such statutory processes that are then directly linked to the political process of appointments by the Government or the Assembly?

[139] **Ms Rochira:** Do you mean in a broader organisational context?

[140] **Simon Thomas:** I am thinking about several commissioners who have similar roles to you in terms of statutory roles; how could we apply that in a way so that there is a disqualification Order that makes sense for everyone?

[141] **Ms Rochira:** I do not know that I can comment on other organisations, because sometimes we look similar but are subtly different in terms of our composition—even across the commissioners, things like terms of office vary. However, that makes sense to me, because it is the statutory function and the statutory duty rather than the general feeling that you are linked to it, because you are employed by the person with the statutory duty. That, for me, is the governance issue, and it is the difference between governance and interest as well. We should keep the governance bit very tight around that, but it is not a net that embraces everybody; governance sits within the statute. That is my view on that.

[142] **David Melding:** Did you also want to raise an issue on this particular area, Suzy?

[143] **Suzy Davies:** I can ask my question now, if you would like me to.

[144] **David Melding:** Yes, we are going to Joyce next. If the flow is improved, I do not mind you skipping ahead.

[145] **Suzy Davies:** Are you okay with that, Joyce? Shall I skip ahead?

[146] **Joyce Watson:** Yes, you skip ahead.

[147] **Suzy Davies:** On the basis, of course, that all of your staff are currently barred—and you talked about there potentially being an opportunity for at least some of them not to be barred—I would like to take you back to the question that you probably heard the Chair ask Dr Roberts regarding a member of staff who declares themselves to be a political activist to the extent that they want to stand for the Assembly. Your office is the ultimate critical friend and independent voice, if you like, so how would you square that circle about having a member of staff who is standing for a political party, regardless of their seniority, when that organisation is perceived to be completely and utterly independent?

16:15

[148] **Ms Rochira:** The reality is that they could not stand for election for a political party and continue operational work with me.

[149] **Suzy Davies:** Yes, so how do you deal with that?

[150] **Ms Rochira:** I have not come across this yet, so I think I would put them on unpaid leave immediately until the period of election. If they were selected, I would immediately terminate their employment. I was talking about this earlier—I would want to be a good employer because you want to be able to support people to take time from the workplace to do that. It is very hard to do that if you say, ‘Well, you’ve just got to resign from your job’, because that disadvantages some people who cannot afford to do that. I would suggest that there are some people that you really want to bring into the process. So, I would probably put them on unpaid leave for that, so they would be taken off of all operational duties, which would give them the space and time to go to do that. If they were successful, I would then terminate their employment, and I would consider that to be good employment practice. That would not be done without difficulty for me as commissioner, because I might lose one of my best and key members of staff.

[151] **Suzy Davies:** That would be practicable if you are just talking about three or four weeks, or even three or four months at a push. However, if you are a candidate that has been selected by a political party and you are effectively acting as a candidate—. In my own case, that was three years in advance. You would not lay me off for three years, would you? So, how would you deal with somebody like that?

[152] **Ms Rochira:** As an employer, I have to use my judgment, and, in a sense, that is at my discretion. What I would want as a good employer is to try to be able to do that. Sometimes, the reality is that it is easier to get somebody in on secondment to cover something for two years than for a period of three months. However, it would depend really on the individual circumstances, what the key needs of the business were, and whether I thought I could support and cover that.

[153] **Suzy Davies:** However, you would like that power to be within your organisation rather than in statute?

[154] **Ms Rochira:** Yes, because I think it is very hard to legislate for discretion around not just good practice but getting the balance right as well. So, I am really clear in my code of conduct about what is appropriate and what is not appropriate about taking part in party political activity. I am very clear that staff should come to me in relation to that. That requires some judgment—putting leaflets through someone’s door at weekends is very different from standing for election. I am really clear in terms of where the line is with me: it is activity that, were that person to continue to be working actively with me, would be seen to undermine my independence as a commissioner. It has to be a line to broker, but what I would like is the discretion to be able to broker that, because I would like the discretion—I suspect like many of us would—to be able to encourage people to want to be part of the democratic process. I am also a human rights-based commissioner, and I think it is an important human right to be able to engage in that process where you can. There is always a line, and my staff would have to understand that as well.

[155] **Suzy Davies:** That is a lovely clear answer. Do you want to come in now, Joyce?

[156] **Joyce Watson:** I had to leave the room just for a minute, so I do not know whether anyone has asked whether, in your opinion, the criteria for determining disqualification are clear or unclear. If someone asked it after I left the room—

[157] **David Melding:** We have not, Joyce.

[158] **Ms Rochira:** As I mentioned earlier, I had not quite realised that my staff were all barred, which may have been an error on my part. So, on that basis, I would probably say that it is not very clear, because I did not know. It is a reasonable assumption about me. However, it is important, because I need to be clear about the terms and conditions of employment of my staff, and when people apply for jobs I need to be clear about where the line is and what the conversation is if we ever get to that line. I think that that is the key thing; it is about saying, ‘Look, the line sits here somewhere, and if you get near to that line, then that is when we would need to have that conversation’. It is okay to have that conversation, but that conversation needs to be had when we get to that line. I will try to be a good employer in relation to that, but there are no guarantees around that.

[159] **Joyce Watson:** So, how do you think we can make it clearer? That has to be the ultimate decision that we have to come to.

[160] **Ms Rochira:** I suppose, in one sense, it is clear now: I am barred, as are all my staff. I suppose it is just about telling me, which would have been quite useful. It is a simple answer, but I am not quite sure how I was supposed to know this. I am not really worried from my perspective at all, but I would like to have this conversation with my staff. I do recruit staff, and people need to know what the terms are when they apply. They need to know what the deal is.

[161] **David Melding:** So, there is nothing in the induction process at the minute to tell your staff that they are now in a politically excluded office, or an office that excludes political activity.

[162] **Ms Rochira:** No, because I was not aware of that. There is something in terms of the induction for the commissioner. I recognise that we do not have that many commissioners; we are unusual creatures, in a sense. There are the top 10 things that you might need to know as commissioner and it might be quite useful to add this to the list of things.

[163] **Suzy Davies:** You have made it quite clear that, in the alternative universe that we are talking about now, you would like to retain discretion in terms of dealing with people in

your organisation who come forward to say that they would like to stand for office. However, do you think that there is an argument for a statutory cut-off at some point, and by that I mean that once a candidate is formally nominated, they should be debarred for that three or four weeks or whatever it is, and that that bit would not be left to your discretion, so that there is at least some clarity and that it does not all come down to you?

[164] **Ms Rochira:** I think that it really depends on the organisation. So, for me, maintaining my independence, and being seen to maintain my independence, is really important. I am an independent statutory commissioner and the word ‘independent’ matters enormously. So, it is hugely relevant to me and, therefore, it is hugely important to me that I manage that line appropriately. I guess that it depends on the organisation and how important that is—. I am not sure how many bodies are barred at the moment. I do not know whether it is three or four, or hundreds and hundreds, in which case, by the time you get to the edges, it starts to get a little bit more—

[165] **Suzy Davies:** It is a question of probity, really. When somebody is formally nominated and has three weeks to run for election, should they be allowed to be associated with your office during that three or four weeks, or is it okay to let them stay until the day that they win or lose the election? Is there a little lacuna in there where perhaps it should not be discretionary but statutory?

[166] **Ms Rochira:** Perhaps the way that I would do it is to say that there should be a duty on the accountable officer to make sure that the integrity of the office is not compromised and that that should be subject to scrutiny. I have an audit and risk management committee, for example, and if I was not sure about something, I would go to the committee and take soundings from it. If I was really not sure about something, I might go to the auditor general, for example, and take soundings and say, ‘Look, there’s a line here; it’s never easy when there are lines, but this is what my judgment is—can you tell me whether you think that’s right?’ I should then be held to account for the quality of my judgment around that. I also have a vested interest in getting it right because I do not want my own personal integrity or independence undermined.

[167] You have a twofold pressure to get it right: you have the pressure that you bring from yourself in terms of the integrity of your office and the pressure from you personally—I cannot divorce myself from my office because the way in which the commissioner is constituted means that I am the office and the office is me. However, you also then have the potential for external scrutiny of whether you discharged your duty not to compromise the integrity. I think that that is very much in line with the Nolan principles in terms of good governance and probity. I suppose that that would be my view because that enables you not to have quite such a black and white situation with those bodies that are on the edge of the hundreds. That is just my view.

[168] **Suzy Davies:** Okay. So you would not seek statutory protection for yourself in saying to a member of staff, ‘There are three weeks to the election; that is it, I have to put you in purdah for three of weeks, whatever it is—it nothing to do with me’.

[169] **David Melding:** You would have two regimes then, would you not? You would either leave it to discretion, or you would say that it is a disqualified post.

[170] **Suzy Davies:** That is what I am trying to tease out, really.

[171] **Ms Rochira:** I think that I would rather have it at my discretion, but I would be very happy for there to be scrutiny of the decision because, ultimately, that is what I am paid for, namely to try to make the right calls on issues, as opposed to the wrong calls. Personally, I would not want to get it wrong because I am an independent statutory commissioner and the

‘independent’ part is a key part of the title.

[172] **Suzu Davies:** Lovely. Thank you very much.

[173] **Simon Thomas:** There is another way of looking at this, is there not, which is that the rules at present, as I understand it, are such that disqualification kicks in at nomination? That is correct, is it not? So, it is at nomination that the disqualification Order for all of your staff now kicks in. So, in other words, to be nominated, a member of your staff would have to resign his or her post. However, there could be an active prospective candidate for a year or 18 months before that. So, you will have to have in place a way of dealing with that anyway, so the Order does not help you do that, does it? The current regime does not help you to deal with the issues that we have been discussing now about probity and your independence.

[174] **Ms Rochira:** In a sense, not, because, you know, it is when is active too active? It is a judgment call, is it not, which is why I am very clear in my code of conduct, and that is actually quite an important document—I sign it as well, as commissioner. You could be incredibly active for a political party—you could be leafleting, you could be campaigning, you could be the billboard picture for things—actually without being selected, which I might argue is skating a little bit close to my independence. So, you could be incredibly active—and there are many people who are incredibly active—and we would not particularly want to discourage that. So, no, I agree with you, it does not—whose definition of ‘active’?

[175] **Simon Thomas:** It does not really help you manage your roles and responsibilities.

[176] **Ms Rochira:** No. The thing that helps me manage it, I think, is clarity with staff, and this document, and staff understanding that there is a line, and that, sometimes, you have a conversation around that line, and that, sometimes, you have to make decisions around that line as well. However, as a general rule, I believe in the right of people to be part of the democratic process, and to be part of debate, because we want people to do that, but, in return, they have to respect my role as a statutory commissioner.

[177] **Simon Thomas:** Okay, thank you.

[178] **David Melding:** Eluned Parrott has the next questions.

[179] **Eluned Parrott:** So, following up on this point, would you agree that there is actually no point in the statutory disqualification being on nomination? It may as well be on election, or indeed on swearing in, because that three-week period is neither here nor there when you think about the actual campaign period.

[180] **David Melding:** At the minute, though, a person would lose their job once they had been nominated, so there is quite a big difference here, is there not? I can see the practical point that you could, technically, have someone being a candidate for 12 or 18 months, or even three years, but that nomination does then kick in and there would be no obligation on the employer whatsoever to take that person back on; in fact, the expectation would probably be that they would not.

[181] **Ms Rochira:** I think that, if I understand your question correctly, the issue that I would have around somebody being barred at nomination, and then having to resign if they wanted that, relates to the groups that it would disadvantage. I think that some of the very people that we want to bring into the political environment—people on low incomes, women, or people who are carers, for example—are the people who could not afford to give up their jobs, and I think would not just be barred, but would be barred from the circumstances of their life. Actually, I would struggle with that, because I think that it would then mean that those who could afford to come and put their names forward would be the ones put forward, and I

want to see a really diverse political base, with a small ‘p’. I just want to see—. Diversity is good. So, I think that that is why I would struggle with that.

[182] **Eluned Parrott:** Okay, thank you. From that kind of human rights perspective, do you think that the rules as they are at the moment—. We have heard evidence today that suggests that the rules disadvantage young people at the start of their career, because they are less likely to have an opportunity to fall back on professional reserves of some sort—I do not know. However, do you think that there are particular age groups that are disadvantaged? Are older people in particular disadvantaged by the way that the rules are set up now?

[183] **Ms Rochira:** I do not know. I suppose that, at one level, you would have to look at the age profile of the organisations that currently had the bars running through them, and, if they are skewed to one age group, you could argue that that age group is disproportionately affected. The route that I prefer to take, as a human-rights-based commissioner, is more one of inclusion, opportunity and removing barriers for people. I think that there are many, many barriers that people face to go into the world of politics, and into political life, either at national or local level, and, actually, what we should really be focusing on is how to remove those barriers for people. However, that is not to say that there are not then some places where you go, ‘Hey, you have to make your choices here; you cannot have both in this context’, and I would be one of those examples.

[184] **Eluned Parrott:** Thank you. You have spoken quite a lot about how you would take a practical approach to protecting the integrity of your office. However, obviously, the rules as they are designed are there to protect the integrity of the offices that have disqualification orders, but they are also there to protect the integrity of the process of political elections as well. Taking that into account, do you still feel that you would wish for only yourself and the deputy commissioner to be barred? Do you think that that is adequate protection for the process?

16:30

[185] **Ms Rochira:** I think so, yes. If you could just explain a little bit more what you mean by—

[186] **Eluned Parrott:** You have spoken about how you would manage protecting the integrity of your office and the independence of your office, but the rules, as they exist, are also there to protect the integrity of the electoral process and to make sure that people who are taking part in that process do not have an unfair advantage or a platform that others do not have. Is it still your belief that that independence for the political process is adequately protected, in the case of yourself and other commissioners, by just the commissioner and the deputy commissioner being barred automatically?

[187] **Ms Rochira:** I think so, yes. I can only speak for myself. I am not sure that my staff are privy to anything that is so advantageous that it would give them an advantage over anybody else. I think that, if anything, I would argue that if you are so politically active that you plan to stand for office, you probably know your stuff fairly well anyway.

[188] **Simon Thomas:** Hopefully, yes.

[189] **Ms Rochira:** I am sorry, I am not totally sure that I answered your question.

[190] **Eluned Parrott:** No, I understand what you mean. Thank you.

[191] **David Melding:** Are there any other questions? Unless you have anything to add, I think that we have covered the ground that we wanted to discuss. It was very helpful; I think

that some of the insights that you have had will help our inquiry also. Thank you very much for your participation this afternoon, Commissioner.

[192] **Ms Rochira:** Thank you. Diolch yn fawr.

[193] **David Melding:** Croeso. **David Melding:** You are welcome.

16:31

**Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd o'r  
Cyfarfod  
Motion under Standing Order 17.42 to Resolve to Exclude the Public from the  
Meeting**

[194] **David Melding:** I move that

*the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order 17.42(vi).*

[195] **David Melding:** I see that no Member objects. Clear the public gallery and switch off the broadcasting equipment.

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 16:32.  
The public part of the meeting ended at 16:32.*