Cynulliad Cenedlaethol Cymru
The National Assembly for Wales

Y Pwyllgor Cyllid
The Finance Committee

Dydd Iau, 19 Mawrth 2015
Thursday, 19 March 2015

Cynnwys
Contents

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi 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

Christine Chapman	Llafur Labour
Jocelyn Davies	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Mike Hedges	Llafur Labour
Alun Ffred Jones	Plaid Cymru The Party of Wales
Ann Jones	Llafur Labour
Julie Morgan	Llafur Labour
Nick Ramsay	Ceidwadwyr Cymreig Welsh Conservatives

Eraill yn bresennol
Others in attendance

Leighton Andrews	Aelod Cynulliad (Llafur), Gweinidog Gwasanaethau Cyhoeddus Assembly Member (Labour), Minister for Public Services
Dr Kate Chamberlain	Prif Weithredwr, Arolygiaeth Gofal Iechyd Cymru Chief Executive, Healthcare Inspectorate Wales
Caroline Turner	Dirprwy Gyfarwyddwr, Adran yr Ysgrifennydd Parhaol, Llywodraeth Cymru Deputy Director, Permanent Secretary's Department, Welsh Government
Sanjiv Vedi	Dirprwy Gyfarwyddwr a Phennaeth Uned Gwynion Canolog, Llywodraeth Cymru Deputy Director and Head of Central Complaints Unit, Welsh Government
Nicola Williams	Cyfarwyddwr Cynorthwyol Nyrsio, Bwrdd Iechyd Prifysgol Abertawe Bro Morgannwg Assistant Director of Nursing, Abertawe Bro Morgannwg University Local Health Board

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

Richard Bettley	Ymchwilydd Researcher
Leanne Hatcher	Ail Glerc Second Clerk
Tanwen Summers	Dirprwy Glerc Deputy Clerk
Joanest Varney-Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser

Dechreuodd y cyfarfod am 08:50.
The meeting began at 08:50.

Cyflwyniadau, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions

[1] **Jocelyn Davies:** Welcome everybody to a meeting of the Assembly's Finance Committee. Peter Black has sent his apologies for today's meeting, and Chris Chapman I'm expecting to join us shortly.

Papurau i'w Nodi
Papers to Note

[2] **Jocelyn Davies:** Before we come to the first substantive item on our agenda, we've got papers to note—the letter from Jane Hutt. Any comments?

[3] **Alun Ffred Jones:** Can I just make two comments?

[4] **Jocelyn Davies:** Yes, Ffred.

[5] **Alun Ffred Jones:** The first is about the letter itself and the bits about the protection offered to local government budget. Within those two paragraphs there are two ways of accounting. There's mention of the block grant being 9 per cent lower in real terms, but, when it comes to the Government's financial support to local government, it talks about a 3 per cent increase in cash terms. I mean, those are meant to, well, fudge the position. I would prefer—and I would ask, really—for those two figures to be presented in the same way, either as cash terms or as percentages. Then, I've asked just for the context of the annex 1, because I can't—

[6] **Jocelyn Davies:** Yes. On annex 1, I think that was—. During the evidence session, the Minister did say she'd send us that, but we'll circulate a note so that you can put that into context. Shall we write back to the Minister and ask—

[7] **Alun Ffred Jones:** Well, I think it would be—

[8] **Jocelyn Davies:** In terms of—. Yes.

[9] **Alun Ffred Jones:** It's consistency: that's all I'm asking for.

[10] **Nick Ramsay:** I think, Chair, we need to point out that 'cash terms' actually is meaningless. It is the 'real terms' that matters.

[11] **Alun Ffred Jones:** Well, it's the consistency that I'm asking for.

[12] **Nick Ramsay:** It's—[*Inaudible*.]

[13] **Jocelyn Davies:** Well, I think—. That's the point that Ffred is making; I think we'd all agree, you can't—. In the first paragraph it says that the Welsh Government budget is 9 per cent lower in real terms, and then it refers to 'cash terms' in the money going to local government. So, it's either got to be one or the other so that we've got a proper comparison. I'll make your point as well, Nick, that we prefer the real terms rather than cash terms; we don't find that so useful. Are Members happy with that?

08:52

Ystyried Pwerau: Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn Dystiolaeth 10
Consideration of Powers: Public Services Ombudsman for Wales: Evidence Session 10

[14] **Jocelyn Davies:** Shall we move on, then, to our first substantive item on the agenda, which, of course, is our consideration of the powers for the Public Services Ombudsman for Wales? We've got the chief executive of Healthcare Inspectorate Wales, and we've got the assistant nursing director of Abertawe Bro Morgannwg University Local Health Board with us. Before I go straight to the first question, would you like to introduce yourselves to us on the record? Shall we start with you, Kate?

[15] **Dr Chamberlain:** Yes. I'm Kate Chamberlain, chief executive of the healthcare inspectorate. I've been there now for about two years.

[16] **Jocelyn Davies:** Two years. Thank you.

[17] **Ms Williams:** I'm Nicola Williams, assistant director of nursing at ABM health board. Since February of last year, I've been transforming our complaints procedure within the health board.

[18] **Jocelyn Davies:** Thank you. Of course, Kate, you sent us some written evidence in advance, which the Members would have read, but perhaps you wouldn't mind just briefly outlining the main responsibilities of Healthcare Inspectorate Wales and what types of reports, and so on, that you produce.

[19] **Dr Chamberlain:** I'll try and do so briefly. Primarily, we're here to regulate the independent healthcare providers within Wales and to inspect the NHS. Our function is to provide public assurance on the quality and safety of care that's being provided across, therefore, the broad range of healthcare settings that exist across Wales. You may be familiar that Ruth Marks has recently done a report, and she quite neatly summarises our role as being, effectively, that third line of assurance. So, the first line of assurance is professionals on the front line, then the responsibilities of the health boards and the Welsh Government in their performance management role, and then ourselves in terms of testing and reporting on what we find, on a periodic basis, across services. The type of work that we typically do—. We have a series of inspections, which look at fundamental care standards within largely hospitals, about either wards or accident and emergency departments, and community hospitals. We have a suite of tools that we can use to look at infection prevention and control. Over the last year, we've been working within general practice and doing reviews of general practice. We've also been working with dentists and looking at introducing a three-year rolling programme with dental practices. We have a large suite of work that goes on in the area of mental health services, both independent and the NHS, and also includes the specific Mental Health Act review service, where we provide second-opinion appointed doctors and undertake reviews of patients who are detained under the Act. We undertake homicide investigations where a homicide is committed by a service user who's previously been known to mental health services. We also work with a range of other inspectorates, such as the prison and probation inspectorates on reviews of death in custody—or youth offending teams. There are a number of other functions—the local supervising authority of midwives, our role in the Ionising Radiation (Medical Exposure) Regulations 2000—but I suspect you don't want me to go through every single one of those in detail this morning.

[20] **Jocelyn Davies:** No, but it does give us a flavour of a broad range of issues that you deal with.

[21] **Dr Chamberlain:** Sorry, can I just add one more that I think I really should've said? We also undertake specific reviews and investigations where there are either systemic concerns or major issues that we think need looking at across Wales. I think that's particularly relevant this morning.

[22] **Jocelyn Davies:** Relevant to our inquiry. Thank you, Kate. Julie, shall we come to your questions?

[23] **Julie Morgan:** Yes. Thank you, Chair. I think you've mentioned one of them, but there have been two reports now in the last year about Healthcare Inspectorate Wales itself, one from the Assembly committee and the other one commissioned by Welsh Government, the independent review, and I presume that's the one you referred to with Ruth Marks, wasn't it? That's right, yes. So, would you say that, as a result of those reports, the healthcare inspectorate's role is likely to change?

[24] **Jocelyn Davies:** Is it too early to say or have you got a sense of whether the role will change?

[25] **Dr Chamberlain:** I suspect that the role in and of itself will not change. What we are doing is developing the way in which we undertake that role. So, for example, one of the recommendations, certainly from Ruth Marks's report, was that we continue the work we've been doing to develop thematic inspections. If you look at the inspection portfolio that we've been doing over the last couple of years, it has been quite hospital-focused. There are a number of areas where I would say we haven't done a great deal of inspection work—a number of different settings. We've not done a great deal in out-patient clinics for diagnostics. Primary care has been quite limited to date. So, we want to use our thematic reviews to sort of pick on an area, which will enable us to look at pathways of care through there and address a wider number of settings and also look at some of the higher risk areas that can occur at the boundaries, whether it's boundaries between primary and secondary care or boundaries between child and adult services. So, thematic reviews will become an increasing part of the way in which we undertake our role. So, whilst that is not a change in the role itself, it is a change in the way that we operate in order to make sure that we get the coverage we need.

[26] **Julie Morgan:** So, you don't think there is likely to be a change in your role as it is now?

[27] **Dr Chamberlain:** Not that I'm aware of at the moment—not a significant change. There's always evolution.

[28] **Jocelyn Davies:** I'm not familiar with the recommendations from the report. Were some of the recommendations made to you and some to Government or were they all made to you or all made to Government?

[29] **Dr Chamberlain:** Some were made to us; some were made to Government. Some of them are about things that we were—to continue things that we were already progressing, some were to give some consideration to things that we might not be progressing and some of them are longer term, you know, 'You may like to consider in the future'.

[30] **Jocelyn Davies:** And, obviously, Government hasn't responded yet to that report so you don't know what their response is going to be to their recommendations, so you can only really give us an insight into the recommendations made to you?

[31] **Dr Chamberlain:** That's right.

[32] **Jocelyn Davies:** That's right. Okay. Julie, do you want to continue?

[33] **Julie Morgan:** Right, I want to go on to the complaints policy and to ask what principles local health boards consider when designing a complaints policy. You're involved in that aren't you, Nicola?

[34] **Ms Williams:** Absolutely. There are a number of core principles. Firstly, for me, it's prevention. We need to try and prevent the complaints arising in the first instance. The key to that is making sure that we give the right care and learn, if we make mistakes, to prevent errors occurring in the future. We've got to have a culture where staff nip issues and concerns in the bud as they start to arise so they don't escalate into formal complaints. We need to make sure that, when incidents do occur, we keep in contact with the patient and the family, provide them with information around investigation findings, and consider redress and not wait for that to get to a complaint. Also, to put some proactive patient experience measures in place across our services to make sure that we are capturing the experience of our patients, addressing issues and celebrating good experiences where we can to make sure that we, again, prevent complaints from occurring.

[35] The second bit is to make sure that a complaints process is accessible to all, and that's really important. We have to make it clear to our patients and their families how to make a complaint and who to address that to, but try and make sure that, again, it's done as near to source of the care delivery as possible but, when that's not possible, that they know how to escalate that and make a formal complaint, and to make the complaints process available in a range of formats and mediums and not just to put it in writing to the chief executive, which may have been historical practice.

09:00

[36] Thirdly it's to make sure it's person and complainant focused, and not focused around the organisation, so that we make contact with complainants and make sure that we source from the outset what their expectations are. It has to be independent, so that, particularly for formal complaints, we are not having the staff who provided that care being the investigators of that complaint. We've got to be fast and get it right, and there is a balance to be struck there. Accountability and responsibility—I think, throughout a complaints procedure, it is absolutely pivotal that there are clear lines of accountability and responsibility, both for care delivery but also for complaints management and responses, and that's from service delivery up to board.

[37] Lastly, it's about learning and ensuring that we've got a culture of learning when things go wrong, so that we prevent those from occurring again. That's not only locally, but how you spread that learning, within a local hospital, across a health board or wider, across NHS Wales.

[38] **Julie Morgan:** Those principles sound really great. Did you say you are actually designing a new complaints procedure at the moment?

[39] **Ms Williams:** Yes. Within Abertawe Bro Morgannwg University Local Health Board, for the last year, we've made considerable changes to our complaints procedures. Those changes are ongoing, but, certainly, we are starting to see—. We've had a reduction of 240 formal complaints in the last 12 months compared with last year, and we are dealing with more informally, but, also, we're having fewer complainants being dissatisfied with the manner in which we are dealing with their complaints. It's those principles that we are adopting locally, but also, across NHS Wales, there's a transformation programme under way on the back of the Keith Evans review, where there's a work group that is taking forward some proposed changes across NHS Wales as well.

[40] **Julie Morgan:** In terms of an overview of NHS complaints, do you have that, Kate? Would you have any idea about that?

[41] **Dr Chamberlain:** We do ask about it when we're going into health boards. We do work with the community health councils quite closely. We've recently agreed an operating protocol so that we also get a sense of the complaints, not just those that are going into the health board, but the ones that are going into the CHCs, so that, before we go out and do inspections, we know what issues are coming through from there. We've extended the use of intelligence quite significantly. We also work with the Welsh Government, so we're aware not just of the complaints processes that are going on, but also of the incidents that are being reported. So, we're getting into that system, maybe before something may come to be a complaint.

[42] **Julie Morgan:** So, do you have the impression as well that things are improving, generally, as Nicola said?

[43] **Dr Chamberlain:** There has been a lot of focus on this recently, and it's clear that there is a lot of attention that is being paid to complaints handling within the NHS. I think even Nicola would say there's still a way to go on this, which is why the transformation programme is running, but it is getting a lot of attention—and attention I think it needs.

[44] **Julie Morgan:** It's having attention, but we'll wait and see. Is that what you're saying?

[45] **Dr Chamberlain:** Yes.

[46] **Julie Morgan:** Finally, I think, Nicola, you said one of the important things was to learn from the complaints. How do you do that? What action do you take that ensures you learn from the complaints?

[47] **Ms Williams:** The first thing we've done within ABM health board is to make sure that we've got a robust process for doing that, and I think, historically, we've struggled to be able to evidence that on all occasions. I think the ability to learn locally within a clinical area is easier to do, but when you try to demonstrate learning across a wider arena, it's been more difficult. So, we've put a new information system in place so that we can capture very robustly what lessons have been learnt from the complaints, and what actions have been taken, and, up to board level, we can now monitor compliance with those actions and be able to go back in and test that those actions have taken place. A very important aspect is to look at the themes, at what the themes are that are arising from complaints, within a local area, a hospital, or wider, and whether those themes are changing, because if they're not, then, clearly, we haven't been learning. That's been a focus of our work, really, and we're now starting to see the benefits of that, and we're starting to see themes changing, and we can evidence that across a number of our areas.

[48] **Julie Morgan:** Thank you.

[49] **Jocelyn Davies:** Thank you. So, Nicola, from your point of view, it sounds as if there's an attempt there to change the culture of how people feel about complaints that are made, so they look at it as an opportunity to learn as well as to deal with that specific complaint. Does the health inspectorate get involved at all with individual complaints? Say, for example, somebody wasn't satisfied, and then they contacted you, which they might—and I suspect you do have contacts directly from patients and patients' families—how do you deal with that then, Kate?

[50] **Dr Chamberlain:** It's probably more accurate to say we treat it as a concern rather than a complaint.

[51] **Jocelyn Davies:** All right. Okay.

[52] **Dr Chamberlain:** So, you know, we're quite keen not to raise the expectation of the complainant that we are acting for them. However we are keen that people tell us where they have concerns about a service. So, if someone were to approach us with a complaint, who hadn't already gone through the internal processes with the health board, we would typically, if we're speaking to them, tell them and then follow it up with a letter about how they can go through that internal process, but also refer them to the local community health council, who can support them in going through the process. So, we encourage them to go through due process, whether it's in the independent sector or in the NHS, whilst also noting down the concern that they've raised.

[53] We have a process for managing concerns within the organisation. That does an initial review to see how worrying it is and whether it requires some immediate action of our own, or we take it through our risk and escalation committee at a slightly less frequent basis, to see whether our plan needs reviewing. So the fact that we're not acting for the complainant and investigating the complaint per se doesn't mean that we wouldn't seek assurance from the health board about the way in which the matter is being dealt with, or even potentially consider it on a broader level within our future inspection programme.

[54] **Jocelyn Davies:** So, you signpost people to where they should be making the complaint, depending on where they are in the complaints process and who they're complaining about, and then you use that information as intelligence within your organisation, which you may or may not be able to use later on.

[55] **Dr Chamberlain:** That's right.

[56] **Jocelyn Davies:** Okay. I'll start with you, Nicola. Do you liaise at all with the ombudsman?

[57] **Ms Williams:** Obviously, the ombudsman is the arbitrator, in relation to the second stage of the complaints process. So, the first thing we do is, should a complainant wish a final written response—and not all do, but the majority do—when we provide that, we always make sure at the end of the letter, first of all we offer a further meeting or a meeting to discuss the findings, but we also make them aware that they have the right to refer the matter to the ombudsman. If they do that, then the relationship we have with the ombudsman is a very professional one. They'll come to us, ask us for our complaints file and a copy of the medical records, before they make a decision on whether the complaint will then go for investigation or not.

[58] There have been opportunities sometimes for a speedy resolution for us, if there have been aspects of the complaints or new aspects of the complaints that we haven't addressed, so we can go back and do that for the complainant as quickly as possible, but, you know, we do have that relationship with the ombudsman through that formal process.

[59] **Jocelyn Davies:** Okay. Kate, what about you? How do you liaise with the ombudsman? I know you've mentioned some of it in your evidence, but can you explain that to us?

[60] **Dr Chamberlain:** Twice a year, we have what we call summit meetings, where we bring together a broad range of regulators and bodies that are involved in the scrutiny and independent review within health boards. Usually, those take place prior to the risk and

escalation meetings that are set up now with the Welsh Government and with the Wales Audit Office, so they begin to inform that. The ombudsman is represented at those meetings, so there is an opportunity for the ombudsman there to engage with the wider regulatory landscape. They will also generally copy us in on reports that we need to be aware of, and will very specifically draw our attention to reports that they think we need to consider in a wider context. So, there are regular meetings of which they are a part of that wider discussion, but we also get the feedback from them as to things that they think we need to think about.

[61] **Jocelyn Davies:** At those twice-yearly meetings with the group of other organisations, do you share each other's work plans there? Do you talk about the work that you intend, or your work plans as you go forward, so that you're all aware of what others are looking at?

[62] **Dr Chamberlain:** In general terms, we talk about what we're planning to do, although those meetings largely are to inform what we're planning to do, so it isn't fixed by the time we get there. It's also to draw together what's come out of the work we've already done, to find out if we're picking up on similar themes and issues, and how that might need to inform us.

[63] We've also got memoranda of understanding in terms of how we liaise with quite a number of bodies now. We've published 10 of those to date, and we've started the conversations with the public services ombudsman about getting an appropriate one in place with his office, because, again, it's about making sure that everybody in both organisations knows how we need to communicate.

[64] **Jocelyn Davies:** Okay. You say the ombudsman sometimes refers things to you or makes you aware of things. Can you give us any examples of investigations that you've undertaken as a result of a referral, for example from the ombudsman?

[65] **Dr Chamberlain:** In January this year, we did publish a follow-up piece of work that we'd done in Hywel Dda health board on the back of an ombudsman's report into a diabetes issue that happened there in 2012. So, that's probably the most recent.

[66] **Jocelyn Davies:** Right. Okay. What about yourselves? If the ombudsman investigates an individual complaint, finds against you or flags something up with you, how do you then take forward the issues that the ombudsman's office has raised?

[67] **Ms Williams:** Initially, we get an opportunity to review the draft report prior to it being finalised, and we ensure that, through the relevant clinical director, medical director or nurse director, we look at the issues that have been raised. That makes sure that the recommendations are doable and achievable. Then, from that point, we develop an action plan, but also work with the relevant clinical service or the health board, depending on the recommendation, to make sure that the recommendation is implemented. Then, we'll go back in and check what the errors are saying, that they have been achieved and actually been delivered.

[68] **Jocelyn Davies:** Okay. Well, coming on the own-initiative powers, because you know that the ombudsman thinks that this would be very useful, do you think it would be beneficial for the public? Nicola, shall I start with you?

[69] **Ms Williams:** I think this has got the potential to be confusing, both to the public and to health bodies. We have got a number of bodies, like Healthcare Inspectorate Wales, the Wales Audit Office and commissioners who undertake a similar role. For me, really, I can't quite understand where the gaps would be that would mean that the ombudsman, in relation to health services, would need to undertake this and not be able to refer on to one of the bodies

that are already in existence. So, I think it could cause confusion for health bodies. It could certainly cause confusion for the public and, potentially, lead to multiple different investigations being undertaken if some individuals go to several different bodies.

[70] **Jocelyn Davies:** Okay. Kate.

[71] **Dr Chamberlain:** I'm probably coming from more or less the same place. I think what's difficult about the evidence I've seen submitted so far is the ombudsman's put in supplementary evidence, talking about how it's been used in other countries. Now, looking through those, I couldn't necessary identify an example that couldn't already be done by an existing body under their existing powers. I'm not aware of instances—certainly in the last two years I don't think there has been a case—in which the ombudsman has come to us and said, 'We are getting an emerging pattern of concerns here that we would like to see investigated and has not been.' I don't think that's come forward. I think it would be really helpful to know what the problem is that those powers are designed to solve, if that makes sense. Given that there are so many potential people—the auditor general, the future generations commissioner, the older people's commissioner—who can do this work, then, what is the specific unique aspect of this that the public services ombudsman is seeking to fulfil?

[72] **Jocelyn Davies:** Within health.

[73] **Dr Chamberlain:** Within health.

[74] **Jocelyn Davies:** Nick, shall we come to your questions?

[75] **Nick Ramsay:** All right, Chair. Morning. Can you summarise the current 'Putting Things Right' complaints procedure in the Welsh NHS?

[76] **Ms Williams:** Okay.

[77] **Nick Ramsay:** So, it's a very simple question, but very broad as well.

[78] **Ms Williams:** It is, yes.

[79] **Nick Ramsay:** Don't worry if it's too much.

[80] **Ms Williams:** The 'Putting Things Right' legislation is aimed as sort of investigating once and investigating well. It's also aimed at ensuring that, when something has gone wrong and harm has or may have been caused, we put that right—hence, the title. That certainly means an apology. It may mean remedial action, for example further surgery et cetera, or it may mean financial recompense. Certainly up to the values of £25,000, we need to internally, without a cost to the patient or their family, look at what redress may be required for patients if we have caused harm. So, the legislation is aimed around that, but it's also to ensure that we do that in a timely manner, that we do that with the complainant, and that we ascertain what their expectations are and achieve that.

[81] **Nick Ramsay:** What were the main recommendations of the Evans review, and how are these leading to improvements in the handling process?

09:15

[82] **Ms Williams:** There were quite a number of recommendations within the Evans review, and a lot of the principles that I described at the outset of my evidence this morning really are framed around those recommendations. There are certainly recommendations

around the visibility of complaints procedures for patients across the NHS. There were certainly recommendations for NHS Wales around increased consistency, because one thing that the Evans review did identify was that there had been different interpretations of the 'Putting Things Right' regulations between health bodies. So, certainly, some of the work that I described earlier, in relation to the all-Wales work, is around trying to eliminate as much of that difference as possible, because patients do go across a number of different health bodies in Wales and there is a need to ensure that we are all interpreting and delivering the regulations appropriately. There were quite a number of recommendations that came out, but most of them—

[83] **Jocelyn Davies:** We're not expecting you to list them all, but they are the ones that lead to the work that you've been undertaking.

[84] **Ms Williams:** Absolutely. They framed the principles that I described at the beginning.

[85] **Jocelyn Davies:** Okay. Nick.

[86] **Nick Ramsay:** Thanks. How does Healthcare Inspectorate Wales interact with the NHS complaints procedure and the ombudsman? Does it interact?

[87] **Jocelyn Davies:** Is there anything that you'd take into consideration?

[88] **Dr Chamberlain:** We are not part of that process in terms of investigating complaints and responding to complaints, but we have an interest in both the issues that are being raised and the way in which they are being responded to. So, our interest in the complaints procedures, for example, within the NHS would be to make sure that the body themselves are—. If I step back to the shared learning point—and I think Nicola gave a very comprehensive answer on the shared learning from complaints—I think my interest is to make sure that the learning spreads from how boards are learning from complaints, how they are learning from concerns that may be raised by staff, how they are learning from the results and the recommendations of independent external reviews, whether they are from us, or whether they are from the ombudsman, or whether they might be through the invited review service, and how they're putting that together to make sure that they are using that combined knowledge to improve services.

[89] So, in a way, that's not really an answer to your question because we don't—

[90] **Nick Ramsay:** It's an answer to my other question. I always like a psychic. [*Laughter.*]

[91] **Jocelyn Davies:** Nicola, in relation to—. You were talking about trying to get consistency across the health bodies in Wales. Do you think they are all pretty much up to scratch now, or do you think that they're—? Usually, with these things, there are some that are very good, most are going to be middling and some are not going to be so good. How would you—? I mean, I'm sure that in your own organisation, it's the best across Wales, but how would you rate consistency?

[92] **Ms Williams:** I think it's improved. It has improved through the all-Wales work since the Keith Evans review. I don't think it's there yet across all health organisations, but a lot of work that is being undertaken now on a national level is about getting consistency and ensuring that we are reporting the same, in the same format. And even something as simple as having the same information system that I described earlier; we're all currently using what we call the Datix system, but all very different versions of it. So, part of the all-Wales work is to get that level of consistency, so that the themed analysis and the types of reports that we can

all produce is the same. So, there's still a way to go, I think.

[93] **Jocelyn Davies:** Kate, would you agree with that? Have you found—? Because you've got an all-Wales view of this, do you find that that inconsistency causes you a difficulty?

[94] **Dr Chamberlain:** I think there is a degree of inconsistency there that does need to be worked on, and is being worked on. Going back almost to my previous question as well, there's an inconsistency in handling a lot of this information within health boards. But, again, systems are starting to move on, so we're beginning to interact more with a single individual within a health board, who's the conduit for this sort of information and then feeds that through into the way in which the health board is managing its improvement. It's not in place everywhere yet, but it's something that we'd be encouraging, because you need to have that centre of intelligence in an organisation.

[95] **Jocelyn Davies:** And for you, Nicola then, what if there's an area where there are absolutely no complaints at all? How do you feel about that? Is that good?

[96] **Ms Williams:** It may be good; it may be fantastic. It does worry me a little bit though, because, clearly, it may be that patients are being made to feel that they can't complain or are afraid to complain. We do have areas in the health board that we don't have any complaints for. We've put in place a system where we are now doing with all our patients within hospital settings—and we're just moving it out into primary care—the friends and family test. So, it's a very quick way of trying to establish the experience of patients within our hospitals. What we then do is ask, 'Well, okay, what is that telling us?' What are the patients within those areas telling us through that, which is an anonymised, very quick survey, and actually, we need not just take that as face value.

[97] **Jocelyn Davies:** Nick, did you want to come back in?

[98] **Nick Ramsay:** Thanks, Chair. We're talking about complaints. I'm just wondering what the nature of these complaints are. Are they predominantly about treatment, or are they about other aspects of hospitals? What's the breakdown of the complaints? I don't expect you to tell me percentage-wise, but what is the nature of the complaints that we're talking about?

[99] **Ms Williams:** They're vast and varied. The majority of our complaints are around appointment times and waiting times, but we also have complaints about care and treatment, as well as complaints around access or attitude of staff. They are varied, and they do vary across different settings. Generally, with regard to the surgical type areas, the higher number of complaints there seem to be around appointments and waiting times, but we do get care and treatment complaints also.

[100] **Jocelyn Davies:** You mentioned earlier that you'd had a reduction in complaints of 240. So, what sort of—? But you just said the number is 'vast', so can get a feel for what sort of reduction that is?

[101] **Ms Williams:** We had 1,500 formal complaints last year. This year, to date, and we've got a couple of weeks left to go before the end of the year—

[102] **Jocelyn Davies:** But you're not expecting—[*Inaudible.*]

[103] **Ms Williams:** No, we're not. We've had—let me just see my figure here—1,181 so far. For the 240 figure, I compared April to the end of February and the two years for that. But what we haven't seen, thankfully, is a reduction in the informal complaints, because what we need to be doing is managing those. Part of the work that we've been doing is working

with our—. I mean, we've got 17,000 staff. We've been working with our front-line staff around how to better deal with patients, families, nip issues in the bud, provide some sort of customer care and early resolution training, so that they feel better empowered and supported in actually undertaking that work.

[104] **Jocelyn Davies:** Okay. Chris, shall we come to your questions? Thank you.

[105] **Christine Chapman:** Good morning. Do you believe it would be beneficial if the ombudsman had a co-ordinating role in overseeing complaints handling and data collection by public bodies, including the NHS?

[106] **Ms Williams:** Again, for us, NHS Wales undertake that role currently and they co-ordinate the performance managers, for want of a better word, in relation to that context. For me, it would be how that would fit in with the current mechanisms that are in place, without there being duplication and, again, scope for confusion.

[107] **Christine Chapman:** So, you're not so keen on that idea.

[108] **Ms Williams:** I think we'd need to see a bit more information on how that would fit in with Welsh Government's role.

[109] **Christine Chapman:** Okay; thank you.

[110] **Dr Chamberlain:** I think I'd like to be clear about what is meant by 'a co-ordinating role' and what value does it add, because as a simple administrative and monitoring function, I'm not convinced, necessarily, that that would need to be done by the public services ombudsman; there are other potential bodies that could do that. If there is an added value strand to that, in terms of the ombudsman being the only person who is in a position to do certain things about what is coming out from that, then there may be an argument for it. But I think it's slightly unclear what it delivers.

[111] **Christine Chapman:** Okay. Further to that then, as an idea, should sector-specific complaints handling procedures be retained for the health sector?

[112] **Dr Chamberlain:** That's a very difficult one for me to answer, because I'm not really familiar, for example, with the complaints handling procedures in local government, say, or in some of the others. So, in terms of compare and contrast, I don't really feel equipped to answer that question.

[113] **Jocelyn Davies:** Nicola.

[114] **Ms Williams:** I think, as long as there's some form of external scrutiny—at the moment, as I said, that's provided by NHS Wales—then I think that's sufficient. I think it would cause difficulties if new additional bodies also had a responsibility for that.

[115] **Christine Chapman:** Okay; that's fair enough. And what do you think would be the financial costs and benefits on public bodies from complying with these new requirements if the ombudsman's proposals were accepted? Do you think there would be a cost?

[116] **Dr Chamberlain:** Shall I start?

[117] **Ms Williams:** Yes.

[118] **Dr Chamberlain:** Are you thinking about all of the proposals of the ombudsman?

[119] **Christine Chapman:** Yes. Just an idea, really.

[120] **Dr Chamberlain:** It's very difficult to say because it's very difficult to quantify on the basis of the information that's been presented. I would expect there to be some degree of cost to own-initiative investigations because it wouldn't just involve the ombudsman; they need to be responded to, they need to be fully engaged with. But again, without knowing what sort of things they would look at, and how they would be conducted, it's very difficult to say what the costs of that might be likely to be. Going through each of the oral complaints—I wouldn't have thought that would differ significantly; that's simply a different way of doing what's done at the moment. I think we just touched on whether there's a need for standardisation in complaints handling. Are we going to talk about jurisdiction later? The key impact, I would have thought—and I'm quite happy for Nicola to disagree with me—would be the additional burden, potentially, of the own-initiative investigations.

[121] **Christine Chapman:** Okay. Nicola, any thoughts on that?

[122] **Ms Williams:** I agree totally with Kate. I think there would be an additional cost burden. For me, it's what would be the benefits of that. So, what's not clear to me is that cost-benefit analysis, because, clearly, if it does end up with improved services, improved outcomes for the public and the population, then that may be worth spending. But it's not clear to me, really, what the actual cost would be. I think there would be a cost for organisations as well, particularly if there's any scope for duplication.

[123] **Christine Chapman:** Yes, okay. So you'd be wary of that, then.

[124] **Jocelyn Davies:** Nick, did you want to come in on this point, before Chris goes on?

[125] **Nick Ramsay:** Yes, on that specific point about the difference between oral and written complaints.

[126] **Jocelyn Davies:** We were just coming on to that.

[127] **Nick Ramsay:** Sorry?

[128] **Jocelyn Davies:** We're just going to come on to oral complaints. Come in after Chris, then, because she's got a question on it. Then you come in after Chris.

[129] **Nick Ramsay:** I bow to your superior—[*Inaudible.*]

[130] **Christine Chapman:** I just wanted to move on—but Nick can come in if he wants to. [*Laughter.*] I just wanted to understand better the issues around the processes of complaints. Now, we know that the Public Services Ombudsman (Wales) Act 2005 requires complaints to be made in writing, although we do know that the ombudsman has the discretion to investigate oral complaints. Do you think this is a barrier to patients making complaints?

[131] **Ms Williams:** Absolutely. I really think—

[132] **Christine Chapman:** Even though there is this discretion.

[133] **Ms Williams:** I think because, you know—. What I'm aware of is that, if somebody does make an oral complaint to the ombudsman, currently there is that discretion. They do record that complaint, but they send it out for the complainant to then agree that their transcription of that is accurate, but they only get 50 per cent of that back. So, there's 50 per cent of that population who don't get that opportunity to have the complaint pursued. When I reflect on our own health board, you know, most of our complaints don't come in in letters;

they are verbal, or via e-mail, or via other mechanisms, so I think it really is a barrier.

[134] **Christine Chapman:** But, I mean, when you say 50 per cent, perhaps only 50 per cent will actually agree to take it further. What do you think is going on there with the ones who are not prepared to go further with it? What is—

[135] **Ms Williams:** What I've said is that the ombudsman, from what I've read, sends out the transcript of what the complaint is, and they need to sign and agree that and send it back to the ombudsman.

[136] **Christine Chapman:** Yes.

[137] **Ms Williams:** Fifty per cent of those don't get returned, and that may be for a variety of reasons. Somebody may think, 'Oh gosh, I can't go through with this at the moment'. It may be that not all the population can actually read. The average reading age within Wales is around age 9, so there are problems there. There may be different ways of doing that. That doesn't necessarily mean sending things back and forth in the post, and expecting things to be read and signed for.

[138] **Christine Chapman:** Okay. Kate.

[139] **Dr Chamberlain:** I think it would certainly potentially be a barrier. There's something about saying that they have to be in writing, albeit that the ombudsman has discretion, that may make people more reluctant to raise complaints, if they're not going to raise them in writing. I do think it's important that there is a record of what the complainant has said that they are satisfied with. I think there might some additional requirements, maybe, on the ombudsman in terms of taking complaints in a variety of different forms—you know, signposting people to advocates, making sure that they've got appropriate support to make the complaints that they want. Also, a number of the complainants, by the time they're coming to raise concerns with us, we will see face to face, and take down and agree the record of what it is they're complaining about as a part of that meeting. So, it can be handled face to face. So, there are a range of mechanisms that can be done, as long as there is a clear record to make sure that what the ombudsman believes he is investigating is the complaint that they intended to raise. I think it would be very positive to make sure that access is as open to that system as it can be.

[140] **Christine Chapman:** But ultimately, you've got to have something in writing to give the end of the process—

[141] **Dr Chamberlain:** So that there is a record.

09:30

[142] **Christine Chapman:** Yes, exactly. Okay. I just want to—. I mean, you've talked about, you know, oral complaints and maybe other forms as well, but, if this did happen, and there was a bit more discretion, do you think this would significantly increase the workload of the ombudsman?

[143] **Dr Chamberlain:** I think it may, but it's very difficult to judge.

[144] **Christine Chapman:** Yes. Okay.

[145] **Ms Williams:** I agree.

[146] **Jocelyn Davies:** Nick, did you want to come in on this point now?

[147] **Nick Ramsay:** Yes. It was just on the point that Kate mentioned before about the difference between oral and verbal complaints. I imagine that the big difference is that, if it's oral complaints, you're going to get more of them, because it's easier to make them. That was the point that I was going to make, but it seems quite dated now. [*Laughter.*]

[148] **Jocelyn Davies:** Nicola, you say that you, where somebody's made a complaint, at the end of that process write to them and you say, 'Well, this is the outcome. If you're not satisfied with this you may go on and complain to the ombudsman'. Does that letter say that it has to be in writing?

[149] **Ms Williams:** It doesn't. No. It just says that they're able to contact the public services ombudsman. We don't put in that letter that it needs to be—

[150] **Jocelyn Davies:** So, it doesn't specify that it—. I don't know if—

[151] **Nick Ramsay:** Can I come in?

[152] **Jocelyn Davies:** Yes, Nick.

[153] **Nick Ramsay:** It may not specify that, but that is the current perception, isn't it? I think most people would—

[154] **Jocelyn Davies:** Well, some letters do say that. I don't say that yours does, but some organisations—

[155] **Nick Ramsay:** I don't think people would feel happy at the moment just ringing the ombudsman up.

[156] **Jocelyn Davies:** No. Yes, Mike.

[157] **Mike Hedges:** On a point just from the last meeting, does it actually say that you'll have recourse to the ombudsman, or does it say that you can contact the ombudsman?

[158] **Ms Williams:** I don't know the specific wording, because I haven't brought a copy of a letter with me, but it does say that, you know, you can contact the ombudsman, I believe.

[159] **Mike Hedges:** Could we ask for a copy of the letter? Because I think the language used quite often acts a bar to people doing things. I mean—

[160] **Jocelyn Davies:** We were concerned that people might not understand exactly what their rights are in terms of that. I don't know whether either of you saw the news last week from *Which?*, which said that 49 per cent of people who could complain don't complain. So, if half of the complaints are not lodged to begin with—and we shouldn't think that Wales is any different, because I think this was a UK study—and then 50 per cent are those that do, and can't put it in writing and don't return to the ombudsman, so we've got quite a small number of people complaining who could actually complain if the complaints process—. I think, actually, people were more deterred in terms of health because they were worried that their treatment would be affected in the future if they made a complaint.

[161] **Ms Williams:** Yes. I think that's correct. Part of what we're doing is trying to change the culture and create a culture where staff, patients and families feel that they can't raise issues and concerns without fear of what that may lead to. We've introduced a PAL service—a patient advisory liaison service—in one of our hospitals, which has been very successful, and we're looking at rolling that out currently, where we've got staff that, particularly during

visiting times, make themselves available, again to support staff within wards and areas to speak to patients' relatives around, you know, 'Is everything okay? Is there anything we can do to help and support?' But, again, it's all about trying to create that culture where perhaps people don't necessarily need to complain, and we can support people and try to make sure that they have their issues addressed as early as possible. The other way of doing that is to capture experience information from patients because, again, it's really important that we can use that and learn from it. Because not everybody will complain. I know myself; I've had services from the public sector, felt that I was going to complain, and actually never did that for various reasons.

[162] **Jocelyn Davies:** Okay. Are you happy, Chris? Ann, shall we come to your questions?

[163] **Ann Jones:** It's to see whether we ought to extend the role of the public service ombudsman to private healthcare, really. So, how large is the independent healthcare sector in Wales? I think, Kate, you said that you regulated the independent private sector.

[164] **Dr Chamberlain:** We do. I'm trying to think what the number is. The last number I saw was 106, about 54 of which were places that wouldn't come under the proposals anyway. So, we're not talking about a large number of institutions. I'm afraid that I haven't got the exact numbers in front of me, but I can certainly send them through.

[165] **Ann Jones:** Yes. So, it's sizeable.

[166] **Dr Chamberlain:** It's not excessive, shall we say?

[167] **Ann Jones:** Okay. Are there any differences in the types of problems that Healthcare Inspectorate Wales identify in the independent sector as opposed to in the NHS?

[168] **Dr Chamberlain:** The basis of the inspections that we do is primarily against the regulations in the independent sector. So, although we approach them in broadly the same way, it's about whether there has been a breach of the regulations. It's slightly different in the NHS. We go much broader probably in terms of basic fundamental standards of care. However, that's not to say that we don't look at the independent sector. On the type of problems that we find, I think, typically, what we find within the NHS, certainly in the hospital side, is that we're dealing with much bigger establishments, and one of the big issues that we find within the NHS is that of inconsistency. So, we visit a small number of areas, but we can find that standards of care are very different in one part of an establishment than they are in another. That tends not to be so much the case when we go into the independent sector. There tends to be more consistency of care in terms of what we're finding.

[169] **Ann Jones:** Okay. And I note that you say in your written evidence that you support the extension of the ombudsman's powers to private healthcare under the circumstances that he described, because he now has jurisdiction to look at private social care. Obviously, you see that as a positive, but are there any negatives to extending those powers to the ombudsman?

[170] **Dr Chamberlain:** It will create an additional workload for him, potentially.

[171] **Ann Jones:** That's something he has to cope with.

[172] **Dr Chamberlain:** Yes. I think he will need to be very aware of the different arrangements that are in place for, and the different rules that surround, the independent sector compared with the NHS. But I still think that—. I mean he has specifically talked about being able to follow situations in which an individual has taken on independent care as a result of a GP referral as part of a pathway that includes the NHS. We've certainly seen

situations in the past where the ombudsman has raised concerns that they've been unable to do so and have not been able to fully investigate the entire care that a patient has received. I think I probably see more benefits to it than disbenefits in terms of being able to extend that role and have that continuity of investigation.

[173] **Ann Jones:** Okay. That's fine. I'm fine; I am happy with that, thanks, Chair.

[174] **Jocelyn Davies:** Okay. Alun Ffred.

[175] **Alun Ffred Jones:** Mi ofynnaf yn Gymraeg. Mae Gwasanaeth Dyfarnu Cwynion y Sector Annibynnol, ISCAS, wedi dweud wrthon ni eu bod nhw'n gobeithio gweithio'n agosach—

Alun Ffred Jones: I will ask in Welsh. The Independent Sector Complaints Adjudication Service—ISCAS—has told us that they hope to work more closely—

[176] **Jocelyn Davies:** Sorry, can you hold on there? The translation is not working for the witness. Have you got it now? Fine, thank you.

[177] **Alun Ffred Jones:** Mae ISCAS wedi dweud eu bod nhw'n gobeithio gweithio'n agosach gydag Arolygiaeth Gofal Iechyd Cymru. Beth yw'r berthynas rhyngoch chi ar hyn o bryd, ac a ydych chi'n credu y byddai cydweithio agosach yn sicrhau y byddai cwynion yn y sector iechyd annibynnol yn cael eu trin yn well petai'r berthynas yn agosach?

Alun Ffred Jones: ISCAS has told us that they hope to work more closely with Healthcare Inspectorate Wales. What is the relationship between you currently, and do you believe that closer collaboration would ensure that complaints in the independent healthcare sector would be treated better if the relationship was a closer one?

[178] **Dr Chamberlain:** On the relationship with us currently, in the same way that, if a complainant approaches us from the NHS, we would refer that complainant back through the local resolution procedures and the ombudsman and whatever other procedures are there, we will do the same where there is membership of ISCAS in the independent sector as well. So, it's part of the regulations that individual providers have to have their own complaints policies. There is this other area in which the individuals can seek redress if they wish to. In the same way that, in the NHS, we would treat any information that we have about a complaint as part of the concerns that we use to inform our inspections, we do the same with ISCAS. We have a memorandum of understanding that we are just finalising with them, which then talks about if there is—not a requirement as such, but if there is considered to be potentially some benefit in exchanging information between the two processes, we have set out how we go about obtaining the appropriate consents from the individual if they think that's an appropriate course of action, so that they're not having to submit information twice, to try and sort of ease them through the process.

[179] But, again, it's about making sure that the systems are in place and that those first and second lines of defence are working effectively, and that the public are being supported to use them properly in as efficient and effective a way as possible. And also, making sure that, where it is appropriate, there is the right sort of exchange of information between the two parts of the system, if you like.

[180] **Alun Ffred Jones:** Iawn. Diolch yn fawr. Pe bai'r berthynas rhwng ISCAS a chi yn cryfhau, a fyddai hynny yn golygu nad oes angen ymestyn pwerau'r ombwdsmon?

Alun Ffred Jones: Fine. Thank you. If the relationship between ISCAS and you strengthened, would that mean that there would be no need to extend the ombudsman's powers?

[181] **Dr Chamberlain:** I would argue that, possibly, in the eyes of the public, maybe not. ISCAS is, of course, still a member organisation. Whilst it is an independent arbitration, I think, as that sort of member organisation, it may be not perceived to be as such. I think, in the circumstances that the ombudsman has described, in which he thinks he would like to use this extended jurisdiction, there will probably be a public benefit for them to be able to use the ombudsman's service to get to the bottom of their complaint.

[182] **Alun Ffred Jones:** Diolch. Mae ISCAS a'r ombwdsmon ill dau wedi nodi nad ydy'r naill gorff na'r llall yn gallu ystyried cwynion am unedau practis preifat—y PPUs yma—o fewn sefydliadau y gwasanaeth iechyd ar hyn o bryd. Faint o'r unedau yma sydd yn bodoli yng Nghymru ac a ydych chi'n credu y dylai unedau o'r fath gael eu trin gan system gwynion y sector cyhoeddus?

Alun Ffred Jones: Thank you. ISCAS and the ombudsman have both noted that neither body can consider complaints about private practice units—PPUs—within NHS organisations at present. How many of these units exist in Wales and do you think that such units should be treated under the public sector complaints system?

[183] **Dr Chamberlain:** That's a very interesting question. It's not one that I've got the numbers with me on, but I could certainly send them through to the committee. I'd be happy to do so afterwards. I would certainly feel nervous at the concept that there might be an area of service that is out of scope of any independent review procedure.

[184] **Jocelyn Davies:** Can you tell us, Kate, what sort of work do those units carry out?

[185] **Dr Chamberlain:** To be honest, I'm not really as familiar with them as I would need to be. I'll come back to you on that.

[186] **Jocelyn Davies:** Okay. Thank you.

[187] **Alun Ffred Jones:** A gaf i jest ofyn un cwestiwn arall? A ydych chi'n codi ffioedd ar y sector iechyd annibynnol os ydych yn gweithredu mewn unrhyw ffordd i'w reoleiddio? A gaf i ofyn jest un cwestiwn arall? Faint o bobl sy'n gweithio i chi, yr arolygaeth gofal iechyd?

Alun Ffred Jones: May I just ask one other question? Do you raise fees from the independent health sector if you act in any way to regulate it? May I add an additional question to that? How many people work for HIW?

[188] **Dr Chamberlain:** There is an annual registration fee to register with us. How many people work for HIW? Sixty. Well, it depends how you define 'workforce'. We have a permanent workforce of 60 people. Our inspection teams consist of our inspection manager, specialist peer reviewers, depending on the subject that we are inspecting, and a lay component. So, we have a panel of specialist peer reviewers, between 100 and 200, who will be called in just for the inspections that they have the expertise to contribute to.

[189] **Jocelyn Davies:** So, you have a permanent workforce of 60, but you commission in expertise, depending on what it is that you're inspecting.

[190] **Dr Chamberlain:** That's right.

[191] **Jocelyn Davies:** Okay. Mike, shall we finish off with your questions?

[192] **Mike Hedges:** Two very quick questions: should the recommendations of the ombudsman be binding or non-binding on public bodies, and should they be binding or non-binding on private health bodies?

[193] **Ms Williams:** I think, for me, if they were binding, we would need to have a system in place where there were really robust opportunities for discussion around those recommendations, you know, at a very senior level, between health bodies and the ombudsman. Very often, the ombudsman will ask an expert adviser and, as we all know, you can have two clinicians and both will have the right answer, but they'll be different answers. You know, I think, if they were to be binding, then there needs to be that opportunity at a senior level to have that discussion, if it's needed, around the recommendations, are they achievable, and, actually, the evidence on which they've been based.

[194] Also, again, within our health board, I'm not aware—recently, anyway—that we've not accepted any recommendations. We certainly are in discussions with the ombudsman around some of them, particularly one case currently. But, you know, what we would hope—. If that was ever the case, then there would need to be that high-level opportunity.

[195] **Jocelyn Davies:** Would you—sorry, Mike—expect the recommendations to be couched in slightly different terms if the recommendations would be binding?

[196] **Ms Williams:** I think the ombudsman would have to be absolutely certain that they were achievable recommendations within a public organisation and that the evidence on which they were based was absolutely sound and not based on, you know, from a health perspective, one clinician's view over another's.

09:45

[197] **Jocelyn Davies:** Okay. Mike.

[198] **Mike Hedges:** I'll ask this rhetorically, and then I'll go into my own question: why do we always think that every inspector—everybody who ever deals with complaints—is right every single time? We seem to have this view that—

[199] **Jocelyn Davies:** That's not an insult to you, Kate, because we know you're always right.

[200] **Mike Hedges:** That's just a rhetorical question. The question I've got is: should the term 'ombudsman' be regulated or protected? As I understand at the moment, I could set myself up as the Swansea East ombudsman, if I so desired. [*Laughter.*] People have a belief and understanding of the term, 'ombudsman'; in the private sector, it seems to have grown quite substantially in recent times. Should it be either protected or regulated to stop people from setting themselves up as an ombudsman or to stop organisations using the term 'ombudsman' when all they really are is a complaints procedure?

[201] **Ms Williams:** It certainly needs a higher level of regulation than there is currently. How that may look and who would do that, obviously that would need to be debated further.

[202] **Jocelyn Davies:** Kate, are your recommendations binding on the organisations that you inspect?

[203] **Dr Chamberlain:** It depends how you define 'binding' really. When we make recommendations, we tend not to be very specific about how those should be implemented, but if we're not satisfied with the response that we get from the health board about how they're going to respond, we do enter into correspondence until we get an action plan that we think is sufficient. If, then, we go back and do a follow-up review and find that the actions that the health board committed to have not been taken, that is the point at which we would escalate that and take that through the escalation arrangements.

[204] **Jocelyn Davies:** Mike, are you happy with that?

[205] **Mike Hedges:** Yes.

[206] **Jocelyn Davies:** Right, okay. We've run out of questions for you. Thank you very much—they've been very interesting. Nicola, I think you said that you'd send us something. If you could do that soon, that would be great. We'll send you a transcript and if you check that for accuracy, we'd be grateful and then we'd be able to publish it. Okay, thank you.

09:47

Ystyried Pwerau: Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn Dystiolaeth 11
Consideration of Powers: Public Services Ombudsman for Wales: Evidence Session 11

[207] **Jocelyn Davies:** We'll move on to our next item. I think we've got the Minister with us now. In your papers, you would have had a letter that the Minister sent to us as part of our evidence.

[208] Good morning, Minister. So, we're now on agenda item 4—the consideration of the powers of the Public Services Ombudsman for Wales. This is our evidence session number 11. We're delighted to have the Minister with us this morning. Minister, would you like to introduce yourself and your colleagues and officials for the record?

[209] **The Minister for Public Services (Leighton Andrews):** I've brought along Caroline Turner and Sanjiv Vedi, myself and my well-known sunny disposition, Chair. [*Laughter.*]

[210] **Jocelyn Davies:** I hope you've brought your sunny disposition with you this morning, Minister. Is it okay with you if we go straight to questions?

[211] **Leighton Andrews:** Sure.

[212] **Jocelyn Davies:** Thank you. Does the Welsh Government see value in the proposals to revise the powers of the ombudsman?

[213] **Leighton Andrews:** I think there needs to be some reflection on what the ombudsman is asking for in his proposals. Certainly, we understand the desire of the ombudsman to expand some of the powers that he has and perhaps clarify his role in certain areas, but I think there are a whole series of issues that are raised by the proposals that have been bought forward.

[214] **Jocelyn Davies:** Minister, since you've come into the room, the sun is now in my eyes for some reason, so I think that you have brought the sun with you. [*Laughter.*] So, as soon as we can, we'll raise the blinds.

[215] So, I guess from what you say there, obviously, it needs further consideration, but what about 'in principle' support for the broad thrust of the proposals?

[216] **Leighton Andrews:** I'm not going to go so far as to offer in principle support at this stage. I think we have sympathy with the objectives of the ombudsman, but I think, as I say, there is a whole series of questions that arises from what he's proposing.

[217] **Jocelyn Davies:** Okay. Are there any particular areas of concern for you?

[218] **Leighton Andrews:** I think the committee would need to explore the potential relationship between the ombudsman and other bodies, including regulators and auditors, and some of the responsibilities that exist on a statutory basis, for example, already within certain parts of public service, such as the complaints procedures that are mandated by legislation within the health service. I think there is a question around the whole approach to own-initiative powers that requires further reflection as well.

[219] **Jocelyn Davies:** Thank you. Julie, shall we come to your questions?

[220] **Julie Morgan:** Yes, thank you, Chair. In terms of the actual practicalities, would you see that there would be time to introduce such a committee-led Bill in this Assembly?

[221] **Leighton Andrews:** That's a matter for the committee.

[222] **Jocelyn Davies:** Okay; thank you.

[223] **Julie Morgan:** In terms of the Government's legislation programme, would you think that that—? How would you describe that for the rest of this session?

[224] **Leighton Andrews:** It's a very busy and very full programme, and there is no opportunity within the Government's programme to bring forward any legislation.

[225] **Julie Morgan:** Right. I think you've said in your letter about the public service reform that is going to come in. Do you think that this Bill would be best introduced after that has happened? Have you got any views on that that you could expand on? I think you've suggested that it might be, in your letter.

[226] **Leighton Andrews:** I think there are two issues here; one, I think, is the pace of introduction of a piece of legislation like this and whether there is sufficient opportunity to explore all of the issues that have been brought forward, and whether there is sufficient time available still in the life of this Assembly to make progress. I think the second area—yes—is whether it might make more sense to pursue the legislation after the 2016 election, when we have more clarity around some of the proposals we're bringing forward, for example, on a local government front, when some of the responsibilities within the health sector are bedded down and when some of the responsibilities arising from the recently passed Well-being of Future Generations (Wales) Bill have bedded down, where there are, obviously, responsibilities for the new commissioner and so on. So, it's a matter of judgment, I guess, but I think, on balance, I would argue for proceeding when we've had a bit more understanding of those.

[227] **Julie Morgan:** You mention the Well-being of Future Generations (Wales) Bill, which, obviously, has just been passed. Have you got any queries about the relationship that the ombudsman, with these changed powers, would have with the auditor general, for example?

[228] **Leighton Andrews:** Yes, with the auditor general under that piece of legislation, and we also reflect on the role of the auditor general in the local government White Paper as well. These are things that would need to be teased out in the passage of any Bill.

[229] **Julie Morgan:** Has the Government had a discussion yet about whether this Bill is going to be—? Have they had a discussion about the change of the role of the ombudsman that is proposed?

[230] **Leighton Andrews:** I have not been a participant in a collective discussion on that,

but I have had conversations with other Ministers.

[231] **Julie Morgan:** Right. One last question: what about legal resources here? Do you think there would be sufficient legal resources to deal with a Bill?

[232] **Leighton Andrews:** The Government's legal resources are pretty much tied up with our legislative programme at the present time.

[233] **Julie Morgan:** So, in summary, you think it'd be better after all of these reforms have come in, and you don't think there's time to do it before the end of the session.

[234] **Leighton Andrews:** That would be my current conclusion, yes.

[235] **Julie Morgan:** Thank you.

[236] **Jocelyn Davies:** Ffred, shall we come to your questions?

[237] **Alun Ffred Jones:** Iawn, diolch yn fawr. Un o'r awgrymiadau gan yr ombwdsmon ydy ei fod yn credu y dylai gael yr hawl i wneud ymchwiliadau ar ei liwt ei hun—dyna un o'r prif fwriadau. A ydych yn credu y byddai hynny yn gynhorthwy i wella gwasanaethau cyhoeddus?

Alun Ffred Jones: Thank you. One of the suggestions by the ombudsman is that he believes that he should have the right to undertake own-initiative investigations—that is one of the main intentions. Do you believe that that would help to improve public services?

[238] **Leighton Andrews:** Maybe.

[239] **Alun Ffred Jones:** Diolch yn fawr.

Alun Ffred Jones: Thank you.

[240] **Jocelyn Davies:** Minister, since we've put the blind up, your sunny disposition seems to have disappeared. [*Laughter*.]

[241] **Leighton Andrews:** I'll say again: maybe. [*Laughter*.]

[242] **Alun Ffred Jones:** Diolch yn fawr. Un o'r pwyntiau mae o wedi'u gwneud ydy y byddai ymchwiliadau fel yna o fudd penodol i'r rhai sy'n agored i niwed a'r rhai sy'n annhebygol o wneud cwyn. Rwy'n credu mai dyna un o'i ddadleuon o. A ydych chi'n derbyn y ddadl honno? I ba raddau mae Llywodraeth Cymru'n monitro grwpiau fel yna i weld a ydyn nhw'n cael chwarae teg?

Alun Ffred Jones: Thank you. One of the points he has made is that own-initiative investigations would be beneficial to those who are most vulnerable and those who are unlikely to make complaints. I think that is one of his arguments. Do you accept that argument? To what degree does Welsh Government monitor such groups to see whether they are given fair play?

[243] **Leighton Andrews:** I'm not sure that I entirely buy that argument. I mean, I've seen the suggestion, for example, that, in an ageing society, there may be more need for own-initiative inquiries, because we might have more frail people who are unwilling or afraid to pursue issues on their own behalf. You see, I'm not sure I buy that in the context of own-initiative inquiries; I buy that in the context of a need for advocates or others to take up issues. I think there may be a role there for the older people's commissioner, for example, in that context.

[244] It seems to me that there is a need for the ombudsman to justify the own-initiative case, and I'm not sure yet that that has been sufficiently set out. We're open, I think, to being persuaded on that, but at this stage, I think the case needs to be made.

[245] **Alun Ffred Jones:** Rwy'n cael yr argraff eich bod yn amharod i weld pwerau'r ombwdsmon yn cael eu hehangu. Wrth gwrs, mae'r ombwdsmon yn sefyll y tu allan i ddylanwad y Llywodraeth. Roeddech chi'n awgrymu yn fanna y buasai'r comisiynwyr yma'n gallu gwneud y math yna o ymchwiliad, ond wrth gwrs mae'r comisiynwyr yn llawer iawn nes at y Llywodraeth. A ydy fy nadansoddiad i'n gywir neu'n anghywir?

Alun Ffred Jones: I get the impression that you are unwilling to see the powers of the ombudsman being expanded. Of course, the ombudsman is outside the influence of Government. You're suggesting there that the commissioners could perhaps undertake those types of investigations, but of course the commissioners are much closer to the Government. Is my analysis correct or incorrect?

[246] **Leighton Andrews:** No, I'm afraid it isn't. If you take recent reports, for example, from the children's commissioner or the older people's commissioner, I don't think either of them have been afraid to be very critical of Government-delivered services, or services within a statutory framework set by Government, if I'm to be more precise. You can think of very substantial pieces of work done by both of those commissioners that I think have been very critical.

[247] We've recently had a very detailed survey of the complaints system within the health service separately from this, which I think has put in place a lot of new practice, going forward. I think that we've been open in the way we've approached these issues and in the local government White Paper, we've talked about the need for local government to improve complaint handling, for example. So, I don't think it's about the relationship of the ombudsman to Government. You know, I regard the commissioners as independent of Government; they may be technically appointed by Government, but I don't think they've ever been afraid to operate in an independent manner.

[248] **Jocelyn Davies:** I don't recall the ombudsman making a case for these, because of a lack of action on behalf of commissioners being part of that. I don't know if you were able to review the evidence that we received from the Northern Ireland ombudsman, who talked about the learning disabled and said that there was a complete absence of complaints from that particular sector, but knew that there was something going on there that shouldn't have been going on. He felt that own-initiative powers can certainly help where there appears to be a complete lack of complaints. Perhaps you'd be so kind, when you have an opportunity, as to look at the evidence from the Northern Ireland ombudsman and see if any of that would change your view.

[249] **Leighton Andrews:** Well, sorry, Chair, I didn't say I was opposed to the ombudsman having own-initiative powers; I said I thought the case had to be made. That's very different. I'm not opposed to those powers being made available, but I do think it's down to the ombudsman to make that case.

[250] **Jocelyn Davies:** Okay. Ffred.

[251] **Alun Ffred Jones:** Un pwynt bach arall. Roeddech chi'n sôn am y berthynas rhwng yr ombwdsmon a'r archwilydd cyffredinol a'r potensial bod yna orgyffwrdd. Ond, mae'r archwilydd cyffredinol ei hun wedi dweud ei fod o'n credu y byddai modd trwy'r pwerau presennol, ond trwy gytundeb gyda'r ombwdsmon i greu ffordd ddigonol i sicrhau nad ydyn nhw'n dyblygu gwaith. A

Alun Ffred Jones: One additional point. You referred to the relationship between the ombudsman and the auditor general and the potential of overlap. But the auditor general himself has said that he believes that through the current powers, through agreement with the ombudsman, it would be possible to create a method of ensuring that there would be no overlap. Do you accept that argument?

ydych chi'n derbyn y ddadl honno?

[252] **Leighton Andrews:** Certainly, I think those are things that can be teased out in further elaboration of legislation and I would hope that it would be feasible for that to be achieved, certainly.

10:00

[253] **Jocelyn Davies:** Yes, we certainly wouldn't want a duplication of work. Nick shall we come to your questions?

[254] **Nick Ramsay:** Minister, good morning. On seeing complaints as a positive thing, you're always going to get complaints, so how do you get those complaints into the system to improve things? How is the Welsh Government promoting cultural change to see complaints in that sort of way?

[255] **Leighton Andrews:** I think, if you look at the work that was done around the complaints review for the national health service, that was very much at its core. I think the learning that came from that was very interesting. There was obviously a review undertaken by a former private sector chief executive, who spoke about the way in which, in his own business, complaints handling operation had been located outside his own office, so it was at the core of his operation, and I think that learning has been very valuable in what we've taken into the public service. Similarly, I would hope that that would be an approach that local authorities might adopt: if you bring the management of complaints right to the centre of your core operations, you are more likely, I think, to see them addressed with a degree of seriousness and seniority.

[256] **Nick Ramsay:** Would it be useful if the ombudsman had a specific role in promoting cultural change?

[257] **Leighton Andrews:** Does he not have that responsibility now, in a sense? You know, I would have thought that the annual reports that are produced by the ombudsman, in a sense, regularly engage with the culture of complaint handling within public services, so, in a sense, I wouldn't see that as being necessarily different in the future from how it is now. So, certainly, the ombudsman has a role in cultural change, yes.

[258] **Nick Ramsay:** I think the point is that it could be made more apparent—

[259] **Jocelyn Davies:** On the Scottish example.

[260] **Nick Ramsay:** On the Scottish example, yes. Yes. How does the Welsh Government currently consider the levels of complaints in different public services?

[261] **Leighton Andrews:** We currently have—if you were to break complaints down—as I understand it, about a third of them in the area of health, about a third in the area of local government and then the other third are what you might call miscellaneous, I guess, across the public services. So, I think that would be our understanding.

[262] **Nick Ramsay:** Okay, and do you believe there should be more consistency in the way complaints are managed and recorded in the different public services, as happens in Scotland?

[263] **Leighton Andrews:** Yes.

[264] **Jocelyn Davies:** Minister, I don't know if you saw the publicity around the *Which?*

report last week, that about 40 per cent of people who could complain don't for a number of reasons. They were put off from complaining in health because they were worried that their treatment in the future would be affected. Some feel that it's not worth bothering because it's either too hard or they won't get an outcome that would be useful to them. So, we've got nearly half of people, and I guess Wales wouldn't be much of an outlier in terms of the data that were collected. It's a bit worrying that half the people who could complain don't, isn't it?

[265] **Leighton Andrews:** I think it is worrying and, you know, I'm sure we all as Assembly Members have examples through our constituency case work of cases that we take up. Sometimes, we need to persuade people, who have come to us with an issue, that they ought to pursue a complaint. They feel more often relieved that we are prepared to do it on their part as their advocate, as it were. So, I understand the point you make. I've no evidence as to whether the *Which?* survey is accurate in the context of Wales. What I do know is that we've had a very comprehensive review of the complaints process within the national health service.

[266] **Jocelyn Davies:** Okay, Chris, shall we come to yours?

[267] **Christine Chapman:** Yes, okay. Thank you, Minister. I mean, obviously, you have said that you would like more consistency in the way the complaints are managed. Do you think it would be helpful if the ombudsman had the power to improve this consistency? Do you think it would be his or her role?

[268] **Leighton Andrews:** Well, I'm not absolutely convinced to what extent you can legislate for consistency, let me say that. I think, at the end of the day, it's about embedding behaviour, it's embedding practice, and it's about provision of guidance, I guess, and training. So, I think the ombudsman clearly has a role in all of those things, but I'm not certain that legislation on its own is the way to do that.

[269] **Christine Chapman:** So, just to check, the alternative provision, as you said, could be guidance—I think that's what you're alluding to there—as well, other than just legislation, then.

[270] **Leighton Andrews:** I certainly think that, if there is a need for the improving of consistency in the handling of complaints, which I'm sure there is, that involves a whole series of issues from the issuing of guidance, right the way through to training and behaviour change within particular public bodies.

[271] **Christine Chapman:** Okay, thanks.

[272] **Jocelyn Davies:** Nick, did you have a question on this point?

[273] **Nick Ramsay:** I'm not sure it's specifically on this point.

[274] **Jocelyn Davies:** Okay, go on then. We'll try to make it related. [*Laughter*.]

[275] **Nick Ramsay:** Can I have a question there? We took evidence, I think it was last week, or certainly in the last session, where one of the witnesses—forgive me, I can't remember. It was one of the—. I can't remember the witness.

[276] **Jocelyn Davies:** Anyway, a witness, at some point. [*Laughter*.]

[277] **Nick Ramsay:** A witness, yes. It was the expert in legal issues. He said there's a danger, as there are two sides to the ombudsman: on the one hand, you have the smaller-level complaints, but on the other hand, you have broader maladministration—I don't like that

word—issues. There's a danger that if you focus too much on the smaller issues, you could actually miss the bigger point of the ombudsman. Would you share those concerns?

[278] **Leighton Andrews:** Well, I could share those concerns, but I wouldn't necessarily start from that point. I think what I would say is that it's down to us to define a range of responsibilities for the ombudsman in legislation. It is then important for the ombudsman to reflect, in his work, that range of responsibilities that we have given him, and, in the way he reports on that annually, there is a process then, back through accountability to this Assembly, for those issues to be followed through and questioned. So, there is an accountability process. So, I understand the concern. I think the concern is a valid concern, but I think there are mechanisms to avoid that becoming the case.

[279] **Jocelyn Davies:** Yes, this was the expert—the professor. I've forgotten his name. Dr O'Brien, that's it. Chris.

[280] **Christine Chapman:** A couple more questions, Minister. The report on health, 'Escalation and intervention arrangements in the NHS'—obviously, this is not your immediate responsibility, Minister, but do you recognise that this shows that public regulators should work together to identify service weaknesses?

[281] **Leighton Andrews:** Yes. Yes, I do. I mean, I think that's the way that we've taken that work forward. The health Minister has got a programme in hand to take all of that work forward. Bear in mind, as I said at the outset, that there are statutory procedures within the health service, in respect of complaints in different areas. Different bodies have the responsibility for following through on complaints that are brought to them.

[282] **Christine Chapman:** Okay. Finally, do you believe that the cost to public bodies of improving the public complaints procedures could be compensated by reduced litigation?

[283] **Leighton Andrews:** Well, that requires a lot of speculation about the behaviour of lawyers, about the balance between complaints that can be resolved short of legal action, and those that can't. In an ideal world, yes.

[284] **Christine Chapman:** Okay, thank you.

[285] **Nick Ramsay:** That's a great answer. [*Laughter*.]

[286] **Jocelyn Davies:** We've received a lot of evidence over the years about the code of conduct, of complaints about local authority members. Do you think the current system is working? Is it working for you, Minister?

[287] **Leighton Andrews:** In respect of local authorities?

[288] **Jocelyn Davies:** Yes. I mean, we hear that there are many, many complaints being generated from a tiny number of local authorities, usually community councils, we have to say, which is a bit worrying.

[289] **Leighton Andrews:** Well, we've obviously said a fair bit in the White Paper about the code of conduct and the way it's managed, and that's out to consultation at the present time. I think one of the things we've been seeking to do, obviously, is to address the question of vexatious complaints, often generated from within councils, by councillors about each other, which I think probably can be resolved in other ways, politically. I think there are, clearly, issues with community councils that may be different from principal local authorities, where there is more of a structure, and more of a role, perhaps more understanding and experience in the management of issues such as this, but, as I say, we're out to consultation.

We've said what we think in the White Paper.

[290] **Jocelyn Davies:** Mike, did you want to come in on this particular point?

[291] **Mike Hedges:** Does the Minister agree that it's not just councillors on councillors, but defeated candidates and prospective candidates, on councillors. That is slightly more complicated, and I can give you a prediction now that, in 2017, the number of complaints about councillors will go up.

[292] **Jocelyn Davies:** That wasn't a question, Minister, but your view on it would be welcome.

[293] **Leighton Andrews:** I know that Mike Hedges has far more experience in this area than I do. [*Laughter*.]

[294] **Jocelyn Davies:** It does seem that, around election time—but not always confined to the elections that those people are fighting, I have to say, as we have elections every year now—there is an opportunity for complaints to be made that are vexatious. The ombudsman has told us that in itself is a breach of the code of conduct, but, of course, if you're not a councillor, then you can't be breaching the code. In your consideration around this in the White Paper, are you happy to continue with the ombudsman having the role of policing that code of conduct?

[295] **Leighton Andrews:** Yes.

[296] **Jocelyn Davies:** Okay. Ann, shall we come to your questions?

[297] **Ann Jones:** Thanks. It's around healthcare, Minister. I know healthcare is not your immediate responsibility, but do you believe that patients should have the right to complain to the ombudsman when they have chosen private healthcare alongside their NHS care?

[298] **Leighton Andrews:** As you know, the ombudsman currently has no power to investigate private healthcare complaints, and he has been asking for that. I think we're open to looking at that, and we welcome your consideration of it.

[299] **Ann Jones:** Okay. One of the ways that has been suggested that we could do it would be to raise a levy on those private healthcare providers. Do you believe it's reasonable for the levy to go ahead, or should the taxpayer bear the ombudsman's costs from investigating such complaints if we were to extend his jurisdiction?

[300] **Leighton Andrews:** Certainly, we would want to ensure that there was no cost to the public purse.

[301] **Ann Jones:** Okay.

[302] **Jocelyn Davies:** Okay? Ffred, shall we come to your questions?

[303] **Alun Ffred Jones:** Jest o gwmpas y cysylltiad â'r llysoedd, fel yr ydych chi'n gwybod, o dan Ddeddf 2005, nid yw'r ombwdsmon yn gallu ystyried cwyn pe gallai llys, tribiwnlys, Gweinidogion Cymru, neu Weinidogion y Goron ystyried y mater. Dyna'r sefyllfa ar hyn o bryd. Roedd y cyn-ombwdsmon, Peter Tyndall, o blaid cael

Alun Ffred Jones: Just regarding the interaction with the courts, as you are aware, under the 2005 Act, the ombudsman is not permitted to consider a complaint if a court, tribunal, the Welsh Ministers, or Ministers of the Crown are able to consider the matter. That's the situation as it stands. The former ombudsman, Peter Tyndall, was in favour of

gwared ar y cymal hwnnw, ac mae'r ombwdsmon presennol wedi dweud y byddai fo'n ddymuniad ganddo fe, hefyd. Rwy'n deall bod Llywodraeth Cymru yn dadlau yn erbyn hynny, ac eisiau cadw'r ddarpariaeth. Pam hynny?

removing that statutory bar, and the current ombudsman has said that that would be his wish as well, to see that done. I understand that the Welsh Government is not in favour of that, and wants to keep that provision. Why is that?

[304] **Leighton Andrews:** I think we believe there is complexity in this area, and, on balance, we believe it's better to have a line of demarcation between the ombudsman and the court. I think there's an additional area, which is about the competence of the Assembly and therefore the competence of the ombudsman in respect of certain cases as well.

[305] **Jocelyn Davies:** So, would you have concerns, as a Government, about having perhaps to defend something in the Supreme Court that wasn't really your policy, and maybe you're a bit reluctant to go there in terms of that? Is that the case?

[306] **Leighton Andrews:** I wasn't going as far as that. I think that you get into the territory, then, of what, potentially, is within the competence of the ombudsman, I guess, once you go into the area of the court. I think our understanding is that the statutory bar provisions are only an issue in a very small proportion of the overall number of complaints currently received by the public services ombudsman.

[307] **Jocelyn Davies:** Okay then. Mike, shall we finish off with your questions?

[308] **Mike Hedges:** The term 'ombudsman'—should it be either regulated or protected, so that private sector organisations can't actually set up, identify somebody and call them an ombudsman?

[309] **Leighton Andrews:** I haven't given any reflection to that myself. I think it's an interesting question.

[310] **Jocelyn Davies:** Minister, that was a very interesting answer. [*Laughter*.]

[311] **Mike Hedges:** Can I ask perhaps that you do give some thought to it, because there is a danger? The term 'ombudsman' really does have a great deal of respect, and people think of them as somebody who is independent and fair. There is no reason why an organisation cannot identify somebody who deals with their complaints as the 'whatever-organisation-it-is ombudsman', and it could end up damaging, in my opinion—I don't know whether you would agree—the title 'ombudsman' if it starts being used by lots of different people.

[312] **Leighton Andrews:** I hear what you're saying. I'm just trying to reflect on whether that raises issues of competence in itself, because, clearly, there could be UK-wide organisations that might decide, for example, to create a post of ombudsman. We might not like that, but we might not have the power to regulate it.

[313] **Jocelyn Davies:** There are UK-wide ombudsmen.

[314] **Leighton Andrews:** So, it's not a simple answer, I think.

10:15

[315] **Mike Hedges:** No; I wasn't asking you to give an answer. I was just asking you to actually think about it. The other one—an even simpler question—is: should the ombudsman's recommendations be binding or should they continue as they are now, to be recommendations?

[316] **Leighton Andrews:** Well, I suppose, as they are now, any public body that ignores a decision of the ombudsman is going to be leaving itself open to considerable public criticism. I think that if powers are to be binding, then there have to be powers of sanctions. So, you'd need to think through—. You know, we would all need to think through what that might lead to and what the consequences might be and how those would operate.

[317] **Mike Hedges:** There would also have to be powers of appeal, of course, wouldn't there, if they were binding and not just recommendations? I'll say this to you, because I've said to everybody else: I'm not convinced that every inspector and every ombudsman and every one of these people who go are right every single time. I think they must make a mistake occasionally. I think that that itself is something that we never seem to talk about. I think the argument, which I hope you would agree with, on binding is that, if they were binding, there would have to be that means of appeal and, therefore, that would not be fulfilling the role of an ombudsman making a final decision, then.

[318] **Jocelyn Davies:** Do you agree with Mike? [*Laughter.*]

[319] **Leighton Andrews:** I think Mike has made his point.

[320] **Jocelyn Davies:** Yes. I think he's made his point. I think one of our concerns as well is that the recommendations might be couched in different terms if the organisation felt that the recommendations were binding. We certainly heard that in evidence earlier this morning.

[321] Minister, we've run out of questions. I don't know if there was anything else you wanted to say to us before we move to private session to consider your evidence. You've left us with plenty of opportunity, I think, to read into your answers—some inferences that, perhaps, are not directly on the record—and we are very grateful for that.

[322] **Leighton Andrews:** Thank you very much.

10:17

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

Cynnig:	*Motion:*
bod y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod yn unol â Rheol Sefydlog 17.42(vi).	*that the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order 17.42(vi).*

Cynigiwyd y cynnig.
Motion moved.

[323] **Jocelyn Davies:** I propose, under Standing Order 17.42, that we move into private session. Thank you.

Derbyniwyd y cynnig.
Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 10:17.

The public part of the meeting ended at 10:17.