



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

## **Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol The Communities, Equality and Local Government Committee**

**Dydd Mercher, 6 Tachwedd 2013  
Wednesday, 6 November 2013**

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trawsgripiad 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**

Leighton Andrews	Llafur Labour
Peter Black	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Christine Chapman	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Janet Finch-Saunders	Ceidwadwyr Cymreig Welsh Conservatives
Mike Hedges	Llafur Labour
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives
Gwyn R. Price	Llafur Labour
Jenny Rathbone	Llafur Labour
Rhodri Glyn Thomas	Plaid Cymru The Party of Wales
Lindsay Whittle	Plaid Cymru The Party of Wales

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

Ed Green	Pentan Partnership Architects Pentan Partnership Architects
Susan Hudson	Rheolwr Polisi a Chyfathrebu, Swyddfa'r Ombwdsmon Gwasanaethau Cyhoeddus Cymru Policy and Communications Officer, Office of the Public Services Ombudsman for Wales
Elizabeth Thomas	Cyfarwyddwr Ymchwiliadau, Swyddfa'r Ombwdsmon Gwasanaethau Cyhoeddus Cymru Director of Investigations, Office of the Public Services Ombudsman for Wales
Peter Tyndall	Ombwdsmon Gwasanaethau Cyhoeddus Cymru Public Services Ombudsman for Wales

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

Jonathan Baxter	Y Gwasanaeth Ymchwil Research Service
Sarah Beasley	Clerc Clerk
Leanne Hatcher	Dirprwy Glerc Deputy Clerk
Rhys Iorwerth	Y Gwasanaeth Ymchwil Research Service

*Dechreuodd y cyfarfod am 09:14.  
The meeting began at 09:14.*

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

[1] **Christine Chapman:** Bore da, and welcome to the Assembly's Communities, Equality and Local Government Committee. I remind Members to switch off any mobile phones. I would just remind people as well that you do not need to touch the microphones when you speak; they will come on automatically. We have not received any apologies this morning.

### **Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Trafod Adroddiad Blynyddol 2012-13 Public Services Ombudsman for Wales: Consideration of Annual Report 2012- 13**

[2] **Christine Chapman:** First of all, I give a warm welcome to Peter Tyndall, the Public Services Ombudsman for Wales; to Elizabeth Thomas, director of investigations; and to Susan Hudson, the policy and communications manager. We have read the report, Mr Tyndall, but I invite you to say a few words before we start the questions.

[3] **Mr Tyndall:** Thank you very much, Chair. First of all, I should say that I am very grateful for the opportunity to be here. I think the ombudsman is one of the offices of the Assembly. My accountability is via this committee, and it is very important that we recognise that role as being separate from the administration of the day, but part of the mechanism that allows citizens and service users in Wales to feel confident that, if they have concerns about the way in which public services are being delivered, independent adjudication is available to them and that, equally, that person has access to you, so that the Assembly itself has oversight of the way that complaints are dealt with and, most particularly, it seems to me, of the issues that may arise for the delivery of public services from the complaints that are considered.

[4] The annual report is one of the ways in which we try to make known what the work of the office is like, and it does contain quite a range of statistics. It will come as no surprise to any of you that the year revealed a further increase in the number of complaints coming to the office. Within that, however, there are trends, and I imagine that we will explore some of those in questions, so I do not want to take up too much of your time with that. The other statistical issue is that of how we managed to deal with those in the context of that growing workload and within fairly restricted resources. I think that, again, statistically, you will be able to see that, by and large, we have been able to maintain our performance, or improve it, despite the fact that there is a growing workload, and we are quite proud of that.

[5] The other way that we quite often bring things to you is via the casebook. So, whereas the annual report contains details of those reports that were sufficiently important to be public reports, the vast majority of the other reports are available to you via the ombudsman's casebook, which I hope you all receive and read frequently, as I think it has been one of the innovations that we have introduced that make sure that the learning from the complaints is available. I guess that there are two aspects to any ombudsman's role. One is the fundamental role of securing redress for individuals who have suffered an injustice, where public services that they were entitled to have either not been delivered or not been delivered properly or fairly. The other is to make sure that the learning from those complaints is used to continuously improve public services. I think that we have been able to do both during the year in question, and I hope that, during the course of our conversation—*[Interruption.]*—when I have finished breaking glasses, we will be able to explore some of those issues.

[6] I was asked to keep it brief, so there we are.

[7] **Christine Chapman:** Thank you, Mr Tyndall. Obviously, we want to explore, as you said, some of these points in more detail. I will start off. You talked about the fact that there was a 12% increase in new complaints in 2012-13. To what extent do you think this is a cause for concern?

[8] **Mr Tyndall:** I think that you have to look very carefully at how those complaints are made up. For a start, I think that it is a cause for concern, and there are issues within it that are a cause for major concern, and I will speak to those now. The office has a high profile, I hope, on the basis that many of the complaints that we investigate are of great interest to the public. Consequently, we see increases in the number of complaints that we receive on the back of publicity that the office receives. Also, bodies in jurisdiction have to tell complainants that they are entitled to come to my office. So, in all of those circumstances, you would expect that there would be some increase over the years, but, frankly, you cannot keep pointing to the higher profile of the office to say that that is why complaints have gone up.

[9] Ultimately, you have to say that the reason why complaints have gone up has something intrinsically to do with the way people feel about the services they are receiving. Also, and quite importantly for me, it links to the way that bodies in jurisdiction are dealing with complaints. I expect that we will come on to the issue of health complaints at some point. In broad terms, what I want to say in terms of the number of complaints coming in, is that across local government, Government directly delivered services, Government sponsored public bodies, and housing associations, we are seeing complaints holding broadly steady. When you consider the pressure that some of those services are under—particularly local government—that says something about the way that they are dealing with complaints. It also says that the majority of people seem to be satisfied with the service they are receiving and that the number who are dissatisfied is not growing—or at least, if it is growing, that local authorities and the bodies concerned are managing to satisfy their concerns themselves.

[10] We will come on to the issue of health, but before we do that, it seems to me that we are now starting to see a rise in social care complaint trends. Although starting from a much lower base, this has the potential to increase in the way that health increased. That is just getting inside the figures as to what is happening.

[11] What I had to say to the Finance Committee—it is probably worth while that I repeat it here—is that you cannot indefinitely deal with more work with the same level of resources and reach the same standards. So, things suffer ultimately. Performance will suffer or the quality will suffer. In the context of ombudsman schemes, what happens is one of two things generally: if you try to maintain quality, which I think is paramount, then you will start to see backlogs building up and there will be delays, or complaints that would otherwise be investigated are not investigated. With our current level of resources and the current rate of growth, we can manage another year without seeing either of those things happening. What I had to say to the Finance Committee is that if the rate of growth in complaints increases, it is very difficult to see how the office can continue to deliver at its current levels of performance.

[12] **Christine Chapman:** Thank you, Mr Tyndall. I think that Rhodri Glyn has a question.

[13] **Rhodri Glyn Thomas:** Diolch yn fawr iawn, Gadeirydd. Mr Tyndall, roedd eich sylwadau agoriadol yn ddiddorol iawn yng nghyd-destun y cynnydd yn y llwyth gwaith i swyddfa'r ombwdsmon. Nid wyf yn **Rhodri Glyn Thomas:** Thank you very much, Chair. Mr Tyndall, your opening comments were very interesting in the context of the increase in the workload of the ombudsman's office. I am not sure that I

siŵr a ydwyf yn cytuno â chi ynglŷn â llywodraeth leol, oherwydd nid dyna yw fy mhrofiad i yng Nghaerfyrddin, fel y gwyddoch yn iawn o'r achosion y mae Jonathan Edwards a minnau wedi eu cyfeirio atoch chi. Rydych yn dweud bod y llwyth gwaith ar hyn o bryd yn peri problemau, a, phe bai hwnnw'n cynyddu, y byddai cwestiwn sylfaenol ynglŷn ag a oes modd dygymod â hynny. Y ffaith amdani wrth edrych ar iechyd, sy'n mynd â thraean o gyllideb y Cynulliad, yw mai'r tebygrwydd mawr yw y bydd nifer y cwynion yn codi. Gallaf ragweld, yng nghyswllt ardal Hywel Dda, y bydd llu o gwynion yn eich cyrraedd ynglŷn â'r penderfyniad i ohirio triniaethau dewisol orthopedig. Beth sy'n mynd i ddigwydd? A fyddwch chi'n penderfynu ar eich asesiad chi o achosion—sef a ydych yn mynd i ymchwilio ai peidio—ac a fydd hyn yn golygu na fydd achosion a fyddai wedi cael ymchwiliad yn y gorffennol bellach yn derbyn ymchwiliad?

agree with you about local government, because that is not my experience in Carmarthen, as you will know from the cases that Jonathan Edwards and I have referred to you. You say that the current workload is causing problems and that, should it increase, there will be a fundamental question about whether you will be able to cope with it. The fact of the matter is that when we look at health, which takes a third of the Assembly's budget, the likelihood is that the number of complaints is going to increase. I can anticipate, in relation to the Hywel Dda area, that a great number of complaints will reach you about the decision to delay elective orthopaedic surgery. What is going to happen? Will you be deciding on your assessment of cases—whether you will investigate or not—and will that mean that cases that would have been the subject of investigation in the past will not now be investigated?

[14] **Mr Tyndall:** Rhodri Glyn and I have enjoyed conversations about Carmarthenshire County Council. I understand some of the issues that we have seen with complaints that have come from there—there have been some particularly intractable ones, and some quite high-profile ones. I understand the source of your question, but I think that my general point about local government is that the level of complaints coming to us in an absolute measure is not increasing at a rate that would give us cause for concern; it is health complaints that are increasing at a rate that gives us cause for concern. Since 2006, when the office first became a combined office, we have seen an increase in health complaints, which is projected to be 290% at the end of this financial year. The reasons for that, I think, are that, first of all, you would have to say that the health service is now providing treatment to many more individuals, at a much greater frequency. So, part of it is simply because there is more treatment going on about which people might have a complaint. So, some of it is down to that. A small amount is due to the changes in the health complaints system, which raised the profile of health complaints within hospitals, in particular, but it also took out one of the overlapping stages, so that there is a concentration of complaints in my office—but that happened once, and you cannot keep pointing to that as a reason for the increase; it is not the reason for the increase this year, for instance. So, what is it? I think that there are two things.

[15] First of all, the health service is under tremendous pressure; the average age of people in hospitals, for instance, is 83. Consequently, those are people with often multiple health conditions, and treatment is challenging, and people have greater expectations. So, part of it is simply because there is a health service that is trying to deliver in very difficult economic times. However, it seems to me that a large part of it—and I am going to cite the example of a case that had a lot of publicity over the weekend—is that health boards are not properly dealing with complaints themselves. We have two solutions to problems in Wales, it seems to me: one of them is to change the processes and systems, and the other one is to restructure, and yet, often times, the same people will be doing the same jobs after either of those things. This is not a problem with systems, it is not a problem with structures, and it is not a problem with process; it is two problems. One of them is resource, namely that there are not enough people who are devoted to dealing with complaints locally, so that too many of them come through to my office because they have not been dealt with properly.

[16] The second issue is that, on the more serious complaints, the health boards have the capacity to involve independent advice and choose not to do so far too often, so that, in situations where someone is saying—as in this particular case—‘I nearly aborted my child which was healthy because of your mistake’, they had the opportunity to investigate that and to put it right, and the system is there to enable them to do that, but they did not do it. Now, I am not saying that that is typical, but many of the complaints that come to my office are exacerbated by the fact that, when first asked what went wrong, they ask the people who made the mistake, ‘Did you make mistakes?’, and those people say, ‘No, guv, we got it right’, and they then simply repeat that to the person who is complaining.

[17] Now, the way to manage the volume of health complaints coming to my office is not to do something in my office, but is actually for the health boards to get a grip on managing complaints properly. Some are better than others, and I do not want to—that case that I mentioned was among the worst example that I have seen.

[18] **Leighton Andrews:** Name names.

[19] **Mr Tyndall:** Okay. Well, I would have said, for instance, that Aneurin Bevan Local Health Board takes complaints very seriously, to choose an example. There is also strong commitment at the top now in Abertawe Bro Morgannwg University Local Health Board, after a period of what I thought was very indifferent attention to—

[20] **Leighton Andrews:** Do you detect a difference when an elected representative is involved in pursuing the complaint on behalf of a constituent?

[21] **Mr Tyndall:** There are two issues, really. If you were to look at the characteristics of people who will persist with a complaint, even when they have been fobbed off, one of them is advocacy, whether from an elected representative, from a community health council advocate, or from another source, and the other one is perhaps where someone in the family has that expertise. So, if someone in the family is a nurse or a doctor or whatever, they know the system and will pursue it. My view within health—and I know that this is the wrong committee, but I am sure that you will pass it on to your colleagues—is that there need to be people on the ground in hospitals whom patients can go to talk to, whom they feel are independent of the doctors and are on the patients’ side. In my view, the way in which the community health council system works does not fulfil that purpose. You see the advocacy service from community health councils, which I have a lot of time for, because it works with people who have concerns, but the rest of the system it seems to me—. It may be doing something else, so I cannot comment on whether it is playing a valuable role in issues around consultation about the future development of healthcare, or those kinds of issues. However, what it is not doing is providing a presence on the ground within main health delivery.

09:30

[22] **Christine Chapman:** I have other Members that want to come in. Rhodri wanted to ask another question, then Janet, and I think Mike as well.

[23] **Janet Finch-Saunders:** My question has been answered.

[24] **Christine Chapman:** Fine. Rhodri Glyn.

[25] **Rhodri Glyn Thomas:** Rwy’n credu ei fod yn fwy o sylw nag o gwestiwn, oherwydd rwy’n credu eich bod wedi dweud mwy o fewn chwarter awr na mae llawer o’n **Rhodri Glyn Thomas:** I think that it is more of a comment than a question, because you have said more within a quarter of an hour than many of our witnesses say in an hour or

tystion yn dweud mewn awr a mwy o dystiolaeth. Gallaf ategu yn llwyr o ran fy rôl fel Aelod etholedig bod y rhan fwyaf o broblemau rwy'n delio â nhw, nid yn unig ym maes iechyd ond ym mhob maes lle mae cwynion, yn deillio o'r ffaith bod awdurdodau yn gwrthod derbyn bod camgymeriad sylfaenol wedi ei wneud yn y lle cyntaf. Mae'n bosibl iawn bod y camgymeriad hwnnw yn un gweddol ddibwys, ond, oherwydd bod yr awdurdod yn gwrthod derbyn hynny, mae'r holl broses yn datblygu i fod yn broblem enfawr. Pe bai'r awdurdod wedi ymwneud â'r broblem sylfaenol, a rhoi eu dwylo lan a dweud, 'Mae camgymeriad wedi ei wneud yn y fan hyn, ac mae'n rhaid i ni ddelio gyda fe', ni fyddai problemau yn datblygu. Mae hyn yn arbennig o wir o ran iechyd, a chredaf fod yn rhaid i Lywodraeth Cymru edrych yn sylfaenol ar y math o adnoddau sy'n cael eu rhoi i'r cynghorau iechyd cymunedol i'w galluogi i wneud y gwaith maent i fod i'w wneud, a chynrychioli cleifion mewn ffordd llawer mwy proffesiynol ac effeithiol. Credaf fod y broblem sydd gyda nhw yw bod yr adnoddau sydd ganddynt yn eithriadol o brin. Y cwestiwn roeddwn yn mynd i ofyn, ac rwy'n credu eich bod wedi ei ateb, yw: pam nad yw'r gwasanaeth iechyd yn gwella oherwydd y cwynion sy'n dod atoch chi a'r ffordd rydych yn delio â nhw? Yr ateb yw nad ydynt wedi dysgu'r wers sylfaenol bod yn rhaid iddynt gydnabod ar y dechrau, os oes camgymeriad wedi ei wneud, bod yn rhaid iddynt ddelio â'r camgymeriad sylfaenol hwnnw, a bod yn rhaid iddynt gael cyngor annibynnol er mwyn gwneud hynny.

more of evidence. I can confirm from my role as an elected Member that the majority of problems that I deal with, not just in health but in all fields where there are complaints, arise from the fact that authorities refuse to accept that a fundamental error has been made in the first place. It is possible that that error is a fairly minor one, but, because the authority refuses to accept that, the entire process develops to be a huge problem. If the authority had dealt with the fundamental problem, and just put their hands up and said, 'A mistake has been made here, and we have to deal with it', the problems would not develop. This is especially true in terms of health, and I think that the Welsh Government needs to look fundamentally at the kinds of resources that are given to the community health councils to enable them to do the work that they are supposed to do, and to represent patients in a much more professional and effective way. I think that the problem that they have is that the resources that they have are very scarce. The question that I was going to ask, which I think you have already answered, is: why is the health service not improving because of the complaints that come to you and the way that you are dealing with them? The answer is that they have not learned the fundamental lesson that they have to acknowledge at the beginning, if an error has been made, that they have to deal with that fundamental error, and that they have to have independent advice in order to do that.

[26] **Mr Tyndall:** The critical thing for me is leadership, and I think I alluded to that in saying why some do better than others. Fundamentally, people at the heart of organisations have to accept that organisations as complex as health boards are going to get things wrong—it is just inescapable; the nature and volume of their work makes it inevitable. The measure of difference is what you do when you accept that something has gone wrong. First of all, you have to accept that something has gone wrong. If you are in denial about it, you see what happened in the case that we were talking about and in many other cases: the opportunity to stop doing the thing that you should not be doing is missed. So, that is why it is important.

[27] There are a couple of other issues that we will come to, but, just to make a critical point, you need to resource the part of your health board or organisation that is dealing with when things go wrong—not just complaints but also clinical incident reports and whistleblowing. It does not matter what it is; all of that needs to be concentrated and used as a source of learning. Also, in order to do that, the people doing the job must have sufficient authority. At the moment, too often, they are people whose level of authority within the organisation is not sufficient for them to influence change. So, the chief executive, chair and

the independent members in particular need to be making sure that those people are being listened to, and that involves them listening to what is happening. I think that there is huge scope for improved leadership to address that.

[28] **Mike Hedges:** I have two questions. Would problems not be solved a lot of the time by someone saying ‘sorry’ and that they have identified what the problem is and will make sure that it does not happen again? It is the unwillingness to say ‘sorry’ at the beginning that leads to an awful lot of time, effort and money being expended by both the organisation and yourself. The second thing is that you have had very few complaints about the Hafod renewal system. I, along with lots of other Members, fulfil part of your role some of the time in dealing with these problems. That worked, because it was not the person on the ground who they were complaining about; they actually got somebody relatively senior inside the organisation to arbitrate between the two, especially over Hafod doors; I can send you a list of about 30 people whose doors are not as they should be after they were done. Should not somebody—it might be you, or it might be somebody in Government—be suggesting to organisations that, when they have complaints, they have somebody senior enough inside the organisation to act as an arbitrator early on in the proceedings, which will save people having to go through the whole process?

[29] **Mr Tyndall:** ‘Yes’ is the straightforward answer to that one. In the context of people saying ‘sorry’, there is a mistaken notion that saying ‘sorry’ is an admission of liability; it is not. ‘Putting Things Right’, for instance, in health is very clear about that: saying ‘sorry’ is not an admission of liability. If somebody is unhappy about the service they have received, you should apologise to them. You might say in the end, ‘What we did was what we were supposed to do’, but if someone is unhappy, then we should be saying ‘sorry’. So, that is the first thing. There is a much too defensive culture in some instances.

[30] On the second point about arbitration, we do that as well. If somebody is not happy and we can see that it can be put right without an investigation, then we will always try to do that. Sometimes, it is as simple as going back to somebody and saying, ‘Look, you got it wrong; just apologise’.

[31] **Mark Isherwood:** Almost all the people on whose behalf I have submitted complaints to the health board have said that all they want is to be believed, to be able to sleep at night, and to ensure, as much as they can, that nobody else will have the experience that their loved one has had. Yet, now, every written response I get has more of the letter taken up with disclaimers against liability and reference to the avoidance of financial recompense than to the issue itself, which is, as you described, about avoiding risk. That is a cultural thing and a fear thing, and, presumably, it is guided by lawyers and insurance companies rather than by patient need. How do we change that management culture? Does it need enforcement from here in some way or is it just a matter of development and training?

[32] **Mr Tyndall:** The oversight of the complaints function across the public sector in Wales is very limited. If you want to see comparable statistics about how local authorities or health boards deal with complaints in the last year, you will not be able to find them. You can find out how they dealt with complaints that came to my office, but I have long made the point that there needs to be proper statistical analysis of how many complaints people are receiving, at what stage they are being dealt with, and how many are being upheld and so on. That is an important part of the business of holding public services to account. The fact that you cannot get those statistics, it seems to me, is an indictment. You simply cannot know. My office deals with the complaints and it deals with the reports on the complaints and the statistics to do with that. As part of developing the model complaints process, I put forward proposals for standardised means of collecting data about complaints across the public sector in Wales. That has not as yet been implemented. I think it needs to be implemented and I think you as a committee would find the annual reports on that, in respect of each of the local



authorities, for instance, of interest. Similarly, the Health and Social Care Committee, I imagine, wants to see the statistics on how health boards are dealing with complaints.

[33] **Peter Black:** One of the frustrations in dealing with health board complaints is that you cannot get to your office until it has gone through the board's complaint system. The time it takes to go through a health board's complaints system can sometimes be months—it takes a very long time indeed. You find that they are not answering letters on time, they are sitting on the complaints and trying not to deal with them, and, as a result, people get more and more frustrated. What discussions have you had with health boards about how they can make their complaints systems more focused and shorter so that we can get through that process much more quickly?

[34] **Mr Tyndall:** I had a meeting recently with all of the complaints leads in each health board—it was a seminar to discuss complaints handling—at which we addressed precisely these issues. In my round of annual meetings with chairs and chief executives, I have been making exactly the same point. That has been the focus: they need to improve the way they are dealing with complaints. I made a point earlier about the relative seniority of people. At the moment, quite junior individuals are trying to persuade consultants to give a detailed account of an incident and they say that they are too busy dealing with patients to respond. That affects the speed at which it is dealt with by the health board in the first instance and then it affects the rate at which I can deal with it when it comes to my office. You have to put senior management back in. So, when the person asks for a response within whatever time and nothing comes back, then the chief executive needs to follow that up with the individual to remind them of its importance.

[35] You may ask why that is important; it is important because if they are making mistakes that are putting people's lives at risk, then that is just as important as dealing with the day-to-day routine. You cannot say that one is more important than the other. Therefore, you have to put senior management effort behind it. Until that is dealt with, there will be the delays that you are experiencing. Complaints are now reaching my office from health earlier than was the case before Putting Things Right—often quite a lot earlier than was the case before Putting Things Right—but it is still not where it should be. I would not like to think that things have gone backwards. However, chief executives have to say to senior people in their organisations, 'You need to give this proper attention. I want a response.'

[36] **Gwyn R. Price:** Good morning to you. My question is on targets. You made a comment in your paper that you are slightly disappointed that you failed to reach the target of completing all cases within 12 months following a decision to investigate a complaint. However, reading your paper, there are some good pointers in it and the fact that you got to 96%. I listened to what you said about more complaints coming in over future years, so do you think that the figure of 100% is realistic?

[37] **Mr Tyndall:** It is a point that my own staff ask me about, because, occasionally, matters fall outside our control where we, for instance, produce a draft report and we get another raft of information in from the body and we have to consider it before finalising it and, sometimes, it is beyond our control. My view is that, unless you have a target that says 'We don't tolerate delay', then those who are responding to you think, 'Oh, well, they're only doing 96%, so it doesn't matter if ours is the one that is sent in late'. I believe that we should set the target at 100% and be disappointed if we do not reach it. Similarly, the biggest difference that we have made, as you will know, is that we give people an indication of whether we will investigate or not much sooner in the process so that we can concentrate our investigation efforts on the cases where we know that there is something to be looked at.

[38] **Gwyn R. Price:** I agree that you have to have a target of 100%, because, as you said, taking it away because it might not be achievable is not the answer.

[39] **Christine Chapman:** Peter, do you want to come in on this point?

[40] **Peter Black:** On code of conduct complaints—my favourite subject and that of Mike Hedges—although the number of new complaints relating to a breach of the code of conduct has declined, to what extent are you still concerned that the number is too high, given the number of cases that have been closed after initial consideration?

[41] **Mr Tyndall:** You saw that there was a reduction last year, and we have seen a further reduction this year thus far; compared with the same period last year, they are 30% down. So, our view is that the arrangements that have been put in place for a local resolution are starting to pay off and we are pleased about that. It is very difficult. You want people to be able to complain, and we need to be able to investigate the more serious cases. For instance, in the past, we have seen cases where people have failed to declare significant interests and have tried to take advantage of the planning system. You need to be able to deal with those cases. So, we just need to continue to drive it down. If you were to ask me where I would go next with it in terms of reducing numbers, then I would say that we probably have a greater problem with town and community councils now than we do with county councils, where it seems to be much more managed. It seems to me that the issue with town and community councils is that some of them have been conducting disputes since the dawn of time and they no longer even remember why they cannot stand each other. [*Laughter.*] In some instances I think that it was a backward step when the threshold for a referendum to abolish dysfunctional community councils was raised. I would suggest that you might need to look at that again because it seems to me that some of them are causing far more trouble than good. They are a minority but they can generate an awful lot of work. Probably, some means of dealing with that is something that you as a committee might want to think about.

09:45

[42] **Peter Black:** I think that we can tell that you are leaving. [*Laughter.*] You set a threshold in terms of health complaints that they have to go through the local system before you deal with them, but in terms of code of conduct complaints, is it not reasonable to say to someone making such a complaint, particularly a councillor against another councillor, that you will not consider it unless it has already gone through the local resolution process and you send it straight back?

[43] **Mr Tyndall:** Yes, that is what we do.

[44] **Peter Black:** So, how many councils have those local resolution processes in place?

[45] **Mr Tyndall:** As far as we are concerned, we regard all of the county councils as having those in place now. However, such systems have not been introduced yet for town and community councils. There may be some way of extending it in the future.

[46] **Peter Black:** Okay. Obviously, you have made the comment before that during election periods the complaints go up. Is there any way around that? Do you anticipate that happening again in 2016—or 2017, rather?

[47] **Mr Tyndall:** The solution to that is probably in political rather than in ombudsman hands, I think.

[48] **Christine Chapman:** Did you wish to come in on this, Leighton?

[49] **Leighton Andrews:** Can you tell us how the nature of complaints to you has changed with the publication of the code of conduct guidance?

[50] **Mr Tyndall:** That is an interesting question. It is probably the case that people do cite the guidance when making complaints. The biggest issue for us is threshold. The trivial banter-type issues are not ones that would ever attract a sanction if we took them to a standards committee, so we have screened them out. We hope that the guidance will make it easy for people to adhere to the code by setting out how best to do that, and also that it gives the people making complaints a better understanding of what is likely to happen. We have tried to supplement it, and the first edition of the code of conduct casebook will be in your inboxes fairly shortly. However, it is a matter of trying to get the message across to people consistently. I think that the guidance probably has been of a lot of use to monitoring officers in speaking with members, because they are able to demonstrate that it is not just their own perspective that is given but that there is case law and guidance around the advice that they are giving.

[51] **Leighton Andrews:** Okay. What about the Calver case and its impact on your work?

[52] **Mr Tyndall:** It is very hard to say. Did you want comment on anything, Elizabeth?

[53] **Ms Thomas:** I think that it has had an impact in the sense that we have to consider very carefully complaints involving respect and consideration, for example, because you have to weigh up the obligation under that head of the code with article 10, the right to freedom of expression. So, it is certainly right to say that we have lifted the bar. We have a far more stringent set of principles. It is certainly an ongoing issue, and lawyers involved in code of conduct complaints now are citing that guidance. It will be interesting to see, and I think that we are awaiting it with interest, a challenge in the way in which the court deals with subsequent challenges by members.

[54] **Mr Tyndall:** I said that the introduction of the guidance was one of the measures that was being taken to reduce the number of complaints, and I hope that, in part, it is responsible for that.

[55] **Christine Chapman:** Did you want to come in, Mark?

[56] **Mark Isherwood:** Yes. The Calver case, I think, stated that councillors should have a thicker skin, and you also indicated that you would be unlikely to pursue a complaint against members or senior officers if those complaints were political, although, quite rightly, you would protect officers if you felt that there were individual attacks. How do you reconcile a situation in which we see an increasing number of reports from, say, the Wales Audit Office, and letters from Welsh Government Ministers, where there has been failure in local government or local government departments, criticising members for not having challenged officers or providing leadership against the increasing use, in certain councils, of the threat of referral to you if they challenge? It has got to the point in certain areas where scrutiny is unable to happen properly because of the implicit, and sometimes explicit, threat that, if they raise or pursue these points, you will be getting a letter or a call. Does that not require further, tougher guidance from the ombudsman's office, so that members know where crossing the line exists and how they can properly, thoroughly and assertively scrutinise without bullying or being aggressive and without harassing or breaking the laws protecting each of us as individuals?

[57] **Mr Tyndall:** We changed the guidance on this. It is clear—and I have made it clear on many occasions—that it is the role of members to challenge officers and that they cannot take what comes to them for granted, but that they must accept that, on occasions, their electorate expects them to hold officers to account for the advice that they are giving, or for the way in which they are running services. We are very clear about that. The only types of cases that we are likely to take under those circumstances are ones where members bully

junior officers. Thankfully, they are very rare, with just occasional cases. However, the notion of a strong political challenge to a chief executive or a planning officer on a particular issue is something that we would never regard as falling outside the bounds of the code of conduct; that is a member's job. If you read the revised guidance, you will see that it is very clear about that. What the Calver case did, I think, was to raise the bar even higher about what constitutes political comment, and I think that, for the most part, members have very little to be concerned about, and I would refer them to the guidance, because it is quite—

[58] **Mark Isherwood:** It is senior officers who worry them more than junior officers.

[59] **Mr Tyndall:** Pardon?

[60] **Mark Isherwood:** Based on precedent, it is the senior officers who worry them more than the junior officers.

[61] **Mr Tyndall:** Yes. Where members bully junior officers, there are one or two instances of this. There comes a point where a member is trying to coerce a junior officer into following a particular path, when the balance is that that person is not in a position, if you like, to properly speak up for themselves, but those are rare occasions. The bulk of what we are talking about is instances where a politician is properly calling somebody to account for their actions as an officer. There is no problem with that under the code. I think that I would refer people to the guidance, because it is quite clear on it.

[62] **Mark Isherwood:** There is certainly a perception of that.

[63] **Mr Tyndall:** I would just say that I get criticism from the other side, from council officers, who say that I do not give them sufficient protection from bullying members, so, possibly, we may have the balance somewhere about right.

[64] **Rhodri Glyn Thomas:** O ran y sylw hwnnw am aelodau, yn enwedig aelodau o wrthblaid, yn herio swyddogion hŷn a phrif weithredwyr ar eu dyfarniadau o ran yr hyn sydd mewn trefn ac allan o drefn, ac i ba raddau y maent yn gallu codi materion ar lawr y cyngor, a ydych yn credu bod problem wedi codi, gyda chyflwyno byrddau gweithredol, fod prif weithredwyr a swyddogion hŷn yn gweld mai eu rôl yw cynrychioli'r bwrdd gweithredol yn hytrach na'r rôl a ddylai fod ganddynt, sef cynrychioli'r cyngor yn ei gyfanrwydd?

**Rhodri Glyn Thomas:** In terms of that comment about members, particularly opposition members, challenging senior officials and chief executives on their decisions with regard to what is acceptable and what is not, and the extent to which they can raise issues on the floor of the council, do you think that a problem has arisen, with the introduction of executive boards, in that chief executives and senior officials see their role as representing the executive board rather than the role that they should have, which is to represent the council as a whole?

[65] **Mr Tyndall:** I think that, probably, the way in which local authorities are organised is going to be something that I cannot usefully comment on. It clearly has substantially changed the culture and the nature of relationships between members and officers, as members have taken on in the last decade and more far more executive responsibilities, and that has changed the nature of the interaction between officers and members. Clearly, that was introduced with a view to making local authorities more democratically accountable for the executive actions that they take—

[66] **Rhodri Glyn Thomas:** That was the intention, was it?

[67] **Mr Tyndall:** Apparently. The intention, I believe, was that arrangements would be put in place to hold members democratically to account for the delivery of services, and the

perception in the past was that members were not sufficiently engaged in the actual executive decision making. However, it is not for me to comment on whether or not that is working as members who introduced it at the time envisaged it would. All I can do is deal with any complaints that arise, and I think the nature of most complaints that I investigate probably is not to do with that. They are rather more to do with issues around the role of councillors perhaps interacting with their community. There is a range of measures. I do not think that that particular interface has been the cause of a significant number of complaints to the office.

[68] **Christine Chapman:** Just to remind Members, we have less than 20 minutes now, and there are some other areas that we need to cover. Janet Finch-Saunders, did you want to come in?

[69] **Janet Finch-Saunders:** In terms of the 10 public-interest reports that you published, with the hope that the message would get through about how public bodies handle their complaints procedures, how are you going to monitor the impact of those reports, as to whether they have the intended outcome?

[70] **Mr Tyndall:** We never finish dealing with a case until we have evidence that the recommendations have been complied with. That is not the same thing as somebody writing to us saying, 'We have done it'. We actually want to see the detail.

[71] **Janet Finch-Saunders:** You follow it up.

[72] **Mr Tyndall:** Yes. We may request an audit of some kind of practice. We may require evidence that people have gone on training courses and have achieved the standard that was expected. We always follow up on reports. The reason we make them public reports as well—we do that with all of our reports—is because the learning may go beyond the particular individual case that we have dealt with. If you take the case that we were dealing with—again, I will use it as an example because it is fresh in people's minds—we know that the guidelines that were being followed were wrong. In the course of the investigation, we persuaded the health board to put the proper guidance in place. That was before we produced the report. What I am not able to do is extend the investigation to check whether other people have suffered similar difficulties, or whether other health boards have been following similar wrong guidance.

[73] One of the things that I have had brief discussions about is that that is not the case with many other ombudsmen across Europe. It is not the case with the ombudsman in the Republic of Ireland and it shortly will not be the case in Northern Ireland. This time, it highlights the need for change here on that front. It should be possible for the ombudsman to pursue own-initiative investigations under those circumstances, because the question people invariably ask is, 'Has it affected anyone else?', and the answer I always have to give is, 'I don't know, because I can only investigate the case that is in front of me'. 'Is the same thing happening in other bodies?', and, again, the answer always has to be, 'I don't know'. I know that Welsh Government, through the chief executive of the NHS, picks up these issues, or I will deal with the WLGA and so on, but frankly I think most members of the public would expect my office to be able to answer those questions when they are asked, and I think there is a need for change to enable that to happen.

[74] **Janet Finch-Saunders:** Just endorsing comments that have been made here this morning, I have first-hand experience of many cases that would have reached you had there been—. People do find it quite fascinating that they cannot come straight to you, but that they have to go through this stage 1, 2 and 3 with the local authority or with the health board. They end up coming to me, losing the will to live, saying 'Forget it. We are not going to get anywhere. I've gone through all this misery. It's been years', and I just wonder whether some legislation is needed from here, because I am not convinced that, despite the 10 public-

interest reports—. Even only last week, I have instances where it is just so painfully slow going through the complaint process for people, but that, actually, makes the situation far worse, and when people have had quite a heartbreaking experience with the health service, or a very frustrating experience with the local authority, to name just two public bodies, there does come a time when people just give up. They feel that the whole system is failing them. Even I, at times, have felt, ‘Goodness me, if I am feeling like this helping someone with advocacy, goodness knows how they must feel’. I actually do not believe the system is working, and I just wonder whether it is something from here or from your department that empowers people to be able to complain. For me, it is a freedom and right that they should have, and if we are starting to struggle with the numbers—

10:00

[75] **Christine Chapman:** Do you want to come to the question, Janet, because we need to move on?

[76] **Janet Finch-Saunders:** The point that I am making is that it is almost like a screening or filtering process, so that you do not get the complaints through, and I am trying to find out whether it is needed here or whether it is your department that really needs to—

[77] **Mr Tyndall:** I think that the point that I was making about getting the statistics out there is that you do not know about the delays except through anecdotes at the moment. I can tell you what delays I experience, but I am seeing a minority of cases. Each of you knows that you are seeing delays, if you are seeing delays. You have to have those statistics out there, and they have to be acted upon. Within health, there is a complaints mechanism that has timescales on it. If they were adhered to, people would not be having the difficulties that they are having, or if there are delays that are genuine delays because there is a need to look into something in detail, people should be told about that. It should be explained to them and they should be kept up-to-date and so on, so that it does not feel like such an attritional process to go through.

[78] It is only a two-stage process; they have a brief time to look at things informally and then there is one formal investigation. That is the same with the model complaints policy that has now been adopted by 21 of the 22 local authorities. So, the question is: is it being delivered upon? Where does the responsibility for that come from? To a large extent, I think that you as a committee need to be holding local authorities to account for their performance on complaints, and I am sure that the Government would also take a view on that. For the health boards, NHS Wales and the Government need to make sure that they are devoting the resources and that they are delivering the outcomes. I will continue to highlight issues, as that is my job, or my office will continue to highlight the issues. However, you cannot have a situation where every complaint comes for central investigation immediately, because we would need ridiculous levels of resources in order to do that, so you have to make the first step of complaint handling better.

[79] **Jenny Rathbone:** You would, of course, totally undermine the ability of that organisation to improve. You are very clear about what needs to happen in health to strengthen the internal complaints mechanisms and ensure that the people doing those jobs have sufficient authority. I wonder whether you can tell us whether the same applies in local government. Is there the same secrecy around what complaints have been made in each local authority? What evidence do you have that there is any learning from your public-interest reports that relate to local authorities?

[80] **Mr Tyndall:** Within local authorities, because we have not seen the same rise in complaints coming to our office, we have not seen the same urgency to tackle that. However, I will make a couple of points. Twenty-one of the 22 now have adopted the model complaints

policy, which is streamlined, so there is one informal attempt to resolve it and then one formal attempt to resolve the complaint. So, a system is in place that lets things get dealt with quickly. There is no reporting mechanism for that, other than whatever each local authority adopts, and the practice is very different across authorities. I think that there should be standardised reporting for that. If everybody is using the same complaints system, there is no reason why you cannot produce comparable data. That should happen, and that should be coming here to you and you should be able to take a view on it. Similarly, councillors would then be able to see how well their council was performing, compared with others, in managing complaints.

[81] My concern about local authorities is that I think that what happened in health is that the huge increase in demand meant that resource was going to the front end, and everything that was not the front end was squeezed. The consequence of that was that, to some extent, the ability to deal with complaints reduced while the number of complaints was rising, so you got the situation that I have been describing, and there is a risk of that happening in local authorities as they go into a more stringent financial climate, going forward. I think that it is going to be very important to watch whether what happens is an increase in levels of complaints. Curiously, it may arise not because people are unhappy about service levels reducing, but because local authorities are less well able to deal with the complaints that they are receiving. For the most part, we have seen them dealing well with complaints, from our perspective. We see fewer instances where we have to criticise the complaint handling as part of the response to a complaint.

[82] In terms of public reports, I suppose that those that we have produced have varied. In terms of outcomes, we have seen a big reduction in the number of complaints about neighbour nuisance, which was a big source of complaints. We have worked very hard with local authorities and housing associations to persuade them to work in partnership with other bodies like the police, and to intervene promptly in complaints and to escalate them quickly if the early intervention does not work. We have seen authorities like Cardiff, for instance, change the way they deal with complaints of neighbour nuisance entirely. I am not going to say that we have eliminated it because, clearly, neighbour nuisance is not something that you can eliminate, because it is not the local authorities that are the source of it. What they can do is deal with it, and our sense is that, across Wales, they are dealing with it much more effectively than they did in the past. So, yes, you can see things coming out of it. I have no doubt that the particular issues that arise in the health reports are dealt with, but there are other issues that will arise soon afterwards. They are dealt with across Wales. If you take the instance in Cwm Taf, as it was, there were very serious difficulties with a range of specialist services—ENT cancer care and coronary care, to name but two. We know that those problems have been addressed in changes to the way that things are delivered, but that is not to say that new problems could not arise with the new arrangements.

[83] **Jenny Rathbone:** Indeed, but it is about the culture of using complaints positively to learn from the near misses, and so on.

[84] **Mr Tyndall:** Our experience is that that is variable. I think that one of the points that I have particularly made is about the need to provide independent advice to the independent board members, to better enable them to challenge what they—

[85] **Jenny Rathbone:** In the health service.

[86] **Mr Tyndall:** Yes.

[87] **Jenny Rathbone:** Given the standardised approach to complaints, I can see that it would be possible to produce some tables so that people could see what was going on. At what point do you classify an inquiry as a complaint? As Assembly Members, we all write to

local authorities or health boards. Sometimes it is a complaint, but sometimes it is more a case of saying, ‘This person wants to know’, and that may not be what I would classify as a complaint.

[88] **Mr Tyndall:** There is a definition in the model complaints policy, which is the one that we would go by. It says that an initial request for service is not a complaint, but somebody does not have to say, ‘I am complaining’ in order for it to be dealt with as a complaint. If somebody is asking for something, deal with it as a request, but if somebody is not happy about something, then it is best to deal with it as a complaint, provided that you have an informal mechanism at the outset, so that you are not getting caught up in a large bureaucratic paper chase by defining it as a complaint.

[89] **Jenny Rathbone:** Okay. Within the health service, there is quite a lot of across-board learning from different challenges. Do you think that the Welsh Government could be doing more to get that cross-fertilisation of learning in local authorities?

[90] **Mr Tyndall:** Potentially, yes. I think that there is scope to do more. As I said, the model complaints policy—as all of them are running it—gives you the opportunity to be much more comfortable. We do get the lessons out through our casebook. The better bodies are producing their own similar digests, and sharing those across Wales would be very valuable. I think that most bodies should be preparing a digest of things that have gone wrong and what they have done about them. I think that that is a very useful measure of how well they are doing. Sharing those means that other people can learn from their mistakes.

[91] **Jenny Rathbone:** Thank you.

[92] **Christine Chapman:** I am going to allow an additional five minutes but, obviously, we do need to cover some of these areas. That is just a reminder to Members. Peter Black wants to come in next.

[93] **Peter Black:** I have a very quick question. You said that, in most cases, health bodies learn from their mistakes. With a lot of the resolution problems, in my experience, you get a letter back saying that the staff member concerned will be retrained. When you ask them to document that retraining, they do not actually have any documentation to prove that. To what extent do you think that, not just health bodies but others as well, are able to demonstrate that when they are trying to retrain or change the culture of an organisation, that is documented, so that there is an audit trail, and you can be satisfied that it has actually happened?

[94] **Mr Tyndall:** In the cases that we prepare, we do require to see that audit trail, to see that training has been carried out—who provided it, who attended it, what the purpose was and whether it was achieved, and so on. So, we do try to make sure that that happens. In the more serious cases where we think that there is a danger to members of the public, we would expect the body concerned to take appropriate disciplinary action, or we would make a referral to the appropriate professional body, or both.

[95] **Mark Isherwood:** Why do you believe that the number of complaints against the ombudsman’s service has increased, I think from 38 to 59? What was the nature of those complaints and how did you respond to them?

[96] **Mr Tyndall:** The number of complaints increased because we raised the profile of the capacity to complain. They are generally people who are dissatisfied with our decision, either not to uphold their complaint, or not to investigate it where we feel that there is no reason to do so. We have a mixture of reasons. We uphold some if we do not have our customer care right, but the majority of complaints, which are supposed to be about things like customer care or delay and so on, are actually a request to review the decision as opposed



to complaints about the service, and they will be followed up, often, with a freedom of information request and so on. Therefore, I think that it is people who are frustrated at not getting the outcome that they wanted.

[97] Sometimes, you have to sympathise with somebody over what has happened and you can understand why they are disgruntled, but it is not necessarily because anybody has done anything that they should not have done. Some people also come to us with a view to making a point about issues that we cannot deal with. So, it might be properly taken planning decisions, and they simply disagree with the outcome. You can perfectly understand why they disagree with the outcome, but it is not a matter of maladministration, or service failure; it is simply a legitimately taken decision.

[98] Therefore, we are very concerned about dealing with complaints properly and we are looking again at our own complaints procedure to see whether we can improve it, but it is mostly because we do not uphold every complaint and people are unhappy. That is the general reason.

[99] **Mark Isherwood:** What is the appeals procedure if people want to appeal against a decision made by your office? Do you believe that there is sufficient accountability if you or your office's response is not to the complainant's satisfaction? I do not know whether I am asking the right person here—perhaps not you personally, but your office.

[100] **Mr Tyndall:** Fundamentally, somewhere has got to be the final point of arbitration for complaints in the public sector. So, you cannot simply have a system where, if somebody is not happy at this stage, they go to the next stage, with that receding into infinity. At some point, you have to say, 'That's where the line is drawn'. If people are unhappy about decisions, they have the right to a judicial review, but I am not going to pretend that that is an easy route to pursue.

[101] What I have done within the context of the office is introduce a review manager who is not engaged in the casework, and who, at a senior level, is able to review any requests that come in. However, we are fairly clear that those requests have got to be on the basis that either we did not take something into account, or that there is new information, not simply, 'I disagree'. I think that you have to say that the job of the ombudsman is to look to see whether the body concerned came to the right conclusion when it investigated a complaint. Otherwise, as I say, you just have endless repetition, and I am not sure that it is for any useful purpose.

10:15

[102] **Mike Hedges:** The big change that I have seen over recent years has been the amount of public sector services provided by the private sector. I have read your report, and I got confused. What powers do you have to deal with private sector bodies that are doing what has historically been a public sector activity, and have been sub-contracted by a council or another public body to do so?

[103] **Mr Tyndall:** Straightforwardly, if they are doing a function of the council under contract, I just treat it as though the council is doing it. So, there is no problem there.

[104] **Mike Hedges:** Even if it is not a statutory duty of the council, but a function that it carries out using some of its powers?

[105] **Mr Tyndall:** If it is contracted by the council, I can deal with the complaint. If the council gives a grant, it becomes more problematic. The example where we found great difficulty was a case in the year before last with a hospice, which otherwise does a fairly good job; I will not speak against it. Although those public grants were going in, nobody had a

contract, and consequently I could not investigate. Legislation is going through to change that. If you take the situation in Scotland, for example, you will see that the water companies there are within the ombudsman's jurisdiction, even though that is now not a public service. This is a growing problem, and my general principle is that if a service is being privatised, that does not mean that you have to privatise redress. My view would be that when people are contracting out, they need to make sure that it is clear to the person delivering on the contract that they are doing so on behalf of a public body, and they need to tell people who complain about their rights to come to my office.

[106] My biggest concern about this is not with local authority services. Residential care has been privatised almost completely across Wales—social care and nursing care. I know that moves are afoot to bring that into my jurisdiction, but the biggest problem is that if you look at continuous care in nursing homes, for example, you will see that if someone is there as a patient supported by the health board, they have the right to come to my office. However, I do not think that anyone knows that, because it is not properly written into contracts, so it needs to be. We need an awareness-raising campaign by the bodies that are contracting out to make sure that people know that they have the right to complain.

[107] **Lindsay Whittle:** The people of Wales love to complain—it is a national hobby of ours, but, to be fair, the work that you and your department have done since 2008 has proven not only that people are well within their rights to complain, but that they should have complained, and you have highlighted serious causes for concern that have been put right. I put on record our thanks to you for your work, and wish you all the very best in your new post in your home country of Ireland. I can strongly recommend O'Donoghue's in Dublin as the best Irish folk venue of all.

[108] You say in your report that you feel that areas of legislation could be strengthened, changed and developed in the context of public services. Why do you feel that, and can you give us any further details?

[109] **Mr Tyndall:** First of all, the legislation in Wales was groundbreaking when it was introduced, and it remains close to the forefront, but 2015 will be the tenth anniversary of that legislation and things have moved on. We have talked about privatisation, and there are issues around jurisdiction that need to be addressed. I am the Public Services Ombudsman for Wales, not the public sector ombudsman for Wales, so there is a need to make sure that there is a comprehensive range of public services that you can complain about. There are also other areas of jurisdiction such as private healthcare where there is no independent redress. I do not think that the state should pay for it. As with other areas within the private sector, the bodies concerned need to pay for the resolution of complaints, so there would need to be a hybrid funding model. However, there is a need for change on that front. The Law Commission made recommendations for changes some years ago to ombudsman legislation, but I do not think that they have been formally responded to yet. There were particular ones about findings, so that the findings of the office must be accepted by public bodies; the recommendations are then a matter for political discretion. That is the case with the Local Government Ombudsman in England, but it is not the case in Wales, so I think that there is room for change there.

[110] With private sector bodies, I think that there is a need for binding remedies. With a public body, you can hold them to account if they do not do what I have asked them to do; with a private body, there is not the same responsiveness, so that, as more private bodies come in to jurisdiction, there need to be binding remedies. That is the case for the Financial Ombudsman Service, for instance, which can choose a private sector ombudsman scheme. It can require people to comply with their recommendations, and it can only be challenged in court; I think that the same should apply, otherwise I think that people simply will not do it. I think that there are some issues around links with the courts, which would be helpful. Many

cases are going to the administrative court that might be better dealt with by an ombudsman at the moment. Once it goes to court, I cannot look at it. So, even when the courts want to send it back for resolution, I cannot look at it, so there are issues around that.

[111] I think that I have provided to the Chair some thoughts for the committee. I hope that one thing that can happen is that, as the 10 years are approaching, there can be a review of the legislation. I think that, for me, one of the most fundamental things is the right to own initiative investigation, not so that ombudsmen can go off to investigate things willy-nilly, but so that they can pursue issues that arise in investigations of the kind that I described. I think that all of those areas are worthy of some detailed consideration and discussion by the committee going forward.

[112] **Lindsay Whittle:** I think that that is great. Many people who complain do sometimes feel a sense of frustration. I can feel your sense of frustration sometimes in some of the services that are provided, not by the public services, but by others. I think that that is a really positive note to end on. I think that, perhaps, you should ask the last question, Chair.

[113] **Christine Chapman:** Okay. Thank you, Lindsay. *[Laughter.]* Obviously, Peter, we have covered a lot of ground today, and I thank you for that; I think that we have had a very full and frank discussion. However, are there any other issues that you would like to raise with the committee about your post, or about public services in Wales? We have very little time, but is there anything that you can just signpost us to?

[114] **Mr Tyndall:** I will be very brief. It has been a huge privilege and honour to have the job; there can be few more satisfying jobs in the public sector than being able to deal with things on behalf of people when they have gone wrong, being able to put things right, and influencing improvement in public services. As I say, it has been a great privilege, and I have hugely enjoyed it. I think that the relationship with the Assembly is what marks out the difference in Wales, and the relationship with this committee has cemented that. I think that we have something that Wales can be proud of, and it is often held up overseas as an example of how an office should be structured. Therefore, from that point of view, I have been very grateful for the opportunity to come here, and I am grateful for the support that I have had from Members. I have enjoyed some of our more testing discussions over the years. *[Laughter.]* However, I think that the important thing is that the office continues, through a very able team, to deliver high-quality outcomes to complaints for the people of Wales, and I hope that that will continue to be the case, under whatever future arrangements are introduced. Thank you.

[115] **Christine Chapman:** Thank you. Before we finally close, Peter, you mentioned earlier the guidance that has been issued to local authorities regarding neighbourhood nuisance. Would you be able to send us a note on that? I know that there was some interest in that from Members, so we would be grateful if you could look at that for us.

[116] In closing the session, I want to thank you, Peter, for your work here in Wales. As Lindsay and others have said, on behalf of the committee, I wish you all the best in your new appointment. I am sure that it will be a very interesting move for you, but we would like to thank you. Obviously, we also thank your team. Thank you very much for attending today. We have had a very full and frank discussion. Thank you very much.

[117] **Mr Tyndall:** Thank you.

[118] **Christine Chapman:** We will break now for 10 minutes.

*Gohiriwyd y cyfarfod rhwng 10:25 a 10:37.  
The meeting adjourned between 10:25 and 10:37.*

**Ymchwiliad i'r Rhwystrau i Adeiladu Cartrefi yng Nghymru—Sesiwn  
Dystiolaeth gan Ed Green, Pentan Partnership Architects  
Inquiry into Barriers to Home Building in Wales—Evidence Session from Ed  
Green, Pentan Partnership Architects**

[119] **Christine Chapman:** If we can make a start, then, on the second item on the agenda, we have been holding an inquiry into barriers to homebuilding, and I am very pleased to welcome this morning Mr Ed Green from Pentan Partnership Architects. Thank you very much, Mr Green, for attending today.

[120] **Mr Green:** You are welcome.

[121] **Christine Chapman:** Members will have read the paper that you sent in, and, if you are happy we will just go straight into questions, because I know Members are keen to hear about your work.

[122] **Mr Green:** Sure.

[123] **Christine Chapman:** I want to ask the first one. Could you tell me how the cost of the Barnhaus compares with conventional homes?

[124] **Mr Green:** It is difficult to get very precise figures from volume house builders, but what they have told me and colleagues in the past is that the cost of building a conventional family home starts at about £70,000 to £75,000. I suppose the thing to add to that is that the size of conventional family homes built by volume house builders starts very, very small. The headline figure from the competition was that all of the entries had to fall under the £50,000 price range. We have got ours down to about £41,000.

[125] **Christine Chapman:** You won the competition, did you not?

[126] **Mr Green:** We won the competition; that is right.

[127] **Christine Chapman:** That is very good. Well done.

[128] **Mr Green:** Thank you very much. That price is very much driven by the specification, as you can imagine—external materials and things such as that. The other thing to bear in mind in that price is that there is no labour included in there, or very little labour. It is a self-build scenario. However, what the competition allowed us to do more than that was to look at the state of house building generally. There was an Ipsos MORI report carried out towards the end of last year, commissioned by the Royal Institute of British Architects, and the big findings there were that people had real problems with the houses that are currently being built in terms of two main areas. It was do with flexibility of the houses—there was very little flexibility long term—but also generally the size of them. The £40,000 to £50,000 house that we are proposing, exclusive of labour, is a much bigger house, actually—it is a 100 sq m house, whereas a Barrett or Wimpy house might be 75 sq m or 80 sq m. We felt that was important in terms of building in space and flexibility, and also just aspirations for the house to be a really attractive place in which to live.

[129] **Christine Chapman:** I have a question from Lindsay Whittle next.

[130] **Lindsay Whittle:** Thanks for coming along. This looks really interesting, actually. It reminds me of the prefabricated houses, or prefabs, as we say in Wales, that served us so well after the war, and are in fact still going really strong today in many of our communities. I

have to say, however, that it does not look like a conventional house, and I wonder how you could fit this in into—. It would not work in an area of outstanding natural beauty; it looks more like a holiday cabin, with respect. There is nothing wrong with holiday cabins, but is there any way that you could change the design, because people like the conventional house, these days, do they not?

[131] **Mr Green:** They do, yes. It is interesting that you pick up on the prefab thing, because I won a competition run by the British Homes Awards last year to design a house of the future. There, we were looking very specifically at prefabs, and there were some big benefits there. However, we found that the problem with the prefabs was that there were a lot of specialist trades and a lot of complexity, and although the idea of pre-fabricating things off site was nice, actually, what we wanted to do this time around was to really get back to the nuts and bolts and make it as simple as possible. So, the form that you see there is derived from steel portal frames that are used in agricultural buildings. That is what sets the shape. Now, there are a couple of things to say about that. One thing is that it means that the form of the house, as you say, is a lot less like a conventional home, but it actually has quite a lot in common with more agricultural buildings. So, what you might find is that, in rural settings, which there are obviously more of Wales, it might be more appropriate as a shape—it would be less obviously house-like, I suppose, but more appropriate in terms of sitting comfortably in the landscape and that sort of thing than a conventional house, which can often look a little bit *Little House on the Prairie* if you are not careful, in the big rural locations that we have in Wales.

[132] **Lindsay Whittle:** Right. I will not confess to having watched *Little House on the Prairie*. [Laughter.] I note that you are hoping to build a mock-up in the Grand Designs Live exhibition in May 2014. Could you let us know if that happens? I would quite like to go along and have a look at that.

[133] **Mr Green:** Absolutely. There is a little bit of showmanship there, to be honest, and what tends to happen at those kinds of shows is that it is a little bit like a Hollywood stage set—you know, the thing is kind of thrown up days beforehand. One side of that is that it is actually a really good way for us to test what we think is going to happen in terms of the speed of construction: because it is a frame construction, and because there are no wet trades in there, the timescale for putting these houses together should be much quicker.

[134] The other thing to say is that, in tandem with wanting to get it to Grand Designs Live, to raise the level of awareness, what we are probably more interested in doing is getting involved with the University of South Wales and with the Welsh School of Architecture, where I teach fairly regularly, in getting some research done on the practicalities of building with this type of construction, because it is a departure from conventional types of construction, and making sure that the thing does everything that we are promising before we start building them. It is a very chicken-and-egg situation; we need to get some prototypes built to get it tested, but we have to get this testing carried out to make sure that it really does what it says on the tin.

[135] **Lindsay Whittle:** Thanks, and good luck. Thank you very much.

[136] **Christine Chapman:** Leighton Andrews is next.

[137] **Leighton Andrews:** First, congratulations on your award. May I ask you what you think the scope is for industrially scaling the production of these?

[138] **Mr Green:** Well, a lot of the people who have approached us—and we have had a lot of interest in the concept post the competition—have done so wanting an off-the-shelf house. To be honest, you could do that, but where I am coming from—I am trained as an architect—

means that I am much more interested in adapting designs and construction methods to suit individual's needs and to suit specific locations as well. I like the idea that this thing would be very different if you landed it in Anglesey compared to what it would be if you landed it across the water in Bristol. For me, the important thing is to make sure that the system is flexible enough so that it can be adapted to be quite different for different locations, if that makes sense.

[139] **Leighton Andrews:** Are you clear that the design is compatible with building regulations in Wales?

[140] **Mr Green:** The place where we need to do the most work is exactly there, because what we are looking to do is to take the economies of using structural frames that are designed for big commercial spaces and agricultural buildings and use them in a domestic scenario. Now, that means that you are going from a situation where you have a 20-year warranty to one where you need a 50-year warranty, and people need to be able to get a mortgage on it. So, that is the really important next step, and those are the next kind of conversations that I am having with various parties that will do research and carry out investigations for us. It is about making sure that we can achieve building regulations compliance and 50-year warranties, and that the National House Building Council is going to sign it off, so we are having a conversation with it. Those are the things that have to happen before we can start building them as houses.

[141] **Leighton Andrews:** Okay, and if you could produce at volume—say 100 on a site—do you have any kind of concept of what the average labour cost per unit might be?

[142] **Mr Green:** No. I suppose that, in a one-off scenario, you might be adding as much as 30% to the cost that we are looking at, but I think that there are big advantages in terms of economies of scale, particularly with this type of construction, where, as you can imagine, the frame team could come in, erect the frame, and move on to the next plot, and then immediately the enveloping team come in and envelope the thing. So, there were big economies of scale to be had by going bigger.

10.45

[143] I lost my train of thought there for a second. The other thing that I was going to say was that where this approach stands to benefit significantly is by looking at higher environmental standards. Going back to that comment about the simple frame, the big advantage there is that it really simplifies the envelope of the building. The approach that we are talking about is this: you put the frame up and, basically, you wrap the whole frame in a very thick, heavy envelope, that could be straw bales, sheep's wool or whatever. What it means is that you can get very easily to a much higher environmental standard without the kind of shortfalls that a lot of conventional homes have where they have complex details. It is with those details that typically things like air-tightness and build performance tend to break down quite a bit. So, the simplicity of the form really ties in to looking to drive the performance much further, beyond current building regulations.

[144] **Peter Black:** I would like to look at two things. First of all, since I have been an Assembly Member, we have been talking a lot about lifetime homes. Given the additional size of this, to what extent does this design enable you to build buildings as lifetime homes, with wider doorframes, access and those sorts of issues?

[145] **Mr Green:** My understanding is that the requirement for lifetime homes has always made social housing a little bigger than the private market. There would be no problems for us in complying with the lifetime homes standard. However, to take a step back from that, I wonder whether it would be worth evaluating where the lifetime homes standard currently is,

and what it is doing to conventional house building. The aspiration of lifetime homes is very good, but I think that the reality, sometimes, is that it bloats contemporary house design. I am particularly thinking about volume house building stuff in the wrong places rather than the right places. Going back to the Ipsos MORI report, the places where people really want more space is in their living rooms. They want to have a separate dining room. They want the second or third bedroom big enough to turn into an office. Those sorts of things. That is where they perceive that they will see the real benefit in making the houses that much bigger. It is worth pointing out again that we are talking about a 15% bigger house for the same or less money.

[146] **Peter Black:** I think that that is why lifetime homes have not really caught on as they should have done in the last 15 years or so. The other issue is this: I have been a councillor for 30 years and some of the most difficult times that we have had is when system-build houses, particularly social housing, have reached the end of their useful life and have had to be demolished and rebuilt. This is effectively a system-build house with a steel frame, is it not?

[147] **Mr Green:** It is to a certain extent. Going back to that previous comment about prefabrication, the important departure here is that there is no complicated technology. As I said, we did this a year ago with quite a complex, as you say, system-build house. The more you looked into it, the more the costs went up, and the more that you looked at maintenance, the more it became a bit of a headache. So, that is why we have really gone back to the nuts and bolts. We are saying that there is a very simple steel frame at the heart of it, which means that the whole house can be open, you can knock walls about in the longterm, you can put rooms in, taken rooms out, make the thing longer or shorter and make it very flexible. However, at the end of the day, what wraps the house could easily vary on a project by project basis. It could be that very vernacular, traditional materials are providing that wrap, or they could be modern, prefabricated materials. That is very much part of the flexibility of the system.

[148] **Peter Black:** What would be the life of a property like this?

[149] **Mr Green:** Like I said, we are looking to make sure that we achieve the 50-year warranty that conventional housing uses. If we do not achieve that, people will not get mortgages and the whole thing just kind of breaks down.

[150] **Peter Black:** When a lot of the system-build houses reach 50 or 60 years old, that is when we have to start replacing or recladding them and so on. Are you anticipating that sort of thing as well, maybe after 50 or 60 years?

[151] **Mr Green:** It is entirely possible, depending on the kind of systems that you are talking about.

[152] **Gwyn R. Price:** What do you think that the Welsh Government can do to encourage self-build, for instance, in relation to planning and bureaucracy, land availability, and direct financial support?

[153] **Mr Green:** Going back to the competition, the judging panel on the competition was great, because of the people who were on it. You had two television personalities who everyone wanted to meet. They were Kevin McCloud and Charlie Luxton. You had the mayor of Bristol, George Ferguson, who is, obviously, very clued up on architectural matters, and you had Ted Stevens, who is the chair of the National Self Build Association. I had a chat with Ted a few days ago, and he was espousing the benefits of self-build. I have honestly been taken by surprise by what self-build means these days. It is not what I expected, necessarily. When you think of self-build you think of people out in the wilderness building their houses with their hands and that sort of thing. It is a much broader remit these days and

it includes the more public-friendly end, what they call ‘custom build’, which is ordering your house from a catalogue to a plot with a few very simple variations. If you look over in Europe, that sector, including custom build, is 50% of all house building. In Britain as a whole, it is 10%, which was a figure that surprised me—I was not expecting it to be that high, to be honest. In Wales, traditionally, it is about 20%, and I can only think that that has a lot to do with the rural aspect of Wales. I have lost my train of thought again.

[154] The other thing is that they carried out their own surveys, and there are a lot of people who are really keen to self-build who just do not feel that they have the expertise. The biggest problem is that between 40% and 50% of all of the problems to do with self building is to do with access to land. I am sure that you are talking in parallel about what is happening in England, but in England they have changed the national planning policy framework so that all local authorities are doing two things: they are looking at the level of need in their area for people who want to self-build, and, typically, that is about 18% of the population at any one time, and they are identifying land and looking at ways to make that land more accessible. It seems that access to land, or access to affordable land, is by far the biggest hurdle to making that happen.

[155] **Mike Hedges:** I will come in on land, and getting land with planning permission is one of the things. On local development plans, I can only talk about Swansea’s, but any site that took fewer than 10 properties was not put into the local development plan, but there were loads of small sites that would hold two, three or four properties, which would, in many cases, if built, improve the area. Would these buildings fit into those small sites in an urban area where there are gaps between houses?

[156] **Mr Green:** Yes, they would. Going back to the very first comment, I think that it is important to recognise that the form or the shape would possibly need to be adapted to suit an urban situation, and, basically, our design is driven by the frame. So, if you can imagine all of the different frames that are available on the market, that could be the driver for the form of a house. However, the other thing that we did in the design of the house—and it was partly for environmental reasons, but also for reasons of density and urban land use—is that we do not have any fenestration—doors or windows—in the sides. That means that you can arrange these in, effectively, a traditional terrace or a row, and you can make use of those much tighter sites—long, thin sites for terraces and that sort of thing.

[157] **Mike Hedges:** Gaps exist in urban areas. A large number of us represent urban areas, and there are gaps where, for historical reasons, houses were not built. One or two, or maybe four, properties could fit in there, and it would stop the land being used as the local dump. There are sites where former chapels have been knocked down.

[158] **Mr Green:** Another thing to consider is that lighter forms of construction will be much easier to fit into those small gaps.

[159] **Mark Isherwood:** I have a couple of points going back to land and regulation. Has the Welsh Government given sufficient consideration, in your view, to the impact on affordability, based on local price/income ratios or rent levels of the regulatory cost? To what extent does the Minister’s announcement deferring part L building regulations and sprinklers in single-unit housing address that?

[160] **Mr Green:** There are a lot of pressures on costs in housing. As you say, sprinklers and that sort of thing all swell the price of a house. The other thing that has the potential to do that is code, and I know that, at the moment, code is under quite a strenuous review and there were proposals to cut back the nature of code quite considerably. We have not really talked about environmental standards, but the environmental standard that we are looking at for this type of house is the Passivhaus standard, because the only thing that that looks at is the actual



energy consumption of the dwelling, whereas a lot of broader environmental standards, such as code and BREEAM, look at everything and the kitchen sink. They look at where you park your bike, but they also look at how close the nearest post office is and that kind of thing. Basically, at those broad levels, it can become expensive to achieve different standards of environmental performance, whereas we are interested in the energy side on things. So, there are a lot of things that are driving up the price of housing at the moment, but I would come back to that 30-30-30 split, and the fact that whether it is Barratt building one of these or whether it is our proposal to build something for £40,000 plus 30% labour, the actual cost of building the house is not that great. There is a lot more money tied up in the land and in the facilitation of the building of the house.

[161] **Mark Isherwood:** May I come in with a second question—my final one—on that? In terms of land, you are probably familiar with the Tŷ Unnos model, and its first commercial development for affordable housing. I think that it is at the top of the Conwy valley, on land that it received from the public sector, but because it required such extensive engineering to accommodate those properties, the technical unit costs went up far higher than originally anticipated. So, it is not just whether you agree on the availability of land, but it is a matter of availability of suitable land. The corollary to that is that I have had a number of cases where landowners owning rural periphery sites on settlement boundaries, which technically would fall within the TAN 6 guidance on rural exception sites. Planners are very reluctant to allow development on ideal sites with easy access, a flat surface and no real engineering problems but are happy to grant consent on sites such as the one that I mentioned earlier. Is there a need for Welsh Government to further clarify the guidance to local authorities to drive the target of affordability for local people according to local need?

[162] **Mr Green:** I think so, and I think that that is happening with the increased latitude that is coming in England from the pressure to find places for people to self-build. However, I would agree with you on two counts. I think that, in Wales, we have a very particular geography, and as soon as you get away from the south coast, you are invariably looking at very lumpy sites. I think that that is also where the pattern books in social housing that existed until a couple of years ago really broke down, because, in a lot of cases, looking at small infill sites and so on, it was very difficult to apply pattern book social housing to sites with very significant changes in levels across them and so on. Also, as you say, it kind of jacks up the expense. In Wales, we really should be looking at the systems of building houses and new ways of making houses, which accommodate the fact that the ground might not be very good—big changes in levels and so on. I think that that is a really important aspect of the uniqueness of building housing in Wales, if that makes sense. I have forgotten the other point. I am sorry.

[163] **Mark Isherwood:** It was on planning and rural exception sites.

[164] **Mr Green:** That is completely borne out by the interest that we have had. We have probably been approached initially by a couple of hundred individuals—putting aside, for a moment, developers and so on—who really want to build these houses that they have seen. I would say that 60% to 70% of them are desperate to build in rural locations. Probably 50% of those people have previously tried and have been turned down, and they are looking to see whether things have changed at all based on some of the new legislation that has crept in about converting existing agricultural buildings into residential buildings. They are looking for ways to make what they want to do happen. I think that the aspiration is there, as you say, to build more homes and to build them in slightly more manageable locations. It is just that there is some red tape in the way at the moment.

[165] **Jenny Rathbone:** It is a fantastic design and it is really disappointing that we have not seen some of the large house builders capable of thinking along these lines of delivering these zero climate change homes in terms of efficiency, and also using local materials so that,

in Blaenau Ffestiniog, for example, we could line the rain screen with slate, and elsewhere timber may be more widely available. On the detail, because the RSLs are complaining that the lifetime home standard raises their costs, compared with private house builders, as they must have upgraded joists to accommodate hoist systems, one of the features of your design is that it is very lightweight. I wondered whether it would meet the standards of being able to put a hoist on it. Also, what about its hurricane resistance, given that we have had some very severe weather recently?

[166] **Mr Green:** That is all down to the specification of the frame. I think that 'lightweight' is a term that architects bandy around when they are trying to make something sound environmentally friendly, because it sounds like there is less substance to it. I think that the reality of it being lightweight in this scenario is that it is a frame construction rather than a traditional masonry construction. The big advantage there—to go back to the kind of ground conditions that we have in Wales—is that you are putting a lot less time and money into the ground. There is a lot less concrete involved; you do not have to wait for the concrete to cure; you do not have to deal with retaining conditions and so on. So, there are big savings there. However, that does not necessarily affect the structural rigidity of the building in any way. You would size sections of the steel frame to make sure that, for example, supporting a hoist off the first floor was not a problem at all.

11:00

[167] Similarly, with hurricane resistance, pretty much everything in America is either timber framed or frame construction, and they just have different ways of fixing to make sure that, when you have that suction effect of high winds, it is not pulling things off. So, it is all down to the specification and how the materials are used, but I think that the light weight is a really important thing to pick up on, because one of the big advantages that heavyweight construction has, thinking longer term and thinking about global warming and that sort of thing, is the thermal mass that it provides. If you do not want to have overheating in your housing stock, especially if temperatures are going to rise, you need to think very carefully about how to bring thermal mass into a building that does not inherently have any, if it is a lightweight construction. There are lots of ways of doing that. There are different materials that you can use: water, or phase-change materials, which are different materials that will, basically, soak up the excess heat during the day and then disperse it back out during the night-time. So, there are ways of overcoming the shortcomings that lightweight construction does have.

[168] **Christine Chapman:** I think that we have come to the end of our questions, Mr Green. Is there anything else that you wanted to add before we close this session?

[169] **Mr Green:** I am sure that you have talked about it in another format, but the only thing that I was going to mention was this document, the 'London Housing Design Guide', which is two or three years old now, which Mae Architects produced with Boris and his cronies in London as a way of looking at the current state of housing and how housing can be improved. I think that, given that we do not currently have a pattern book for housing to work to in social housing, there is a real benefit in looking freshly at housing in Wales and seeing whether there are guidelines—whether it is going back to Parker Morris space standards or whatever it might be—that we can provide for the local authority sector, but possibly also for the private sector, to make sure that the housing that we are building in Wales is built to an appropriate standard.

[170] **Christine Chapman:** So, you recommend that we get a copy of that.

[171] **Mr Green:** I would recommend that you consider setting up a group that is tasked with looking at what good housing in Wales should be, how big it should be and what the

criteria should be. Maybe it is not about copying patterns in England, given the terrain and the slopes that we are working with, the geography and that sort of thing. Maybe it is about coming up with a different set of rules, and maybe, at the heart of those rules, those touchstone issues of flexibility and space standards could be embedded somewhere, so that the new housing that we are building in Wales is built to a really high standard.

[172] **Christine Chapman:** Okay. Thank you for those comments, and we have noted what you have said. First of all, thank you for coming today; it has been a really interesting session, and we wish you well with your work. I just want to mention that we will send you a transcript of the meeting, so that you can check it for accuracy. Thank you.

[173] **Mr Green:** Thanks for your time.

11:02

**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**

[174] **Christine Chapman:** I move that

*the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order No. 17.42.*

[175] I see that you are happy to do that.

*Derbyniwyd y cynnig.  
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11:02.  
The public part of the meeting ended at 11:02.*