



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

## **Y Pwyllgor Cyfrifon Cyhoeddus** **The Public Accounts Committee**

**Dydd Iau, 16 Mai 2013**  
**Thursday, 16 May 2013**

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

The proceedings are recorded 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**

Mohammad Asghar	Ceidwadwyr Cymreig Welsh Conservatives
Jocelyn Davies	Plaid Cymru The Party of Wales

Mike Hedges	Llafur Labour
Darren Millar	Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor) Welsh Conservatives (Committee Chair)
Julie Morgan	Llafur Labour
Jenny Rathbone	Llafur Labour
Aled Roberts	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

**Eraill yn bresennol  
Others in attendance**

Tim England	Cyfoeth Naturiol Cymru Natural Resources Wales
Dean Jackson-Johns	Cyn Glerc a Pheiriannydd, Bwrdd Draenio Mewnol Gwastadeddau Cil-y-coed a Gwynllŵg Former Clerk and Engineer, Caldicot and Wentlooge Internal Drainage Board
Gareth Jones	Cyfarwyddwr Cyffredinol, Dyfodol Cynaliadwy, Llywodraeth Cymru Director General, Sustainable Futures, Welsh Government
Jo Larner	Pennaeth Dros Dro Rheoli Risg Llifogydd ac Erydu Arfordirol, Llywodraeth Cymru Acting Head of Flood and Coastal Erosion Risk Management, Welsh Government
Richard Penn	Rheolwr Cyffredinol, Bwrdd Draenio Mewnol Gwastadeddau Cil-y-coed a Gwynllŵg General Manager, Caldicot and Wentlooge Internal Drainage Board
Emyr Roberts	Prif Weithredwr, Cyfoeth Naturiol Cymru Chief Executive, Natural Resources Wales
Dr Jean Venables	Prif Weithredwr, Cymdeithas yr Awdurdodau Draenio Chief Executive, Association of Drainage Authorities

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

Dan Collier	Dirprwy Glerc Deputy Clerk
Joanest Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser
Tom Jackson	Clerc Clerk

*Dechreuodd y cyfarfod am 9.01 a.m.  
The meeting began at 9.01 a.m.*

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

[1] **Darren Millar:** Good morning, everybody, and welcome to today's meeting of the Public Accounts Committee. I would like to remind Members, officials and anyone in the public gallery that they should turn off their BlackBerrys, pagers and mobile telephones, because they can interfere with the broadcasting and other equipment. In the event of an emergency, we should follow the instructions of the ushers, who will take us to the nearest safe exit. The National Assembly for Wales is a bilingual institution, and we should feel free

to use Welsh or English in this meeting, as we see fit. Translation facilities are available for those who require them. We have received apologies today from Sandy Mewies, and we have no substitutions. We will now move straight on to the next item on our agenda.

9.02 a.m.

**Materion sy'n Codi o Ganfyddiadau Swyddfa Archwilio Cymru 'Bwrdd  
Draenio Mewnol Gwastadeddau Cil-y-coed a Gwynllŵg'  
Issues Arising from the Findings of the Wales Audit Office Report 'Caldicot  
and Wentlooge Levels Internal Drainage Board'**

[2] **Darren Millar:** This is the first evidence session on this particular issue. The Wales Audit Office published a detailed report in the public interest late last year, and the committee decided that it wanted to take some evidence on it. I am very pleased to be able to welcome Gareth Jones, Director General for Sustainable Futures in the Welsh Government, to the table today. With him is Jo Lerner, and I am terribly sorry that we do not have a nameplate for her. I believe that she is the acting head of coastal erosion and—

[3] **Ms Lerner:** I am the acting head of flood and coastal erosion risk management.

[4] **Darren Millar:** Thank you very much for clarifying that for us. We have a lot of questions that we want to get through this morning. I will ask the first question, and, if you have any opening remarks that you would like to give in responding to it, that is absolutely fine. The Wales Audit Office report sets out a number of key documents that it expected drainage boards would have in place, such as simple things like strategic plans and workforce plans. How has the Welsh Government worked with internal drainage boards in Wales to ensure that these documents are being produced by them?

[5] **Mr Jones:** First of all, thank you very much for your welcome and for inviting me here today. I will make a few opening remarks, if I may, largely around the relationship between the Welsh Government, officials and the internal drainage boards, and what the relationship has been and, perhaps just as important, what it has not been. Within the Sustainable Futures directorate, I am responsible for the vast majority of sponsored bodies in Wales. We have a very close relationship with those sponsored bodies. We fund them. I have an accounting officer relationship with the heads of those organisations, as accounting officers in their own right. We have sponsorship arrangements, which policy departments undertake, and very close monitoring and supervisory arrangements around policy issues and supervision of what you might call governance within those organisations. Internal drainage boards are not like that. In fact, there is a very different relationship between the Government and internal drainage boards. Ministers have a very clear responsibility with regard to the policy of the operations of drainage boards, in this case, land drainage and flood management, and a very clear relationship with regard to setting the legislative framework, in this case, the Land Drainage Act 1991, for the establishment of those bodies. The relationship then includes the need to approve changes of rules, changes of standing orders et cetera. So, it is very much a relationship with the Government that is centred around policy and the legislative framework, rather than being a governance supervisory role, which the Government would normally have with other organisations. I know that the committee will be well aware of the way in which internal drainage boards, and this particular one, are governed and how the board is established.

[6] Turning to your specific question, which was around strategic plans, workforce plans and rules and standing orders that the IDBs might establish, the Land Drainage Act of 1999 is very clear that internal drainage boards may make rules for proceedings—

[7] **Jocelyn Davies:** Is that a different Act? Did you say 1999?

[8] **Mr Jones:** It is 1991.

[9] **Jocelyn Davies:** Okay. You just said 1999.

[10] **Mr Jones:** Did I? I beg your pardon.

[11] **Jocelyn Davies:** Sorry, I thought there was a different one. It is 1991.

[12] **Mr Jones:** Yes. The Act is very clear that IDBs may make rules for the proceedings of their board and that, if they do, they have to get agreement from Welsh Ministers to those rules. However, establishing those rules and the framework within which they operate is not a mandatory requirement. So, the answer to your question is that, while the internal drainage board, in this case, will have had plenty of guidance as to the sort of rules, documentation and standing orders that it should produce, if it chose not to, or if it chose to continue to operate under what were, in this case, pretty ancient rules, dating back to the 1940s, then that was a matter for it and not something in which we could intervene.

[13] **Darren Millar:** I am a little bit confused here. As I understand it, internal drainage boards perform a very important function in terms of flood protection. The Welsh Government is responsible for flood-risk management in Wales. You ought to be working very closely—hand in glove—with these organisations to ensure that there is effective flood-risk management in the areas for which they are responsible. However, you are telling me that, in terms of a strategic plan, there is no mandatory requirement and that it is not up to you to get on their backs about it to make sure that its strategic plan fits with a Wales-wide strategic plan. Why is that? It is just obvious, is it not? This protects incredible swathes of land in the Gwent area from flooding. You certainly would not want to see it flooded—I accept that—so why on earth did you not ask for a strategic plan to see how it fitted with your strategic plan?

[14] **Mr Jones:** The answer lies in the relationship between what was the Environment Agency Wales, and is now Natural Resources Wales, and the internal drainage board. Policy responsibility for flood-risk management throughout Wales is, as you say, the responsibility of the Government. The Environment Agency had a relationship with the internal drainage board to ensure that it was undertaking its flood risk and land drainage responsibilities correctly. As far as I am aware, Chair, there was never any issue raised by Environment Wales with regard to that. If one were to judge this organisation on the outcomes that it has achieved with regard to flood-risk management of a very substantial swathe of wetlands and low-lying land—26,000 ha of land—one could conclude that it has been spectacularly successful, I guess, because—

[15] **Darren Millar:** In spite of you not seeing a plan or knowing what on earth it was doing as an organisation.

[16] **Mr Jones:** I return to the fact that it has been very successful in terms of managing its business with regard to flood-risk management. Certainly, in my lifetime, there has not been a significant flooding event there, and I know the area extremely well. As I say, the relationship between us was not one of close supervision in the way that you describe, although there was always the opportunity for the Environment Agency, if it had been concerned about how the IDB was undertaking its principal function of flood-risk management, to inform us and to suggest that we intervene.

[17] **Darren Millar:** So, what you are saying is that you rely on the Environment Agency to flag up concerns to you as accounting officer for these organisations that are providing

significant flood-risk management services across large parts of Wales.

[18] **Mr Jones:** What I am saying is that I would rely, in this instance, on the Environment Agency to inform us whether the organisation was performing its statutory duties with regard to flood-risk management. There are, of course, other agencies involved, on which we would have relied, with regard to issues such as governance. I am sure that we will come on to that, Chair, but there are other routes by which we could have been alerted to the sort of spectacular governance failures that we have seen in this organisation.

[19] **Darren Millar:** Okay. I have a few Members who want to come in here. Julie is first, then Mike and Aled.

[20] **Julie Morgan:** Looking back, do you think that there were any deficiencies in the relationship between Government and the agencies it was dealing with?

[21] **Mr Jones:** I have thought long and hard about this, Chair, in preparation for this committee, because, as you will know, the Government is certainly not complacent about these issues. I look at what we have done since we knew about the problems, and the more proactive approach, if you like, that we have taken to try to help the board with setting out good governance procedures and good codes of conduct, and adhering to the guidance that is provided for it, either by the Association of Drainage Authorities or by other institutions in Wales. Had we known that there were the sort of problems that there were, clearly, we would have wanted to have intervened to help and to take some action to support the board through areas of doing its business that it clearly was not up to doing. That relationship was not there, because we did not have those triggers to alert us that those problems were happening.

[22] **Julie Morgan:** So, you were entirely dependent on other bodies reporting to you and so you would not really take any responsibility for a report such as that which the WAO has produced.

[23] **Mr Jones:** It was we, of course, who asked the WAO to undertake the review and to produce the report.

[24] **Julie Morgan:** Yes, I know that; I am referring to the findings of the report.

9.15 a.m.

[25] **Mr Jones:** As I said, we have worked closely with the WAO and we are now supporting the Caldicot and Wentlooge Levels Internal Drainage Board to implement its action plan in order to put it in a much more satisfactory position. If one looks at the situation from 1991 onwards, through to when we found out about this issue via a whistleblowing event, we would have relied firmly on the governance procedures that were in place and local authority representation on the boards to manage it successfully. We would have relied on the annual reporting, accounting and audit processes that were undertaken by the Wales Audit Office. As far as I am aware, none of those audits flagged up any issues with regard to governance. Indeed, I have read the governance statements that are in those reports and they look precisely as you would expect statements from a public organisation to look. We relied closely again on anyone deciding to whistleblow—as I put it earlier—if there had been an issue. None of those triggers were pulled in that period of time, so there was not really an opportunity for us to say that we needed to intervene.

[26] **Mike Hedges:** In the early 2000s, I sat on the south-west Wales flood defence committee, which I think is not dissimilar. My understanding was that all our plans were submitted to you—I do not necessarily mean you as individuals, but rather officials in the Welsh Government who would then look at them and file them somewhere. That is what I

was told at that time. Is that true and did the same thing happen here?

[27] **Mr Jones:** I do not know whether the specific plans of that organisation were submitted to us. As I understand it, that committee was under the control or supervision of the Environment Agency, so the route for reporting or accountability would have been via the agency. As I hope I explained earlier, we have had a very close relationship with the Environment Agency as regards accounting officer responsibilities, so I am not really surprised that that would have been the case. In this case, no, that did not happen. As I said in answer to the Chair earlier, plans were not required to be submitted to the Government. The only piece of documentation that we saw during that period would have been the annual report and accounts that came from the organisation, which was certified and audited by the Wales Audit Office.

[28] **Aled Roberts:** I fod yn glir, rydych yn dweud na chawsoch chi unrhyw fath o gŵynion oddi wrth Asiantaeth yr Amgylchedd nac Archwilydd Cyffredinol Cymru. Rydych yn dweud eich bod wedi derbyn cwyn gan aelod o fewn y bwrdd a oedd yn dweud bod pethau o'u lle. Pa bryd oedd hynny? **Aled Roberts:** To be clear, you say that you did not receive any complaints from the Environment Agency or the Auditor General for Wales. You say that you received a complaint from the member of the board that things were going wrong. When was that?

[29] **Mr Jones:** Yes, that is absolutely right. We did not have any complaints from the Environment Agency about the way in which it was undertaking its duties or from the Wales Audit Office with regard to Government audit-type procedures. It was February 2011 when we were first made aware of concerns about the administration and governance arrangements for the board.

[30] **Aled Roberts:** Dyna'r hyn y mae'r papur briffio yn ei awgrymu, ond a oedd swyddogion Llywodraeth Cymru yn bresennol mewn unrhyw gyfarfodydd lle'r oedd problemau wedi dod i'r amlwg? **Aled Roberts:** That is what the briefing paper suggests, but were Welsh Government officials present in any meetings where problems were flagged up?

[31] **Mr Jones:** Do you mean before that date?

[32] **Aled Roberts:** Yes.

[33] **Mr Jones:** Not that I am aware, no. I am not aware that Welsh Government officials were present in any meetings of the board. If they had been, I would have expected them to have elevated the issue to a more senior level in the Government for us to take some action.

[34] **Aled Roberts:** Rwyf wedi derbyn tystiolaeth yn dangos bod swyddogion yn bresennol mewn cyfarfodydd ym mis Gorffennaf 2010. **Aled Roberts:** I have received evidence that officials were present in meetings in July 2010.

[35] **Mr Jones:** I am not aware of that at all. If you have specific evidence on that, I would be very happy to look at it.

[36] **Aled Roberts:** I will pass it on to you.

[37] **Mr Jones:** As I have said, if Government officials were at any discussions that raised specific concerns, which suggested that we should have taken a more proactive approach, intervened or, as I said earlier, provided more support and help to the organisation, I would

have expected us to have done so, and I would be disappointed if we did not.

[38] **Jocelyn Davies:** I want to ask you about the standing orders. You mentioned earlier that, under the 1991 Act, the Minister—or the Welsh Government—would have to approve any changes to the standing orders. The report states that the standing orders operating in this particular internal drainage board were outdated, to say the least, but that DEFRA had issued model standing orders in 2005. If the Welsh Government is responsible for the approval of any changes, why were you relying on DEFRA to issue model standing orders? It seems that these organisations were under the radar because they were not causing any specific concerns to you. So, why rely on DEFRA? Can you tell us what you did in relation to ensuring that all of the internal drainage boards then followed those model standing orders, and were the standing orders that are currently in force approved by Welsh Ministers? I have copies here.

[39] **Mr Jones:** In terms of why we relied on DEFRA, DEFRA is responsible for 120 internal drainage boards, and we have one here in Wales. Therefore, in terms of why DEFRA was doing the majority of the work in this, I think that that makes that—

[40] **Jocelyn Davies:** That is not a criticism. I can see what you are saying—why duplicate when someone else was doing it?

[41] **Mr Jones:** Indeed. I would have expected us to have been involved in the development of those standing orders.

[42] **Jocelyn Davies:** You might very well have been consulted. Perhaps you would let us have a note on that.

[43] So, you did not, for very good reasons, and I can understand that. So, what happened following the issuing of these model standing orders? Have you now approved the standing orders?

[44] **Mr Jones:** I have two things to say on this, Chair, if I may. As I understand it, the model documents that were produced by DEFRA were distributed to internal drainage boards across the UK via the Association of Drainage Authorities. So, it became part, if you like, of the general guidance that was provided by ADA to all IDBs. There was no requirement at that time for IDBs to adopt those changes. That was entirely a matter for the boards to decide.

[45] **Jocelyn Davies:** I understand that.

[46] **Mr Jones:** So, those changes were never implemented or put to Ministers for approval. Since the production of the Wales Audit Office's report in the public interest, we have worked with the Caldicot and Wentlooge Levels Internal Drainage Board and, in January this year, it submitted standing orders to the Government, at which point we had a duty to prepare advice to Ministers, which we duly did. They were checked for compliance against the most up-to-date version of model standing orders. They were found to be compliant and were approved in February 2013.

[47] **Jocelyn Davies:** Okay. I have the Powysland Internal Drainage Board standing orders, which state that they have been approved by the relevant Minister. Would that be the Welsh Government?

[48] **Mr Jones:** Yes. In Powys's case, because it is a cross-border issue, it would have been approved by Ministers—

[49] **Jocelyn Davies:** It states that it has been approved under the Land Drainage Act 1991.

[50] **Mr Jones:** Yes, by both Ministers.

[51] **Jocelyn Davies:** The Caldicot one states that it is approved under the Land Drainage Act 1930. I draw your attention to standing order No. 17 of the Powysland IDB standing orders, which states that if any Members have an interest in any matter to be discussed, that must be drawn to the attention of the board. The Caldicot and Wentlooge Levels IDB standing orders' only reference to conflict of interest is if the board proposes to make a contract with any company and if any member has an interest in that company, they have to declare that interest. Why are they different?

[52] **Mr Jones:** I have not seen the detail of the standing orders. I do not know whether Jo wants to comments on those.

[53] **Ms Larner:** The standing orders I have seen have been the ones for Caldicot and Wentlooge Levels IDB, which do comply with the guidance given by ADA. In terms of what they are, they are compliant with the most recent up-to-date guidance. Could you repeat the rest of the question?

[54] **Jocelyn Davies:** What I am saying is that the Powysland standing orders clearly state that if a member has a conflict of interest in any matter being discussed, they have to declare it. In the Caldicot standing orders, it is only if you have an interest in a company with which there is a contract do you have to declare an interest. I am just asking why there is a difference.

[55] **Ms Larner:** When we met with Caldicot and Wentlooge Levels IDB and the previous Minister in January this year, they provided us with not just standing orders, but a complement of policy documents for their organisation. Among these policy documents was specific guidance and policy in relation to conflicts of interest and declarations. This applied to both board members and employees of the organisation. So, these are in place.

[56] **Jocelyn Davies:** They might be in place, but they are not in the standing orders as they are, in the ones that you have had; they are entirely different documents. I am just wondering why that is the case, if they are both based on a model issued by DEFRA. However, I will move on.

[57] In relation to the statement that was made by the former Minister for environment that there would be a consultation, we are assuming then that that was triggered by the whistleblowing and this public-interest report in November 2012. Perhaps you could give us an update on the progress of the consultation; I read the consultation responses this morning. You particularly focus on the views of the local authorities that are responsible for sending representatives to this board.

[58] **Mr Jones:** Certainly. The consultation finished in August 2012. We had, I believe, 39 responses to the consultation. The Minister has not yet, just in terms of process, taken a decision on the way forward. As Members will know, a number of options were set out in the consultation document. As a result of responses to that consultation, which raised the possibility of another option in terms of the governance of the board, we are now working on an option appraisal—a business case, effectively—to put advice to Ministers as to what we think is the best way forward.

[59] **Jocelyn Davies:** What do the vast majority of responses favour?

[60] **Mr Jones:** The vast majority of responses favour leaving the internal drainage board as it is, but with improvements to its governance.



[61] **Jocelyn Davies:** What about the three local authorities?

[62] **Mr Jones:** Their view is that the local authorities themselves should be given the responsibility to run the drainage board, and I understand that the Environment Agency, in its response, was joined, as it were, with that view, namely that the local authorities should be given that responsibility and that they would establish some sort of governance framework local committee or whatever to manage it.

[63] **Jocelyn Davies:** The preference of the Welsh Government during the consultation was that the function should be transferred to the single environment body. Is that right?

[64] **Mr Jones:** Yes, to Natural Resources Wales. That was an option that was set out, both—

[65] **Jocelyn Davies:** That was the preferred option of the Government.

[66] **Mr Jones:** I think it is fair to say that it was an option that was set out in the ‘Living Wales’ consultation, which was the consultation for the establishment of what was then the single environment body and which has since become Natural Resources Wales. It was also an option set out in the consultation on the future of internal drainage boards, so I think it is fair to say that it is an option that Ministers were, and are, attracted to.

[67] **Jocelyn Davies:** So, you are not comfortable in saying that it was the preferred option.

[68] **Mr Jones:** I do not think that that word was used.

[69] **Jocelyn Davies:** It might not be in the consultation, but I have read all the minutes of the internal drainage board meetings, and it clearly says that, in discussion with Welsh Government officials, the preferred option of the Government was that the function should be transferred to a single environment body. Was that the case?

[70] **Mr Jones:** Well—

[71] **Jocelyn Davies:** You might have changed your mind during the consultation.

9.30 a.m.

[72] **Mr Jones:** I do not want to put words in the Minister’s mouth, because it will be his decision, not mine, as to what option is decided upon. However, we have established Natural Resources Wales to manage Wales’s natural resources. Effectively, it is already the internal drainage board for 11 internal drainage districts in north Wales. It has established modern, successful governance arrangements very recently. So, it is fair to say that transferring responsibility to it must be seen as a front runner.

[73] **Jocelyn Davies:** It sounds like that is your preferred option, then. Okay, I have finished; I have exhausted that.

[74] **Aled Roberts:** A fyddai’n bosibl cael nodyn o bw ymatebodd i’r ymgynghoriad? Os oedd y mwyafrif yn dirfeddianwyr a fydd wedi gwneud yn eithaf da o’r sefyllfa, byddech yn disgwyl iddynt ofyn am i bethau aros fel ag y maent. Os **Aled Roberts:** Would it be possible to have a note of who responded to the consultation? If the majority were landowners who would have done quite well out of the situation, you would expect that they would ask for things to remain as they are. If you were aware of

oeddech yn ymwybodol o broblemau ym mis Chwefror 2011, a yw'n dderbyniol bod corff cyhoeddus yn parhau i weithredu o dan hen reolau am ddwy flynedd? problems in February 2011, is it acceptable that a public body continues to operate under old rules for two years?

[75] **Mr Jones:** I will just comment on who responded; that information is publicly available on the website, but we will certainly let you have a note, Chair. That is not a problem. There was a range of respondents, some of whom were landowners, some were local authorities, as has been mentioned, but we can let you have the details on that.

[76] We were first made aware of concerns, as I said, in February 2011 and a fair bit of activity with our lawyers followed with regard to what powers we had to intervene, or even ask another organisation to intervene on our behalf. It was eventually decided, in April 2011, to refer the matter to the Wales Audit Office, and that was done. In that sense, we had not had any confirmed information about the issues that were raised by the whistleblower, as I described earlier, until the report in the public interest was published in October 2012. Nonetheless, as you will know, changes were made to the board before that, because the chief engineer resigned and was replaced. There has been a great deal of activity since then in terms of providing support. We heard earlier about the creation of more acceptable standing orders for the organisation and I think that the Wales Audit Office has said to you that we are more comfortable with the way in which the organisation is being run at present.

[77] **Aled Roberts:** The concern is that, in the meantime, issues such as the conflict of interest were still being dealt with under the old standing orders and there was no requirement on people to indicate that there was a conflict, in the type of situation in which most people would expect a conflict to be declared.

[78] **Mr Jones:** I agree. It is firmly the responsibility of the board to deal with those conflicts of interest. I have to say that I would have expected the appointed members of the board to have taken a much more robust line about that sort of thing before then.

[79] **Mohammad Asghar:** Gareth, can you send us a few notes on my questions, which relate to membership of the internal drainage board, rather than interrupting you now?

[80] The important point is this alarming auditor's report. Are you aware that most members of the Caldicot and Wentlooge drainage boards do not attend the meetings? Are you aware of that? Is it common in other boards? Are you aware of the obligation of the board members? It is a serious responsibility to maintain this drainage and flood system and so on. Do they expect to meet regularly for board meetings and fulfil their obligations? What about the local authorities—at least one member was involved in the board? Was full information being given to local bodies about the activities in the drainage board? We are covering Caldicot and Wentlooge at the moment, but is it also common in others that local authorities are not involved, only sending one member and that is it, and that that member is not bringing back information to the councils?

[81] **Mr Jones:** I am aware of it. It is clearly not acceptable. I have described the relationship as one of, at best, benign neglect in that the appointed members of the board were not always being appointed timeously and, even where they were appointed, they were not always, as you said, turning up to meetings. That effectively left the management of the organisation in the hands of elected members and officials in the organisation, which is clearly not acceptable.

[82] It is fair to say that the situation at Caldicot and Wentlooge Levels IDB is unusual in that there are so many appointed members on the board. I do not know of any other organisation that is funded by local authorities on which so many, in this case, members and

officers could represent the local authorities concerned, but I do not have information with regard to other bodies that local authorities supervise and control and on which they sit. I would be disappointed and surprised if there were other organisations that are funded from public money by local authorities on which there is insufficient control with regard to the governance and supervision of conduct, frankly.

[83] **Mohammad Asghar:** So, there was some sort of problem with good practice there, then.

[84] **Mr Jones:** Very much so. There are clear rules and guidance, which have been established by the Association of Drainage Authorities, with regard to things like codes of conduct and good practice. There are clear rules that have been established in terms of governance and accountability in internal drainage boards. There is a practitioners' guide, which is established. There are clear Accounts and Audit (Wales) Regulations 2005, which establish the proper practice that should take place in public bodies, of which the internal drainage board is one. To be frank, they simply were not being followed.

[85] **Jenny Rathbone:** It is not the only public body to which people get themselves appointed, perhaps to make their CV look more impressive, and then do not carry out their functions. Is there any role for Welsh Government to issue some guidance, so if people do not attend for, say, three consecutive meetings, they are automatically no longer a member of that body?

[86] **Mr Jones:** Although I do not know the detail, I am aware that the Wales Audit Office provides good practice guidance on its website on governance of this sort of thing. I do not know whether it includes that; if it does not, or if our guidance does not cover it, it probably would be a good thing for us to give some guidance on that. My experience of sponsored bodies, agencies et cetera is that people are much more attentive to their duties. I am aware that local authorities fund dozens, probably hundreds, of organisations on which they may well provide appointed members. However, it is a fair point that we need to make sure that people understand what best practice is in this regard.

[87] **Jenny Rathbone:** No-one is obliged to take an appointment. If they fail to do the work, they should not take the appointment. It gives the appearance of involvement when, in fact, there is none, as in this case.

[88] **Mr Jones:** Interestingly enough, the Land Drainage Act 1991 makes it clear that, in appointing a person to be a member of an internal drainage board, the charging authority should have regard to the desirability of appointing someone who has knowledge or experience, including knowledge of internal drainage district issues, commercial experience, or some other matter relevant to the functions of the board, and has shown some sort of capacity in that matter. There is something set out in statute that says you have to have the skills, experience and qualities to undertake that role—although I accept that that does not mean that you turn up.

[89] **Darren Millar:** Would it be fair to say that local authorities are perhaps not as rigorous in applying that due regard test for appointments to boards, and perhaps other outside bodies more generally, as they could be? From my experience in local authorities—I am sounding like Mike here, with his recent experience in Swansea—and no doubt others can testify this as well, it was very much an AGM at the start of the year, appoint a chairman, there is the list of outside bodies, so you work out who is doing what, tick, tick, tick, and there is very little regard, really. It was more a case of divvying the work up so that everybody could share a bit of the burden. If people expressed a particular interest, or had particular experiences, of course they would try to be linked to those areas of interest, but in terms of the obligations that were required, it was an interesting factor.

[90] **Jocelyn Davies:** In this case, there are something like 19 members coming from three local authorities, so you would not just be finding one person with relevant experience—you might be having to find six or more.

[91] **Mr Jones:** There were 15 from Newport.

[92] **Jocelyn Davies:** I guess, then, that it was a case of everybody having to take a turn. If there are 15 from Newport for every meeting, I can imagine that, if you are one of the 15, you might imagine that you do not need to turn up.

[93] **Darren Millar:** Is the size of the board an issue?

[94] **Mr Jones:** Absolutely, yes.

[95] **Darren Millar:** Should it be hacked in half, or should it have a third of the members? What sort of size should it be?

[96] **Mr Jones:** It would be difficult for me to put my finger in the air and pick a number, Chair. My experience of chairing boards is that anything much greater than 12 is almost impossible to manage, and often pretty unruly. I am sure that you have experience of that, Chair. I would agree. In this case, Newport, which put forward 15 individuals to the IDB, put forward a mixture of members and officers. I could not possibly comment on whether local authorities are flaunting the law in this case, which requires them to pick people who have knowledge and experience of the area in question. I can see how it may well have worked. It is a very large number of people to find—and a very large number of people to feel that they are obliged to go.

[97] **Mike Hedges:** I do not know how the meetings went, but I can imagine that, if the board called its meeting at the same time that a council was having its meeting, you would have that conflict that people would be expected to attend their council meeting, not meetings of the drainage board. I do not know whether there were any problems of clashes like that.

[98] My second question, which is the main one that I wanted to ask, is that we have established that the board had inadequate records of proceedings prior to 2011, but to whom, in either the Environment Agency or the Welsh Government, did the board send copies of those? Did it just stop at the land drainage board? If so, is it normal for the minutes of bodies that are publicly funded to stop at that organisation rather than making their way up to somewhere else?

[99] Another problem is that no-one enforced disclosure of information et cetera. I am told here that members failed to complete

[100] ‘forms if their interests changed. The requirement to disclose this information appears to have been introduced in 2008. However, the Wales Audit Office’s review of the file held by the Drainage Board indicates that not all members completed these forms and they found no evidence that officers undertook any follow-up to ensure that the forms were submitted’.

[101] A school governing body—and many of us serve on one, or have served on one—comes along every year with a form and asks you to provide an update. If it can be done for a body that is purely voluntary, like a school governing body, why can it not be done in this case?

9.45 a.m.

[102] **Mr Jones:** Chair, I have no idea whether there are clashes between the meetings of the board and local authorities; I think that it would be almost impossible to find that out now. As far as minutes are concerned, although I understand that the minutes of the board were put on the organisation's website, I am not aware that those minutes were ever submitted, and there was no requirement for them to submit minutes to us or indeed to anyone else.

[103] One thing that I would say is that this is part of the pretty rich landscape of a spectacular failure in governance in this organisation. I am pretty sure that, if I were to run the Sustainable Futures directorate-general in this way, certainly my internal auditors would have something to say about it and would provide me with pretty damning reports about the way in which I was managing the organisation. As far as I am aware, that did not happen here, although the internal drainage board had internal auditors, which were in Monmouthshire County Council. However, you would need to ask the former chief engineer and clerk of works about that.

[104] As for forms not being submitted, again, all I can say is that there was no requirement for such forms to be submitted, and I am not aware that any were. That would again have been a matter for the board itself, and for the chair of the board to satisfy himself, as it was a 'him', that people were declaring, as it were, conflict of interest et cetera as they should.

[105] **Mike Hedges:** Can I paraphrase your answers, in case I have got any wrong? Local authorities and the Welsh Government give money to this body and then wish them good luck and tell them to get on with it, saying, 'We're not interested in how you spend it or what you do'. That seems to be the answer that I received from you.

[106] **Mr Jones:** Welsh Government does not give any money to these bodies.

[107] **Mike Hedges:** Who does?

[108] **Mr Jones:** Local authorities provide funding for all internal drainage boards. In the case of the Caldicot and Wentlooge levels board, 76% of its funding came from local authorities.

[109] **Mike Hedges:** And who funds the local authorities? [*Laughter.*]

[110] **Mr Jones:** Well, as you know, local authorities are funded by a mixture of revenue support grant and council tax.

[111] **Mike Hedges:** And the mix is approximately what?

[112] **Mr Jones:** I do not know.

[113] **Mike Hedges:** It is 76%.

[114] **Mr Jones:** I do not think that any conclusion can be drawn from that. The funding in this case was a very large sum, or a relatively large sum, with a relatively large proportion from local authorities, a very small proportion from landowners—much smaller than I have seen in any other internal drainage board—and a significant amount of money from private works that it undertook.

[115] **Darren Millar:** Thank you, Mike. Jenny is next.

[116] **Jenny Rathbone:** Just going back to—

[117] **Aled Roberts:** May I just come in there?

[118] **Darren Millar:** Pardon me, Jenny. Aled wants to come in. Be very brief, please.

[119] **Aled Roberts:** You mentioned that the minutes were on the website. I have copies of the minutes. The Welsh Government was aware that there were problems in February 2011.

[120] **Mr Jones:** Yes.

[121] **Aled Roberts:** I am not sure that a publication scheme would actually cover the need to publicise vacancies for what they call elected members, although they are in fact non-elected members, because the councillors are referred to as appointed members. Does the publication scheme deal with the election of the ratepayers and landowners?

[122] **Ms Larner:** [*Inaudible.*]

[123] **Jocelyn Davies:** Sorry?

[124] **Mr Jones:** The point that Jo was making was that that should be covered in the guidance provided by the Association of Drainage Authorities. However, we can let you have a note on that.

[125] **Aled Roberts:** The reason I ask is that in the November 2011 meeting, which was under the new management arrangements, there were elections, supposedly, for 18 of the board members. Fourteen board members were re-elected, with four vacancies, because there had been no nominations. They then went on to fill the vacancies by nominating among themselves. During the same meeting, however, there is reference in the minutes of the meeting to a board member complaining that the minutes of board meetings were being circulated late. The minutes also state that a

[126] ‘Board member expressed his unhappiness at the lateness.’

[127] Meetings were being scheduled at the same time as council meetings within the authorities. All of this happened under the new arrangements. So, is it fair for those local authority members to be criticised for non-attendance when, on one reading of these papers, you might suggest that the meetings had been arranged so that they were not there?

[128] **Jocelyn Davies:** They could not be there.

[129] **Mr Jones:** I understand the point well. Of course, the reality is that the decision regarding when those board meetings were to be held was down to the board itself. The board had a majority of appointed members from local authorities on it. So, if they wanted to change the dates on which the board met so that they did not clash with local authority meetings, they had all the power in their own hands to make those changes. Incidentally, the November meeting that you referred to, Mr Roberts, was the one where there were a few changes. Indeed, that was the meeting when the chairman at the time stood down and a new chairman was appointed.

[130] **Darren Millar:** That was immediately after the publication of the Wales Audit Office report, was it not, or very shortly after?

[131] **Mr Jones:** This was November 2011.

[132] **Darren Millar:** Pardon me; it was 12 months earlier.

[133] **Jenny Rathbone:** Coming back to the point about managing conflicts of interest, we

have already discussed that there was a pretty poor attendance by local authority members, either deliberately engineered or for whatever reason, but, equally, the elected members would also need to be mindful of conflicts of interest. So, what guidance would the Welsh Government provide to any member of a board to be mindful of their duties in relation to conflicts of interest, particularly in terms of things like the former clerk and engineer drawing up proposals to be granted enhanced voluntary redundancy? You would not need to have any knowledge of internal drainage to understand that this was potentially extremely hazardous. So, what advice did you give, and is it different to the type of advice that you would now give to people sitting on such boards?

[134] **Mr Jones:** As far as internal drainage boards are concerned, we did not provide specific advice to them. The Association of Drainage Authorities provides advice and guidance via a code of conduct. As I alluded to earlier, there are accounts and audit regulations for public bodies in Wales, of which the internal drainage board is one, which refers to proper practices. In this case, the proper practices that it refers to are the accounting practices contained in the practitioners' guide to governance and accountability in internal drainage boards, which was set out in 2006. So, it did have guidance. Frankly, if someone sitting on the board of a public body does not understand that there is a potential conflict of interest in being present and putting forward propositions on their own salaries or their own terms and conditions, then that is a spectacular failing of understanding of what public bodies are and the duties that they have to the public, and the money that they are using.

[135] **Darren Millar:** This was after the whistleblowing incident, and the Welsh Government was aware that, potentially, there were problems at the organisation, yet you allowed them to continue to progress with these proposals. What sort of eye were you keeping on the ball at that time?

[136] **Mr Jones:** It is fair to say that not all whistleblowing events turn out to be—

[137] **Darren Millar:** I appreciate that, but a flag had gone up in terms of risk here, had it not? So, why did you not do more in order to keep an eye on what was going on within that organisation, given that somebody had approached you as a whistleblower—and I appreciate that, sometimes, whistleblowing can be sour grapes from a former employee or whatever and can be completely unsubstantiated in terms of any allegations that might be made. Here, we had a serious set of allegations about the governance, and yet, for whatever reason, the Welsh Government does not appear to have done anything to intervene in this process, or even to monitor it more closely.

[138] **Mr Jones:** I think that it is fair to say, Chair, that that is true. It is a fact, as I alluded to, that we did not have the powers to intervene in this instance. Our responsibility was for the legislative framework and the policy of this organisation.

[139] **Darren Millar:** I am not asking whether you intervened; I am asking what you were doing to monitor the situation. Intervention and monitoring are two very different things. You have a public body here about which you knew that there were concerns. What did you do as a result of those concerns, other than refer the matter to the Wales Audit Office?

[140] **Mr Jones:** There was no other specific intervention by the Government.

[141] **Darren Millar:** I am not asking about intervention; I am asking about the monitoring that you were doing.

[142] **Mr Jones:** There was no other specific action, then, taken by the Government in terms of closer monitoring of the organisation. I return to the point that the board had responsibility for undertaking that. The appointed members on that board, who were from

organisations that were funding it, knew that this was happening, and therefore I would have expected them to have taken the action that you describe.

[143] **Jenny Rathbone:** Did no discussion take place with the local authorities that had appointing rights for the internal drainage board? Once you knew that there was a problem and that there was an investigation, did no discussion take place with the local authorities to make sure that appropriate people who were supposed to be attending did attend?

[144] **Mr Jones:** I am not aware of any discussions that took place in that regard.

[145] **Darren Millar:** So, even though you knew about the problems, you did not put any monitoring arrangements in place, nor did you contact the local authorities and the other stakeholders involved in the governance arrangements of this organisation to say, ‘We think you ought to keep an eye on this; we’ve had an allegation made by a whistleblower’.

[146] **Ms Larner:** During the course of the investigation, we were in regular contact with all the stakeholders to inform them of what was happening. We were also kept informed of what was happening, but we had no active role to play because that was led by the Wales Audit Office.

[147] **Darren Millar:** I am sorry, but I find it very difficult to understand, given the important function that this internal drainage board performs, that you did not seek to ensure that there was proper monitoring of the arrangements post the whistleblowing incident. I find it very difficult to comprehend that. You have told us that you had no specific discussions with the local authorities to ask them or other stakeholders to monitor the situation more closely, and that you simply referred the matter to the Wales Audit Office. That is clear in terms of your response.

[148] Aled and Oscar want to come in—please be very brief, because we need to wrap up this particular part of the meeting.

[149] **Aled Roberts:** A oedd Llywodraeth Cymru yn cael cofnodion o’r cyfarfodydd hyn, achos hyd yn oed ym mis Ionawr 2013, mae’r cofnodion yn ymddangos fel pe baent yn dweud fod diffyg ar ran aelodau’r bwrdd i ddeall pam bod yn rhaid iddynt ddatgan diddordeb. Rwyf am ddarllen y cofnod yn uchel.

**Aled Roberts:** Did the Welsh Government receive minutes of these meetings, because even in January 2013, the minutes appear to suggest that there is a lack of understanding by the board’s members as to why they have to declare an interest. I will read out the minutes.

[150] ‘A question was raised as to whether any Board members should have declared an interest when the board considered whether to take legal action over the issue of salary overpayments made to the former Clerk and Engineer, by virtue of their membership of the Board which had originally approved the payments. In response it was noted that any such declaration would be a matter for individual members to decide rather than the Board.’

[151] There was no subsequent declaration of interest.

[152] **Ms Larner:** It is the responsibility of the board to undertake declarations of interest: it is not a Welsh Government responsibility.

[153] **Aled Roberts:** Did you receive these minutes and think, ‘Hang on, this is still going on—we’d better give Newport a ring?’

[154] **Mr Jones:** I am not aware that we received the minutes. As I said, we were working



closely with the organisation at around the time that you described, because that is the point at which the new standing orders were presented to us for agreement by Ministers. However, in terms of the specific question about the minutes, the answer is 'no'.

[155] **Mohammad Asghar:** My question is a follow-up to that question. Being a director general of Sustainable Futures, if a drainage board under your remit is not performing its proper duties, where does the final responsibility lie? Where does the buck stop?

10.00 a.m.

[156] **Mr Jones:** I hope that I have described the relationship between us and drainage boards. In terms of where the buck stops with regard to the future existence, if you like, of this particular drainage board and its legislative framework—in other words, how it is established and how it runs in future—lies with my Minister and with the advice that my colleagues and I will give him with regard to accountability arrangements that will need to be set up for the future operation of this important function.

[157] **Jocelyn Davies:** I have just a small question. You are claiming absolutely no responsibility at all for the running of the drainage board. You have gone to some lengths to explain that. Who funded the special interest report by the Wales Audit Office?

[158] **Mr Jones:** We did.

[159] **Ms Larnar:** We did.

[160] **Jocelyn Davies:** How much was that?

[161] **Ms Larnar:** It was £100,000.

[162] **Jocelyn Davies:** How are you justifying that when it is absolutely nothing to do with you?

[163] **Ms Larnar:** It would have presented an unnecessary burden on the internal drainage board—[*Inaudible.*]

[164] **Jocelyn Davies:** I see. All right.

[165] **Darren Millar:** The final question is from Julie.

[166] **Julie Morgan:** Do you have any plans to do anything more as a result of the report and what you have heard today?

[167] **Mr Jones:** Absolutely. There are two issues here, the first of which is around the future of drainage boards themselves. I hope that I have described what is happening in that respect. There will be a decision before too long in terms of its future and the future of the management of all internal drainage districts in Wales. I think that a question like this is a broader one with regard to the management of organisations. Yes; we will, of course—as we always do—seek to learn lessons from Wales Audit Office reports. I would say that these particular organisations are slightly outwith the normal main stream of bodies and organisations that are sponsored by Government. The way in which they have been established is not typical of other organisations. Clearly, I have already—I hope—said that there are a number of lessons that we will learn, for example, in terms of guidance with regard to people who are attending these boards, and guidance with regard to their need to turn up at boards and to take their responsibilities seriously, which clearly did not happen in this case.

[168] **Darren Millar:** Okay. That brings us to the end of this particular evidence session. You will be sent a copy of the transcript of today's proceedings to correct if there are any factual inaccuracies in it. You have also suggested that you will be able to send us some notes on some of the requests from Members. So, we look forward to receiving those in due course. Thank you very much for your attendance.

[169] **Jenny Rathbone:** Chair, I wonder whether it is possible for the witnesses to provide a confirmation that there was no communication with any of the appointed members representing the local authorities once the concerns had been raised.

[170] **Darren Millar:** I think that they made it clear that there was no such thing in terms of monitoring.

[171] **Jenny Rathbone:** Okay.

[172] **Darren Millar:** Continuing with this particular inquiry, we will now take evidence from Natural Resources Wales. I am very pleased to welcome Dr Emyr Roberts, director of Natural Resources Wales, this morning. Welcome to you. I also welcome Tim England, who—I understand—is the area flood and coastal risk manager for the south-east area.

[173] **Mr England:** I am, Chair. Good morning.

[174] **Darren Millar:** Excellent. I am glad that I got that right; it was a last-minute addition. I am very grateful for your attendance today. We know that times are busy with the new organisation, but we have some important questions that we want to ask in relation to the Wales Audit Office report that was published in the public interest last year in respect of the drainage board that we are looking at, namely Caldicot and Wentlooge Levels Internal Drainage Board.

[175] Obviously, there were lots of issues raised in the Wales Audit Office report regarding the inadequate and ineffective governance arrangements at the internal drainage board. We have just heard from the Welsh Government that, essentially, it was relying on the former Environment Agency to tell it if there was a problem with this organisation, that it was not the Government's responsibility to look at strategic plans or anything like that, and that that was the Environment Agency's responsibility. You have assumed those responsibilities as a new organisation. What role might you have in the future in respect of these organisations, and what role did your predecessor organisations have in holding this particular organisation to account and in making sure that it was operating properly?

[176] **Dr Roberts:** I will ask Tim to elaborate on this issue. The relationship between Natural Resources Wales—and, previously, the Environment Agency—and this internal drainage board was principally around operational matters, not governance matters. That is the relationship that is ongoing in the statute. We have no formal role to play in the governance of this organisation, but we deal with it on operational issues. I am not sure if Tim wants to elaborate on that. I see that he does not.

[177] **Darren Millar:** Strategic plans were not in place within this organisation. A strategic plan is important, is it not, from a flood-risk management point of view? Why on earth would that not be important to you as an organisation? You cannot wash your hands and say that that was nothing to do with you, can you?

[178] **Dr Roberts:** From an operational point of view, we were satisfied with the performance of the organisation. The issues have been around governance. That is the nature of our relationship with it.

[179] **Darren Millar:** Forgive me, but the Environment Agency was charged with managing flood risk across the whole of Wales. You produced strategy documents. Surely, they had to be informed by the strategic plans of internal drainage boards like this one, which was protecting some very important swathes of land and property in south-east Wales. So, why were you not demanding strategic plans from this organisation? What were you doing in terms of making sure that operational plans that were clearly linked to strategic and corporate objectives were in place? The auditor general found none of these. When he looked in the cupboards for this information, the cupboards were bare.

[180] **Mr England:** The way in which the Environment Agency operated was that we had a strategic plan and a corporate plan. Beneath that, we had a strategic flood-risk management plan. That plan aligned very much with the Welsh Government's national flood and coastal risk-management strategy. Our role was to ensure that the Environment Agency, as was, operated in accordance with that strategy to deliver the outcomes from the Welsh Government strategy. In the national strategy, I believe that there was a requirement that all flood operating authorities, which would include the drainage board and local authorities, had plans in place to explain how they were going to manage flood risk. In terms of policing those documents, the Environment Agency did not have a role. We had no legislation that permitted us to regulate in that regard. So, that is something that we were not monitoring.

[181] **Darren Millar:** So, you had a strategic plan for the whole of Wales that fitted in with the policy objectives of the Welsh Government. I completely understand that, and it is perfectly appropriate. However, in relation to those organisations that are responsible for the delivery of significant parts of flood protection in Wales, you feel that you had no responsibility to ensure that their work was being policed.

[182] **Mr England:** Our strategic plan covered the responsibilities that Environment Agency Wales had. So, our strategic plan covered how we were managing flood risk from main rivers and from the sea and tidal rivers. So, it was a strategic plan for the watercourses for which we were responsible.

[183] **Darren Millar:** So, you do not accept the assertion that the Welsh Government has made, that it was up to you to ensure that these people were delivering on their strategic objectives and operational plans.

[184] **Mr England:** No, I do not accept that.

[185] **Darren Millar:** You do not accept that at all. So, do you think that the Welsh Government has a proper understanding of your role?

[186] **Mr England:** I think that it has a very good understanding of our role, with regard to—

[187] **Darren Millar:** Does it really, given what we have heard this morning?

[188] **Jocelyn Davies:** Mr England, we just heard from the Welsh Government that it would expect you to flag up to it any concerns about this organisation. However, you are saying, 'That was not our job.'

[189] **Mr England:** That was not the question that I was answering. I was answering a question around strategic plans.

[190] **Jocelyn Davies:** Did you know that the Welsh Government was relying on you to flag up problems with any of these organisations? Did you know that the Government did not see that as being its role, and that it saw it as yours?

[191] **Mr England:** Through our oversight role, the Welsh Government would look to us to flag up issues on operational matters. So, if the drainage board—

[192] **Jocelyn Davies:** There was no question about operational matters with this organisation. That has been made clear.

[193] **Mr England:** It relates to operational matters. So, if it was not undertaking work to manage flood risk appropriately, we would flag that up. In terms of operational matters, we did not have any concerns with regard to the work that it was undertaking.

[194] **Darren Millar:** However, surely its work programme would have been of interest to you.

[195] **Mr England:** Yes.

[196] **Darren Millar:** That was not in place, according to the auditor general. Its operational plan and its private works policies would have been important to you to ensure that all those things were being delivered and that they complemented the strategic plans that you had as an organisation. Surely it is your responsibility to make sure that they fit hand in glove with what you are doing.

[197] **Mr England:** No, I do not think that it was our responsibility. The governance for the drainage board—

[198] **Darren Millar:** Set aside governance. Those operational issues—all of which, yes, flow from the governance arrangements, if you like—must have been important to you in terms of ensuring that its operational plans complemented yours and that your flood-risk management plans would fit hand in glove with its plans. Its plans must have been important to you, but you are telling us that they were of no interest to you.

[199] **Mr England:** I was not saying that they were of no interest.

[200] **Darren Millar:** Okay. You are saying that you had no responsibility to make sure that they would work effectively with your strategic plans.

[201] **Mr England:** We have responsibility for making sure that they are undertaking maintenance work. If that was not happening and, as a consequence, was creating flood risk, we would have a responsibility for reporting that. However, we would have no responsibility for ensuring that those maintenance programmes were in place.

[202] **Aled Roberts:** Given the operational relationship, do you also have responsibility, if certain things do not appear right or if there are warning signs, for passing that information on, given that you do not have any governance responsibility? There were clearly big issues: a chief engineer disappeared and there was a pollution incident in September 2010 on the River Usk where reports were prepared and there were issues regarding huge disagreement between the board and the operational managers. Did you pass on any concerns to anyone regarding this dysfunctional organisation?

[203] **Mr England:** Until March 2011, we were not aware of any of the concerns that were being raised over governance. We are not members of the board and we do not routinely attend the board meetings, so we were not privy to a lot of the accusations that are being made.

[204] **Aled Roberts:** Surely you had discussions with the chief engineer regarding some of

these things that were going on.

[205] **Mr England:** We had regular discussions with the engineer—

[206] **Aled Roberts:** But you did not pick up any warning signs.

[207] **Mr England:** We did not pick up anything untoward from the discussions that we had with the engineer of the board.

[208] **Darren Millar:** In those discussions, which you were having on a regular basis, you did not ask for a copy of the work programme at any time, because none existed.

[209] **Mr England:** No, we did not ask.

[210] **Darren Millar:** Do you think that you ought to have had statutory duties to police what the internal drainage board was doing?

[211] **Mr England:** It would certainly make things easier if an authority had statutory duties to do that, whether it is NRW or another body. I am sure that it will come out of the review of the drainage board and the proposals going forward.

[212] **Mike Hedges:** You report to the civil servants and you report up to the Welsh Minister. I can see your line of command. I am confused—I hope that you can un-confuse me—with this land drainage board, because you do not seem to have responsibility for it. Certainly, Welsh Government civil servants denied any knowledge of responsibility for it. Who do you think was responsible for it, if anybody? Was it just an organisation that had public money ploughed into it and was wished good luck and told to get on with it?

[213] **Dr Roberts:** Constitutionally, it is the responsibility of the board of the internal drainage board, which is funded by precept from the local authorities and the landowners.

[214] **Darren Millar:** Ultimately, the Welsh Ministers are responsible for internal drainage boards in Wales. That is what the legislation says, does it not?

[215] **Mr England:** Yes.

[216] **Jocelyn Davies:** Do you only do things that you have a statutory duty to do? You are saying that you have no statutory duty and that it would be easier if you had a statutory duty as you would have asked for that plan, which did not exist anyway. Do you think that, if you asked somebody for their plan, but they did not have a statutory duty to give it to you, they would give it to you anyway?

[217] **Mr England:** Quite probably they would have, yes.

[218] **Jocelyn Davies:** Of course they would. Saying that there was no statutory duty is a bit of a red herring, I think. So, you did not ask, because you did not have a statutory duty, but it did not refuse it. And anyway, it did not exist.

[219] **Mr England:** In terms of a statutory duty, we are not responsible; we do not have legislation that allows us to police the drainage board. There is nothing there that—

10.15 a.m.

[220] **Jocelyn Davies:** Do you do anything that you do not have a statutory duty to do? I am sure that you could give a long list of things that you do that you are not required to do

under the law, and asking for a copy of that plan could possibly have been on that list, but it was not.

[221] **Mr England:** It could have been, yes.

[222] **Jocelyn Davies:** It was not refused to you, because there was no statutory requirement to provide it.

[223] **Mr England:** That is quite right.

[224] **Jocelyn Davies:** That is quite right, thank you.

[225] **Mr England:** However, that was not what I said.

[226] **Jocelyn Davies:** You said that you never asked for it.

[227] **Dr Roberts:** I think, Chair, going back to the original point, it would be helpful to get clarification on this point about the expectation that we—and previously the Environment Agency—had responsibility for this. As the accounting officer for Natural Resources Wales, it is very important for me to know where that piece of paper lies or what responsibility is expected of us, because I would like that clarification going forward.

[228] **Darren Millar:** I think that what you are hearing from Members is a bit of surprise that, given your responsibilities as an organisation, or your predecessor organisation's responsibilities, to support flood-risk management in Wales, and that you had a working relationship with this organisation, one of the obvious things that you did not ask for was its forward work programme. It is pretty extraordinary.

[229] **Mike Hedges:** Your work must border its work in places. Your responsibility must stop at point X, and then, a yard or an inch further on, its responsibility takes over. Surely, you would have wanted to know what its plans were so that you could fit your plans into them. However, that does not appear to have been the case.

[230] **Mr England:** At a local level, if we were working in one area, we would notify the drainage board that we were working there. Likewise, it would notify us, so we would know what work was going on in each area at a given time.

[231] **Mike Hedges:** Sorry, I am not explaining myself very well. You would plan your work for a year or three years in advance, generally, would you not, unless anything crops up urgently? For land drainage, you would have a year plan and a three-year plan. I would have thought that you would want to know what the people next to you were planning for the next year or three years, because then you could tie it in. If it was going to do some work at a certain point, you might want to tie some work that you were planning in so that it fitted together. So, I would have thought that you would have wanted to know what it was planning.

[232] **Mr England:** We shared information on capital works. So, where we were building new sluices and new control structures, we worked together on that. In terms of routine maintenance, we did not share programmes. The framework that the agency used to do the maintenance work is a different framework from the one the drainage board operates on, and the work was not joined up, because separate bodies were doing it.

[233] **Jenny Rathbone:** You said earlier that you felt that this was a problem of governance, not of operations, but, as you were not down there in the mud in Caldicot and Wentlooge, how did you know that the operational plans were not just a work of fiction? The whole point of a local board is that it is monitoring the local plans, based on knowledge of the

detail. How would you know that what it was telling you was not simply what you wanted to hear?

[234] **Mr England:** We operate the main rivers across the Gwent levels, so our rivers crossed theirs at many places, so, we were aware of what was going on in terms of maintenance work on the Gwent levels, because—

[235] **Jenny Rathbone:** Yes, but how do you know that it was not just simply telling you that it was doing maintenance work? How were you able to test whether what it was telling you was accurate? That would be the role of a local board, and therefore I cannot understand why you think, ‘Oh well, the governance arrangements—’.

[236] **Mr England:** We did not test that. If it said that it was going to do work, we took it at its word that it was doing work. Again, it was not a responsibility of the Environment Agency.

[237] **Jenny Rathbone:** So, it is potentially possible that the operational side of the board was telling you one thing and then telling a different set of things to the local board.

[238] **Mr England:** It is possible, but unlikely.

[239] **Jenny Rathbone:** Okay. As far as you were concerned, then, the fact that the standing orders and regulations of the board had not been updated since 1943 did not in any way affect the competence of the internal drainage board to do this very important work.

[240] **Mr England:** Until the audit report came out, we were not aware of the position on the standing orders of the drainage board.

[241] **Jenny Rathbone:** Okay. You said you collaborated on capital projects.

[242] **Mr England:** We do.

[243] **Jenny Rathbone:** Obviously, that involved deciding who was going to pay for what. How was that arrived at, if the governance arrangements were not—

[244] **Mr England:** The funding mechanisms are relatively clear. If it was work on a main river, the money would come from the Environment Agency; if it was work on the ordinary watercourses within the internal drainage district, the money would come from the board to pay for that; if it was collaborative work affecting both watercourses, it was split proportionally.

[245] **Jenny Rathbone:** How did you know that the money that was to be spent by the drainage board had been approved by the drainage board?

[246] **Mr England:** We did not.

[247] **Jocelyn Davies:** May I ask a question? We heard from the Welsh Government earlier that the whistleblowing took place in February 2011; that is when it was raised with the Wales Audit Office. You knew nothing about these problems until October 2012, did you? You just said—

[248] **Mr England:** We started getting copied into some e-mails from the gentleman who was raising his concerns in about March 2011. We were copied into e-mails that were going to the Wales Audit Office and the Welsh Government.

[249] **Jocelyn Davies:** However, you just said that you were not aware of the problems until the publication of the report.

[250] **Mr England:** I was not aware of the standing orders problem.

[251] **Jocelyn Davies:** Ah, not of the standing orders problem. You were aware of everything else, though.

[252] **Mr England:** We were aware that some accusations were being made about the board, probably from March 2011, when we were copied into e-mails.

[253] **Jocelyn Davies:** March 2011. Okay.

[254] **Aled Roberts:** Was there one officer within the Environment Agency who was the contact as far as the drainage board was concerned?

[255] **Mr England:** No. There would have been officers involved at an operational level: we call them field teams. They are the guys who go out and do the maintenance work. They would have been speaking to their equivalents within the drainage board. Finance officers would have been speaking to each other about funding matters related to doing work. I would have been speaking to the engineer at the drainage board at a higher level.

[256] **Aled Roberts:** So, who would have been present in meetings in July and August 2010 regarding the action that was being brought by the Gwent levels flood defence alliance?

[257] **Mr England:** Nobody from the agency.

[258] **Aled Roberts:** Was the agency aware of the action at that stage?

[259] **Mr England:** We were aware that a claim was being made against the agency by Mr Len Attewell.

[260] **Aled Roberts:** Was it not the agency's case that it was saying that it was not liable because it was the internal drainage board that was liable?

[261] **Mr England:** Sorry, I do not understand the question.

[262] **Aled Roberts:** There was an action proposed against the Environment Agency regarding the sea wall.

[263] **Mr England:** There was, yes.

[264] **Aled Roberts:** The Environment Agency's defence was that the Environment Agency was not responsible for the sea wall: it was the internal drainage board's responsibility.

[265] **Mr England:** That is not quite right. Under the Water Resources Act 1991, the Environment Agency has powers to operate, maintain and improve sea defences. Going back to some very old legislation, from 1885, I think, there is a provision in place that puts a duty on the former drainage commissioners, now the drainage board, for the upkeep of those sea defences.

[266] **Aled Roberts:** There was potential, however, for the internal drainage board to be the body that was liable. There was a possibility of action. Was the Environment Agency aware at that stage that members of the Gwent levels flood defence alliance were also members of the



internal drainage board?

[267] **Mr England:** No.

[268] **Aled Roberts:** You were not aware.

[269] **Mr England:** No. We met the Gwent flood alliance on a number of occasions, and met the alliance jointly with the engineer of the board, but he was there in his capacity as engineer and the alliance was there in its own capacity.

[270] **Aled Roberts:** Were Welsh Government officials in attendance at any of those meetings in July and August 2010?

[271] **Mr England:** Not that I am aware of. Sorry, the meetings that I have just referred to were not the ones that happened in July and August. The meetings that took place in July and August were, as far as I am aware, board meetings of the drainage board with no other external presence.

[272] **Aled Roberts:** So, you are not aware of any meetings being held where Welsh Government officials were present.

[273] **Mr England:** No, I am not.

[274] **Darren Millar:** Julie, you wanted to come in.

[275] **Julie Morgan:** Yes. What we have heard, in the first evidence session and this one, is that everything seems to be somebody else's responsibility. There does not seem to be a clear path to draw these things together. How would you comment on that?

[276] **Mr England:** As I think Gareth—the chap who was in earlier—said, the drainage boards are unique organisations in terms of public bodies. As a consequence, it is not clear to whom they are accountable and responsible.

[277] **Mike Hedges:** I am probably jumping ahead to my question for later, but it fits in with what we are discussing now. Would it not be easier if you were Natural Resources Wales and you covered land drainage as well, and that you were not Natural Resources Wales excluding land drainage for these bits? Would it not make life easier if we knew that you were the ones responsible and there was no confusion, because we know how you fit into the hierarchy and who to get at if things are not going right? With this land drainage system, from what you and the previous witnesses have told us this morning, actually getting at who has responsibility for this hanging organisation seems incredibly difficult. So, would it not make life easier if you just took it over?

[278] **Dr Roberts:** Chair, as Natural Resources Wales, we have not yet discussed the situation around internal drainage authorities. Obviously, we have only been in existence since 1 April. However, there is a paper going to next week's board on internal drainage districts and it might help the committee—

[279] **Jocelyn Davies:** Your board?

[280] **Dr Roberts:** Natural Resources Wales's board, yes. There is a paper going to the board next week. It might be helpful if I read out the recommendations; there are two of them. The first is that:

[281] 'Natural Resources Wales encourages a fundamental reform of the internal drainage

districts' legal framework to achieve a more efficient and effective sustainability focused agenda'.

[282] The second is that:

[283] 'The future administration of internal drainage districts in Wales be undertaken by the organisation, or organisations, best suited to deliver within that reformed framework'.

[284] **Darren Millar:** I think that we would all recognise the importance of those recommendations.

[285] **Mike Hedges:** I would not say now that it is the worst possible way—

[286] **Julie Morgan:** He said the 'best suited'.

[287] **Mike Hedges:** Do you think that it would be easier and simpler for you to run it—I am asking for your personal opinion—rather than for you to be responsible for everything apart from the little land drainage bits? I am speaking as someone who receives lots of complaints about different things. My life is a lot easier now that you exist, because I know exactly to whom I should write, rather than having to try to work out who is responsible for which areas. I am sure that, for those Members who represent Gwent, it would be much easier for them, rather than having to try to work out which bit falls under you, and which bit falls under the drainage board, if they had to write to just you.

[288] **Dr Roberts:** That is a decision for the Welsh Government. There are a range of options here. Our position is that we believe that fundamental reform is necessary. We will support whatever decision the Welsh Government takes on this.

[289] **Darren Millar:** One of the challenges is the financial arrangements, is it not, in terms of how the duties are funded and where that money would come from if the duties pass to another organisation? You have the ratepayers, as it were, and the local authorities chipping in and the costs that are recovered through the private works in addition to that. So, do you have any thoughts on how those issues might be overcome, as a matter of interest?

[290] **Dr Roberts:** Our view is that it is just too complicated at the moment and it needs to be resolved. It seems to me that there are finances flowing from different sources into the internal drainage boards and that is one of the issues that needs to be reformed going forward: who actually funds these bodies?

[291] **Jocelyn Davies:** I was going to ask you about the model standing orders, but that is nothing to do with you, I suppose. You will probably remember that you said in your evidence to the Environment and Sustainability Committee that the transfer of functions should be discussed at a later date. You have not said what your preferred option is, other than that somebody ought to do it and do it well. The Welsh Government witnesses really were very uncomfortable when we asked them what their preferred option was earlier. Can you understand why those who have responded to the consultation overwhelmingly reject the option of these functions being transferred to your organisation?

[292] **Dr Roberts:** I think I understand that. In terms of the consultation, a large proportion of the responses came from either the internal drainage boards or those associated with them, but it is interesting to note that some environmental groups also rejected transferring the functions to Natural Resources Wales. At the heart of their concerns, I think, is local accountability and, if the function were transferred to us, we would want to see much more local accountability than the current arrangements actually give.

10.30 a.m.

[293] **Jocelyn Davies:** You probably know that the local authorities reject the proposal that the functions should be transferred to you. Can you tell us what the Environment Agency's response was to the consultation?

[294] **Dr Roberts:** In brief—I have that paper—its preferred option was that local authorities administer the IDBs.

[295] **Jocelyn Davies:** So, the Environment Agency did not see the transfer to you as the preferred option, but to the local authorities, who currently fund it. The Minister for environment said a little while ago that some of the responses would have been given before the problems that are in this public-interest report became known. You have just said that it is the people connected with the board and the local authorities, but that statement cannot possibly be true, can it?

[296] **Dr Roberts:** That is a matter for the Welsh Government, Chair.

[297] **Aled Roberts:** O ran y cyllido, mae adroddiad gan DEFRA yn 2006 yn dweud y dylai pob ardal gael ei hailbrisio. Nid oedd ailbrisio yn ardal Gwent. Rydych yn gyfrifol am ardaloedd y gogledd, neu roedd Asiantaeth yr Amgylchedd yn gyfrifol amdanynt; a yw'r ailbrisio wedi ei wneud yn y gogledd?

**Aled Roberts:** In terms of funding, a report by DEFRA in 2006 says that every area should be revalued. There was no revaluation in the Gwent area. You are responsible for areas in the north, or the Environment Agency was; has that revaluation been done in the north?

[298] **Dr Roberts:** Nid wyf yn siŵr; nid wyf yn gwybod a yw Tim yn gwybod.

**Dr Roberts:** I am not sure; I do not know whether Tim knows.

[299] **Mr England:** I am afraid that I do not know the answer to that. It is outside of my operation area, but we can find out for you.

[300] **Dr Roberts:** We can send you a note.

[301] **Mohammad Asghar:** I was listening with interest to you, Mr Roberts, and, very conveniently, you mentioned governance and operation in an earlier statement. They are two sides of the same coin; if one is wrong, the other is wrong. In my book, it is a nonsensical argument. We are talking here about Caldicot and Wentlooge IDB, and my question relates to the membership of the internal boards and these people who did not attend and did not fulfil their responsibilities. Members did not fulfil their responsibilities by not attending. Why do you think councils are putting forward just one councillor or one council representative, for example, who does not then attend? A colleague mentioned earlier in previous scrutiny that sometimes the meetings clashed with council meetings, so people did not attend. Non-attendance at board meetings means that people do not fulfil their responsibilities properly. Do you think that the appointment of these members was the most appropriate mechanism for informing the local authority about the board's decisions? There are quite a few anomalies there, and it seems that neither of you are taking any responsibility whatsoever about the fact that there was something wrong in Caldicot and Wentlooge drainage board.

[302] **Dr Roberts:** The Wales Audit Office report speaks for itself on that, but the issues you raise are beyond the remit of Natural Resources Wales, in terms of who turns up for meetings and so on. That is not our job.

[303] **Darren Millar:** That is a fair point, but Oscar is simply asking you to give your

views on these things going forward.

[304] **Dr Roberts:** I caught the back end of what Gareth Jones said earlier and I concur entirely with him. As someone who has been involved in public life for a long time, these are fairly shocking actions. So, we would be concerned about that, but that goes back to our point that the governance, the administration, the finance, and the founding legislations of these organisations need to be fundamentally looked at. They are a bit of an anachronism in this day and age.

[305] **Mohammad Asghar:** Tim just mentioned that it is a unique body, but that does not mean that they do not have any responsibility. There was wrongdoing there, but there were no checks and balance. I am very keen to know who is responsible and where the buck stops.

[306] **Jocelyn Davies:** You cannot comment specifically about this board, but you said earlier that you have a board overseeing what you do. How would you function if half your board did not turn up and there were no standing orders, proper codes of conduct and so on? Would you still deliver good outcomes?

[307] **Dr Roberts:** I hope that that is a hypothetical question. In terms of governance, as the accounting officer, I would be shocked if those kinds of arrangements were not in place. They are in place for Natural Resources Wales, I can assure you of that. Whether you are delivering, I do not know. That is a difficult question.

[308] **Jocelyn Davies:** It is possible—

[309] **Dr Roberts:** It is perfectly possible.

[310] **Jocelyn Davies:**—that you might still be able to deliver, even though you have a non-functioning board.

[311] **Dr Roberts:** Exactly.

[312] **Mr England:** I would like to make an observation with regard to representation on the board in that I know of no other organisation that manages a budget of about £1.5 million and that has a board of 37 people. That is part of the problem with the board. If a board has 17 appointed members, and knowing how local authorities do their business, I think that you are quite right to say that there would have been a conflict of interest for many of the meetings, because there are lots of local authority meetings going on for planning and the like. So, that would have been part of the problem.

[313] **Darren Millar:** Given the problems at this internal drainage board, what have you done in terms of the other drainage boards in Wales or mainly in Wales, to ensure that they are delivering their objectives and working hand in glove with you in terms of their operational work, their programme of capital investment and maintenance et cetera?

[314] **Mr England:** In terms of the Caldicot and Wentlooge drainage board, we now have regular liaison meetings with the new engineer.

[315] **Darren Millar:** Do you have a copy of its operational plan now?

[316] **Mr England:** We have a draft copy of its plan; it is not complete, but we have a lot more information than we have ever had before. In terms of the other drainage board that we deal with, which is the Powysland board, we share maintenance information with it, and I know that one of the people who will be presenting evidence to you later, namely June Venables from ADA, is doing a lot of work as a consequence of that audit, with not only the

drainage boards in Wales, but across England as well, to pick up on issues like standing orders and issues around operational plans and strategic statements.

[317] **Dr Roberts:** Clearly, there are lessons here, and we will take fully into account any recommendations that you make or that the Wales Audit Office makes for our responsibilities in this area.

[318] **Aled Roberts:** Nid wyf yn meddwl ei bod hi'n deg gofyn cwestiwn i chi am archwilio, ond a oedd cynlluniau yn cael eu trefnu rhyngoch chi a'r bwrdd? Mae nifer o achosion yn yr adroddiad lle nad oedd tendro a lle gwnaed cytundeb, a lle roedd cost y gwaith ar y diwedd yn llawer uwch na'r hyn a nodwyd yn y cytundeb. A oedd gennyh chi unrhyw fath o gyswllt gyda'r bwrdd ar y fath brosiectau, lle'r oedd cwestiynau yn cael eu gofyn?

**Aled Roberts:** I do not believe that it would be fair to question you on audit, but were there plans established between you and the board? There are many cases outlined in the report where there was no tendering and where an agreement was put in place, and where the ultimate cost of the work was far higher than set out in the agreement. Did you have any kind of contact with the board on such projects, about which questions were being asked?

[319] **Mr England:** No, the drainage board and the Environment Agency, and now Natural Resources Wales, have very different individual financial schemes of delegation. We have our own scrutiny and approval process, and the board would have had its own process, to which we would not have been privy.

[320] **Aled Roberts:** This is a sensitive area. There is also reference to the headquarters, pumping stations et cetera not having the necessary planning approvals. You would be a statutory consultee as far as those planning processes were concerned. Were you aware of any of those instances?

[321] **Mr England:** We became aware of those accusations only when we started getting copied into some of the correspondence in early 2011.

[322] **Jenny Randerson:** You have already informed us, with regard to the IDB portion of joint capital projects, that you were not aware of whether or not those moneys had been approved by the IDB. Were the Minister to consider that the IDB should continue as an independent board or under the control of a local authority in some sort of joint board, what would your role be in ensuring that conflicts of interest were being managed, and to ensure proper governance?

[323] **Mr England:** That is probably an issue for the Minister to answer.

[324] **Jenny Rathbone:** Clearly, it is the Minister's decision as to the format—

[325] **Mr England:** As an observation, the Environment Agency in England allocates the capital budget to drainage boards and local authorities as operating authorities, and similar arrangements in Wales could be looked at.

[326] **Jenny Rathbone:** What sort of arrangements would you want to see to ensure that the governance arrangements were appropriate? They clearly were not in the past.

[327] **Mr England:** With regard to the arrangements that I have just mentioned as being in place, they relate to scrutiny of the business case for allocation of capital funds. Once it has been approved, the capital funds are allocated. Similar arrangements could be put in place in Wales, and would work, I am sure.

[328] **Dr Roberts:** This is all for discussion going forward, but one could imagine some kind of joint planning between Natural Resources Wales and the internal drainage boards. There would be options around governance, such as whether somebody from NRW should be co-opted to the board under new arrangements; we are open to any suggestions that make things better.

[329] **Jenny Rathbone:** Would you agree that Natural Resources Wales would have an interest in ensuring that conflicts of interest were being managed—in the awarding of contracts, for example?

[330] **Dr Roberts:** That probably depends on the structure that eventually comes out of this process.

[331] **Jenny Rathbone:** What if it was a structure that did not involve you being in charge? You would still presumably have an interest in ensuring that those things were being managed properly.

[332] **Dr Roberts:** It would depend where the prime responsibility lay. We might possibly have an interest in that, yes.

[333] **Julie Morgan:** Basically, it seems that a new structure is needed, and that is what we are waiting for and thinking about. In the meantime, how is the performance of IDBs being monitored?

[334] **Dr Roberts:** We have seen a considerable change in respect of the internal drainage boards and a strengthening of the relationship between us and the IDBs. Do you want to elaborate on that, Tim?

[335] **Mr England:** In terms of the actions identified in the audit report, we are working with the drainage boards to help facilitate those actions where required. We are now sharing information on maintenance. I know that they have been working on a strategy for the IDD, and we are involved in its development. Again, we have not taken on a policing role as a consequence of this as such. We are working together, jointly, to develop the actions.

[336] **Julie Morgan:** You said that the routine maintenance information was not previously being shared, and it is now being shared.

[337] **Mr England:** We are sharing that information now, yes. There are regular liaison meetings between the operational staff, which happen roughly on a monthly basis.

[338] **Julie Morgan:** Do you think that it is necessary to share the routine maintenance now?

[339] **Mr England:** It is certainly helping matters, yes.

[340] **Jocelyn Davies:** It was not denied to you before; you said that you never asked. You do not have a statutory duty now, but you are able to do it.

[341] **Mr England:** Again, it was highlighted in the audit report that there would be a benefit to doing so, therefore, yes, we now do it.

[342] **Jocelyn Davies:** So, the deficiency that was highlighted was not just on the part of the internal drainage board.

[343] **Mr England:** That deficiency was not affecting our operational role.

[344] **Darren Millar:** As a consequence of you seeing the benefits of this now with this particular drainage board, are you doing that with the other drainage boards in Wales?

[345] **Mr England:** There is only one other drainage board that we deal with for now—the Powysland IDB and, yes, we are sharing maintenance information. However, it is on a much smaller scale than for Caldicot and Wentlooge.

[346] **Darren Millar:** So, those sorts of liaisons and discussions are taking place.

[347] **Mr England:** Yes, we are having discussions.

[348] **Darren Millar:** Were they taking place before this report was published?

[349] **Mr England:** We were having discussions, but we were not necessarily sharing the maintenance programmes.

[350] **Darren Millar:** So, there has been learning that you have applied to the other drainage board that operates within, or partly within, Wales.

[351] **Mr England:** Yes.

[352] **Darren Millar:** I will just ask one other question in closing this particular session. The Welsh Government became aware of the problems with this internal drainage board in February 2011. It referred the matter to the Wales Audit Office in April 2011. Did the Government contact you at all at that time to share with you the concerns that it had raised with the WAO about the situation at the drainage board and suggest that you might want to monitor the arrangements there, or liaise more closely with them in helping to resolve some of these concerns?

10.45 a.m.

[353] **Mr England:** There were some discussions going on between the Environment Agency and Welsh Government regarding the accusations that were being made. However, the line that was taken was that it had been reported to the Wales Audit Office, which instigated an investigation. So, it was left in the hands of the audit office.

[354] **Darren Millar:** So, you were not encouraged to do anything? It was a matter of: ‘We are aware of this; pass it to the audit office and let us forget about it for now’.

[355] **Mr England:** It was not forgotten about; it was being dealt with by the audit office, in whose hands we were to leave it.

[356] **Jocelyn Davies:** So, there were no actions for you to take after that.

[357] **Mr England:** No.

[358] **Darren Millar:** Okay. As there are no further questions from Members, that brings us to the end of this evidence session. You will get a note with a copy of the transcript of proceedings. If you could, please send us the notes that you promised to send during the course of the meeting—you will get a reminder about those from the clerk.

[359] We will now take a short break and reconvene at 10.55 a.m.

*Gohiriwyd y cyfarfod rhwng 10.46 a.m. ac 11.01 a.m.*

*The meeting adjourned between 10.46 a.m. and 11.01 a.m.*

[360] **Darren Millar:** The meeting is now reconvened. We are continuing with our inquiry into the Caldicot and Wentlooge Levels Internal Drainage Board. I am delighted to be able to welcome to the table Richard Penn, the general manager of the drainage board, and Dr Jean Venables, the chief executive of the Association of Drainage Authorities. Just to help Members, Dr Venables, it would be helpful if you could outline what your association does and the relationship between your association and drainage boards, particularly in Wales, and the Caldicot and Wentlooge board.

[361] **Dr Venables:** Thank you, Chairman. We are a membership body and we have voluntary membership of all of those organisations involved in water-level management. So, principally, it is the internal drainage boards—121 of them—the Environment Agency, flood defence committees and some local authorities. We also have suppliers, contractors and consultants in associate membership. So, it is a membership body that works to promote good practice within water-level management.

[362] **Darren Millar:** Do you have a policing role in terms of your members? If you make good practice et cetera available, do you have a kitemark, as it were, to ensure that good practice is being implemented within your membership?

[363] **Dr Venables:** No, not as far as that, but we try very hard to go through advice, influencing, and sometimes mentoring where we feel that somebody needs the experience of somebody who is more experienced. So, there is a lot of encouragement in that way. That is, there is peer help.

[364] **Darren Millar:** In terms of your relationship with the Caldicot and Wentlooge drainage board, for how many years has the drainage board been a member of the association? Is it a long-standing member?

[365] **Dr Venables:** The association was formed in 1937, so we are a long-standing organisation. The board has been a member for as long as I know. I have been the chief executive for the last five or six years and it has always been a member.

[366] **Darren Millar:** Before I open the discussion up to other members of the committee, I would like to ask you a question, Mr Penn. Welcome to the meeting today. The Wales Audit Office report made for very alarming reading and made some serious conclusions about the quality of the governance arrangements at your board; what action has been taken since the publication of the report to improve the situation, and what support has the association that Dr Venables represents given you?

[367] **Mr Penn:** I should say that my involvement is fairly recent. As Members might know, I have no background in this work at all. I was simply brought in on an interim basis in September 2011, following the resignation of the previous chief executive. I am not an engineer, I have no knowledge of drainage boards, and I knew nothing about this one. I work only three days each week, so I work part-time. My background is as a local authority chief executive, which I did for many years, and I have also spent 10 years as the commissioner for standards in this institution. So, that is my background in the public sector. I was brought in on a short-term basis to try to deal with a very difficult situation when the previous chief executive resigned. I knew nothing about the whistleblowing allegations nor about the problems at the drainage board until I was told after I had started my work in September 2011.

[368] When I discovered it, my first action was to talk with Welsh Government, with Joanne Lerner's predecessor, Nic Edwards, who Members may know, and also with the



Wales Audit Office, of course. I met them and took a full briefing on what the whistleblowing allegations and the problems were. Pretty quickly after that, I had a formal letter from the Wales Audit Office setting out what the allegations were. I immediately set in place a programme of action to deal with what I could in the short term. I suppose that there was some cherry-picking going on, because some things are easier to change than others. I then waited, with the improvement programme continuing, until we saw the first draft in summer 2012 of what was called a ‘consideration document’, which set out its findings.

[369] From that point on, as a board, we have put in place a programme that is monitored on a bimonthly basis. I think that Members will have had the most recent copy of the monitoring report of the improvement programme to address the issues in the Wales Audit Office’s report. That programme will be completed in October of this year, at which time, in line with the Wales Audit Office’s recommendation that there should be an independent review of the effectiveness of that improvement programme, we will procure, through a tendering process, an independent organisation to conduct that review in October of this year.

[370] I am sorry to go on at length, Chairman, but from listening upstairs in the public gallery to evidence from Welsh Government and Natural Resources Wales, I have to say that what was being discussed—understandably, because it is a very shocking report—is largely historical. The board’s management, the way it operates and its governance arrangements are now totally different to the situation described in the Wales Audit Office report. That is acknowledged by Welsh Government, Natural Resources Wales and the Wales Audit Office. It is very different. There is more to do—of course, there is always more to do—particularly around the size and composition of the board, and its relationship with other organisations such as Welsh Government and Natural Resources Wales. However, it is a very different organisation to the one described in the Wales Audit Office report.

[371] **Darren Millar:** I am very grateful for those remarks. What has surprised us this morning is that the Welsh Government takes no responsibility for monitoring your organisation, nor does Natural Resources Wales, and nor did its predecessor organisations. Who do you feel that you are responsible to?

[372] **Mr Penn:** This is a personal perception—it is not based on experience prior to September 2011—but someone said this morning that it was under the radar. I think that it was a little organisation that got on with its job, and did it very well. There have been no flood incidents on the Gwent levels since the tsunami of 1606—before my time—and it just got on with its job. You heard evidence from Welsh Government and Natural Resources Wales that it just got on with things.

[373] **Darren Millar:** However, Mr Penn, you are well above the radar now, and still no-one is accepting responsibility for—

[374] **Mr Penn:** I think that the reality is that no-one was responsible for drainage boards prior to 2011. They are bodies formed from— We have heard the description of the board. The operational side of the organisation is accountable to the 37 board members. The elected members are accountable, in turn, to their constituents, who are the landowners, and the 19 local-authority-appointed members are responsible to their constituents in Newport, Cardiff and Monmouthshire. The board was not accountable to anyone other than the board. There was a legislative framework arising from the Land Drainage Act 1991, but there was no accountability to Welsh Government, the UK Government or the Environment Agency. There was no accountability line—it is as simple as that.

[375] **Darren Millar:** However, you are responsible to Welsh Ministers. Drainage boards that are wholly within Wales are the direct responsibility of Welsh Ministers.

[376] **Mr Penn:** That is not my view, Chairman. Our standing orders have to be approved by Welsh Ministers, and they have been, but nothing says that we are accountable to the Welsh Government. Maybe we should be—I am not saying that that is not desirable or sensible—but at the minute it is simply not clear.

[377] **Mike Hedges:** As part of the support grant given to the local authority, there will be an amount of money in there for land drainage that will not exist for other local authorities. Would it not be simpler if that were made zero and everything then fell on the local taxpayers' purse in the local area, so that they would then have a big interest in it, and may well not want to spend money on it?

[378] **Mr Penn:** The way that the board operates is by drawing money through the agricultural rate, from its agricultural ratepayers, and through levies on the three local authorities. Those levies, actually, are not on simply the people who live in the drainage district. All of the council tax payers in the three authorities currently pay for the operation of the drainage board. That is the way it is under the Land Drainage Act.

[379] **Mike Hedges:** You said that you are a former chief executive of a local authority, so you are well aware that the vast majority of the money going to a local authority comes through the rate support grant and through the unified business rate, which makes up approximately 80%.

[380] **Mr Penn:** Yes, of course.

[381] **Mike Hedges:** So, 80% of the expenditure, which is going out on what you are talking about there, is actually starting its journey from the Welsh Government.

[382] **Mr Penn:** I do understand that.

[383] **Darren Millar:** Dr Venables, you indicated that you wished to speak.

[384] **Dr Venables:** When internal drainage boards were formed, they were formed on the basis that the funding came from the beneficiary. So, the beneficiary of the activities of the internal drainage board paid for those activities. Whether that was a landowner, a domestic owner or business property owner, they all paid for the benefits that they got. You have to remember that drainage districts are usually below the level of an adjacent river or below the level of the adjacent sea; so, if it was not for the daily activity of managing that water, you would have a big lake. So, the people who live in those areas directly benefit. Sometime in the past, there was a switch; instead of putting a rate demand on an individual house, the local authority would collect it together with its rates and then give that money back to the internal drainage board to carry out its functions. It is not just a landowner or property owner who benefits; the infrastructure in that area benefits as well. In England and Wales, we have 53% of the generating capacity of this country built inside internal drainage board areas. So, the activities of a drainage board actually assist in us keeping our lights on, because if we did not, half of the capacity in this country would not be able to function.

[385] **Darren Millar:** Okay. I appreciate what you are saying in terms of the discussion that we are having this morning. It is very interesting information—we know about the role of drainage boards, and we understand how they are funded—but, who do the other members of your organisation feel that they are accountable to?

[386] **Dr Venables:** We look upon the Environment Agency as having a supervisory role, and it is expressed in that way: a supervisory role over the activities of the internal drainage boards. That is done through the regional flood and coastal committees.

[387] **Darren Millar:** Is that the case for your organisation, Mr Penn?

[388] **Mr Penn:** Not at the minute. There is no—

[389] **Darren Millar:** What I am asking is whether your organisation now looks to Natural Resources Wales as having a supervisory role over the action of your organisation.

[390] **Mr Penn:** We certainly have a very collaborative role, and I think that you heard from Natural Resources Wales that that has improved. I do not think that it is still at the level of a supervisory role. I think that there is a gap between the board and what it does—what it authorises, what it does for its governance arrangement—and who it then reports to, who it is accountable to or supervised by. I think that that gap needs to be addressed in full.

[391] **Darren Millar:** So, why is there this distinction in Wales, compared with England? Why is there no accountability in the Environment Agency, as it was, here as there is in England?

[392] **Dr Venables:** The supervisory role is a very high-level role. There will be no involvement in day-to-day activities. It is a legal backstop if we have problems with an IDB.

[393] **Darren Millar:** Why do your members feel accountable to the Environment Agency in England, but not in Wales?

[394] **Dr Venables:** It is a matter of language. We do not feel accountable to it, but it has the same—

[395] **Darren Millar:** Okay. Why does it feel that it has a supervisory role in relation to members in England, but not in relation to members in Wales?

[396] **Dr Venables:** That is the way that the legislation has been interpreted in England, and that is how we respond. There is a great deal of partnership working. Local authorities, the Environment Agency and internal drainage boards are very active partners in the flood-risk management programme and they work actively together.

11.15 a.m.

[397] **Mr Penn:** We are a flood-risk authority. We work closely and our plans are being developed in line with Newport, Monmouthshire and Cardiff authorities, who are lead flood-risk authorities. There is very close collaborative working; we are part of the south-east Wales flood-risk arrangements. In a sense, there has not been a need for accountability because the operational stuff—the 24/7 stuff—has just continued successfully. It is only the whistleblowing allegations that flagged up these serious governance problems that has led to, in my view, the Welsh Government and the Environment Agency wanting to take notice of us. That is where we currently are, but there is still no certainty about what is now the best way forward.

[398] **Darren Millar:** You are suggesting that nothing has changed operationally and that it is the governance that is the problem, yet we were told by the Natural Resources Wales earlier that it has only just got these regular meetings and you are only just starting to share the maintenance plan, the forward work programme and the capital investment programme. These were things that were not shared before and not even requested by the Environment Agency.

[399] **Mr Penn:** That is because there is no practical connection between the work of one organisation and the other. It deals with main rivers and we deal with ditches.

[400] **Darren Millar:** We understand the distinction, but what we found astonishing was this lack of hand-in-glove working between your organisation and the other organisation, given the joint responsibility for good flood-risk management in that particular area.

[401] **Mr Penn:** All I can say to you is that that happens now. It may not have happened in the past; it was before my time. For example, on the capital side, as an organisation we are delivering a £0.25 million sluice replacement programme for the Environment Agency on its main rivers. We are doing the physical work with our workforce at £0.25 million a year. We are now in our third year of that work, so it is close collaboration, but with different responsibilities.

[402] **Darren Millar:** There is close collaboration now; we accept and understand that, but there clearly was not earlier. Aled, then Jocelyn and then I will come on to Jenny.

[403] **Aled Roberts:** As far as the association is concerned, is there a membership subscription? How is the association funded?

[404] **Dr Venables:** It is funded through membership subscriptions and the subscriptions are set on an area value basis. It reflects the size of the organisation because the size of internal drainage boards varies greatly.

[405] **Aled Roberts:** You mentioned the financing through determination of who the beneficiaries are. There was the Department for Environment, Food and Rural Affairs report in 2006, which suggested that there needed to be a revaluation in terms of how far the base upon which the agricultural levy was raised. That has not happened in this particular case. Is that the situation across England and Wales?

[406] **Dr Venables:** No revaluation has occurred. It has not occurred for rates, council tax charges or water charges in England. Given that there is no data, we cannot alter in relation to this.

[407] **Aled Roberts:** Finally, on this supervisory role in England, as far as the Environment Agency is concerned, given that it is high level, would the Environment Agency pick up the fact that an internal drainage board in England did not have a strategic plan, an operational plan, an organisational budget, an overall work programme, a private works policy or a workforce plan? Would it pick up those types of issues?

[408] **Dr Venables:** It would not automatically be a member of the board, so there would not necessarily be that close involvement.

[409] **Aled Roberts:** So, even in England, you could have an internal drainage board that had none of that documentation in place and nobody else would pick it up, other than members of the board.

[410] **Dr Venables:** That could happen.

[411] **Darren Millar:** Jocelyn, did you want to come in on that before we go to your question?

[412] **Jocelyn Davies:** No, I did not indicate; sorry.

[413] **Jenny Rathbone:** How many board members do you have now? I see that you have various processes for revising your terms of reference. Do you still have 37 members?

[414] **Mr Penn:** Yes. We have 37 members. The attendance average at each board meeting is about 20 members. We had a real problem with getting representation from Newport City Council. After the local elections in Newport, we did not have any Newport City Council members until January of this year, because that council simply delayed appointing its 15 appointed members. That was a real problem in terms of governance, in that the biggest payer did not have representation. There are now 15 Newport City Council appointees. I have to say that the local authority appointees make a very significant contribution to the work of the board. Picking up on a point that someone made earlier, this is particularly the case in relation to governance. They have been very much involved in finalising the governance documents that have now been approved by the Welsh Government. That is what was missing in the past. For whatever reason, before my time, local authority appointees—with one or two exceptions—were simply not engaged. With the best will in the world, elected representatives who are mostly farmers or landowners are not imbued with experience in public sector management and governance arrangements. I came into an organisation that simply did not understand the governance issues.

[415] **Jenny Rathbone:** In terms of updating governance arrangements and making them more fit for purpose, why have you not hacked the numbers on the board? There are 37 of them, and the organisation has a turnover of about £1.5 million, I believe.

[416] **Mr Penn:** That is not in our gift. It requires a separate process.

[417] **Jocelyn Davies:** In whose gift is it?

[418] **Mr Penn:** Jean may know more than I do about that. There is a process whereby boards can reduce or reshape their numbers. If you want my personal view, as someone who has worked with local authorities all of his life, having an organisation that now has more members than Merthyr Tydfil County Borough Council does not seem to be quite right. I would have thought that there needs to be a reshaping process so that there are about a dozen board members, and I believe that most of those should be appointed members because they are the biggest payers.

[419] **Darren Millar:** Given that we have introduced the subject of local authority members, I want to bring Mike in now because he has some questions on this issue.

[420] **Mike Hedges:** Dr Venables, would 37 be considered a large number for English land drainage boards?

[421] **Dr Venables:** Our boards are variable in size. The membership of some of the boards is in the thirties, but we are advising that that should be reviewed. Regarding the situation that Richard found himself in, there were a lot of urgent issues that had to be addressed. So, that was on the to-do list, but probably not at the top of the list. We are encouraging boards to reduce the size of their membership.

[422] **Mike Hedges:** My other question is this: what do you do to ensure that your meetings do not clash with the main local authority meetings—that is, council meetings and major planning meetings?

[423] **Mr Penn:** The board has always met on the second Tuesday in the month at 2.30 p.m. At the request of Newport City Council members, in particular, that was changed a couple of meetings ago to 2 p.m. to suit their other commitments. Apart from that, I have had no indication from any Newport member or any other appointed member that the timing of meetings was a problem.

[424] **Mike Hedges:** I think that this is important. If your meetings were clashing with

major local authority meetings, local authority members would be under pressure to attend their local authority meetings over and above the meetings of an outside body.

[425] **Mr Penn:** I do not believe that to have been the issue. The issue was that the appointed members simply saw this as an organisation that was being run in a different way to the way in which they wanted to be involved with it, and they voted with their feet. That is my perception.

[426] **Mike Hedges:** Would it help if, for a meeting to be quorate, a certain percentage of council members had to attend as well? Therefore, there would have to be engagement with local authority members, or the meeting itself would be inquorate.

[427] **Dr Venables:** It is up to a board to decide what its quorum is. When people are on a board, their responsibility is to the work of the board. The board members are all equal. They have a responsibility to deliver the functions of water level management in that area. So, I would not want to differentiate between one member and another in that respect.

[428] **Mike Hedges:** There are other organisations in which you have to have a certain number of non-executive members. On health boards, for example, a certain number of non-executive board members must be present for a decision to be allowed to be taken. So, there are examples of that. Could I ask my question again? Everything that you just told me, I previously knew: when you are appointed to a board, your responsibility is to that board, and every member of the board is equal, et cetera. However, I am asking whether you think that it would be beneficial—and your answer can be ‘yes’ or ‘no’, based on your own opinion—if 40% of local authority representatives had to be there, or 40% of landowners, in order to ensure that the board would be making decisions when it has a quotient of people there from both sides, thereby ensuring that it is not only a small body that is making those decisions.

[429] **Dr Venables:** That would be something that you would have to debate very carefully, because there are a lot of implications involved in that. Personally, as someone who is running a membership organisation, I would not wish to answer that. I would rather see a debate about the particular issues first.

[430] **Mike Hedges:** Okay. Fine.

[431] **Mr Penn:** If I may pick up on that point, I have worked very hard since I have been there to try to bridge the gap between the elected members and the appointed members. When I came, the organisation did not recognise the appointed members. It talked about members as being the agricultural members. I had to work very hard and remind people at every meeting and every opportunity that they are equal in status, accountability and responsibility. I think anything done to undermine that will be counterproductive.

[432] **Darren Millar:** The interesting thing is that police authorities, when they existed, had to have a majority of councillor members present for any meeting to be legitimate. That gave appointed members from local authorities an upper hand, if you like, over those people who were the other members of the organisation. Do you think that that could be a model that ought to be considered?

[433] **Dr Venables:** I would be prepared to debate it.

[434] **Darren Millar:** So, you are saying that it should be considered; let us debate it and let us consider it.

[435] **Mike Hedges:** I have one last question. We keep talking about this as a unique organisation. I have experience of sea fishery boards, and land drainage boards are very

similar, in that sea fisheries boards are made up of Government representatives who are all interested in—well, cockles, down in our area. So, you have a group like that. On the land drainage boards, you have exactly the same thing: Government representatives who are interested in that, plus local authority representatives. So, is it not true that it is unique in that respect; there are other bodies in Wales that are similar.

[436] **Mr Penn:** They may do similar things, but it is unique in its governance arrangements. It is a local authority. It is a public body. It is composed of a number of board members who are accountable to the board, not to where they came from. It is different from the other bodies that are mentioned. They might do similar things and they might have similar membership, but its foundations are different.

[437] **Mike Hedges:** Can you give us a note on how it differs? I do not see how it differs in terms of its governance. If you say that it differs, could you drop us a note to explain how?

[438] **Darren Millar:** It is certainly not unique in that there are another 100-odd of these organisations elsewhere in England.

[439] **Mr Penn:** On a point of information—I do not think that it was picked up earlier—there are three IDBs in Wales.

[440] **Darren Millar:** Yes, we understand that.

[441] **Mr Penn:** There is the Caldicot one. There is Powysland Internal Drainage Board, which is nothing to do with us. I am clerk to the Lower Wye Internal Drainage Board, which is tiny. It has a budget of £30,000 and no staff. So, there are two other boards and we administer the lower Wye one as well. Incidentally, we have just changed all its standing orders, rules of engagement and all the other governance documents and had those approved by the Minister.

[442] **Darren Millar:** Okay. Aled, you wanted to come in.

[443] **Aled Roberts:** On the point you made regarding people voting with their feet, is it surprising that that was the case? In the minutes, I have picked up allegations—whether they were substantiated or not is another matter—that the landowners were holding pre-meetings in the presence of officers.

[444] **Mr Penn:** It is no surprise to me, because that was the culture that I inherited, which I have tried to change.

[445] **Aled Roberts:** From what you say, that is no longer happening.

[446] **Mr Penn:** Certainly not.

[447] **Darren Millar:** Jenny, you had a question to ask.

[448] **Jenny Rathbone:** Can you tell us what formal role the local authority members now have in reporting back to their local authorities on the workings of the board?

[449] **Mr Penn:** You would have to ask them. I am not sure—

[450] **Jenny Rathbone:** Do you not have that conversation with them? What do they think they are there to do?

[451] **Mr Penn:** They have been told what they are there to do by me in terms of their

induction. They are there to represent the council tax payers of their authority, to make sure that the organisation is well governed and well managed and that it does its business well. That is what they are there for. Their role is to set the direction and to scrutinise performance. What they do in reporting that back to their host organisation, I do not know. There is clearly an obligation, but I think every local authority is different in that regard.

[452] **Jenny Rathbone:** Are you saying that, despite all the serious problems that were identified by the Wales Audit Office, the three local authorities still have zero interest in what is going on?

11.30 a.m.

[453] **Mr Penn:** Not at all. They are very engaged and very involved. More so, I have to say, than the elected members. If you were to attend a board meeting, you would see that the debate, discussion and contributions come from the appointed members much more than the elected members, because what I have done is to shift the agenda. I am not being funny, but, at my first board meeting, there was an item on the agenda about invoices and there was a long discussion about whether the cost of the windscreen wipers for one of the tractors was too high. That is what it was doing. The farmers and the landowners were very engaged in the detailed operational stuff, which is why the organisation did not have plans and strategies. What I have done—and things takes time—is to change that so that now the board is focused on strategy, direction and performance, and, through delegation, leaves everything else to management, as it should. It has changed, and the appointed board members, clearly, are much more comfortable with that kind of involvement than the elected members, who now, I have to say, look somewhat lost at board meetings, because they are not doing what they did traditionally, which was to get involved in the detail.

[454] **Jenny Rathbone:** Okay, but, in terms of our future witness appraisal, you are not aware of any form of reporting back from the representation of local authorities.

[455] **Mr Penn:** No, not formally. I have no idea of formal processes.

[456] **Jocelyn Davies:** The report identified very specific concerns. There is a long list of them, and I will not punish us all by listing them again, but it would make very unhappy reading for anybody. You are confident, based on what I have heard from you today, that things have completely changed now and that these things could not arise again, are you?

[457] **Mr Penn:** It is a very different organisation. There is still more to do. The board is too big. We still do not have all of the building blocks in place. The strategic plans and so on are still being developed and worked on. It is a very different organisation, but I am confident that the issues in the public-interest report will never happen again—certainly not while I am involved.

[458] **Jocelyn Davies:** You said that you were listening earlier, so you probably heard me say that I printed off a copy of the standing orders from your website. They are based on the Land Drainage Act 1930.

[459] **Mr Penn:** No.

[460] **Jocelyn Davies:** Well, I have a copy here, and that is what it says. These are the ones that are on your website. I am not a member of the board, so I have not been circulated with—

[461] **Mr Penn:** I can certainly let you have them.

[462] **Jocelyn Davies:** I asked the Welsh Government officials earlier if these are the ones



that have been approved. Obviously, they did not have a copy of these. Are these not your up-to-date standing orders?

[463] **Mr Penn:** The up-to-date standing orders are those that were approved by the board in January and by the Minister in February. I am not sure whether they are the same as those that appear currently on the website.

[464] **Jocelyn Davies:** As somebody just visiting the website, I cannot possibly tell when this was posted there.

[465] **Mr Penn:** I will check that out and I will let you have a set of our current approved standing orders.

[466] **Jocelyn Davies:** These, as I say, claim to be based on the—. You would have drafted the newly approved standing orders.

[467] **Mr Penn:** Yes, absolutely, from scratch.

[468] **Jocelyn Davies:** I did not find much on the website relating to before you came to the board. I could not find any minutes from the time previous to your tenure. I will have to put these to one side then, because I was going to ask why they were so different from standing orders based on the model standing orders that I can see for the Powysland Internal Drainage Board, especially in relation to conflicts of interest, which have been a huge problem here. We will wait to see the updated ones, but I think that there is a failure here, if you have new ones, in not having them on your website several months later, but there we go.

[469] You mentioned to us today that you have come to the conclusion that the board is too large. I notice from the board minutes that I was able to see that you prepared the response to the consultation of the Welsh Government on the future of internal drainage boards. Did you put that in your submission?

[470] **Mr Penn:** I think that what was said in the submission was that the board required further reform. I do not think that it specified a reduction in numbers, but, clearly, forming a board involves looking at the membership and the balance between membership. I am not sure that a 19:18 ratio is right, because the 18 represent a small number of people who pay, as opposed to the 19 who represent hundreds of thousands. So, I think all of that is up for reform. As I said earlier, I think that the board should be much smaller and perhaps constituted differently in terms of the balance between elected members and appointed members.

[471] **Jocelyn Davies:** However, you did not include that: you just said that it needed to be reformed.

[472] **Mr Penn:** Yes. That was being talked about nationally in England: there is a process going on there, which has not been followed in Wales, of reforming boards and there have been amalgamations and so on. So, there is a process going on in England that has not happened in Wales.

[473] **Jocelyn Davies:** Yes, we are aware of that. Local authorities give you the most significant proportion of your funding. In their response to the consultation, did they say that the boards needed reform?

[474] **Mr Penn:** I have never seen their responses.

[475] **Jocelyn Davies:** You have not looked at those.

[476] **Mr Penn:** I have not been given them. We have not seen any of the other responses.

[477] **Jocelyn Davies:** I see. Okay. I will leave it there for the time being, Chair.

[478] **Darren Millar:** Aled, you wanted to ask a brief question.

[479] **Aled Roberts:** Yes. My question is on the minutes from 21 January 2013, when numerous documents were presented to the board to be approved. One of them was the publication scheme. Would that deal with the publication of nominations for elected members? I notice from the minutes of the November 2011 meeting that there appeared to be difficulties in filling the 18 places, and, to all intents and purposes, the 14 members who were re-elected then went on to nominate four landowners from among the group.

[480] **Mr Penn:** To answer the publication point: no, the publication scheme is a traditional publication scheme relating to what the board publishes and how people can get access to information about the work of the board. It is not about that particular issue. There was to be an election in November 2011—it is a four-year election period. There were fewer nominations than there were places to fill and, within the current standing orders, the board is able to fill vacancies of elected members simply by nominating, as long as the nomination is by a board member. It is an anomaly. That is the way it works, Jean, is it not?

[481] **Dr Venables:** Yes.

[482] **Aled Roberts:** What happens as far as the publication of the vacancies goes?

[483] **Mr Penn:** Well, the electors are the landowners. There was the potential for an election, but there was no election because there were fewer nominations than spaces, and so there were four vacancies. The board can then fill those vacancies simply by nominating without going through any process.

[484] **Dr Venables:** That is all laid down in great detail in the Land Drainage Act 1991 and the procedure was followed.

[485] **Mr Penn:** It is an anomaly. Those are what the rules are. There is one thing that I would like to point out. There has been a lot of talk about the standing orders. Before my time, in 2009, as I understand it, and I think the Wales Audit Office report reflects this, model standing orders were adopted by the board—there is reference to that in the Wales Audit Office report, I think—but they were not approved by the Minister. That is the issue. They were model DEFRA standing orders and the Welsh Government made it very clear to me from the time that I started that it required standing orders that would be approved by the Welsh Minister.

[486] **Darren Millar:** That sounds to me as though you have some accountability to the Welsh Minister; you must feel some accountability to the Welsh Minister.

[487] **Mr Penn:** I do not think that it is about accountability, I think—

[488] **Darren Millar:** Well, wait a minute. If Welsh Ministers are responsible for signing off your standing orders—the fundamental thing that your organisation works to—how on earth can you say that you are not accountable to Welsh Ministers or the Welsh Government?

[489] **Mr Penn:** It goes back to the Land Drainage Act 1991, which does require the ‘rules’, as it calls them, of a drainage board to be approved by the relevant Minister.

[490] **Darren Millar:** So, you are directly accountable to Welsh Ministers, then, are you not?

[491] **Mr Penn:** It has now become a Welsh Minister rather than ‘a relevant Minister’, which was a DEFRA Minister in those days, but there was a gap: nothing happened from 2009. When I came along, I was told very clearly that, if we were to have our rules fit for purpose, they had to be approved by a Welsh Minister. I do not think that that amounts to accountability: I think that amounts to a request from the Welsh Government that the rules be approved by a Welsh Minister. I very readily agreed with that; it makes sense to me. However, I think the whole relationship—

[492] **Darren Millar:** If you are accountable to them, of course it makes sense.

[493] **Mr Penn:** At the minute, however, you could not point to a piece of paper anywhere that says that the Welsh Government is responsible for drainage boards in Wales. There is no such legislation.

[494] **Jocelyn Davies:** I have a question here. If the Minister decided, following his consultation, to transfer all the functions of the drainage board to the new environmental body, he would be within his lawful right to do so. Therefore, he is wholly responsible for the functions of drainage boards in Wales. If he chooses to do nothing, that is also something for which he has to take responsibility.

[495] **Mr Penn:** My understanding is that he would have to go through exactly the same process as he went through to bring together Environment Agency Wales, the Countryside Council for Wales and the Forestry Commission. It requires a National Assembly for Wales parliamentary process to transfer the function to Natural Resources Wales.

[496] **Jocelyn Davies:** Yes, but he could choose to do so.

[497] **Mr Penn:** He could choose to do so, but he would have to get the support and approval of the Assembly. I am not saying that he would not get it; I am saying that he cannot just do it at a stroke. There is a proper parliamentary process.

[498] **Darren Millar:** There is an Order that you would have to put into practice.

[499] **Jocelyn Davies:** Yes, but it is lawful for him to bring forward that proposal.

[500] **Mr Penn:** It would be through a Measure.

[501] **Dr Venables:** There would have to be legislation.

[502] **Mr Penn:** There would be a Measure.

[503] **Darren Millar:** There would have to be an Order. It was an Order that brought about—

[504] **Mr Penn:** No, I am sorry, Chairman, but it is a Measure.

[505] **Darren Millar:** It was a law; an Act.

[506] **Mr Penn:** It was a Welsh Government Measure.

[507] **Jocelyn Davies:** It might very well be, but the point is that he would be within his rights to bring forward that legislation, whichever type it is—a regulation, or whatever. If he

chooses not to do so, he is also responsible for that decision to do nothing.

[508] **Mr Penn:** I am not here to argue the point; I am just saying that at the minute, that legislation, however it is framed, is not in place. No constitutional lawyer could take you to a piece of paper and say, 'That establishes firmly that the Welsh Government, or the Welsh Minister, is responsible for the internal drainage boards in Wales'. There should be—

[509] **Jocelyn Davies:** He might be responsible for allowing it to continue. That is his decision.

[510] **Mr Penn:** It is a Measure that would change that.

[511] **Darren Millar:** What we need is a clear note on the competence of Welsh Ministers here in relation to local drainage boards, because it appears to me that you are deferring to them in terms of your standing orders and, clearly, your colleagues in English local drainage boards feel that some accountability or supervisory responsibility lies with the Environment Agency. You are clearly accepting that the Minister can wind up your organisations and pass on your responsibilities to somebody else, or at least initiate that process.

[512] **Mr Penn:** Yes; I accept that, Chairman.

[513] **Darren Millar:** Therefore, it seems to me that it is very clear that there is a direct line of responsibility to Welsh Ministers, given that they have responsibility for flood-risk management in Wales and the environment.

[514] **Mr Penn:** If that were the outcome, Chairman, I would be very content.

[515] **Jocelyn Davies:** Otherwise, your response to the Minister's consultation is, 'You haven't got the powers to do this, Minister'.

[516] **Darren Millar:** We will ask our legal adviser to prepare a note. Julie is next.

[517] **Julie Morgan:** How do you see your relationship with the Welsh Government?

[518] **Mr Penn:** Due to all the turmoil, if you are asking me personally, it has been very close over the last 18 months, not with Jo Lerner, but with Nicola Edwards who was her predecessor. We worked closely on how to take this forward. In terms of an organisational relationship, there is currently no direct relationship between us and Welsh Government. We are not supervised by it and we do not have any of our operational arrangements monitored or authorised. So, there is no practical relationship between us and the Welsh Government.

[519] **Julie Morgan:** So, because of the turmoil, Welsh Government became involved.

[520] **Mr Penn:** It did.

[521] **Julie Morgan:** From your point of view, it did so voluntarily.

[522] **Mr Penn:** The whistleblowing allegations were made to Welsh Government initially, so it was involved from that point on.

[523] **Julie Morgan:** So, how has the Welsh Government assisted you in trying to sort out all of this mess, or in taking a step towards sorting it out?

[524] **Mr Penn:** Purely in terms of real support, Welsh Government officials have been extremely supportive of what I have been trying to do and they have made it clear that they

approve of it and want what I have been trying to do. We have had meetings with officials and the chairman of the board and so on, to make it clear that there are expectations about the way in which public bodies in Wales behave. But, it has been very much a collaborative, supportive role, rather than a directing role.

[525] **Julie Morgan:** What about them reassuring themselves that things were going in the right direction? Do you feel that they have been monitoring what has happened?

[526] **Mr Penn:** I was surprised to hear a Welsh Government official say that he has not seen the minutes of the board meetings, because they are sent and have been sent for the last 18 months to Jo Lerner now, along with any other documents, including the standing orders and governance documents. I have brought them totally into the picture, because they are clearly a very important consideration for a public body in Wales. If the lines of accountability and responsibility were clearer, I would be very happy with that; I do not think that anyone is resisting it. It is just that, at the minute, it does not exist.

11.45 a.m.

[527] **Julie Morgan:** So, you are sending all these documents, but it appears that they are not being read.

[528] **Mr Penn:** Not by the boss perhaps, but maybe by someone who did not want to say.

[529] **Julie Morgan:** Just looking back, how do you feel about the Welsh Government's role before you came? Do you have any comments on that?

[530] **Mr Penn:** I have no knowledge because I was not here. However, my perception is that, before the whistleblowing allegations, the board and its operations were below the radar. They were getting on with it, and they were doing a good job. You heard the Environment Agency say that there have been no problems and so no-one, really, was concerned about it because the governance arrangements were not known or understood. You must remember that it employs only 20 people. It is a very small organisation. I think that because it was not a problem, it was not a problem. It became a problem with the whistleblowing allegations.

[531] **Julie Morgan:** So, you think that it is understandable why it was not picked up beforehand.

[532] **Mr Penn:** Absolutely.

[533] **Darren Millar:** Aled had a brief supplementary question and I will then call on Mike.

[534] **Aled Roberts:** There may not have been problems with the operational activities, but there were certainly problems with the misuse of public funds.

[535] **Mr Penn:** That is what the allegations were—the whistleblowing allegations.

[536] **Aled Roberts:** The allegations that are basically substantiated in the Wales Audit Office report.

[537] **Mr Penn:** Yes.

[538] **Aled Roberts:** As far as all the documentation is concerned, it is quite clear that during 2010 in particular there were major issues among the staff, and conflict between the board and certain staff members. It is my understanding that, in the Lincolnshire agreement, a

grievance procedure is necessary. I cannot see reference in the 2013 minutes to a grievance procedure. Is a grievance procedure in line with the Lincolnshire agreement now in place for that?

[539] **Mr Penn:** Yes, of course. The grievance procedure has been widely used, believe me.

[540] **Mike Hedges:** There are other small bodies—the South Wales Sea Fisheries Committee employs roughly the same number of people. The thing that I want to say is: you are sending minutes to an organisation to which you do not feel responsible. This is being done after whistleblowing to an organisation to which you do not feel responsible to. It does not seem to make any sense. If they had written to Torfaen County Borough Council, which is not a payer in, would you have taken the same interest? Do you send the minutes to every local authority in Wales?

[541] **Mr Penn:** No, because the three constituent authorities have members who sit on the board, so they get their minutes in that way. Since my time, I have been ensuring that the Wales Audit Office and the Welsh Government have had regular reports, including minutes, so that they can be kept abreast—having been brought into the situation, they can be kept abreast of what is happening. To me, that seems like common-sense management.

[542] **Mike Hedges:** I agree with you. However, I think that you are responsible to the Welsh Government; you are the person who thinks that you are not.

[543] **Mr Penn:** I am not saying that. I am saying that it is not clear. I am sorry, Chairman, I am saying that I could not take you—and perhaps your legal advisers could—to a piece of paper, which is what I rely on when I look at constitutions and constitutional arrangements, that states that the drainage boards in Wales are accountable to the Welsh Government. There is no such piece of paper. Perhaps there should be. I hope that there is. I hope that it is clearer in the future. At the minute, it is not.

[544] **Darren Millar:** I am sure that the same will be said about local authorities. There is no direct piece of paper, but given that they get funding from the Welsh Government, they are directly accountable, in the same way that your organisation, when you do the maths, probably gets 50% of its cash in some way, shape or form from the Welsh Government.

[545] **Mr Penn:** It would do, of course.

[546] **Darren Millar:** So, of course they should have an interest, and quite clearly have taken an interest since the production of the report. There is one final question to be asked. I think that the one on funding, in particular, Oscar, is the important one.

[547] **Mohammad Asghar:** I think, Richard, that running an organisation with just standing orders is not acceptable. That is one thing. The Welsh Government is also considering making some possible changes to the internal drainage boards. One plan is to merge them, and then incorporate them within Natural Resources Wales. That is one of the views. Would you be able to say a few points in relation to that? What would be your input?

[548] Secondly, do you believe that the current funding mechanisms used to support IDBs are sufficient at this stage?

[549] **Mr Penn:** On the first point, Chairman, I think that I made it very clear in my submission what our response was to the consultation. The response was that, subject to reform, our belief is that the internal drainage boards in Wales should be independent bodies with proper accountability, proper organisational arrangements and proper governance arrangements. However, because of their very local role, they should remain independent, but

within the family of the Welsh Government and Natural Resources Wales, because we all contribute towards flood-risk reduction and water-level management. It is very clear. We also see the case, and I think again that it is in my submission, that there could be much more collaboration between the three drainage boards in Wales and the drainage boards that may be created—who knows?—in the 11 internal drainage districts that do not have a drainage board at the moment. It is clear in my submission where we see the future: it is independent drainage boards in Wales operating within a family of those bodies concerned with flood-risk and water-level management.

[550] On the point about funding, it is cumbersome and strange. We are funded almost wholly from public funds, from local authorities, and a small amount comes from landowners and some balancing income comes from the private works programme. It is not understandable; people do not understand it. There is room for reform. As to whether it should be a direct stream from the Welsh Government that funds us, if we were accountable to it, that is one option. That is another issue that needs to be sorted out, depending on what the decision is by the Minister about our future.

[551] **Darren Millar:** We have one final supplementary question from Aled—

[552] **Dr Venables:** May I answer the—

[553] **Darren Millar:** Yes, I know, Dr Venables. Dr Venables wants to respond to the point that Mohammad Asghar made. Aled will ask his supplementary question first, and then you can respond to both points.

[554] **Aled Roberts:** A settlement was reached with former employees that, in some instances, included confidentiality clauses, so that they were not to discuss what are clearly issues of considerable public concern. How many confidentiality clauses were entered into? Would it be possible for the current board to consider releasing them from those confidentiality clauses?

[555] **Mr Penn:** There were two former employees whose contracts were terminated on the basis of compromise agreements. The confidentiality clause relates purely to the terms of the settlement and nothing else. I do a lot of compromise agreements. I think that there is a misunderstanding—

[556] **Jocelyn Davies:** So, there is no gagging order on these ex-employees.

[557] **Mr Penn:** The clause relates to not just the ex-employees, but everyone involved with the terms of the settlement. That is it.

[558] **Aled Roberts:** It does not relate to the circumstances of the settlement, therefore, or the circumstances that led to the settlement.

[559] **Mr Penn:** The compromise agreement does not relate to that; it is about financial settlements and the terms are confidential, quite rightly.

[560] **Darren Millar:** That is very helpful. Dr Venables, you wanted to chip in, and then we will draw this session to a close.

[561] **Dr Venables:** May I just respond to that? I am currently dealing with an issue in Cumbria where, in 1986, the local IDBs were taken over by the predecessors to the Environment Agency, which have been running those watercourses ever since. The Environment Agency is now tasked with different priorities and is running out of money before it can get down to those areas. So, it is withdrawing its maintenance of those areas. We

are tasked with looking at what we will do in the future. This is why I have a concern about disbanding internal drainage boards, in that they have been around for hundreds of years in a lot of cases and, once they are disbanded and handed over to another organisation, their future is not assured. We are currently dealing with that in Cumbria. The Environment Agency is also withdrawing from running its internal drainage districts in Kent and Sussex, and we are having meetings about what is to be done in those areas to look after the watercourses and the people, property and infrastructure that are currently in those areas. This is why I feel that looking after the activities of the drainage board is so important, because it is very locally funded, locally focused work for the community. The community pays for it and the community benefits from it.

[562] **Darren Millar:** With those closing remarks, we will draw this part of our meeting to a close. Thank you, Dr Venables and Richard Penn, for your attendance. You will get a copy of the transcript of today's proceedings, and you will get a note from the clerks of any additional information that you have said that you will provide as a prompt and a reminder. Thank you very much indeed.

[563] We will continue with our evidence session on the Caldicot and Wentlooge Levels Internal Drainage Board. We have already heard this morning from the Welsh Government, Natural Resources Wales, the Association of Drainage Authorities and the newly appointed manager of the Caldicot and Wentlooge Levels Internal Drainage Board. I am pleased to be able to welcome to the table Dean Jackson-Johns, the former clerk and engineer of the internal drainage board. Just to start off, we are very grateful for the written paper that you sent in, which has helped to inform our discussions today and our work. Would you like to make a few opening remarks before we start? Then we will turn to Members for questions.

[564] **Mr Jackson-Johns:** Thank you for the opportunity to attend the Public Accounts Committee. As I have advised all the way along, I will always do my best and my civic duty to co-operate fully with any inquiry. Obviously, various reports have been written over the ensuing two years, or two and a half years. Members will hopefully have had sight of those. I would certainly do my best to answer the committee's questions in an open and honest fashion. The only thing I would ask you to bear in mind is that is almost two years since I left the employment of the drainage board. Many of the issues or areas that you want to question me on may relate to the time beyond that. I have no access to any written records, confidential minutes, or anything like that, so I will openly and honestly answer any questions that I can. I do not have any more to say in opening.

[565] **Darren Millar:** Obviously, we have quite a damning Wales Audit Office report, which was published late last year. It was a damning indictment of the governance arrangements of the organisation, in particular. Do you agree with the assessment of the Wales Audit Office?

[566] **Mr Jackson-Johns:** I do not know if you ever saw my formal response to Anthony Barrett. I have copies of it here, which I would like to give to Members. I do not want to go on ad infinitum about what I thought of the report. Needless to say, I have copies that I would like Members to see and possibly read afterwards; I appreciate that there are time limitations. I asked at the time that my formal response be made publicly available and published. I do not know if it ever was. I would guess that your good selves have not seen it. I will give copies to the clerk. I will quote from the first paragraph of my reply. I will not give a very lengthy reply now because that would not be suitable, so I will just address some key issues in the report.

[567] I felt the report was not objective. I will quote from the first paragraph of my response and perhaps your good selves can then read my formal response. As I say, I asked for it to be made publicly available and circulated. I do not know if it ever was.



[568] **Darren Millar:** Would you be content for the committee to publish it?

[569] **Mr Jackson-Johns:** I would be quite happy with that. I would welcome its publication. The first paragraph says:

[570] ‘The report is superficial, unbalanced, inaccurate and not objective, both in its content and conclusions. The report does not truly reflect the situation that persisted at the board, and all that happened. Your report has essentially been cherry-picked and concentrates on a few areas, which further underlines my comments above, and the fact that this has followed a very specific prescribed agenda and end goal’.

[571] I went on to say that, obviously, I am very disappointed with it. I had a three and a half hour interview with the audit office and I was totally open and honest. I do not think that any of my advice or my response was considered in the report, especially given the timescales between the writing of my letters and when the report was published. It would not have been possible, in that tight time frame, to consider my responses and to issue the final report. There are copies for Members, and hopefully the clerk will circulate them to you. I would like you to have a look at them. My response only deals with three areas of the report. I have not gone through every single item and produced something 30 or 40 pages long, but I give a feeling for what I think is wrong with it.

[572] **Darren Millar:** So, essentially you are saying that you disagree with the findings of the report.

[573] **Mr Jackson-Johns:** Yes.

[574] **Darren Millar:** Do you disagree with the findings of the report in respect of a strategic plan not having been produced or put in place; an operational plan not being in place; an overall work programme not being in place; and a private works policy not being in place that linked to those other strategic and work plans? Is that an accurate finding?

12.00 p.m.

[575] **Mr Jackson-Johns:** I do not totally agree with that. As I said to the auditor—

[576] **Darren Millar:** Well, do you agree, or do you not?

[577] **Mr Jackson-Johns:** No, I do not agree with that.

[578] **Darren Millar:** So, you did have those things in front of you.

[579] **Mr Jackson-Johns:** I did not have extensive documents in place, but there is a lot of history behind it. It is not just a simple ‘yes’ or ‘no’; that is what I am trying to say to you.

[580] **Darren Millar:** Okay, so you do not think that there were any failings at all within the organisation—

[581] **Mr Jackson-Johns:** I accept that there were failings, and I said at the meeting—

[582] **Darren Millar:** So, what failings do you accept?

[583] **Mr Jackson-Johns:** As with any organisation, if you dig deep enough and look for anything, any organisation will have faults. Any organisation in this country will have faults. Certainly, if the information is released in a certain way, any fault can be found in an organisation. However, you must remember that the board was a very successful organisation.

It was only a very small statutory body, but incumbent upon it was a whole raft of onerous requirements. You must remember that there was a small number of staff, and the board had functioned successfully in various forms since 1942. Yes, there were issues; nothing is perfect, and I would be a fool to say otherwise about any organisation.

[584] **Darren Millar:** What were those issues? Can you define or summarise them?

[585] **Mr Jackson-Johns:** Yes. The basic issues are that it is a small organisation with only a few staff working there—

[586] **Darren Millar:** So, capacity is an issue.

[587] **Mr Jackson-Johns:** Capacity is an issue. Certainly, the legislation that the board had to comply with, not only in terms of audit, was highly disproportionate to its size as a small body. The biggest issue with the board was that, because its turnover exceeded £1 million, it fell into the next raft of criteria, which would be incumbent on a large statutory body, such as a county council. You must remember that Caldicot and Wentlooge is one of the largest IDBs in the country. It was essentially well-managed. Yes, there were some issues. If you are on about governance documents, there were documents in place, and those documents came from the Association of Drainage Authorities. The board was subject to not only an internal audit by Newport City Council three times a year—which is an extremely onerous process, and they were there for several days—but to an annual external audit by the Wales Audit Office. That audit was not a light touch; it cost in excess of £10,000 a year. The auditors themselves were at the board's offices for in excess of two weeks, and there were pre-audit meetings, post-audit meetings and various meetings through the year as well, with documents being sent to them, too.

[588] So, there were issues—I accept that there could have been issues, and I would be a fool not to say that—but these should have been raised. However, there were never any issues raised during my time with the board. You can find fault in any organisation, if you dig deep enough.

[589] **Darren Millar:** So, no issues were raised in the internal audit reports that were undertaken or in the external audit reports that were undertaken by the official auditors from the Wales Audit Office.

[590] **Mr Jackson-Johns:** There are always issues raised in audit reports; that is the function of an audit. That is correct and proper and how it should be. One of the areas—and you may have to forgive me if I am mistaken about time frames—was the issue of governance documents. That issue was raised, I believe, by Newport City Council as the board's appointed internal auditor. I believe the council charged in excess of £300 a day, so it was not a light-touch audit by Newport City Council, three times a year. It raised the issue of governance documents. The board took that point on board and we got what documents we could from the Association of Drainage Authorities, and those documents were in place.

[591] The technicality that had arisen, which nobody was ever aware of, was the fact that they did not have ministerial approval. Having said that, those documents were there. They were taken to the board in good light, the board subscribed to those documents in good light, and they were there. The audit office had copies of them. If there was an issue—and, certainly, I can accept that—why did somebody not tell us?

[592] **Darren Millar:** It was alluded to in our previous evidence session, actually, that the Minister had not given approval. There is one very important question that we have tried to get to the bottom of all morning. Who did you feel you were accountable to as an organisation, not just in terms of your board members, but as an organisation?

[593] **Mr Jackson-Johns:** I have something here, which I would like the Members to have. I will give it to the clerk. It is basically the organisational structure of the IDB. This is something that I drew up in 2010. The board, quite rightly, was an autonomous statutory body. It has public duties and public responsibilities. There was never any issue with that; that is what we subscribed to. There were various levels within the board. I was the clerk and engineer and, therefore, I accept that I was the senior person there. However, I accounted in the first instance to the chairman and to the vice-chairman, and, obviously, to the board. The board was the employer and the board was the governing body.

[594] **Darren Millar:** Who was the board accountable to?

[595] **Mr Jackson-Johns:** As far as I could see, it would originally have been DEFRA, and after that, it would be, indirectly, Environment Agency Wales—or Natural Resources Wales, as you would call it now. Ultimately, as flood-risk management is a devolved matter, it would be your good selves at the Assembly.

[596] **Darren Millar:** Did you feel that you were accountable to the Environment Agency for the quality of your work and for the functions that you were delivering?

[597] **Mr Jackson-Johns:** Yes.

[598] **Darren Millar:** Did the agency ever ask you for copies of your plans, your operational plans, et cetera?

[599] **Mr Jackson-Johns:** No; nothing at all. We had plans in place. Obviously, they are documents that I had no access to. I was working with Dr Peter Williams at the time, to prepare five-year plans, budget plans, seven-year plans, or whatever you want to call them. Those documents were prepared and they were in place. They might not have been 30 or 40 pages long, but those documents were in place; there was a goal, there were requirements from DEFRA or the EA or, more importantly, maybe, the Welsh Government for internal drainage boards to modernise, for them to work together and form consortia. That is how these working arrangements come into place.

[600] So, the board is a public body. A whole raft of county councillors sat on the board, and it must be appreciated that county councillors were in the majority on the IDB. There were not only county councillors, but senior staff appointed by the county councils from the three authorities, as you know, to the board. So, the whole reason—and Dr Venables might have gone into this—why these appointments were made was to give a balanced scrutiny experience across a plethora of IDB activities. So, there were the elected board members—the farmers and landowners; anybody with an interest—and, on top of that, superimposed by the rating regulations et cetera, was the raft of county councillors who were appointed to the board. Those county councillors had a responsibility to their local authorities and to the ratepayers of the area.

[601] **Darren Millar:** We are going to move on to some other questions.

[602] **Jocelyn Davies:** I would like to ask a question about the audit by Newport City Council. I have been looking at the website and have recently read the minutes of the board. The bill from Newport City Council for the internal audit was £3,500, I think. So, were you paying that amount three times each year?

[603] **Mr Jackson-Johns:** I cannot remember the exact figures, because the last time that I was—

[604] **Jocelyn Davies:** Would it have been in that range?

[605] **Mr Jackson-Johns:** Off the top of my head, it came in three times a year, and I think that it charged approximately £300 per day. It was always there for a couple of days, so your figures would not be greatly awry.

[606] **Jocelyn Davies:** It was £3,500 or £3,600, plus £10,000 per year to the audit office.

[607] **Mr Jackson-Johns:** That is exactly right.

[608] **Jocelyn Davies:** So, we could say that, perhaps, it could be £20,000 to pay for audits.

[609] **Mr Jackson-Johns:** It is not only £20,000, as what has not been included in that figure is the IDB staff time, that of the chairman, and so on. So, you can add costs on. It is a huge figure for a small statutory body to comply—

[610] **Jocelyn Davies:** It might not be £20,000; it might have been a bit less, but it would have been a significant sum. I just wanted to get on the record the significant sum that was paid. May I go on to my next question?

[611] **Darren Millar:** Yes.

[612] **Jocelyn Davies:** You put up a defence to the report, but I do not think that you would deny that the report states that the board was unable to demonstrate that it acted lawfully with regard to the way in which it was raising its finances. Board members, including you, participated in proceedings where there was a conflict of interest and participated in discussions about proposals on your own pay, and the drainage board undertook a number of visits abroad without a business case. Looking back on those specific actions, do you recognise those as being inappropriate?

[613] **Mr Jackson-Johns:** To address that issue, I will deal with the pay first of all. I have addressed that quite specifically in my formal response to the audit office. My pay review by the board, or whatever you want to call it, was no different to any other member of salaried staff within the internal drainage board. That has never become apparent.

[614] **Jocelyn Davies:** However, it does not mean that it is right because it is like everybody else's.

[615] **Mr Jackson-Johns:** Yes, but the audit office had sight of it; the audit office would look at anything over 5% and it never raised an issue with it, even the board's own minutes said that the salaries were determined—

[616] **Jocelyn Davies:** Yes, but what I am saying to you is that, looking back, can you see that those actions were inappropriate, even though it always happened?

[617] **Mr Jackson-Johns:** With hindsight, I can appreciate what you are saying, certainly.

[618] **Jocelyn Davies:** That is what I am asking.

[619] **Mr Jackson-Johns:** However, you must view it in the context of the time. That had happened in the board for the 20-odd years that I was there before and an issue had never been raised. If someone had said that there was an issue, then of course things would have changed.

[620] **Jocelyn Davies:** I am not suggesting that it was not the culture of the organisation,

and I am not suggesting that you instigated that culture. However, looking back, can you see that, perhaps those things were inappropriate?

[621] **Mr Jackson-Johns:** I agree with you. There should have been an independent organisation overseeing any pay within the IDB, not only mine, but that of all the other salaried employees. That is quite correct. However, what the board did, it did in the right vein. I accept, with hindsight, that someone could have said—and that is what councillors and senior staff should be saying—‘Do you realise that this is not really the right way to do it?’

[622] **Jocelyn Davies:** I appreciate that, and we have not come across anybody yet who wants to take responsibility for anything in relation to this, and you are no different to anyone else in relation to that. Do you consider that these conflicts about which you have now said, ‘Well, I suppose that, now I see it in black and white, and looking back, had it not been the culture of the organisation, I probably would not have instigated it’, were borderline in public life, or are they way over the line?

[623] **Mr Jackson-Johns:** No, because everything was minuted. We had internal and external auditors. If there was an issue, we had to do things that we were told to do, because there are laws and regulations. However, the board did what it thought was the right thing. If there was an issue, why on earth did someone not say to us—

[624] **Jocelyn Davies:** I do not know if you have heard of the Nolan principles, but Lord Nolan said that, just because you have declared an interest, it does not mean that it is okay to hold it. You mentioned earlier that standing orders were in place, and I printed these off this morning. I do not know if you heard my exchange with Richard Penn a little earlier. I went on the website and printed off the Land Drainage Act 1930, and the standing orders emanate from that. You say that you had standing orders in place, that they had not been approved by a Minister, but that they were much updated than that. However, they were not put on the website. Were you maintaining the website?

[625] **Mr Jackson-Johns:** We paid someone to maintain the website. Dr Venables may be able to advise who that person was.

[626] **Jocelyn Davies:** Okay. I want to talk about the specific standing order on declaration of interests, which is only mentioned in one paragraph, namely paragraph 10. As you say, they had not been approved by Ministers, but people were abiding by the standing orders. It says:

[627] ‘Any member shall, if he is interested in any company with which the Board has or proposes to make any contract, disclose to the Board’.

[628] That is it. That is the only conflict of interest recognised in these standing orders—if the board is about to contract or is considering contracting with another company. Are these the standing orders that you were abiding by?

[629] **Mr Jackson-Johns:** They would have been. Those were the ones that were in place before my time, and after my time.

[630] **Jocelyn Davies:** They were not replaced during your time.

[631] **Mr Jackson-Johns:** Not to my knowledge. However, members had to sign a declaration of interest form when they came on to the IDB as well.

[632] **Jocelyn Davies:** Would you have had to sign a declaration of interest form?

[633] **Mr Jackson-Johns:** Yes, but I only worked for the IDB; I was not a board member. That is a huge difference. I worked for the IDB as a salaried employee. That is very important to consider.

[634] **Jocelyn Davies:** So, you did not consider yourself to be bound by the rules regarding conflicts of interest during discussions with the board?

[635] **Mr Jackson-Johns:** I did not say that at all. I said that I was an employee of the board and that everything I did was open, minuted and scrutinised et cetera. Of course, you have to abide by it. If you are referring to the sea wall case—

[636] **Jocelyn Davies:** Let me just get this straight. Do you think that, as long as something is minuted, it is okay?

[637] **Mr Jackson-Johns:** I cannot answer that question. You would be making the best effort to be open and honest.

[638] **Darren Millar:** You would be the custodian, as the person at the helm of this organisation, to make sure that your members abided by those standing orders, would you not?

[639] **Mr Jackson-Johns:** We did it to the best of our ability, yes.

[640] **Darren Millar:** Mike, did you want to come in?

[641] **Jocelyn Davies:** I want to finish the point about the minutes. So, the minutes were taken, and it is okay if it is minuted. Were the minutes published?

[642] **Mr Jackson-Johns:** Yes, they were on our website. The audit office had full copies of them, as did every board member.

[643] **Jocelyn Davies:** They were on the website, although they are not there now. Okay, thank you.

[644] **Mike Hedges:** Who provided legal advice to the members? I have seen your structure, and I cannot see anyone who would be capable of providing legal advice to the members. With regard to what your local authority members have been used to, if it is anything happening around where you live or anything from which you could personally benefit, you have to declare an interest. If I went to a council meeting on planning permission for something near my house, I would not only declare an interest but also leave the meeting and take no further part in it, because it would be perceived that I had an interest. I do not understand how this did not happen within your organisation. Was there someone there to give that legal advice saying, 'Now that you've declared an interest that the drainage work being done is on your land or close to your land, you must now leave the meeting and take no further part in it, because you will be gaining an advantage'?

[645] **Mr Jackson-Johns:** That is quite correct, and it did happen—that was the role of the chairman himself. Members would declare an interest and would leave the meeting, as I am sure you can see in several references to the sea wall case.

[646] **Mike Hedges:** With all respect to Darren, who I think is a very good Chair, but if we were discussing something now of which I was the beneficiary, I would not expect Darren to be the man able to give me legal advice. He would have someone sitting on his right hand side, so that, when I declared that interest, they would probably say 'Look, I think you'd better leave the meeting, because the interest that you've just declared is of a pecuniary

nature'. That is my point. Most organisations tend to have someone sitting there who will give legal advice, saying 'Hang about, you'd better go'.

[647] **Darren Millar:** Usually, that person would be you in your organisation.

[648] **Mr Jackson-Johns:** We did the best that we could with the resources that we had. Solicitors were employed by the board—I am sure that you have seen various names.

12.15 p.m.

[649] **Aled Roberts:** We did not ask Dr Venables who was updating the website. Can you tell who that was?

[650] **Mr Jackson-Johns:** I can tell you. I do not want—

[651] **Jocelyn Davies:** You can send us a note, if you prefer to do that.

[652] **Mr Jackson-Johns:** It was paid for under the auspices of ADA. I do not know if it is right for me to name a single person.

[653] **Aled Roberts:** ADA was updating your website.

[654] **Mr Jackson-Johns:** Someone who was involved with ADA. They maintained many of the internal drainage board websites in England and Wales.

[655] **Jocelyn Davies:** They did look very similar when I looked at them.

[656] **Mr Jackson-Johns:** I can certainly give you a name, but I am conscious, after what has happened to me in the last couple of years, as I am sure you are aware, that I do not want to dig a huge hole for myself. However, I can certainly give you a name in confidence, and maybe Dr Venables can answer that question as well.

[657] **Aled Roberts:** I do not need the name; it is okay. I just want to deal with the conflict issue. You raised the issue regarding conflict as far as board members are concerned, but the Wales Audit Office report deals with your personal conflicts with regard to the case. I do not want to go into the details there, but your case is that all the board members knew of your interest in the case—

[658] **Mr Jackson-Johns:** There was no interest of a pecuniary or personal nature in the case. The only interest that I had in the case was the fact that I worked for the internal drainage board. That must be made very clear.

[659] **Aled Roberts:** It is also in the report that you were advising the claimants, who were then bringing an action against the internal draining board.

[660] **Mr Jackson-Johns:** I advised the board to the best of my abilities as the board clerk—as a salaried employee—but the board employed a very large Cardiff practice to advise it on the legal issues. It employed an eminent barrister—

[661] **Aled Roberts:** That is not the point that I am making. The point is that you, as an employee of the drainage board, were advising the claimants, who included the chairman and the vice-chairman, with regard to their actions.

[662] **Mr Jackson-Johns:** I could not advise on legal action; I am not a solicitor. I make that point quite clearly.

[663] **Aled Roberts:** I do not think that it was the legal advice; it is the technical advice that is in the report.

[664] **Mr Jackson-Johns:** What technical advice would that be, because I am not privy to all this information?

[665] **Aled Roberts:** As the chief engineer, I guess.

[666] **Mr Jackson-Johns:** All that I did was advise in my role as engineer to the drainage board—if the sea wall failed, what would be the consequences of a catastrophic failure of the sea defences. That is well known through the area.

[667] **Aled Roberts:** Can you clarify one thing for me, because it is not clear from my reading of the minutes? It is suggested at one stage that the chair or the vice-chair—I am not sure which—and you were given delegated authority to deal with the case at the outset.

[668] **Mr Jackson-Johns:** You must realise—I am harping on, repeating myself; I hope that it does not look silly—that I only worked for the internal drainage board. The members are in charge of the drainage board, and you know who they are. I am surprised that there are no members or councillors here today to answer some questions as well.

[669] **Aled Roberts:** What I am asking is: was delegated authority given to two or three individuals with regard to the case?

[670] **Mr Jackson-Johns:** I can only advise the chairman. If it is in the minutes—it must be there—it would have been given to the chairman or vice-chairman, whoever was there. I was not a board member; you must realise that. I had no voting rights. I could only advise and sit there and do what I was told. I was doing what I was told, essentially.

[671] **Mike Hedges:** Was the way that the Caldicot and Wentlooge board was run any different to other drainage boards in England?

[672] **Mr Jackson-Johns:** I will give you an honest answer: I think that it was one of the best run drainage boards in England and Wales. That is why we were asked to provide contracted services to other IDBs. We are one of the largest IDBs in the country. I know that there have been various amalgamations—my knowledge is two years' out of date—but we were somewhere near the tenth largest IDB in the country. The board was clearly, in many instances, thought of as an exemplar of good practice, for want of a better description. It was well run and efficient. I do accept that, yes, there were weaknesses, but everything in the board was done in the right spirit, to the benefit of the ratepayers and it was using the money wisely. The issues that we are getting into are—I am not demeaning them at all—whether the 't' was crossed, or whether the dot was put over the 'i'. Yes, those are important, of course, but they must be put in the context of what the board was trying to do. It was a small organisation—it might be a very large internal drainage board—trying to comply with a whole raft of legislation et cetera. However, look at the results on the ground. The board achieved great results; it was respected and it was looked to to provide a service to other IDBs. Yes, you can find fault. I am repeating myself to say that I agree with what you are saying. Yes, there was fault, but it was never raised as a serious issue. Of course it was a big issue, but why did someone not tell us? There were 35 bosses there altogether.

[673] **Jenny Rathbone:** I am struggling to understand how you were safeguarding the issues of ratepayers when you were advising three members of the board, including the vice-chair, on how they could take up action in the high courts, which could, potentially, have ended up with a liability to the drainage board of £35 million to £40 million.



[674] **Mr Jackson-Johns:** I raised those issues with the board. It took advice from Hugh James Solicitors in Cardiff, I think. They were providing the legal advice to the board, not me. I went along as the senior officer to the board. I accept that. However, this was not my case. It was a case brought by the drainage board. It was the employer. It took the advice of a pre-eminent Cardiff law firm and a pre-eminent barrister.

[675] **Jenny Rathbone:** How could these people still be on the board and be suing the board?

[676] **Mr Jackson-Johns:** I cannot answer that. It is not in my remit.

[677] **Jenny Rathbone:** You were the chief operating officer for this organisation. You allowed these three people to remain on the board while they were suing the board.

[678] **Mr Jackson-Johns:** There is a reference in the minutes to the fact that the vice-chair was willing to stand down.

[679] **Darren Millar:** Did you give advice to the rest of the board that this was an inappropriate conflict of interest?

[680] **Mr Jackson-Johns:** I gave advice to the best of my ability. They were taking legal advice, and no-one ever raised an issue. I am not in a position to argue with an eminent barrister and an eminent Cardiff law firm. That is why the minutes were there. This was not kept secret from anyone.

[681] **Mike Hedges:** Did you ask the local authority—Newport council, which was the biggest there—if it would provide a legal person for these meetings when you were discussing anything this difficult?

[682] **Mr Jackson-Johns:** Not a legal person, specifically. However, Newport City Council appointed quite senior officers to the IDB—who hardly ever came, I hasten to add. So, these were not just councillors left by themselves.

[683] **Mike Hedges:** You might have very good engineers, who might be the best civil engineers in Wales, but when it comes to legal advice, the poorest lawyers would probably be of more use than the best engineer.

[684] **Jocelyn Davies:** We cannot expect engineers to be giving legal advice on issues.

[685] **Mike Hedges:** The point that I am making is this: should you or someone else not have asked, in cases that were this difficult, that the local authority provide you with legal help?

[686] **Mr Jackson-Johns:** I will tell you what happened. This is the situation. A copy of the board's minutes was sent to the legal department of Newport City Council every month. Also, the decision to employ Hugh James Solicitors was based on the advice of a pre-eminent Monmouthshire county councillor, who is no longer a councillor. I can give you that name in confidence, if you want. That firm had acted for Monmouthshire County Council in the past and came with a very strong recommendation.

[687] **Darren Millar:** Feel free to answer the following question however you want: did you feel that you were competent to be giving advice on conflicts of interest to the board?

[688] **Mr Jackson-Johns:** I will tell you the truth regarding the sea wall case. I was uneasy

about it, and that is why it was minuted at such length. That is also why I was adamant that the board had to employ a pre-eminent legal practice. I believe that that was Hugh James Solicitors; correct me if I am wrong. The gentleman concerned was Will Jones Salem, and I believe that the firm employed a very eminent barrister, called Leslie Blohm. Never, at any time, were any issues raised. I was uneasy with this situation; you are quite right. When I was appointed as clerk to the board in 2001, no-one mentioned an issue. Audits were carried out and reports were written. What I was doing was not essentially different from what many other engineers and clerks were doing for internal drainage boards. Maybe there is an issue with what is happening with internal draining boards. If people are being put in that invidious position, maybe this is about the bigger picture.

[689] **Darren Millar:** Aled will come in here, and then we will come to Julie.

[690] **Aled Roberts:** I have the minutes of the meeting on 21 January, 2013, where the democratic services manager from Monmouth County Council is an officer in attendance. In your earlier minutes, from what I can see, the only officers in attendance are internal officers of the internal drainage board. Was there ever any attendance by a monitoring officer or a senior legal officer from any of the authorities when the legal case was being discussed at the outset? Alternatively, was the legal adviser from Hugh James or the barrister in attendance at board meetings?

[691] **Mr Jackson-Johns:** I think that the solicitor from Hugh James and Leslie Blohm came to board meetings. I cannot remember exactly what happened three or four years ago, but they came to meetings and advice was certainly given. I cannot provide further details, but they did attend meetings. I cannot remember meeting dates now, as they were three or four years ago.

[692] **Aled Roberts:** Did the chair and vice-chair attend legal conferences with the solicitors or the barristers?

[693] **Mr Jackson-Johns:** Yes. I went along as a board officer; I made that point quite clearly. If that was not correct, we did what we did in the right light. The people with the authority were the chair and vice-chair, and there were always a couple of board members in attendance as well.

[694] **Aled Roberts:** So, you never received advice, as the clerk, that there was something wrong.

[695] **Mr Jackson-Johns:** Do you mean a conflict of interest? If so, no. In relation to someone saying, 'There is a conflict of interest, and these gentlemen should resign', that was never raised to us as an issue.

[696] **Darren Millar:** Forgive me, but this is obvious, is it not? If there is a legal case being taken by individuals who are also receiving advice on behalf of the people whom the claim is being made against, it would seem to me that there is a clear conflict of interest. I find it bizarre that you did not feel as though you needed to escalate your concerns, given that you told other parties that you had reservations.

[697] **Mr Jackson-Johns:** With the greatest respect, solicitors had not advised that there was a conflict of interest. The barrister had not advised that there was a conflict of interest. The audit office had not advised that there was a conflict of interest. None of the county councillors advised that there was a conflict of interest. Newport City Council's legal department, which was asked to help fund this case and subscribed to pay a special levy to the board, never raised an issue. A senior councillor at Monmouthshire County Council never raised an issue. We did the best we could with the resources available.

[698] **Jenny Rathbone:** [*Inaudible.*]—employ eminent lawyers, so I do not think that that is a defence. I am confused as to whether the people who were suing the drainage board were attending the meetings with the solicitor who was advising the drainage board on how to defend itself. So, giving the case to the opposition at x pounds a time—I am sure that the solicitor was on the meter. How could that possibly happen? There was a clear conflict of interest. You were simply just allowing them to come along and hear what the defence was.

[699] **Mr Jackson-Johns:** No. I was not simply allowing them to come along. I was acting to the best of my abilities in the situation. The board itself—and there are 35 people on the IDB—were fully aware. The meetings are fully minuted and representations were made. How much more could I have done? Was I going to stand up and say, ‘You must sack the chairman and the vice-chairman’? We gave the advice and the board made the decisions. That is what is important. It was not just farmers or county councillors or officers; they were board decisions. The board is the culpable authority. It made these decisions.

[700] **Darren Millar:** We are going around in circles. Let us move on.

[701] **Julie Morgan:** You said that you were uneasy. Was your uneasiness minuted? Did you take any action in view of the fact that you were uneasy?

[702] **Mr Jackson-Johns:** I cannot remember exactly what was in the minutes and I have no access to that information. However, given that there were issues and concerns, an eminent Cardiff firm was employed under the advice of an eminent county councillor for Monmouthshire County Council—Hugh James. I did what I did. I am not a solicitor. An eminent firm had to be employed. There was no point employing a little local firm from around the corner. There was a need for a company—

[703] **Darren Millar:** Was the firm employed to defend the case or was it employed on the basis of your reservations about a conflict of interest? That is the point here, is it not?

[704] **Mr Jackson-Johns:** It is both, is it not? I am not qualified to advise the board in that respect, so a qualified law firm was employed to give that advice. It never said that there was a conflict of interest. It was at the board meetings and it gave advice on the case. The barrister never raised any issues. You are talking about top people in the profession here. They never raised the issues.

[705] **Jenny Rathbone:** [*Inaudible.*]

[706] **Mr Jackson-Johns:** You must ask the question of the board members—

[707] **Darren Millar:** This could go on and on. We heard you answer.

[708] **Julie Morgan:** I want to ask about the relationship with the Welsh Government at the time. How did you see the relationship between the IDB and the Welsh Government?

[709] **Mr Jackson-Johns:** There was an excellent working relationship with the Welsh Government at the time.

[710] **Julie Morgan:** How would you describe it?

[711] **Mr Jackson-Johns:** Amicable, fruitful, professional—

[712] **Julie Morgan:** Yes, but what was it? How did you relate to each other?

[713] **Mr Jackson-Johns:** With mutual respect and understanding. There was never an issue with anybody at the Assembly Government. The board worked very closely with it. I attended many meetings with it.

[714] **Julie Morgan:** When you worked closely, how did you see the relationship? Did you see yourself reporting to it in any way?

[715] **Mr Jackson-Johns:** Yes. Technically, it monitored—[*Inaudible.*]. I know that the Welsh Government has the devolved power for flood-risk management. I accept that. The—[*Inaudible.*]—is a supervisory authority. I was brought up in the old school; I have always been taught to respect authority positions and public office and not to hide anything—

[716] **Julie Morgan:** I was thinking more about meetings. Did you have regular meetings scheduled?

[717] **Mr Jackson-Johns:** There were no regular scheduled meetings, as in, ‘Give us an update every four months on what you are doing’.

[718] **Julie Morgan:** No, there was nothing like that.

[719] **Mr Jackson-Johns:** However, there was a very close working relationship. We were on first-name terms with them. I know that officers may have changed and I do not know who is in charge now, but, at the time, there was an excellent working relationship. We were at many meetings with them. That is why the board achieved great results.

[720] There is an issue that I would like to bring to the front, as you are raising issues. I will now bring it up formally. I would like to know why the Assembly Government gave the IDB £100,000 to pay for the audit office report. I have never had an answer to that. If there was such a lot wrong with the IDB, why on earth did a Government body give the organisation £100,000 to help to pay for the audit office report? That information was minuted; that is the only reason I found out as I had no access to information. If it had issues with the IDB, why was it given that money? That is where I am coming from and that is why I am surprised—

12.30 p.m.

[721] **Jocelyn Davies:** We asked it that.

[722] **Darren Millar:** Yes, the Welsh Government’s response was that it was concerned about the impact that that would have on the IDB’s finances, given that it is a small organisation.

[723] **Mr Jackson-Johns:** When I left the IDB, it was a cash solvent organisation—I am trying to be tactful—but I do not know whether that money has gone now.

[724] **Jocelyn Davies:** Do you know what the reserves were when you left?

[725] **Mr Jackson-Johns:** The ballpark figure—and I am talking two to two and a half years ago now—was in the region of £0.5 million or £600,000. In addition, it owns the freehold to the Pye Corner site at Pye Corner. That is a valuable site. I guess that that site is worth in excess of £1 million.

[726] **Julie Morgan:** Did Assembly Government representatives talk to you about there being any problems?

[727] **Mr Jackson-Johns:** Only if they ever phoned up. They never raised any issues with

the IDB.

[728] **Julie Morgan:** Yes, but, obviously, there were issues when this went to the audit office. At what point did they involve you in discussing that something appeared not to be right?

[729] **Mr Jackson-Johns:** As soon as things happened, in 2010 or 2011, whenever it started happening—I forget now—I wrote many e-mails and letters to the Assembly Government. I wrote some heartfelt e-mails and letters, saying, ‘Please can I reach you so that the board can discuss these matters with you’. No e-mail or letter was acknowledged. They are on file, but I do not know where they would have gone. I was concerned about whistleblowing allegations and of course there were issues. The format should have been to bring them to the board. Meetings would have been publicly minuted and the audit office and the Assembly could have been involved. We accept all of that, but the way it has been done has cost probably hundreds of thousands of pounds. I would not hazard a guess at how much it has cost. However, it is getting the same result.

[730] **Julie Morgan:** So, when these issues first arose, there was never any discussion with the Assembly Government about them?

[731] **Mr Jackson-Johns:** No.

[732] **Julie Morgan:** Right at the very beginning, you had no discussions with them.

[733] **Mr Jackson-Johns:** Basically, it ignored every request for advice and a meeting made by me, and maybe those made by the chairman as well.

[734] **Julie Morgan:** So, it never approached you.

[735] **Mr Jackson-Johns:** No, and I sent many e-mails and letters asking, ‘Please can I come to talk to you to see what is wrong with the organisation?’ There were of course issues that had to be put right, and they could have been put right. This did not have to go down the road that it did. There could have been public investigations. I have no issues with that. However, the way that it was done has cost the public purse many hundreds of thousands of pounds and will paint many organisations and individuals in a very bad light. You must bear in mind that the organisation was a good organisation. It was cost-effective, respected, open and transparent. It could have been put right. There were issues, and I will be the first to put up my hand up and say that those issues should have been put right; you are quite right. They could have been put right correctly, cost-effectively, efficiently and quickly. This has gone on for over two and a half to three years now and it has involved you.

[736] **Julie Morgan:** Did you see yourself as accountable to the Welsh Government?

[737] **Mr Jackson-Johns:** Yes, I do. That is why I am here today. I took time out of my business to come here because I think that it is my civic duty, and as I said in the paper, I am willing to co-operate in any respect with the Welsh Government. I made that offer to it. I said, ‘Please let me come to talk to you and tell me what the problems are’, and there was never any acknowledgement of that.

[738] **Aled Roberts:** The issues regarding the court case were starting to brew in the summer of 2010. There was an emergency board meeting in August, but that appears to refer to a meeting that had taken place the previous month in Monmouth. Was that meeting organised by the Assembly Government, or was there any Assembly Government involvement in that meeting?

[739] **Mr Jackson-Johns:** Speaking off the top of my head—I obviously cannot fully recall—I know that there was an emergency meeting. Was it because a declaration of interest was not made and they had to reaffirm a resolution or something? Something like that happened, because we were concerned about declarations of interest; you are quite right. They had to have an emergency or some other board meeting—I am speaking about something that happened two and a half years to three years ago now—to put something right, because the board was conscious of issues.

[740] **Aled Roberts:** My concern is whether there was any Assembly Government involvement in the summer of 2010.

[741] **Mr Jackson-Johns:** Not to my knowledge. The Assembly Government was fully aware of what was happening. It would be wrong for it to say that it was not fully aware, because this was a nationally important legal case.

[742] **Aled Roberts:** How was it fully aware then?

[743] **Mr Jackson-Johns:** From conversations with the chairman and the vice-chairman. We had discussions with people. I am not saying that there was a full meeting at 10 a.m. on Monday morning to discuss it, but there was widespread knowledge of what was happening. This was taken as a benchmark legal case nationally.

[744] **Aled Roberts:** Were those discussions with Assembly Government officials?

[745] **Mr Jackson-Johns:** I cannot remember whether there were discussions with them. I do not wish to mislead you, but there was widespread knowledge throughout the industry, the Government and especially in local authorities, given that the board, following the advice of the solicitors, had formally written to the three local authorities asking them to help fund the legal case. I am sure that there are records and letters on file about that. By default, therefore, the Assembly Government would have known, because this was a big legal case on nationally important issues.

[746] **Jocelyn Davies:** It was a precedent.

[747] **Mr Jackson-Johns:** You are quite right: it was a precedent. We are talking about primary legislation here.

[748] **Aled Roberts:** I will move on to audit. The Wales Audit Office report acknowledges that there are legitimate questions regarding the effectiveness of previous audits. You made that point yourself.

[749] **Mr Jackson-Johns:** I raised that in my reply and your clerk can give you copies of that.

[750] **Aled Roberts:** You mentioned Newport's internal audit and the Wales Audit Office; were any other auditors involved?

[751] **Mr Jackson-Johns:** No. The board took its governance responsibilities very seriously. For instance, I was looking in my file the other day and saw that we were the first internal drainage board in the whole of England and Wales to send every board member on an internal drainage board course, hosted by JBA Consulting on IDB members' duties and responsibilities, which was held on 22 April 2008. We were recognised as being one of the first in the country to do this. I took the responsibility of members extremely seriously. I am sure that you have mentioned the attendance of members at board meetings. I understand that it takes time, but if you look at the minutes carefully, you will see that there are numerous

references to concern at the lack of attendance by councillors and officers at IDB meetings. I know that you have gone back a year or two, but if you had gone back further, you would have seen that.

[752] **Jocelyn Davies:** They were not available.

[753] **Mr Jackson-Johns:** There are files in the IDB offices, which I had asked to be prepared. There are Excel spread sheets on the attendance of every single board member. I can assure you that they go back quite a few years. So, I was concerned about it because members should attend. Members cannot attend every meeting and, from the top of my head, the IDB regulations say that if they do not attend within six months, they are automatically disqualified unless they have a valid excuse.

[754] **Jocelyn Davies:** Who was running that course?

[755] **Mr Jackson-Johns:** It was run by JBA Consulting, which is one of the biggest civil engineering consultancies in the field of flood-risk management in England and Wales. That course was run on 22 April. That is just an example of how seriously we took the responsibility. There is a note of every board member who attended. There is even a copy of the detailed 50-slide presentation that I asked to be kept on the board's server.

[756] **Darren Millar:** What proportion of your board attended that?

[757] **Mr Jackson-Johns:** I cannot remember now. It was certainly a good number. It was probably about two-thirds. There would be records at the IDB. To my knowledge, we were the first IDB in the whole of England and Wales to ask its members to attend such a training day. The gentleman who came to give the PowerPoint said that it was the first one that he had done, so we took it very seriously. Maybe more have been run now, I do not know. Here is my certificate, and every board member had one as well, so it was taken seriously. I accept that it was not perfect. I am reiterating here to agree with what the members are saying, but it was done in the right spirit.

[758] **Aled Roberts:** Really, the criticism that we have had of audits—and I am paraphrasing—is that, given the amount of money that was spent by the internal drainage board on audits, you would have expected audits to have picked up issues. Do you have any concerns regarding the manner in which those audits were carried out?

[759] **Mr Jackson-Johns:** I have a lot of concerns regarding the audit; I am glad that you have asked that. It is not only down to money, though I understand that money, *prima facie*, is important. We must remember that members quite rightly—and I had to go along with this, though I accept that that was maybe a blinkered view—had a very extensive external audit by virtue of the fact that the IDB's turnover was in excess of £1 million. Had it been £999,999, we would not even have had to do a full audit; we could have just submitted accounts. Is it called a limited-scope audit? I am trying to remember the correct terms. We could have just submitted accounts, sent an opinion to the audit office and that would have been the end of the matter. However, because we tripped over that magic figure, we automatically went into the same round as a local authority would go, which is very onerous. That is quite correct and I am not arguing against that; we should have scrutiny.

[760] It is not only about the cost. Members raised this issue and the auditors came to the board and talked about these issues. It is a fact that they were at the board for at least two weeks every year, plus they came to the board for pre-audit and post-audit meetings. It is wrong to say that it only reflects finances: it reflects the whole governance of an IDB. For heaven's sake, the reason why the board updated its governance arrangements—quite rightly so, and I will give credit to Newport—was because there were concerns that the board's

governance arrangements were not totally up to date. Fair enough, that was addressed as a matter of extreme urgency. We took all the documents that we could from the website. We took the best available documents. If there was a glitch in the fact that the Minister did not approve it, we must take that on the chin, but the documents were all there. There were minutes that had been accepted by the board, declarations of members' interests, schemes of delegation—that is just a list from the top of my head. There was an issue in that the auditors were there. If you look at the audit opinions, you will see that no issues were ever raised. The board had a clean slate, practically, every year. It had various high-risk and low-risk categories in the tables. They did not just cover whether the board spent £50,000 correctly: it was a lot more than that. They had copies of the minutes of every board meeting of the year. The officers would come down and stand at the photocopier for hours.

[761] **Jocelyn Davies:** As it was an organisation with an income of over £1 million, there was not just a cursory glance at whether it all added up; it was a much more in-depth audit.

[762] **Mr Jackson-Johns:** Yes, quite right. It was a very extensive audit. You are quite right, Member. It went way beyond sitting around a table, having a cup of coffee. They had copies of everything.

[763] **Darren Millar:** We will be speaking to the appointed auditor and raising some of these issues.

[764] **Mr Jackson-Johns:** That is why I have made copies of my formal response to the auditors, because I think that it just—

[765] **Darren Millar:** We will take those. I am very conscious of the time. There are two more people who want to ask questions. So, we will have to move on. I call on Jenny, very briefly, and then Oscar. Perhaps you could be as brief as possible with your responses.

[766] **Mr Jackson-Johns:** Yes, certainly.

[767] **Jenny Rathbone:** Could you just take us through the manner in which the board reviewed your remuneration?

[768] **Mr Jackson-Johns:** As I said before, my remuneration was reviewed in exactly the same way as every other salaried employee of the board. Obviously, the senior field operative was reviewed in the same way. If you are an operative—and it was not just me; every single employee of the board now went through the same procedure. That never came through in the report. Some people in the organisation—

[769] **Jenny Rathbone:** I am sorry; every single operative of the board—

[770] **Mr Jackson-Johns:** Every salaried staff member or employee went through that. Other people who have had percentage increases and had a bigger percentage rise than I did—and I will not mention names because I do not think that it is right, but I can give that information if you need it—went through the same procedure. We had various senior departmental managers—to use a global term—who had quite robust and large increases over the years. I am sure that you could pick it up if you look at the personnel files. If they felt that their position was becoming busier and they had more responsibilities, but that they were not being fairly remunerated, the employee—and it was not just me—would make a request to the full board, asking, 'Would you please reconsider my grading within the organisation?'

[771] **Jenny Rathbone:** So, did the local authority members use their knowledge of how the local authority works, and the benchmarks?



[772] **Mr Jackson-Johns:** What happened then was that if the board agreed that a review was overdue or should be taken, it would appoint a sub-committee or panel—for the want of a better word—that would hear the case. That panel would consist of the chairman and the vice-chairman. It would always consist of one local authority member—100% of the time, there would be a county councillor. I am sure that there was a representative from the councils. Also, there would be another representative of farming or land-owning interests. So, there were always four people undertaking the review. That was a balanced approach: one from the county councils, one from the landowners and the chairman and vice-chairman, quite correctly. They were then given the power to consider the review. If they felt that that review was justified, after a presentation by the employee, they would take it to the full board for ratification. We got slandered once—quite rightly so—because we were told off that we could not put my salary in the minutes because of freedom of information et cetera. We got rapped over our knuckles for that by the audit office, so we just put in a general description. I have been criticised for it. I gave detailed minutes because I cared for the organisation, but I have been criticised for putting too much information in the minutes. Does that answer your question?

[773] **Jenny Rathbone:** I am not sure. However, the other major issue—

[774] **Darren Millar:** Could you be very brief, Jenny?

[775] **Jenny Rathbone:** The other major issue was the visits abroad and whether they were appropriate.

[776] **Mr Jackson-Johns:** The visits abroad were also duly minuted. Also, every time the board went on a visit abroad, it was cleared with the audit office. Its advice was, ‘Keep full records and financial accounts of what happened’. If it advised you incorrectly, that happened when they went to Italy and when they went to Ireland.

[777] **Darren Millar:** May I clarify something? So, you got advance permission.

[778] **Mr Jackson-Johns:** Yes. I am not saying that it would say, ‘Go; everything is hunky-dory and wonderful’, and give you a pat on the back. It would say, ‘Keep the full records’, and we gave—

[779] **Darren Millar:** So, you took advice on record-keeping, but did you take advice on the decisions?

[780] **Mr Jackson-Johns:** We gave that information. All of the decisions about who attended were duly minuted in the minutes. The audit office was fully aware that these visits were taking place and, importantly, the finances were there.

[781] **Jocelyn Davies:** Did it ever ask for a business case in relation to the decision?

[782] **Mr Jackson-Johns:** No, but it was told by the board who was going. The agendas that it was seeing showed that they would be looking at land drainage pumping stations and various schemes.

[783] **Aled Roberts:** May I just clarify one thing?

[784] **Darren Millar:** Be very brief then, Aled.

[785] **Aled Roberts:** You said that the Wales Audit Office picked you up on the fact that you were named in the minutes. Was that picked up in writing?

[786] **Mr Jackson-Johns:** It was part of the audit office report somewhere along the line that we should not—and it was not only me—put personal information relating to any officer or member in the minutes. The minutes should be an anonymous record, in a sense.

[787] **Aled Roberts:** So, they never picked up the process by which salaries et cetera were—

[788] **Mr Jackson-Johns:** No. Also, it is important to realise—it is an important point for Members, yet I know that time is running away—

[789] **Darren Millar:** Very briefly.

[790] **Mr Jackson-Johns:** My salary was published at the insistence of the audit office in the board's annual accounts. I objected to it, but it made it quite clear that it had to be done; fair enough. So, my annual salary was published in the board's annual accounts every year.

[791] **Darren Millar:** Okay. Julie wanted to come in on this.

[792] **Julie Morgan:** [*Inaudible.*]

[793] **Mr Jackson-Johns:** No. It was the board's decision to go abroad. The chairman and members would say, 'We want to have a visit to such and such a place', normally at the end of the tenure of a chairman, and all the information was given to the audit office. It was minuted. The finances were there, and how much it cost.

[794] **Julie Morgan:** So, you did not have permission to go beforehand.

[795] **Mr Jackson-Johns:** We gave the information to it. We did not ask—

[796] **Jenny Rathbone:** You did not need its permission.

[797] **Mr Jackson-Johns:** We did not need permission. You are quite right. The information was given to the audit office and never was a concern was raised.

[798] **Jenny Rathbone:** When did you decide—[*Inaudible.*]

[799] **Mr Jackson-Johns:** That was a decision of the board. You are quite right.

[800] **Jenny Rathbone:** [*Inaudible.*]—including the authority members as well?

[801] **Mr Jackson-Johns:** [*Inaudible.*]—entitled to go; you are quite right, yes.

[802] **Darren Millar:** So, just for clarification, you sought its advice on how to account for the trips after they had taken place.

12.45 p.m.

[803] **Mr Jackson-Johns:** Yes. It is all there, in the files, which it saw.

[804] **Darren Millar:** Okay. We will have one final question from Oscar, then I will have to wrap this up because of the time.

[805] **Mohammad Asghar:** Thank you. I have a very quick question. You were the chief executive, or the clerk and engineer.

[806] **Mr Jackons-Johns:** Yes.

[807] **Mohammad Asghar:** This is not personal; it is an example. Little Johnny comes home with his clothes and shoes full of mud and tells his mum, 'I never played football'. So, you are one of those: coming here and telling us that you were only doing what you were told.

[808] **Mr Jackson-Johns:** I—

[809] **Mohammad Asghar:** Wait a minute; I have a question to follow on from that.

[810] That is very hard for us to swallow. The Welsh Government is now considering merging various drainage boards and incorporating them into Natural Resources Wales. Basically, we know that there were a lot of anomalies and we are not blaming you for it. But, with that sort of attitude, a lot of things will be changed in statute sooner or later, because nobody seems to be taking responsibility. So, what is your advice and what do you think that the Welsh Government should learn from the 2010-11 audit report of Caldicot and Wentlooge Levels Internal Drainage Board?

[811] **Mr Jackson-Johns:** Obviously, changes are needed; I have never denied that changes are needed. If you feel, hand on heart, that that is the right way to go—flood-risk management is a devolved matter—I am not in a position to argue with your good selves about what is the right way to go. If you feel that accountability to and the expertise of a large organisation are needed, I cannot argue against that. If you feel that that would lay this beast to rest—for the want of a better word—that is the way to go. I cannot argue against that. I have seen the report. I do not have access to information like your good selves, of course. If you think that that is the right thing to do, to satisfy yourselves that things have been put right—there are things that need to be put right; I cannot talk to you for two hours on that as we do not have enough time—then that is what you must do. I am certainly not qualified to argue against that. I have no remit to argue against that.

[812] **Darren Millar:** Okay. We have given you the final word. We are happy to do that, as always with all of our witnesses. We are very grateful for your attendance today, Dean, at this meeting. It has been a very useful session and we will circulate all the papers to committee members and publish those as part of our evidence pack with the report that we draw up as a result of today's evidence. You will be sent a copy of the transcript of the proceedings. If there is anything that you need to correct, or any other bits of information that you want to send us as a result of that, feel free to do so.

[813] **Mr Jackson-Johns:** I am very conscious of saying something that I should not say in public, but if you need names or whatever, I can give those to you in confidence.

[814] **Darren Millar:** Thank you. That draws this particular item to a close.

12.48 p.m.

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

[815] **Darren Millar:** We have had a note from Hywel Dda Local Health Board and I will take it that that has been read.

**Cynnig o dan Reol Sefydlog Rhif 17.42 i Benderfynu Gwahardd y Cyhoedd  
o'r Cyfarfod**  
**Motion under Standing Order No. 17.42 to Resolve to Exclude the Public  
from the Meeting**

[816] **Darren Millar:** I move that

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

[817] I see that there are no objections.

*Daeth rhan gyhoeddus y cyfarfod i ben am 12.48 p.m.*  
*The public part of the meeting ended at 12.48 p.m.*