



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

Y Pwyllgor Plant a Phobl Ifanc **The Children and Young People Committee**

Dydd Mercher, 5 Mehefin 2013
Wednesday, 5 June 2013

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Cynnig o dan Reol Sefydlog Rhif 17.42 i Wahardd y Cyhoedd o'r Cyfarfod
Motion under Standing Order No. 17.42 to Exclude the Public from the Meeting

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

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

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

Angela Burns

Ceidwadwyr Cymreig
Welsh Conservatives

Keith Davies	Llafur Labour
Suzy Davies	Ceidwadwyr Cymreig Welsh Conservatives
Rebecca Evans	Llafur Labour
Bethan Jenkins	Plaid Cymru The Party of Wales
Ann Jones	Llafur (Cadeirydd y Pwyllgor) Labour (Chair of the Committee)
Lynne Neagle	Llafur Labour
Aled Roberts	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats
Simon Thomas	Plaid Cymru The Party of Wales

**Eraill yn bresennol
Others in attendance**

Lisa Edwards	Swyddog Cyswllt Gwleidyddol Dros Dro, Undeb Prifysgolion a Cholegau Cymru Temporary Political Liaison Officer, University and College Union (Wales)
Chris Jones	Cadeirydd Pwyllgor y Sector Addysg Bellach, Undeb Prifysgolion a Cholegau Cymru Chair of UCU Wales Further Education Sector Committee
Margaret Phelan	Swyddog Rhanbarthol, Undeb Prifysgolion a Cholegau Cymru Regional Official, University and College Union (Wales)
Kieron Rees	Swyddog Polisi a Chynrychiolaeth, Undeb Cenedlaethol Myfyrwyr Cymru Representation and Policy Officer, National Union of Students Wales

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

Steve Davies	Cynghorydd Cyfreithiol Legal Adviser
Steve George	Clerc Clerk
Olga Lewis	Dirprwy Glerc Deputy Clerk

*Dechreuodd y cyfarfod am 9.34 a.m.
The meeting began at 9.34 a.m.*

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

[1] **Ann Jones:** Good morning and welcome to the Children and Young People Committee. I ask Members around the table who have their mobile phones on to switch them off as they affect the broadcasting and translation equipment. We operate bilingually, so, if you need translation, the headsets are in front of you and it is channel 1 for the translation

from Welsh to English. Channel 0 has the floor language, should you need some amplification. We are not expecting the fire alarm to operate, so should it operate, we will take our directions from the ushers, who will direct us to the safe place and assembly point. We have not received any apologies for today's meeting, so we will move on. Do Members need to declare any interests that they have not already declared?

[2] **David Rees:** In my former employment, I was a lay officer for the University College Union or National Association of Teachers in Further and Higher Education, as it was in those days.

[3] **Ann Jones:** Thank you very much for that.

[4] **Aled Roberts:** My wife informed me last week that she has joined the Association of Teachers and Lecturers.

[5] **Ann Jones:** That is fine. Does anybody else need to declare anything? I see that you do not; thank you very much.

9.35 a.m.

**Y Bil Addysg Bellach ac Uwch (Llywodraethu a Gwybodaeth) (Cymru): Cyfnod
1—Sesiwn Dystiolaeth 4
Further and Higher Education (Governance and Information) (Wales) Bill:
Stage 1—Evidence Session 4**

[6] **Ann Jones:** The main item on our agenda is to continue taking evidence from bodies on the Further and Higher Education (Governance and Information) (Wales) Bill—I will only say that once, because the title goes on and on. I am delighted to welcome representatives of the University and College Union. We have had papers from you, so thank you very much for those. Margaret, as this is a legislative scrutiny session, I wonder whether you would like to introduce yourself for the record.

[7] **Ms Phelan:** Certainly; my name is Margaret Phelan, and I am the Wales official for the University and College Union.

[8] **Ms Edwards:** I am Lisa Edwards, and I am currently the temporary political liaison officer for UCU Wales.

[9] **Mr Jones:** I am Chris Jones; I teach at Neath Port Talbot College.

[10] **Ann Jones:** Thank you very much for that. Just to offer a little background information, we are very grateful to you for coming today, but the Association of School and College Leaders and the Association of Teachers and Lecturers were also invited to provide oral evidence. ASCL declined that invitation, but, unfortunately, ATL accepted and then could not make this session and had to pull out. However, we are very grateful that you are with us. Members have received your papers, so I wonder whether we may go straight to questions in this session. David, do you want to start with the first questions?

[11] **David Rees:** Thank you for your submission. From the tone and feel of it, I feel that you question whether there is a need for the legislation.

[12] **Ms Phelan:** Yes.

[13] **David Rees:** Could you explain why you feel so strongly about that?

[14] **Ms Phelan:** I will start, if I may, by giving some background information to help to contextualise what I am going to say. I have been around education in Wales for over 30 years, so I have seen the education system in its various different guises. When the Further and Higher Education Act 1992 was enabled in 1993, the National Association of Teachers in Further and Higher Education, as it was then, was very concerned about the idea that further education in particular was being taken away from the public sector. It was going to have a legal structure and, potentially, a business ethos that might undermine and damage its educational function and nature. I have to say that, for the most part, we have been proved right. There are examples—Chris can talk to you a bit more about what happens in Neath Port Talbot College, which is expanding and buying in other little bits, the details of which he can talk to you about, as I say.

[15] One reason that we are very concerned about this Bill is that, first of all, it seems to be blindly following what has been done in England. The context of English FE is very different to the context of Welsh FE. The easiest way that I can explain what I mean by that is that if you look at the structure of post-16 education in England, there are a significant number of sixth-form colleges and sixth forms. If you look at the structure of post-16 education in Wales, that is not the case. A lot of students rely on further education in a way that they do not in England, because their school has a sixth form or there are sixth-form colleges for them to attend.

[16] The issue with the Bill is that it sets out to do something, but we are very clear that there are no guarantees that it will do what it says that it wants to do. The legal opinion that we have sought from counsel also supports that contention. When we first heard about the plans for the White Paper and this Bill, we involved ourselves in the various different presentations. We have spoken to the civil servants concerned about this. The first key argument that is presented to us as to why we need this is to protect the surpluses of colleges. The second is to give them the freedom that they need to be more businesslike. However, we do not want them to be more businesslike; we want them to be educational institutions that look after the educational health of the nation. It is crucial that you remember that education is as important as training. They are not the same things. Education and training are not the same things. What we are worried about, in terms of the direction of travel of this particular policy, is that we will get to the point at some point in the future—as we said in our paper, we do not think that it will change overnight; we do not think that there is going to be a sea change; it will be a slow process—where we will end up with a further education sector that is about training and not about education.

[17] The funding alongside this policy will mean that you will only realistically be able to access education if you are up to the age of 19. If you are over 19, if you want a second chance or if you are a woman wanting to go back after having children, those options are not going to be open to you. On the notion of collaboration with the business sector, I have been around education for a long time and there is always a discussion and a debate when the economy fluctuates about the amount of money that businesses are prepared to spend on training. It is the first thing that always gets looked at in the budget of an organisation when the budget is tight and something needs to be reduced. Training is always the thing that gets hit. It has been like that for as long as I have been around the sector.

[18] The idea that the Government is going to say that the future of our further education sector and our second chance opportunity for an education and for training— Training is important, but it is the educational function of the FE sector that we are concerned about. We are going to risk that on the basis of putting this Bill through. If you do this and if the Government decides to enact this Bill in the way that it is currently worded, you will be taking all of the controls away from further education. You will be allowing it to do what it sees fit with the sector, and we do not agree with that. Chris, did you want to say something

about Neath?

[19] **Mr Jones:** Yes. I have taught at Neath Port Talbot College since 1988. What concerns us at Neath is that there are already provisions for the college to double in the private sector. We recently purchased a language school for overseas students in Portsmouth at a cost of something in the region of £3 million. At the moment, it makes a profit of between £500,000 and £700,000 a year. That can be used to cross-subsidise the core business of the college, which is teaching students of further and higher education. What worries me is what happens if that language school begins to make a loss. Think of the changes by the Westminster Government to the status of overseas students and their migrant status. What happens if that school begins to make a loss? What happens if the buildings cannot be sold or if they are sold at a price that is less than what was paid for them? Already, we have this kind of business ethos coming in to an educational establishment—using money generated from the public sector to buy a private sector language school. If this Bill were to go through, the worries of the people who are teaching and working in the sector is that that process would be intensified and amplified with all the concomitant risks that would come with that. It is a risk that practitioners are not keen to take.

[20] **David Rees:** On the Neath Port Talbot point, if I am right—I come from that area, therefore I talk to Mark Dacey quite a lot—it is a private company as a subsidiary, so it should be a separate legal entity. So, if it does become a loss-making organisation, it should not impact on the main institution, because it is a private company.

[21] **Mr Jones:** That is what we have been told, but if it does make a loss, who will fund that? If we cannot sell it, what is going to happen? It is part of the Neath Port Talbot group in the same way as other training providers. At the moment, the profits are gift aided—they are free of tax—but that legislation could change. You are quite right that, when things are going well, it seems to be a win-win situation, but our worry is what happens when things are not going well.

9.45 a.m.

[22] **David Rees:** So, we need to ask questions about the issue of subsidiary companies and so on in the future.

[23] Margaret, you mentioned the English FE sector in the context of the Welsh FE sector. Have you looked at the legal requirements? We are being told that the reasoning for this is that ONS is looking at the decisions and what it is now reclassifying. Can that be done in another way?

[24] **Ms Phelan:** I will start with the last question first. Can it be done in another way? The evidence, or the argument—we cannot evidence it, as we do not have a crystal ball—that we want to put forward firmly and strongly is that there is no need for this legislation. That is our view. If you read the counsel's opinion carefully, you will see that it is saying the same thing. The reality, in her view, is that, if you look at all the various regulations that currently exist and if you look at the current legal status of the institutions, you will see that they can do what they need to do within the current legal framework. You do not need to change it. The idea that you need to change it because of the ONS decision to reclassify as public sector in 2010 is something that she questions. We have brought some additional evidence; I wonder if you would allow us to share it, Chair. We only got it on 2 June.

[25] **Ann Jones:** Yes. If you leave it with the clerks, we will share it after the meeting.

[26] **Ms Phelan:** We have evidence from answers to written questions that were tabled in the Scottish Parliament on 2 June. The advice that the Scottish Parliament is getting is very

different to the advice that you are getting here. The Scottish Parliament is saying that there is no problem, that you do not have to do anything and that there are no worries about this. We will share that evidence with you.

[27] **Keith Davies:** Rwyf am ofyn yn Gymraeg. **Keith Davies:** I will ask my question in Welsh.

[28] Un broblem rydych yn sôn amdani—efallai fod y Llywodraeth a'r Gweinidog yn sôn am hyn hefyd—yw'r arian sydd gan y colegau. Os byddwch yn dod i mewn o dan y Llywodraeth, efallai y byddwch yn colli'r elw sydd gennych. Y ffaith yw bod ysgolion yn cadw'r arian, oherwydd bod llywodraeth leol yn dweud wrthynt y gallant gadw 5% neu beth bynnag—nid wyf yn siŵr beth yw'r ffigur presennol. Hefyd, os yw ysgolion yn gorwario, mae'r awdurdodau yn gofalu amdanynt. Felly, ni allaf weld y byddai problem pe bai'r colegau yn cael eu rhedeg gan y Llywodraeth. A ydych chi'n gweld problem yn hynny? One problem that you have discussed—perhaps the Government and the Minister are also discussing it—is the funding that the colleges have. If you come in under the Government's auspices, you might you're your profits. The fact is that schools keep the funding, because local government tells them that they can keep 5% or whatever—I do not know what the figure is at present. Also, if schools overspend, the authorities look after them. So, I cannot see that there would be a problem if the colleges were run by the Government. Do you see a problem in that regard?

[29] **Ms Phelan:** It is a structural problem, rather than a problem of policy, principle or ideology. We as UCU would like the further education sector to remain in the public sector. The problem with it being in the hands of the local authority is the current structure of FE in Wales. For example, Coleg Gwent has five local authorities, so to talk about it being in the control of a local authority is not an appropriate mechanism for the management of the college. As a consequence of transformation, colleges are of a size now that you would not know which local authority was responsible. Also, how would you structure it? What we are arguing for, in terms of the current situation, is it being returned to the public sector, but not local authority control, because local authority control just does not do it now in terms of the structure of the sector.

[30] **David Rees:** We are being told that, as a consequence of the decision, the reserves would come back into the Welsh Government's coffers, effectively, and that that would have an impact. Do you think that that is the genuine case? Is there going to be a problem with that?

[31] **Ms Phelan:** No, we do not think so. If you look at the current reserves that the colleges have—we will provide them for you—you will see that there are a number of colleges that have significant reserves, in excess of £20 million. They have those reserves. The colleges are currently classified as public sector organisations. Nobody has said to the colleges, 'You can't keep those reserves; you've got to hand them back'. Nobody is saying that to the schools. If you look at the reserves that schools hold—again, this information is readily available and we can provide it for you if you like—you will see that they are significant. Can you remember how much it is, Lisa?

[32] **David Rees:** I think that you mentioned £67 million.

[33] **Ms Phelan:** Yes, there are significant reserves there. So, the idea that you need this piece of regulation to protect those surpluses and those reserves from some exercise of control— You have seen the advice that we have had from counsel. One of the questions that I wanted her to answer was whether she could identify where this requirement is articulated so that we could see how it is worded and how it might operate or how it might need to

change. She cannot find it. She cannot find any evidence of the need to do what this Bill is proposing to do. I am not suggesting that it is not there; it is just that I do not know where it is. I cannot find it, a Queen's counsel cannot find it, and she is on the Assembly panel as counsel.

[34] If I may say one more thing, Ann, one of the things that I would urge you to do as a committee is to take your own legal advice and see whether you can find out where it is that this requirement is articulated, because we cannot find it.

[35] **David Rees:** May I ask just one question? The legal advice that you have here talks about the White Paper, but the Bill is different from the White Paper.

[36] **Ms Phelan:** Yes.

[37] **David Rees:** Have you had legal advice on the Bill?

[38] **Ms Phelan:** We have had legal advice on the Bill and we are going to share that with you. You do not have that; we only received it the day before yesterday.

[39] **Ann Jones:** Simon, you have a small point on this and then we will move on.

[40] **Simon Thomas:** It is on the legal advice, and thank you for sharing that with us. The conclusion of the Queen's counsel is that, if this legislation is passed but Welsh Ministers continue to exercise their current controls over the conditions of funding and so forth, the likelihood is that the ONS would not reclassify and that, in other words, it would stay in the de facto position of the public sector. That seems to imply that there is a set of controls that may not be exercised but are there in legislation and in direction that keep the colleges from being identified as being in the NPISH—it is an awful acronym—category.

[41] **Ms Phelan:** There are criteria that the ONS uses. In January 2012, it produced a list of criteria—

[42] **Simon Thomas:** They are set out in your evidence.

[43] **Ms Phelan:** Yes, and what the ONS is telling us, because we had conversations with it when we first saw the White Paper, is that if any one of those criteria applied to a circumstance, it would consider reclassifying.

[44] **Simon Thomas:** At heart, what you are telling us is that you do not think that the borrowing and the debt requirements are a problem if the colleges remain where they are in the public sector. So, you have a fundamental disagreement over the view that Government is taking on that.

[45] **Ms Phelan:** Yes, that is what we are saying.

[46] **Ann Jones:** Thank you very much for that. Suzy, will you move us on?

[47] **Suzy Davies:** I would like to ask you a few questions about the borrowing, but I wanted to test something that you said earlier first, namely that you do not want further education institutions to be more 'businesslike'—I am quoting you directly there. In the public sector, entirely or even partly, surely there is an obligation on further education institutions to behave in a businesslike manner when using public funds.

[48] **Ms Phelan:** No, I do not accept your idea that business equals good. I think that that is where we differ.

[49] **Suzy Davies:** You do not think that public money should be dealt with efficiently and effectively and in a well-organised way?

[50] **Ms Phelan:** That equates in your mind to business, which is fine, but that is not what it equates to in my mind. To my mind, the way that further education and, indeed, all organisations that have access to public funds, should operate is with integrity, transparency and good governance. I do not equate that to business, because that is not my experience of the business model.

[51] **Suzy Davies:** You have a completely different idea of what business means to mine then.

[52] **Ms Phelan:** Yes, quite.

[53] **Suzy Davies:** On borrowing, you mentioned earlier that you have concerns about the build-up of reserves. Do you accept that, if any institution is going to borrow, often the lender will want to see some evidence of an asset base against which that borrowing can take place?

[54] **Ms Phelan:** Clearly, yes.

[55] **Suzy Davies:** So, it is not actually the existence of reserves that worries you.

[56] **Ms Phelan:** No.

[57] **Suzy Davies:** What if those reserves had been built up as a result of ring-fenced spending, if you like: that the money has been gathered in order to finance a particular project in the future? Obviously, further education institutions do not live, year by year, with their capital spending, so you would expect to see reserves there.

[58] **Ms Phelan:** I do not have a problem with good management. I really do not have a problem with a large organisation saying that it wants to refurbish a particular campus for the benefit of the community. If an organisation is going to do that, it has to find the money to do it. The problem that we have about the Bill is not about incorporation; I am not arguing against incorporation. I said earlier what UCU policy was in terms of returning further education to the public sector, but not to local authority control, but there is a view within UCU that incorporation is not good. I am saying that, at the moment, in terms of the operation of colleges, incorporation and the current legal structures allow them to do what they need to do in terms of, as you say, building up assets and actually having the money to refurbish or build new campuses. I do not see that there is a problem with that. The problem arises for us when they start to use those assets to buy private companies and what happens next. Although we do not have a crystal ball for Wales, we do have evidence of what is happening in England. What happens in England is that the terms and conditions of the staff start to be affected, and then you do not have to have people qualified to teach because, of course, anyone can teach. It is as though you do not need to have a qualification to teach because it is not a difficult job. I am sorry; I find that position on education—

[59] **Suzy Davies:** Can I just bring you back to my question?

[60] **Ms Phelan:** I am trying to answer your question.

[61] **Suzy Davies:** You have already answered it, thank you. In building up reserves, what are your views on borrowing in the marketplace in order to build up those reserves? Do you have any worries about that? One of the things that might happen under this Bill is that ministerial control of what can be borrowed will disappear. Does that worry you?

[62] **Ms Phelan:** Yes, of course it does. The idea of us arguing in evidence today that you need to think very carefully about the way that this Bill is structured is that you are proposing, in terms of these regulations, to remove controls over the way that a chief executive can operate in an institution. We think that that is wrong. We think that there should be some controls because the Government, the public sector and the public purse put a lot of money into the further education sector in Wales, and there should be some controls over it. We have not seen what the controls will be. We do not know; we have not seen them yet. All that we know is that you have, in the Bill, the authority to exercise some controls, but we do not know what those controls are going to look like.

[63] **Suzy Davies:** I accept what you say there, which is that the spending of public moneys needs to be monitored properly, but the private market will not lend to an institution in which it has no confidence, and one that has no safeguards. The Minister has explained—although not in detail, I admit—that there are still some safeguards from the Government’s perspective, but whomever you borrow from will also expect certain safeguards. In particular, if we are talking about a situation where an institution is desperate to retain its charitable status, there are already safeguarding limits in the legal system that should prevent some of the concerns that you have been voicing today.

[64] **Ms Phelan:** Suzy, I think that you are arguing from the same perspective that we are. The safeguards already exist. The borrowing already happens. They can do what they need to do. Why do we need this new Bill? I am sorry, that is the—

[65] **Suzy Davies:** You have just explained to me that you are worried that these organisations, under the new system, will effectively run amok with their borrowing potential. I doubt that that can happen.

[66] **Ms Phelan:** No; what I said was that we are concerned that there will be a slow progress to privatisation and all that that brings with it. In our view, privatisation will give effect to a change in the educational mission of further education. The private sector will be interested in training. From our perspective, there is a significant difference between training and education. They are both necessary.

[67] **Suzy Davies:** You have also had a commitment from the Minister a couple of weeks ago that, when it comes to education, he will intervene if he has any concerns about the educational standards of institutions.

[68] **Ms Phelan:** There have been controls on the conditions of funding and clawback in that. A number of regulations have been put in place where both the Minister and the department for education have said, ‘We can intervene’, but, as I said, I have been around in the sector a fair time, and there have been a number of examples of the mismanagement of funding. The latest one to hit the floor of the Assembly is Coleg Harlech. It does happen. If we remove the controls that we currently have, we worry that it will happen more. It is not going to happen sector-wide—of course it is not. I am not coming here and presenting the view of the sector as that it cannot be trusted, and that there are not efficient and effective senior managers in the sector—of course there are. However, we have concerns.

10.00 a.m.

[69] **Ann Jones:** David will come in very briefly, but we are halfway through the session and we are still on the first half of the questions, so we have to move on.

[70] **David Rees:** It is a very brief question, Chair. Are we focusing too much on borrowing? When we had ColegauCymru here a couple of weeks ago, it indicated that there

was not much borrowing going on, and this was not a real issue. Are we putting an issue into place that actually is not there?

[71] **Ms Phelan:** I do not see it as an issue. The borrowing part of it, for me, is not an issue. As I said, colleges that want to borrow money have the capacity to do so—if they have an asset base and if the marketplace will lend to them. If they have not, then why are they borrowing? Why are they spending money that they cannot afford to pay back? That is not a position that I would encourage any organisation to get into. The issue for us is the transfer of the public assets to the private sector and the focus that there will be, we believe, on training rather than education. Those are the key issues for us. We do not believe that this Bill is necessary.

[72] **Ann Jones:** We will have to make some progress. Keith, can you go through your questions, please?

[73] **Keith Davies:** Mewn un ffordd, rydych yn becho am y pwerau sydd gan y prif weithredwyr. Sut fydddech chi'n diwygio'r rhan o'r Bil sy'n ymwneud ag erthyglau rheoli? Beth ydych chi eisiau yn Atodlen 1 i'r Bil? **Keith Davies:** In one way, you are perhaps concerned about the powers that the chief executives have. How would you revise the part of the Bill that deals with management articles? What would you wish to have in Schedule 1 to the Bill?

[74] **Ms Phelan:** If you look at paragraph 3 of Schedule 1, which talks about the eligibility of persons for membership, you will see that it is six sentences long. It says that regulations must make sure that staff and students at an institution are a part of its governance. It does not say how the staff and students will be put on the board of governors. It does not say that they will be elected. It does not say how many. There are circumstances where we have found that the chief executive has chosen the staff member to sit on the board, which is totally inappropriate, because the purpose of the board of governors is to scrutinise, and when you do not have appropriate scrutiny, that is when you have problems. One of the things that we will be looking at is persuading some of our colleagues to table amendments to that part of the Bill, because it is not tight enough. If we have to have it, we have to do some work on it.

[75] **Keith Davies:** Rwy'n credu ein bod wedi dweud wrth y Gweinidog nad ydym eisiau gweld prif weithredwyr yn gwneud hynny ar eu pennau eu hunain. **Keith Davies:** I think that we have told the Minister that we do not want to see the chief executives doing that on their own.

[76] **Petai gennym ryw fath o god llywodraethu, a'n bod yn glir ynghylch yr hyn roedd hwnnw'n ei ddweud—ai dyna'r hyn fydddech eisiau ei weld, o ran y ffordd y mae pobl yn mynd ar fyrddau llywodraethwyr?** **Keith Davies:** If we were to have some sort of governance code, and that we were in agreement about what the code said—is that what you would want to see, in terms of the adoption of governors?

[77] **Ms Phelan:** The reality is that we already have a code in relation to governance. We have a very thick folder of guidance for FE governors. Our reality, I am afraid, is that there are some institutions—not all; please do not misunderstand what I am saying—where the exercise of governance leaves a lot to be desired. It is in those institutions where governance does not function properly that we are most concerned about the impact that this new Bill may have in terms of the behaviour of the organisation.

[78] **Keith Davies:** Mae hynny'n wir am nifer o wahanol sefydliadau yng Nghymru. Mae Estyn a Swyddfa Archwilio Cymru, **Keith Davies:** That is true of several institutions in Wales. We have Estyn and the Wales Audit Office, so if you are concerned

felly os ydych yn poeni am rywbeth sy'n mynd ymlaen mewn coleg, mae cyrff y gallwch ysgrifennu atynt i ofyn iddynt edrych i mewn i'r materion hyn. about something that is going on in a college, there are bodies to which you can write to ask them to look into these matters.

[79] **Ms Phelan:** Yes, we could, but the reality is that, for the most part, you have to have the evidence of the misdeed. By the time that you have that, you have a real problem. We need appropriate governance to make sure that the decisions that are being made at the level of the governing board are the right ones and are in the best interests of the learner and the community in which that college is based; they should not be decisions based on a business model. That is the key.

[80] **Keith Davies:** Felly, yr hyn rydych yn ei ddweud yw y byddech yn hapus i'r cod sydd gennych gael ei drosglwyddo i'r Bil hwn. **Keith Davies:** So, what you are saying is that you would be happy for the code that you have to be transferred to this Bill.

[81] **Ms Phelan:** I would be content for the code to be transferred, but I am more concerned about the stripping out of the controls within the articles and instruments of governance. For example, one of the things that we value strongly in our role as a trade union, as opposed to a professional association, is the right to challenge the decisions of the chief executive through a governance structure, concerning such things as compulsory redundancies and dismissals. One of the things that will happen if this is introduced is that we will no longer get access to the board of governors. So, we will no longer be able to say to the board of governors, 'These decisions are being made'. Already, Colegau Cymru is arguing with us that that right no longer exists within the current articles, and that is the bone of contention that we are currently arguing about in terms of the national contract. So, yes, from our perspective, the articles and instruments are a very important regulation in terms of the behaviour and integrity of the governance of organisations. That is very important, because if we do not get that right, we really are going to be in difficulty.

[82] **Ann Jones:** Thanks. We will have to make some swift progress. We move on to Aled with the next set of questions.

[83] **Aled Roberts:** Rydym wedi bod yn trafod rhai o'r gwelliannau yr hoffech eu gweld. Mae tystiolaeth bod cryn bryder ynglŷn â diogelu arian cyhoeddus a'ch bod chi, efallai, yn gweld bod y lleihad ym mhŵer y Gweinidog i ymyrryd yn y sefyllfa yn creu anhawster o ran diogelu'r arian cyhoeddus. A oes unrhyw awgrym gennych ynglŷn â gwelliannau a fyddai'n rhoi mwy o ddiogelwch i'r arian cyhoeddus hwnnw? **Aled Roberts:** We have been discussing some of the amendments that you would like to be made. There is evidence that there is some concern about safeguarding public funding and that you, perhaps, see the decrease in the Minister's power to intervene in the situation creating difficulties in terms of safeguarding public funding. Do you have any suggestions about amendments that could be introduced to provide more security for that public funding?

[84] **Ms Phelan:** There is a real contradiction there, because if you do that and start to write those controls into regulation, that is when you fall foul of the ONS standard classifications. That is why counsel's opinion is that even the current conditions-of-funding letter that is attached to the funding that colleges get could be enough for ONS to say, 'We're going to reclassify as public sector'. Even if you introduce this Bill and if it were to become NPISH, the very existence of that conditions-of-funding letter could mean that, in terms of ONS's criteria, it could be reclassified. So, why would we want to amend the Bill when we already have a set of regulations that allow the Minister to do what we would like him to do? That is why we keep arguing very strongly—and will continue to do so—that, in our view,

there is no need for this Bill. We have a regulatory framework that, for the most part, works. We have a vibrant FE sector that has made some significant progress in the last 10 years in Wales. We have a national pay scale, we will hopefully get a national contract and we have large institutions that, for the most part, are well-run. Why change something that is working when you do not know what the consequences will be? You do not know whether this will be enough for ONS, or what the implications will be for the involvement of the private sector in further education. Why try to fix something that is not broken? If you look at the evidence that we are going to leave with you from the Scottish Parliament, we do not think that the current system is broken; we do not think that the current system needs to be changed. We do not believe that there is a need for this new Bill.

[85] **Aled Roberts:** Barn bendant y Llywodraeth yw bod angen newid. Yn ei hasesiad gwreiddiol, mae opsiwn 2 yn debyg iawn i'r model yn yr Alban, o ran creu cyngor cyllido. Beth yw'ch barn chi am y model hwnnw?

Aled Roberts: The Government's clear opinion is that change is needed. In its original assessment, option 2 is very similar to the Scottish model, with the creation of a funding council. What is your opinion of that model?

[86] **Ms Phelan:** From our perspective, if we were to be convinced—and we are not—that there was a need for a change to the current regulatory framework and the current structures in place, our preferred option would be for the establishment—actually, let me rephrase that: it would be for the re-establishment of a further education funding council. There used to be a joint funding council; John Andrews used to be the chair of it, and it used to work very well, in the one building, with a co-chair, with further and higher education. Given the direction of travel in Wales, and the size of the sector, and with the work that is going on in south-west Wales in relation to Trinity Saint David and Sir Gâr and Ceredigion going into the institution—we do not know what is going to happen in north-east Wales, though there may be the possibility of a merger or a coming together of the FE and HE institutions up there—from our perspective, it makes much more sense, if there is a need to do it, and we are not convinced that there is, and it can be proven that, arguably, changes are needed to suit the classification process of the ONS, then the funding council would be our preferred option.

[87] **Aled Roberts:** Rwy'n derbyn yr hyn a ddywedoch yn gynharach am eich barn chi am yr hyn a ddywedodd y Gweinidog am y ffaith ei fod yn gallu rheoli'r sefyllfa drwy gyllido. Wrth gwrs, mae'r Llywodraeth wedi cyhoeddi y bydd yn ailwampio'r system gyllido ôl-16. A yw hynny'n lleihau eich pryderon chi o gwbl?

Aled Roberts: I accept what you said earlier about your opinion of what the Minister said about the fact that he can manage the situation through funding. Of course, the Government has announced that it will revamp the post-16 funding system. Does that alleviate your fears at all?

[88] **Ms Phelan:** No.

[89] **Aled Roberts:** Iawn. Mae hynny'n ddigon clir.

Aled Roberts: Okay. That is clear enough.

[90] **Ann Jones:** We will move on, then, to the ONS's decision to reclassify colleges as part of the Government.

[91] **Bethan Jenkins:** Rydym wedi clywed cryn dipyn yn barod am yr ONS ac ailddosbarthu'r colegau. Mae'r Pwyllgor Deisebau wedi cael deiseb gan UCU Crosskeys, yn tanlinellu ei gonsŷrn am y risg, sef bod y Gweinidog, ar dudalen 24, yn

Bethan Jenkins: We have heard quite a lot already about the ONS and the reclassification of colleges. The Petitions Committee has received a petition from UCU Crosskeys, underlining its concern about the risk, in that the Minister, on page 24, realises

sylweddoli y gallai hyn fynd drwodd fel darn o ddeddfwriaeth, ond y byddai'r ONS yn cymeradwyo aiddosbarthu o hyd. A allwch chi ehangu ar hyn i ni, achos mae'n thema sydd wedi cael ei thrafod drwy'r sesiwn y bore yma?

that this could go through as a piece of legislation, but that the ONS would still recommend reclassification. Can you expand on that for us, because it is a theme that has been discussed throughout this morning's session?

[92] **Ms Phelan:** I am not privy to the conversations that the ONS had prior to 2010 when, for whatever reason, it reclassified further education as being in the public sector. If you look at the criteria that it has—there is a list of about eight or nine of them—basically, the ONS is saying that if the Government exercises control over an organisation in one of the following ways, that will place it in the public sector. Now, one of the things that the Government does and will continue to do, because of the amount of money that it spends in further education, is to require further education to deliver certain things in relation to the conditions-of-funding letter. The conditions-of-funding letter is issued every year, and every year, the Government tells the colleges, 'This is what you have to do'. What our legal opinion is saying is, based on that one issue alone, if you introduce the Bill and classify them as NPISH, it could result in their being reclassified as public sector bodies.

10.15 a.m.

[93] Our concern as a trade union is that successive Governments have spent a significant amount of money in further education on introducing the national pay scales. We are currently very close, hopefully, to the introduction of the national contract. One of the things that we believe has contributed to the growth and development of the further education sector in Wales and the way that it has developed, grown and performed, is the existence of those national pay scales and national contracts. I am sorry; I am trying to not give you a lecture, but I am a lecturer. If you look at the ideology of work and the theories around management and how you engage, encourage and motivate a workforce, the one thing that you will find writ large in all of the theories is that people need to feel valued. They do not necessarily need to feel valued in terms of money—because Maslow's hierarchy of needs demonstrates that it is not about money—it is about feeling as though the effort that you make is recognised and that you are valued for what you do.

[94] One of the reasons we believe the colleges have made the progress that they have made is that we have created a working environment that pays people decent wages—for the most part, because there is still an issue about one part of the workforce, which I will come to in a moment—and hopefully we will have a national contract that makes sure that people have the time and the wherewithal to look after quality. That is the key in terms of the contract. There is one group of staff that sits outside that. Once again, this is an issue that we are very concerned about, because one of the worries about the involvement of the private sector is the de-professionalisation of the workforce and the use of fixed-term and zero-hours contracts. We have worked very hard over the last 10 years to control those, because we have a national agreement. Some colleges do not follow this, but we are doing some work with them. The reality is that in the current conditions-of-funding letter, colleges have to agree to maintain those national agreements. If they do not agree to maintain them and if they do not implement them, the Government can withdraw some of their funding. Again, going back to the conditions-of-funding letter and what ONS may do in terms of the reclassification, it is all tied in, because either we are going to see all of the work that we have done over the last 10 years just disintegrate, because the Minister cannot control the colleges in terms of the pay scales and the types of contracts that are used, or he will control them. If the Minister does, the ONS arguably, and certainly in terms of our legal opinion, will probably reclassify it as public sector.

[95] **Bethan Jenkins:** Byddwn yn trafod **Bethan Jenkins:** We will discuss the

y contractau yn nes ymlaen, ond pan ofynnais y cwestiwn i Golegau Cymru, dywedodd na fydd y Bil hwn yn amharu ar y negodi sy'n mynd ymlaen ar hyn o bryd. Fodd bynnag, fe wnawn ni drafod hynny yn nes ymlaen. Y cwestiwn rwyf am ofyn yw: pe bai'r ONS yn fwy cadarn nawr ynglŷn â beth y byddai'n dderbyn o ran y ddeddfwriaeth, a fyddai hynny'n help i chi? Hynny yw, a fyddai'n gliriach ynglŷn â sut y dylai'r ddeddfwriaeth edrych? Ar hyn o bryd, nid ydym ni fel pwyllgor yn siŵr, gan nad yw'r Gweinidog yn siŵr, os bydd y Bil hwn yn bodloni'r ONS. Felly, hoffwn glywed eich barn chi am hynny.

contracts later, but when I asked the question of Colleges Wales, it said that this Bill will not affect the negotiations that are taking place at the moment. However, we will discuss that later. The question that I wanted to ask is: if the ONS was to be more robust now as to what it would accept in terms of the legislation, would that be of assistance to you? That is, would it be clearer with regard to how the legislation should look? At present, we as a committee are not sure, because the Minister is not sure, whether this Bill will satisfy the ONS. So, I would like to hear your views on that.

[96] **Ms Phelan:** It is interesting, because I tried to have that very same conversation with the ONS, about what it might do should certain circumstances prevail, but you cannot get an answer from it because it will not hypothecate. It will not say, 'It might be this, or it might be that'. All it will say is, 'These are the criteria, and if you come close to meeting any one of those criteria, there is the possibility that you will be reclassified'. So, I am sorry, I cannot help, Bethan.

[97] **Bethan Jenkins:** Byddwn yn cael sesiwn gyda'r ONS, lle gallwn ofyn am hynny. Fodd bynnag, mae'r ONS wedi dweud wrthym yn barod na fydd yn ateb cwestiynau *hypothetical*. Felly, mae'n anodd gan nad ydym yn gwybod beth fydd impact y ddeddfwriaeth ar ôl iddi gael ei gweithredu.

Bethan Jenkins: We will have a session with the ONS, where will be able to ask about that. However, it has told us already that it will not respond to hypothetical questions. Therefore, it is difficult because we do not know what the impact of the legislation will be after it has been implemented.

[98] **Ms Phelan:** Exactly.

[99] **Ann Jones:** We have started to cover it, so we are going to move on to the implications of the Bill for learners, local communities and FE staff. Lynne will take the first set of questions, then Rebecca. Is that right?

[100] **Lynne Neagle:** I think that it was the other way round.

[101] **Ann Jones:** Okay, Rebecca, you start.

[102] **Rebecca Evans:** I am interested in something that we heard when we took evidence from Colegau Cymru, which was that they felt that the Bill would not have any impact on staff pensions. Is that something that you would agree with?

[103] **Ms Phelan:** 'I do not know' is the honest answer. I suspect it will not have any impact on staff who are teachers or lecturers, because of the teachers' pension scheme. However, a number of colleges are part of local government schemes. I am sorry, but I am not that familiar with support staff pension schemes. I can give you an example, but it is an HE example, unfortunately. There is an HE institution that has its own scheme for support staff. If that were to exist in FE—I do not know whether it does, but I will ask my Unison colleagues and come back to you—this Bill could have an impact on pensions. If the pension scheme is owned by the corporation, it could be given to another organisation to run. That could have consequences for the pensions of staff, but I do not honestly know the answer, Rebecca; I will

need to check with Unison and come back to you.

[104] **Mr Jones:** The administration staff at Neath Port Talbot College are in the old Neath Port Talbot local government scheme, for example, so it would not have an impact on them.

[105] **Rebecca Evans:** With regard to the impact of the Bill on students, do you envisage that there will be any potential detrimental impact on the experience of students? You alluded to concerns that, when an organisation is following a business model, they might take their eye off the ball in terms of the focus on education. Do you have a concern in that regard?

[106] **Ms Phelan:** We have huge concerns about a number of things. First, how do you prioritise your spend? It is stating the obvious, but I am going to say it anyway. If we are talking about FE as a business, if you look at the amount of FE spend that goes on staffing, we are talking about 60% to 70% of its costs as staffing costs. If you are running a business and you want to create surpluses or profits, one of things that you will focus on is your large cost bases, and how you will reduce the costs for that particular part of your business.

[107] Going back to the point I made in answer to Bethan's question, we get very frustrated by the way in which colleges use part-time hourly staff and zero-hours contracts, because it gets them round the legislation. The legislation is there to protect people. I need to explain what I am saying. On zero-hours contracts, we know for a fact that a number of part-time hourly staff that have just disappeared off the books in one particular college that operates zero-hours contracts. Redundancy legislation is fairly straightforward, but when it comes to things such as zero-hours contracts, it gets a bit technical, because you have to work out their weekly income. If you do not have a set pattern of hours, you do not have a set income. What happens is that the people on zero-hours contracts do not get a redundancy payment—they just do not get offered any more work.

[108] Employment legislation is not good. There are lots of gaping holes in it that a decent lawyer can find a way through, which is why they use zero-hours contracts, because it gets them around things like that in terms of part-time hourly staff when it comes to pensions. We try very hard to get colleges to agree to employ people on fractional contracts. Sorry, I am getting technical, but it is quite an important point. A fractional contract means that—let us say for argument's sake, taking hours that are easy to explain—if there was a requirement for 800 hours teaching for a full-time member of staff, you could have a 0.25 contract and you would be expected to teach 200 hours. In terms of the pension scheme, if you are on a fractional 0.25 contract, you will get 0.25 of the pension entitlement. So, in effect it will take you four years to accrue one year's service in the pension. If you are part-time hourly, you have to get up to about 1,500 hours to get one year, so those 200 hours into the 1,500 takes you eight years. They are doing the same amount of work, and teaching the same students, but the type of contract on which they are employed makes a significant difference to the amount of money that needs to be paid into the pension scheme, and therefore the amount of money that the teachers get out. What do we think will happen if this Bill goes through and private sector bodies start to be employers within FE colleges? Terms and conditions will be affected, because they will look at the cost base and try to reduce it. Staffing costs are significant in FE. So, yes, we are very concerned about that. What I try to do is present the issues not just from a trade union perspective about terms and conditions, but about quality and about education, because they are as important to us as the terms and conditions issues.

[109] **Simon Thomas:** Just to follow up on this and to be clear, my reading of the Bill is that it does not change anything that you have just described. Those are conditions that you have to negotiate with employers now, and you will do the same in the future, whether this Bill is passed or not. The Bill does not change that.

[110] **Ms Phelan:** No.

[111] **Simon Thomas:** So, what you are describing to us are problems within the sector as you perceive them—relationship problems with the employers.

[112] **Ms Phelan:** Yes.

[113] **Simon Thomas:** They are not legal problems or legislative problems that the Assembly has the competence to deal with.

[114] **Ms Phelan:** No, they are not. The point that I am trying to make—

[115] **Simon Thomas:** I just wanted to be clear about what we are talking about. Unless, of course, you were going to devolve pay and conditions to Wales, which would, in my opinion, be a very good thing.

[116] **Ann Jones:** That is not in the Bill either. Let us move on.

[117] **Simon Thomas:** I just want to be clear that the Bill does not change that.

[118] **Ms Phelan:** There is an implication. The Bill does not change that, but it makes it more likely to happen.

[119] **Simon Thomas:** If you are going to use your crystal ball to say that, yes.

[120] **Ms Phelan:** I am saying it, because we have evidence in England. That is why you have that paper from England in your pack. We do not know what will happen in Wales, but we do know what has happened in England over the last few years, and that is exactly what is happening—people are getting these horrible contracts.

[121] **Ann Jones:** Bethan will come in briefly. I am aware of the time.

[122] **Bethan Jenkins:** I thought that you were saying that the national contracts would be jeopardised in some way by the Bill coming through, so that it would affect—

[123] **Ms Phelan:** I am saying that. The Minister cannot say to colleges, ‘You must implement the national contract’, because of the ONS classifications.

[124] **Bethan Jenkins:** So it would have an impact. That is how I see it.

[125] **Ms Phelan:** It is an implication of the regulation, not the regulation itself.

[126] **Lynne Neagle:** You obviously have very serious concerns about the Bill. I wondered if you could tell us a little more about what discussions you have had with the Minister to try to allay those concerns, and what the approach of Welsh Government has been in those discussions?

[127] **Ms Phelan:** We have had a conversation with the Minister. I do not feel comfortable just relaying that conversation. To summarise, I think that what the Minister said to us was, ‘I don’t have a choice’, and what we are saying to the Minister is, ‘Yes, you do’.

[128] **Lynne Neagle:** Following on from that and from Simon Thomas’s point, is there anything that could be put in this Bill that would allay your concerns, particularly about the terms and conditions of staff? Are there any changes, or do you think that that is not possible because of the ONS?

[129] **Ms Phelan:** It is not possible, Lynne, because as soon as you do that, you are back to classification of the public sector.

[130] **Ann Jones:** We move on to provisions relevant to higher education. Simon, would you take the first set?

10.30 a.m.

[131] **Simon Thomas:** First of all, there are some limited provisions here in relation to HE. Do you have any view at all on the data-sharing provisions? Do you view them as being technical in nature, as we have been told?

[132] **Ms Edwards:** The one concern that we had was the data that Her Majesty's Revenue and Customs used and whether they are up to date. We were concerned that there may be some students who were, perhaps, penalised because the data that were held were not necessarily up to date; that was our main concern. I do not know whether there is anything that you want to add on that, Margaret.

[133] **Simon Thomas:** That would be a matter of practice and good guidance, would it not?

[134] **Ms Edwards:** Yes; it would.

[135] **Simon Thomas:** You are, therefore, concerned about implementation rather than what is on the face of the Bill; is that so?

[136] **Ms Phelan:** What we are trying to get at is that we like the idea of what the regulation is saying, but we are just pointing out that you need to check the operation of it. I suppose that what we are saying is that there has to be a safety net in terms of using 12-month-old data.

[137] **Simon Thomas:** Thank you for that.

[138] **Ms Edwards:** We are just concerned that there might be some students who are disadvantaged by the process.

[139] **Simon Thomas:** The other aspect, of course, is the removal of the Minister's powers to restrict the provision of HE in FE. Do you see implications there with regard to how HE might be delivered in FE going forward? What, in your view, is the purpose of that? It does not seem to me that that is directly related to the ONS; that is another bit of the White Paper that is being addressed in this particular Bill. Have you had conversations with colleges or with Government about how the purpose behind it might be worked out in practice?

[140] **Ms Phelan:** We have had lots of conversations about higher education and further education, and we have some fairly well-developed policy in this area. Again, one of the things that we have been looking at in terms of the discussion on the national contract is how you give a person time to deliver HE on an FE contract. ColegauCymru's view is that a person does not need any additional time; they can do it on the same terms and conditions as in FE.

[141] Our colleagues in the post-92 sector in Wales are on a contract that requires them to teach up to 550 hours, on the basis that the contract is ostensibly in three parts; there is teaching, there are the academic-related duties that go alongside teaching and there is research and scholarship. If you look at the HE contract for post-92 institutions, about 1,530 hours are available when you take out holidays, bank holidays, closure days and other things. A third of the time is spent on teaching, a third on scholarship and a third on research. The reality is that

if you look at the FE contract that is currently being negotiated, we have a maximum, in the twenty-fifth draft that we are on at the moment, of 835 hours. Our view is that you cannot deliver quality HE on FE terms and conditions.

[142] We did not go for HE pay scales, because there is also a difference of about £10,000, on average, between FE and HE in terms of pay. What we have said is that, rather than insisting that people get paid the same as their HE colleagues, we would rather have a workload model that reflects the ratio of time in the classroom, and the preparation and marking associated with that hour in the classroom, which is how we work it out in the workload models in HE. However, ColegauCymru will not agree. It will agree only to give people a small amount of additional hours at level 6, which is the third year of a degree.

[143] **Simon Thomas:** I understand the point. Again, that negotiation point does not change in the legislation. However, is it your belief that this change in the legislation will mean more HE being delivered in FE? Is that happening anyway?

[144] **Ms Phelan:** It is really difficult to answer that one, Simon. If you had asked me that question six months ago, I would have said, ‘Yes; definitely’; I am not so convinced now. I expected to see a significant growth in HE being delivered in FE over the last few years, and it has not happened. I cannot really explain why it has not happened. Maybe it is just that, because of the fees regime, people, if they are going to pay for higher education, want to pay for higher education from a proper university—sorry, that sounds terrible. [*Laughter.*]

[145] **Simon Thomas:** If you are going to pay for a degree, you want the full degree experience, do you not?

[146] **Ms Phelan:** Yes, there is probably an element of that. I am sorry, Chris, do you want to say something?

[147] **Mr Jones:** Margaret is absolutely correct, but where we are seeing the figures in what I now have to call college-based HE holding up is in the part-time sector. A number of people cannot afford to go away full time, but they want to study part time. This is a growth area for college-based HE over the next few years.

[148] **Ann Jones:** I will bring Angela in to ask a question. I know that Dave has a supplementary question, but I am conscious that we are running out of time.

[149] **Angela Burns:** I have listened carefully to everything that you have had to say and I read your evidence and the opinion with great interest last night, although I did not follow all of it terribly well on my tiny little screen, but I got the gist of it. I understand totally the ideological statements that you are making, such as that you

[150] ‘are fundamentally opposed to the proposal to enhance the autonomy and decision making abilities of Further Education Institutions’.

[151] You have come out most strongly of all of our witnesses as an organisation that is far apart from the Minister in terms of what he is trying to drive through with the Bill. So, I want to ask you a general question about the fact that, when you look across the landscape of the public sector, whether it is privatisation or Government giving more autonomy, whether it is through local health boards or whatever, the public sector seems to be changing, particularly in terms of ownership, and a lot of the drive is about trying to give areas of the public sector far more ownership of their bit of the public sector and of their ability to drive change and to respond to market conditions, which can be the college down the road offering something about which they think ‘Should we or shouldn’t we?’ In all of the evidence that you have given, you have been clear in saying that most colleges are run well and do things correctly.

There is one college, as I understand it, that has zero-hours contracting and I think that you implied that one or two colleges were not doing other things correctly, because you raised concerns about the levels of reserves of some colleges. So, my question is simply: do you have any concerns that your opposition to this Bill will fetter, because of small instances that are not right, the growth and the development of the entire sector over the next five to 10 years? We have to push forward. Do you feel that your position might, in any way, fetter the ones that are doing it well, that have got it right and that have the aspiration to move forward and try to bring funding benefits—because money is running out, end of conversation—and funding opportunities into their area in order to deliver other courses and so on, for the sake of a few rogues that are not doing it right? There may be more appropriate methods of corralling those rogues and getting them on board than stopping the development. So, it is a philosophical question.

[152] **Ms Phelan:** I have to disagree with some of the things that you said. Ideologically, I do not accept the idea that money is running out, for a start, because I do not accept the whole premise of the austerity debate. I really do not—

[153] **Angela Burns:** I am sorry; I am not talking about the austerity debate, but about pressures. We have an ageing population and more and more people whom we need to take care of. So, money is there, but it is no longer— *[Interruption.]* Thank you. It is about priorities; some priorities are getting bigger because we are all getting older, for example.

[154] **Ms Phelan:** One of the things that I hope that I have been clear about is that the sector works. It is developing new areas and it is doing the things that one would expect it to do: it is responding to industry, developing its reserves and establishing new campuses. It is doing all of these things. Our argument is that you do not need this Bill to give effect to a sector that is already working. In this Bill, you are taking away the checks and balances that we think are necessary to deal with the small—I emphasise that it is small—number of institutions for which we have concerns about the way that they operate.

[155] **Ann Jones:** A brief last question from David.

[156] **David Rees:** I want to go back to the HE/FE issue. You have mentioned colleges like Sir Gâr and Ceredigion going into Trinity Saint David, and there may be others. Where do you see their legal position in relation to being an FE institution and part of its governance? Do you see the HE world as a way in which FE college managers will want to expand and get more income? In that situation of Coleg Sir Gâr and Ceredigion and the transfer of some HE work from the parent college to the FE college, is that more of an avenue that you would expect to see? I negotiated the contract in 1992 back in Swansea Institute of Higher Education, as it was then, so I know where you are coming from. Where do you see that agenda going?

[157] **Ms Phelan:** First, Sir Gâr and Ceredigion are not affected by this, because they will be part of the HE group. If you look at the detail of this, you will see that they are no longer FE institutions within the articulation of this Bill. So, arguably, they could be totally outside of it, but then they are governed more by the controls that are exercised by the HE sector, HEFCW and the Minister, through the new HE funding model that they have. I would urge you to look at the HE technical Bill that has just been tabled, last week or the week before. The difference in the rationale between this FE Bill and the HE Bill that has been tabled means that the policy is going to diverge. It is very interesting if you look at it. The articulation in the consultation document on the HE Bill is very clear about looking after the public sector, looking after the public money and making sure that HE institutions will do the bidding of the Government in terms of its mission and in terms of the work that needs to be done. It is much clearer than it was in the White Paper for this or in this Bill. So, although you would expect me to say that I have real concerns about the fact that FE is going into an HE

institution because it no longer is within the control, I am actually saying the opposite. I am much more comfortable with the articulation of the rationale for the HE technical Bill than I am with this, because there are more safeguards in the HE Bill.

[158] **Ann Jones:** Angela, you have a point on that.

[159] **Angela Burns:** I am confused. Can you to clarify which HE Bill you are referring to?

[160] **Ms Phelan:** The HE technical Bill. The consultation on the Bill was published last week or the week before. Can you remember the date, Lisa?

[161] **David Rees:** It is a consultation.

[162] **Ann Jones:** It is a consultation on a White Paper.

[163] **Angela Burns:** You referred to it as a Bill. That got my heart racing; I wondered whether you had had sight of a Bill that Assembly Members had not.

[164] **Ms Phelan:** I beg your pardon. No, it is the consultation on the Bill.

[165] **Angela Burns:** Thank you.

[166] **Ann Jones:** We are over time, but I am going to allow Bethan one short question and one short answer from the witnesses.

[167] **Bethan Jenkins:** We know that other witnesses have not been as strong as you in terms of opposition to this Bill. I take it that you would say that you would oppose this Bill.

[168] **Ms Phelan:** Yes.

[169] **Bethan Jenkins:** If that was not the reality of the situation, can you give us a note or something about what type of amendments you would be thinking of putting down at this stage or whether you would be asking this committee to advise not to accept the Bill? I wanted to get that on record.

[170] **Ms Phelan:** Our very clear advice to you in relation to the rationale behind this Bill is that you should take your own legal advice. We are not convinced that this Bill will do what it says on the tin. You need to look very carefully at that. You are going to be talking to ONS. All the issues that we have covered this morning are real issues for us in the sector, but I would suggest to you that the sector, as it is currently regulated and as it is currently structured, works very well. We do not need to change it.

[171] **Ann Jones:** Thank you very much for coming and giving us evidence. You will get a copy of the transcript to check for accuracy. You are going to leave us with some additional evidence and you are going to provide us with some notes about the reserves. You also mentioned the pensions and the contractual arrangements. Can we have those?

[172] **Ms Phelan:** Yes, I will check with Unison about the pensions.

[173] **Ann Jones:** Thank you very much for coming this morning. If the committee is in agreement, we will break until 10.50 a.m.

*Gohiriwyd y cyfarfod rhwng 10.44 a.m. a 10.53 a.m.
The meeting adjourned between 10.44 a.m. and 10.53 a.m.*

[174] **Ann Jones:** I would like to introduce Kieron Rees, the representation and policy officer for the National Union of Students Wales. I am sorry that we are running late. Thank you very much for attending, and also for your paper. We have quite a few questions; so, if it is all right with you, we will move straight to questions. I think that David is going to start with the first set of questions.

[175] **David Rees:** Thank you for your paper in relation to the Bill. Clearly, you also reflect sometimes on the experiences in England. In your view, what is the likely involvement that you see of the learner in FE governance as a consequence of the autonomy that will be given to the colleges?

[176] **Mr Rees:** We would not foresee there being any great change as the instruments and articles still make provision for students and staff to be members of the body. Our concern would be what is currently the standard in FE institutions of two student governors on the body. We worry that this perhaps might be moved away from. This has happened in England in some institutions. What we would ideally like to see, perhaps, is an amendment to the Bill that specifies the exact number of student places on the body. Otherwise, we continue to work, for example, with ColegauCymru on the development of the code of governance and will hopefully get some kind of prescribed number there. Something that was quite welcomed when the Education Act 2011 was brought in in England was section 7 of Schedule 4 of that Act, which is the same in this Bill, which states,

[177] ‘An instrument must require the body to publish arrangements for obtaining the views of staff and students on the matters for which the body are responsible’.

[178] We welcome that section of the Schedule as well as strengthening, if anything, the requirement to consult with learners.

[179] **David Rees:** Would you prefer to see the Humphreys report enacted, or perhaps even included in this Bill, rather than what we currently have?

[180] **Mr Rees:** We think that one of the main recommendations of the Humphreys review, namely a membership body, is a powerful tool and we would welcome a strengthening of the requirement to have a membership body. However, in terms of the Bill, if membership bodies were prescribed, I am not sure how that would then impact upon ONS classification. In terms of the Humphreys review, the review does not stipulate any places for student governors on the body. So, we would obviously not want to see that enacted.

[181] **David Rees:** I will stop there because I am crossing over into other questions.

[182] **Ann Jones:** If you just finish on that section, Keith can take the next section, which is section D, and we will then go back to Suzy on borrowing. You might as well finish it off now for the sake of tidiness really.

[183] **David Rees:** The word ‘elected’ is not mentioned. Would you prefer to see the word ‘elected’ there? We have raised this with the Minister. Also, you talk about two places on the governing body. Normal practice, as I understand it, is that the NUS president tends to be put on, so technically that person is elected by the body, but not necessarily according to the governing body. How do you match up those two things?

[184] **Mr Rees:** There are two questions there, I guess. In terms of the word ‘elected’, we would like to see it mentioned in the Schedule that the student places should be elected. Currently, this is the case through the instruments and articles, but of course if FEIs have the ability to modify the instruments and articles, this could be altered.

[185] Normally, it will be the students' union president who sits on the governing body, but it is worth bearing in mind that, currently, not all further education institutions have a students' union president. We consider that good practice, and the reason that we advocate the two governing places is that you have that role, but you also have another role to perhaps complement the skills and expertise that the president brings.

[186] **David Rees:** Is it better to say 'elected' full stop? If you have two, the second person may not be an officer, in that sense, of the students' union if it exists.

[187] **Mr Rees:** Generally, we would want it to be just 'elected' rather than specifically ascribed as the SU president.

[188] **Suzy Davies:** I just want to check one thing. I take your point completely on this, but are you relatively relaxed about your requirement being on the face of the Bill, or in regulation, which is also subject to scrutiny? I can understand your concerns that it might be put aside in a code or some guidelines, but if it went into secondary legislation, would that satisfy your concerns?

[189] **Mr Rees:** In relation to the—

[190] **Suzy Davies:** The number of people on the body.

[191] **Mr Rees:** That would satisfy us; yes.

[192] **Suzy Davies:** As long as it is subject to some sort of scrutiny in this place.

[193] **Mr Rees:** Yes.

[194] **Suzy Davies:** Okay. That is great, thank you. I was pleased to see that you recognise that there is scope for more autonomy for further education institutions. However, one of the prospects that they face is that they might have complete freedom to borrow. Are you relaxed about that, or do you have any concerns that FE colleges might just go too far in some way?

[195] **Mr Rees:** It is our understanding that they would still be accountable to the Charity Commission and they would still have to be audited. We consider those safeguards to be appropriate.

[196] **Suzy Davies:** You are not looking particularly for any further ones that might compromise the ONS classification.

[197] **Mr Rees:** No.

[198] **Suzy Davies:** It is not a trick question, I promise. Thank you.

[199] **David Rees:** The UCU has just been in and it has taken legal advice. Has the NUS taken legal advice on that position?

[200] **Mr Rees:** No.

[201] **Keith Davies:** Gofynnaf fy **Keith Davies:** I will ask my question in
 nghwestiwn yn Gymraeg. Oes pryderon gyda Welsh. Are you concerned that if a college is
 chi y byddai coleg sy'n cael ei ddiddymu dissolved it may want to transfer its property
 eisiau trosglwyddo'i eiddo a'i asedau? Ydych and assets? Do you think that that will be a
 yn credu bod hynny'n beth da neu'n beth positive thing or a negative thing? What is
 gwael? Pa bryderon sydd gennyh chi am your view on that?

hynny?

11.00 a.m.

[202] **Mr Rees:** We completely think that that would be a negative thing. One of our main concerns with the Bill is the possibility that colleges could transfer assets, particularly to private providers or to make themselves a company limited by guarantee. Although we recognise that the Bill does stipulate that it would have to be for charitable and educational purposes, there is a question as to the extent to which that could be enforced, and as to whether an educational or charitable purpose could be enacted without necessarily being in the best interests of the learners. One of our significant concerns with that aspect of the Bill is how this impacts on representation. For example, they would not be bound by the Schedule in relation to the instrument and articles of government and would not necessarily have to continue student representation should they move to being a company limited by guarantee. In fact, the protection for students in that kind of situation is something that worries us generally. Staff would have protection under the Transfer of Undertakings (Protection of Employment) Regulations 2006, but there would be very few safeguards to ensure that the continuation of students' educational experience was protected.

[203] **Keith Davies:** A oes enghreifftiau **Keith Davies:** Do you have examples of that gennyh chi bod hwn wedi digwydd yng happening in colleges in England? ngholegau yn Lloegr?

[204] **Mr Rees:** There are examples from England that pre-date the Education Act 2011. This can happen anyway, but it has to happen with consent. One of the most notable examples in England would be Newcastle College Group, which has something like a £70 million turnover. I do not have any specific examples of an impact on student representation.

[205] **Keith Davies:** Fy nghwestiwn olaf **Keith Davies:** My final question is: will yw: a fydd canlyniadau anfwriadol os caiff y there be unintended consequences if the Bill Bil ei basio? is passed?

[206] **Mr Rees:** There are none that we can identify other than the increased risk of, for example, dissolution. From our experience of working with the sector, it is a mature sector and we do not think that many of the legislative changes will have a great impact, in the sense that many of the freedoms that the sector will gain are things that, generally, it would have been able to do beforehand anyway. It just removes a process of consent. For example, I think that I am right in thinking that it is an incredibly small number of colleges that have had requests to borrow turned down. In fact, I do not think that any have been turned down in the past few years. So, we have not been able to identify any unintended consequences other than, perhaps, what we have outlined around the role of student representation.

[207] **Keith Davies:** Os ydynt yn sefydlu **Keith Davies:** If they establish profit-making cwmnïau sy'n mynd i wneud elw, a fyddent companies, will they then offer the same type yn cynnig yr un fath o gyngor ac addysg i of advice and education to students as the fyfyrwyr ag y bydd y coleg wedi eu cynnig college would have offered previously? o'r blaen?

[208] **Mr Rees:** We do not think so. We think that FE colleges are a public good, and that they are better off rated as NPISH. It is worth bearing in mind that—I guess that this impacts on the reclassification question, as well—the new funding and planning system will put a lever in place through which to exert power over the institutions. So, I imagine that institutions will be disincentivised from going private, because that might have a consequential effect through the funding and planning system that is coming into place.

[209] **Keith Davies:** Yn y pen draw, felly, rydych chi'n gweld bod y pŵer gan y Gweinidog o hyd. **Keith Davies:** Ultimately, therefore, you see the Minister as retaining the power.

[210] **Mr Rees:** I imagine that, ultimately, it will operate in much the same way as the higher education sector does, where the institutions are NPISH as well, which is that the funding becomes the policy lever.

[211] **Ann Jones:** Simon is next, then Bethan.

[212] **Simon Thomas:** Dyna'r hyn roeddwn i eisiau'ch gofyn, mewn ffordd. O'r ffordd rydych wedi ateb cwestiynau Keith Davies, rydych yn gweld hwn fel Bil sy'n tynnu ymaith y pŵer ymyrraeth statudol sydd gan y Gweinidog, ond sy'n gadael y llywio ariannol gan Weinidog a gan y Llywodraeth yn ei le. Ar wahân i'ch cwestiynau am gynrychiolaeth myfyrwyr, rydych fel NUS yn weddol gysurus gyda'r ffordd mae'r Bil yn ceisio delio gyda sector sydd, yn eich geiriau chi, yn aeddfed. **Simon Thomas:** That is what I wanted to ask you about, in a way. From the way in which you have responded to Keith Davies's questions, you see this as a Bill that takes away the statutory intervention power that the Minister has, but leaves in place the financial control by the Minister and by the Government. Apart from your questions about student representation, you, as the NUS, are relatively comfortable with the way in which the Bill tries to deal with a sector that is, in your words, mature.

[213] **Mr Rees:** Yes. We would rather that this was not necessary. However, our principal priority is the student experience. We have concerns about a possible impact on student experience as a result of the classification as central Government. We would be keen to see whether there is a stronger case in relation to the impact on capital spending. That is one of the most expensive financial implications, as far as we can tell, from remaining classified as central Government. If that has been accurately portrayed in the White Paper and the explanatory memorandum, then we are reasonably content.

[214] **Simon Thomas:** I am not asking you to go into detail, but, looking at the big picture, you accept the Government's basic premise that trying to get colleges back into being NPISH is a good thing to happen to the sector.

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

[216] **Bethan Jenkins:** Sut daethoch i'r penderfyniad hwnnw fel undeb? A basiwyd cynnig ar hynny o fewn yr NUS? A ydych wedi ymgynghori gyda'r undebau myfyrwyr sydd yn bodoli ar hyd a lled Cymru? Hefyd, i gadarnhau, er bod gennych gonsŷrn ynglŷn â'r ffaith y gallai mudiadau colegau diddymu eu hunain a mynd i'r sector preifat, ac nad ydych yn siŵr beth fydd yn digwydd i fyfyrwyr o ran eu profiad, rydych yn dal i gefnogi'r Bil. **Bethan Jenkins:** How did you come to that decision as a union? Has a motion been passed on this within the NUS? Have you consulted with the students' unions that exist throughout Wales? Also, to confirm, although you have concerns about the fact that colleges could dissolve themselves and go into the private sector, and you are not sure what will happen to students in terms of their experience, you still support this Bill.

[217] **Mr Rees:** There are two points there, I guess. On the first point, about consultation, there have not been any motions. However, we have worked with the two sabbatical officers we have in further education in Wales. One of the sabbatical officers had been involved in discussions on the number of governor places on the body. There were initial plans in one further education institution to move to one governor place, but that has been nipped in the bud. As well as engaging with the two sabbatical officers that we have in further education,

the Welsh national executive committee has engaged with this issue and discussed it, and there are a range of views. We have been quite fortunate in being able to draw on policy expertise in NUS UK, which went through a very similar process. The content of this Bill is incredibly similar to the content—

[218] **Bethan Jenkins:** Did NUS UK support it in England?

[219] **Mr Rees:** Broadly, yes. There were similar concerns.

[220] **Bethan Jenkins:** Did NUS UK pass any motions on this, or did it just have the executive committee discussion and okay it?

[221] **Mr Rees:** I cannot answer that question. I could let you know.

[222] **Bethan Jenkins:** It is important, because I want to know whether the NUS has consulted widely with the people who will be affected, because you are talking about the student experience and I am concerned, because you are saying that, if the colleges are given powers to dissolve themselves, you are concerned about that, but it is all hypothetical, is it not? However, you are quite clear in saying that you are comfortable with the Bill. That is very different from what the UCU said.

[223] **Mr Rees:** In terms of dissolution, we would be very keen to see the regulations for that, and there would have to be meaningful consultation with learners. We would absolutely have to require that in the regulations. Looking at the colleges in England that have dissolved themselves into companies or transferred their assets, the majority of that occurred before the Education Act 2011, and so before they even had the freedom to do that without consent. I think the reason that we have not seen that happen in Wales is cultural rather than legislative. We are unique in Wales in that the size of the sector, the number of colleges and the relationship between the Welsh Government, ColegauCymru, the colleges, the unions and NUS puts us in a position where such developments are far more unlikely.

[224] **David Rees:** May I ask a question?

[225] **Ann Jones:** Very briefly, David, because we want to move on.

[226] **David Rees:** You have mentioned that the important thing to the NUS is the learner experience, and I understand that. You also said just now that the majority of institutions in England that went private did so before the 2011 Act. My question, therefore, is: have you looked at the implications for those colleges, irrespective of when they went, in terms of how those colleges are now operating and the learner experience in those colleges? You have talked about borrowing. Have you considered the impact upon learners of the need to build up reserves and put a capital base down for borrowing? Do you have any experience from England, since the 2011 Act, and since those colleges transferred themselves, of how that is impacting upon the learner experience?

[227] **Mr Rees:** I could find specific examples. I can talk generally, but—

[228] **Ann Jones:** A note would be fine. We could have a further note afterwards. That would be okay. We could look at that with our evidence.

[229] **Mr Rees:** Generally, there is a very different culture in further education colleges in England. There is definitely a far more businesslike approach in further education colleges in England, which we do not agree with. There is a definite marketization. To return to the example of the Newcastle College Group, we do not think that the way that it operates through subsidiaries, such as its training group, and the way that it diverts resources is

beneficial to the student experience.

[230] **David Rees:** I know that they have the power to do this now, because I know of colleges doing this now, but is it possible that this Bill gives them greater encouragement to do this in the future, so that, in the years ahead, we will see that happening? Will we see Welsh institutions emulating English institutions?

[231] **Mr Rees:** That is possible. The key to attempting to sidestep that obstacle would be to ensure rigorous regulation that has to take into consideration consultation with learners and staff prior to dissolution. I know that the FE sector has welcomed the continuation of a priorities letter from the Minister, and I think that kind of enactment of Welsh Government policy would help to ensure that that does not occur in Wales. It is important to take into account the different policy context in Wales. There is not a legislative barrier to it, but we operate in a very different context in Wales, particularly when you consider, for example, the way in which the unions operate in Wales.

[232] **Ann Jones:** The next question is on the Welsh Government's powers of intervention and direction.

[233] **Aled Roberts:** Gofynnaf fy nghwestiwn yn Gymraeg. Rydych wedi ei wneud yn eithaf clir y bore yma mai eich blaenoriaeth chi yw buddiannau'r dysgwyr. Mae pwerau'r Gweinidog i ymyrryd yn cael eu lleihau o dan y Bil hwn, ond gwnaeth ddatganiad—ac rydych chi wedi ategu hynny'r bore yma—ynghylch ei bwerau o ran cyllido a'r ffaith y buasai'n barod iawn i ddefnyddio'r grym hwnnw i sicrhau bod buddiannau dysgwyr yn cael eu diogelu. A ydych yn fodlon bod y pŵer hwnnw'n ddigonol?

Aled Roberts: I will ask my question in Welsh. You have made it quite clear this morning that your priority is the interests of learners. The powers of the Minister to intervene are reduced under this Bill, but he made a statement—and you have endorsed that this morning—in relation to his powers in terms of funding and the fact that he would be very willing to use that power to ensure that the interests of learners are safeguarded. Are you content that that power is sufficient?

[234] **Mr Rees:** Until the process by which the Minister is able to intervene is clarified, it is difficult to comment on that. I believe that the Bill makes reference to mismanagement, poor performance or failure to discharge a statutory duty.

11.15 a.m.

[235] We welcome the fact that if there is a ministerial intervention, that college is then brought into the public sector. We think that that is a reassuring safeguard. However, although the funding and planning system is still in the early stages and although we have not had the detail on what those step-in powers are, we would be content with those step-in powers, coupled with the funding and planning lever, provided that they are rigorous.

[236] **Aled Roberts:** O ran rôl ColegauCymru, rydych wedi sôn am y berthynas bositif rhwng ColegauCymru, y colegau, Llywodraeth Cymru a'r undebau, sy'n rhoi dipyn bach mwy o hyder i chi wrth symud ymlaen. Wrth greu sefyllfa lle mae'r colegau eu hunain yn hollol annibynnol, a oes ansicrwydd y bydd rôl ColegauCymru yn cael ei wanhau, ac y bydd y broses o ledaenu arfer da a gwella'r colegau hynny sydd dipyn

Aled Roberts: In terms of the role of ColegauCymru, you have talked about the positive relationship between ColegauCymru, the colleges, the Welsh Government and the unions, which gives you a little more confidence going forward. In creating a situation where the colleges themselves are entirely autonomous, is there uncertainty that the role of ColegauCymru will be weakened, and that the process of spreading good

bach ar ei hôl hi yn llai tebygol o ddigwydd yn y dyfodol? practice and improving the colleges that are a little behind will be less likely to happen in future?

[237] **Mr Rees:** If anything, I think that the role of ColegauCymru will be strengthened as a result of the Bill. In many ways, ColegauCymru is the institution's voice in Welsh Government. It is ColegauCymru that was involved in the development of, for example, the learning area programme that is proposed in the funding and planning Bill. It is ColegauCymru that had a key role in the development of the qualifications review. We would be incredibly surprised if any of the colleges acted autonomously, because they lack the direct line through to policy development.

[238] **Ann Jones:** We will move on to the ONS's decision to reclassify colleges. Bethan?

[239] **Bethan Jenkins:** Pan roeddem yn siarad gyda'r UCU y bore yma, dywedodd y dylem gymryd cyngor cyfreithiol ynglŷn â'r hyn sy'n llywio'r holl Fil, sef penderfyniad yr ONS. Gwnaethoch ddweud yn gynharach fod gennych farn ond nad ydych wedi cymryd cyngor cyfreithiol. Pam ydych chi wedi cymryd y penderfyniad hwnnw? **Bethan Jenkins:** When we spoke with the UCU this morning, it said that we should take legal advice regarding what is steering the whole Bill, namely the ONS's decision. You said earlier that you have an opinion but that you have not taken legal advice. Why have you taken that decision?

[240] **Mr Rees:** The reason why we have not sought legal advice is purely a matter of resource. That decision was reached, as I mentioned, through consultation with our membership, particularly in FE colleges. We have also learnt from the experiences of NUS UK in terms of the similar process that it underwent in 2011.

[241] **Bethan Jenkins:** A oedd NUS UK wedi cael cyngor cyfreithiol ar y penderfyniad yn Lloegr? **Bethan Jenkins:** Did NUS UK receive legal advice on the decision in England?

[242] **Mr Rees:** I am not entirely confident that I can answer that accurately. If you want, I could get back to you.

[243] **Bethan Jenkins:** Diolch. Fy nghwestiwn arall yw hyn: pe na bai'r aiddosbarthu yn digwydd, pa broblemau cyllidebol fyddai'n wynebu colegau, yn eich barn chi? **Bethan Jenkins:** Thank you. My other question is this: if the reclassification did not go ahead, what budgetary problems would colleges face, in your opinion?

[244] **Mr Rees:** In terms of the costs outlined in the explanatory memorandum, we do not consider that the estimate of £70,000 a year for the change to be a substantial—

[245] **Bethan Jenkins:** It was said that that was for administrative costs.

[246] **Mr Rees:** We imagine that the legislative costs of doing this is probably in excess of that figure anyway. There are two areas on which we think there would probably be a financial impact. The first is capital spend, which is currently matched by Welsh Government. If the colleges were not reclassified, the entirety of their capital spend would be considered Welsh Government spending, and that would impact on Welsh Government budgets accordingly. Secondly, I believe, although I do not have the detail on this, that there is a possible impact on the Barnett formula for Welsh Government funding if the entirety of FE colleges' income and expenditure was accounted as Welsh Government income and expenditure.

[247] **Bethan Jenkins:** Yn yr Alban, mae ganddynt gyngor cyllido sydd yn delio â'r pethau hyn. Rwyf yn gwybod bod y sefyllfa yn hollol wahanol yno, ond a ydych chi wedi meddwl am yr opsiwn hwn i Gymru?

Bethan Jenkins: In Scotland, they have a funding council that deals with these things. I know that it is a completely different situation there, but have you considered this option for Wales?

[248] **Mr Rees:** We would not advocate a funding council for Wales. The further education Funding council that existed in Wales had some significant problems. Similarly, the creation of a funding council would not solve the classification problem, as colleges in Scotland were reclassified as part of central government. In Scotland, they have taken the decision to absorb the cost, but it is worth bearing in mind that this is in the context of something like a £25 million cut in further education spending in Scotland, which was originally somewhere in the region of £50 million. I think that there has actually been a fair bit of dissent by colleges in Scotland regarding the reluctance of the Government to seek reclassification there. I think that the funding arrangement there is very different anyway, with the regionalisation agenda. We have discussed with Northern Ireland what the situation is there. Currently, it has not discussed reclassification, but there is a governance review going on that is due to report, which we imagine will take into account the reclassification issue.

[249] **Bethan Jenkins:** Yn olaf, gofynnwyd i'r UCU am ei drafodaethau gyda'r ONS a gofynnwyd iddo a fyddai'n hapusach gwybod a fyddai'r ONS yn derbyn yr ailddosbarthiad. Beth yw eich barn chi ynglŷn â'r ffaith fod y memorandwm esboniadol yn dweud bod risg na fyddai'r ONS yn ei dderbyn? A yw eich undeb wedi dangos unrhyw gonsym am hynny?

Bethan Jenkins: Finally, we asked the UCU about its discussions with the ONS and about whether it would be happier to know whether the ONS would accept the reclassification. What is your opinion on the fact that the explanatory memorandum states that there is a risk that the ONS would not accept it? Has your union expressed any concern about that?

[250] **Mr Rees:** We would obviously be very concerned if this Bill was passed and there was not reclassification. You are kind of getting the worst of both worlds there. Our view is that the Bill is a bit of a trade-off to ensure that the student experience is not impacted by financial costs. As to whether the ONS would reclassify, the Bill, as it stands, is very similar, almost word for word—

[251] **Bethan Jenkins:** *[Inaudible.]*

[252] **Mr Rees:** Yes. Where there may be a question mark is in terms of the differences in the funding and planning and whether that would impact on the ONS reclassification decision. I think that it is safe to say that, in Wales, we will still have a stronger funding and planning lever, especially when you look at things such as the implementation of learning area programmes, where you have to adhere to a very specific programme to be eligible for funding. The plans that FE colleges submit around those programmes have to be approved by the Welsh Government and amendments have to be taken on board. I am not sure whether that would impact on the reclassification issue; I think that that is definitely something that is worth considering.

[253] **Bethan Jenkins:** Okay. Thanks.

[254] **Ann Jones:** We will move on to the implications of the Bill for learners, local communities and FE staff. Rebecca, are you or Lynne taking this one? I see that it is Lynne.

[255] **Lynne Neagle:** You referred at the opening of your evidence to your concerns about the level of student representation on the governing bodies. Are there any changes that you

would like to see in the Bill to safeguard that representation, or do you agree with the UCU that any such changes might jeopardise the reclassification?

[256] **Mr Rees:** I think that the minute that you do start to diverge from the instrument and articles that are in the Education Act 2011, you are raising a question about whether there will be an impact. The further you diverge from what is happening in England, the more likely it is that reclassification is going to become an issue. Generally, we consider that the instrument and articles already make provision for students—plural—to be members, even though they do not proscribe a place. I think that the use of the plural suggests that if you were to proscribe two places, that would not jeopardise the reclassification.

[257] **Lynne Neagle:** So, is that something that you would like to see?

[258] **Mr Rees:** Yes, that is something that we would like to see. However, to refer back to an earlier question, if that was in subordinate legislation, we would be happy with that.

[259] **Lynne Neagle:** I want to ask about the impact of the Bill on young learners—14 to 16-year-olds. Do you have any views on what the impact will be? Has your consultation with young people taken into account the views of that particular group of learners?

[260] **Mr Rees:** We do not represent 14 to 16-year-old learners. Our membership is 16-plus. That said, one area where we have concerns is around the removal of the duty for FE institutions to participate in local curriculum planning. We advocate flexibility in the education system and that you should be able to access the qualifications and training that you require to pursue your career or vocation. The 14-19 networks and the local curriculum plan have been really beneficial. There are some accepted difficulties with local curriculum planning, but generally it has been beneficial in opening up opportunities for young people. We would want to know how FEIs would still be incentivised to engage in this collaboration.

[261] **Rebecca Evans:** I want to pick up on a couple of things regarding colleges' relationships locally. Do you imagine that the Bill might have an impact on colleges' relationships with local schools, especially schools with small sixth forms? Do you imagine that there might be an impact on colleges' relationships with local employers—either positive or negative—as a result of the Bill?

[262] **Mr Rees:** We think that there is a potential impact on relationships with local schools. I think that it is safe to say that the relationship between local authority schools and further education institutions is currently strained. For example, they are not subject to the same information requirements in terms of how they are—I am trying to avoid the word 'assessed'—considered. They are not subject to the same information requirements, although the qualifications review and the funding planning review have both expressed an intention to standardise that. We would have a concern that there would, perhaps, be an aggressive expansion of further education colleges in relation to the shared curriculum with local schools. However, we would hope that the funding and planning system would have suitable provision to remedy that, since programmes will have to be improved. I know that a lot of the rhetoric from the Welsh Government in terms of the funding planning review has been around the planning rather than the funding. We would hope that that would be one way in which that could be avoided, especially given that, in a number of local authorities, there is definitely a move towards closing sixth forms and utilising colleges more. I guess that I should make clear again at this point that our membership does not involve school sixth forms, only colleges.

[263] **Rebecca Evans:** Do you foresee any issues with regard to local employers?

[264] **Mr Rees:** We have not been able to identify any potential issues there.

[265] **Rebecca Evans:** Do you have any view or any concerns about the impact of the Bill on FE staff?

[266] **Mr Rees:** Yes. We support the common contract and the linking of the pay scale to teaching staff. We think that FE staff should have equity of esteem with school staff. I am not entirely convinced that the Bill as it stands would lead to colleges moving away from linking the pay scale, or moving away from the common contract when it is implemented. It is an area of negotiation for the unions and colleges. However, we would definitely have serious concerns if any college did move away from what would be the common contract and the linking of the pay scales. That is something that I would hope could be assured by the Welsh Government through its relationship with Colegau Cymru, which holds a lot of power in relation to these negotiations.

11.30 a.m.

[267] **Bethan Jenkins:** I wanted to ask what you thought about the fact that UCU said this morning that it was concerned about the staff contracts in relation to the fact that if, for example, an FE college set up a subsidiary, or transferred rights to another body or privately run institutions, that the contracts would be diminished in some way. Some colleges are already using zero-hour contracts and contracts that already diminish their rights and that could lead to problems in the future. I know that these are hypothetical concerns at the moment, but they clearly are of real concern to the union that represents the staff. I wondered whether you had any more views on that. You seem to be saying that you are concerned, but that you are comfortable with the way in which that is progressing.

[268] **Mr Rees:** The easiest point for me to deal with there is the one about zero-hours contracts, in that we are completely opposed to them. We think that they are really damaging. They happen currently, so it is an existing issue that would not be impacted by the Bill. In terms of the transferring of staff, I believe that their contracts would be protected by the transfer of undertakings (protection of employment) regulations 2006.

[269] **Bethan Jenkins:** In the long term, that could still lead to changes. I know that when councils have transferred over to not-for-profit companies, after a while, they change the terms and conditions of those staff. I know about TUPE and I know that that is an initial protection, but, down the line, that does not necessarily protect staff.

[270] **Mr Rees:** I know that I am reiterating the point, but we would obviously be very concerned about that. What we want to see is a robust level of regulation in terms of the process for dissolution, so that if there was clear student and staff opposition, with students being the main stakeholders for colleges, this would hopefully, if the relationship was robust enough, impede that process. We would also want to see detail related to the funding planning, namely to what extent would a private provider be eligible for the same funding from Welsh Government. So, for example, in higher education, you have a clear deterrent for NPISH universities becoming private providers, because if they become private providers, they are not eligible. The students are not eligible for the same level of student support for statutory courses. That is a very clear disincentive to higher education institutions. We need to consider what similar disincentives can be put in place in the further education funding and planning system.

[271] **Ann Jones:** Has everybody finished with that section? I see that you have. We move on to provisions relevant to the higher education sector. Simon has the first set of questions.

[272] **Simon Thomas:** Diolch. Gofynnaf **Simon Thomas:** Thank you. I will ask my fy nghwestiwn yn Gymraeg. Fel y gwyddoch, question in Welsh. As you know, part of this

mae rhan o'r Bil hwn yn delio gyda rhannu gwybodaeth rhwng Cyllid a Thollau Ei Mawrhydi a Gweinidogion Cymru. Sut fydd hyn yn effeithio ar ddysgwyr, ar y ffordd y mae dysgwyr yn canfod cyngor ynglŷn â chyllido a'r ffordd y bydd y wybodaeth yn cael ei bwydo i mewn i'r system? A fydd yn arwain at welliant yn eich tyb chi?

Bill deals with sharing data between Her Majesty's Revenue and Customs and Welsh Ministers. How will that affect learners, the way in which learners find advice in relation to funding and how that information would be fed into the system? Will it lead to an improvement in your opinion?

[273] **Mr Rees:** I have to be careful in response to this question to not talk about the modernisation project itself, but to talk specifically about the data sharing. We think it would bring an improvement, generally speaking. In terms of students not having to produce paper evidence, this would be fantastic for students.

[274] **Simon Thomas:** Students do not do much with paper anymore. [*Laughter.*]

[275] **Mr Rees:** No, and it is a laborious process. So, we would generally welcome it. Our main concerns are about how you would ensure that vulnerable groups that might not be living with their parents or might have a broken down relationship with their parents, and the safeguards that are in place to ensure that they are treated as they should be. It is also about the accuracy of the data.

[276] **Simon Thomas:** O safbwynt symud o system sydd wedi ei seilio yn eithaf lleol ar hyn o bryd i system fwy cenedlaethol, a oes unrhyw berygl yn hynny? Ar yr ochr arall, a fyddai'n ei gwneud yn haws i fynd ar ôl dyled myfyrwyr hefyd? Efallai y bydd gennych farn ychydig yn rhanedig yn hynny o beth, ond, yn y bôn, bydd y broses yn fwy hygrych, oni fydd?

Simon Thomas: In terms of moving from a fairly locally based system at present to a more national system, is there any danger in that? On the other side, would it make it easier to pursue student debt? You may have a rather biased view on that, but, fundamentally, the process will be more accessible, will it not?

[277] **Mr Rees:** Yes, we think that the process is generally more accessible. With the modernisation project, there are very significant concerns about the loss of face-to-face contact, particularly with non-traditional learners and people outside that, such as full-time undergraduates in the 18-year-old bracket. We very much hope, through the modernisation project, that the Student Loans Company has learnt the lessons of Student Finance England, given the significant impact that the delays had on students at that time. Generally, we think that it makes it a more accessible system.

[278] Could you clarify your point in relation to making it easier to pursue student debt?

[279] **Simon Thomas:** In terms of having a system that is more centralised and more related to online information, would it make it easier for the Student Loans Company to identify where students have gone or moved on to? Would this data sharing have implications further down the line?

[280] **Mr Rees:** In terms of the information that the Student Loans Company would have, I do not think that the data it holds would be significantly different to what it currently does.

[281] **Simon Thomas:** So, it just streamlines the way that data gets accessed and collected in the first place.

[282] **Mr Rees:** Yes. In terms of the additional data it would have, it would improve the accuracy of its data on student incomes, which would be taken into account in its decisions

regarding student finance. For the significant part, that will be the income of the parents of the student, rather than the student's income.

[283] **Simon Thomas:** Are there any implications because of data sharing on other educational allowances in the long term, such as the educational maintenance allowance? Do you see anything there, or do you see it just as a technical thing that relates directly to the traditional student experience?

[284] **Mr Rees:** We see it as a technical thing. We think that it could potentially reduce fraudulent claims, which, even though we represent students, is something that we would welcome as well.

[285] **Simon Thomas:** You do not want students to commit fraud, do you? [*Laughter.*]

[286] **Mr Rees:** No.

[287] **Simon Thomas:** It is not a good start to your career. Diolch yn fawr.

[288] **Angela Burns:** Kieron, in answer to a question from Rebecca, you talked about the seepage between sixth-form colleges, sixth forms in schools and FE colleges in terms of provision. Do you have any concerns over the removal of the power to restrict the provision of HE courses within FE institutions? The Minister says that the power has never been used. Could you go further and explain what benefits that might bring to students in FE colleges, if any?

[289] **Mr Rees:** We advocate flexibility in learning, and the idea that you can move in and out of the system when you need upskilling and reskilling. In that sense, we think that the ability of further education institutions to provide higher education helps to improve access, because such institutions tend to be more local than universities; they tend to have better access arrangements.

[290] In terms of the relationship with higher education, we would like to see greater collaboration between HE and further education in the sense of being able to move students between courses. We would not want to see a 'my little empire' attitude where people think that they have to keep all of the FE students and keep them moving on to HE. To go back to the Newcastle College Group, which is ripe for examples, it offers provision that allows students to go from level 2 to Master's within the group. We are not convinced that that is necessarily in the interests of the learner, because it is unlikely that one particular provider is able to provide the entirety of the skills that a learner would require. So, we think there are benefits to further education providers being able to provide higher education that improves flexibility and access, but we also think that there needs to be an emphasis on collaboration between providers to ensure that the learner, rather than going on a course that is okay for them, for example, is on a course that meets all of their needs. The best way to do that is through flexibility of provision and being able to move students to the most appropriate place to meet their needs.

[291] **Angela Burns:** If you were to put a HE hat on for a second, do you think that the HE sector would have issues with this removal?

[292] **Mr Rees:** I am not sure. HE providers currently view further education institutions as meeting the needs of a different kind of student. However, whether the attitudes of HE providers would change with further education providers if they were to pursue an expansion, I am not sure. In many ways, higher education institutions have a stake in HE and FE anyway, because a lot of them provide the franchised provision through the college. I guess that one of their concerns might be whether there would be an impact on that.

[293] **Angela Burns:** Thank you very much, and thank you for your evidence.

[294] **David Rees:** Is it therefore your concern that there will be a detrimental effect on the quality of the experience of the learner in an FE institution—and you mentioned Newcastle—if this goes through?

[295] **Mr Rees:** They are very different experiences. The experience of higher education in a further education provider is a very different educational experience. It is not necessarily a better or a worse one, but it is a different one. We would have to ensure that further education institutions adhere fully to the safeguards and regulations that are imposed on higher education providers. So, for example, there was a discussion recently about whether further education institutions should complete fee plans for higher education students. It is our view that of course they should. If they are paying the same fee as a student who is doing a similar course in a higher education institution, then the institution should complete the fee plan to explain how they are spending that fee.

[296] Another of our concerns with higher education and further education is related to student representation. I do not think that I will shock anyone when I say that student representation structures in higher education are above and beyond what we currently have in further education. So, there is a concern as to whether students in HE and further education are getting equitable representation.

[297] **Ann Jones:** Thank you very much for your evidence. You are going to provide us with a note, and we will contact you afterwards about that. We will send you a copy of the transcript to check for accuracy. Thank you very much for coming in. We apologise that we have run late.

11.44 a.m.

**Cynnig o dan Reol Sefydlog Rhif 17.42 i Wahardd y Cyhoedd o'r Cyfarfod
Motion under Standing Order No. 17.42 to Exclude the Public from the Meeting**

[298] **Ann Jones:** I move that

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

[299] I see that the committee is in agreement. Thank you very much.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11.44 a.m.
The public part of the meeting ended at 11.44 a.m.*