



Northern Ireland  
Assembly

Committee for Education

# OFFICIAL REPORT (Hansard)

Education Bill:  
Northern Ireland Teachers' Council Briefing

28 November 2012

# NORTHERN IRELAND ASSEMBLY

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**Members present for all or part of the proceedings:**

Mr Mervyn Storey (Chairperson)  
Mr Danny Kinahan (Deputy Chairperson)  
Mrs Brenda Hale  
Mr Chris Hazzard  
Mr Trevor Lunn  
Miss Michelle McIlveen  
Mr Sean Rogers  
Mr Pat Sheehan

**Witnesses:**

Mr Gerry Murphy	Irish National Teachers' Organisation
Mr John Devlin	National Association of Schoolmasters Union of Women Teachers

**The Chairperson:** I welcome to the Committee Mr John Devlin from the National Association of Schoolmasters Union of Women Teachers (NASUWT) and Mr Gerry Murphy from the Irish National Teachers' Organisation (INTO). Thank you for your submissions. I invite you to make your presentation, after which members will have the opportunity to ask questions.

**Mr Gerry Murphy (Irish National Teachers' Organisation):** Thank you very much, Mr Chairman, for your welcome. We are very appreciative of the opportunity to address the Committee on this important matter.

The Northern Ireland Teachers' Council (NITC) is the recognised body representing the teaching profession and is made up of the Association of Teachers and Lecturers (ATL), the Irish National Teachers' Organisation, the National Association of Schoolmasters Union of Women Teachers and the National Association of Head Teachers (NAHT).

We would like to make a brief introductory statement, if that is acceptable, and then we are happy to engage directly with you and provide any clarification that you may wish to seek.

The NITC sees the proposed Education Bill as the proverbial curate's egg. We welcome, in principle, the establishment of the Education and Skills Authority (ESA), described as a single employing authority in clause 3(1). Our hope is that when ESA comes into being, we may see a greater continuity returned to the administrative arm of the educational establishment and significant savings accrued from the removal of unnecessary duplication across the system. We anticipate those administrative savings becoming available to directly support teachers and children in classrooms.

The board of ESA, as described in the Bill, does not include any representation as of right for the workforce, be they teachers or our colleagues in the ancillary and auxiliary support staff. The NITC believes that this is a missed opportunity, as representation at board level of those employed in the education sector would, we contend, assist greatly with the smooth functioning of the system as a whole.

NITC is concerned that elsewhere in the Bill — in clause 12(1) to 12(5) and schedule 2 respectively — non-teaching staff and boards of governors will have the power to employ teachers, terminate their employment and discipline them. This is contradictory and will, no doubt, lead to challenges. The provision of employment schemes and management schemes, potentially from 1,200-plus schools, will create a potential patchwork of provision in these areas and will serve only to undermine *[Inaudible.]* in application and interpretation.

NITC suggests that, together with the ESA implementation team, we construct model schemes of employment and management. This will have the effect of reducing potential conflict and mean that any variance from those schemes on the part of the submitting authority would have to be justified. These documents — that is, the schemes — should also be public documents and published by the submitting authorities. We are further concerned to protect the central negotiating machinery. The submission by various sectors or schools of individual schemes presents a threat to the centralised negotiating machinery. NITC views this as a recipe for chaos and something to be avoided.

The Bill brings about a significant number of substantive changes in the role and responsibility of boards of governors. We see these bodies, populated as they are by volunteers, having additional responsibilities thrust upon them — I refer to clause 38(1) — and, consequentially, being subject to greater levels of public scrutiny and accountability — I refer to clauses 46(3) and 46(4). NITC is most concerned that citizens will become unwilling to put themselves forward for these voluntary positions in light of the proposed changes. From a trade union perspective, NITC is anxious that the good relationships between governors and teachers should be maintained in the interests of both parties, in particular the children. However, the imposition on governors of an obligation to drive up levels of attainment places them in potential conflict with the education professionals — the teachers.

Other issues arise in this area of the Bill, such as the introduction of an ethos qualification at clause 39(7)(a) and (b). NITC sees this as reducing further the potential pool from which to recruit governors initially and reinforcing a silo mentality. However, if the legislation is to proceed as written, we feel that the trade unions should be represented on boards of governors as of right.

The Bill allows for the establishment of a tribunal by the Office of the First Minister and deputy First Minister (OFMDFM) as a means to resolve disputes that may arise between boards of governors and ESA. NITC is of the view that access to the tribunals should be open to third parties, namely, trade unions. It is likely that the majority of disputes arising between governors and ESA will be in respect of the schemes of management and employment, both of which impact directly on our members. Additionally, the Bill does not make clear whether the decisions reached at the tribunal are binding. If the decisions are not binding, what is to prevent the parties to a dispute seeking resolution elsewhere? The area that deals with tribunals, like much of the Bill, lacks clarity.

The Bill enhances the functions and power of the inspectorate — clauses 44 to 48. NITC believes that the inspectorate already has adequate powers to carry out the Department of Education's bidding. The Bill also focuses the majority of new powers on inspection of teachers and governors. Inspections to be carried out in areas controlled by the Department for Employment and Learning (DEL) remain unchanged in the Bill. In areas under the control of the Department of Culture, Arts and Leisure, inspection powers are significantly reduced. The Bill does not indicate who will pass judgement on the effectiveness of the inspectorate in supporting the work of teachers and governors to raise standards. This omission removes any pretence of partnership working and fundamentally changes the dynamic in the relationship between teachers, governors and the inspectorate.

Area planning will become a statutory duty for ESA under the provisions of the Bill. This should, in NITC's view, lead to a more strategic approach across the entire school estate than has been the case to date. We also feel that the planning process would benefit if the trade unions representing those employed in the sector were to be included in the central planning group.

Finally, NITC is disappointed that the Bill makes provision for the funding of sectoral bodies. We have long held the view that such bodies should not be funded directly from the public purse and that schools should opt in to a sectoral body if they wish. Funding for the body would be by means of annual subscription paid for by the school.

Mr Chairman, thanks for your attention and that of the Committee. John and I will do our best to answer any questions that you may have.

**The Chairperson:** John, do you want to make any further comments?

**Mr John Devlin (National Association of Schoolmasters Union of Women Teachers):** No. I will take questions from members.

**The Chairperson:** Thank you. I appreciate your making a submission and taking time to come to see us today. Obviously, for us, this commences a lengthy process of ensuring that we cover in an open and transparent way the issues and concerns raised by a variety of organisations. It is important that we were able to have early in this process the opportunity to listen to union representatives, who are the voice of their members. It is they, the teachers, who will be affected.

We have received submissions from other unions, and it is difficult to be conclusive about the agreed position of the various unions on the key issues. I would appreciate your view on that. I take it that there is a general agreement that having one organisation, ESA, is desirable, as opposed to the situation now. As the Bill has 69 clauses and eight schedules, there will be some variation in the emphasis of one union compared with another. What is your general sense of the level of unanimity on the key issues that need to be addressed and which have a particular bearing on your members?

**Mr Murphy:** I have addressed what I consider to be the key issues for the trade unions, but the fundamental issue for us is this: who is the actual employer of teachers? The provision of individual schemes of management and employment are covered in clauses 3 to 9. It seems to us that the Bill is unclear on individual schools carrying out employment functions separate from the employing authority or employer. To us, the potential for conflict and variance in the application of existing employment law and existing procedures seems very great. We would prefer there to be a central employment scheme and a central scheme of management. That appears to us to be almost common sense in so far as it removes any potential for misunderstanding that could lead to conflict and dispute between our members and the employing authority.

**The Chairperson:** At this point, Gerry, what is your assessment of the current employment arrangements? Another union has said that clause 3 should provide that an opt-out be available to, for example, voluntary schools.

**Mr Devlin:** We look at this as a whole. An opt-out would totally weaken the whole procedure. Either everybody is under the tent, in which case things can be organised and there are terms and conditions common to all teachers throughout the Province, or we open the door to suddenly having differences occurring in different parts of the system. In some ways, when we read through the Bill, we see that, certainly in the voluntary sector, there is an element of freedom and control. Throughout the Bill, the door is opened to every school taking that route. The term "academisation" jumped out at us. Effectively, the Bill creates a system akin to the academies in England. People may have different views on that. Maybe that is a good thing, but it is certainly not something that we have had within our system here.

We also have a question on opting out. Would an institution opt out but still receive the full benefits as everyone else, or would their funding be reduced? If opting out reduced their funding, they may have to charge fees, and a fee-paying type of education would suddenly appear on our doorstep. We have always supported the idea of one central body managing education in Northern Ireland so that we can avoid the situation that exists now, when we seem to be negotiating with up to nine different types of employer. There is a lot of duplication, and this is an opportunity to simplify what we have now.

**The Chairperson:** John, I am not being facetious here — sometimes people accuse me of that — but you are arguing that there is merit in having one organisation to streamline employment, and the logic of that argument is that we should not have five or six union organisations representing a variety of views and opinions. I was once berated at a NASUWT conference. A gentleman from the floor tore me apart, accusing politicians of not being able to make decisions, not being united on anything and being a shambles. I said that, respectfully, we have five or six unions. I have no difficulty with that. They do not always present a unified position. That is why I asked the question at the start. Part of the reason for that is probably because difference and variety can, sometimes, be good.

Some 99.9% of the money that goes to our schools, irrespective of sector, comes from the state. It comes from the public purse. We have clear legal advice that clause 3 makes ESA the employer — full stop. That is it, there is no ambiguity. However, for some time, certain schools have believed that they have a degree of autonomy or independence — call it what you will — and they see the merit, value and worth of that. There is a worry that, somehow, a centralised arrangement will restrict their ability to do what they have done, which, they will argue, has given them good outcomes. Other schools across a variety of sectors are envious of the way in which a decision can be made on, for example, the employment of a teacher. In some sectors, that can be a very straightforward, simple process. In others, however, the employment of a teacher is done via the boards — there are some such schools in my constituency — and the way in which the process goes on and on, meaning that an appointment cannot be made quickly, is a downright disgrace.

How do we get an agreed position on that? Is it autonomy for all while taking the money from the public purse, or taking money from the public purse but subject to a very stringent, uniform process?

**Mr Murphy:** The Bill introduces the notion of maximised autonomy. As the Minister and the Department are always telling us, maximum accountability will accompany that. We have not really had a debate about what this autonomy means. The concept has arrived here in the Bill, but there has been no lead-up to it in the form of an exchange between all the stakeholders — forgive me for using that word — to date. We have not explored what is in fact meant by autonomy. What are we talking about? As it stands, a primary-school principal — I was one until 12 months ago — has autonomy over a maximum of between 8% and 10% of his or her budget. How much real autonomy do they have? On top of that, we have a Department that appears to be practising a command and control approach. What approach do you take to the delivery of a curriculum, a teaching strategy, pedagogy or any of that? What is this autonomy that we are talking about? There are issues there.

I want to return to something that you said earlier about the way in which teachers are employed. Currently, there are six employing authorities, all of which do things slightly differently. My experience was in the maintained sector with the Council for Catholic Maintained Schools (CCMS). The model being proposed here has been referred to in some circles as "CCMS-lite". My experience of CCMS as an employing authority and when working as a principal with a board of governors — my trade union experience bears this out as well — is that situations arise in the normal course of events in which the employing authority says that an issue is a matter for a board of governors, but the board of governors says that it is an issue for the employing authority. It is a system that is, I suppose, unique to this place and every aspect of our society because we love our constructive ambiguities. Constructive ambiguity is at the very heart of this Bill. From a trade union perspective, we think that we can do without that here. This goes back, Chair, to your question to John. We would like it established, clarified and clearly spelt out — without that ambiguity — that ESA is the employer. You say that you have received legal advice that provides that clarity, and I accept that, but we do not see it in the Bill and we would like to.

**Mr Devlin:** There is another point. I picked up on what Gerry said. At the moment, we have boards of governors who make decisions on employment. As Gerry said, that is a board issue. If a board of governors acts against the advice received and there ends up being an industrial tribunal, who picks up the bill? It is the people at the top. When I read through the Bill, I can see that situation happening again, "You are not allowed to interfere with what we do. You can reject or accept our advice, make a decision but not pick up the bill."

I picked up more from reading the Hansard report of Chris Stewart's presentation to the Committee. That is really where most of the information and clarity came from. It appears that the Bill will extend employment liability to the voluntary sector, which currently is not the case, as it takes out separate insurance for that.

**The Chairperson:** This is very difficult for the Committee because we go here, there and everywhere. You raised a whole range of other issues, but let us stay on the employment issue in clause 3.

There surely is ambiguity in the system now because if there is a dispute in some sectors and the dispute goes to court, it is not the employing authority but the relevant board that picks up the bill. That is an ambiguity, which, I think, has to be redressed. People want to be the employing authority, but when something goes wrong and goes to court, it is not the employer but the board that picks up the bill. I do not see how that is a fair system. I think that that —

**Mr Devlin:** That is exactly what I am talking about.

**The Chairperson:** Is that what you are referring to, John?

**Mr Devlin:** Yes.

**The Chairperson:** I will not mention any sectors so that I am not accused of picking on one sector over another. Let us be general and say that there is uncertainty. Are you saying to us today that you do not see that being resolved by what is currently in place in clause 3?

**Mr Murphy:** We are saying that, as far as we are concerned, the way in which that is written means that the ambiguity will remain in the system.

**Mr Lunn:** On this issue of constructive ambiguity, when I read the Bill, I see only one thing. I listen to people such as Chris Stewart and our legal advice, and I accept what they say, but then I hear a different version from you. That is not to say that I disagree with everything in your paper, by the way. To my mind, it is absolutely clear that ESA will be the employer or the employing authority. I do not think that there is any difference between those two descriptions. I will not mention sectors, Chairman, but if I were a governor or headmaster of any type of school, I would welcome that. What you have is ESA as the backstop employer — the last resort employer — and all schools being given almost complete autonomy to run their own affairs within the scheme of employment agreed by ESA. I see that you want that to be standardised. I think that there may be a bit of wriggle room, but we can work on that. As I understand it, this will mean that certain schools, which had to pay for expensive liability insurance over the years, will no longer have to do so. They should be glad about that. I do not get this ambiguity that you refer to. My reading is that it provides clarification rather than introducing ambiguity.

**Mr Murphy:** When there are 1,200 schools submitting schemes of employment and schemes of management, and you are running a delegated model, the opportunity for various interpretations to be applied to the same set of rules is huge.

**Mr Lunn:** The point is that they have to be approved by a single body.

**Mr Murphy:** To use a football analogy, the size of the pitch and how it is marked out will be approved by the central authority, but what takes place on the pitch will be different for every school.

**Mr Lunn:** I do not think so. I think that most schools will adopt a model scheme provided by ESA and be glad to do so. As I understand it, for the schools that do not adopt that scheme, ESA can interfere only if they step outside what is agreed in their scheme of employment, which will have been approved by ESA.

**Mr Devlin:** I am glad to hear you say that. We are of the view that there should be a model scheme in place for all schools. If a school wants to deviate from that model scheme, it would need to be able to justify why it is doing something slightly different. That is not to say that that will be a problem, but a process needs to be in place. There should be agreed model schemes and the opportunity to vary from them, but a school that does so must provide a reason, and, hopefully, there should not be a problem. However, in the way that the Bill is written, there seems to be a bit of a clash about how much ESA can interfere without going down the route of saying that a school cannot do something. It is more of a negotiated type of approach to make small changes.

Trade unions come in at the margins when things go wrong or do not happen. That is not to say that we are constantly in and out of schools trying to sort things out. That is not the story. We rarely visit some schools; we are in others quite a lot. These things are on the margins, and we are looking for an opportunity to tidy up areas that have caused particular problems down the years so that the system operates smoothly. We do not want to be going in and out of tribunals or going to court. We want the opportunity to put something in place that will make the system run smoothly.

**The Chairperson:** Yet there is an issue with, for example, clause 13 of the Bill, which deals with the modification of employment law. We are talking about having uniformity, yet some of us would say that there is currently a huge disparity in the fact that some sectors are able to opt out under the Fair Employment and Treatment (Northern Ireland) Order, in relation to the employment of staff on the basis of staff having or not having a Catholic certificate. That is a huge issue. Is there unanimity among the unions on that issue? Do they all want to see equity in the treatment of staff? If there were

to be secondments, deployments or the redistribution of staff, as things stand, the employment opportunities for a large section of teaching staff without a Catholic certificate would be restricted. I will park that point. It came from my reference to clause 13, through which the Department wants to take on powers — not that it ever wants to do anything else.

Clause 13 states:

*"The Department may by order make such modifications in any statutory provision relating to employment, and in particular in any statutory provision".*

One union stated:

*"The Education Department should not have the authority to unilaterally make modifications to 'any statutory provision relating to employment'."*

Further comments on that include:

*"The Department should be required to obtain agreement with DEL rather than simply consult."*

*"The Department should be required to consult with staff representatives, not just staff."*

Clearly, power is being given to the Department. The reasons for the Department seeking this power are outlined in the delegated powers memorandum:

*"This clause allows the Department to make an Order to modify employment law. This is necessary because of the particular nature of ESAs functions as an employer of school staff. Although ESA is the employer, a number of employment functions are delegated to the Boards of Governors of grant-aided schools. It is intended that this power will be used to make Orders ensuring that the appropriate body is liable under employment law (e.g. in the case of an employment tribunal). It is envisaged that any Order would be procedural and therefore the negative resolution procedures would be appropriate."*

What does all that mean in practice? I am glad that Chris is here because he probably wrote that. We are talking about having one body to regularise things, but as we explore this one element of employment, we are beginning to discover that we are not getting there. Maybe Chris will give us some explanation of clause 13 in the later session. Do you have any comments on that? I want to move on to members and open up a number of other issues.

**Mr Murphy:** First, we absolutely support the concept of equality being applied across the system. You referred to the Catholic teacher's certificate. We do not support that certificate being used as any sort of barrier to the free movement of teachers across the system. It is our understanding that CCMS is consulting, or had been consulting, on the application and use of that certificate within the system. I hope that that clarifies that point.

In relation to clause 13 and the Department unilaterally changing employment law, I would imagine that the Department would be extremely careful in employing that provision because the ramifications in other areas of employment would be huge. There is a duty on the Department to consult but I see that our colleagues in one other union, and I think that we are talking about the same union, are saying that that would be insufficient, as it does not place on the Department any requirement to obtain, say, DEL's agreement. That is a further example of areas such as the tribunal, which requires greater clarification on, and investigation of, what the intention is and how it would work in practice.

In fairness to the Department and Chris, who, I am conscious, is sitting here, he highlighted, in his contribution to the Committee in Omagh, that the tribunal and a number of other points were work in progress. I absolutely agree with where you are coming from on clause 13 and understand the thrust of your question, but I do not have an answer. The Department may have an answer now, but probably did not when that memorandum was written.

**The Chairperson:** My concern is that, despite the time that it has taken us to reach this point with the Bill, we still do not have clarity on the circumstances in which the Department would want to use those powers to make those modifications. Surely it would be better to look at the current suite of employment policies and try to be clearer about what the Department envisages doing rather than our

saying, "Well, we will create this organisation, and we will still give the Department the power to change, whenever necessary or appropriate, employment laws."

Surely we already know the issues with employment law. Maybe we should not be putting the cart before the horse. We will have to look a bit closer at that.

We will move to members because I want to raise issues with boards of governors, and so on. If we expand the discussion, we will, I hope, get to that.

**Mr Kinahan:** Thank you very much for your presentation. I have various queries but I will start two on the current subject. One of the main reasons for bringing in ESA was to cut costs. If ESA then takes on the role of employer of all the different groups of teachers, surely the cost of employment will rise as we equalise how teachers are employed across all bodies. Do you follow me? As people come in at different levels, everything will have to be equalised through ESA as the single employment body. Do you envisage a rise in costs for the Department?

**Mr Murphy:** There will be no equalisation of teachers' salaries because they are centrally schemed. There will, inevitably, be some equalisation with the non-teaching workforce in the sector. There is a significant challenge in that we do not support any race to the bottom or an equalising down. We want them to be equalised up. However, we think that that is unlikely.

There has been talk of £40 million of savings, and we think that there will be savings over the years because of the removal of duplications. For example, we will have one payroll instead of seven, and there are various opportunities for savings in school transport and other issues. We perceive savings being made. We do not doubt that, initially, there will be some possible increase in costs as, to use a tired phrase, some investments are made to effect savings. Overall, however, we anticipate savings and further anticipate that those savings will make their way directly into classrooms and will not disappear into greater bureaucracy. The short answer to your question is: yes, we envisage that savings will be made.

**Mr Kinahan:** You said that you are keen to have representation on ESA and that giving the sectoral bodies places was not your preferred way forward. Who else should be included and how better could the body of ESA be represented? We know that you want to go on it, but are the Welsh are doing anything different that we should be doing? Is that an unfair question?

**Mr Devlin:** Membership now is very prescriptive, and there is prescription in who can be on a board and where they come from. Such a large number is already blocked out, and there could perhaps be a reduction in the representation. We advocate reducing the representation of sectoral bodies from four to three and allowing us, as employees' representatives, into the system. We include non-teaching colleagues in that because many non-teachers are employed in the system. You could open up community representation through a stringent public appointments process. I am sure that people here have been through public appointments: having to fill in an application form and go for an interview to take those positions is very important, because we are putting responsibility into the hands of a small number of people, and, therefore, they need to be suitably qualified to undertake that role.

**Mr Murphy:** There are eight political representatives and 12 others: four trustees, four transferors and four from the general public. That group represents broad society as well as specific sectoral interests. However, a huge group — employees — is unrepresented on the board; 23,000-odd teachers are directly employed in the system with 8,000 to 10,000 ancillary and auxiliary support staff. It seems only logical to us that that constituency be represented on the central decision-making body for the entire system. The Bill stipulates that there should be four community representatives. Our community is not the community that it was 30 years ago; we now live in an extremely diverse and multifaceted society. Getting four individuals to represent that group will be quite a challenge. However, that is not primarily our concern. The trade union concern is that we would not be represented on the board of ESA.

I will switch hats here. As the northern secretary of the Irish National Teachers' Organisation, I made a submission in which I suggested that paragraph 2 of schedule 1, which refers to the make-up of the board, could be altered so that the transferors and the trustees could do with one representative less, to make space for one representative from the teachers' trade union side and one from the non-teaching side.



**The Chairperson:** Gerry, could it be modified so that one of their representatives is a teacher? Take the composition, the four and four; there was a reason why that was the case. Currently, you do not have representation on the boards.

**Mr Murphy:** Yes; that is correct.

**The Chairperson:** That has been an ongoing issue. One of the reasons why the board is constructed in that way is to reflect the Education (Northern Ireland) Order 1986, which is the same as an education and library board. It is intended to protect legal rights that were conferred by the 1946 Education Act.

Can an argument be made to the transferors and trustees that in the appointment of their four representatives, they should ensure that one of them is representative of teachers in their sector? Is that one way round it?

**Mr Murphy:** That is certainly an option.

**The Chairperson:** OK.

**Mr Murphy:** However, I am suggesting another option, which I prefer.

**The Chairperson:** Yes. That's OK.

**Mr Lunn:** We all have a whole lot of questions, but I will restrict myself to a couple.

In your presentation, you talked about your apprehension at the inclusion of the requirement for ESA to appoint governors committed to the ethos of a school. There may be scope for changing the meaning of that slightly. I am not being facetious when I say that perhaps it should read "ESA should not appoint governors who are not committed to the ethos of the school", or something like that.

You say that all schools should have a similar ethos, based on providing an education that develops each pupil to their maximum potential. However, they all do that anyway. That really is a different subject. What you are talking about here is the removal of the faith-based ethos of some schools, the Quaker ethos of a particular school, the ethos of integrated schools, which is slightly different from that of some other types of school, and the Irish-medium schools. Those ethos have been built up over a long time — over a century in some cases — and it seems a bit Stalinist to talk about gradually removing a valuable ethos that has been built up over time.

**Mr Murphy:** I disagree; that is not what the Northern Ireland Teachers' Council is saying. However, we do not think that ethos should be a qualifying factor. I am grasping for the correct term, so I will just say it: when you consider the other impositions visited upon boards of governors by the Bill, by introducing ethos, we further reduce the pool of individuals who may be willing to present as governors.

**Mr Lunn:** Surely, it boils down to what level of heavy-handedness the Department or ESA introduces to enforce it. You cannot really put that in a Bill, can you? If the ethos point is valid —

**Mr Murphy:** I noticed that when Chris was questioned by one of the members of the Committee on that very point in Omagh —

**Mr Lunn:** It was me.

**Mr Murphy:** It was you; you are consistent. He said something along the lines of — I am sure that he will correct me if I am wrong — that if a governor deviated from a position on an ethos and its nature upsets the effective and smooth functioning of a school, they will look at that. Therefore, the potential for heavy-handedness exists.

**The Chairperson:** It is the dreaded article 101.

**Mr Murphy:** The NITC recognises the importance of governors being committed to their schools; we see it as a positive thing. However, its presentation as almost a precondition to membership of a board of governors is causing us to baulk a little.

**Mr Lunn:** I do not know how far you could take that theoretically. You could say that it would be offensive to that article if a Protestant was appointed to the board of a Catholic school —

**Mr Murphy:** Or vice versa.

**Mr Lunn:** — or if a non-Quaker was appointed to the board of Friends' School. That is stretching it a bit. The ethos is slightly different from that. I find it a wee bit difficult to put this into the correct words for you, but you are, perhaps, making too much of that, although I acknowledge that there may be a better form of words than that in the paper.

**Mr Devlin:** It is interesting to read in Chris's submission about tying down what ethos is, because it is sometimes difficult to put it into words. People say that there is a great ethos in a school, but what does that actually mean? If I ask somebody to tell me what it is, they will struggle. That happens all the time. It is a very loose term.

**Mr Lunn:** Can I slow you there? The discussion in Omagh was on a hypothetical case that we all know about, and it is probably easier to identify somebody who is not committed to the ethos of a school than somebody who is.

**Mr Devlin:** We advocated a standard ethos, which you mentioned earlier, to maximise the potential of the children in the school. That ethos should appear in every school.

**Mr Lunn:** Absolutely. However, this is a slightly different matter.

**Mr Murphy:** The first couple of clauses refer to ESA as having a responsibility for moral and spiritual growth. Therefore, the genesis of a collective ethos is already there.

**Mr Lunn:** In your presentation, you talk about the powers of the inspectorate to inspect, copy and take away documents. You say that there should be a positive relationship between schools and the inspectorate that should not make the inclusion of that clause necessary. I do not know whether it is laid down in legislation at the moment, but is that not just a statement of the powers that the inspectorate already has? In practice, it does not make any difference.

**Mr Murphy:** It is an extension of the powers that it has and, I believe, comes from legislation in England in 2005 on Ofsted's powers. You are quoting from INTO's contribution as opposed to that of the NITC.

**Mr Lunn:** I am not; I am quoting from paragraph 9 of the NITC submission.

**Mr Murphy:** We do not feel that it is necessary for its powers to be extended in that way.

**Mr Lunn:** Will they be extended? I would have thought that an inspector going into a school has the authority, whether written down or not, to inspect, copy and take away documents.

**Mr Murphy:** No; inspectors do not have that power. We were engaged in industrial action in the previous 12 months, part of which was non-co-operation with the inspectorate. As part of that non-co-operation, we were able to withhold books and data from it.

**Mr Lunn:** I was not aware of that. What would be the point of a school wanting to withhold documents from the inspectorate if you are talking about a positive, free and open relationship between a school and the inspectorate? I am not standing up for the inspectorate; I just wonder what the difference is.

**Mr Murphy:** When we get to the stage of withholding documents and data from the inspectorate, the relationship to which you and I referred has broken down.

**Mr Lunn:** What sort of documentation, information or data would a school want to withhold from the inspectorate?

**Mr Murphy:** Central to the inspection process, for example, is the school development plan. Withholding it, from a tactical point of view, if you like, denies the inspectorate a context within which it can make an assessment of a school. From an industrial relations point of view, the action that you are taking would be effective in that respect.

**Mr Lunn:** A school should lay itself open to inspection if it has nothing to hide.

**Mr Murphy:** I accept that. However, when you are taking industrial action, you are not making yourself available for that.

**Mr Lunn:** You are moving it on to industrial action, but I am just talking about the normal relationship between a school and the inspectorate. Others here may disagree, but the inspectorate is not there to condemn or intervene, although that sometimes happens, but to help, advise and support.

**Mr Devlin:** That is perhaps —

**Mr Lunn:** It can hardly do that unless it can get full information from the school to start with.

**Mr Murphy:** In the general run of things, it would get that information. The only time it would not get it would be if you were taking industrial action.

**Mr Devlin:** It also highlights, perhaps, that it is a strengthening of its powers in this area. There is a concern, from our point of view, that there may be a continual breakdown in the relationship with the Education and Training Inspectorate, which previously had been quite reasonable.

You mentioned support and guidance. We have great concerns about that because what would almost be deemed the pastoral role that it had in the past seems to have slowly disappeared and has become more of an Ofsted-style role.

**Mr Lunn:** I have heard that view, which is why I said that others may disagree. I cannot agree with that particular wording, although I am sure that we will take it on board and look at it. Thank you, Chairperson; I could go on all morning.

**Mr Rogers:** I want to make a couple of quick points, the first of which is about representation on the board. You are looking for representation on the ESA board. You also mentioned the central planning group for area planning. However, if you were truly represented on the ESA board, would you need extra representation on the area planning board as well?

**Mr Murphy:** Yes, I think so, because it is possible that the area planning function would be delegated down in ESA. It would be essential that we be represented on the planning group, which would most likely work to one of the directorates in ESA. That will probably be done on a more localised basis. The ESA board will take decisions on a centralised basis. I imagine that the plan will be made at a local level and will come to the ESA board for approval. We would like to be involved at the earliest possible stage in the planning process.

**Mr Rogers:** OK. You also said that unions have a right to have a representative on the board of governors. Is it really the board of governors or is it the ESA board?

**Mr Murphy:** No, when I talk about boards of governors, I am talking about trade union representation as of right. Schools elect a teacher representative to a board of governors. With the increased powers accruing to boards of governors in the Bill, it is essential for our members to have a trade unionist representative or their nominee. We are being careful about what we wish for. Populating this could be difficult, but people who would be acceptable to our members in schools would sit on the boards of governors in addition to the teacher/governor.

**Mr Rogers:** That clarifies it for me. The other point, John, was that you said that when you read the Bill, academisation jumped out at you. Will you clarify that?

**Mr Devlin:** The way that voluntary grammars are organised in receiving their money directly and running their own show within that is akin to the academisation that has occurred in England. In some

ways, the Bill opens the door to any school and talks about it being given as much control as it wants. Chris spoke about schools wanting to have their own bursars. A bursar would be the key person to manage that one block of money and how it is distributed. We picked that up straight away in the NITC discussion. We felt that there was certainly the footprint of that in the Bill or the opportunity for it.

**Miss M McIlveen:** Thank you very much. Gerry, in your opening statement, you referred to the Bill as a curate's egg. What are the redeeming features of the Bill?

**Mr Murphy:** The fact that we are going for one central management structure across the entire system. That also goes to Danny's question and the savings that will accrue from that over time and the fact that we should see greater continuity in management processes. The organisation that I represent is also a professional organisation, and we would see large benefits in curricular or professional development terms.

For example, ESA will have responsibility for workforce planning and professional development, both of which are notably absent from our existing system. We see those as being the good parts. It is unfortunate that, in responding to this, we did not wish to come with a 10- or 12-page document. We have tried to give someone such as yourself the opportunity to ask that question and then present the other stuff that we know to be at issue in the broader debate.

**Miss M McIlveen:** What you have presented here are big issues, but they are all very negative.

**Mr Murphy:** Sorry.

**Miss M McIlveen:** That is absolutely fine; we need to hear that.

**Mr Devlin:** We still have problems where special needs provision varies in various parts of the country. Here is an opportunity to bring that all under the one tent and to make sure that whether in deepest Fermanagh or in Ballymoney, you receive the same treatment and opportunity. You can translate that from special needs to many other areas and ask whether we are getting equality of opportunity. This is a big opportunity to make up ground in that area. We have been talking about this for a long time, yet there are still people suffering from inequality in different parts. In some ways, that is why we need to forge ahead with this.

**Mr Murphy:** Structurally, the Bill takes us to a place where we can address those inequalities of access and provision that John mentioned. For that alone, the Bill is to be welcomed. The other issues are huge, but we will work them out between us eventually.

**Miss M McIlveen:** In your submission you state:

*"The NITC opposes the inclusion in the Bill of legislation to ensure that sectoral bodies are perpetuated and supported by the already over-committed Education Budget."*

What is your view of the sectoral bodies?

**Mr Murphy:** Since they were first mooted in, I think, paper 26 all those years ago, we have opposed them because of what we consider to be the financial burden that they place on the system — money that we feel could be better spent to support teaching and learning in classrooms. That is fundamentally it.

Sectors are entitled to establish a body to represent their point of view and to promote their interests. However, it should not be funded directly from the Department of Education's budget. If schools choose to spend their money supporting sectoral bodies, that is up to them, and the delegated autonomy model that is suggested would permit that. However, that decision would have to be balanced against their capacity to deliver the curriculum and the entitlement framework and to meet all their other requirements. However, we do not think that the direct funding of sectoral bodies by grant is the right way to go.

**Mr Devlin:** When this was first mooted and we discussed it with the Minister, we were told that the sectoral bodies are there, and we asked whether they would be there for ever. They may have a place in the initial phase of the Bill's operation to allow for transition, but keeping them forever is perhaps not the right step forward when we bring the whole system into operation. Perhaps they

could operate for a short period of three or four years, after which their continued need could be reviewed.

**Miss M McIlveen:** Are you of the opinion that the controlled sector does not require a sectoral body?

**Mr Murphy:** No. If everybody else has a sectoral body, there is no reason why the controlled sector should not have such a body. However, if there is to be such a body, it should be funded by the schools. The schools should choose to opt into such a body and fund it.

**Miss M McIlveen:** NITC believes that representatives of the workforce should, as of right, be on the consultation body for the planning process. From your comments, I understand that you do not believe that the sectoral bodies should play a role in that.

**Mr Murphy:** No; I do not think that that is what we are saying. The Bill makes provision for representative bodies in the area planning process; that would incorporate the sectoral bodies.

**Miss M McIlveen:** Do you feel that they are key?

**Mr Murphy:** Yes. It is their funding that we are talking about.

**Miss M McIlveen:** OK. When referring to the area planning provisions in the Bill, the INTO submission states:

*"There is a remarkable lack of detail throughout this section in respect to how the adequacy of educational provision in an area will be decided and indeed how an area is to be defined."*

Will you expand on how you feel that might be improved?

**Mr Murphy:** An audit or snapshot in time was carried out, and the area planning process unfolded subsequent to that. As you know, we only have the draft post-primary document at the moment. Like you, we are waiting to see what comes out of that. On foot of that and, indeed, on foot of what comes out of the primary one that is to follow — and the Department has been sitting on the special education one from February — it is possible that when those processes work themselves through, we may see a number of flaws or, indeed, shortcuts presenting themselves in the planning process, and there may be subsequent modifications to that process. So, the Bill is not really in a position to be any clearer than it is.

The other issue I raised in the INTO presentation is the word "area" and how to define it. The Bill refers to the provision of a map, but there is no idea about how that map will be arrived at or how its scope will be determined.

In respect of area planning, the other thing in the presentation that you have not mentioned is that we would like to see a statutory obligation on the Department to consult, as far as possible, with education providers south of the border and along the border corridor in order to have education provision that straddles the border.

**Miss M McIlveen:** Have you had a discussion with the Minister about that aspect?

**Mr Murphy:** No, but I would be happy to do so.

**The Chairperson:** John, you talked about service provision. This has always been an issue, and it has raised its head numerous times in the Committee. Whether you are in Enniskillen or Ballymoney, and I am glad you mentioned Ballymoney, is there not a worry that — whether there is currently good practice in one place and poor practice in another and whether it is the Department or ESA — given the track record, we will end up settling for less than good practice, and that rather than raising the bar to ensure that everybody gets the best possible outcome and service provision, we will end up with something far short of that?

The curriculum advisory and support service is a prime example; it depends on where you are. Take the area plans, which Gerry mentioned: to be honest, I do not know why the Belfast Board even bothered turning on the computer. All of us could have written that plan. However, the North Eastern Board went beyond expectations, with consultations and meetings, and it did all sorts of things. The

detail and vast array of information provided made it very challenging for everybody. I am very worried that, as far as ESA is concerned, we will end up with the Belfast Board model for area planning as opposed to the North Eastern Board model.

**Mr Devlin:** I agree. With any change, there is the danger that you do not quite hit the mark and end up going for something in the middle.

I wear another hat, as I am a North Eastern Board member, and I am fully aware of what you are talking about. The work it did on area-based planning was outstanding. The good thing — I am led to believe — is that the other boards were told to go away and do it in the same way as the North Eastern Board. That is part of the reason why there has been a little bit of a delay. That board set the template. The key, of course, is in identifying good practice and using it to design the system. How can we do anything about that? We will just have to trust the professionals. A lot of very skilled and able people have exited the system, particularly the boards, as we move towards ESA, and that is the danger. We have not even got to the point of appointing second-tier personnel, who, I suppose, will be very key to how the thing shapes up.

**The Chairperson:** I have referred to this before, but ESA is claiming, in a paper that we got last week, that it has reduced by 53% the number of people that it has employed — in an organisation that does not exist. It is doing really well, and it has not even got up and running yet.

**Mr Devlin:** It just so happens that I was at a board meeting yesterday, and that was brought up. When you look at it, there are a lot of holes, and it has prompted more questions than answers.

**Mr Hazzard:** Thank you for your presentation. You mentioned, and I agree, the dangers of opening the door to fee-charging elite academies. Is there also a danger that something such as this might happen with the removal of support for the sectors? If you take away their floor of financial support, certain schools might charge fees or look to make up the money in other ways that might hamper the children and families involved.

**Mr Devlin:** Yes, I suppose there is the danger of that. We hope that the need to go looking for extra money will disappear as the savings in the system will allow for the release of more money to the front line. From one point of view, this has created a little bit of disparity in the system in that we have sectors that seem to have alternative funding sources helping out their schools. We are trying to equalise the provision, the delivery and the outcomes across the whole Province, and we are trying to raise the bar in all of this. Funding is a big factor, and there are some big differences in the access to money that some schools have.

**Mr Hazzard:** You referred to the Scottish model of inspection. Will you expand on the benefits of such a model?

**Mr Murphy:** Basically, the Scottish model is about quality assurance. The inspectors arrive at your school, and you will welcome them and tell them where the school is at in achievement, value added and extra-curricular parental involvement. You would also tell them the measures that the school has taken to get to that point and where you plan to go in the future. The inspector would look at all that, benchmark it against national standards, make suggestions as to how you may improve or accelerate your processes, point out any shortcomings and suggest how you may address them. That is it in a nutshell.

We have a different approach, which changed significantly post-Every School a Good School in 2005. We were 60% to 70% down the road of the Scottish system prior to 2005. Under Marion Matchett's time as chief inspector, her team brought out a document called 'Together Towards Improvement' which was a valuation instrument for schools, and was developed in conjunction with teachers. It provided a template for schools to assess themselves. What we had evolving at that stage was a system in which the inspector would have quality-assured fundamentally what the schools were doing.

In 2005, Every School a Good School came into being, and we had a shift to a more inquisitorial and data-driven approach to inspection, and with Every School a Good School, the development in the system of a whole series of consequences for inadequacies. Punitive elements began to appear, such as the placing in of special measures, the additional visits by the inspectorate in the period after an inspection and the production of an action plan. All that came after that. We are promoting the idea of the Scottish approach because it allows for genuine partnership working across the system, and we feel that that approach — and my colleague mentioned it earlier — has been lost to us. We do

not think that, in the first instance, this is in the interests of our members or the children. Therefore, it is not in the interests of the system.

**Mr Lunn:** What do the Scottish inspectors do if they find that a school is in need of support or is failing? Does the school have an opportunity not to disclose documents to the inspectorate?

**Mr Murphy:** I do not know the answer to that question.

**The Chairperson:** Clause 37 concerns the review of certain decisions on schemes of management by the tribunal. The interest by organisations in having the right to use that mechanism is common in a number of submissions. Is there not a risk that this will become a grievance and become bureaucratic and burdensome? Ultimately, my worry is that it will only take the first decision to be judicially reviewed either to kill off the tribunal and its effectiveness in one swipe or to add to an already convoluted system. Do you see the need for the reference to the tribunal? At this moment, there are few ways for you to refer issues.

**Mr Murphy:** We see the need for the tribunal because, in effect, the system will enjoy the biggest change in virtually a generation and issues will need to be teased out and resolved, especially in a landscape in which all the different schemes of management and employment will come forward. It is better that they are resolved by means of a tribunal than by reference to the courts because if we go to the courts, our learned friends will take huge chunks of money that would be more properly spent on educating our young people and paying our teachers than on paying for second homes for lawyers. So, we are very much in favour of not spending the money in that manner, and the tribunal provides a means to do that.

I would be very interested to see how the tribunal will be made up and whether issues will automatically go to the tribunal or whether there will be a mediation process beforehand in an attempt to resolve issues at the lowest possible level. We are very much in favour of that. Yes, we see the need for the tribunal and are not concerned that it will become overly bureaucratic. It could possibly be quite busy in the first 18 months to two years of the new dispensation, if we can call it that, and it should fall off after that.

**Mr Devlin:** It is not to be viewed as something that will mediate or be between schools and ESA. We have said that we want to have access to some mechanism when we do not agree with something. As Gerry said, we are looking for something that will maybe keep the matter out of the courts because, ultimately, if we do not have access to it when there is a dispute, we will have nowhere else to go but into the legal side of things. Again, there is an opportunity here, maybe, to bring in something that will benefit all of us, ultimately.

**The Chairperson:** Could it be modified to be something that may not necessarily have been its original intent? I see merit in what you are saying in relation to this being something short of going to court. My worry is that if there is no satisfaction from those who may have had recourse to the tribunal in the first place, the court is where they will end up, ultimately. They may be able to go there now, anyway, but I think that it is a valid point and well worth further consideration.

**Mr Kinahan:** I am really on the same point: whether we should be exploring whether a tribunal could be too limited, if it is too legally-bound and whether we should be having an arbitration system instead of, or as well as, a tribunal. Something that allows people to have representation—

**Mr Devlin:** I think that, in the way that we work, we try really hard to stay out of the formal area. We will always look to arbitration to see whether we can come to a consensus before we end up in some formal tribunal or something like that. Yes, we are interested in looking at some mechanism.

**Mr Murphy:** That is the way that things are going in the broader industrial relations front anyway. Arbitration is preferred; tribunals are becoming a point of last resort.

**Mr Kinahan:** As long as it has a short enough timescale.

**The Chairperson:** Just on a point of clarity and for my own information, does the Department give any funding to the unions for any work that they carry out?

**Mr Murphy:** Not that I am aware of, no.

**The Chairperson:** Gerry, John, thank you very much. This is the beginning of a long road. You were the first in. Thank you for that. No doubt we will return to your comments and to ourselves over the next period of time.