



Northern Ireland
Assembly

Committee for Education

Report on the Addressing Bullying in Schools Bill

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Remit, Powers and Membership

The Committee for Education is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and, under Standing Order 48.

Statutory Committees have been established to advise and assist the appropriate Minister on the formation of policy in relation to matters within his/her responsibilities. Specifically, the Committee has power to:

- consider and advise on departmental budgets and annual plans in the context of the overall budget allocation;
- consider relevant secondary legislation and take the committee stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister for Education.

The Committee has 11 members, including a Chairperson and Deputy Chairperson, and a quorum of 5. The membership of the Committee is as follows:

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Peter Weir (Chairperson)

Sandra Overend (Deputy Chairperson)¹

Maeve McLaughlin

Jonathan Craig

Danny Kennedy^{2,3}

Nelson McCausland

Chris Hazzard

Trevor Lunn

Robin Newton

Pat Sheehan

Dolores Kelly⁴

¹ With effect from 15 June 2015 Mrs Sandra Overend replaced Mr Danny Kinahan as Deputy Chairperson

² With effect from 23 June 2015 Mr Ross Hussey replaced Mrs Sandra Overend

³ With effect from 14 September 2015 Mr Danny Kennedy replaced Mr Ross Hussey

⁴ With effect from 8 February 2016, Mrs Dolores Kelly replaced Mr Sean Rogers

Executive Summary

The Addressing Bullying in Schools Bill includes a definition of bullying and places duties on Boards of Governors of grant-aided schools in respect of devising and implementing measures to prevent bullying and to keep records of incidents of bullying.

During the Committee Stage, Members considered written evidence from 16 organisations and undertook 2 oral evidence sessions and 6 formal meetings. The Committee was also informed by the findings of school focus groups undertaken by Assembly Research Services.

The Committee agreed to recommend a number of amendments to the Addressing Bullying in Schools Bill including:

- an alteration to the wording of the definition of bullying, designed to provide schools with the discretion to include one-off events or acts and omissions targeted at particular groups;
- a new order-making power designed to ensure the capture of changing motivations underpinning bullying;
- a new obligation on Boards of Governors to review their school's anti-bullying measures at least once every 4 years; and
- a new power to permit Boards of Governors to consider measures to tackle cyberbullying, in certain circumstances.

The Committee also agreed to seek a Ministerial assurance in respect of the development of guidance and support for Special Schools and Learning Support Units regarding the application of the provisions of the Bill to children with Special Educational Needs.

The Committee also agreed to support Departmental technical or correcting amendments to Clauses 1 and 3 of the Bill.

Introduction

1. The Addressing Bullying in Schools Bill (NIA 71/11-16) (the Bill) was introduced to the Assembly on 30 November 2015 and referred to the Committee for Education for consideration on completion of the Second Stage of the Bill on 8 December 2015 in accordance with Standing Order 33(1).
2. At introduction, the Minister for Education (the Minister) made the following statement under Section 9 of the Northern Ireland Act 1998:

“In my view the Addressing Bullying in Schools Bill would be within the legislative competence of the Northern Ireland Assembly.”

3. The Bill’s Explanatory and Financial Memorandum (EFM) sets out a summary of the Bill’s main provisions. The Bill and the EFM can be viewed at the following link:

<http://www.niassembly.gov.uk/assembly-business/legislation/primary-legislation-current-bills/addressing-bullying-in-schools-bill/>

4. The Bill is described as:

- providing an inclusive definition of bullying;
- requiring the Board of Governors of each grant-aided school to determine and review measures to prevent bullying involving registered pupils at their school whilst: on school premises during the school day; travelling to or from school during the school term; or whilst the pupil is in the lawful control or charge of a member of school staff; and to ensure the policies designed to prevent bullying among pupils registered at the school are pursued; and
- requiring the Board of Governors of grant-aided schools to ensure that a record is kept of all incidents or alleged incidents of bullying which involve a registered pupil whilst: on school premises during the school day; travelling to or from school during the school term; or whilst the pupil is in the lawful control or charge of a member of school staff. The perceived motivation and the manner in which the incident was addressed are also to be recorded.

5. The Bill does not contain provisions relating to delegated powers.

Committee's Approach

6. The Committee had before it the Addressing Bullying in Schools Bill (NIA 71/11-16) and the Explanatory and Financial Memorandum that accompanied the Bill.
7. The Committee received a Departmental briefing on the Addressing Bullying in Schools Bill, at its meeting on 4 November 2015, in advance of the Committee's formal consideration of the Bill at Committee Stage.
8. Following introduction of the Bill to the Assembly, the Committee wrote on 30 November 2015 to key education stakeholders. The Committee also inserted notices in the Belfast Telegraph, Irish News and News Letter seeking written evidence on the Bill by 5 January 2016. The Committee also highlighted its call for evidence via social media.
9. Owing to the extensive nature of the Executive's general legislative programme and the introduction of a number of Education Bills during the final session of the mandate, the Committee agreed to undertake its scrutiny of the Bill over a much shorter timescale than is usual. Consequently, at its meeting on 27 January 2016, the Committee agreed to only seek a very short extension to the Committee Stage of the Bill.
10. Around 16 organisations and individuals responded to the request for written evidence. Copies of these submissions received by the Committee are included at Appendix 3.
11. During the period covered by this Committee Stage Report, the Committee considered the Bill and related issues at 6 of its meetings. The relevant Minutes of Proceedings are included at Appendix 1. From 13 January 2016 to 20 January 2016, the Committee took oral evidence from selected stakeholders who had submitted written evidence. These included:
 - Northern Ireland Anti-Bullying Forum (13 January 2016);
 - Children's Law Centre (13 January 2016);
 - Tor Bank Special School and the National Association of Head Teachers (13 January 2016);
 - Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission (20 January 2016);

Northern Ireland Commissioner for Children and Young People (20 January 2016); and

Ulster Teachers' Union (20 January 2016).

12. Both stakeholders and Departmental officials answered Members' questions after their individual sessions, as reflected in the Minutes of Evidence - extracts of which are reproduced at Appendix 2. Departmental officials were requested to provide specific follow-up information to the Committee - this is reproduced at Appendix 4.
13. The Committee commenced its informal deliberations on the clauses of the Bill on 27 January 2016 and completed its formal clause by clause scrutiny at its meeting on 3 February 2016.
14. In order to assist the Committee in determining the views of children and young people on the provisions of the Bill, the Committee commissioned Assembly Research Services and Assembly Education Services to undertake focus group surveys with representative groups of school pupils. A report on the findings from these focus groups was presented to the Committee, at its meeting on 20 January 2016, and is appended at Appendix 5. Assembly Research Services also provided the Committee with research papers on the Bill itself which are also included at Appendix 5.
15. Additionally, Members of the Committee met informally with young people participating in the Assembly's Erasmus+ Connections project and considered their report on mental health issues in education and the linkage with bullying in schools. The relevant Assembly Erasmus+ Connections report is included at Appendix 6.

Report on the Committee Stage of the Addressing Bullying in Schools Bill

16. At its meeting on 8 February 2016, the Committee agreed that its Report on the Addressing Bullying in Schools Bill - this Report - would be the 8th Report of the Committee for the 2011-16 mandate. The Committee also agreed that this Report should be printed.

Consideration of the Bill

Clause 1: Definition of “bullying”

17. Clause 1 is described as providing an inclusive definition of bullying.
18. Some stakeholders indicated in written and oral submissions to the Committee that schools currently employ differing definitions of bullying, leading to varying disciplinary practices and inconsistent record-keeping. Stakeholders therefore generally welcomed the introduction of a statutory definition, as the basis for the development of both a robust Departmental policy and a coherent anti-bullying culture in schools. That said, most stakeholders also suggested changes to the definition of bullying or its application. These are discussed below.

Definition of Bullying: Repeated Acts

19. A number of stakeholders including the Northern Ireland Commissioner for Children and Young People (NICCY); the National Association of Head Teachers (NAHT); and the Children’s Law Centre (CLC) argued that the definition of bullying in Clause 1 as a repeated act, could wrongly lead to significant one-off events (including single, distressing electronic communications which are shared repeatedly) being treated by schools as less serious than repeated less consequential actions. These stakeholders suggested that the definition be altered in order to include single acts etc. of bullying. The Equality Commission for Northern Ireland (EC) also argued that statutory provision should be made in order to require schools to address one-off actions or instances in school disciplinary policies.
20. CLC also highlighted concerns that schools may wrongly distinguish repeated actions associated with a single perpetrator, from a series of single actions directed at a sole victim (or set of victims) but undertaken by different individuals - the former being defined in the Bill as “bullying”; the latter apparently defined in the Bill as “not bullying”. CLC also contended that the definition should be altered in order to recognise the reasonable expectation of a victim (of a single event) that they may experience repeated unwanted acts or omissions even if these have not actually yet occurred. CLC argued that such an amendment would avoid incorrect classification of bullying actions and extend to bullying victims the current protections available to victims of harassment.

21. The Department clarified that the Bill was designed to provide a legal minimum definition of bullying and an obligation on schools to produce related measures and undertake relevant action. The Department advised that schools are currently obliged to have disciplinary (or positive behaviour etc.) policies and will ordinarily take action in respect of one-off events. The Department further advised that schools may, following the passage of the Bill, if they choose, continue to interpret one-off events or a sequence of events perpetrated by different individuals against a sole victim or number of victims, as bullying. Thus, it was contended that explicit amendments in respect of one-off events were unnecessary. It was further argued that the inclusion of such events in the definition of bullying might unreasonably require schools to record a very large number of incidents which were not part of a pattern of bullying behaviour. This, it was suggested might lead to important bullying trends not being identified and focused on by schools.
22. In respect of widening obligations on schools in order to include those protections available to victims of harassment, the Department argued that this was beyond the policy intention of the Bill and would lead to a significant and undefinable change to the disciplinary culture in schools.
23. The Committee noted with interest the arguments made by stakeholders in respect of strengthening the obligations on schools and extending harassment protections to victims of bullying. However, the Committee felt that the proposed harassment amendment would substantially (and not necessarily beneficially) alter the culture of school discipline. It was also felt that this suggested change might potentially lead to confusion in schools while obscuring the anti-bullying policy objectives of the Bill. The Committee therefore agreed not to pursue a related amendment
24. In respect of the treatment of one-off events, the Committee noted that the statutory definition of bullying in the Bill would not prevent schools from treating these as bullying incidents and applying the appropriate counter measures. The Committee agreed that including related explicit measures in the Bill might present a significant additional bureaucratic challenge for schools. In order to ensure a consistent response in respect of the treatment of serious one-off events, the Committee agreed that further guidance was required for Boards of Governors in order to make clear the appropriate interpretation of the provisions of the Bill and the relationship between anti-bullying measures and school disciplinary policies.
25. Notwithstanding the above, the Committee also felt that there may be some merit

in generally redrafting the definition of bullying in order to emphasise that schools can choose to classify one-off or unrepeated events as bullying. The Committee felt that such an approach might be more efficacious than simply referencing this explicitly in the Bill. This is discussed further below.

Definition of Bullying: Imbalance of Power

26. CLC, the Northern Ireland Anti-Bullying Forum (NIABF), NAHT and other stakeholders raised concerns regarding the absence in the bullying definition of any reference to the imbalance of power between bullying perpetrator and victim.
27. NIABF contended that an imbalance of power was a key defining characteristic of bullying which was recognised internationally by academics and by at least one other legislature. NIABF suggested that a power imbalance might be based on: size, strength, age, intelligence, peer group power, economic status, social status, religion, ethnic origin, sexual orientation, family circumstances, gender, gender identity, gender expression, race, disability or the receipt of Special Education. NIABF argued that a related amendment incorporating the above would strengthen the bullying definition and help schools to focus on those incidents and patterns of conduct which include power imbalance and which typify bullying behaviour.
28. NICCY, CLC, the Black and Minority Ethnic Women's Network (BMEWN) and the School Focus Groups highlighted the absence of provisions relating to the bullying of pupils by teachers or other educational staff. CLC and BMEWN also argued that the Bill should include reference to bullying of teachers by pupils.
29. The Department argued that the absence of the "imbalance of power" wording would have no adverse impact on the identification, actioning or recording of bullying incidents but that schools would retain the discretion to record details of an imbalance of power between those involved in a bullying incident. The Department also contended that schools might struggle to define the nature of an imbalance of power and that the associated confusion might in turn lead to schools becoming liable to vexatious litigation. The Department also indicated that further qualifying criteria for bullying - including the "imbalance of power" wording - might lead to incorrect under-reporting of bullying behaviours.
30. In respect of the bullying of pupils by teachers or other educational staff. The Department argued that teachers and other educational staff are subject to their school's code of conduct which proscribes the bullying of pupils by staff and sets

out complaints procedures and redress mechanisms for parents. It was indicated that bullying of teachers by pupils should be more appropriately managed by teaching professionals applying a school's disciplinary or positive behaviour policy. The Department contended that consequently, the inclusion of bullying by teachers of pupils or bullying by pupils of teachers in the Bill was unnecessary and might serve to inappropriately shift the focus of the provisions from the important policy area of addressing pupil-on-pupil bullying.

31. Members accepted the assertions from stakeholders that bullying in schools is typified by an imbalance of power. The Committee felt however that a widely drawn definition of bullying accompanied by guidance for schools would, in the absence of the wording proposed by NIABF, be unlikely to lead to under-reporting or inappropriate reporting of bullying incidents in schools. The Committee therefore agreed that it would not pursue a related amendment.
32. The Committee accepted that the focus of the Bill should be on addressing pupil-on-pupil bullying and that given the existence of other protections, provisions relating to other forms of bullying should not be included in the Bill. The Committee therefore agreed that it would not pursue a related amendment.

Definition of Bullying: Intention

33. NICCY, CLC, BMEWN and others commented on the reference in the definition of bullying to the need to establish that the perpetrator had an "intention of causing emotional or physical harm". CLC argued that it could be difficult for schools to determine intention, particularly in the case of younger children. It was suggested that the 'intention' provision would present a significant obstacle to the classification of unacceptable, repeated behaviours as bullying - leading to under-reporting and failure by schools to address related problems where intention can not easily be established.
34. Some stakeholders argued that more recognition should be given in the Bill to the effect caused by the bullying activity rather than simply determining if there was an intention to harm. BMEWN argued that the Bill should refer to the effect of causing physical or emotional harm or creating an intimidating, hostile, degrading or offensive environment. CLC argued that the reference to intention to cause harm should be augmented with references to the effect of causing adverse consequences including (but not limited to) distress, alarm, hurt, fear, exclusion and harassment. NICCY argued that the definition should reference the perception

of the victim in respect of the harm that was caused or intended. EC argued that the definition should refer to acts or omissions which have “the purpose or effect of violating dignity”.

33. The Department contended that the reference to the “intention of causing physical or emotional harm” was based on well understood legal and academic definitions of bullying and that other wording was unnecessary and would add nothing to the efficacy of the related provisions. The Department further contended that the absence of the ‘intention’ wording and the inclusion of either a number of specific effects or a catch-all term covering the “violation of dignity” or a reference to the perception of the victim would lead to schools making difficult judgments regarding the effect of bullying. The Department asserted that this would lead to confusion and inconsistency in schools while leaving Boards of Governors liable to vexatious legal challenge.
35. The Committee noted the clarification and explanation provided by the Department. The Committee felt that although schools should always take into account the perception of the victim and the effect of bullying in applying counter measures and recording key information, this would be difficult to incorporate into the Bill. The Committee agreed that appropriate guidance including relevant case studies was essential in order to ensure the development of the anti-bullying culture and consistent robust responses to bullying, which are the objectives of the Bill. The Committee agreed that it would not pursue related amendments.

Definition of Bullying: Acts and Omissions

36. NICCY and the Ulster Teacher’s Union (UTU) sought clarity in respect of the reference in the definition of bullying to acts being equivalent to omissions. UTU felt that clarity was required in order to ensure consistent interpretation by schools.
37. The Department clarified that the ‘omissions’ reference was designed to ensure that schools capture the deliberate exclusion of pupils (where this is intended to cause emotional or physical harm) as bullying. The Department advised that any potential ambiguity on this matter would be addressed through guidance which it was developing in order to support and underpin the legislation. The Department provided an assurance that the guidance would include case studies which would clearly explain how omissions could be assessed by schools when considering bullying incidents.

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38. The Committee noted the clarification and assurance provided by the Department and consequently agreed not to pursue related amendments.

Definition of Bullying: Section 75

39. EC, BMEWN and Mencap argued that the definition of bullying should make explicit reference to groups referred to in Section 75 of the Northern Ireland Act (1998) including those of different races and those with disability including particularly learning difficulty. It was argued that these groups are particularly susceptible to incidents of bullying at school and that explicit protections were required in the Bill. EC argued that schools should be either encouraged or statutorily obliged to follow equality guidelines and include reference to Section 75 groups in their disciplinary, anti-bullying and other policies.
40. The Department argued that children from Section 75 groups currently enjoy important protections through existing legislation. The Department advised that it encourages schools to adopt policies and practices designed to enhance the inclusion of children from these groups. It was indicated that the addition of amendments, singling out particular groups in the Bill, would not provide any material benefit for these children and young people and may even possibly undermine some of the relevant existing protections.
41. The Committee noted the concerns raised by stakeholders and the Department's evidence. As indicated above, the Committee felt that a general inclusive redrafting of the definition of bullying might serve to emphasise that the provisions represent a legal minimum and that schools would be free to identify different kinds of events, directed at different groups and for a variety of reasons, as bullying. The Committee felt that such an approach might be more efficacious than simply and explicitly referencing certain groups etc. in the Bill. This is discussed further below.

Definition of Bullying: Discretion and Exemptions

42. Representatives from NAHT and Tor Bank Special School expressed concerns that the statutory definition of bullying would not allow a sufficient level of teaching staff discretion in the management of incidents involving children with Special Educational Needs (SEN) - in Special or mainstream schools - or children whose unacceptable behaviour can be linked to exceptional circumstances including a significant trauma. Both organisations suggested that Special Schools or Learning Support Units in mainstream schools should be the subject of a variation to the

bullying definition in order to allow teachers to exempt or apply discretion in respect of repeated unacceptable behaviours in exceptional circumstances.

43. CLC, on the other hand, argued that the statutory definition of bullying should be amended in order to allow teachers wider discretion in order to include other forms of unacceptable behaviour which were not explicitly referenced in the Bill e.g. non-verbal actions e.g. gestures etc..
44. The Department argued that the exemption of Special Schools or Learning Support Units from the provisions of the Bill would wrongly exclude a key part of the school system from an important policy which is designed to generate an anti-bullying culture by providing sensible protections for children and reasonable obligations for schools. The Department contended that the inclusion in the bullying definition of a reference to the intention to cause physical or emotional harm would preclude the wrongful identification of children with SEN, (in Special or mainstream schools) whose behavioural conditions drive their inappropriate conduct, as exhibiting bullying.
45. The Department clarified that although the Bill would require the bullying definition to be applied consistently by all schools, Boards of Governors would retain the ability to devise their own measures in order to prevent bullying. Thus, it was argued, that this could afford teaching staff a sufficient level of discretion in the treatment of pupils in exceptional circumstances or who have SEN and related behavioural conditions.
46. Members noted the convincing evidence and the genuine concerns set out by dedicated professionals working with children with SEN, in respect of the Bill. The Committee recognised the unique demands and distinct circumstances which can exist in Special Schools and Learning Support Units. The majority of Committee Members felt that the overall drive for inclusion of Special Schools and children with SEN may be better served by the extension of the provisions of the Bill to all children in all grant-aided schools rather than by a series of exemptions. The majority of Committee Members also accepted the Department's argument that the 'intention' provisions and the flexibility afforded to schools in respect of anti-bullying measures would allow a necessary and appropriate level of discretion for teachers in dealing with bullying involving children in exceptional circumstances or children with SEN. The Committee strongly felt that the Department should consult widely with the SEN sector - both Special Schools and LSUs - in the

development of appropriate guidance for teachers and principals regarding the treatment of children with SEN and those in exceptional circumstances, under the provisions of the Bill. The Committee agreed to seek a Ministerial assurance in this regard at Consideration Stage.

47. The Committee noted the suggestions made by CLC and other stakeholders that a widely drawn definition would be required in order to encourage schools to address the many different forms of pupil-on-pupil bullying. In order to provide for this and for the Section 75 and other concerns set out above including the treatment of one-off events, the Committee agreed to support a limited change to the wording of the Bill which would indicate that the definition of bullying would not be limited to the provisions that had been explicitly set out in the Clause. Members felt that this approach would better support inclusion of marginalised groups and allow schools the discretion to identify different forms of unacceptable conduct, including one-off events, as bullying.
48. The Committee agreed to combine this amendment with a technical amendment proposed by the Department.

Cyberbullying

49. The Committee noted extensive commentary from the School Focus Groups and other stakeholders in respect of cyberbullying i.e. bullying related to the use of electronic communication, social media or the internet. These stakeholders contended that this form of bullying could have a very substantial impact on its victims and was significantly under-reported by schools. Other stakeholders advised that cyberbullying accounted for only a small fraction of all bullying incidents and was the subject of a disproportionate level of exposure by the news media.
50. Some stakeholders called for wide-ranging measures to address cyberbullying - arguing that although the definition, as drafted, referred to repeated acts of electronic communication, the Bill required these to be committed when the perpetrator is under the lawful control of the school. These stakeholders indicated that the provisions could be easily evaded by a would-be cyberbully and thus cyberbullying would go unrecorded and would continue to be actioned inconsistently by schools. Some of these stakeholders suggested widening the scope of schools' responsibility in order to capture out-of-hours cyberbullying (and other bullying) events.

51. Other stakeholders highlighted the considerable complex technological and legal challenges that cyberbullying presents and the undefined consequences of legislation. It was argued that ill-considered legislation, at this time, might undermine actions currently taken by schools in respect of cyberbullying, leading to confusion and possible legal challenges.
52. The Northern Ireland Human Rights Commission (NIHRC) advised the Committee of the issues presented by legislating for, or the regulation of, school anti-cyberbullying activities including the securing of electronic communication information - highlighting considerations including the violation of the human rights of the originator of the communication.
53. The Department indicated that other jurisdictions had yet to devise legislation which fully met the technological and complex legal challenges presented by cyberbullying, including the difficulty associated with regulating, while not criminalizing, the actions of young people using electronic communication. The Department also advised that NIABF had been tasked with producing guidance for schools on this issue, in the current school year, which would: provide case studies for schools; reflect current best practice; and suggest how cyberbullying incidents might be most effectively managed. Furthermore, the Department advised that the Safeguarding Board for Northern Ireland was to produce e-safety guidance, for publication in February 2017.
54. The Department strongly advised that the introduction of further provisions, at this time, in respect of cyberbullying would be very ill-advised. The Department indicated that such provisions should at the very least be informed by extensive consultation with schools (and other stakeholders) and should be accompanied by serious and detailed consideration of the associated legal implications. In the absence of the above and pending further legal clarity, the Department advised that guidance would provide the necessary direction for school, in respect of this important issue.
55. The Committee noted with concern recent high profile cyberbullying incidents and the devastating consequences for victims and their families. Members indicated that they believed that cyberbullying was an issue of significant importance which required immediate action and support for schools. The Committee also noted the complexity presented by a wide-ranging legislative solution and the potential for conflict between e.g. the rights of the victim and the rights of others to privacy.

56. The majority of Committee Members felt that in order to ensure support for current best practice in respect of the management of cyberbullying in schools, Boards of Governors should be empowered, in certain circumstances, to develop anti-cyberbullying measures. The Committee accepted that this must be achieved without burdening schools with an unreasonable set of obligations.
57. Following a division, the Committee agreed to support relevant amendments which are discussed below.

Clause 2: Duty of Board of Governors to secure measures to prevent bullying

58. Clause 2 is described as requiring the Board of Governors of each grant-aided school to determine and review measures to prevent bullying involving registered pupils at their school whilst: on school premises during the school day; travelling to or from school during the school term; or whilst the pupil is in the lawful control or charge of a member of school staff; and to ensure the policies designed to prevent bullying among pupils registered at the school are pursued.

Anti-Bullying Obligations

59. Stakeholders wrote to the Committee commenting on the relevant obligations on Boards of Governors and the drafting of the related provisions. NIABF, Stranmillis University College, the Rainbow Project and CLC suggested that Clause 2 be redrafted in order to require schools to have an anti-bullying policy and to be obliged to implement it and/or for there to be explicit obligations on schools to refer to particular forms of bullying including e.g. homophobic and transphobic bullying etc., in their anti-bullying policies.
60. The Department contended that the Bill as drafted requires Boards of Governors to have anti-bullying measures in place and to ensure that they are implemented. The Department also advised that the drafting of the Bill included well understood terminology designed to provide legal certainty for schools - thus it was contended that amendments in respect of anti-bullying obligations for schools were unnecessary.
61. The Department also argued that it was inappropriate to specify in primary legislation various forms of bullying or measures to secure the inclusion of particular groups. The Department assured the Committee that guidance would be provided to schools and Boards of Governors highlighting best practice in respect

of anti-bullying measures and the inclusion of marginalised groups.

62. The Committee noted the Department's explanation and assurances and agreed that it would not pursue related amendments.
63. Some stakeholders including NIHRC, Playboard and the Early Years organisation suggested that responsibilities in respect of anti-bullying measures and their implementation should be extended beyond grant-aided schools in order to include e.g. independent schools, Early Years settings and Education Other Than At School (EOTAS) providers.
64. The Department argued that the inclusion of independent schools and Early Years settings within the remit of the Bill would be inconsistent with the treatment of these sectors in respect of other educational policies and legislation. The Department also advised the Committee that both independent schools and Early Years settings are already subject to inspection by the Education and Training Inspectorate (ETI).
65. The Department indicated that EOTAS settings are subject to guidance from the Department which requires them to maintain anti-bullying; positive behaviour and related policies. The Department contended that, as EOTAS settings are effectively subject to the same obligations as grant-aided schools, it would be unnecessary to include these settings explicitly within the provisions of the Bill
66. The Committee noted the Department's explanations and clarifications and agreed that it would not pursue related amendments.

Review of Anti-Bullying Measures

67. A number of stakeholders - including NICCY, NIABF and CLC - suggested that Clause 2 should be amended in order to specify a time period during which schools would be obliged to review and update their anti-bullying policies. NICCY, the Council for Catholic Maintained Schools (CCMS), EC etc. also suggested that an explicit obligation was required in respect of consultation by schools with pupils in the development of anti-bullying policies. CLC and NICCY also argued that ETI and/or the Education Authority (EA) should be identified in the Bill as being responsible for monitoring Boards of Governors' compliance with the provisions in the clause.
68. The Department initially argued that a formal time period for the review of anti-bullying measures was unnecessary, as schools will ordinarily review their policies

regularly as part of the self-evaluation process which is monitored by ETI. The Department clarified that the Bill, as drafted, includes provisions requiring consultation and publication of a school's anti-bullying measures. The Department also clarified that additional explicit obligations relating to the review of Boards of Governors by ETI or EA were unnecessary, as these functions were covered by existing statutory Departmental duties, relating to inspection and compliance.

69. The Committee felt that it was reasonable to expect Boards of Governors to review and update their school's anti-bullying (or other) policies during the period of office of school governors - this is typically 4 years. The Committee therefore agreed to support an amendment to this effect. The Department subsequently advised that it expected the Minister to support such an amendment.
70. The Committee noted and welcomed the Departmental clarification in respect of consultation and communication relating to anti-bullying policies. The Committee therefore agreed that it would not pursue related amendments.
71. The Committee noted Departmental clarification in respect of inspection and monitoring by ETI or EA. The Committee therefore also agreed that it would not pursue related amendments.

Scope of School Responsibility - Cyberbullying

73. Stakeholders commented at some length on the extent or scope of schools' responsibilities in respect of bullying. Some stakeholders - including CLC, NICCY and the Schools Focus Groups - argued that in order to give effect to existing good school practices designed to tackle cyberbullying, amendments were required so as to extend school responsibility for the actions of pupils beyond the times specified in the Clause. These stakeholders suggested various options including references to acts committed when pupils were "using school equipment" or "engaged in education" etc. or acts committed at any time which have an impact on pupils in school. EC suggested that school responsibility should include acts involving pupils from other schools.
72. Other stakeholders - including the Ulster Teachers Union (UTU), NAHT and Tor Bank Special School - highlighted concerns that the existing provisions would effectively and unreasonably make schools responsible for acts and omissions which do not occur in school and over which they could not possibly have any control. These stakeholders also felt that Clause 2(b)(ii), which refers to the pupil

journey to and from school, represented a significant departure from current practices and schools' understanding of their obligations. These stakeholders: recognised the challenge presented by cyberbullying; shared examples of common sense, good practice interventions by teachers and principals with the Committee; and called for clear guidance and leadership on this issue from the Department. They expressed considerable concerns and urged the Committee to set aside proposed amendments which might unreasonably widen school responsibilities and expose Boards of Governors to undefined legal liabilities.

73. As indicated above, the Department advised of the considerable legal challenges associated with developing legislation designed to tackle cyberbullying. The Department also strongly advised against the introduction of provisions which generally broadened the scope of schools' responsibility beyond that set out in the Bill. The Department contended that such measures would, at best, simply replicate existing duties relating to the safeguarding of children. Officials also advised that such provisions might serve to obscure schools' important safeguarding and welfare duties while also, over-burdening Boards of Governors with obligations which they could not reasonably meet and generating new, substantial and undefined legal liabilities.
74. The Committee noted concerns relating to cyberbullying and the evidence from teaching professionals and the important perspectives that they provided to the cogent consideration of the implications of the Addressing Bullying in Schools Bill. It was in this context that the Committee considered possible amendments which would extend the scope of the responsibilities of Boards of Governors. These amendments sought to take into account unacceptable conduct originating with registered pupils at the school, which might occur outside the formal school day or the other parameters set out in Clause 2, but which would reasonably be expected to impact upon the victim's participation in school.
75. The Committee noted that such amendments would indeed capture cyberbullying practices, apparently without setting legal precedents (in this regard) with undefined consequences. Notwithstanding the above, the majority of Committee Members felt that, however well-intentioned such an approach might be, it would have other, wide-ranging and unknown corollaries for schools. Some Members indicated, in particular, that the amendment might be exploited in support of vexatious legal challenges brought against schools and was so widely drawn that it may generate absurd parental expectations and additional bureaucratic duties for

Boards of Governors.

76. The Committee also felt that it could not support amendments which would require Boards of Governors to be responsible for bullying events involving pupils at other schools. Members indicated their belief that schools will ordinarily take appropriate action in respect of such circumstances and that it would be difficult to draft amendments and impossible to determine the full ramifications of such legislation.
77. As indicated above, the majority of Committee Members felt that in order to ensure support for current best practice in respect of the management of cyberbullying in schools, Boards of Governors should be empowered to develop anti-cyberbullying measures. Following a division, the Committee therefore agreed to put down an amendment to Clause 2 which would extend the powers of Boards of Governors to develop measures in order to tackle electronic communication (which meets the bullying definition in Clause 1 and which originates with registered pupils of the school and) which may have been devised or sent when the perpetrator is not within the parameters set out in Clause 2 (that is to say when the pupil perpetrator is not within the lawful control of school staff) but is likely to have an impact on the victim's participation in their education.
78. The Committee felt that this approach would not unreasonably extend the responsibilities of Boards of Governors, while addressing an important and growing concern for pupils, parents and schools. The Committee also believed that this approach would avoid setting precedents with undetermined consequences in respect of the complex legal arguments relating to criminalisation and competing privacy and other human rights. The Committee re-emphasised its support for the early production of up-to-date and useful guidance for schools on the subject of cyberbullying and e-safety.

Scope of School Responsibility - Other Issues

79. Playboard in its written submission sought clarity as to whether the scope of the responsibility set out in Clause 2 would automatically include the playground as a 'safe place' and cover activities such as wrap-around childcare; homework clubs; and extra-curricular activities etc..
80. The Department clarified that the reference in the Bill to the "lawful control or charge of a member of the staff of the school" provided certainty for schools that the provisions applied to playgrounds and the relevant extra-curricular activities.
-

81. NIHRC suggested that an amendment was required in order to oblige schools to report instances of criminal activity or human rights abuses that fall outside of Clause 2(b) to other public authorities. NICCY and EC also argued that a mandatory obligation should be placed on all school staff to report acts of bullying.
82. The Department advised that it understood that existing and well-understood obligations on schools, in respect of the safeguarding of children, should be interpreted by schools as an obligation to report criminal acts etc. as appropriate. The Department also confirmed that its anti-bullying guidance would provide direction for school staff in respect of the reporting of bullying in line with the provisions of the Bill. The Department therefore contended that changes to the Bill in this regard were not required.
83. NAHT and UTU called for greater clarity, including possible amendments, in respect of the important role for parents in tackling bullying in schools.
84. The Department argued that schools will ordinarily involve parents in the resolution of bullying incidents and that an attempt to define the role of parents in legislation would be difficult, contentious and likely to restrict schools' discretion to follow best practice in the resolution of bullying issues.
85. The Committee noted the Department's clarification in respect of the above and agreed that it would not bring forward related amendments.

Principal's Responsibilities

86. Stakeholders commented on Clause 2(3) which includes provisions which will transfer the responsibility for anti-bullying measures from the school principal to the Board of Governors of a grant-aided school.
87. NICCY indicated its support for the provision but called on the Department to provide guidance and training for governors in order to allow them to effectively discharge their new obligations.
88. The Transferors' Representative Council (TRC), CLC and NAHT argued for further discussions or indicated opposition in respect of the transfer of responsibilities from principals to Boards of Governors. NAHT argued that regardless of the passage of the legislation, principals would continue to have operational responsibility for anti-bullying processes and that it was unreasonable to expect volunteer governors to be available or sufficiently experienced in order to manage the associated complexities. CLC highlighted concerns in respect of limited

redress mechanisms associated with school processes including the resolution of bullying incidents.

89. The Department contended that the relevant provisions are required in order to correct a legal anomaly and ensure that there is a single body - the Board of Governors - which has legal responsibility for anti-bullying measures in the school. The Department accepted that additional responsibilities for school governors should be underpinned by appropriate guidance and training - which was to be developed following consultation with schools - and assured the Committee that the relevant provisions would not be commenced until this was in place. The Department also advised that additional redress mechanisms in respect of school processes were expected to become available following the passage of the Public Services Ombudsman Bill.
90. The Department also confirmed in evidence to the Committee that the directions which are to be issued under Clause 2(1)(e) and 2(2) would be to all schools or individual schools and would relate to policy and not individual bullying cases.
91. The Committee noted Departmental clarifications and assurances and agreed that it would not pursue related amendments.

Clause 3: Duty to keep a record of incidents of bullying

92. Clause 3 is described as requiring the Board of Governors of grant-aided schools to ensure that a record is kept of all incidents or alleged incidents of bullying which involve a registered pupil whilst: on school premises during the school day; travelling to or from school during the school term; or whilst the pupil is in the lawful control or charge of a member of school staff. The perceived motivation and the manner in which the incident was addressed must also be recorded.

Record-Keeping

93. A number of stakeholders gave evidence to the Committee in respect of the nature of the records which are to be kept by schools.
94. NIABF, CLC and BMEWN contended that the Bill should specify in greater detail the information that is to be recorded. NIABF called for the recording of the method of bullying. CLC argued that schools should record facts; circumstances; the nature of the incident; conclusions; and activities associated with a bullying

incident. BMEWN argued that the school should keep details of social media bullying, including screen shots and the identity of the bully. These stakeholders generally felt that records should either be retained centrally or at the very least maintained in an agreed format and made available for inspection to ETI.

95. UTU and NAHT expressed reservations in respect of the additional bureaucratic and inspection burden which the record-keeping obligation would present to schools. NAHT argued that the requirement to record could undermine the ability of school principals to use discretion in how they resolve bullying incidents. NAHT also expressed considerable concern that the production and retention of standardised bullying records would generate mischievous Freedom of Information requests and lead to the unhelpful development of unofficial league tables of bullying.
96. The School Focus Groups suggested that bullying records should not be produced or retained unless the agreement of the victim had been secured.
97. The Department asserted that the application of a consistent and robust anti-bullying policy across schools was designed to tackle an existing and important problem which adversely and seriously affected the lives of some pupils. The Department advised that the vitally important objectives of the Bill required uniform and reliable record-keeping in schools. The Department also indicated that recent case law appeared to suggest that where schools fail to keep good records in respect of their existing disciplinary policies, this may increase the likelihood of possible civil legal liability. The Department therefore argued that the provisions of the Bill generally and in respect of record-keeping were reasonable, logical and consistent with good practice.
98. The Department: highlighted the safeguards for personal information provided by existing data protection legislation; confirmed that personal information would be held at school level; and advised that guidance - produced in consultation with schools - would ensure functionality and minimize bureaucracy while also setting out how the records would be used by ETI in school inspections.
99. The Department asserted that its primary concern was the well-being of pupils and that its policy would generate an appropriate anti-bullying culture in schools. The Department indicated that it believed that the record-keeping arrangements for schools would be unlikely to lead to the development of unofficial league tables. In any event, the Department contended that the possibility of reputational damage to

schools was of secondary consideration compared to the need to address bullying in schools robustly.

100. The Department also advised that, consistent with other policies, it would not require schools to seek the consent of the victim when producing or maintaining bullying records. As indicated above, the Department referred to existing data protection legislation and also assured the Committee that following consultation with schools it would revisit the relevant school record retention and disposal schedules so as to ensure the appropriate treatment of sensitive bullying information.
101. The Committee noted particularly the concerns of teaching professionals but agreed that the protections and mitigations set out above were sufficient. The Committee therefore agreed that it would not pursue related amendments.

Motivation

102. As indicated above, the Clause requires schools to record the perceived motivation of a bullying incident. Stakeholders commented at some length on this provision. EC, Rainbow Project, CLC and BMEWN called for the list of motivations to be amended or augmented in order to include better definition of particular groups or explicit reference to: children with dependents; socio-economic background; community background; ethnicity; language; asylum seekers; Roma and Irish Travellers; gender identity; and care status etc.. NAHT suggested that the list of motivations should include reference to the power imbalance between perpetrator and victim including physical strength, virtue of numbers, appearance, academic performance and popularity etc..
103. Despite suggesting additions to the list of motivations (above), CLC also suggested that it was questionable whether the proposed collection of motivating factors would generate useful data which could inform policy development. UTU also argued that the requirement to record motivations would make for difficult value judgements and additional bureaucratic tasks for teachers. UTU suggested that the recording of motivations might be simply limited to the intention to cause physical or emotional harm.
104. The Department advised that guidance to schools would provide clarification on the recording of information, including perceived motivations, relating to bullying incidents. The Department assured the Committee that all of the guidance relating to the anti-bullying policy would be informed by good practice in other jurisdictions.

The Department contended that the motivations listed in the Bill were designed to be consistent with the Department's policy in respect of the inclusion of Section 75 groups. However, the Department conceded that in order to achieve this, a correcting amendment would be required in order to include reference to "children with dependents". The Department asserted that when the information specified in the Bill is recorded by schools and subject to aggregation, it would usefully inform relevant Departmental policies.

105. The Department also advised that the wording of the Clause indicated that the list of motivations was not exhaustive and, as would be set out in guidance, schools would have the discretion to record a greater level of granularity in this regard. The Department thus contended that further amendments to these provisions were not required. The Department assured the Committee that the relevant provisions would not be commenced until guidance and relevant support for schools was in place.
106. The Committee agreed that the recording of bullying motivations by schools was an important feature of the anti-bullying policy. The Committee felt that aggregated information could usefully inform Departmental policy and ultimately help schools deal consistently with unwanted conduct and behaviours. The Committee felt that the list of motivations in the Bill required improvement. The Committee considered a number of approaches.
107. Some Members favoured amendments which would remove the list from the Bill and include an regulation-making power under which the Department would consult on and generate a more representative list of motivations. These Members dismissed the Department's contention that such an approach would be wasteful of school, Departmental and Assembly time and resources. These Members argued that this represented a sensible method of dealing with changing school demographics and responding to differing social pressures in schools.
108. Other Members felt that the list should be retained but that an order-making power should be included which would allow the Department to amend the list of motivations. It was argued that this would permit the Department to aggregate data and subsequently revise the list of motivations, as appropriate.
109. The Committee divided and agreed to support the latter approach. The Committee also subsequently agreed to support the Departmental correcting amendment to add "children with dependents" to the list of motivations.

Clause 4: Interpretation

110. This Clause contains information on the interpretation of key terminology which is used in the Bill.
111. Stakeholders did not comment on the Clause. The Committee agreed that it was content with the Clause as drafted.

Clause 5: Short title and commencement

112. This Clause contains the short title of the Act - Addressing Bullying in Schools Act (Northern Ireland) 2015.
113. EC recommended that a provision should be added to the Bill which would require a review to take place after a fixed period, e.g. five years, in order to ensure the effectiveness of the legislation. UTU also suggested that the title of the Bill should be changed in order to reflect the Department's objective of seeking to eradicate bullying in schools.
114. The Department indicated that it ordinarily and regularly reviews the effectiveness of policy and legislation. The Department indicated that the title of the Bill accurately reflected its objective of helping schools to address bullying. The Department therefore advised that further substantive amendments were not required.
115. The Committee agreed that it would not pursue related amendments.

Other Issues

116. Stakeholders made a number of other suggestions, not necessarily related to the clauses of the Bill.
117. NIABF suggested that the Department's anti-bullying research instrument - a regular survey of single year groups in primary and post-primary schools - should be adapted in order to include children in different year groups, non-mainstream settings and should be based on a rights-based framework and focus on building resilience in children.

118. The Department assured the Committee that it was to revise its research instrument in order to facilitate the evaluation of the effectiveness of the anti-bullying policy.
119. NICCY suggested that the Bill should create a statutory duty on educational bodies to support young and student carers.
120. The Department advised that such a duty was outwith the scope of the Bill.
121. NIHRC argued that other policies such as child protection and safeguarding policies should be amended in order to align their provisions with the Addressing Bullying in Schools Bill.
122. The Department assured the Committee that it was to review and revise its safeguarding and other relevant policies follow the passage of the Bill.
123. The Erasmus+ Connections group suggested that the Bill should be amended in order to enhance and ensure consistency of mental health support for pupils in schools and to increase the awareness of teachers on this issue during training provided during Initial Teacher Education.
124. The Department undertook to respond to the Committee on this issue as part of the Committee's consideration of pastoral care matters and the implementation of the Marshall Report Action Plan.
125. The Committee accepted the clarifications and assurances set out above and agreed that it would not pursue related amendments.

Clause by Clause Scrutiny

126. This section gives the decisions on the Committee’s scrutiny of the clauses of the Addressing Bullying in Schools Bill. Members and other readers of this report may wish to refer to the previous section so as gain a full understanding of the Committee’s consideration and deliberations on the individual clauses, alongside the decisions set out below.

Clause 1: Definition of “bullying”

127. The Committee noted a Departmental assurance that forthcoming anti-bullying guidance would clarify the treatment of unrepeated or one-off events.
128. The Committee agreed to seek a Ministerial assurance, at Consideration Stage of the Bill, in respect of the development of appropriate guidance for Special Schools and Learning Support Units in relation to the identification and recording of bullying involving children with Special Educational Needs.
129. The Committee agreed to recommend an amendment to the Assembly, as indicated below, which would clarify that acts or omissions which do not meet the specification in Clause 1(1) may also be classified as bullying.

Clause 1, page 1, line 2
At end insert ‘(but is not limited to)’

130. The Committee agreed that it would reconsider its position in respect of the above, in the event of an alternative Departmental approach or upon receipt of revised Departmental wording.
131. The Committee agreed to recommend to the Assembly, in line with a Departmental suggestion, that Clause 1 be subject to a technical amendment set out below.

Replace Clause 1 with the following:

‘Definition of “bullying” [j1]

1.–(1) In this Act “bullying” includes the repeated use of–

(a) a verbal, written or electronic communication,

(b) a physical act, or

(c) a combination of those,

by a pupil or a group of pupils against another pupil or group of pupils, with the intention of causing physical or emotional harm to that pupil or group of pupils.

(2) For the purposes of subsection (1), “act” includes “omission”.’

132. The Committee agreed that in order to give effect to the specification amendment above, it would recommend to the Assembly an amendment to the previous Departmental amendment to Clause 1.
133. The Committee agreed that it was content with Clause 1, subject to the proposed amendments.

Clause 2: Duty of Board of Governors to secure measures to prevent bullying

134. The Committee agreed to recommend an amendment to the Assembly, as indicated below, which would require schools to review their anti-bullying measures within a period not exceeding 4 years.

Clause 2, page 1
 Leave out line 22 and insert-
 '(i) at intervals of no more than 4 years; and'

135. The Committee agreed to recommend an amendment to the Assembly, as indicated below, to enable Boards of Governors to consider measures to address bullying by means of electronic communication regardless of when it occurs where it is likely to have a negative impact on the pupil's education. The Committee's agreement was on a without prejudice basis and subject to consideration of revised wording.

The Committee divided.

Ayes	Noes	Abstained	Not voting
Peter Weir	Chris Hazzard	Sandra Overend	
Jonathan Craig	Maeve McLaughlin		
Trevor Lunn			
Robin Newton			
Nelson McCausland			
Seán Rogers			

Clause 2, page 2, line 16

At end insert –

'(1A) The Board of Governors of a grant-aided school may, to such an extent as is reasonable, consider measures to be taken by the school (whether by the Board of Governors, the staff of the school or other persons) with a view to preventing bullying by means of electronic communication, in circumstances other than those listed in section 2(1)(b), where that bullying is likely to have a detrimental effect on a registered pupil's education.'

136. The Committee agreed to write to the Department seeking sight of its pastoral care

guidance and any other relevant policies relating to the well-being and safeguarding of pupils.

137. The Committee agreed that it was content with Clause 2, subject to the proposed amendments.

Clause 3: Duty to keep a record of incidents of bullying

138. The Committee agreed that it would not recommend an amendment to the Assembly, as indicated below, to replace the list of bullying motivation factors in Clause 3 with a relevant Departmental regulation-making power.

The Committee divided.

Ayes	Noes	Abstained	Not voting
Peter Weir	Chris Hazzard	Sandra Overend	
Jonathan Craig	Maeve McLaughlin		
Robin Newton	Trevor Lunn		
Nelson McCausland	Seán Rogers		

Clause 3, page 2, line 37
 Leave out from line 37 to line 4 on page 3 and insert - 'any one or more factors prescribed in regulations to be made by the Department, subject to the draft affirmative procedure.'

139. The Committee agreed that it would recommend an amendment to the Assembly, as indicated below, to provide an order-making power to the Department to amend the list of bullying motivation factors in Clause 3.

The Committee divided.

Ayes	Noes	Abstained	Not voting
Peter Weir	Chris Hazzard	Trevor Lunn	
Jonathan Craig	Maeve McLaughlin	Seán Rogers	
Robin Newton			
Nelson McCausland			
Sandra Overend			

Clause 3, page 3, line 4
 At end insert '() The Department may by order subject to negative resolution amend subsection (3).'

140. The Committee agreed to recommend an amendment to the Assembly, in line with a Departmental suggestion, which will add a reference to children and young people with dependents in the list of motivation factors in Clause 3(3).

Clause 3, page 3, line 4
 At end insert '() having, or not having, dependants'

141. The Committee agreed that it was content with Clause 3, subject to the proposed amendments.

Clause 4: Interpretation

142. The Committee agreed that it was content with Clause 4, as drafted.

Clause 5: Short title and commencement

143. The Committee agreed that it was content with Clause 5, as drafted.

Long Title

144. The Committee agreed that it was content with the Long Title of the Bill, as drafted.

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27 January 2016 - Informal deliberations – Department of Education

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3 February 2016 - Formal clause by clause scrutiny

8 February 2016 – Agreement of Report



Northern Ireland
Assembly
Committee for Education
MINUTES OF PROCEEDINGS
WEDNESDAY 4 NOVEMBER 2015
SENATE CHAMBER, PARLIAMENT BUILDINGS

Present:

Peter Weir MLA (Chairperson)
Sandra Overend MLA (Deputy Chairperson)
Jonathan Craig MLA
Chris Hazzard MLA
Danny Kennedy MLA
Trevor Lunn MLA
Nelson McCausland MLA
Maeve McLaughlin MLA
Robin Newton MLA
Seán Rogers MLA
Pat Sheehan MLA

In Attendance:

Peter McCallion (Assembly Clerk)
Paul Stitt (Assistant Clerk)
Paula Best (Clerical Supervisor)
Kevin Marks (Clerical Officer)

Apologies:

None

The meeting commenced in public session at 9:38am.

8. Addressing Bullying in Schools Bill – Departmental briefing

Departmental officials joined the meeting at 11:48am.

Caroline Gillan, Director of Access, Inclusion and Well-being and Alan Boyd, Head of Pupil Behaviour Management briefed the Committee on the Addressing Bullying in Schools Bill. A question and answer session followed the briefing.

Pat Sheehan left the meeting at 12:05pm

The officials left the meeting at 12:18pm.

The Committee noted that the Assembly Education Service and Assembly Research Service are undertaking focus group studies with school children on the subject of bullying. The Committee also noted that it is anticipated that the focus group findings will be presented as part of the Committee Stage report for the Bill

Agreed: The Committee agreed to forward, to the approved list of stakeholders, correspondence inviting submissions to the anticipated Committee Stage of the Addressing Bullying in Schools Bill, following the introduction of the Bill.

Agreed: The Committee agreed to publish a press advertisement inviting submissions to the anticipated Committee Stage of the Addressing Bullying in Schools Bill, following the introduction of the Bill.

[Extract]



Northern Ireland
Assembly
Committee for Education
MINUTES OF PROCEEDINGS
WEDNESDAY 13 JANUARY 2016
SENATE CHAMBER, PARLIAMENT BUILDINGS

Present:

Peter Weir MLA (Chairperson)
Sandra Overend MLA (Deputy Chairperson)
Jonathan Craig MLA
Chris Hazzard MLA
Danny Kennedy MLA
Trevor Lunn MLA
Maeve McLaughlin MLA
Robin Newton MLA
Seán Rogers MLA

In Attendance:

Peter McCallion (Assembly Clerk)
Paul Stitt (Assistant Clerk)
Paula Best (Clerical Supervisor)
Kevin Marks (Clerical Officer)
Simon Kelly (Assembly Legal Advisor– item 1 only)

Apologies:

Pat Sheehan MLA

The meeting commenced in private session at 9:49am.

The meeting moved into public session at 10:11am.

5. Matters Arising

5.1 Committee Stage - Addressing Bullying in Schools Bill

The Committee noted a copy of the Addressing Bullying in Schools EQIA screening information from the Department of Education. The Committee also noted 16 written submissions from stakeholders to the Committee Stage of the Addressing Bullying in Schools Bill.

Agreed: The Committee agreed to publish the written responses on the Committee's webpage, share them with the Department and include them in the Committee's report.

7. Addressing Bullying in Schools – Committee Stage – oral evidence Northern Ireland Anti-Bullying Forum

The witnesses joined the meeting at 10:38am.

Dr Noel Purdy, Chairperson - Northern Ireland Anti-Bullying Forum and Lee Kane, Regional Anti-Bullying Coordinator - Northern Ireland Anti-Bullying Forum briefed the Committee as part of the Committee Stage of the Addressing Bullying in Schools Bill.

A question and answer session followed the briefing.

Jonathan Craig rejoined the meeting at 11:01am

Members declared the following interests:

Danny Kennedy serves on the Boards of Governors of a number of schools.

Jonathan Craig serves on the Boards of Governors of a number of schools.

The witnesses left the meeting at 11:47am.

8. Addressing Bullying in Schools – Committee Stage – oral evidence Children's Law Centre

The witnesses joined the meeting at 11:47am.

Rachel Hogan, Children's Law Centre; and Kathryn Stevenson, Head of Legal Services, Children's Law Centre briefed the Committee as part of the Committee Stage of the Addressing Bullying in Schools Bill.

A question and answer session followed the briefing.

Maeve McLaughlin left the meeting at 12:20pm.

Trevor Lunn left the meeting at 12:21pm.

The witnesses left the meeting at 12:22pm.

Agreed: The Committee agreed to write to the Department: seeking clarification as to the application of the provisions of the Bill for children in Education Other Than At School and to seek further information on the

protections for school children that are currently in place in order to address incidents of bullying by teachers.

9. Addressing Bullying in Schools – Committee Stage – oral evidence Tor Bank Special School and National Association of Head Teachers

The witnesses joined the meeting at 12:24pm.

Colm Davis, Principal - Tor Bank Special School; Harry Greer, President - NAHT(NI); and Helena Macormac, Policy Director, NAHT(NI) briefed the Committee as part of the Committee Stage of the Addressing Bullying in Schools Bill.

Trevor Lunn rejoined the meeting at 12:25pm.

Chris Hazzard left the meeting at 12:52pm.

A question and answer session followed the briefing.

The witnesses left the meeting at 1:04pm

Agreed: The Committee agreed to write to the Department seeking further information as to the degree to which the Bill will permit school authorities to use their discretion in respect of incidents of bullying involving children with Special Educational Needs or children whose bullying behaviour can be linked to specific circumstances that require sensitive handling.

[Extract]



Northern Ireland
Assembly
Committee for Education
MINUTES OF PROCEEDINGS
WEDNESDAY 20 JANUARY 2016
SENATE CHAMBER, PARLIAMENT BUILDINGS

Present:

Peter Weir MLA (Chairperson)
Sandra Overend MLA (Deputy Chairperson)
Jonathan Craig MLA
Chris Hazzard MLA
Trevor Lunn MLA
Maeve McLaughlin MLA
Robin Newton MLA
Seán Rogers MLA
Pat Sheehan MLA

In Attendance:

Peter McCallion (Assembly Clerk)
Paul Stitt (Assistant Clerk)
Paula Best (Clerical Supervisor)
Kevin Marks (Clerical Officer)
Caroline Perry (Assembly Research Services – item 6 only)

Apologies:

Danny Kennedy MLA
Nelson McCausland MLA

The meeting commenced in private session at 9:38am.

5. Matters Arising

5.1 Rescinding decisions in respect of the Committee Stage of the Addressing Bullying in Schools Bill

Agreed: The Committee agreed to consider, at the meeting on 27 January 2016, to rescind its previous decision, not to seek an extension to the Committee Stage of the Addressing Bullying in Schools Bill.

6. Addressing Bullying in Schools – Committee Stage – oral evidence - Assembly Research - Feedback from school children’s focus groups

A representative from Assembly Research Services joined the meeting at 10:00am.

Caroline Perry, Assembly Research Services briefed the Committee on the feedback from school children’s focus groups on the Addressing Bullying in Schools Bill.

A question and answer session followed the briefing.

The representative from Assembly Research Services left the meeting at 10:34am.

Agreed: The Committee agreed to write to the Department in order to seek commentary on:

- the scope of schools’ responsibility: in respect of bullying based on the repeated use of electronic communication and where a pupil is in the lawful control or charge of a member of the school staff;
- the consequences for schools who do not retain or dispose of records of incidents of bullying correctly or who publish this information in an inappropriate manner; and
- the suggestion that a record of an incident of bullying should only be made with the consent of the victim.

Agreed: The Committee also agreed to write to the Department seeking oral evidence on: the inspection evidence relating to the quality and consistency of the provision of pastoral care in schools and the Department’s progress with the Safeguarding Board in producing guidance that is to be issued to schools in order to tackle cyberbullying.

Chris Hazzard joined the meeting at 10:44am.

7. Addressing Bullying in Schools – Committee Stage – oral evidence - Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland

The witnesses joined the meeting at 10:47am.

David Russell, Deputy Director, Northern Ireland Human Rights Commission (NIHRC); Fiona O’Connell, Researcher, NIHRC; Dr Michael Wardlow, Chief Commissioner, Equality Commission for Northern Ireland (ECNI); and Deborah Howe, Policy Manager, ECNI briefed the Committee as part of the Committee Stage of the Addressing Bullying in Schools Bill.

A question and answer session followed the briefing.

Peter Weir left the meeting and Sandra Overend assumed the chairpersonship at 11:28am.

Peter Weir rejoined the meeting and resumed the chairpersonship at 11:30am.

Agreed: The Committee agreed to write to the Northern Ireland Human Rights Commission seeking information on the relevant constraints on school authorities in obtaining electronic information from the personal communication devices owned by pupils, in order to record or address cyberbullying incidents.

The witnesses left the meeting at 11:46am.

8. Addressing Bullying in Schools – Committee Stage – oral evidence - Northern Ireland Commissioner for Children and Young People

The witnesses joined the meeting at 11:46am.

Koulla Yiasouma, Commissioner, Northern Ireland Commissioner for Children and Young People (NICCY); and Mairéad McCafferty, Chief Executive, NICCY briefed the Committee as part of the Committee Stage of the Addressing Bullying in Schools Bill.

A question and answer session followed the briefing.

Maeve McLaughlin left the meeting at 12:01pm.

A Member declared the following interest:

Seán Rogers serves on a Board of Governors of a school.

The witnesses left the meeting at 12:23pm.

Agreed: The Committee agreed to write to the Department to seek commentary on the inclusion of independent schools in the provisions of the Bill.

9. Addressing Bullying in Schools – Committee Stage – oral evidence - Ulster Teachers' Union

The witnesses joined the meeting at 12:24pm.

Julie Orr, President, Ulster Teachers' Union (UTU) and Sandra Brown, Ex-President, UTU briefed the Committee as part of the Committee Stage of the Addressing Bullying in Schools Bill.

A question and answer session followed the briefing.

Chris Hazzard left the meeting at 12:57pm.

The witnesses left the meeting at 1:11pm

Agreed: The Committee agreed to write to the Department to seek clarification as to how bullying data collected under the provisions of the Bill would be used in school inspections by the Education and Training Inspectorate.

[Extract]



Northern Ireland
Assembly
Committee for Education
MINUTES OF PROCEEDINGS
WEDNESDAY 27 JANUARY 2016
SENATE CHAMBER, PARLIAMENT BUILDINGS

Present:

Peter Weir MLA (Chairperson)
Sandra Overend MLA (Deputy Chairperson)
Chris Hazzard MLA
Danny Kennedy MLA
Trevor Lunn MLA
Maeve McLaughlin MLA
Robin Newton MLA
Seán Rogers MLA

In Attendance:

Peter McCallion (Assembly Clerk)
Paul Stitt (Assistant Clerk)
Paula Best (Clerical Supervisor)
Kevin Marks (Clerical Officer)

Apologies:

Jonathan Craig MLA
Pat Sheehan MLA

The meeting commenced in private session at 10:12am.

**1. Addressing Bullying in Schools – Committee Stage – informal deliberations
– written briefing**

The Committee considered possible amendments to the Addressing Bullying in Schools Bill based on the written and oral submissions from stakeholders.

Danny Kennedy joined the meeting at 10:20am

Maeve McLaughlin joined the meeting at 10:51am

Seán Rogers joined the meeting at 10:54am

Proceedings were suspended at 11:30am.

Proceedings were resumed at 11:40am with the following Members: Peter Weir, Danny Kennedy, Chris Hazzard, Trevor Lunn, Robin Newton and Seán Rogers.

The meeting moved into public session at 11:40am.

8. Addressing Bullying in Schools – Committee Stage – oral evidence Departmental response

Departmental officials joined the meeting at 11:52am.

Caroline Gillan, Director of Access, Inclusion and Well-being; Alan Boyd, Head of Pupil Management Team; and John Anderson, Education and Training Inspectorate, Department of Education briefed the Committee as part of the Committee Stage of the Addressing Bullying in Schools Bill.

The Committee noted Departmental correspondence in respect of Education Other Than At School (EOTAS) provision; protections for children in respect of bullying by teachers; and schools' discretion regarding bullying by pupils with Special Educational Needs etc..

A question and answer session followed the briefing.

Sandra Overend rejoined the meeting at 11:59am

Clause 1: Definition of “bullying”

The Committee considered stakeholder submissions relating to: proposed exemptions for children with SEN in Special Schools and mainstream schools from the provisions of the Bill: discretion in the interpretation of the definition of bullying where unwanted behaviour is related to a serious non-school-related trauma; and proposed changes to the definition which are designed to identify a wider range of unacceptable conduct.

Danny Kennedy left the meeting at 12:22pm.

The Committee noted Departmental responses indicating:

- the importance of extending the protections within the Bill and the associated anti-bullying culture to all SEN children in all settings;
- the inclusion in the Bill of the reference to the intention of the perpetrator and the consequent discretion that schools could exercise in respect of children with SEN; and
- the flexibility included in the wording of the bullying definition which would permit schools to include a wide range of unacceptable conduct.

The Committee also noted a technical amendment proposed by the Department in respect of the wording of Clause 1(1).

The Committee informally agreed that it was content to support the Department's proposed technical amendment to Clause 1(1).

The Committee also informally agreed that it would pursue an amendment to Clause 1(1) which would introduce some flexibility to the definition of bullying by including the wording "...bullying includes but is not limited to..."

The Committee considered stakeholder submissions relating to proposed revisions to the definition of bullying in order to reference one-off events or to require schools to address such events in their disciplinary policies.

The Committee noted Departmental responses highlighting the obligation on schools to maintain and apply disciplinary policies which include the management of serious one-off events. The Department advised that the Bill permitted schools discretion as to whether they recorded one-off incidents as bullying.

The Committee noted that the proposed amendment to Clause 1(1) in respect of the definition of bullying may address concerns in respect of one-off events, consequently, the Committee informally agreed that it would not pursue other related amendments.

The Committee considered submissions which suggested that the definition of bullying should make more explicit linkage with Section 75 groups including race and disability.

The Committee noted Departmental responses highlighting existing protections for children from Section 75 groups and indicating that explicit reference in the Bill was unnecessary.

The Committee informally agreed that it would not pursue related amendments

Danny Kennedy rejoined the meeting at 12:33pm.

The Committee considered submissions relating to the proposed inclusion in the bullying definition of a reference to: the "imbalance of power" between bullying victim and perpetrator and the bullying of pupils by teachers or other school staff.

The Committee noted Departmental responses indicating that schools could not always easily identify an imbalance of power and that this might lead to under-reporting of bullying or the possibility of legal challenges for schools. The Committee noted Departmental arguments that as teachers were subject to a code of conduct and a separate disciplinary procedure it was unnecessary to include reference to them in the Bill.

The Committee informally agreed that it would not pursue related amendments

Agreed: The Committee agreed to write to the Department seeking clarification regarding the constraints applied to non-teaching school staff in respect of the bullying of school pupils.

The Committee considered stakeholder submissions on the reference in the bullying definition to an intention to cause harm. The Committee consider submissions which

argued that the focus of anti-bullying measures should be directed towards the effect on the victim rather than the intentions of the perpetrator.

The Committee noted Departmental responses indicating that the “intention” provision would allow for the application of discretion by teachers for SEN pupils in respect of bullying incidents. The Committee also noted the Department’s contention that the removal of the “intention” wording and the inclusion of either a number of specific effects or a catch-all term covering the “violation of dignity” or a reference to the perception of the victim would lead to schools making difficult judgments regarding the effect of bullying and consequently leading to the possibility of vexatious legal challenge.

The Committee informally agreed that it would not pursue related amendments

The Committee considered submissions in respect of the reference in the definition of bullying to ‘acts’ of bullying being the same as an ‘omission’.

The Committee noted Departmental responses indicating that guidance would be provided to schools in this regard.

Agreed: The Committee agreed to write to the Department seeking clarification as to the meaning and interpretation of “omission” as set out in Clause 1 of the Bill.

The Committee informally agreed that it would not pursue related amendments

The Committee considered submissions which suggested that the Bill be amended in order to make explicit reference to schools’ responsibility relating to cyberbullying.

The Committee noted assurances from the Department that the Northern Ireland Anti-Bullying Forum (NIABF) was to produce (in 2015-16) guidance for schools on cyberbullying and that the Safeguarding Board for Northern Ireland was to produce e-safety guidance for publication in February 2017. The Department advised that the NIABF guidance would provide case studies for schools which would reflect current best practice and suggest how cyberbullying incidents might be managed.

The Committee also noted the Department’s assertion that other jurisdictions had yet to devise legislation which met the technological and complex legal challenges presented by cyberbullying – including the difficulty associated with: regulating while not criminalizing the actions of young people on the internet; and securing electronic communication information relating to cyberbullying while not violating the human rights of the originator of the communication etc..

The Committee noted the challenges presented by legislation relating to cyberbullying and informally agreed to pursue an amendment which would enhance the scope of a school’s responsibility in order to include all forms of bullying which might originate at any time but which have an impact on the pupil’s participation at school.

Seán Rogers left the meeting at 1:19pm.

The officials left the meeting at 1:21pm.

[Extract]



Northern Ireland
Assembly
Committee for Education
MINUTES OF PROCEEDINGS
TUESDAY 2 FEBRUARY 2016
SENATE CHAMBER, PARLIAMENT BUILDINGS

Present:

Peter Weir MLA (Chairperson)
Sandra Overend MLA (Deputy Chairperson)
Chris Hazzard MLA
Danny Kennedy MLA
Trevor Lunn MLA
Nelson McCausland MLA
Robin Newton MLA

In Attendance:

Peter McCallion (Assembly Clerk)
Paul Stitt (Assistant Clerk)
Paula Best (Clerical Supervisor)
Kevin Marks (Clerical Officer)

Apologies:

Jonathan Craig MLA
Sean Rogers MLA

The meeting commenced in public session at 2:07pm.

3. Matters Arising

3.1 Addressing Bullying in Schools Bill.

The Committee noted correspondence from the National Association of Head Teachers suggesting that Special Schools etc. be exempt from the provisions of the Addressing Bullying in Schools Bill.

The Committee also noted correspondence from the Northern Ireland Human Rights Commission in relation to anti-cyberbullying measures and related legal considerations.

**4. Addressing Bullying in Schools – Committee Stage – oral evidence
Departmental response**

Departmental officials joined the meeting at 2:10pm.

Caroline Gillan, Director of Access, Inclusion and Well-being; and Alan Boyd, Head of Pupil Management Team, briefed the Committee as part of the Committee Stage of the Addressing Bullying in Schools Bill.

The Committee noted Departmental correspondence in respect of cyberbullying and school responsibilities.

The Committee continued its informal deliberations on proposed amendments to the Addressing Bullying in Schools Bill.

The Committee again considered commentary relating to cyberbullying and the role of school authorities in tackling this complex issue.

The Committee informally agreed that it would pursue amendments in respect of Clause 2 which would reasonably enhance the scope of a school's responsibility in order to include a wider range of bullying activities which might originate at any time but which have an impact on the victim's participation at school.

Clause 2: Duty of Board of Governors to secure measures to prevent bullying

The Committee considered submissions from stakeholders which suggested that the Bill be amended in order to: require school anti-bullying policies to explicitly reference various forms of bullying; include specific reference to the implementation of school anti-bullying policies; and require the inclusion of independent schools, Early Years settings and Education Other Than At School (EOTAS) settings within the provisions of the Bill.

The Committee noted Departmental responses indicating that: relevant detail in respect of forms of bullying should be included in guidance rather than primary legislation; a requirement for schools to implement anti-bullying policies was already contained within the Bill; and that the inclusion of independent schools or Early Years settings would be inconsistent with existing Departmental policies. The Committee also noted Departmental assurance that EOTAS settings are already obliged to have anti-bullying and related policies.

Sandra Overend joined the meeting at 2:21pm.

The Committee informally agreed that it would not pursue related amendments.

The Committee considered submissions which suggested that the process for review of anti-bullying measures by schools should be time bound and should include consultation with pupils. The Committee also consider submissions which suggested that the Education Authority (EA) or the Education and Training Inspectorate (ETI) should be explicitly referenced in the Bill as having responsibility for monitoring the compliance of Boards of Governors (BoGs) with the provisions of the Bill.

The Committee noted Departmental arguments that a time limit on policy review might inhibit the natural evolution of school anti-bullying policies. The Committee noted also Departmental assertions that the Bill, as drafted, obliges BoGs to consult with pupils on their anti-bullying policies and that existing Departmental powers and duties in respect of inspection and governance obviated the need for explicit reference to either ETI or the EA.

The Committee informally agreed that it would pursue an amendment which would place an obligation on Boards of Governors to conduct a review of anti-bullying measures within a period of 5 years or less.

The Committee informally agreed that it would not pursue other related amendments.

The Committee considered submissions which suggested that the Bill be amended in respect of the scope of school anti-bullying responsibility in order to include: cyberbullying; reporting of criminal activity; proactive protections for Section 75 groups; explicit reference to extra-curricular activities; and the role of parents.

The Committee noted Departmental assertions that guidance – which is to be produced following consultation with schools, BoGs, parents and pupils – will address the scope of schools' responsibility including the inclusion of Section 75 groups etc.. The Committee noted also that cyberbullying and e-safety guidance are to be produced in the medium term by other bodies. The Committee noted the Department's argument that it would be difficult to define the role of parents in anti-bullying legislation and impossible to enforce compliance. The Committee also noted Departmental assurance that existing obligations on schools would require the reporting of criminal activity.

Danny Kennedy left the meeting at 2:40pm

As indicated above, the Committee is to pursue amendments relating to cyberbullying.

The Committee informally agreed that it would not pursue other related amendments.

The Committee considered submissions from stakeholders in respect of the transfer of anti-bullying responsibilities from school principals to BoGs.

Danny Kennedy rejoined the meeting at 2:43pm

The Committee noted the Department's clarification that the relevant provisions were necessary in order to remove a legal anomaly and ensure that a single legal body-BoGs – were ultimately responsible for compliance with the Bill, even though principals would retain operational control of anti-bullying measures.

The Committee informally agreed that it would not pursue related amendments.

The Committee considered submissions from stakeholders in respect of the directions to be issued by the Department under Clause 2(1).

The Committee noted the Department's clarification that its directions would be issued to all schools or individual schools and would relate to policy and not to individual bullying cases.

The Committee informally agreed that it would not pursue related amendments.

Clause 3: Duty to keep a record of incidents of bullying

The Committee considered submissions which suggested changes to the drafting of Clause 3.

The Committee noted the Department's explanation that the current drafting is in line with best practice and that the use of "may" at Clause 3(3) was designed to ensure that the list of motivations set out in the Bill was not to be considered as exhaustive.

The Committee informally agreed that it would not pursue related amendments.

Trevor Lunn left the meeting at 2:49pm

The Committee considered submissions which suggested that the Bill should: prescribe the format and content of bullying records; set out how the records would be used by ETI in a school inspection; require the consent of the victim before a record is produced or retained by a school; and include protections so as to preclude the development of unofficial bullying league tables.

The Committee noted Departmental clarification that guidance on the format and content of records would be produced following consultation with schools. The Committee also noted that records were to be retained at school level and that currently, failure to maintain good discipline records by schools may lead to the exposure of those schools to civil legal liability. The Committee noted the Department's contention that the promotion of an anti-bullying culture would not be supported by requiring victims' consent for the retention of records or deferring or amending the provisions of the Bill in order to evade possible reputational risk for schools – related to unofficial league tables.

The Committee informally agreed that it would not pursue related amendments.

The Committee considered submissions from stakeholders in respect of the list of motivations for bullying to be used in school records. Some stakeholders favoured the addition of particular groups to the list. Others suggested the addition of a catch-all term.

The Committee noted Departmental assertions that it was unnecessary to provide a catch-all reference as the Bill indicates that the list of motivations provided are not exhaustive. The Committee noted that the Department intended to amend the Bill in order to include 'those with dependents' in the list of motivations.

The Committee informally agreed that it would pursue an amendment to the Bill which would permit the Department to issue regulations that would provide for

a list of motivations that could be used for schools when recording incidents of bullying activity.

The Committee considered submissions which referred to the absence of redress mechanisms in schools and the development of guidance by the Department making use of practice in other jurisdictions.

The Committee noted Departmental responses that the Northern Ireland Public Services Ombudsman Bill, when enacted, would provide an additional redress mechanism in respect of maladministration in schools. The Committee noted Departmental confirmation that it would take into consideration the best practice in other jurisdictions when developing its anti-bullying guidance.

The Committee informally agreed that it would not pursue related amendments.

Chris Hazzard joined the meeting at 3:09pm

Clause 4: Interpretation

The Committee informally agreed that it was content with Clause 4, as drafted.

Clause 5: Short title and commencement

The Committee considered proposed amendments suggesting that the Bill be subject to a 3 to 5 year review process and that the title of the Bill be changed.

The Committee noted the Department's argument that it would ordinarily review legislation and policy efficacy and that a related obligation was not required. The Committee noted also the Department's assertion that the title of the Bill correctly summarised the objectives of the legislation.

The Committee informally agreed that it would not pursue related amendments.

Miscellaneous

The Committee considered commentary from stakeholders which referenced: anti-bullying research; duties in respect of young carers; policy alignment; and consistency of mental health provision in schools.

The Committee noted the Departmental assertion that general duties relating to young carers were outwith the scope of the Bill. The Committee also noted Departmental clarification that it would:

- revise its existing research instruments in order to review the effectiveness of its anti-bullying policy;
- review its safeguarding and related policies in order to ensure consistency; and
- respond to Committee concerns separately in respect of mental health provision in schools.

Danny Kennedy left the meeting at 3:16pm

The Committee informally agreed that it would not pursue amendments in relation to the issues raised above.

The officials left the meeting at 3:23pm

Agreed: The Committee agreed that it was content to proceed to formal clause by clause scrutiny of the Addressing Bullying in Schools Bill at its meeting on Wednesday 3 February 2016.

[Extract]



Northern Ireland
Assembly
Committee for Education
MINUTES OF PROCEEDINGS
WEDNESDAY 3 FEBRUARY 2016
SENATE CHAMBER, PARLIAMENT BUILDINGS

Present:

Peter Weir MLA (Chairperson)
Sandra Overend MLA (Deputy Chairperson)
Jonathan Craig MLA
Chris Hazzard MLA
Trevor Lunn MLA
Nelson McCausland MLA
Maeve McLaughlin MLA
Robin Newton MLA
Seán Rogers MLA

In Attendance:

Peter McCallion (Assembly Clerk)
Paul Stitt (Assistant Clerk)
Paula Best (Clerical Supervisor)
Kevin Marks (Clerical Officer)
Caroline Perry (Assembly Research Services – item 6 only)

Apologies:

Danny Kennedy MLA

The meeting commenced in public session at 10:02am.

5. Addressing Bullying in Schools – Committee Stage – final clause by clause scrutiny

Departmental officials joined the meeting at 10:06am.

Caroline Gillan, Director of Access, Inclusion and Well-being; and Alan Boyd, Head of Pupil Management Team briefed the Committee as part of the Committee Stage of the Addressing Bullying in Schools Bill.

The Committee commenced its formal clause-by-clause scrutiny of the Addressing Bullying in Schools Bill.

Clause 1: Definition of “bullying”

The Committee noted a Departmental assurance that forthcoming anti-bullying guidance would clarify the treatment of unrepeated or one-off bullying events.

Chris Hazzard joined the meeting at 10:12am.

Jonathan Craig left the meeting at 10:30am.

Question: “That the Committee is content with the proposed amendment to Clause 1, which would clarify that acts or omissions which do not meet the specification in Clause 1(1) may also be classified as bullying, as indicated below, put and agreed to.”

Clause 1, page 1, line 2

At end insert ‘(but is not limited to)’

Agreed: The Committee agreed that it would reconsider its position in respect of the above, in the event of an alternative Departmental approach or upon receipt of revised Departmental wording.

Jonathan Craig rejoined the meeting at 10:33am

The Committee considered the exclusion of Special Schools or Learning Support Units from the provisions of the Bill.

Agreed: The Committee agreed to seek a Ministerial assurance, at Consideration Stage of the Bill, in respect of the development of appropriate guidance for Special Schools and Learning Support Units in relation to the identification and recording of bullying involving children with Special Educational Needs.

Question: “That the Committee is content with the proposed Departmental amendment, as indicated below, which makes a technical change to the wording in Clause 1, put and agreed to.”

Definition of “bullying” [j1]

1.—(1) In this Act “bullying” includes the repeated use of—

(a) a verbal, written or electronic communication,

(b) a physical act, or

(c) a combination of those,

by a pupil or a group of pupils against another pupil or group of pupils, with the intention of causing physical or emotional harm to that pupil or group of pupils.

(2) For the purposes of subsection (1), “act” includes “omission”.

Agreed: The Committee agreed that in order to give effect to the specification amendment above, it would put down an amendment to the Departmental amendment to Clause 1.

Question: "That the Committee is content with Clause 1, subject to the proposed amendments, put and agreed to."

Clause 2: Duty of Board of Governors to secure measures to prevent bullying

The Committee noted advice from the Department that the Minister was likely to support an amendment relating to a time period for the review of anti-bullying measures by schools.

Question: "That the Committee is content with the proposed amendment, as indicated below, which would require schools to review their anti-bullying measures within a period not exceeding 4 years, put and agreed to."

Clause 2, page 1

Leave out line 22 and insert-

'(i) at intervals of no more than 4 years; and'

The Committee considered but did not pursue proposed amendments that would widen the scope of the responsibilities of Boards of Governors. These amendments sought to take into account unacceptable behaviour towards a pupil of a school by another pupil, or pupils, from that school, which occurred outside the formal school day but which impacts upon the pupil's participation in school.

The Committee considered amendments relating to tackling cyberbullying.

Nelson McCausland joined the meeting at 10:46am.

Question: "That the Committee is content with the proposed amendment, as indicated below, to indicate that Boards of Governors may consider measures to address bullying by means of electronic communication regardless of when it occurs where it is likely to have a negative impact on the pupil's education, put and agreed to – on a without prejudice basis, subject to consideration of revised wording."

The Committee divided.

Ayes	Noes	Abstained	Not voting
Peter Weir	Chris Hazzard	Sandra Overend	
Jonathan Craig	Maeve McLaughlin		
Trevor Lunn			
Robin Newton			
Nelson McCausland			
Seán Rogers			

Clause 2, page 2, line 16

At end insert –

'(1A) The Board of Governors of a grant-aided school may, to such an extent as is reasonable, consider measures to be taken by the school (whether by the Board of Governors, the staff of the school or other persons) that may help reduce bullying by means of electronic communication, in

circumstances other than those listed in section 2(1)(b), where that bullying is likely to have a detrimental effect on a pupil's education.'

Agreed: The Committee agreed to write to the Department seeking sight of its pastoral care guidance and any other related policies relating to the well-being and safeguarding of pupils.

Question: "That the Committee is content with Clause 2, subject to the proposed amendments, put and agreed to."

Clause 3: Duty to keep a record of incidents of bullying

The Committee considered proposed amendments relating to Clause 3(3) which would clarify that the list of bullying motivations provided in the Bill was not exhaustive. Some Members highlighted concerns that the Bill did not explicitly refer to socio-economic background and physical appearance as motivations for bullying.

Question: "That the Committee is content with the proposed amendment, as indicated below, to replace the list of bullying motivation factors with a Departmental regulation-making power to generate a list of factors, put and not agreed to."

The Committee divided.

Ayes	Noes	Abstained	Not voting
Peter Weir	Chris Hazzard	Sandra Overend	
Jonathan Craig	Maeve McLaughlin		
Robin Newton	Trevor Lunn		
Nelson McCausland	Seán Rogers		

Clause 3, page 2, line 37

Leave out from line 37 to line 4 on page 3 and insert - 'any one or more factors prescribed in regulations to be made by the Department, subject to the draft affirmative procedure.'

Question: "That the Committee is content with the proposed amendment, as indicated below, to provide a regulation-making power to the Department to amend the list of bullying motivation factors, put and agreed to."

The Committee divided.

Ayes	Noes	Abstained	Not voting
Peter Weir	Chris Hazzard	Trevor Lunn	
Jonathan Craig	Maeve McLaughlin	Seán Rogers	
Robin Newton			
Nelson McCausland			
Sandra Overend			

Clause 3, page 3, line 4

At end insert '() The Department may by order subject to negative resolution amend subsection (3).'

Question: "That the Committee is content with the proposed Departmental amendment, as indicated below, which will add a reference to 'dependents' in the list of motivation factors in Clause 3(3), put and agreed to."

Clause 3, page 3, line 4

At end insert '() having, or not having, dependants'

Question: "That the Committee is content with Clause 3, subject to the proposed amendments, put and agreed to."

Clause 4: Interpretation

Question: "That the Committee is content with Clause 4, as drafted, put and agreed to."

Clause 5: Short title and commencement

Question: "That the Committee is content with Clause 5, as drafted, put and agreed to."

Long Title

Question: "That the Committee is content with the Long Title of the Bill as drafted, put and agreed to."

The Committee concluded its formal clause-by-clause consideration of the Addressing Bullying in Schools Bill.

The officials left the meeting at 11:35am

[Extract]



Northern Ireland
Assembly
Committee for Education
MINUTES OF PROCEEDINGS
MONDAY 8 FEBRUARY 2016
ROOM 21, PARLIAMENT BUILDINGS

Present:

Peter Weir MLA (Chairperson)
Sandra Overend MLA (Deputy Chairperson)
Chris Hazzard MLA
Dolores Kelly MLA
Nelson McCausland MLA
Robin Newton MLA

In Attendance:

Peter McCallion (Assembly Clerk)
Paul Stitt (Assistant Clerk)
Paula Best (Clerical Supervisor)
Kevin Marks (Clerical Officer)

Apologies:

Jonathan Craig MLA
Danny Kennedy MLA
Maeve McLaughlin MLA

The meeting commenced in public session at 3:48pm.

1. Apologies

Apologies are as indicated above.

2. Chairperson's Business

2.2 Media coverage: Addressing Bullying in Schools Bill Report

The Committee noted that following agreement of the report on the Addressing Bullying in Schools Bill, the Chairperson would undertake media interviews and publish a platform piece setting out the Committee's position on the Bill.

3. Matters Arising

The Committee noted correspondence from the Department in respect of pastoral care issues relating to the Addressing Bullying in Schools Bill.

Agreed: The Committee agreed to include this correspondence in its report on the Bill.

4. Addressing Bullying in Schools – Committee Stage – Consideration of Report

The Committee considered its report on the Committee Stage of the Addressing Bullying in Schools Bill.

Chris Hazzard joined the meeting at 3:54pm

Agreed: The Committee agreed to write to the Department seeking clarification on the responsibility of Boards of Governors, in respect of bullying and discipline, where pupils from different schools are engaged in sharing activities.

Agreed: The Committee read and agreed the Contents section of the report.

Agreed: The Committee read and agreed the Remit, Powers and Membership section of the report.

Agreed: The Committee read and agreed the Introduction section of the report.

Agreed: The Committee read and agreed the Consideration of the Bill section of the report.

Agreed: The Committee read and agreed the Clause by Clause Consideration section of the report.

Agreed: The Committee read and agreed the Appendices of the report.

Agreed: The Committee read and agreed the Executive Summary section of the report.

Agreed: The Committee agreed that it was content for the minutes of the meeting of 8 February 2016 to be included in the Report.

Agreed: The Committee agreed to order the Report on the Addressing Bullying in Schools Bill to be printed as the eighth report of the mandate.

Agreed: The Committee agreed to publish the Report on the Committee's website and to advise stakeholders accordingly.

Agreed: The Committee agreed that a motion to extend the Committee Stage of the Bill would not be moved.

[Extract]

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13 January 2016 - NI Anti-Bullying Form

13 January 2016 - Children’s Law Centre

13 January 2016 - Tor Bank School and the NAHT

20 January 2016 – Assembly Research Briefing

20 January 2016 – Equality Commission NI and NI Human Rights Commission

20 January 2016 – NICCY

20 January 2016 – Ulster Teachers Union

27 January 2016 - Informal deliberations – Department of Education

2 February 2016 – Informal deliberations – Department of Education

3 February 2016 - Formal clause by clause scrutiny



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Anti-bullying Bill: Department of Education

4 November 2015

NORTHERN IRELAND ASSEMBLY

Committee for Education

Anti-bullying Bill: Department of Education

4 November 2015

Members present for all or part of the proceedings:

Mr Peter Weir (Chairperson)
Mrs Sandra Overend (Deputy Chairperson)
Mr Chris Hazzard
Mr Nelson McCausland
Mr Seán Rogers
Mr Pat Sheehan

Witnesses:

Mr Alan Boyd	Department of Education
Mrs Caroline Gillan	Department of Education

The Chairperson (Mr Weir): I welcome back Caroline Gillan, a familiar face, and Alan Boyd. Caroline is the director of access, inclusion and well-being, and Alan is the head of the pupil behaviour management team. Caroline, I invite you and Alan to make a short presentation, and then we will open the meeting up for questions.

Mrs Caroline Gillan (Department of Education): Thank you very much for inviting us here to provide a briefing on the Department's proposed anti-bullying Bill. I do not want to labour matters that we have covered previously and which are included in the written submission, but I will begin by providing a brief overview of the work that has brought us to this point before Alan addresses the key features in the Bill.

As members are aware, bullying is a complex problem, and it can be found, to some degree, in almost every school in the world. It changes and evolves over time and finds new means to manifest itself, particularly now with mobile phone technology and the social media sites that have sprung up over recent years. While modern technology has added to the problem and to the complex nature of the problem, the Minister is very clear in believing that all forms of bullying are equally unacceptable and must be challenged when they arise and that bullying must never be considered as an inevitable or acceptable part of school life for any pupil.

In 2013, 10 years after the last legislative change, the Minister asked the anti-bullying forum to undertake a review of anti-bullying legislation support services and practices in Northern Ireland. While that found that many schools were following best practice and actively working to tackle the problem, there remained variations in understanding and practice among schools and, in particular, significant variations in the quality of anti-bullying policies. The forum recommended that the Minister consider further legislation to tackle those inconsistencies. In response, in June 2014, the Minister announced his decision to introduce legislation to do just that. Officials developed policy proposals that were subject to public consultation during January and February this year. The consultation had

three proposals: first, to provide a common definition of bullying; secondly, to introduce a requirement for all grant-aided schools to record centrally complaints of bullying, the motivating factors behind bullying behaviour and the actions taken by the school to address each complaint; and, thirdly, to introduce a requirement for each board of governors to identify and designate one or more members with responsibility for the development of anti-bullying policies and their implementation in the school.

The consultation attracted nearly 5,000 responses — a very high response rate — 85% of which came from pupils and young people. While differing views were expressed on the detail, there was broad consensus that the three proposals would strengthen schools' ability to tackle the problem of bullying more effectively and that we should pursue all three areas. We provided a briefing to the Committee in March, along with an interim summary of the consultation responses. Subsequently, officials provided an informal oral briefing later in March at a planned session in Limavady. A full analysis of the consultation responses was published on the Department's website in the summer.

That is how we got to the point of developing and starting the work on the Bill. I will hand over to Alan, who will talk through the provisions, which we have shared with you.

Mr Alan Boyd (Department of Education): The Executive agreed a final policy position and approved the drafting of a Bill at their meeting on 28 May. That policy retained the three common objectives set out in the earlier consultation: the definition; the requirement to record incidents; and the requirement to designate a governor with specific anti-bullying responsibilities. The Executive also considered and agreed an outline definition that recognised the core characteristics of bullying as being its repetitive nature; that it can take the form of physical, verbal, electronic, written or psychological acts or omissions; and that bullying causes hurt, fear or distress or adversely impacts the needs or rights of victims. It also explicitly recognised that isolated or one-off incidents between pupils should not be recognised as bullying but should still be handled in accordance with a school's normal discipline processes.

That position provided the basis of our drafting instructions to the Office of the Legislative Counsel (OLC). In seeking to translate those into a suitable Bill, however, a number of difficulties were identified, particularly with our proposed designation of a school governor. It became apparent that requiring designation would mean a departure from an established practice, which has, until now, been that members of the board of governors carry out all of their duties and responsibilities as a single corporate body. Additionally, in assigning other responsibilities to the board, we have always, historically, granted them significant discretion in how precisely they meet those duties. That is necessary to allow them to put in place measures that are appropriate to the size and composition of the board and to the needs and circumstances of their school.

We were advised that requiring the designation of one or more governors would potentially create legal issues with the boundaries between individual governors' responsibilities and that corporate responsibility. It would also require the Bill to include provision to set out default arrangements where, for whatever reason, a school found itself unable to designate a governor. We were very mindful of the significant requirements and responsibilities already placed on school governors and did not wish to do anything that might discourage people from volunteering to serve in that important role.

We agreed that we would revisit the proposal on designation, seeking to retain the desired policy outcome, which is to make sure that governors are more directly involved in all of the anti-bullying policies and practices in their school. The Bill, therefore, now places a statutory duty on the governors to determine the detailed measures to be taken at a school and to ensure that they are properly implemented, that recording takes place, that the operation of the procedures is monitored and that the policies and procedures are kept under periodic review.

A draft Bill reflecting all those changes was cleared by the Minister on 29 September, and both the Departmental Solicitor's Office (DSO) and the Attorney General subsequently confirmed legislative competence in this area. A paper seeking Executive consent for the introduction of the draft Bill was issued on 2 October. We had anticipated that this would potentially permit the introduction of the Bill on 9 November. We still await Executive approval and are ready to contact the Speaker requesting its introduction.

The Chairperson (Mr Weir): Do you hope to have it introduced before the end of November?

Mr Boyd: Yes.

That is all that I have to say at this stage.

The Chairperson (Mr Weir): Thanks for that. I want to lead with two or three questions. First, a number of recommendations in the 2011 survey by RSM McClure Watters have found their way into the Bill, but other recommendations, such as changes to initial teacher education, training needs analysis etc did not. Why did others not make it into the Bill?

Mrs Gillan: The Bill is what we felt was appropriate to pin down in legislation, particularly the duties on boards of governors, and to clarify roles and responsibilities. We are aware that there need to be other elements of work, such as guidance and training, alongside it. The Bill is not the end of the story for the Department's anti-bullying work.

The Chairperson (Mr Weir): Other aspects will be taken forward in a non-legislative fashion.

Mrs Gillan: Yes, absolutely.

The Chairperson (Mr Weir): The second issue that I want to touch on is the recording of bullying incidents on a central IT system. In certain respects, that is a difficult issue. Is there a danger that this would allow the disclosure of information and almost create an unofficial league table of schools in which there is bullying? I have seen the double-edged sword of things such as ASBOs, where people have a fairly malicious intent. In this case, people might aspire to push their school up the table. There would be a concern among schools that, if they were seen to be at the top of any league table on bullying, it would be very counterproductive to their reputation. Linked to that, if that is a danger, the issue is that it might create an atmosphere in which there is some discouragement of full disclosure and an attempt to under-report or cover up problems. Will you address those issues?

Mrs Gillan: We are very alive to that. That was an issue that we discussed at our previous Committee appearance. It is about finding the balance between the publication of unofficial league tables — that is obviously an issue because a school protects its reputation as an institution — and wanting to ensure that the individual needs of pupils are properly met in schools. We felt that the reporting of incidents was a really important tool for schools. They will know how they respond to incidents, and it will enable them to look at trends and at any particular issues. Also, boards of governors will have a good data set telling them to what extent the policies and measures that we are asking them to develop and put in place are being followed.

Although there is potential for unofficial league tables, the reality is that, if we were to find that there were schools that had almost no incidents of bullying, that, in itself, would raise some questions. Is that an absolutely genuine position in any school? More realistic reporting would probably show some incidents, but, along with that, schools would have a good story to tell and say, "We have reported incidents, but, alongside that, we have very proactive steps that we take to address them and produce successful outcomes".

The Chairperson (Mr Weir): One of the final issues that I want to touch on relates to outcomes. You mentioned statistics. Other than simply having overall graphs of the numbers of reported cases, which can, as I said, be a double-edged sword, how will we measure the success or otherwise of the legislation? The other issue is about what lessons have been learned. Sadly, bullying is not unique to Northern Ireland, in the sense that, as you said, it is universal in schools throughout the world. Have any lessons been learned from legislation in other jurisdictions that could be applied here?

Mr Boyd: We are, largely, still among the front-runners of legislatures looking to address bullying. There is no clear, international, recognised definition of bullying. There is a variety of widely accepted academic definitions, but not much legislatively. The Office of Legislative Counsel, in part of its drafting work, picked up on the Education (Welfare) (Amendment) Bill 2015 that was taken forward in the Oireachtas but did not proceed, and it also identified a Republic Act in the Philippines. Subsequently, we also identified a US state law in New Jersey that was adopted to tackle bullying. However, there is very little legislative consensus. What little there is seems to pick up on a lot of the same areas that we did: defining where a school's responsibilities would lie for actions in school under the lawful control of teachers or while travelling to and from school. The details of the definition generally focus on physical/mental harm or distress to pupils. There is no clear consensus on other factors that should be included.

Mrs Gillan: I will say something about the information that we will capture on motivating factors. In the past, the Department periodically commissioned research on bullying and the incidence of bullying, as you mentioned. We envisage using the C2k school management information system (SIMS) system for this. Although the information is primarily to be used at school level, the Department and the Education Authority will be able to ask for analysis to be done at a much higher level: trends, types of bullying and issues like that. That will help us as we develop policy and decide what other responses we need to put in place, just to see how effective our policies are and whether the advice that we give to schools is effective. It will be much more efficient because, instead of commissioning research for x number of years, we will be able to have ongoing oversight.

The Chairperson (Mr Weir): There is also the area of interaction, and I appreciate that this is one of the constraints. You are looking specifically at bullying in schools, which is within your remit, but bullying seems to be growing outside of schools through social media and so on, which did not exist 20 years ago. It is now a major problem for a lot of children and, sometimes, adults.

Mrs Gillan: We had to draw a line around what we can expect schools to be responsible for. The wider e-safety issues are in the remit of the other side of our directorate, under child protection and safeguarding. We have issued guidance and are taking forward work that is more to do with advising how to keep kids safe on the Internet. That bleeds into home life and general knowledge about how to stay safe online.

Mr Rogers: You are very welcome. I am thinking particularly about the advice to schools about the recording of incidents. You mentioned data capture and so on. My knowledge of C2k is now 10 years old. When an incident happens, is that put on to the system or is it that the result of the investigation of the incident goes on to the system?

Mr Boyd: It is envisaged that a specific module series of screens will be developed to record incidents or reported incidents. It will allow the school very quickly to select and identify the pupils involved and the key motivating factors, as they are aware of them, and to record what steps the school has taken to intervene. Using C2k will ensure that exactly the same data is captured and appended to the record of each pupil involved, irrespective of whether they have been engaging in a bullying behaviour or been the victim of a bullying behaviour. There will be absolute consistency in that data.

In making sense of what motivating factors schools may record, the Bill identifies a series of possible motivating factors. We have deliberately made that non-exhaustive. We appreciate that there is a large subjective element because we ask any teacher recording an incident to assess a situation and make some decisions. We are attempting to make the process of capturing and recording data as quick and straightforward as possible. We are acutely aware of the potential for this to be viewed as a very large administrative burden. However, by using an IT system with which all teachers are familiar, we hope to minimise that burden.

Mr Rogers: My point is that you could have pupils who were there when an incident was reported and, therefore, associated with the bullying. However, once you record that on C2k, it does not remain only on a local computer that night; it is recorded centrally on your back-up system or whatever. It may transpire later in an investigation that certain pupils just happened to be there and had nothing to do with the bullying. How will you ensure that they will have nothing on their record in the system?

Mr Boyd: There will be enough sophistication within the screens to identify directly children who had suffered in the incident, those who were believed — even at an early stage — to have perpetrated the incident and those who merely witnessed it. We would not look simply to tag a list of 10 or 15 children and have them all loosely associated; it would be much more tightly defined than that.

Mrs Gillan: The key thing here is that we have had early discussions with C2k, but we have not developed the module or the system. We are conscious that we will want to put out guidance for boards of governors. We envisage having a working group involving schools, IT folks and stakeholders to explore some of those issues. We will want to deal with those issues when developing the system and deciding what is appropriate and how it should be captured.

Mr Rogers: When it is appropriate to capture —

Mrs Gillan: Absolutely, yes.

Mr Rogers: Thanks for that clarification, Caroline. I am glad to hear that there has been a change to corporate responsibility for a board of governors rather than a designated governor. May I assume that training associated with that will be built into the programme as well?

Mrs Gillan: Yes, that is what we hope. Obviously, this is a more particular duty on boards of governors in general, so we want to develop guidance on what is expected of them. It remains to be seen whether we ask to have a particular module or training devoted to this area, when the time comes, as part of the boards of governors' training that is already being rolled out.

Mr Rogers: Although there is a lot of responsibility on the governors, please remember that the principal or senior management ends up with all these jobs. Do not forget that.

Mr Hazzard: I have a couple of points to raise. First, a lot of bullying relates to pupils, but what about instances in which a principal is alleged to be bullying staff or there are problems in staff relationships? Will that also be a part of this?

Mr Boyd: Those interactions were considered early on. In fact, they were flagged by some respondents to the consultation. We concluded, however, that there are mechanisms to address that under conditions of employment and normal staff disciplinary procedures and that trying to wrap those in with what, essentially, tries to target pupil-on-pupil bullying would unnecessarily complicate the Bill.

Mr Hazzard: OK. Secondly, I have dealt with two schools that have been entirely incapable of dealing with homophobia issues. In one, a teacher who was teaching about homophobia in a week that including the International Day against Homophobia was told that the school did not deal with it. Another school taught that heterosexuality was the ideal. I have no faith in those two schools that they will deal adequately with such issues. If we look at the example of the need for a policy on relationship and sexuality education (RSE), we see that many of our schools do not even have such a policy. Is it not appropriate that we ensure in this legislation that it is obligatory for schools to have a policy on RSE? Could that be looked at?

Mrs Gillan: This legislation, which is particular to bullying, is probably not the right place for it. You will know that the Council for the Curriculum, Examinations and Assessment (CCEA) recently published its updated guidance on RSE. It focused on the need to ensure that pupils are completely embraced regardless of their identity. We respect the ethos of schools. I am not aware of the details of the particular position. The teaching of RSE is a slightly different issue, but there is an obvious overlap if a school has incidents of homophobic bullying.

Mr Hazzard: We know for a fact that racism, sectarianism and homophobia are three big reasons for bullying in schools. I find it odd, then, that we cannot say that every school must have a policy. That should nearly be the first step in preventing the bullying that takes place.

Mrs Gillan: We are saying that every school must have a policy on bullying. However, our advice was and the consultation showed that you want that bullying policy to be applied regardless of the motivating factor. We were conscious of saying that we wanted information on the motivating factor because that, in itself, will require schools to acknowledge that the motivating factor has been sexual orientation, racism or whatever. The school has to acknowledge that and then say what steps it has taken to address it. It will have to —

Mr Hazzard: It sends a worrying signal to pupils if a school does not take sexuality seriously enough to have a policy on it. It sends the wrong message. If there were a way to make it obligatory for a school to have a policy on this, that would make it easier for teachers to deal with some of the bullying.

Mrs Gillan: A policy on sexual orientation.

Mr Hazzard: Well, on RSE certainly.

Mrs Gillan: I will certainly feed that back to colleagues in the Department. I am just not sure that an anti-bullying Bill would be the right vehicle for us to open that up.

Mrs Overend: Thanks very much for the presentation. I very much welcome your comments on developing the guidance in connection with many other bodies. I presume that the Safeguarding Board will be one of those, specifically in relation to Internet safety.

Mrs Gillan: Absolutely. The anti-bullying forum that we fund is already involved in the e-safety forum. It is linked to the Safeguarding Board through the development of the e-safety strategy that it has been commissioned to develop. We have asked the anti-bullying forum to produce cyberbullying guidance. Alan, is that within this financial year?

Mr Boyd: We have asked the forum, as part of its work, to update a leaflet that it already had on cyberbullying and to develop a specific resource for schools. The forum has published an 'Effective Responses to Bullying Behaviour' resource pack, and we asked it to develop a cyberbullying addendum to that. That will also be completed in the current year. I recently had an update from the forum that stated that it had gone further and would, in the very near future, publish a leaflet for parents and carers to guide them on how they should interact and engage with their child's school should cyberbullying become an issue. We are aware of those concerns and the need to ensure that anything that we do remains aligned with the work of the Safeguarding Board.

Mrs Overend: Very good. I am concerned that any guidance that comes out of the Department should cover not just dealing with the after-effects but how to prevent such bullying. I have given my stance on Internet safety before. It is so complicated. I have been chatting to other people about means and ways of preventing problems. Is having specific courses that children can take at school and aligning that with working with parents the sort of thing that you are looking at?

Mrs Gillan: Are you thinking of courses on respecting others and their rights in order to prevent bullying behaviour or cyberbullying in the first instance?

Mrs Overend: Recently, I was chatting to someone from a school in which a teacher sits down and goes through a course with the child. Then, once the child has completed a certificate on Internet safety, the school brings in the parents in and goes through the issues with them. Might you look at that?

Mrs Gillan: The Department recently issued its guidance on Internet safety. Coupled with that, new resources on the C2k system allow schools and pupils to go into e-safety rooms and go through almost real-life scenarios. A lot more put has been put on to the C2k system precisely for schools to teach about staying safe online. In light of incidents in the summer, we also wrote to schools to draw attention to e-safety resources that are available nationally, what pupils can do if they do find that their personal information is on the Internet and places that can help. The preventative side has been pursued through the Internet side of the curriculum and the e-safety rooms. There are rooms on Fronter precisely for that purpose, for teachers to go online and do that.

Mrs Overend: I am glad to hear that. I am just concerned that some schools will do it and others will not. How do you help with that?

Mrs Gillan: That will always be the challenge in everything that we try to roll out. We always point to the Education and Training Inspectorate (ETI) for best practice. ETI goes into schools and carries out its inspections, and it will look right across the scope of pastoral care and delivery of the curriculum. All that we can do is make the resources available and make sure that they are high up the agenda. We are also working with the Regional Training Unit on the optimising achievement tool that we funded, which focuses on mutual respect and self-respect issues. We are trying to roll that into a lot of the leadership training in schools so that a positive ethos in schools is rolled out through pupils and teachers. It is about trying to approach these things from lots of angles.

Mrs Overend: A lot of schools have a concern about what their responsibilities are and where their responsibilities stop. You lay that out in the legislation, which is welcome, but it also identifies that there may be a gap. Schools may say, "Well, our responsibility stops here". We need to make sure that there is help available elsewhere to pick up where those gaps are.

Mrs Gillan: That is where the leaflets and guidance on awareness-raising for parents come in. There is an obvious parental responsibility outside the school system for keeping children safe online.

The Chairperson (Mr Weir): It is a very important subject. We, as a Committee, will ensure that we give the Bill adequate time so that we can get it through as soon as possible. Caroline and Alan, thank you for your presentation.



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Addressing Bullying in Schools Bill: Northern
Ireland Anti-Bullying Forum

13 January 2016

NORTHERN IRELAND ASSEMBLY

Committee for Education

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Members present for all or part of the proceedings:

Mr Peter Weir (Chairperson)
Mrs Sandra Overend (Deputy Chairperson)
Mr Jonathan Craig
Mr Chris Hazzard
Mr Danny Kennedy
Mr Trevor Lunn
Ms Maeve McLaughlin
Mr Robin Newton
Mr Seán Rogers

Witnesses:

Mr Lee Kane	Northern Ireland Anti-Bullying Forum
Dr Noel Purdy	Northern Ireland Anti-Bullying Forum

The Chairperson (Mr Weir): I welcome Dr Noel Purdy, the chair of the Northern Ireland Anti-Bullying Forum, and Mr Lee Kane, the forum's regional anti-bullying coordinator. I invite you to make a 10-minute presentation, after which I will open the session for questions.

Dr Noel Purdy (Northern Ireland Anti-Bullying Forum): Thank you, Chair and Committee members. As well as being the chair of the Anti-Bullying Forum I am director of research and scholarship at Stranmillis University College, and I represent all the initial teacher education providers in the forum. I am accompanied by Mr Lee Kane, who is the regional coordinator of the Anti-Bullying Forum.

Thank you for the invitation to present to the Committee this morning. I want to do two things: first, I want to assure the Committee of our commitment to the need for an Addressing Bullying in Schools Bill and our broad support for it, and, secondly, I wish to summarise why we believe that the Bill needs to be amended in a number of ways that, we believe, will strengthen it and allow us to tackle bullying more effectively in our schools.

The Anti-Bullying Forum brings together over 20 regional statutory and voluntary sector organisations, acting together to end the bullying of children and young people in our schools and communities. The forum was formed by Save the Children at the request of the Department of Education in August 2004 and was formally launched in November 2005. The forum is currently hosted by the National Children's Bureau in Northern Ireland, and its activities are funded by the Department of Education.

In September 2013, the Minister invited the forum to carry out a review of existing legislation, policy, guidance and practice in Northern Ireland in relation to bullying in schools. That comprehensive review was submitted to the Minister in December 2013 and identified four areas most urgently

requiring attention. The first was the need for an agreed definition that would be the cornerstone of a school's detailed anti-bullying policy. The second is the need for schools to record centrally details of any incidents of bullying behaviour. The third is the urgent need for additional training and resources to be made available to schools as they seek to address new and complex forms of bullying in particular. The fourth is that an evidence-based approach to addressing bullying must be adopted at all times, on the basis of international research and best practice.

The forum welcomes the Bill in broad terms as an important and timely step forward in the Department of Education's work to support schools in their efforts to address bullying. In our written evidence, which you have all received, we went through each of the three clauses in some detail. This morning, I want to concentrate on what we see as the main issues that need to be addressed.

I will begin by looking at clause 1. Recent research that I have conducted along with Professor Peter Smith of Goldsmith's College, University of London, and which was outlined in detail in the submission from Stranmillis University College highlights that there is wide variation in the definition of bullying currently in use across school policies in Northern Ireland. Indeed, we found that the existing Department of Education definition was used in just 20% of the policies, and many inadequate definitions were found. It is clear that there is much confusion among pupils, teachers and parents as to what exactly is meant by bullying and that this can lead to inconsistent understanding by pupils, parents and teachers but also inconsistent reporting and responses by schools. It is, therefore, fundamentally important that we have a robust definition of bullying in the Bill as the very foundation of our efforts to address bullying.

Bullying is not just a problem for a handful of schools in Northern Ireland; it is an issue in every school in every country. Similarly, over the past 40 years, there has been a growing body of international research into bullying in schools that has considered the nature and incidence of bullying and the effectiveness of different forms of intervention. In responding to bullying in schools in Northern Ireland it is, therefore, vital that we do not ignore that international body of knowledge. We are part of a global research community but also a global community of teachers and parents who want to end bullying in schools, so let us learn from our global colleagues.

There is now widespread international agreement that there are three core components to any good definition of bullying behaviour that distinguish it from all other forms of aggressive behaviour. First, the definition must include reference to an intention to harm; in other words, the behaviour is not accidental. Secondly, bullying behaviour is repeated behaviour and not a one-off action. Thirdly, there is an imbalance of power in which the victim finds it difficult to defend himself or herself. This is, of course, not to suggest that other forms of aggressive behaviour that do not meet those three criteria should be condoned by schools but simply that they should be dealt with under the school's discipline policy rather than its anti-bullying policy.

The Anti-Bullying Forum wishes to focus the Committee's attention on the fact that this anti-bullying legislation should relate to bullying in schools alone. In advocating a definition based around those three core criteria, we refer in some detail in our written evidence to the leading anti-bullying experts in the world — Professors Dan Olweus from Norway, Ken Rigby from Australia and Peter Smith from London — all of whom include an imbalance of power in their definitions. Indeed, reference must also be made to the existing Department of Education definition, which is included in its 1999 child protection guidelines, where bullying is defined as follows:

"deliberately hurtful behaviour, repeated over a period of time, where it is difficult for the victim to defend him or herself".

In proposing a new legal definition in the Bill that omits the criterion of an imbalance of power, we would be ignoring a key element that is now well established internationally. The forum believes that this would be a very retrograde step.

The Anti-Bullying Forum has been informed that the legal advice received by DE states that it is not possible to enact a definition that includes an imbalance of power. In response, we draw the Committee's attention to the Accepting Schools Act 2012 from Ontario, Canada. In that Commonwealth country, where the legal system is based on the same common law principles that prevail in the UK, the legislative definition clearly includes all three core criteria — intent to harm, repetition and an imbalance of power. In our written evidence, we set out this definition in full — at the bottom of page 4 — but we draw the Committee's attention to the Canadian legislation, which states that the bullying behaviour:

"occurs in a context where there is a real or perceived power imbalance between the pupil and the individual based on factors such as size, strength, age, intelligence, peer group power, economic status, social status, religion, ethnic origin, sexual orientation, family circumstances, gender, gender identity, gender expression, race, disability or the receipt of special education".

Therefore, I emphasise to the Committee this morning that it is possible to enact a legal definition that includes an imbalance of power. However, it is also important for the Committee to be confident that the definition in the Bill is legally workable. In an effort to address the issue, we contacted the leading anti-bullying expert in Ontario, Canada. Professor Wendy Craig is professor and head of psychology at Queen's University, Kingston, Ontario. When asked if she knew of any difficulties with the inclusion of the imbalance of power criterion in the definition, she replied, "No problems to my knowledge". We also contacted the Minister of Education of Ontario, Liz Sandals, to ask about the legislation. Replying on her behalf, Eileen Silver, director of the safe schools and student well-being branch at the Ministry of Education, told us:

"Ontario arrived at the above definition through the leading research in the field of bullying. Furthermore, prevention and intervention efforts can only be effective when there is a common understanding of the power differential between the individual who is bullying and the individual who is being victimised, as well as an understanding of the power dynamics of those who are witnessing the bullying. It is essential to understand that these power dynamics and bullying arise systematically in the context of a relationship rather than being random aggressive interactions."

Ontario, though, is not alone in including that in its legal definition. By way of just one further example, in the state of Texas, House Bill 1942, enacted in 2011, also provides a definition of bullying. It refers to behaviour that:

"exploits an imbalance of power between the student perpetrator and the student victim through written or verbal expression or physical conduct".

In considering the proposed definition of bullying in clause 1 of this Bill, the Anti-Bullying Forum would therefore argue that we need to amend the current proposed definition to include an imbalance of power. If we fail to do so, we will have a definition that is contrary to all leading international definitions. Moreover, we will have a definition that allows some forms of aggressive behaviour — for example, repeated intentional acts of aggressive behaviour between equals — to be included as bullying behaviour. That will mean that schools will mis-record such aggressive behaviour as bullying, which will inflate their incidence levels, and schools will effectively be recording many more incidents than is necessary.

One proposed solution might be to leave the legal definition as written in the Bill but include the imbalance of power criterion in the ensuing statutory guidance. However, that would effectively create two definitions, which simply confounds the current situation highlighted by my research when we are seeking precisely to agree one common definition moving forward. If schools are then asked to tick a box in the reporting system to indicate whether there is an imbalance of power, surely they are capable of identifying that at the outset. As a teacher, I believe that teachers are capable of identifying bullying situations where there is an imbalance of power, but they need the right definition at the outset.

Finally and crucially, having provided evidence that an imbalance of power can be successfully written into anti-bullying legislation, we would argue strongly that it should be included in our definition, too. I will set out below how we think that must be worded to achieve the objectives that we are all seeking to achieve. In clause 1, we would simply add a paragraph (e) at the end that would include the words:

"where there is an imbalance of power between the pupils".

We would put in just one final caveat to the clause. It follows the advice of another leading expert in Canada, Professor Faye Mishna, dean and professor of child and family at the University of Toronto, who noted that the Ontario legislation was accompanied by mandatory staff training to make sure that all teachers had a clear understanding of the nature of bullying. We would, of course, welcome such support here for the training of teachers, both pre-service and in-service.

I have just two brief comments to make on clauses 2 and 3. Do not worry, they will be much shorter than previous comments.

On clause 2, we recommend a brief amendment to clause 2(1)(c)(i), which states that the board of governors of a grant-aided school must review its anti-bullying measures "from time to time". We believe that that is really too vague and recommend that the subsection be amended to read:

"from time to time and no later than two years from the last review".

We have two points to make on clause 3. We suggest making two minor amendments to the clause, which relates to the duty to keep a record of incidents of bullying. The first amendment provides that a record under subsection (1) must state what, from all of the circumstances, appears to be the method and motivation of the incident; in other words, we are adding the words, "method and". In seeking to analyse the incidents of bullying, it would be essential that schools record not just the motivation for the bullying — for example, whether it is homophobic, disablist or racist — but the method and whether it is physical, verbal, cyber, social exclusion, material, indirect and so on. Indeed, we had suggested that already in our 2013 review for the Minister. Secondly and finally, we recommend the addition of a new subsection (2)(c) to state that a record under subsection (1) must

"be kept for as long as a pupil is registered at the school, and for one or two years thereafter".

This would ensure that schools must keep records securely for what we believe is a reasonable time.

Chairperson, members of the Committee, that concludes our opening statement, and we are happy to take questions.

The Chairperson (Mr Weir): Thank you Noel, the issues that you drilled down on were extremely helpful. I would like to clarify a couple of points. In terms of the imbalance of power, and you have suggested a form of wording for clause 1(1)(e), I notice there are a couple of definitions that state, unless I have picked this up wrongly, an imbalance of power real or perceived. When you gave us your draft definition, it did not include that additional bit of wording. Would that be something that was helpful or unhelpful? What is your view?

Dr Purdy: My view is that it is potentially unhelpful to include "real or perceived", because it just introduces another element of doubt to the definition. That is a matter that would have to be proven, in any case, so to add the additional uncertainty of perception there would be potentially unhelpful. That is why we deliberately did not include "real or perceived" in our proposed amendment.

The Chairperson (Mr Weir): OK, that is helpful. In terms of the scope of this, could you address whether cyberbullying should be included in the Bill and specifically referenced or should simply be a part of guidance? I am interested in your views on that.

Dr Purdy: My view is that cyberbullying is in the scope of this Bill as it stands. Cyberbullying is, of course, a very important and significant form of bullying. It is very much in the headlines at the moment, but it is not to play down other forms of bullying. As a forum, we see all forms of bullying as something that we want to end, be it homophobic, racist, because of a child's appearance or in another of its multiple forms. We believe that cyberbullying is included here. The Bill makes reference to electronic communication in the definition in clause 1, and we believe that there is a very important role for the statutory guidance that will come out as a result of this and, within that statutory guidance, there is clearly a need for a significant section in relation to cyberbullying. As a parent —

The Chairperson (Mr Weir): To sum up, from that point of view, this is adequately covered in the Bill, and there is no amendment needed. As with a lot of issues, the meat can be put on the bone when it comes to the statutory guidance. Is that a fair summary of your position?

Dr Purdy: That is exactly right. I actually agree with what it states in relation to the limits of the Bill in clause 2, where it mentions cyberbullying. This is an area that I have done some research on, in relation to the legal responsibilities of schools for cyberbullying incidents that take place. Of course, most of them take place outside school hours, at home, at the weekend. The wording of clause 2 is very reasonable. No school that I am aware of would want the responsibility of any cyberbullying incident 24/7, during school holidays and so on. The limits set in clause 2 are entirely reasonable.

The Chairperson (Mr Weir): OK. The final point I want to make is this: you made what seems to be a very reasonable point about recording methodology as well as motivation, and it seems fairly sensible to me that it is something that is also recorded. That can presumably help identify trends in the

methods used, but, at this stage, are you aware of any methods of bullying that you feel need to be explored or researched further? Are there any other deficiencies that you can think of?

Dr Purdy: It is really more of a general point. It is about getting statistics about the incidents through the different methods. We are aware from the most recent Department of Education research in 2011 that the most common form of bullying in year 6 and year 9 is actually direct verbal bullying — being called mean names and so on. That is consistently the most common form of bullying, not cyberbullying. I would make the point that that research was carried out in the spring of 2011, and we are now in 2016. Clearly there is a need for more research to update that. My point is not to focus on one method of bullying; it is simply to have the data. Motivation is very important, but so is the method.

Mr Hazzard: Thanks for that. The discussion has been very thought-provoking, particularly on some of the areas that have been touched on. When we look at the additional motivating factors that should be included, how far should we go? There is already an extensive list, but what should we be looking to add? Physical appearance, social status and, maybe, care status? Apart from those, we are going to get quite —

Dr Purdy: I am drawn to clause 3(3), which states:

"For the purposes of subsection (2)(a), motivation may include".

I am aware from discussions with the Department of Education that the list is not exhaustive. We have been informed that it is based on the section 75 categories, although the wording is slightly different. I would even question the order in which they are listed; maybe it would make more sense to use the wording from section 75 of the Northern Ireland Act 1998 to avoid confusion.

The Chairperson (Mr Weir): I am guessing, so I might be wrong, but to try to suggest that one is not more important than the other the order seems to have been done alphabetically. I do not want to speak on behalf of the Department, but I assume that they are trying to suggest that there is not necessarily a hierarchy and that they are not making a value judgement on what is more likely to be on it.

Dr Purdy: It might have been helpful for them to make it more explicit that it was based on section 75 categories, because some people we have spoken to wondered where the list came from.

I take your point absolutely, Mr Hazzard, that the list is not exhaustive. In the statutory guidance, there are many other motivations for bullying, and you have mentioned some of them. Those would need to be referred to in the statutory guidance. As long as the Bill says that the list is not prescriptive, I have no real problem with —

The Chairperson (Mr Weir): We may be dancing on the head of a pin a little bit. Whenever you are looking to add categories to the list, there will be an argument about what you put in. I appreciate that the word "may", by its definition, does not exclude things, but maybe there should be something at the end of the list to act as a catch-all, saying "or other forms of motivation" or something of that nature.

Mr Hazzard: Physical appearance and social status, apart from homophobia, racism and sectarianism, are probably two of the biggest motivations and should be included on the list. I accept the points that have been covered.

Mr Lee Kane (Northern Ireland Anti-Bullying Forum): It is really important to say that that would make it difficult to future-proof the Bill. Looking back 10 years, we would not have been looking so much at issues such as transphobic bullying. "Islamophobia" is a word that did not really exist 10 years ago and is something that we see much more these days. We should think about 10 years from now and whether we will need to come back and amend it then. Can we make it so that it will still be appropriate 10 years from now?

Mr Hazzard: Finally, I want to ask about method. I agree entirely about social exclusion being a very prominent method of bullying. You mentioned material and indirect methods, which I am not overly aware of. Can you give a bit more detail on them?

Dr Purdy: The term "material bullying" is used in reference to the extortion of money and the stealing of possessions; for example, taking a school bag and throwing it out the window. That is what is meant by material bullying. "Indirect bullying" is often referred to as rumour-spreading or gossip. That is the terminology.

Mr Lunn: Thanks for your presentation. You comment in your paper on the words "repeated use". Your view appears to be that bullying is only bullying if it is repeated. The Children's Law Centre will be talking to us shortly, and it takes a different view, as would I instinctively. A one-off bullying incident is still bullying. There is some comment about the ability of a teacher to react to a bullying incident if it happens only once and what happens if he or she cannot nip it in the bud on the first occasion. What is the rationale for the use of the word "repeated"?

Dr Purdy: It goes back to what I was saying in the written submission about aggression. There is international agreement that bullying is a subset, if you like, of aggressive behaviour. All bullying is aggression, but not all aggression is bullying, if you follow what I am saying. To go back to the incident that you propose, of course a school and a teacher need to respond to any incident of aggressive behaviour. As you say, if it can be nipped in the bud, that will help to stop it developing into something more serious and repeated. The most common international definitions of bullying talk about a repeated act. It is a pattern of behaviour, not a one-off incident. That is not to say that a one-off incident is any more or less serious or worthy of a school intervention, but the definition is as it stands. Bullying is a pattern of intentional aggressive behaviour against someone who finds it hard to respond and defend themselves.

Mr Lunn: I have had occasion to talk to people whose children were bullied at a primary school. They reported the circumstances to the school at a very early stage, and the school's response was, "OK, we'll keep an eye on it", which I am sure it did. Without boring you with all of the details, the conclusion was that two children were moved to another school because the first school was not dealing with it properly. It was not physical, so I can well understand that it is quite hard to deal with. You need particular skills, but it just worries me that that early intervention may be slightly stymied by the requirement for repetition.

Dr Purdy: I disagree with that. I do not think it should be stymied in any way. Any school has a behaviour and discipline policy that should be implemented immediately if there is any report of aggressive behaviour. All we say is that, for it to be defined as bullying, it must be a more repeated pattern of behaviour. From what you tell me today, perhaps that school did not respond as effectively as possible, but it should have had not just an anti-bullying policy but a discipline policy. Under either but certainly under the discipline policy, the school should have intervened more effectively.

Mr Lunn: The school had posters all over the walls about zero tolerance of bullying.

The imbalance of power thing seems to receive fairly unanimous support. You have suggested paragraph (e) to add "where there is an imbalance of power". Is it as simple as that? Is it sufficiently clear that that does not just mean physical power but mental power as well?

Dr Purdy: I think it is clear. Again, we need to be clear about the difference between what goes into the legislation and what goes into the statutory guidance. I read out the long paragraph from the Ontario legislation, which goes into considerable detail. My only fear with that, as soon as you start defining it like that, is about what you have left out. It is much more difficult to change primary legislation, whereas, if we have the term "the imbalance of power", which I think is clear enough and which does not say just physical power, the statutory guidance is the place to spell out in more detail examples of an imbalance of power.

The Chairperson (Mr Weir): Noel, just to pick up on that point, would that be commonly understood by practising teachers or at least relatively easily interpreted by them?

Mr Kane: Definitely, from our direct work with schools and teachers, it would be. There are various forms that power can take, so it is not just about your physical presence. It is about the person whom everyone is friends with and who can manipulate people to do the things they want, the person who has all the friends or the person whose birthday party you want to be invited to. It is that concept of power.

The Chairperson (Mr Weir): I should say that both I and the vice Chair are Whips in this place, so we may be taking notes at this point on the use of power other than physical threats. *[Laughter.]*

Mr Kennedy: You have nothing to learn. *[Laughter.]*

The Chairperson (Mr Weir): I will take that as a compliment.

Mr Lunn: I am not necessarily disagreeing with you about imbalance of power; I am just exploring the possibilities here.

Finally, I want a comment from you on the non-exhaustive list of motivations. Fair enough, there will have to be some sort of catch-all, which would be quite normal. One of the things on the present list is "marriage". I am struggling to think of an example.

Dr Purdy: I was a little surprised to see that, but I am reassured that the list is based on the section 75 categories, and that is included. I suspect that it is not a common motivation for bullying or not the most common. I have not done a lot of research into that. There has to be some starting point for the motivation categories. Section 75 seems to me to be a reasonable enough starting point, but it is not an exhaustive list.

The Chairperson (Mr Weir): Without getting into the mind of the Department, I am trying to think about that a little. I wonder whether that could refer to someone having a go at a pupil because of the marital status of his or her parents, for instance.

Dr Purdy: Quite possibly.

The Chairperson (Mr Weir): It could be that the child of a single mother is bullied. That might be the motivation, but I am just making a supposition.

Mr Lunn: It sounds like one that would come under a catch-all, rather than being listed, but it is not vital.

Dr Purdy: In the guidance, we certainly need to look at the issues raised by Chris. Social status is one motivation. Physical appearance is a very common motivation for bullying, particularly among younger children, as is care status. There are lots of others that could be added to the list and will, I am sure, be added over time.

Mr Lunn: If it said something like "family status", would that make the meaning more obvious?

The Chairperson (Mr Weir): We may need to quiz the Department on that because I am just guessing what that means, and I might be completely wrong.

Mr Lunn: I was wondering what Noel thought.

The Chairperson (Mr Weir): I suspect that this question will come up when we have the Department

Mr Kane: We would refer to it as "family situation".

Mr Rogers: Most points have been addressed, but will you clarify one point? Are you really saying that we need a reference to an imbalance of power in the legislation that the guidance can then tease out?

Dr Purdy: Absolutely, yes. We need something short and sweet in the definition to ensure that imbalance of power is there. I would leave the exemplification to the statutory guidance because it is much easier to update guidance than change primary legislation. As long as it is there, we, as a forum, would be satisfied with the definition.

Mr Rogers: The other point is to do with clause 3(1)(b) on incidents that take place travelling to and from school. Have you any thoughts on that? Clause 3(1)(a), which deals with incidents on school

premises, and clause 3(1)(c), which deals with incidents when under the control of staff, are clear, but what about travelling to school?

Dr Purdy: We know from research that a lot of bullying takes place on school buses on the way to and from school and even in bus queues, at bus stops and so on. It is reasonable to include that. Indeed, it was the focus of Anti-bullying Week a few years ago, was it not?

Mr Kane: Our focus in Anti-bullying Week in 2009 was the journey from home to school. We looked at the need for a partnership approach to keeping children safe on that journey. There was a role for the school — in fact, a lead role for the school — and roles for members of the community and transport providers, such as Translink, which supported the campaign. The statutory guidance accompanying the Bill will need to look at that a little more closely. If a child leaves school at 3.30 pm on Friday, goes into town for a bit of shopping, goes somewhere else in the evening and then gets home at 10.00 pm, there are issues there. However, that can be picked up in the statutory guidance.

Mrs Overend: Thank you very much. It has been very useful to hear your views this morning. I want to go back to the definition and the inclusion of a reference to an imbalance of power. I presume that you are saying that such a reference would eliminate the overbureaucratic recording of every wee argument between pupils. Very often, two people just have different personalities and disagree, but that is not really a form of bullying. We can all think of such incidents from our schooldays. That does not include me — I only watched it, obviously. *[Laughter.]*

Dr Purdy: You were a bystander, perhaps — a witness to those incidents. *[Laughter.]* We believe that schools and teachers are capable of making the distinction between bullying and a playground fight between equals. That is the kind of situation that I remember from my schooldays, when people would crowd round and watch, almost like a sport. A playground fight between two equals is very different from what we say is a bullying situation, in which the victim, the target of the behaviour, feels powerless. It is not a situation involving equals. They feel powerless, defenceless. They rely on the people standing around to intervene, often on their behalf, because they lack the confidence to support themselves. Perhaps they are physically weaker or verbally less fluent. As already noted, it is not all about physical power. Perhaps a pupil is outnumbered or lacks social status or social support. For all those reasons, there can be an imbalance of power that makes a pupil feel defenceless and at the mercy of the child who is carrying out the bullying behaviour. There is an important distinction, and we think that it will be feasible for schools to continue to record incidents, as many already do, using precisely that kind of definition.

Mrs Overend: I also want to ask about the recording of bullying, where that information goes and how you feel it should be recorded. Have you any further concerns? I am thinking about freedom of information (FOI) requests and the creation of a league table of schools, for instance.

Dr Purdy: We have concerns about this. We raised them back in 2013, in our review for the Minister and have discussed it already with DE officials. It is a real concern for schools. However, we think that the benefits outweigh the disadvantages. There is a duty on us as a forum and on society more broadly to educate maybe even the press in this. We do not want unhelpful freedom of information requests to be granted and league tables to appear in local papers. That would not be a helpful situation for anybody.

If I were to go into a school and carry out an anti-bullying programme, one of my key messages would be to encourage children to report bullying. Often, the children, these powerless victims, feel that they cannot tell anybody. I would say, "Tell your teacher". If I did that in a school, the incidence of bullying — the official statistics that are being submitted — would go up, but, in many ways, that is a very good thing and a very powerful message. The children in that school would feel empowered to report the bullying, and the school, I hope, would take it seriously. We need to educate schools and the broader public about how they look at the statistics. A rise in the number of reported bullying incidents is not necessarily, in the first instance, a bad thing; it may be a positive sign that the school is opening those channels of communication and children are feeling capable of responding.

The Chairperson (Mr Weir): Noel, you talk of educating schools. Is there any concern that, if the system were susceptible to FOI requests, some schools might be reluctant to record bullying because of the impact that it would have on whatever statistics were being gathered? Do you think that that might happen, or are you not worried about it?

Dr Purdy: I would worry, but I cannot comment on whether there are any schools in that situation.

The Chairperson (Mr Weir): Sorry, Sandra, for interrupting.

Mrs Overend: That is OK, Chair.

I am just trying to tease this out in my mind. Is there a way in which the schools could record the bullying and keep their records up to date and then the Department would come in to analyse them, rather than the Department taking and recording that information? I am just trying to find a better balance.

Dr Purdy: Yes. In our original review, which we submitted in 2013, all we called for was for the schools to record centrally. The Department has come forward with the proposal that it would have access to the statistics. We were simply suggesting that, if, for example, there were an inspection in a school, the reports would be made available or evidence would be made available to inspectors that the school was following due process and so on. There is the potential for that. I think that the Department is keen — I will let the officials speak for themselves when they are here — to get the overview of trends in Northern Ireland. That is its motivation, if you like, for writing this into the Bill.

Mrs Overend: Yes. The Department wants black-and-white data.

Dr Purdy: We are making the point to the Department that it does not replace the research studies, three of which were carried out and funded by the Department over the last 15 years, the most recent in 2011. That is a very different set of statistics. I remind members of the Committee that those studies were anonymous questionnaires that were handed out to over 1,000 children in P6 and year 9 right across Northern Ireland. Last time, they used 60 schools, I think. The questionnaires asked children whether they had been bullied in a number of different ways over the previous couple of months. They produced a very different score or incidence level from the statistics that will come from this. We know from international research that, often, even in the most open and progressive schools, children do not feel that they can report every incident of bullying. They might admit it on an anonymous questionnaire, but they will not necessarily have reported it to a teacher, or the teacher may have chosen not to report it formally in the school records.

Mrs Overend: Thank you.

Ms Maeve McLaughlin: Thank you for your very clear presentation. My initial observation is that I am firmly in favour of maximising section 75 in its broadest sense. Often, it has been cherry-picked. However, I think that this legislation may come up against issues in that regard because it affects schools. The monitoring and tracking of section 75 categories might, because this relates to schoolchildren, involve issues with which the Committee and wider society will have to grapple.

My view is that the imbalance of power is related to bullying, but there is a process for who decides what constitutes such an imbalance. You said that it needed to be in the Bill and that other issues would be dealt with by a school's discipline processes. Can you give us an example of those other issues? Will the definition of an imbalance of power be at a school's discretion? Does that set schools against each other?

Dr Purdy: I hope not. I go back to Trevor's question: there is a difference between bullying and a one-off incident or an incident in which there is no imbalance of power, which would be dealt with under a school's discipline policy, as distinct from the anti-bullying policy.

I take your point, but I think that, with a little training, this will work. I take the Ontario example very seriously. Ontario has written into its legislation mandatory annual training for schools on anti-bullying measures. We have not included that in our submission to the Committee, but, when I read that, I thought that there was very much a need for it. Our review in 2013 included the need for staff training. Irrespective of the issue of imbalance of power, you could argue that staff training is required to look at issues around intent, as well as the different and very complex forms of bullying that we would like to see covered in the statutory guidance, let alone all the forms of intervention on which the Anti-Bullying Forum, particularly Lee, has done a lot of work through going into schools. There is a serious need for training, not just on the imbalance of power. I take your point that staff need to be clear about what that means, but there needs to be clear guidance on the whole realm of anti-bullying responses by

schools, and we would like that to be well supported by the Department through training. The forum is well placed to help to deliver that.

Mr Kane: I will give an example of something that would come under the legislation — incorrectly — if we did not include imbalance of power. Two pupils just do not get on with each other. They just do not click, and there is a bit of friction between them. Over a number of months, there have been fallings-out and arguments that might have resulted in a physical fight. However, they are of equal power, and they are of equal status in the school and in their peer group. It is just the clash of personalities that leads to the fallings-out, arguments and physical fights. That is unacceptable behaviour. Arguing and fighting with each other in the playground is unacceptable, but such incidents are very different from a bullying incident in which one person picks on the other and repeatedly, over a period, uses his or her power to put the other down. Those are very small details, but they can have a big impact.

Ms Maeve McLaughlin: I am not opposed to the notion, but it needs to be very clear. What I am hearing is that it is more about repetition, and this goes back to Trevor's point: a pupil does something once that could be seen as involving an imbalance of power, but, because it does not happen a second time, it falls outside the anti-bullying strategy. In a nutshell, bullying starts somewhere. Schools, of course, have discretion, but one school's perception of what is a power imbalance might not be the same as that of another school. What does that say about wider society? It needs to be very clear and defined.

Dr Purdy: I totally agree. It needs to be defined in the statutory guidance. I will give another example. There has been a lot of discussion of cyberbullying in the media and so on, but incidents often described as cyberbullying are not really cyberbullying incidents at all. There are general e-safety issues, including grooming and any number of abusive behaviours online. It is aggressive online behaviour, but it is not cyberbullying. There are many instances of that.

As a Committee, you need to be clear about what the Bill is setting out to do. It has limits, and it is only right that it has limits. We are not trying to deal with all aggressive behaviour in schools through the Bill. That is far beyond the remit of what the Bill sets out to do. As long as we acknowledge those limitations, it is very workable.

Mr Kane: I would like to respond to the comment that you made about section 75. When talking about a bullying incident and using those terms to describe prejudice-based bullying in particular, be it racist, sectarian, homophobic, transphobic, disablist etc, it is important to remember that we are talking about the behaviour being displayed rather than just the people involved. We know that an awful lot of homophobic bullying is experienced by non-LGBT young people and that a lot of racist bullying and bullying through the use of racist language is aimed at white young people. It is really important that, when looking at the motivating factor, we look at both the behaviour being displayed and the young people. It is the idea of what the motivation is rather than who is the target.

Ms Maeve McLaughlin: It is the method as well.

Mr Kane: Absolutely

Mr Kennedy: Thank you for the presentation. I have a slightly different query. I am a member of three boards of governors. On the future legal liability for incidents of bullying that take place in a school, you said that you thought that records should be maintained for at least a couple of years beyond a pupil's student career. Do you have any thoughts on the legal liability that schools or boards of governors would have at that point or even beyond?

Dr Purdy: We have suggested one or two years, but we are open to discussion on that. As the Bill stands, there is no duty on schools to retain the records at all. We say that records need to be kept for as long as pupils are registered at a school and for a reasonable time thereafter, and we are open to discussion on what that reasonable time might be.

We want to make the retention of records reasonable for schools. There have been cases of pupils who, having left school, report an incident of how their school did not deal effectively with bullying behaviour. The point is that there has to be some duty on the school to retain the records, and that period cannot end when a pupil leaves the school. Some pupils, during their time at school, might feel unable to report bullying, simply because they are still at school and are fearful of getting themselves

into further trouble. As long as the keeping of records continues afterwards, we are open to discussion on the policy on exactly how long that should be. It is a fair question.

Mr Kennedy: There is an issue of affording protection to boards of governors by not making it open-ended. Twenty-five years after leaving school, people should not be able to say, for example, that their behaviour relates to how they were bullied and that, because the school did nothing about it, they will claim against that school. How can you avoid that situation?

Dr Purdy: I am a member of a board of governors as well, and I see that concern. We have not looked at that in detail, to be honest, but we can consider that and come back to you on it. I appreciate your concern.

Mr Kennedy: It will be interesting to hear what the Department has to say on that.

Dr Purdy: I think so as well. It is important that there are reasonable limits on the responsibilities of governors. Already, it has changed from being the responsibility of a single governor to the responsibility of the board of governors, and that is a positive step.

The Chairperson (Mr Weir): Before I go to the next member, I welcome the school council of Cairnshill Primary School to the Public Gallery. I saw them as they were coming into the Building. We are looking at bullying in schools and what can be done about it, so we are taking evidence from experts in the subject.

Mr Newton: I thank the members of the forum for coming. It has been extremely useful. Having been described as experts in front of Cairnshill Primary School —

The Chairperson (Mr Weir): Your answers had better be good.

Mr Newton: My concern is the imbalance of power. You have answered most of my queries, but you said that training would be needed. Presumably, that would be built in to teacher training and then refresher training as part of continuing professional development (CPD). Some schools are quite big now.

Mr Kane: Yes, some have 2,000 or 3,000.

Mr Newton: Determining the imbalance of power might be a difficult thing for teachers to do. You said that Canada had built training into its legislation: if we did not build it in, what might the impact of that be?

Dr Purdy: First, thanks for the reference to my being a bullying expert; I am not sure whether that was a compliment.

The Chairperson (Mr Weir): It may have been a back-handed one.

Dr Purdy: Perhaps an "anti-bullying expert" would be better.

I will make a point about the importance of training. I work in Stranmillis University College, and we educate all our student teachers in the policy and guidance on anti-bullying. We talk about many forms of bullying. We have compulsory and optional modules at undergraduate and postgraduate level, and the postgraduate CPD courses are very popular.

It is vital that all student teachers coming into the system are aware of the importance of bullying. Some may have been involved in bullying, but all teachers need to be prepared for it. There is a need for further in-service training. When the statutory guidance is published, the Anti-Bullying Forum will be very well placed, but I imagine that it will need support in providing further training, through the Education Authority, to schools in different regions in Northern Ireland. That will require funding. I am sure that you are aware of how tight budgets are, but these are, as I said, complex issues, and it is vital not only that student teachers receive the training but that experienced teachers have refresher training. Ontario, as I said, has annual mandatory training built into its legislation. I am not sure that we need to go that far, but there needs to be regular updating of policies and training for staff.

You asked about the impact of not having imbalance of power in the legislation. This goes back to my opening statement: not having it simply means that schools would record many more incidents of aggressive behaviour that are not defined as bullying. The playground fight that I mentioned earlier and similar incidents in which both combatants were of relatively equal power would have to be recorded as bullying. You would find confusion, and we would be out of sync with the majority of accepted definitions internationally. I do not think that that is the way forward for Northern Ireland and for the legislation. This is a tremendous opportunity for us to get the best possible legislation for our schools and our children. It seems unwise to go against the leading advice from experts all over the world. It would lead to further confusion in schools. More than anything else, a definition that allowed many other forms of aggression to be counted as bullying would create problems for the courts.

Mr Kane: Training for teachers is important, but we must remember that staff training needs to go beyond that. We need to look at the support staff in schools — classroom assistants, lunchtime supervisors etc — and at the boards of governors. Governor training will be very important to the success of the Bill.

Mr Newton: In the investigative process, if that is the right term, whereby a principal or teacher wishes to determine whether there is an imbalance of power, it seems that you might almost be approaching a police investigation in the school. Am I right in that?

Dr Purdy: I do not think that it is any more of a police investigation than trying to work out whether it is an intentional act or a repeated act. That is part of what teachers do day in, day out when trying to find out what has happened by speaking to the pupils involved. I do not think that teachers would like to see themselves as police officers, but, with any incident, teachers have to find out what happened, and they do that by asking questions of the pupils. In that respect, yes, there is a bit of detective work involved, but I do not think that it is unnecessarily complex or beyond the skills of a well-trained member of the teaching profession.

Mr Craig: Thank you, Chair, and I put it on record that you are definitely not a bully as the Chief Whip of our party. *[Laughter.]*

Mr Kennedy: He told you to say that, didn't he?

The Chairperson (Mr Weir): Jonathan, you may be sucking up to the wrong person.

Mr Craig: Who knows?

It is good to see the experts here. I want to get to the root of this, which is, unfortunately, about where the balance of power lies and how to protect a school from litigation. I admit that I am on two boards of governors and chair of one of them. When there is a bullying incident in the school, the parents of the offended party are probably the first to come to you, telling you that the school is not doing enough. Of course, the parents of the pupil who has been reprimanded then come to you and say that what you have done went too far. As a board of governors, you cannot win because, ultimately, it is a judgement call, no matter what you do. It is just like our legal system, if truth be told.

What protections can be built into the legislation? I am not thinking of the board of governors; more important are the schools whose reputation suffers when situations are not dealt with properly and there is no proper response to bullying. What is built in to protect schools? Some parents will never be satisfied, no matter what you do with regard to sanctions on the offending party.

Dr Purdy: I appreciate your point, although I think that it is perhaps beyond the scope of this Bill. Nonetheless, I suggest that the starting point for any school response is its anti-bullying policy. The foundation of the anti-bullying policy is its definition of bullying. We constantly emphasise the same themes. The research that I carried out, which I mentioned earlier, looked at 100 anti-bullying policies in 50 primary and 50 post-primary schools across Northern Ireland. I found an enormous variation in the quality, breadth, content and definitions of those anti-bullying policies. Some of the definitions were very poor: some were one-page long, and some had last been updated in 2005. I suggest that any school that bases its response on a 10-year-old one-page anti-bullying policy is taking a risk in terms of protecting itself. In answer to your question, I think that the best thing a school can do to protect its staff is to have an effective, robust policy and a sound definition, and that is what we are arguing for this morning.

There should be clear procedures for reporting incidents and how members of the school staff, teaching and non-teaching, should respond to incidents. There should also be a clear reporting system. There should also be support for both the pupil being bullied and the pupil carrying out the bullying behaviour. Crucially, as you know, a policy is only as good as its enactment, and we argue that a policy has to be consulted on. By law, since 2003, there has to be consultation with the registered pupils and parents. Moreover, there should be consultation with all members of the school staff, teaching and non-teaching, and that needs to be understood and followed by all members of staff and pupils. That is the best protection. If somebody questions the school response, they will see a robust policy that is being followed effectively. If a school does all that, it is in a very strong position.

Mr Kane: In 2013, NIABF released guidance and a range of strategies to schools called 'Effective Responses to Bullying Behaviour' that looked at alternative responses that schools could take to bullying. Earlier, we had a question about investigating an incident. That sounds very much like the police; it is very legalistic. We like to gather facts and opinions to build a picture of what is going on and then select an intervention from a range of interventions to best meet the needs of the children involved. Very often and from listening to your question, we hear about what the views of the parents are — those are very important — but we know that one of the reasons why young people do not tell us about the bullying that they experience is that they feel that they will lose a sense of power. It stops being their story, and other people take it on. We need to make sure that the children involved — both the child experiencing the bullying and the child or children displaying the bullying behaviour — are at the centre of that situation. They need to be involved in making the decision about what will happen next. I always say that we might look at days one, two and three of sorting out the situation, but my interest is always in day four to see how we make sure that it is safe for child A and child B to be in the same classroom in the same school and how we get past that situation.

The Chairperson (Mr Weir): OK. Two members want back in briefly. Trevor.

Mr Lunn: Thanks, Chair. I will not —

The Chairperson (Mr Weir): Sorry. Jonathan had not finished.

Mr Craig: Sorry about that. I am fascinated by your answer because I can happily say that, in the school that I am involved in, a lot of that is already in place. You are right: that is the ultimate protection for a school. Sadly, it is not the case everywhere; even in some very good schools it is not the case.

I would like to explore another thing with you, and it is the ultimate bugbear for any school: the social media bullying campaign. I know what you are saying — some of it can be aggressive, and some of it can be downright offensive — but, ultimately, it is a form of bullying. I think that, frankly, we are playing catch-up on this, because probably my generation and older generations do not even understand the concept of it. It was not there when we were at school. It is very aggressive and, in some cases, it has serious negative mental impacts on children. A lot of it is done outside school. Where will it fit into the legislation?

Mr Kane: I agree entirely. In the past 10 years, we have definitely seen a rise in bullying on social media, but 10 years ago we did not have social media — it is a very new tool that we are still getting to grips with. I like to split "cyberbullying" into two words. Look at the term "physical bullying". We understand "bullying"; now let us explore what we mean by "physical". As we have been dealing with it for centuries, we understand "physical". So let us unpick what we mean by "cyber". What are we talking about? When we start digging down and looking at the definition of "bullying" as set out in the Bill, we are talking about repeated, intentionally hurtful behaviour, which is moving and expanding into an online world. It is those behaviours that we have concerns about. It is the negative, aggressive behaviour that we engage in when we call people names, make fun of them, tease them, spread rumours or start stories. That is the behaviour that we have an issue with. Now for the "cyber" part. We have made wonderful advances in technology, which are very positive. We need to target negative behaviour to say, "That is unacceptable. It is unacceptable to call someone a nasty name or to write something nasty about somebody, whether it is online or in the playground". Intentionally setting out to hurt somebody repeatedly is unacceptable, and we need to be unequivocal about that.

We need a better understanding of how to respond to bullying incidents that happen through the use of electronic technology outside the school day and outside the areas covered by the Bill. That is why, in my opinion, we need joined-up partnership working between everyone involved in the life of a child. We need to look at the role of the school, the parents and the friends, and we need to look at the role

of the PSNI and understand law enforcement. I represent the Northern Ireland Anti-Bullying Forum on the Safeguarding Board's e-safety forum, and we have been doing a lot of work to understand that wrap-around protection for young people. We know that sending grossly offensive messages through electronic communications is an offence, but we do not want to start criminalising 13-year olds. How, then, can we find that balance to protect them? To me, it comes back to a phrase that is used both in the Education Order and in the Safeguarding Board Act, the duty:

"to safeguard and promote the welfare of children".

We have that role in keeping them safe. If something happens in school, what are we doing to minimise that risk and make sure that it is safe for children to be there? Also, how are we promoting their welfare? That comes very much into the preventative strategies and the preventative curriculum used by schools to raise awareness, to raise capacity and to build that ability in our young people to recognise that.

The Chairperson (Mr Weir): We will try to be relatively brief. I will just bring in Trevor and then Chris for a follow-up.

Mr Lunn: When you visit schools and advise them, what evidence do you see of the pupils not involved in the bullying being bullied or intervening and asserting themselves? I will give you a brief anecdote. When I was at primary school, about age 10, there was a lad in our class who was bullied unmercifully. It would have been a scandal nowadays but not in those days. There certainly was not an imbalance of power physically. He was a big fella, but he also was not the brightest star in the universe. He probably would have been categorised as special needs now. After a few months, his mother invited half the class to his birthday party, and we all went. After that, the bullying did not stop, but pupils intervened on his behalf, big time, including some who had been bullies. I am not saying that you should instruct pupils on how to intervene, but what evidence is there that that happens to any extent?

Mr Kane: If we look at the 2014 Anti-bullying Week, which I am sure you all still have your posters from, we will see that the theme was "Together we will make a difference". It looked at the role that everybody in the school community plays in tackling and intervening in any bullying situation. Whether it happens in the playground, in the corridor or in the classroom, there is a role for everyone who witnesses it or has a concern in tackling it. Now, it may not always be safe for a pupil to step in and say, "Stop doing that!", so we need to make sure that young people understand how to keep themselves safe in that situation. We want to encourage young people to think about the different ways that they can take action and how they can intervene. There is still a real issue in our society about telling tales or touting, and we have tried over the past few years to change the language so that it is no longer "I am going to tell on you"; it is "I am worried about you. I have a concern about you, so I am going to share that concern with someone".

Mr Hazzard: Just touching on that, is there space in the Bill to build on the requirement for schools to provide support for the bullied child once the experience has taken place? Obviously, this is prevention and reporting, but what about the support that a bullied child may need? Should we look to address it in the Bill?

Dr Purdy: If it is not in the Bill, it certainly needs to be in the statutory guidance; that is very important. The research that I carried out recently found that the policies were generally quite good on the support that they offered to a child who was being bullied but far fewer of them referred to what they did to support the child who was carrying out the bullying. Even fewer detailed what that support might entail.

That is an excellent point with which to finish: it is a complex picture, and it involves a range of pupils, from the child experiencing the bullying to the child who carries it out and the bystanders whom Trevor talked about. It involves parents, teaching and non-teaching staff and governors. It is a very complex issue, and we want to ensure that the Bill is as strong as possible so that it can combat it.

The Chairperson (Mr Weir): OK, Noel and Lee, thank you very much for your evidence today. It has been very helpful in our deliberations, and we will be carrying on with our sessions.



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Addressing Bullying in Schools Bill:
Children's Law Centre

13 January 2016

NORTHERN IRELAND ASSEMBLY

Committee for Education

Addressing Bullying in Schools Bill: Children's Law Centre

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Members present for all or part of the proceedings:

Mr Peter Weir (Chairperson)
Mrs Sandra Overend (Deputy Chairperson)
Mr Jonathan Craig
Mr Chris Hazzard
Mr Danny Kennedy
Mr Trevor Lunn
Ms Maeve McLaughlin
Mr Robin Newton
Mr Seán Rogers

Witnesses:

Ms Rachel Hogan BL	Children's Law Centre
Mrs Kathryn Stevenson	Children's Law Centre

The Chairperson (Mr Weir): Members, the next evidence session will be an oral briefing on behalf of the Children's Law Centre. There is a cover note on page 81, and the Law Centre's submission is on page 85.

I welcome to our meeting Rachel Hogan, a barrister-at-law who is here for the Children's Law Centre, and Kathryn Stevenson, a solicitor who is head of legal services there. Can I ask you both to make brief initial comments, and then we will go straight to questions?

Ms Rachel Hogan (Children's Law Centre): Thank you for inviting us to give evidence today; we are delighted to be able to speak on this very important topic. The Children's Law Centre broadly welcomes the Bill and is very keen that it goes through in this mandate. We feel that it is important legislation to protect children from bullying in the school environment. We have concerns that we have outlined in our written evidence, but I think that we can narrow those down after some further analysis and discussions on the Bill. I will deal with clauses 1 and 2 very briefly, and then my colleague Kathryn will deal with clause 3.

The definition of bullying in clause 1 states:

In this Act "bullying" includes—

and then we have what seems to be a set of hurdles and barriers that must be crossed before one can establish that there has been bullying. I wonder whether it is clear enough to use the word "includes".

Does it mean that it includes only those items, or may it not be limited to those items? We suggest that it be changed to "includes but is not limited to". It is our belief that the definition should be inclusive and cover a wide range of potential unwanted behaviours to protect children and schools from all behaviours so that all those that may be harmful will be recorded as bullying in line with the definition so that preventable bullying can actually be prevented.

We have raised a concern about the use of the word "repeated", as we think that there is a lack of clarity in its meaning. For example, if there was a time lapse between two incidents, how long would it be before we would say that they were two single incidents as opposed to a repetition? If one child carries out bad behaviour that is repeated by another child the next day, is that repeated? We think that the use of the word "repeated" might cause some difficulty. It may also send a poor message to a school to possibly ignore the first behaviour. Although it could be recorded as a disciplinary issue, schools might look at it from the bullying perspective as less important because there had been only one incident, whereas, in fact, we think that bullying should be nipped in the bud immediately. That is always the best course of action.

We can compare the Bill with the Protection from Harassment (Northern Ireland) Order 1997, which also requires repetition in order to prove a course of conduct that causes distress or alarm and where there is a tort in terms of harassment. In relation to a civil claim, that requires one act that causes distress or alarm plus fear of a further act. That may be a fairer way of looking at it. There has been an act of aggression or poor, unwanted behaviour, and the child goes back to school the next day worrying about whether it will be repeated. It may be worth considering whether, if repetition is felt to be necessary, fear of repetition would be sufficient. Notably in that Order, for the criminal offence of harassment there have to be at least two acts, so it is a higher standard for a criminal offence. We believe that that is too high a standard for this Bill, which is to cover bullying in our schools, which, of course, could be low-level bullying or criminal offences.

We also note that the types of behaviour covered in clause 1(1)(a) may not fully cover non-verbal activity such as gestures, so it may be useful to include non-verbal actions as well as verbal.

In relation to 1(1)(b) and (c), dealing with bullying by a pupil or group of pupils against another pupil or group of pupils, the Children's Law Centre feels that adults should be included so that an atmosphere of mutual respect is promoted by all parties in the school, whether child or adult, in which everyone should respect each other and bullying should not be tolerated either from children towards other children or from adults towards children. That is because we receive reports from children and their parents that they feel that children have been targeted, laughed at or treated unfavourably in some way by adults in a school on occasion, sometimes on the grounds of sexual orientation or disability, for example. It is also worth noting that a school may already potentially be vicariously liable for the actions of teachers towards pupils. If a teacher has harassed a pupil, under that previous Order the school may be vicariously liable for that behaviour. It may be better to protect a school by putting it into the definition that no member of a school community should engage in bullying behaviour.

We would also like to see a provision for the imbalance of power, which has previously been spoken about. We agree with earlier comments that the imbalance of power is a key ingredient in bullying. A key concern is the use of the word "intention" in subsection (1)(d). We feel that the imbalance of power is a better filter than the use of the word "intention" when using it in law. We have a serious concern about that, because it is difficult to see how we could prove intention. "Intention" nearly sounds like a criminal term or a term from negligence; it is very subjective. How do we look into the mind of the young child and establish what the intention was?

As an alternative, we suggest that, instead of saying, "with the intention of causing harm" it should say, "with the purpose or effect of causing harm". "Purpose or effect" is a broader term and includes cases where there might not be clear evidence of intention. Of course, that might cover a very broad range of incidents where the effect is that someone is harmed. The imbalance of power requirement would then limit the number of people who would be recorded as bullying in that situation, so it would read, "with the purpose or effect of causing" whatever type of harm, taking into account that there had been an imbalance of power between the parties.

The notion of intention caused difficulty in the case of Ryan Collins, whom we mentioned in our written evidence, a young person in Newry who took a case against a grammar school. It is interesting that it is noted in that case that the school in question was a school of good standing with highly professional and dedicated teachers who are highly motivated to help their pupils, but they failed to prevent preventable bullying because of an ineffective policy. In paragraph 9 of the decision, you can see that the teachers were struggling with whether the behaviour was wilful, so they treated it as mistreatment

instead of bullying. It was bullying that lasted in and around four years, ending with a child leaving school just before GCSEs, and it was not treated as bullying. The policy, therefore, did not work in that case. Looking for intention places a burden on teachers that might be difficult to discharge. It may be tempered if we look at the physical or emotional harm that is proposed here.

The Chairperson (Mr Weir): I do not want to curtail you too much, but could you try to make your remarks reasonably brief? We have another witness, and we have time limits on when we need to be out of the room.

Ms Hogan: Certainly. We are very concerned about the term "causing physical or emotional harm"; we feel that that is much too high a barrier. That would indicate criminal intent such as assault, intent to cause physical harm or intent to cause psychological harm. We feel that it should be broadened to include the likes of distress, alarm, hurt, fear, exclusion or physical or emotional harm so that we have a broader range of impacts.

We note that the Bill as it stands does not appear to cover harassment, which is the causing of alarm or distress. That leaves schools open, if they are not dealing with issues that might be harassment or bullying, to finding themselves liable for negligence.

Our key concerns about clause 2 are the scope of the measures that are to be taken. That is the places where the bullying occurs: in school, on the journey to and from school and so on. We feel that that scope is too narrow, and we would like to see a further category added where, if the bullying happens outside school — at home or in the community through cyberbullying — there should be a clause to allow, where there is evidence of a linkage between bullying in school and outside school, that the school would have the power to take that into account, so either a duty or a power for the school to take external factors into account. There is case law in England — the Bradford-Smart case — that, if a teacher is acting reasonably, they should take external bullying into account. If it is spilling into a school and affecting order and discipline, it would be unreasonable to exclude consideration of it.

We would also ask that anti-bullying policies be child-accessible so that proper consultation can take place with children when reviews take place. We would seek that reviews have a timescale such as annual, biannual or if the policy is proving ineffective for some reason. I will pass over to my colleague.

Mrs Kathryn Stevenson (Children's Law Centre): Good morning, Chairperson and members. I will deal with clause 3, which is the duty to keep a record of incidents of bullying.

We welcome the introduction of the duty on boards of governors to ensure that a formal record is kept. We also take the view that, whilst the board of governors would acquire an overarching duty under the clause, all members of teaching and non-teaching staff should receive adequate training and support. That has been covered a good deal this morning already, so I will not embellish it, but support is very important so that staff can report incidents as a witness or be made aware of them, even if it is then taken forward by designated staff in the school.

The ownership and use of data has also been discussed this morning. We had discussions with the Department in advance of giving evidence today, and it is envisaged that the likely mechanism to be adopted for recording data will be the C2k computer network, which is already being used by many schools. It is also our understanding that the data collected will be retained by and will remain the property of the schools. Therefore, it will not be collated or evaluated whole-school by the Department. The Department will have a power to request macro data, we understand, for statistical purposes and to inform future policy development.

It has been suggested — we would welcome this — that there be a role for the Education and Training Inspectorate (ETI) as part of the school inspection process. It would be fairly acceptable, I would have thought, that it could request reports or comparative reports from schools as part of the inspection process. We recommend that departmental guidance accompanying the Bill should provide clarity on the ownership of data, its use and the disclosure of school records, as that might alleviate some of the concerns about league tables and the media.

As regards what records should include, we do not object to what is included in clause 3(2), but we recommend that, as a precursor to paragraphs (a) and (b), it states that records should include statements of fact about the circumstances and nature of incidents. There is very clear guidance. The Northern Ireland Anti-Bullying Forum referred to its guidance this morning: it has a bullying

concern assessment form that provides a useful template for the types of information that may be stored. In light of the Ryan Collins case, which Rachel spoke about, which involved the Abbey Christian Brothers' Grammar School, we recommend that the clearer and more comprehensive the record being kept by the school and the closer their adherence not only to the facts of the incident, as they see them, but, in their response, to their school policy, the more protection the school will be afforded in mitigating future liability. That is borne out in that case.

In our written evidence, we also talk about motivation and the concerns about the use of the word "motivation". Rachel touched on that. We are concerned that motivation, again, leads to intent. There are concerns that it might, in fact, limit the number of records that can be kept. We suggest a change in wording, with the proposed substitution of "relevant factors, characteristics or themes arising". Then you do not have to establish a motive on the part of the child who is allegedly involved in bullying behaviour. It has already been discussed that the list of motivations is not exhaustive. It may include those that appear in the Bill. We seek clarification in departmental guidance of any other factors that may be considered. It may be that another catch-all category could be included in legislation or recorded in the format for the C2k programme so that those factors could be specified, tallied and data collated. We also propose the inclusion of dependents, which would include school-age mothers, school-age fathers and child carers, if that were one of the factors that were involved in the bullying, and socio-economic status. That would align with section 75.

There was a discussion about marriage. We thought that "marital status" might be better. It is interesting to note that, with parental consent, a 16-year-old can get married in Northern Ireland. We know that members of certain communities, such as the Traveller community, get married much younger. We propose that "sex" should be changed to "gender". That would cover all areas of gender discrimination.

I know that there is a time limit on what I can say. With regard to monitoring and review, I just want to raise the point — again, on the back of the Ryan Collins case — that we see effective record keeping and the recording of incidents as a protective measure for schools. We see that as something that they can do. In that case, evidence given by an expert concluded that the school's response was investigative but not solution-focused. The court was concerned with the effectiveness of the policy and whether the school's response was adequate or timely. In order to mitigate exposure to future legal liability, we recommend that schools use the data that they collate as an evidence base to inform their anti-bullying policy review and consultation processes. They can use it to protect themselves against individual allegations as well. The board of governors could also use it to review and evaluate the effectiveness of the existing policy and procedure and assist them in developing proactive measures to tackle any emerging issues and to adopt preventative strategies to mitigate liability.

The Chairperson (Mr Weir): Thank you, Kathryn and Rachel. I will pick up on three points very briefly. On the issue of redress mechanisms for individuals, particularly parents, do you think that the Northern Ireland Public Services Ombudsman Bill provides adequate mechanisms for redress? Is that an adequate route with regard to school bullying?

Ms Hogan: Sorry, which Bill is that?

The Chairperson (Mr Weir): The Public Services Ombudsman Bill, which has just gone through.

Mrs Stevenson: I am concerned about that. I have to say, however, that I have not looked at that Bill in any detail. I understand that the ombudsman's office investigates maladministration, rather than factual disputes.

The Chairperson (Mr Weir): This is in relation to the issue of redress as regards school processes.

Mrs Stevenson: I do not know that the issues around school processes alone might be sufficient, if you are going to be open to civil liability, as happened in the Abbey Grammar School case.

Ms Hogan: The length of time that that might take may allow preventative —

The Chairperson (Mr Weir): I appreciate that there can be quite a lot of delay.

Mrs Stevenson: That is another important factor, yes.

The Chairperson (Mr Weir): The second point, Rachel, is that you mentioned at the very start that there is obviously quite a lot of meat in the substance, particularly in terms of amendments. We talked about the word "includes" earlier, and how it may include other things that are not mentioned. One of the issues that you seem to raise is that there seems to be a desire for a clear definition of what constitutes bullying. Is moving to a situation of saying that it may include other things as well, and putting it very explicitly, not more likely to muddy the waters?

Ms Hogan: The way it is currently drafted is too narrow; it needs to be broadened to some extent. Otherwise, it is going to rule out those lower-level cases of bullying, which cause distress, alarm, fear and isolation. Intention to cause physical harm is very narrow; intention to cause —

The Chairperson (Mr Weir): The final point that you mentioned, which may to some extent be covered elsewhere, is moving beyond a too-narrow pupil or group of pupils on pupil or group of pupils situation — if I put it that way — to include a situation where there is, potentially, bullying by adults of children or pupils. As a definition of bullying, does it also cut the other way? Should it include a situation where a pupil or pupils are bullying adults at school?

Ms Hogan: It can potentially include that, in both directions. What we are trying to do is prevent bullying in schools but, again, you are met with that hurdle of intention or imbalance of power. I think that we can assume that, in the majority of cases, though maybe not all, adults will hold the balance of power, but there have been situations where it has been the other way round, particularly with older children.

The Chairperson (Mr Weir): I appreciate that.

Mr Craig: Kathryn, I found it very interesting to listen to what you were saying about the procedures within the school, the documentation of the events and the timeliness of them. I can speak with experience and say that you are 1,000% right on that one. That is the ultimate protection for the school when it comes to this. Despite everything, the school can do everything properly to tackle the bullying issue, but it may not satisfy all parties involved. Bitter experience tells me that that is inevitably the case with some parents. It is unavoidable. Whether it is the offending party or the party that was offended, you will never fully satisfy all of them.

I note what you say about expanding the definition of bullying, what it actually is and how it is defined. What is the balance that we are going to find in all this? I have a concern that if we expand it too far, every small incident will become almost a full-scale war, with documentation going everywhere. There is a pressure on teachers around this, and a lot of it falls at present under the pastoral care policies of schools. Good schools do it properly. There is a lot of paperwork involved in it, a lot of documentation and an awful lot of time taken by senior teaching staff to go through, as you say, the investigations, as they were described by an earlier party. They are investigations; we need to be honest about that. A lot of time is taken up. If we create a monster here, how do we control it? Ultimately, the staff's first duty is to teach children: it is not to act as police, judge and jury. How do we find a balance on this?

Mrs Stevenson: There are couple of factors there. Schools will never be asked to be police, judge and jury because the standard of proof for bullying is not a criminal standard. I very much empathise —

Mr Craig: But the system feels very much like that when you are in the middle of it.

Mrs Stevenson: I very much empathise with what you are saying, Jonathan. What I am trying to say is that a school can belt-and-braces protect itself if it has the correct records in place. The particular case that we talked about was a recent one and the decision was published, but I understand that other decisions or awards of damages have been made on a settlement basis in Northern Ireland as well. We are not creating a monster; the monster is in the room, and schools have to protect themselves and those within the school community. We want to protect not only the schools and boards of governors but also the pupils who are either alleged to be bullying or are the bullied children.

In that particular case, the problem was that the statutory duties that are already in existence — the duty under the Education and Libraries (Northern Ireland) Order 2003 to safeguard and protect the child and the duty to have a policy and to consult on and review it — were not met by the school. Because the school did not take proactive steps and had not properly recorded things either, it could not establish that it had taken adequate and timely steps to eradicate bullying. Because the bullying

continued for a period of time and was not stopped, the child — he was an adult by the time the case was finalised — was awarded damages.

It is all there; the writing is on the wall. It is not that we are creating a monster. What we are trying to do is to put in place the best protections for everybody concerned. The guidance from the Department is going to be absolutely key in terms of what schools will be required to do. When it comes to written policies, although boards of governors have the overarching responsibility, designated teachers and principals in schools will have very clear responsibilities, which should be clear within the school's policy, for the steps and measures to be taken, for the way in which the interventions are to be implemented and for reviewing the measures that are taken. If it is not effective, then the policy is not working. You have to review and adapt what you do to ensure that things stop. I understand that it is very onerous for teachers, but they are protecting themselves, and that is the bottom line as far as I see it.

Mr Craig: It is, Kathryn, and I do not disagree with that. I noticed that you and our other experts also talked about including the bullying policy around the teaching staff themselves. How practical do you believe that to be? More importantly, however — this is what is in the back of my mind around this — I can think of no incidents of bullying by teaching staff that do not fall into the disciplinary procedures that exist in schools for the staff themselves. A disciplinary action is automatically triggered in the school anyway, if there is an allegation against a staff member. Why do we need to include the staff in this Bill?

Ms Hogan: It is about messaging. It is fair to say that there are two distinct schools of thought on that point. It is about messaging to the school, to the pupils and to the adults. There are statutory provisions that require children to have respect for adults in school and to promote respect for the adults in school and for each other, but there is not the same messaging going in the other direction, which is that adults should respect young people and their difference, for example. Those incidences may also be covered by discrimination protections; there is an argument that there is another avenue of redress there. I am aware of a case where a young person got a declaration of discrimination against a teacher who had treated him unfavourably on the grounds of his disability, so there is that other avenue as well. Really, what we are trying to do with this Bill is to prevent bullying and further the promotion of respect for everyone in the school community. The incidences of adults bullying pupils are probably going to be a lot lower, I assume, than in the other direction, so I do not see it as being a huge issue, but it is one that we would like to see being dealt with in the Bill.

Mr Lunn: All the things that I want to ask you about are around clause 1. Earlier in the meeting today, the Department accused us of coming up with something that was syntactically incorrect, but they have offered to replace it with something that is syntactically incomprehensible. *[Laughter.]* That is for Hansard.

As best I can make out from the notes, the suggested changes that you have made indicate that there is a lack of clarity around repeated use. The previous presenters, I think, suggested adding after "'bullying' includes" in the first line in the Bill "but is not limited to". Do you think that would —

Ms Hogan: I think we might have said that just now.

Mr Lunn: Was that you? Sorry, I am suffering from overdosing.

The Chairperson (Mr Weir): I know, Trevor, it has been a long meeting but —

Mr Lunn: That is OK.

Ms Hogan: It is to allow schools discretion. We have to credit schools that they can use their discretion and use objective assessment when investigating a bullying incident. It is to make it reasonably broad, to allow schools to record if they decide that it may be an incident of bullying.

Mr Lunn: OK. You suggested that rather than "intention" in clause 1(1)(d) we should have "purpose or effect". I am sure that the Department will come back and say that there is nothing wrong with "intention", but perhaps you could add "effect". "Intention" or "effect" has the same meaning as "purpose".

Ms Hogan: The words "intention or effect" would allow for a broader range of severity, in a sense. When a pupil intentionally sets out to hurt another physically, for example, that is quite a serious intent.

Mr Lunn: I am just thinking of the comparison between "purpose" and "intention". It is the same thing.

Ms Hogan: "Purpose" and "intention" are probably very similar. I would agree with that — but "effect" would broaden it.

Mr Lunn: You also suggested that in clause 1(1)(d):

"with the intention of causing physical or emotional harm"

is not wide enough, and you gave us quite a list, including "distress", "alarm", "hurt", "fear" and a couple of other things.

Ms Hogan: One could equally say, "causing adverse" —

Mr Lunn: Sorry. Do you intend to leave in "physical or emotional harm" including —

Ms Hogan: Yes, those should definitely be left in.

Mr Lunn: I think it was you who mentioned the Protection from Harassment (Northern Ireland) Order 1997. I am not familiar with that. Is that relating to schools or to wider society?

Ms Hogan: It is general legislation that can apply anywhere. It has not been widely used here, other than in maybe employment-type cases. Notably, in the Collins case the judge allowed counsel to refer to industrial relations cases, but there has not been a development of case law in relation to schools and harassment. That law came in ostensibly to protect people from stalking, which I suppose is relevant in terms of cyberbullying as well, when a person cannot get any rest from harassment.

Mr Lunn: You were not the first today to discuss the question of retention of records and data. We had a discussion, Chair, at a previous meeting — it might have been before your time — around retention of data, because the Department was looking for permission to adjust some of the time periods. Some of them went to 60 or 100 years, which seems ridiculous.

Ms Hogan: That is fairly lengthy.

Mr Lunn: Do you not think there might be something already in the regulations that would cover the retention of that kind of record?

Ms Hogan: It might be useful to give guidance to schools on how long they need to retain records, especially for children, because when children reach the age of majority at 18 their time limitation may then start to run. That lengthens the period for which you might want to keep records.

My understanding from reading information on England and Wales, where they also have this Order on harassment, is that the limitation period for that is six years. If you were looking at that period, you would be taking from the age of 18 plus six years, so you would need a reasonably lengthy period to keep the records. I would suggest that 10 years might be satisfactory. However, it is important for schools to be able to point to those records if someone comes back later in life and decides to take an action against them, whether for bullying or negligence or under some other heading.

Mr Lunn: What I would call limitation of offences legislation allows for age 18 plus, let us say, five years. Does that limit the ability of a child to take an action against a school belatedly, if you like, once that five-year period is over?

Ms Hogan: There are statutory limitations in relation to all the different types of claims that one can make, and those are set down in law. You do not have an indefinite time period within which you can decide to take a claim. There are limits, although they vary according to the type of claim.

Mr Rogers: I agree that the pupil is the victim and the bullying issue has to be addressed, no matter where the perpetrator comes from, whether it is a member of staff or other pupils. Is there not a danger of opening the whole thing up to staff-versus-staff bullying or principal-versus-staff bullying if you include words like "within the school community"?

Ms Hogan: It will be a matter of discussing that, teasing that out and deciding on any limits that one wants to place on that. If one was to include adults, you might wish to limit that in some respect. There is already protection for adults if they are abused in the workplace by a manager, for example. There are already actions that can be taken there. For example, a constructive dismissal case can be taken to the employment tribunal, or harassment can be dealt with under harassment legislation. It opens a difficult set of questions that has maybe not been discussed or teased out. We just feel that, if you look at it as a children's rights issue, the child has the right to be free from harassment and bullying from any source, and we want to prevent bullying in schools, whatever the source is.

Mr Rogers: So that will have to be addressed in the guidance.

Ms Hogan: There will have to be further thinking around it, whether that is in the legislation or whether something is included in the guidance to that effect.

Mrs Stevenson: Our intention was not to open it out as broadly as that, Seán. It was more to open it out for the pupil to potentially be a victim of some form of unacceptable behaviour from a member of staff as well as from a child, not staff-on-staff issues. That is different.

Mr Rogers: That is all I had to ask.

The Chairperson (Mr Weir): Thank you, Rachel and Kathryn. It is part of a process, but your evidence today has been very valuable.

Mrs Stevenson: Can I take the opportunity to raise one other small matter? You will see that the Bill is only drafted to apply to registered pupils in grant-aided schools. When we were involved in discussions with the Department, we raised some concerns about pupils who might be in education other than at school projects. Even whilst some of those pupils might remain registered on a school roll, obviously that could not be managed remotely by a board of governors if a child was in another project. We have raised concerns with the Department about the issue of parity for children who are outside the formal mainstream educational settings, and the Department has indicated that it is prepared to give an assurance to the Committee that that will be addressed separately, which may include undertaking a review of the education other than at school (EOTAS) guidance. We suggest and hope that the Committee will interrogate that further and seek such an assurance from the Department.

The Chairperson (Mr Weir): That has been flagged up. Once the evidence is completed, the Department will come back to us when we are looking at the details. That is one of the issues we can press it on.

Mrs Stevenson: I just wanted to take the opportunity to raise it, because it is not covered in the Bill.

The Chairperson (Mr Weir): OK, folks. Thank you.



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Addressing Bullying in Schools Bill:
National Association of Head Teachers
and Tor Bank School

13 January 2016

NORTHERN IRELAND ASSEMBLY

Committee for Education

Addressing Bullying in Schools Bill:
National Association of Head Teachers and Tor Bank School

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Members present for all or part of the proceedings:

Mr Peter Weir (Chairperson)
Mrs Sandra Overend (Deputy Chairperson)
Mr Jonathan Craig
Mr Chris Hazzard
Mr Danny Kennedy
Mr Trevor Lunn
Mr Robin Newton
Mr Seán Rogers

Witnesses:

Mr Harry Greer	National Association of Head Teachers
Ms Helena Macormac	National Association of Head Teachers
Mr Colm Davis	Tor Bank School

The Chairperson (Mr Weir): I welcome Colm Davis, who is the principal of Tor Bank School, Harry Greer, who is the Northern Ireland president of the National Association of Head Teachers (NAHT) and the principal of Harmony Hill Primary School, and Helena Macormac, who is the policy director for NAHT. We have handouts from the NAHT. I do not know who will lead off, but you can make a short presentation and then we will open it up to questions.

Ms Helena Macormac (National Association of Head Teachers): I will start with our presentation, if that is OK. NAHT welcomes the opportunity to respond to this call for evidence, and we are delighted that the Committee has given us the opportunity to present oral evidence on what we feel is a vital issue. We welcome the Bill but have concerns about the implications of its outworking, and we have provided a summary of that for you.

Very briefly, for those of you who might not be familiar with our work, NAHT is an independent trade union and professional association with 29,000 members in England, Wales and Northern Ireland. Members include principals, vice-principals and bursars, and, from September 2014, we have represented middle leaders as well. We have membership within the nursery, primary, post-primary and special sectors throughout Northern Ireland, and we believe that that places us in an excellent position to provide a broad, informed practitioner position on the highly important matter at hand. This is a joint presentation with Tor Bank School. We have come together to highlight the implications of the draft legislation for vulnerable learners particularly.

We start by saying that pupil well-being is of the utmost concern to us. We believe that schools must have the autonomy, resources and support to tailor the most effective preventative approach to the

insidious and highly damaging issue of bullying. In addition, schools must be given guidance and clarity in respect of an efficient and swift process approach when incidents occur. It is with that in mind that we would like to present our evidence. From the outset, it must be acknowledged that much good practice exists within schools in Northern Ireland and that the development and implementation of such initiatives have been driven by school leaders. Many schools have stand-alone anti-bullying policies in addition to their discipline policies. While such initiatives should be highly commended, it is recognised that bullying continues to be a persistent problem within schools for a variety of complex reasons.

You will all have received a copy of our detailed response, along with the detailed response that has been provided by Tor Bank School. In our response, we address the Bill on a clause-by-clause basis. Given the limited time of the presentation, we wish to focus on eight key issues. A brief overview has been provided in the handout.

First, we are concerned at the potential unintended consequences of placing the definition of bullying on a statutory footing, given the complexity of the issue and the different challenges that are faced by schools throughout Northern Ireland. Currently, there is no common definition of bullying; however, it is recognised that schools have legally defined responsibilities. Greater clarity would be welcomed in respect of those responsibilities. Different schools have different circumstances. While the development of a definition is welcome, we are concerned that uniformly holding each school to account under the same legal definition at hand will not reflect the different challenges that are faced by schools throughout Northern Ireland. In particular, we are concerned that applying a mainstream bullying definition to a special school may have unintended detrimental consequences.

Many special-school leaders and staff tailor specialist bullying policies to reflect the highly complex needs of the children within their often greatly diverse educational setting. A statutory definition incorporating intent would need to be carefully applied in the context of children with behavioural and learning difficulties. For example, children with severe learning difficulties often do not intentionally hit out in an attempt to bully another person. A staff member with a high degree of experience and expertise who knows the child best is in the best position to be able to distinguish what is bullying, rather than uniformly applying a statutory definition. In addition, putting the definition on a statutory footing may have unintended consequences for vulnerable learners in any school setting that may have above-average rates of behavioural issues or disadvantage. Such schools may have excellent policies and procedures and staff initiatives in place, yet barriers and factors beyond the control of the school may mean that the school will struggle to fulfil legislative requirements. That may have implications with regard to accountability, thus damaging staff morale and inhibiting tailored initiatives.

With that in mind, I turn to our second point. We are concerned that the proposal does not adequately acknowledge that addressing the needs of children and young people goes beyond the limit of individual schools. We believe that all stakeholders who are involved with pupil well-being, including governors, parents and staff, must work collaboratively to address bullying. Therefore, tackling bullying comprehensively is beyond the limited scope of the proposed legislation at hand. It must be recognised that a definition alone cannot prevent bullying. Such a new policy or legislative change must be supported by guidance and adequate resourcing as part of a collaborative interdepartmental strategy. As is implied, it is the intention of the Assembly to develop a statutory definition. Therefore, we have provided comment in our response as to how that proposed definition could be strengthened. We do, however, recommend that further consultation and piloting of the definition in schools is undertaken before it is brought into legislation.

Thirdly, we are concerned that the proposed definition does not incorporate international best practice by giving recognition to the key element of power imbalance. We wish to know the rationale for that highly concerning omission. Schools and school leaders possess a great deal of experience and expertise with regard to pupil relations and are capable of distinguishing between bullying, where there is an imbalance of power, and deliberate repeated aggressive behaviour between equals — for example, playground fights. Those who are closest to the children are often best placed to identify situations. To omit such a crucial aspect of the definition would have detrimental consequences, and would undoubtedly lead to schools having to record many more non-bullying incidents than necessary, thus inflating statistics. Guidance on the element of power imbalance should give explicit mention to the fact that the primary motivation for bullying behaviour can often be prejudice or discrimination based on actual or perceived differences with respect to, but not limited to, the various groups in section 75. We are also cautious that the Bill identifies repetition as a key criterion for bullying. Whilst repetition can be a crucial element in many instances, it must be acknowledged that the actions of the perpetrator are central, whether they act once or repeatedly.

Fourthly, whilst the Bill does address issues of bullying by electronic communication, this legislation does not adequately address all the ramifications of such a multi-faceted and legally complex area. We recommend that DENI develop a separate policy and accompanying consultation process with regards to tackling cyberbullying. In the experience of our members, parents frequently approach schools to request that they deal with incidents of cyberbullying that have happened outside of school hours. Schools and school leaders cannot be responsible for what happens outside of the school day. However, school leaders recognise that bullying can be complex and what may start outside school will have consequences within the school. The Department must thoroughly inform parents of the remit of school responsibility. When incidents occur that are beyond the remit of the school, parents should be provided with guidance and a means of support, so as to ensure that situations are dealt with effectively.

Fifthly, the Bill removes the principal's duty to determine measures in respect of bullying as per the Education (Northern Ireland) Order 1996, and confers the duty upon the board of governors. We are concerned at the impact of increased liability for voluntary boards of governors. The explanatory and financial memorandum states that this duty has been removed to prevent conflict. It is not clear what is meant by this statement. While central guidance to ensure consistency of approach would be helpful, the autonomy of school leaders to tackle the acute issues faced in their schools must be given. Boards of governors are voluntary, and cannot be on site to ensure that measures are taken in relation to every incident. We also wish to know to what extent they will be required to engage in consultation with the principals, pupils, and parents, prior to developing measures. What resources and assistance will be given to facilitate this, and why was consultation with staff omitted from this clause? Many larger schools have pastoral teams to oversee incidents, so staff should be involved in determining measures. While legislatively the responsibility will lie with governors, the practical responsibility will lie with school leaders. Greater responsibility on governors may overburden their capacity, leading to difficulties in recruiting new governors.

The Bill confers a duty to keep a record of incidents of bullying. We recognise the importance and value of recording complaints, but we have concerns regarding the appropriate implementation of this duty and the impact on workload and on limited resources. A key aspect of effective school leadership is the ability to handle difficult situations. Handling accusations of bullying from parents and pupils requires strong interpersonal skills. When every aspect of a conversation has to be recorded as a mandatory requirement with a high level of detail, interpersonal diplomacy may become limited. This will hinder the ability of education professionals to avert situations before they escalate. As the Assembly research paper highlights, effective recording of incidents is usually dealt with by policy and not by legislation, as a flexible approach, rather than rigorous bureaucratic monitoring, is required in order to be effective. We recommend that an efficient, effective mechanism, collating existing reporting approaches with robust guidelines and templates, is developed in partnership with school leaders. In addition, we are concerned at the potential developing of a misleading league table of bullying, which may occur as a consequence of the publication of statistics from a central record. The creation of such a record would be unacceptable, as it would not reflect the widely varying circumstances in every school.

Lastly, we are concerned with resource issues relating to the Bill. A cost analysis must be considered here. The current economic climate means that school budgets are already stretched to the limit. Without additional specific resources, schools cannot be expected to absorb the cost of implementing the Bill within existing funds.

That concludes our oral statement.

The Chairperson (Mr Weir): Thank you. A point, Helena, is that you could pause for breath at times. *[Laughter.]* You packed an awful lot into a very short time.

We will ask some questions. There are probably elements of your presentation — I am not precluding anything that anybody has said, but a number of those points are quite familiar to us now, in that others have made them, so we may at an earlier stage have explored some of the issues. If we do not touch on an issue, it is not because we are not interested in it but probably because we are going along very similar lines.

In terms of the definition, I appreciate you are making a general point across schools with regard to your concern about one size fits all, but obviously and very specifically, as is the case with Colm, you showed the dichotomy of the situation of applying essentially a mainstream definition of bullying to special schools, where indeed sometimes, special schools themselves would, in that regard, be quite variable in their nature. To clarify, if you are we going to have a definition, if you like, of bullying —

clearly, you feel that definition is not necessarily going to be appropriate to special schools — do you feel that the legislation should have a separate definition for special schools, or do you feel that special schools, for instance, should simply be excluded from the definition of bullying? Where do you stand on that?

Mr Harry Greer (National Association of Head Teachers): I will pick up on that, Mr Chairman, just to say that I do not necessarily think so. While we referred to the special needs sector — Colm is from Tor Bank, which is a special school — we feel that the same principles might apply to children with special needs in mainstream schools who are vulnerable and have limitations on their ability to do something. I think some of them could be caught up, because sometimes in a mainstream school a child with special needs and who has a statement of special needs, for example, can be more misunderstood in a way.

The Chairperson (Mr Weir): I understand that. I suspect, notwithstanding any decision that the Assembly will take, that we are likely to end up with a definition in whatever format, rather than no definition. From that point of view, would you seek, be it for statemented children or special needs children, somebody to be qualified? How do you believe, from a legislative point of view, that should be handled?

Mr Colm Davis (Tor Bank School): I will just take up Harry's point that they would be qualified legally. The secret may be giving enough flexibility in the guidance. It will be about having the protocols and having the guidance written by practitioners from all the different sectors, including that one, to affect how it is applied. As you said, Peter, there is such a wide variation even within the special sector. We have not done any recent research on bullying of children with special educational needs in mainstream or even in special schools. A lot has been done in England by different organisations — that is possibly to do with their own agendas on autism, for example — but not so much has been done here recently. However, you would probably find that, in the special schools sector, where we should bear in mind the staff influence on the whole classroom environment, the staff know the children inside out. They will know whether the bullying is intentional, whether they are obsessional and whether it is part of the autism or other condition. Those children are so well monitored, and the strategies are built in to their individual education programme for anger management, for example, or to break an obsession with another pupil or a particular thing. It is probably easier to monitor things, and recording is very meticulous. The worry, when some of these children are mainstreamed, is how that is managed, recorded and perceived in a mainstream teaching environment.

Mr Greer: I think it could be very difficult in the mainstream for the parents of a child who is being hurt or offended by a child who has some sort of special educational needs. It is hard for parents of the alleged victim to understand that. But at the same time, the child who has committed the act of bullying, offending or causing emotional hurt may not intend to do it. When we were in the Public Gallery, I was interested to hear a previous speaker say that they would like schools to have a degree of latitude and discretion when it comes to interpretation. I am not sure that is given in the Bill at the minute. A big concern of ours is the discretion that Colm is talking about, where a teacher knows their pupils. We accept that there have to be rigorously applied strategies to address the issue, but there also has to be, particularly for these pupils, some recognition of the teachers' and the school leader's understanding of the child's needs.

The Chairperson (Mr Weir): Yes, I suppose that this may come down to what is, first, in the legislation and, secondly, in the guidance. In talking about the intention of the legislation, one of the potential issues is whether, from a practical point of view, the test is seen as purely objective. I suspect that, in practical terms, it may be a bit more subjective, and maybe that would be no bad thing. That is more of a comment.

A number of members want to speak, but I want to touch briefly on two issues. Helena mentioned that there is, obviously, considerable concern over clause 2, which is on the duties of boards of governors. I suppose I am paraphrasing here a little bit, but, effectively, the duty has switched and flipped from being a duty on the head teacher to being purely on the board of governors. By the same token, it is clear that there is probably going to be some level of duty on the board of governors. Would you like to see clause 2 removed altogether, or do you feel that there should be considerable rebalancing of it so that principals have a greater input? Whatever is in the legislation, we all know that, from a practical point of view, a lot of the work will be undertaken by head teachers; that is where it is going to be. Is it realistic to simply say that there is not any duty at all on boards of governors, or is it a question of rebalancing it?

Mr Greer: We are entirely happy with the board of governors having a governance view of this, but the Bill now confers the duty on the board of governors to determine measures. We contest that it is very difficult for a board of governors to determine and scrutinise individual measures without the principal. As we said in Helena's presentation, there is a pastoral team and a senior team in the school, so there are more people who need to be involved in this sort of work than just the principal or the board of governors. It may be that the guidance will explain it better or be more helpful, but as it stands at the minute —

The Chairperson (Mr Weir): Yes; there should, at the very least, be a level of adjustment.

Mr Greer: At the minute, it looks as though it removes the duty from principals. We accept the duty of the board of governors in governance, but, practically, we do not think that is a sensible move.

The Chairperson (Mr Weir): I want to raise one final point with you. You covered quite a few points in your presentation. This has been expressed by a number of members, and it was raised at Second Stage as well. It may be less about the legislation and more about the practical outworkings of this. Time and time again, concern has been raised about the need to collect data and to ensure that that is there. You used the phrase, "league table of bullying", and others mentioned that. From a practical or legislative point of view, do you have any thoughts on how we prevent the collection of data emerging as a danger? How do we crack that problem?

Mr Greer: I think it was mentioned before that, if every single incident of somebody being offended or words being exchanged can be defined as bullying, there would be an explosion in record-keeping. I think that the guidance could work very well here. There will be examples of excellent practice in schools in Northern Ireland. That is very sensible practice, and it provides sufficient record-keeping to protect the child, communicate with parents, monitor the situation and eradicate the issue. So, I suggest that we look at existing good practice and be sensible about it.

The Chairperson (Mr Weir): OK. I think that at least six members are looking in, so I ask them to be brief in their questions and not take their lead from the Chair. Jonathan, you are first.

Mr Craig: Thanks, Chair. I will ask you two obvious questions. I think you may —

Mr Newton: Is he getting to ask two questions, Chair?

The Chairperson (Mr Weir): Make it one comment.

Mr Craig: It will be short. You may have heard them anyway.

First, what is your opinion on the remit being extended to staff? Maybe you have heard it. I cannot understand why you would do that, because it falls under disciplinary codes anyway. Secondly, I note that you raised concerns about resources and the ability of a school to carry out extensive record-keeping. We all know that there is a massive difference between resources in the primary sector and the secondary sector, which handle these things slightly differently because of the resources. What are your views on that?

Mr Greer: You are speaking to the converted about resources for primary schools, Jonathan. That is maybe another debate. Where there is an increase or explosion in paperwork and record-keeping, it will create a difficulty for primary schools. Schools do not have the resources to provide teachers, even senior teachers and so on, with release time. Record-keeping could be managed sensibly through good guidance.

On your first question about staff, I do not think we feel that the Bill needs to include that. I think we feel that there are sufficient employment law rights and so on conferred on all the parties in a school to deal with that, and we feel it would come up naturally under a disciplinary procedure.

Mrs Overend: I will not repeat the questions that I thought of; they have been answered. Thank you. It has been interesting to hear your views. I want to ask about children with special educational needs and special schools and the need for maybe an additional clause to cater for them.

Mr Davis: I do not know what that additional clause would look like, to be honest with you.

Mrs Overend: That is what I was going to ask about.

Mr Davis: It is important that they are acknowledged, but I do not know what such a clause would look like. That is the problem you have with trying to impose any definitions on special schools or kids who sometimes sit outside the remit of normal definitions. To me, it would have to have enough flexibility, but how we would get that in I do not know. Do you have any ideas on that, Harry?

Mr Greer: It maybe goes slightly beyond children who have a statement of special needs. For example, you could have a child who is going through very distressing home circumstances and may, for a limited period, have anger issues, fear issues or anxiety issues caused by something outside school. How that child interacts with another child can be changed by that. Some sort of allowance clause could maybe be implemented.

I read the Minister's speech when he introduced the Bill, and we get and agree totally with the need for consistency. But I am not sure that a clause relating only to children with statements of special needs would give sufficient flexibility in circumstances where a child has gone through a difficult, distressing and hurtful experience outside school that, for a limited period, has changed their behaviour and how they interact with other pupils. Allowing for all that is difficult. Would it weaken the Bill if the definition included the words "taking account of"?

The Chairperson (Mr Weir): All this food for thought, particularly for when we deal with departmental officials.

Mrs Overend: Maybe the guidance that comes afterwards would be able to describe the flexibility that would take situations such as the one you described into consideration.

Mr Greer: As I think Colm would agree, we are increasingly dealing in schools with societal problems and family difficulties and so on. In primary schools and special schools, those difficulties have an impact on children whose behaviour changes. So, children who normally would never have any negative interactions with others can do so for a limited period, because they are upset due to what they are living through. I feel that the current definition being on a statutory footing does not allow enough discretion.

The Chairperson (Mr Weir): We are in a position to look at potential amendments to put to DE, but it may also be that, if we are looking at the proper flexibility being in the statutory guidance, we would want to get the Department very publicly tied to that position. That is one of the advantages of getting assurances that we could use in the Chamber. We need to have a very clear understanding of that.

Mr Greer: In Helena's presentation, we talked about the school leader needing very strong interpersonal skills to deal with situations like that. Where you have a situation where a child's behaviour has temporarily changed, although it may be long-lasting, because of a crisis situation outside school and another parent comes in to raise concern about that child's behaviour towards their child, often the strong interpersonal, pastoral and people skills of the school leader can diffuse and bring a bit of understanding to the situation through discussions with the parent. If you have a definition, it is done and dusted, and it does not take account of a moment in time that can be worked through positively with families when a situation occurs. I think that is our fear with that.

Mr Kennedy: Thank you very much indeed for your presentation. My sense is that you are inclined to think that better regulation and guidance would achieve more than legislation. Is that a fair assessment in the profession generally?

Mr Greer: Yes.

Mr Kennedy: Do you want to expand on that? You are clearly indicating the potential problems that the legislation, as it stands, would create. That gives me a sense that there is a certain nervousness on your behalf about what principals and other teachers will have to face as a consequence of this going through. Are you indicating that it would be far better to provide stronger guidance or regulation than legislation?

Mr Davis: Yes, certainly, Danny, that would be the key to the success of this. We are all in agreement that something like that is certainly needed across all schools to get more harmony and consistency. It is about who draws the guidance up and what stakeholders are involved in that to ensure that we

are all in agreement that it is workable, does not add to the existing workload of schools or governors [*Inaudible.*]— that is a key issue — and is actually in the best interests of all children. That includes those who, as Harry pointed out, have had differences in their lives over short periods of time, those with special needs and those with and without statements. Getting the guidance right will be the key to success.

Mr Greer: We would probably also accept the Minister's concern, and presumably the Committee's, that, as we stand, there may be inconsistent application of anti-bullying policies and approaches in schools. However, there are many examples of fantastic, outstanding practice, so when the guidance is being developed, I think it would be really helpful if we called on those. Simply, if some schools are applying very rigorous, successful policies and some are not, that is not right for the children. But there is enough good practice out there, Danny, for the guidance to be flexible enough, to exemplify good practice and, to be fair, to tie schools to that level of good practice. I think that is better done through good guidance, as long as the good guidance takes account of the best practice that is happening and is aware of where best practice is not happening. There is a need to bring that up to scratch; we accept that.

Mr Lunn: Thanks for your presentation. I was interested in what you both said about the special schools and the need for the legislation, because, instinctively, I would have thought that there would be a case for excluding special needs schools as designated from the legislation. That would be simple. Harry, you said that it could impact on mainstream schools with special needs and special units, but —

Mr Greer: Actually, that is maybe mainstream schools that do not have special units. There are a lot of children now with statements of special needs who are in mainstream schools but not in units.

Mr Lunn: Right, OK. I still tend to think that the application of the legislation, no matter what comes out at the end of our process, does not really relate to the pupils that you probably have, Colm, or that other special schools have. The way you would deal with those situations would not be so formal, given the fact that, I would say, you know your pupils a lot better than those in mainstream schools with huge populations would know their pupils. You know them inside out, and you can spot these things. I continue to think that perhaps exclusion from the legislation of that type of school would be a good start. Also, in schools like yours, there is no possible element of bullying by what could be called mainstream pupils on special needs pupils, which I would think would be reasonably prevalent. Maybe you could advise me, Harry. I see the need for the legislation to be applied to all mainstream schools, whether they have special units, statemented pupils or whatever. That is fine, but I am not sure about Tor Bank or Ceara School.

Mr Davis: In some ways it is a difficult one. We deal with bullying, like we deal with most other incidents, by trying to support the holistic needs of the child. We put in lots of support that perhaps the mainstream cannot provide. You have art therapy and music therapy, and we buy in an additional counselling service. We collect copious data on changes in behaviour or obsession with other pupils etc, and we analyse that. It is time-consuming, but, in our case, we have small numbers in the class. We have a good, strong team of staff with a high degree of expertise who know the individual children. The worry is the situation in the more mainstream setting, where class sizes are bigger and the teacher will struggle to access those resources. A lot of stuff comes through the voluntary sector and through our connection with additional stakeholders, as well as the clinical psychologists who come in and the various psychology departments in the Departments of Health and Education. We still argue that we do not have enough, but we can call on those partnerships that have built up. They give us a more informed insight into that child's learning condition and whether it is driven by the autism or by genuine bullying, if that is the case. Very rarely is it driven —

Mr Lunn: That is exactly the point I make. Bullying is the repeated use of verbal, written or electronic communication, physical acts, stress, alarm, hurt, fear and the intention of causing physical or emotional harm. I would have thought that would rarely apply to what might be perceived as a bullying situation in your school.

Mr Davis: Very rarely. What happens in our case, Trevor, is that we get young people coming in for alternative education provision (AEP) at 16 with a very chequered background. That being the case, it will apply more to young people who have come in through the system and have a history of this throughout their schooling career. They may have been excluded or suspended from previous schools that may lack the capacity to deal with such a young person. In those cases, that is where our main issues come in. They have not come through our system having been there since they were

three years of age; they are coming in sideways. The inclusion agenda has created that. We get a lot of children coming in sideways to special education who have been in mainstream education. Maybe it is time for a move to a more specialised resource if the parental wish was to have them in mainstream at the beginning but it has not worked out.

There is lots of pressure. Very rarely do we ever have to apply that. I have said before that we are committed to shared education. We are at level 2 of Rights Respecting Schools and are ambassadors for that. So, the UNICEF principles of the Rights Respecting Schools are driven throughout the school and throughout all the programmes, including relationship and sexuality education (RSE) and personal development and mutual understanding (PDMU). It is easier, to a degree, because we have individual education programmes designed specifically for that child. That includes the whole pastoral side and the welfare needs of that child in the context of a supportive environment. I am not saying that mainstream schools do not have that, but it is harder for them to recreate that model.

Mr Lunn: Fair enough. Chair, you and I visited Ceara School. To apply this sort of legislation to that school would seem of no consequence.

The Chairperson (Mr Weir): I understand that.

Mr Newton: I thank the witnesses for coming up. I will be very brief. Mr Greer, I noticed that you were in the Public Gallery for most if not all of the previous presentations. Helena was very strong in her presentation on the emphasis of the power of imbalance, as you described it, or the imbalance of power, as others described it. I had some concerns about how that might play out. Will you make a few comments on that? I would be very much of the thinking that, whatever the school, all children across the board, whatever their needs, must be treated equally, but how we get to that is where the governance lies.

I know that you, Chair, will join me in saying that we were concerned at point 8, which relates to the cost of this. That is particularly relevant to the special needs schools that do not manage their own budgets and are not in command of them. We had asked the Minister some questions about that. There will obviously be a cost to this, so, as a special needs school, how do you address not being in charge of your budget?

Mr Davis: Thank you for taking that on board. We are struggling. A lot of the additionality we have in the school is due to the voluntary sector and our links with it, putting pressure on that. We have no additional funding whatsoever to support any measures beyond what we already have. In fact, we struggled to bring in music therapy, for example. We have counselling in the secondary end of the school paid for by the Department of Education but not in the primary end. In the primary end of the school, we have employed counsellors, but we pay for that ourselves out of the limited budget that we have. That will put us in the red. We have identified a need for that in the primary school, and it is working very well.

I still argue that, if we had more control over the funding in some shape or form, it would not cost us more money. We have said before that it is a smarter way of using the existing money. We seem to have an old framework imposed upon us of classroom assistants and teachers, and we do not have enough flexibility to manage other additional support services or to bring them in using the existing money. For example, instead of a classroom assistant, we might have a behavioural therapist, a music therapist and an art therapist all for the price of a classroom assistant. We are asking for that not only for us as a special school but for a mainstream school that applies for additional support for children from the EA and gets a part-time classroom assistant. Maybe the part-time classroom assistant is not what is needed for that child and that a more bespoke therapeutic model will help to support their needs. The classroom assistant might be what they need; Harry could probably answer that. To me, we have been starved over the years of the opportunity to look at a new model to support underachievement and special education.

Thankfully, the Minister and other people are aware that we need to look at this. To me, the existing model has not been very successful. Certainly, we have lots of outstanding schools. A lot of the work that is going on in special schools is due to the dedication and enthusiasm of the staff working in them. They bring in new initiatives and innovation, and they think outside the box. They really get into the world of that child and make a difference for that child. We are grateful for the high-quality staff whom we have who can do that, but we recognise that, with having our own budget or elements of that budget to manage, we could build up a better support infrastructure and more of a nurturing environment than we have.

Mr Rogers: Most things have been addressed. We spend a lot of time across this Table or across the Chamber heckling about amendments to legislation and so on. It has been refreshing to have you here today, because it brings in the key thing, which is that it has to be about the child. Children are all different. The more I think of this, the more it seems that the success of really addressing bullying in schools will put added pressure on our school leadership. Good schools have good leaders, so there is more coming to you as leaders. I just wanted to make that comment.

The Chairperson (Mr Weir): Thanks. It has been a very useful session to help us to focus our minds on some of the issues. Thank you for your presentation.

Mr Greer: Thank you very much.



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Assembly

Committee for Education

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RaISE Briefing

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Ms Maeve McLaughlin
Mr Robin Newton
Mr Seán Rogers

Witnesses:

Miss Caroline Perry Northern Ireland Assembly Research and Information Service

The Chairperson (Mr Weir): I welcome Caroline Perry from the Research and Information Service. If you present your findings, we will then open it up to members for questions.

Miss Caroline Perry (Northern Ireland Assembly Research and Information Service): Thank you, Chair. In this briefing, I will present some of the key findings from the series of focus groups that the Assembly commissioned us to do on the Bill. First of all, I will give a quick overview of our approach. We conducted a total of 16 focus groups with post-primary pupils in November and December of last year. We aimed for a good mix of school management types and covered them all, including a special school, an Irish-medium school and education-other-than-at-school students. I would like to take this opportunity, if I may, to thank the schools and pupils for their valuable contributions.

I turn now to the key findings. It is important to note that the participants in the focus groups really emphasised the harmful and detrimental effects of bullying. They discussed the impact that it can have on students' mental health in detail and highlighted the fact that it can even lead to suicide. It really was an important issue for them. Another key theme across all the focus groups was concern about the widespread nature of cyberbullying. Participants said that it could actually be more damaging, because there is the potential for a large number of witnesses. It is also permanent: it can never really be deleted or removed.

I will look now at people's views on the definition set out in the Bill. The majority of participants did not agree that the definition should stipulate that the perpetrator intended to cause harm. Instead, they thought that the impact on the victim and their feelings should determine whether the incident was bullying. Another key disagreement was that almost all the pupils thought that the definition of bullying should extend to interactions between teachers and pupils, not just to those between pupils. They talked about the inherent power imbalance between teachers and pupils; pupils feel that they would not be believed, if they reported being bullied by a teacher. There were mixed views on whether acts

need to be repeated; but there was agreement that the omission of an act is an important criterion and should be there.

I will now consider the duties of boards of governors detailed in the Bill. In line with the findings of the Department's survey, the majority of pupils agreed that schools should be responsible for addressing bullying during school hours or on school property. Views on whether responsibility should extend beyond that were more mixed, although there was a slight majority in favour. Most participants thought that the school should be responsible for cyberbullying, particularly if teachers became aware of it. Some said that an incident might begin in school, but then develop on social media overnight. Then, when they went to the teacher, the teacher said that it was not their responsibility. Quite a number of participants also thought that the school's responsibility should extend to when pupils are wearing school uniform. They talked about the idea that they are representing the school when in uniform. They felt that the school should also be representing them. They talked about the duty of care that the school had towards them. They also said that incidents of bullying are likely to spill over into school hours and affect them throughout the school day, when they are in class with the perpetrator and that sort of thing.

I turn now to the Bill's provisions for recording incidents. Pupils supported the general principle of recording incidents of bullying, agreeing that it could help schools and policymakers to address the problem. However, there was consensus that teachers would not be aware of all incidents of bullying and that statistics based on the records were therefore unlikely to represent a true reflection of what is going on in schools. Students highlighted a number of factors behind the under-recording, including feelings of shame and embarrassment on the part of the victim; a perception that teachers do not always take bullying seriously; and the fear that reporting could intensify bullying, particularly if a record had been made as a result of reporting the incident. There was also the perception that many teachers are less aware of electronic bullying and may not understand how to deal with it. They might say, "Just go and delete that", but they do not understand that that will not actually deal with the problem. Participants also raised a number of concerns about the recording of data, including the implications for their privacy. They were worried that teachers might treat them differently if they were involved in an incident, either as the perpetrator or as the victim, and whether it could have an impact on their future education or employment if information was released. They also worried about whether schools would follow due process when recording incidents: there might be conflicting accounts, and a teacher's bias could come into the record. They had some concerns there. In light of these concerns, the majority of participants raised the issue of consent. They suggested that the victim of bullying should have a say in whether a record is kept about the incident. They felt that was particularly important where it related to something quite personal or if they feared retribution as a result of reporting the incident.

I turn now to the Bill's reference to motivation. Participants discussed a wide range of motivations for bullying. The most commonly noted motivations related to factors outside those listed in the Bill. Pupils thought that internal motives drive a lot of bullying, such as jealousy, problems at home and as an outlet for anger. There were also social reasons or the desire to fit in with friends. Another factor was appearance, and a smaller number talked about the section 75 categories of race and religion and so on. Pupils said that it would be very difficult for teachers to determine the motivation behind an incident: it is not black and white; the victim may not understand why they were bullied; and the perpetrator may not be honest about their motivation. They also thought that it could be quite difficult for schools to assign blame in cyberbullying, because the original posting could be redistributed by other people. How would schools decide who was responsible for that?

To summarise, our research found that young people support some aspects of the Bill, but there were concerns about a number of key areas, particularly the focus on the perpetrator's intent rather than the impact on the victim; the exclusion of staff from the definition; the scope of policies in relation to cyberbullying; the under-reporting of bullying incidents; whether schools would follow due process; and finally the potential implications for privacy. Most pupils believed, as I mentioned, that they should be able to give their consent in this regard.

The Chairperson (Mr Weir): That is very useful. It is good to get those at the cutting edge of this. I will open up for questions.

Mr Lunn: Since we started this, the question of interactions between teachers and pupils has come to the fore. I see the figures here, but did you get the impression that this is a serious concern, particularly when the pupils were responding? I cannot help thinking that sometimes it might be difficult to distinguish between a teacher bullying a child and a teacher trying to get the best out of a

child by imposing pressure on them in a way that they are perfectly entitled to do to push them. Is there any discussion about that?

Miss Perry: Yes, some pupils thought that it could be difficult to see where the line was. It might just be a teacher's way or their method of pushing a student. However, a lot of pupils said that they have seen pupils singled out for humiliation and degradation by a teacher. Almost all the participants in our focus groups thought that the definition should include teachers. They felt quite strongly about that. It can also work the other way, when pupils bully teachers. In the Department's pupil survey, 56% of pupils thought that it should include teachers and 24% disagreed. Twenty per cent did not know or were neutral. In the focus groups, definitely, there was quite a strong impression of that.

The Chairperson (Mr Weir): I have a couple of people to bring in here. This is one of the issues that we are grappling with. Do you have any additional information? You said that there was a mixed response on whether a single incident could constitute bullying or whether it had to be repeated. I suppose from a definitional point of view that is one of the areas that has been raised, and different opinions have been given to us. Do you have any more information?

Miss Perry: In the focus groups, views were quite mixed. Some people were saying that there could just be a one-off or an argument between pupils. Others were saying, "Yes, it could be a one-off, but it could be extremely damaging. It could stay with you". Cyberbullying is a very permanent thing, and a lot of people see it, so the harm is there. It was quite mixed. Looking at other jurisdictions, in the Republic of Ireland, for example, repetition is set as a criterion, but an exception is made where a single offensive or hurtful act takes place on social media, which might be viewed or repeated by others. There is a difference there. All the American states have legislation on this now, but the majority of them do not include repetition. There are different approaches, which I drew attention to in my Bill paper. The academic literature requires repetition as a criterion, but the practice varies.

The Chairperson (Mr Weir): The variation in practice may be a result of looking at what is there on social media. You said that the academic focus is on repetition. Is the trend from a legislative point of view moving towards the inclusion of single acts? Is there a shift away from repetition?

Miss Perry: I am just looking at a table in my Bill paper. In England, it is not statutory, but they include repetition. Finland includes repetition, as does the Republic of Ireland, but, as I mentioned, a single act on social media is an exception to that. Scotland does not include repetition, and it exists in fewer than half of the American states as well. The Northern Ireland Anti-Bullying Forum supports the inclusion of repetition, as does the World Health Organization. It is quite difficult to say; there is quite a variation.

Mr Lunn: I want to raise the issue of cyberbullying. It is a big thing in this report, and it is clearly a bigger thing than we might have realised it was when we started this. The Bill as it stands talks about the repeated use of electronic communications, and that is as far as it goes in terms of cyberbullying. The Bill also makes it quite clear that it applies only to acts that happen during school hours. Cyberbullying does not happen on school premises, and nor does it have to happen in school hours to have a serious effect on school activity. If somebody puts out something derogatory about a fellow pupil in their own time in the evening that goes viral, everybody in the school knows about it and it is every bit as much a bullying act, surely, as if one pupil had confronted another pupil verbally in the school. Have you any thoughts about that?

Miss Perry: It came out very strongly in the research that I did for the Bill paper and in what the pupils were saying in the focus groups. Cyberbullying is very much an evolving thing; it is not just a one-off. It might start in school with something and then develop on social media, or it might begin on social media and develop in school. Even if it is not developing in school, the participants in the focus groups were saying that they are in the class with the perpetrator all day, and that is very difficult for them to deal with. It is very much an evolving issue. There was some research by Stranmillis University College and Trinity College, Dublin which said that parents will approach schools and ask them to deal with incidents of cyberbullying that their children have been affected by. There is a lot of evidence that schools really struggle to understand where their responsibility lies and where it ends.

Mr Lunn: If it affects the smooth running of a class, or if it is having a detrimental effect on a particular pupil because of the actions of another pupil, surely it is part of the responsibility of the school to try to do something about it, and it should be reported.

The Chairperson (Mr Weir): There is one thing that we need to be careful about, and it will apply in a number of instances. If something is not necessarily covered under this legislation, whatever definition we eventually come up with, that does not mean that the school should simply ignore it. There is that aspect of things as well.

Mr Lunn: I cannot help thinking that, to date, schools have chosen to ignore a lot of these things —

The Chairperson (Mr Weir): That may well be.

Mr Lunn: — because it is difficult to deal with, but that does not mean that they should not themselves be educated and trained in how to deal with it. The manipulation of a situation through the Internet or social that affects a child has far more potential for serious harm than, perhaps, somebody getting involved in a bit of a fight.

The Chairperson (Mr Weir): That is fair enough.

We have to decide whether particular issues should fall within or be brought within the scope of the Bill. From that point of view, maybe the Clerk is glad that we got the extension. Also, without prejudging anything, there may be some aspect on which, although not seeking a legislative amendment, we might want to press the Department on some form of additional action. It may be that the scope of bullying cannot simply be covered by one Bill and that other actions need to be taken.

Mr Lunn: The findings of your research are that children have a huge concern about this.

Miss Perry: Yes, very much so. It came out very strongly.

Mr Rogers: Thank you, Caroline, for your work. I want to follow on from Trevor's point, which was that schools choose to ignore it. Did you find through your research or from the focus groups that schools are not well equipped, in terms of professional development etc, to deal with it?

Miss Perry: In my research for the Bill paper, a number of training needs were identified, and previous research by McClure Watters and so on suggested that the Department conduct a training needs analysis. There are issues, particularly in relation to cyberbullying. A lot of teachers report that they do not feel equipped and maybe do not understand all the different social media applications that children use. As I mentioned, some pupils said that teachers just tell them to delete something but do not understand that that does not deal with the issue. Also, teachers cannot go in and look at what has been put on Facebook, Snapchat or whatever other application, and there is a privacy issue as well. The need for training came out very strongly in the other research.

Mr Rogers: I notice that the focus groups were made up only of post-primary pupils. There were almost 5,000 responses to the Department's consultation. What response did the Department get from primary-school pupils and their parents? I do not know what other constituency offices are like, but, in the last two weeks, I have been dealing with two cases of bullying in primary schools, and it is the parents who bring the cases to me.

Miss Perry: I need to look at the breakdown of responses and come back to you on that. Of a total of 4,939 responses, the vast majority were from pupils — 4,221. Teachers, parents and other stakeholders made up the remainder of about 700. I will come back to you with an exact figure for the parents.

Mr Rogers: Thank you.

Mrs Overend: Trevor brought up cyberbullying. It was a good discussion because it is an issue that we need to give further consideration to. It leads us back to the presentation that we had yesterday on mental health issues and the responsibility for pastoral care. We need to define where responsibility for all of this lies so that everything knits together. As you say, it is the responsibility of schools to ensure good relationships and that children feel secure when in school. We need clarification from the Department on what the responsibilities are in that area.

I thought it interesting that the research found a concern that, when children are wearing school uniform, they are representing their school, so the school should support them. That would be difficult to define, though, because some children wear their school uniform for longer than others. Some do

not go home immediately after school, and incidents could happen in that period for which the school would not be responsible. What do you think of that?

Miss Perry: It was an interesting point that came up a few times. It was not a question that we asked directly; pupils brought it up. They talked about their schools impressing on them that when they are in their school uniform, they are representing the school. They felt that it should work the other way, too, and talked about the school's duty of care. The practicalities of that are another issue, I guess, but their view was that the school should have more responsibility for them when they are wearing their school uniform

Mrs Overend: It is probably a fair point. There probably should be an analysis of each individual situation.

The Chairperson (Mr Weir): We are talking about incidents in school hours, but an incident might arise, say, at a Saturday morning sports event at which pupils are representing their school. I do not know whether, ultimately, we will want to cover such a situation. Is that covered? That example is connected to the school: it is an extracurricular activity organised by the school. Does that fit with the definition?

The Committee Clerk: The Bill states that the scope of a school's responsibility extends to:

"while the pupil is in the lawful control or charge of a member of the staff of the school".

I think we should ask the Department whether that means a Saturday morning football club or school trip.

The Chairperson (Mr Weir): We should. It is an area that we want reassurance on.

Ms Maeve McLaughlin: Repetition was touched on, and I am about to, if you will pardon the pun, repeat it. You mentioned the Twenty-six Counties and said that repetition was a criterion, but there was almost a notion that cyberbullying could be a single offence. Is that legislated for somewhere else?

Miss Perry: It is not legislated for; it is just policy and guidance, I think.

Ms Maeve McLaughlin: It is at the discretion of individual schools.

Miss Perry: Yes, it is. It is in guidance, which refers to it being repeated over time but also states:

"placing a once-off offensive or hurtful public message, image or statement on a social network site or other public forum where that message, image or statement can be viewed and/or repeated by other people will be regarded as bullying behaviour".

Repetition is still there, but it is the potential for it to be repeated.

Ms Maeve McLaughlin: Is it in guidance for this legislation or just in general guidance?

Miss Perry: No, there is no legislation on bullying as such; it is just in guidance.

Ms Maeve McLaughlin: The research report refers to concerns about record-keeping. Is the concern just that it is inconsistent? Will you elaborate?

Miss Perry: Pupils had a few concerns. There was the issue of whether a school would follow due process and make sure that the records were accurate. They said, for example, that somebody could make something up because they wanted to get somebody else in trouble; a perpetrator might give a false account; or there might be conflicting accounts. How do schools get to the bottom of that?

Pupils were also concerned about their privacy. They were worried that teachers might view or treat them differently if they saw that they had been involved in an incident of bullying. They were worried that there could be implications for their employment and education if that information were to be

released in the future. It was in light of that that they raised the issue of consent. A lot of them felt that they should be given the opportunity to say whether an incident should be recorded.

Ms Maeve McLaughlin: I was going to touch on the issue of consent. It seems peculiar that there will be processes in play in which consent from the pupil is not in place. Did that issue come up in the focus groups? Are there examples where consent from the pupil to proceed with whatever action is not in place?

Miss Perry: I think that the policy on record-keeping is very much up to individual schools and how they want to do it. From what I have read of the Bill, I do not see consent in there. It is probably for the Department to state whether that will be in the guidance.

The Chairperson (Mr Weir): I understand why there are concerns about consent. The only problem I can see with that is, I suspect, one of the reasons why it is not in the Bill. If you are talking about the consent of a victim for an incident to be recorded, that would be a huge opportunity for the bully or bullies to intimidate that victim by saying, "If any of this is mentioned, you're to make sure that we're not mentioned etc", particularly bearing in mind the nature of bullying. However we define it, a large element is a form of intimidation, particularly where there is a power issue. I can understand why some people would want consent to be included, but I think that it would put the victim in an incredibly difficult position, and maybe unnecessarily so. That is more of an opinion than a question.

Mr Craig: Caroline, yet again, this is a good bit of research. To be honest with you, there are some intriguing findings in it. I find it intriguing that pupils are of the opinion that, while they have the school uniform on, there should be an obligation on the school with regard to bullying and antisocial behaviour. I can see in what you have found that there is a question mark against and a divergence of opinion about the definition of bullying and the distinction between an act of bullying and an act putting pressure on someone to do something. If we are being honest, we all face that in life. I really cannot get my head around whether it is an act of bullying to force someone to back gay marriage if they want to become a candidate or whether it is an act of putting pressure on them. I do not know; I cannot define it. From your findings, where did that divergence of opinion among pupils go? What were their views on it?

Miss Perry: Do you mean which aspects of the definition they were happy with and which they were not?

Mr Craig: It is about how we define an act of bullying. I find it intriguing that there is a difference of opinion there. Will you draw out what some of the differences were?

Miss Perry: Yes. As I mentioned, there was agreement on the omission of an act of excluding people. Pupils agreed that that should be included. They felt that exclusion could be just as damaging as verbal, physical or electronic bullying. They were not happy with the omission of staff either. They felt that teachers should be included.

The views on repetition were mixed. Some said that an argument with somebody could be just a one-off but, if repeated, might become bullying. Others said that a one-off act could be very damaging for an individual and stay with them, even though it happened only once. They were also worried about that happening on social media because of the number of witnesses to it. They felt that a one-off act on social media could be particularly bad and had the potential to be permanent.

Intention was another interesting element. The majority disagreed with that criterion. They felt that there should be much more reflection on the impact on the victim and his or her feelings and that it did not matter whether the intention was to hurt. They said that, sometimes, people do something just to fit in with their friends and may not mean to hurt but that can still be very harmful to the victim. Others said that they were bullied in primary school and felt that the perpetrators did not really mean it — it may have been because of their age — but that it was really quite hurtful. That was an interesting area on which they diverged from the definition in the Bill.

Mr Craig: That range of views tells you that those surveyed struggle to define an act of bullying as opposed to an act of stupidity or unintentional hurt. I find it intriguing because I know for a fact that all schools struggle with that concept. It is a judgement call. When teaching staff investigate any allegation of bullying, it is a judgement call for them. I get what you are saying, though. There has to be a victim-centred approach to how much damage, whether intentional or unintentional, was done to

the victim by what was said or done. The secret in this legislation is to give some flexibility in how you deal with an act of bullying, whether it is high-scale, low-scale or whatever. What is coming back is that a level of flexibility should be allowed. Do you agree with that, Caroline? Given the divergence, is that what the survey is really saying?

Miss Perry: It is difficult to say. There was definitely agreement that omission and teachers should be in there, but the views were much more mixed on repetition, so that is a difficult one to call.

Mr Craig: Of course, Caroline, I find the view on teachers being in intriguing. When you conduct a survey, you have to be careful. Were the pupils aware that, when an allegation of bullying or any allegation is made against a teacher, they are automatically into a disciplinary procedure that can have a devastating impact on their career? If they are not aware of that, you will get a different set of opinions. Do you understand what I am saying? For the life of me, I would not think that pupils would be aware of that.

Miss Perry: They did not raise that. In a focus group, we try not to lead; we try to ask a lot of open questions and so on. I cannot say whether they were aware, but nobody mentioned it.

Mr Newton: Thank you for the work, Caroline. Yesterday, we listened to a group of pupils give a presentation on mental health issues. They said that, whilst some schools are very good at pastoral care, others are very poor. Your report, in the section titled "Recording bullying incidents" states that there is:

"a fear that reporting may worsen bullying; a perception that reporting is futile ... ; pupils may not wish to identify as being bullied due to feelings of embarrassment or shame; and a view that teachers often misidentify bullying or fail to take it seriously".

What was the strength of feeling on those issues? How strong do you think those perceptions were?

Miss Perry: Those issues came out in every group. There was consensus among all the pupils that teachers were not always aware of bullying and that it is often under-reported. Those issues came up time and time again. There were a lot of fears about retribution and retaliation for reporting incidents, which the Chair mentioned, and that is a big factor in why they might not want to report. It came out quite often that they felt that there might be no point in reporting bullying and that teachers might not take it seriously. Some pupils said that, because of where they live, everything is taken as banter, even when it could be quite harmful — it is misinterpreted. There are a lot of issues with that as well. They talked a lot about being embarrassed by an incident of bullying and not wanting to identify as a victim. They might not even see themselves as a victim. Maybe they feel that this is just what goes on. There were a lot of concerns about teachers failing to take bullying seriously and about reporting incidents to teachers who dismissed them. This was a sample of 16 schools, but those issues came out time and time again. The wider research here and in other jurisdictions also supports the issues that came out. Under-reporting and the reasons for it are supported by that, too.

Mr Newton: Would you describe the feelings as strong?

Miss Perry: Yes. It came up so often.

Mr Newton: It came up in each of the groups.

Miss Perry: Definitely in the majority of them.

Mr Newton: It was a factor in each group.

Miss Perry: Yes.

The Chairperson (Mr Weir): Caroline, that is extremely helpful to our deliberations. Thank you for a very good research paper. We will make great use of that as we move ahead.

Miss Perry: Thank you.



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Addressing Bullying in Schools Bill:
Northern Ireland Human Rights Commission and
Equality Commission for Northern Ireland

20 January 2016

NORTHERN IRELAND ASSEMBLY

Committee for Education

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20 January 2016

Members present for all or part of the proceedings:

Mr Peter Weir (Chairperson)
Mrs Sandra Overend (Deputy Chairperson)
Mr Jonathan Craig
Mr Chris Hazzard
Mr Trevor Lunn
Ms Maeve McLaughlin
Mr Robin Newton
Mr Seán Rogers

Witnesses:

Ms Deborah Howe	Equality Commission for Northern Ireland
Dr Michael Wardlow	Equality Commission for Northern Ireland
Ms Fiona O'Connell	Northern Ireland Human Rights Commission
Dr David Russell	Northern Ireland Human Rights Commission

The Chairperson (Mr Weir): I welcome, from left to right, Fiona O'Connell, researcher at the Northern Ireland Human Rights Commission, David Russell, deputy director of the Northern Ireland Human Rights Commission, Dr Michael Wardlow, chief commissioner of the Equality Commission, and Deborah Howe, policy manager with the Equality Commission. I will hand over to you if you want to make a short presentation.

Dr Michael Wardlow (Equality Commission for Northern Ireland): Chair, thanks again for allowing us both to present on this. I am going to do 10 minutes, maybe not even that, and my colleague David will then say a few words. Obviously, we will then be happy to deal with any questions. I will preface this by saying that we did our response in February last year. Some of the things we put forward have been included and some have not, so I will take the opportunity to simply give a few reasons why this is of interest to us. Secondly, I will say a couple of things around what we think the issues are, and, thirdly and very briefly, I will talk about three of the key areas to highlight some of the stuff that we said in our submission.

This is important for us because prejudice-based actions are found not just in schools but everywhere. For example, 40% of the cases that come to us every year are disability-related. It is interesting when you look at schools and see that bullying related to disability is actually quite high. Therefore, what happens in schools often follows through into working life, and so on. It is very important, because there are high levels of bullying in some of the areas that are of interest to us — the special interest groups like the transgendered, the minority ethnic, those with special educational needs, those with

disabilities and the LGB group. That is one of the reasons. Also, obviously, some are what we call protected but also at risk.

In our recent key inequalities statement, which is still at draft stage and will come out in its full form very soon, we point to some of the extensive research around bullying in schools. We know that it has remained constant. About 30% to 40% of year 6s and year 9s reported that they had been bullied in the last couple of months. We know that one child in five actually admitted to having been a bully. Quite how that question was asked is another thing, but the very fact that some fessed up to that is important.

Probably the most important thing is the fact that young people spend 12 or 14 years of their life at school and seven or eight hours a day there. That is hugely formational in their life experience. Therefore, it is important that schools are at the core of developing a diverse society. That is why we believe that a very strong anti-bullying discipline policy should be at the core. It is not simply for the policy's sake. This should be part of the DNA of a school. If you break a school open, you should see respect, tolerance and diversity at the core.

Of course, there are specific issues for us that I will come to. There are issues that, I guess, you have looked at as well as to why it happens. It is one thing to say that it happens, but there is an issue not just of motivational factors — in other words, why somebody did what they did on the day. For example, it could be that they had a couple of Mars bars on their way in on the bus and had a sugar rush and did not have good nutrition. As you know, schools are finding that, more and more, breakfast clubs and good food are actually cutting down on some of the motivational incidents. It is also about family background. There is a male/female differentiation. There is the fact that many young people self-exclude because they fear bullying. We know that motivation can be different. Sometimes people will not come in because of something that happened the night before but was a one-off incident. We will refer to that later on.

The good thing is that good practice exists, and, if there is a problem, there is probably an answer out there. This should not be about looking for new solutions alone but looking for things that happen in other jurisdictions. In Germany, they have very good ways in which they timetable classes so that, for example, 5F might not get outside at the same time as 1F. They have one-directional routes around schools. If they know that a particular class has a number of bullies, that class may be kept five minutes later than others. In other words, there are ways to mitigate the potential for bullying. It does not mean that you are ignoring the bullying; it is simply looking at how you do not create the potential for it to take place. For us, the focus should not be on the bully; it should be on how you create resilience in the class and among those who may be the focus of the bully and how you help them deal with it.

It is important that there is a whole-school policy. This should not simply exist in a room somewhere where people tick boxes. If that is what it is, it is next to worthless. This has to really make a difference, and, therefore, if it is not committed to at the top and if it is not passed through the organisation, it is next to worthless. The young people are clear in what their expectations are: when they report an incident, they should not be told to man up or get over it or all the other things that we hear anecdotally.

Research seems to suggest that schools are not very open to reporting incidents of homophobic bullying. I am sure that that equates to others, because no school wants to be known as having, for example, more racist bullying than another. It is important to look at the fact that young people from minority ethnic communities or with special educational needs are more likely to be found in certain schools and certain communities. Therefore this aggregate — to say that school X has a high bullying rate — needs to take into consideration what lies behind it; for example, the school intake, the community and maybe recent incidents in the area.

I turn quickly to the three areas. We absolutely agree on the need for a common definition, and we welcome what you are doing here. Secondly, we have raised the issue of bullying as a repeated phenomenon and accept that bullying on an ongoing, repeated basis is the most pressing problem that we need to address. We are concerned that one-offs are not just treated as such and written off. We understand they are not part of what you, in this sense, call bullying, but they need to be addressed under the discipline policy and therefore should be treated in the same way as zero tolerance. That does not mean that they are necessarily going to present themselves, but somebody could have had a bad day, something could have happened the night before or somebody could have been pushed. It may or may not be bullying, but the fact that it is a one-off does not mean that it should be left aside. It should be treated in the same way.

Then, there is the issue of intent, and that is very hard to know. There is a definition that might be helpful in the Sex Discrimination (Northern Ireland) Order 1976. It does not talk so much about intent but about the consequence of what happens: in other words, that which has the effect of causing someone to feel bullied. That might be a way round it. For example, somebody may use homophobic language not actually realising that saying, "You are so gay" is a homophobic statement. I am not excusing ignorance; I am simply saying that there is not malicious intent every time something is stated. It can simply come from a lack of understanding or a lack of education and training. That is why we say that the curriculum needs to carry information on how to actually live in a diverse society and on what it looks like to be generous, gracious and tolerant. That is as important, if not more important, than having an anti-bullying policy.

We agree that the duty needs to lie with the board of governors, but the danger is risk transfer, and, to be quite frank, the Department needs to be very clear that it is saying that the duty lies with the board of governors and is not simply passing risk across. The board of governors needs to have strong guidance, templates and ways of recording. For example, we are not sure, when looking at the legislation, how incidents will be recorded and monitored and in what way the Department will look at them and assimilate them, as well as what it will do about them. Indeed, we are not sure what schools will do when, under C2k or whatever way they are going to do it, they have the figures.

We have raised the issue of bullying "amongst" pupils because we think that the reference should be to bullying "involving" pupils. All post-primary schools are in learning partnerships, and people with uniforms travel to other schools. If bullying takes place on another site, is that bullying "amongst my pupils" or "involving my pupils"? This is not simply a matter of semantics; it is saying that bullying should travel with the school as long as it occurs during the school day. That can relate to school visits or learning partnerships.

There needs to be a timed review written in. If it is left indeterminate, that is where it is likely to go. We would like to see something like five years in there. We need to have a clear view that this is not simply something to be added on as an extra workload for teachers. There needs to be a reason for it; it should be valued for the work that it is. Therefore, there should be curriculum support for how pupils work through the idea of how to become a good citizen and how they do not have to necessarily show their power through bullying. As an aside, we noticed that only 20% of schools had a relationships and sexuality education (RSE) policy, which surprised us a little when you think of the homophobic bullying that happens. There is something connected.

Finally — we would say this, wouldn't we, going back to the 1970s and fair employment and equal opportunities legislation? — if this becomes a tick-box exercise, it is worthless. It needs to be an exercise in which we really interrogate the motives. There is a list of motives at clause 3(3), but it is not exhaustive. It might be exhausting, but it should not be exhaustive. The danger is that, when you print any list, it becomes the list to go to. We would like to see more than one item being able to be ticked. Let us say that someone is called "fat", "skinny", "black" or "female". What is the motivating factor? You might have to make a call on that. We would prefer it if you could tick more than one box. However, the danger is that they then fall into the hybrid or "other" category, in which case the prime motivating factor would be lost. The most important thing is to track whether something is emerging in the school or year group around a particular child or particular type of bullying. Therefore, we argue that the list needs to be looked at.

We made a submission for the Shared Education Bill. We recognise the Committee's recommendation around "community background" as opposed to religious and political opinion. Religious and political opinion for three- and four-year-olds? Community background would be a better one to put in. We also think that "gender identity" is better than gender modification. To be frank, few young people under the age of 14 could fit in that continuum; so, we would prefer "gender identity". We would also like Travellers and Roma to be specially mentioned. However you deal with the socio-economic issue, it needs to be in there. There is a class element as well sometimes. It happens in learning partnerships when grammars and non-grammars come together. We also need to be aware of refugees; it could be an issue increasingly as refugees come into our school system.

Finally, there need to be safeguards for the young people who report. They need to know that the process protects them and will deliver what it says it will deliver. Teachers also need to realise what that process is. Implementation and monitoring have to be key to this. If we are not tracking it, we cannot say, "There's an incidence of x". We are not saying, "Oh, we need to just specifically focus on that". We need to say to teachers, "Pick this up. Recognise it. Make sure that it's not simply about zero tolerance" — in other words, burying the bullying. It is actually about addressing this and the importance of sharing good practice. It needs to be at the centre and core of that.

Dr David Russell (Northern Ireland Human Rights Commission): I will keep this brief. I have five points to make, and I will be as quick as possible.

The Human Rights Commission welcomes the Bill generally. It is in line with a number of human rights standards and treaties that we have laid out in our submission for members. The first point is that we have noted that there could be an overlap in the Bill with existing criminal law as well as other policies and procedures under the remit of some of the other Departments such as the safeguarding and child protection policies. The Committee, during its scrutiny of the Bill, may wish to ask what engagement the Department has had with other Departments and agencies, such as Justice, the Public Prosecution Service (PPS), the PSNI, Health and the Education and Training Inspectorate. We have drawn attention to that in paragraph 18 of our submission.

Our second point is in regard to clause 1, which sets out the definition of bullying. The commission noted that human rights standards are not prescriptive on a definition of bullying. However, we suggest an amendment to the clause in line with general comment 13 of the Convention on the Rights of the Child. We would like to see these words inserted:

"with the intention of causing harm to the physical, psychological integrity or well being of that pupil or group of pupils".

That would keep it consistent with the treaty obligation.

Our third point is on clauses 2 and 3, which provide for the duty of the board of governors of grant-aided schools to secure measures for preventing bullying and keeping records of such incidents. The commission has advised that the provision on the right to education in the European Convention does not distinguish between public and private settings and that bullying should be dealt with regardless of where it takes place. The Committee may, therefore, wish to ask the Department how bullying will be addressed, for example, in independent schools. We are aware that there are 14 such schools in existence in Northern Ireland at the moment. Clauses 2(1)(b) and 3(1) require boards of governors to review measures and record incidents of bullying involving registered pupils while they are on school premises during the school day, travelling to or from school during the school term or whilst in the lawful control of a member of school staff.

The commission has noted that there may be incidents that fall outside the scope of those clauses, for example, when schools have been made aware of incidents involving registered pupils in the evenings. There is case law that illustrates the point, which we can examine in a wee bit more detail during questions. The case is that of *Dordević v Croatia*, which involved the harassment of a vulnerable person with disabilities by children from a nearby school. The European Court in Strasbourg held that states were required to take all steps to comply with article 3 of the convention. In this situation, the court, in finding a violation, found that no serious attempt was made to address the true nature of the situation and the lack of a systemic approach. The commission has recognised that this is complex but advises that further consideration should be given to whether there is an obligation on schools to report human rights abuses that fall outside the scope of clauses 2(1)(b) and 3(1) to ensure that the Department adopts a systemic approach.

Clause 3(3) provides that motivation for bullying may include a number of grounds. The commission notes that the clause makes no reference to language, which is important in Northern Ireland for children who attend Irish-medium schools and for those for whom English is an additional language. The commission has noted that clause 3(3) makes no reference to socio-economic deprivation. In the same way as Michael has highlighted, we have noted that this was an important focus in the Shared Education Bill, and we would like to see it included. We have also noted that there is no reference to pregnancy, nor any reference particularly to school-age mothers, fathers or those with caring responsibilities. There are specific human rights requirements around addressing those matters.

The commission is of the view that clause 3(3) should be amended to include language, persons with or without dependents and other status, which would reflect article 14 of the convention and would encapsulate many of the categories that Michael laid out in the Equality Commission's presentation. It would also reflect the other relevant binding standards, including the Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Beijing Platform for Action.

The Chairperson (Mr Weir): That was very useful; there is a lot of meat in that and it was quite focused and succinct. I want to pick up on a few points. There are issues for both of you and I will take them in reverse order.

You made a few interesting points about motivation. It comes down to a couple of issues. Clause 3(2) includes the phrase "appears to be the motivation". In one sense, there is a slight complication in that that could be interpreted differently. By talking about the motivation, you may actually list things and prioritise them, or it could be interpreted as somebody asking what the principal motivation was; was it principally a racial incident or something else? It may be that certain things get ignored. There is an issue about whether the wording needs to be amended where it talks about motivation or motivations to, at least, make it clear that more than one could be registered, or whether a clear level of guidance for schools is required about the way that an incident is recorded.

I will just ask you to comment on one other issue. You have both mentioned a range of other possible additions to the list in clause 3(3). Whatever definitive list is produced, whether it is short or long, we need an additional catch-all point. There will be things that will fall outside the list. I want to pick your brains on this issue. Am I right to assume that the items in the list are all variants on the potential areas covered under section 75, or do they go wider than that? Would reference to section 75 in the clause be pertinent in that regard? I am not saying that this is the wrong way to do it. There are ten specific grounds named at the moment. There could be arguments about whether, as indicated, they are the right terminology or the right way of doing it. Taking on board what both of you have said, that would mean, automatically, renaming some of them and probably extending the list to 15 or 16 grounds. I am just wondering whether you get to a point where the list becomes so long that it is almost meaningless and whether there is a different way of expressing grounds, maybe by tying them in with section 75. I would like your reaction to that.

Dr Wardlow: They are not coterminous with section 75, and we raised that. They partly mirror it, but not quite. I am not sure about putting section 75 in, because that limits the definition by a 1998 Act, which may change. There is a bit of, "Oh, that is a section 75 duty", when schools, as you know, are not designated under section 75. The issue for us is that, if you have a list, people will tend to go to that list, and if something is not in the list, it will be treated as miscellaneous or other. The problem, as you have highlighted, Chair, is disaggregating the hybrid. How do you know that a particular school has a high incidence of a particular type of bullying? The purpose of this is to help a teacher understand the motivation, the intent, and what lies behind it. That could take a period of time, because the pupil may have pushed somebody and it was nothing other than, "I did not like him" or "He was in the way" and not because he was from any of the other groups, for example. It is therefore not exhaustive.

What we are saying, for example, is that Travellers and Roma are specific groups that all the research seems to say do not have a good experience of schools here and in other places. They are protected in lots of ways. There was therefore a reason for us drawing attention to them. People with and without dependents, as David said, should also be protected and, increasingly, schools have 14-, 15-, and 16-year-old mothers and fathers.

The Chairperson (Mr Weir): I will just interrupt you, Michael. I am conscious that when you look at particular communities, you run into the difficulty of who to include and who not to include. I think it was David, correct me if I am wrong, who made reference to political opinion —

Dr Wardlow: No, I was saying community background rather than political or religious opinion.

The Chairperson (Mr Weir): If you included community background instead of political opinion, would that not cover the range of —

Dr Wardlow: Our suggestion was that it is very difficult to determine the political opinions of 4-, 5- and 6- year-olds.

The Chairperson (Mr Weir): I entirely understand that. It is a very valid point. I am maybe playing devil's advocate. If you had a specific reference to community background, rather than political opinion, would that cover the different range of communities without having to name them?

Dr Wardlow: No.

The Chairperson (Mr Weir): I am conscious that if you single out one community or a couple of communities it might create a level of hierarchy —

Dr Wardlow: This is about two things, Chair. It is about trying to identify things that are happening in the school and how you can address them. Secondly, on a Province-wide basis, it is about asking whether there is an issue for Roma or Travellers. We are mentioning them because they are specifically protected — David will probably want to come in on the human rights side. For me, the guidance could be clear and the template could lay down a range of motivating factors, and there could be 15, 16 or 17 of them. There is an argument about whether they should be on the face of the Bill. We have raised that before. The danger is that if there are six, seven or eight items, people will only look at them. What we have done is easier: we raised with you the high-risk groups that we believe have experienced bullying. That is why we feel that they should be specially mentioned.

The Chairperson (Mr Weir): I appreciate that. I suppose I am thinking out loud. Is there an argument that one alternative to clause 3(3) might be to require the Department to issue guidance or regulations listing the groups that would be affected by motivation. I am conscious of the fact that to get a definitive list in the legislation would be difficult. Even some of the things that we have mentioned may not have occurred to people five or 10 years ago. I want to have something that covers all the situations and is adaptable to cover what may happen five or 10 years from now.

Dr Russell: I will say something briefly, and then Fiona may want to come in. One of the issues of concern going forward is the reporting requirements under treaties, which this will eventually form part of when we have the law. They are keen on disaggregated data. If the data capture system that deals with community background encapsulates a lot of different communities, the difficulty will be disaggregating the data. The real question, whatever the list is, is whether the Department will be able to disaggregate the data sufficiently.

The Chairperson (Mr Weir): Presumably, that could also happen with some of the other grounds.

Dr Russell: It could.

The Chairperson (Mr Weir): For example, race is in there, perfectly validly. It may be useful to disaggregate migrant communities to identify a particular problem. You mentioned the refugees. Say there was bullying of children from — I appreciate that it also happens on religious grounds — an Asian background, it may be useful to disaggregate that. To what extent, therefore, do you disaggregate within the list?

Dr Russell: The curse of disaggregation is infinite regression.

Dr Wardlow: I know.

Dr Russell: I appreciate that that is a problem. There are definitely four categories that are not there at the minute and need to be addressed. Michael might want to add something on the addressing of language needs. Socio-economic deprivation should be addressed because it was recognised as an issue by the Department itself in the Shared Education Bill, and rightly so. Persons with dependants should absolutely be covered, particularly focusing on mothers and children with caring responsibilities. Then, back to the issue of disaggregation, the article 14 obligation has this catch-all of "other status" for types of bullying that we may not be able to foresee but should be captured, nonetheless.

Ms Fiona O'Connell (Northern Ireland Human Rights Commission): I will come in on "other status" as well. The European Court of Human Rights has ruled that it can have a wide meaning. For example, article 14 of the European Convention refers to property but not to socio-economic deprivation.

As an example of including "other status" in addition to other protected grounds, in the case law of Carson and others v UK, article 14, particularly "other status", was interpreted to include residency. Article 2 of the international covenant on economic, social and cultural rights (ICESCR) is a non-discrimination principle. It also includes "other status" at the end, and the Committee on Economic, Social and Cultural Rights has interpreted "other status" to include socio-economic deprivation. Perhaps where you cannot have an exhaustive list of grounds, you could have something like "other status" in there.

The Chairperson (Mr Weir): You need to have something. In practical terms, a lot of the time, school bullying — there is a range of grounds that are named — happens on the basis of things that do not fit

into a particular category. Quite often, it might be around physical appearance. A child might be bullied because of the colour of their hair, size of their nose or whatever. A lot of those things do not fit into boxes.

Dr Wardlow: For us, it is a secondary point, and it is about form and function. The purpose of the anti-bullying legislation is to protect individuals and schools, but it is also about learning from it. The reason for disaggregation is partly to respond to outside bodies, but it is mostly about learning. If it is in the guidance and the template, as long as those categories are captured —

The Chairperson (Mr Weir): I would not be doctrinaire; I am trying to find the best way of dealing with it practically. I want to touch on two other issues on that side of things, and I appreciate that a number of members want in as well. One very quick point on the definition is that the issue has been raised with us that one of the things that is missing from the definition is the imbalance of power. That was identified by the Anti-Bullying Forum, for instance, which seeks to apply the most common international definitions. Do you have a particular view on that?

Dr Wardlow: No. From our side, although that is probably a motivating factor in a lot of the anti-discrimination stuff that we deal with — male/female is the most classic, from the 1970s — but it is never mentioned in the anti-discrimination legislation. It is a given that a lot of what happens with prejudice is about power, interpretation, views and formations. We certainly would not have anything to say one way or the other on that. We did not notice —

The Chairperson (Mr Weir): It is on the definitional side of things. I know that we are throwing things at you, a little bit. Just on the definitional side of things, just to pick up on two other bits: David, in particular, mentioned the tweaking or alteration of the wording on intention to harm, whether it is intentional or unintentional; and there is the issue of to what extent there is repetition. You mentioned that, Michael. Neither of those is an absolutely clear-cut issue. In clarifying those issues, are you seeking changes to the wording of the legislation or do you think that they are best covered by the guidance?

Dr Wardlow: This one is very simple. We accept the fact that bullying is the repeated nature of something. We are simply saying this: do not miss the one-offs, because they could become repeated. Yes, they should be dealt with them under the discipline policy and as rigorously, but they are not, in that sense, bullying. As to the question of intent, as we said, as in sex discrimination legislation, it really does not matter whether mischievous intent was meant; it is what has happened as a consequence, and the learning could then be for both. With "You are so gay" or whatever it happens to be, there could be a genuine misunderstanding: "I did not realise that that was wrong; I did not realise that I should not have said that". Nonetheless, the person felt bullied and was bullied. So, for us, that is the issue. Of course, the question of intent is valuable and we need to look at it but, on those occasions, maybe it is better to say that it has "the consequence of".

Dr Russell: Briefly, on the issue of intent in particular, the reason that we are so keen on the UNCRC definition being included in an amendment on intent — this is one that we do not have the answer to, but we think that the Committee should explore it — is the potential of having a situation where there is a repeated action of engaging pieces of criminal law, like harassment legislation. We have some concerns about that. We do not have the answer to it but we think that the criminal justice agencies should have a view on it.

The Chairperson (Mr Weir): The very final point that I want to make is on a separate topic. This is again something that we are struggling to get the right balance on. The other issue, which you have touched on, Michael, is the issue of scope. We mentioned the issue of what is covered by the school day and that type of thing; but the other related topic is, on the one hand, the desire to cover all aspects of bullying across the board so that you are not being seen either to ignore or turn a blind eye to any particular bit, while keeping something manageable. One of the areas that particularly exercise us is cyberbullying and where it takes place outside school premises and school time but may well then have a very detrimental impact on school life for pupils. Where does the balance lie between trying to cover everything, which may create difficulties in terms of manageability, and, on the flip side of the coin, if you are not covering things, you are not necessarily creating a loophole but you are not properly covering things?

Dr Wardlow: From our perspective, this is not about risk transfer. It is not about a school saying, "At 4.00 pm, once you are off the bus and at home, we have no control over you." Practically speaking,

travelling to and from school and school activities — we know all that stuff. In that sense, cyberbullying can be 24/7. On one hand, there is a danger of overemphasising cyberbullying because it is the trendy thing at the minute, and probably 16% of research seems to say: "We are not quite sure what that means." It is still very big but the other, normal, physical bullying still goes on. So the danger is the precedence given.

The second thing, though, is the involvement of parents and the Youth Service. For 35 years, I have been trying to say that this should be much more joined up. Young people have multiple memberships, so they go from school into after-school clubs and into youth and community activities. They are the same young people, meeting the same young people. The question is how we involve those other youth agencies and parents. If a child is bullied at a youth club, and it is by the same kids that they are at school with, it is unreasonable to expect those young people to go into the school, having been bullied by the same young people.

It is not about whose responsibility it is; it is about how we protect those young people. Therefore, I think that there is good practice in other jurisdictions and here, where schools are very much connected with the home, and parents are involved in helping to set these parameters. It is not about schools asking "Where does my responsibility stop?" I do not know any school that actually asks that question. Schools are genuinely concerned for the young people, in and out of uniform. I think that is where you should be looking to good practice. It does exist. I do not think that you should be writing into the Bill "At 4.00 pm" or whatever it is. Bullying is a 24/7 issue and, with cyberbullying, much more so. A child may send a text at a certain time, but timed not to go until 6.00 pm, just to escape the fact that it is under school time. These things are very easy to do. It is much more about addressing, within the school, what you can address in the school.

The Chairperson (Mr Weir): Or, to take the other example, as we were talking about the school uniform, we do not want to take the ludicrous excuse of "Well, to be fair, on the way home the bully took off his school tie before he beat up the other pupil",

Dr Wardlow: Absolutely. David has also mentioned the human rights issue, which is a bit grey for me. I am never sure about the reach of findings on a particular case where something happened outwith the school and school was somehow held to be accountable.

Dr Russell: I will ask Fiona to speak about this. We have a case which, we think, is right on point on this issue, and we think that the Committee should take a look at it.

Ms O'Connell: There is a case called *Dordević v Croatia*, and David highlighted it in the submission. It did not involve cyberbullying, but it was an incident that happened outside school. The applicant was not a pupil registered at the same school, but a person with disabilities who lived nearby. The children were involved in harassing behaviour. It happened in the evening, so it was not actually something that happened on the way home from school, and so that behaviour would not have fallen within the scope of the clauses of this Bill. What happened was that the court found a violation. Repeated incidents had been reported to the school, the ombudsman and the police. Even though there was some action taken — for example, the school contacted parents and police interviewed the children — there was that lack of a systematic approach that Michael was talking about. The court found that there had been a violation because it was not followed up with any further concrete action. No policy decisions were in place to recognise and prevent any other harassment. Our concern is that a school may be made aware, but what is its responsibility to engage with other agencies and public authorities? That is something that is not clear to us in that clause.

Mr Hazzard: Some of the stuff has been touched on. We have discussed the recording of the information and for how long these records should be kept etc. Do you think that there is any issue that we may start to encroach on the rights of the child that we are recording information about? The perceived bully, for example? Is there anything that we need to be aware of? We could be keeping records for a certain amount of time that suggest bullying. A child may be involved in bullying with regard to race, for example. In a number of years, an accusation might be made, "You are racist and there is proof of that." Do we need to be wary of that?

Dr Wardlow: There is a concern about so-called soft intelligence. How far can you go back and dig? When Noel was here, he raised the danger of a league table approach and so on. The bottom line on this is that, for a long time in workplaces, people's discipline records have been kept. The question is raised about whether this has data protection issues. Of course it has, but does it somehow infringe their rights? No, because these are forensically looked at. They have all the process of the discipline

policy, procedures and grievances in the school. As long as the parameters are clear, the data protection provisions are met and the legal advice adhered to, it is acceptable. There must be a limit to how long you can keep these things and how you record them. That is when it comes into motivating; if a teacher is writing "He did this because he said X" and if you are recording the fact, there are tried and tested ways in which you can do this. There must be precedence on this, David, from human rights, I guess.

Dr Russell: The individual case ideally ought to be for the school to address in the there and then. What we are talking about here, as far as we understand the Bill, is a systemic approach to addressing bullying, to show that schools are addressing a systemic issue, rather than individual cases or individual victims per se. In terms of children who are bullies or are involved in that side of it, their article 8 rights are engaged in terms of privacy. The best interests of the child should be the paramount consideration, and that goes for the children on both sides of the debate. Absolutely, the data should not be retained, if it is being retained at all, we would say, in a way that identifies individuals.

Mr Hazzard: Absolutely. Just finally, then, you mentioned some instances of good practice in Germany on mitigating effects and how we involve wider communities: is there anywhere in particular to which we should look for good examples, do you think?

Dr Wardlow: Noel Purdy at Stran and others who are involved in the anti-bullying stuff have much more reach in this. The principals of schools have fora that exist for this. We are dealing with research and secondary research. We are not the experts on where good practice exists. When you engage with teachers, they will tell you things like nutrition, how you let people out, how you identify things, how you mitigate against these preventative measures are very classical things. However, there is already a huge amount of good practice in Northern Ireland. Germany and the Nordic countries keep being mentioned to me as good examples of children's rights against how teachers work with that. However, you have the evidence from Noel Purdy and others.

The Chairperson (Mr Weir): Getting everybody in Northern Ireland to go in the same direction might be a little difficult at times.

Dr Wardlow: Seriously? *[Laughter.]*

The Chairperson (Mr Weir): You are right in that there are smart things that can get done.

Dr Wardlow: They are simple, low-cost measures. For example, C2k is already there — £40,000, I heard. In another life, during my 15 years in the integrated sector, there were six schools set up as independents. In order to be teaching and recognised as schools, they had to have school numbers and, therefore, were inspected. Even though they did not have money coming from the public purse, they were independent schools.

We have a concern that just because a child goes to, say, Rudolf Steiner or one of the Christian independent schools, they should not be outwith the reach of this legislation. This should not be about public money being the only determinant on whether a child is protected. We do not know the answer but we ask you to ensure that no child falls outwith this legislation, even if they are in a school not paid for from the public purse.

Mr Lunn: Thanks Michael, David, Fiona, and Deborah for your presentation. I want to go back to the question of what happens outside school hours, David, and cyberbullying. We seem to be getting into considerable discussion about this. Michael, you said that it was only 16%, but that is a lot.

Dr Wardlow: Absolutely.

Mr Lunn: The feedback from the focus groups and pupil surveys perhaps indicates that it is a bit more serious than that. The Bill states that it would be an act of bullying if you repeatedly used electronic communication with the intention of causing emotional harm to a pupil while:

"(i) on the premises of the school during the school day;

(ii) while travelling to or from the school during the school term; or

(iii) while the pupil is in the lawful control or charge of a member of the staff of the school;"

To put it another way, if somebody repeatedly sent emails of an abusive nature to another pupil during the school day, they would be guilty of that, and, if they sent them at 4.30 pm, they would not. To protect the rights of children fully, if the interaction that causes the emotional distress is between two pupils from the same school, the Bill should be capable of dealing with that. As everybody says, this is a 24/7 thing, but, if it is interaction between two pupils, what do you think? Put another way, is there other legislation that could deal with it?

Ms Deborah Howe (Equality Commission for Northern Ireland): There is a potential on the interpretation of that. Cyberbullying can be so damaging because it is not a one-off like someone punching you or saying something to your face. If it is an email or something on Facebook, it is permanent. What makes cyberbullying potentially damaging is that it is forwarded around the likes of Snapchat or Instagram where things are forwarded to a group, so it is not something that happens at 4.30 pm and is over and done with. The damaging element is that it goes on for so long, so it fits within the definition because it is 24/7. It is going on while someone is at school because it is on their account and the interaction continues throughout the day.

Dr Wardlow: Perhaps I was misunderstood earlier. It is not that I was feeling that 16% was small; I am simply saying that the danger in focusing so heavily on cyberbullying is what else we miss. I went to an all-boys school, and I remember so many times people saying, "I'll see you at the youth club tonight". The threat of the bullying was made at school, but it continued at whatever it was after school. That happens because young people almost feel that they are free once they are outside school.

On one hand, it is unnecessary and unhelpful to say to a school, "Wherever they bully someone, it is your responsibility because they are your pupil". How would you make sure that worked? On the other hand, just because you take your school uniform off before you bully someone you are at school with, how does that not apply? It is a conundrum. There has to be a joined-up approach to how we look at it. I agree with Deborah: if someone is sent a text at 10.00 pm that stays on a phone or goes around Snapchat, Instagram or whatever, it is difficult to argue that that is not also bullying during the school day. It exists; it is there in the ether and in black and white. I think that falls within the scope.

Dr Russell: We agree. We read "electronic communication" as quite broadly drafted. It is sending, receiving, reading or passing on messages during the school day. We think that what happens during the school day when children are the ward of the school is covered and properly drafted. However, the issue that you raise about what happens outside school is right. We have concerns, including the case law that Fiona has laid out. As we said at the beginning of the presentation, we are not sure that that falls within the remit of the Department of Education or the schools because it potentially engages criminal law. There are areas that we think need to be explored in both the Department of Justice and the Department of Health and their arm's-length bodies, including the child safeguarding procedures and policies. Some of these activities will fall within that. There is the potential for some of these things to fall within the remit of criminal justice in the Communications Act. The commission's one word of warning or plea is around the criminalisation of children. If there is a way of having a Bill that brings everything into its scope but prevents the criminalisation of children, that can only be welcomed. In the commission's view, nothing in the Bill should further criminalise children below the age of 12 and, ideally, below the age of 14.

Mr Lunn: Yes, I was going to comment that there must be an age at which the criminal law would not or should not kick in. We had a brief discussion earlier around evidence of bullying. I appreciate that, at times, it may be difficult to provide evidence if an accusation is made. However, one thing about cyberbullying — if you have ever tried to take down a post, you will know what I mean — is that it is there. If somebody copies it, it is out there and the evidence is absolutely clear. We really should focus on that, and I am glad to hear your views on it.

Mr Rogers: David, I will just take you back to the mention of carers. Do you believe that there should be a statutory duty on the Department to support young carers in wider pastoral care, although they are sort of covered by section 75?

Dr Russell: Young carers are a particularly vulnerable group. I cannot speak for the Department; I do not know what provision it has in place at the minute. However, before we came here, we looked at school-age mothers. We know that an audit of inequalities faced by school-age mothers was published by the education and library boards. A departmental programme was, at the end of last

year, supporting 295 girls whose schooling might have been discontinued otherwise. Young carers are an equally vulnerable group in terms of their access to education and their capacity to concentrate during the school day. If you are talking about focusing on and protecting vulnerable children, there should be enhanced pastoral support for that specific group in education.

Mr Rogers: Thanks for clarifying that. Going back to clause 1, will you clarify what you said about the intention to cause physical harm and so on? Could you repeat what you said about that?

Ms O'Connell: That was reflecting the language of the UNCRC general comment. We would like to see that language used and embedded in the legislation, because it makes it clear that human rights standards are being applied. That is why we suggested that language.

Dr Wardlow: One thing on the dependants issue is hidden dependants. There are huge numbers of young people with caring responsibilities who do not disclose them, for all sorts of reasons. Again, it is about how you get that. It is one thing to say that the protections are there, but it is another to identify them. I can think of one young girl whom I know who has a young brother with a disability. She helps to get him up and so on in the morning. Basically, she is the prime carer, along with the mum. Would she be covered? There is a need for us to look at that hidden dimension. Lots of young people have those responsibilities and are increasingly taking them on.

Mr Rogers: Moving on, Chris mentioned a child being labelled a racist after a number of incidents. Schools would also be concerned about that data and maybe being labelled as a racist school. How do we deal with that? There will surely be freedom of information (FOI) requests shortly after the Bill becomes law, and we will have league tables of bullying.

Dr Wardlow: I heard Noel's evidence, and I understand the point exactly. We had the same thing with GCSEs and A levels, and we know that, even though the tables are not produced, the media have ways of finding out what schools do, even with primary schools and transfer test results. There is a paranoia out there about getting the figures.

The danger with FOI requests is that, whatever it is that is discoverable that goes out, you can easily see how that would happen. That does not mean that we should not be doing it. We need to look at how we involve the media. School X, which may have, let us say, a 30% BME community, because it is, let us say, around Portadown, and it probably stands to reason that it is likely to have more racial incidents, purely because of the proportion of students of a different ethnic background. Would it be labelled racist because of that? It is about proportionality and how we address it.

The Chairperson (Mr Weir): The concern is about the league tables that might be compiled, and you mentioned the exam results. There may be some manipulation, but one thing that provides some protection is that, whatever the results are, those are the results. The concern would be that, if you have things that are entirely discoverable, there may be an attitude in schools of not recording it. Some schools will be very open and honest and will want to record everything. Others may take a view, coming down to some individuals in the schools, of wanting to protect the reputation of the school, and they would be loath to record it. I suppose that it is probably more open to manipulation than school exam results. I agree with you, but there is that caveat.

Dr Wardlow: I have a few very quick points. First, is the about the purpose, and once schools get their head around its purpose and the intent — Secondly, the media have been talked to about suicides in schools, and those are not reported in the press in the way that they were 15 or 20 years ago. There is a very strong sense and understanding within the press that reporting some things is not in anybody's best interests. Finally, I know very few parents who live within the limits of a school who do not already know what the school's reputation is. Parents find those sorts of things out.

I do not think that we should be afraid of the Bill and, therefore, restrict it. We know, for example, that schools are less likely to record homophobic bullying and, therefore, it goes on undetected. It is about how we get that balance. There is absolutely no simple answer.

The Chairperson (Mr Weir): You could get a situation in which a lot of the press is very responsible and sensible, but you could get the odd reporter —

Dr Wardlow: Absolutely. It is the maverick.

Mr Rogers: Finally, in your presentation you said that the focus should not be on the bully. Maybe it should not be on the bully initially, but it needs to be on the bully to get to what is behind that.

Dr Wardlow: Again, it is a both/and. There is a danger in having a zero-tolerance approach and closing down on bullies. However, building resilience in the school community, whereby people stand up for each other and know how to do it, is as important, if not more important, in the long term.

Mrs Overend: Thanks for coming today. It has been a very useful conversation. A lot of my points have been raised. You spoke earlier about reviewing what is happening and suggested doing so every five years. Do you not think that that is a bit long?

Dr Wardlow: No, sorry. That is the legislation. In our submission, we said that two things are absent. The first is that, when we will look at the effectiveness of the Bill, we think that there needs to be a time frame. The second thing is how monitoring happens. There is nothing in the Bill to say whether a school should monitor that annually and what DE will do when schools give their responses. We do not know. In that element, absolutely, we would like something to be done within a realistic time frame, which is certainly not five years. For the legislation itself, we are saying that it should not just be left indeterminate. I think we said three to five years for a review of the legislation itself.

Mrs Overend: I appreciate that. There is a duty on the board of governors, in clause 2, to review those measures "from time to time", which is too vague.

Dr Wardlow: That is what we were saying. It needs to be tied down, otherwise it is just left.

Mrs Overend: We talked all about joined-upness, whether that is between Departments — you talked about criminal justice and the Department of Health, and I agree with you that that is really important — or the joined-upness within the Department of Education as regards the discipline policy and pastoral care, for instance. I totally agree with that.

We have talked about cyberbullying. You gave the example of someone saying to you, "I'll see you tonight at the youth club". We do not need to be afraid, and schools etc should not be afraid, of having to deal with cyberbullying, because it is just an extension of bullying in other instances. You just brought that home to us. It is really just about clarifying where schools stand, as long as our schools are kept up to date with technology and the ability of teachers to be aware of what goes on and to deal with it. Do you think that should be drawn into anti-bullying legislation?

Dr Wardlow: We have very clearly said that there needs to be awareness-raising, there needs to be training and it needs to be part of continuous professional development (CPD). It should not just be left to the bullying teacher. So often, the fig leaf is given to somebody, and they are the responsible person. It is often somebody who has just come in to the school, because you get it handed to you. We are saying that it has to be the whole school. It has to be led from the top. The governors are the responsible people. Yes, of course, they delegate operationally, but they cannot absolve themselves, so there needs to be training for them as well. They need to have those reports coming back, because they are the people running the schools. The principals and head teachers need to lead from the top and say that it is not acceptable. Therefore, it is everyone's responsibility to monitor the bullying. There may be a responsible person, yes, but that does not mean that they are the only person. It is about the whole school and building up an ethos. To be fair, that is what most schools want. Most schools want to add value to young people; it is not just about exam results.

Mrs Overend: There needs to be a legal obligation for that.

Dr Wardlow: Absolutely. That is why we welcome the fact that it resides with the board of governors, but they cannot simply have the risk transfer. They need to be supported by the guidance.

Ms Howe: On the issue of cyberbullying, I had a look, and the Department for Education in GB has guidance on that. They actually have legislation — the Education Act 2011 — that gives powers to tackle cyberbullying, with a power to search and to actually go into a pupil's phone and delete images from it. There are other things going on, quite close to home, to tackle cyberbullying.

Dr Wardlow: We have seen it in the workplaces; private emails can now be read and so on. We have seen that. I do think there is an issue about how you balance the rights of the child and the data protection.

Dr Russell: There is case law, just this week, actually, from the Strasbourg court, with regard to personal emails and personal electronic communications. The court has actually found that it is not a violation for employers to access personal data devices. We are happy to follow that up if it is of any use to the Committee.

Mrs Overend: Yes, that would be good. Thank you.

Mr Lunn: Forgive me if I missed it, but — maybe this is for you, David — on the question of the inclusion of teacher-pupil bullying, have you any thoughts about that, about the rights of the teacher in those circumstances or about alternative remedies?

Dr Russell: Teacher to child?

Mr Lunn: Teacher to child bullying, yes.

Dr Russell: That is an abuse of power. It would come specifically under that. If it is teacher to child, you are dealing with an abuse of power situation, so it could quite quickly get a lot more serious. You could be talking about criminal activity.

Mr Lunn: I inferred from comments of the pupils' forum the suggestion that that should be included, but you are perhaps inclined to think that there is no need for it.

Dr Russell: I would have to think about it, but my gut reaction is to say that, no, that is a very specific issue with an adult who has responsibility for looking after minors. It is a completely different situation.

Dr Wardlow: For us, it would not be part of bullying. Bullying is about how young people relate together. This should be about the discipline policy and how you advance it. The issue of an abuse of power has always been there. Putting it under bullying would not be the right place for it, any more than a pupil bullying a teacher, which does happen, should be in a bullying policy.

The Chairperson (Mr Weir): I suspect that we may get slightly different evidence soon, judging from the reaction at the back. Thank you very much for your evidence. It has been very useful. Like you, we are trying to work our way through various conundrums to make sure that we get the balances right. That has been very useful.



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Addressing Bullying in Schools Bill:
Northern Ireland Commissioner for Children
and Young People

20 January 2016

NORTHERN IRELAND ASSEMBLY

Committee for Education

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Northern Ireland Commissioner for Children and Young People

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Members present for all or part of the proceedings:

Mr Peter Weir (Chairperson)
Mrs Sandra Overend (Deputy Chairperson)
Mr Jonathan Craig
Mr Chris Hazzard
Mr Trevor Lunn
Ms Maeve McLaughlin
Mr Robin Newton
Mr Seán Rogers

Witnesses:

Ms Mairéad McCafferty Northern Ireland Commissioner for Children and Young People
Ms Koulla Yiasouma Northern Ireland Commissioner for Children and Young People

The Chairperson (Mr Weir): I welcome back a couple of familiar faces: Koulla and Mairéad. As everyone will know, Koulla is the Northern Ireland Commissioner for Children and Young People (NICCY), and Mairéad is the chief executive. I refer members to the written submission on behalf of the Commissioner for Children and Young People on page 93. Koulla, I will hand over to you to make a short presentation, and then we will open it up to questions.

Ms Koulla Yiasouma (Northern Ireland Commissioner for Children and Young People): Thank you, Chair. I do not want to repeat what you have heard before, which is why hearing what our colleagues in the Equality Commission and the Human Rights Commission said was very useful. I will try and make my opening remarks as brief as possible. As the Chair has rightly said, I am the Commissioner for Children and Young People, and you know that my role is to promote and safeguard the rights and best interests of children and young people. Mairéad McCafferty, who is next to me, is chief executive with NICCY.

You will know from our written evidence that NICCY and many others have done a lot of work on bullying, and it is an issue that has been raised consistently by children and young people, their parents and carers and schools. They want clearer guidance. For that reason, we really welcome the legislation and are very interested in making it work for children and for schools.

Recently, NICCY talked to about 500 children and young people across Northern Ireland to discuss various issues relating to their rights. One of the areas at the top of their list was bullying. Some of the young people felt that bullying was not addressed properly in school, and that can then cause anxiety and depression. The impact of bullying is very significant on the lives of children and young people. Many of the young people whom we spoke to felt that schools did not do enough to prevent

bullying. In relation to the final conversation that you had in the previous session, children felt that teachers were not doing enough to prevent bullying and to promote positive attitudes towards different groups of young people. I will talk a little bit more about the groups.

We are all acutely aware of the prevalence of bullying in schools as well as its complexities and the difficulties associated with identifying, monitoring and tackling bullying incidents. As I mentioned, we are also concerned about the damaging nature of bullying and the potential long-term impact that it has on the lives of children and young people, including as they grow into adulthood. There has been a lot of research that has talked about children developing anxiety, depression, self-harm and suicidal thoughts, and even adults who reported that they had been significantly bullied as children talked about the impact on their self-esteem, confidence and ability to form relationships. Research conducted across the water also showed that about 70% of teachers reported that they felt ill equipped to support children with mental health issues related to bullying.

Moving on to the Bill, it is with the United Nations Convention on the Rights of the Child (UNCRC) in mind that I welcome clause 1 and the definition of bullying. It is absolutely right that we should have a statutory definition. We support a consistent approach to the prevention and tackling of bullying. The definition of bullying as a repeated act is welcome, but, again, you cannot ignore one-off incidents. When does it become a pattern? It becomes a pattern with the first incident, so it needs to be recorded and addressed properly. I am not asking necessarily for the definition to be changed, but we suggest that a one-off act or the first act is reported, recorded and dealt with properly.

The proposed definition of bullying also refers to the intention of causing harm, at subsection (1)(d). There is, however, no reference in the definition to the perception of the victim. Again, you had the conversation earlier. We wish to see the inclusion of the perception of the victim in the statutory definition. How I experience an act is almost as important as the motivation of the person who undertook the act. I am concerned — again, this is where it gets difficult — about the proposed scope of the definition of bullying. Again, I am cognisant that you have just had a conversation about cyber and online bullying and incidents that happen outside school. We cannot ignore that, as it is a huge issue for children and young people. No longer is it confined to school grounds or to incidents on the way in and out of school.

I want to read you a quotation from a young person who talked to us about this:

"Even if the school does something, they can only do what they see. It is not as bad as it used to be with the online stuff that other people can see, but you can still get bullied through private messages or texts, and then the school can't do anything because, if you tell, you'll just get more hassle."

It is difficult to demarcate between school life and home life. Again, I am cognisant of the conversation that you had earlier. We need an online safety strategy, and I know that that is in the works, but we need it sooner rather than later. I am confident that the Children's Services Co-operation Bill that the Assembly passed in November will go some way to ensuring that there is better cross-departmental working. Online bullying and the outworkings of bullying are not the sole remit of Education and schools; they fall under the remit of a number of agencies and Departments, and they need to work better together to ensure that our children are safe and well. I have gone off-script.

I move on to clause 2. Again, I welcome the introduction of a legal requirement on the board of governors to be responsible for this area of school life. However, I add a note of caution. You have debated the Special Educational Need and Disability (SEND) Bill, which imposes a statutory duty on a group of people who are there on a voluntary and unpaid basis and often do it on top of a very busy day. As we did with the SEND Bill, we caution that the governors need to be properly supported and trained and given good, clear guidance to ensure that they can carry out that role properly. I am not saying that they should not do it — they should — but we just need to be wary about how much we ask our governors to do, and we should ensure that we properly support them. Let us not forget that, with anti-bullying, it is quite complicated and very emotional, and they will have to develop skills in conflict resolution because parents will often challenge some of the decisions made at school. That then raises the question about the role of the Education and Training Inspectorate (ETI) and the Education Authority. We need to see clearer monitoring and guidance given, particularly by ETI when it inspects, to make sure that anti-bullying measures and policies are properly executed and the board of governors meets its duties and responsibilities.

Clause 2(1)(d) places an explicit duty on the board of governors to consult pupils and their parents when determining or reviewing measures to address bullying. As you would imagine, we wholly

welcome that, but I think that there is a typo because, at paragraph (f), there is no mention of making sure that there is dissemination of the policy and the statement to the children themselves. We mention the parents of registered pupils, other stakeholders and teachers, but we do not mention how we disseminate the information to the children and young people themselves in the school.

I have already mentioned the need to address texting and cyberbullying.

We now go on to definitions. I welcome the obligation on the board of governors to ensure that a record is kept of all incidents or alleged incidents of bullying, the motivation behind bullying incidents and information on how incidents are addressed. However, that needs to go further. I recommend that greater consideration is given to the mandatory reporting of all incidents of bullying by schools. That will ensure consistent criteria and processes for recording across all schools, which will enable the sharing of good practices and learning across the piece, bearing in mind that we are not for one minute advocating publishing league tables or anything like that. We expect incidents of bullying to go up as children and parents feel more confident about reporting it. That should be a good thing in the first instance.

I also wish to see the extension of the duty outlined in clause 3 to include an obligation on all school staff to report any incidents of bullying they witness to ensure that the incidents are dealt with promptly and without responsibility being placed on the child. We should not leave it to the alleged victim to report that they were bullied. If somebody in the school sees bullying occurring, they have an obligation to report it. That is really important.

Before I finish, I want go back to the definition of pupil-on-pupil bullying. Children and young people have told us consistently that, in a minority of incidents, teachers and adults in school are involved in bullying by being either complicit in it or through omission. The definition should include teachers, adults-on-children and children-on-adults; only having pupil-on-pupil is not broad enough. That is not to say that this legislation should supersede other things: there is professional conduct, and there are disciplinary measures. As colleagues from the two commissions said, there are other laws and practices that we have to take into account. Children and young people, particularly those from communities such as LGBT, are very clear: they say that teachers and adults in schools have often been complicit in the bullying. It is not fair to just blame the child and not take in the whole approach. It then speaks to how we resolve the issue, but we advocate including an adult-pupil bullying definition.

The Chairperson (Mr Weir): That was very useful and interesting. I suspect that there will be different opinions. I think that Trevor raised with the Equality Commission and the Human Rights Commission the definition of the teacher-child situation. The counterargument is that there are mechanisms in place. Indeed, the mechanisms, particularly those in terms of implication, are more serious because, without minimising any of these things, a teacher-child abuse of power or harassment — however you want to put it — is, arguably, on a more serious level than many child-to-child situations. Is that not something that is already covered? There is a separate mechanism. There was a somewhat negative reaction from the Equality Commission and the Human Rights Commission; they said, essentially, that this is not the place to cover that. I appreciate that you have probably answered this to a large extent anyway, but is there anything else that you want to add to that in terms of the position as you see it from the Human Rights Commission and the Equality Commission?

Ms Mairéad McCafferty (Northern Ireland Commissioner for Children and Young People): In terms of the legislation, you are talking about adults who are complicit. Some of that, obviously, will refer to acts of omission. We are well aware of instances where bullying has taken place and teachers maybe have not acted when they should have to address the bullying. The fact that the legislation includes acts of omission is important.

I appreciate that there are other policies in place in terms of teacher-pupil bullying. Ultimately, the aim of the legislation is to look at how we address bullying in schools effectively so that we reduce and, hopefully, at some point, eliminate or eradicate it. We need to look at the whole-school approach. That involves all pupils, teachers and adults working in that environment. It is important that we develop in our schools a culture that bullying is unacceptable. That is not just the overt bullying that we witness; it is also about bullying that happens when young people are not protected and do not feel safe. Very often, that can happen when teachers or adults working in the school tend sometimes to think, "Oh, I'll not address that". We also have to recognise that we have to help to support our teachers. As the commissioner pointed out, some teachers want to do something but are not sure what exactly they should do. There has to be a whole-school approach to how we deal with this, and it

is not just about continuing professional development but early professional development in our teacher training colleges and raising awareness of how they can deal with the issue and give proper and appropriate guidance.

The Chairperson (Mr Weir): I was interested in your remarks on clause 2. I am paraphrasing some of the evidence that we got from the National Association of Head Teachers, but, broadly speaking, there is an acceptance that, yes, it is important that there is a clear role for and, indeed, an onus on, governors. However, there is a constraint on that to the extent, as you say, rightly, that governors are there on a voluntary and part-time basis. The concern about clause 2 raised by the National Association of Head Teachers, which gave evidence jointly, I think, with representatives of special schools, was that the balance of responsibility shifted overwhelmingly towards the governor side and that there was not sufficient responsibility for tackling the issue on principals and schools, perhaps. Will you comment on that?

Ms Yiasouma: It speaks to the role of governors. Are they ensuring that there is an accountability mechanism? Are they ensuring that the school properly implements its policies? We need to be clear which ones are being responsible. Many of us round the table have been members of boards of governors and know how taxing it is. Children, young people and their families consistently say that bullying is one of the most serious concerns in schools. It behoves boards of governors to look at this properly. That does not mean that they go into the classroom and do the work themselves, but it is their job to make sure that the senior leadership team, particularly the principal, are discharging their duties and responsibilities properly. It is right that we put a statutory obligation on our boards of governors to do that. I do not think that it dilutes the authority or responsibilities of the senior leadership team and the principal, but I do think that they need to be able to account for how the school discharges its duties, as any organisation does to its governing body.

The Chairperson (Mr Weir): I want to raise a final point, and I am interested in your views. Again, it is on an area that you have touched on. You mentioned the safeguarding aspects that are coming forward and the need to deal with cyberbullying particularly. There is a critical thing that goes beyond this. Within the specifics of the Bill, where do you see a restriction of this on the scope of the school? It is about trying to balance things and ensuring that bullying is fully covered. As indicated, a lot of the incidents will happen outside school premises. So, you have a situation where you want to ensure that things are covered fully, without placing an unreasonable onus on the school. Should a line be drawn on where cyberbullying, for instance, impacts on a school? Does it need to be drawn wider than where it is at present? Does it need to be more open-ended? What are your views?

Ms McCafferty: You have named it: it is very much about the impact of bullying. That very often is carried into the school environment. If it is something that happened the evening or night before, it will still be felt by the young person in the classroom, so it is something that the school should address.

Ms Yiasouma: As Mairéad said, you cannot divorce the issues. The relationship between the children was formed at school, and it goes into family life and into the home; it is very complicated. It would be unreasonable to place a duty on schools to address bullying outside their remit, as defined in the legislation. However, we may want to see a line that reminds them of their responsibility with regard to safeguarding. Regardless of where a child protection issue occurred, the school has a duty to report it under the joint protocol procedures, the minute the school becomes aware of it. We were asking for an amendment, and we were struggling to find whether we would suggest an amendment to be put in the Bill or whether to suggest that the guidance attached to the Bill should be very clear.

The Chairperson (Mr Weir): Off the top of my head, one possible avenue for a potential amendment is in clause 2(1)(b), which lists where bullying incidents are to be circumscribed. It is in school, travelling to and from the school, and where pupils are in the lawful control of the school. A way around it might be for it to include something about where it has effect while under control of the school.

Ms Yiasouma: That may well be.

The Chairperson (Mr Weir): I think that you said that this is one of those things where there is no perfect answer. If there were, we would have all gone for it.

Ms Yiasouma: We cannot overestimate the impact that online bullying has on our children.

The Chairperson (Mr Weir): Robin is next.

Mr Newton: No, Chair, I am content. My question was about the teacher-pupil or the adult-pupil relationship.

The Chairperson (Mr Weir): It is always good to have a content member of the Committee. There are maybe less content members coming up.

Ms Yiasouma: I would be surprised.

Mr Rogers: Mairéad talked about support for teachers. Two pupils may pass a cyberbullying text during the school day and then have it out with physical violence at the youth club that night. Every school is different. I listened to teachers from special schools last week saying that an incident in a school with children with special educational needs would be terribly different from one in another school. My concern is that the Bill is quite short but has major implications. Are you concerned about the lack of guidance for school leadership and teachers and for boards of governors, which have an increasing role? We do not know more. I speak as a member of a board of governors.

Ms Yiasouma: There seems to be a trend for short Bills with huge consequences: the Shared Education Bill was very short but said a lot. Harking back to the Special Educational Needs and Disability Bill, the devil is in the detail, and the guidance goes with this, including how you address these issues. Obviously, if a child is distressed, there are certain processes, but, where it is in the gift of the school to problem-solve and resolve the issues internally, we need to be sure that schools have the right tools and processes in place.

There have been lots of very effective problem-solving, mediation and restorative practices in schools; there is peer mediation and children supporting other children with what are called relatively low-level incidents. I do not think that we are asking them to do much more than they are already doing because most schools have some mechanisms. We are optimistic that the Bill will place a duty on the Department of Education and on our Education Authority to ensure that proper supports are in place to help schools to do their job. They are already doing most of those things. Some struggle, and there is patchy and inconsistent practice. We hope that it will become more uniform and that there will be clearer guidance, advice and support on how to address this issue.

Mr Rogers: My concern is that support for teachers is inadequate.

Ms McCafferty: It is, absolutely. I think that we recognise that a level of support and guidance is missing. I think that that is why 70% of teachers have already said that they would feel ill equipped to deal with it effectively. That is why the guidance is so important, and you are right to say that the Bill is quite brief, as Koulla also said. The guidance will be very important, not just for teachers and school leaders but for governors and young people, parents and families. This is about reassuring our parents and our children and young people that schools are dealing with this effectively and addressing it effectively. It is also about helping to support teachers. As a former teacher, I am the first to say that teachers need more support with guidance and training as well as all the other stakeholders involved, including governors.

Mr Lunn: Thanks, Koulla and Mairéad, for your presentation. I go back to your view that teachers and pupils should be included in this and vice versa. Would that include all staff in schools, such as ancillary staff and classroom assistants?

Ms Yiasouma: Yes.

Mr Lunn: You spoke about the duty on boards of governors. I declare an interest as a member of a board of governors, but what I am going to say does not apply to our school.

Ms Yiasouma: Of course not.

Mr Lunn: I suppose that it depends on the size of the school and perhaps the quality of the governors. I have the impression that, a lot of the time, it is not the board of governors that is telling the principal what to do and that it is pretty much the other way round, necessarily so because the principal has more expertise and more experience. Under clause 2, "Duty of Board of Governors to secure

measures to prevent bullying", would there be any value in including "and principals" after "Board of Governors"?

Ms McCafferty: There is already a responsibility on principals and teachers to act in the interests of children. Would that strengthen it? Possibly. I take your point. Boards of governors, as Koulla said, are comprised of volunteers who give of their time, knowledge and expertise, and that is why it is so important that we provide guidance and support for them. You are right: when boards of governors meet, they meet the principals and the senior leadership teams who know the daily business of the school. This is about boards of governors taking their responsibilities seriously in how they monitor the recording of incidents of bullying but, more importantly, how it is being addressed, how practice in the school is changing as a result and ensuring that the culture of the whole school is such that bullying is unacceptable and is being addressed effectively.

We discussed earlier that some schools — it went back to the point that the Chair made in the previous session — may feel reluctant to record or identify certain behaviour as bullying. As a former teacher, a former governor and as a parent, I think that it is vital that we have confidence that schools are not afraid to be open and transparent, because a school that records incidents is a school that is, hopefully, addressing it effectively. As times goes on, you want to see a situation where we acknowledge that incidents of bullying should probably rise as people create more confidence, but, in time, they should wane.

Mr Lunn: I will go back briefly to the question of teachers bullying. Particularly at secondary level, a teacher may, with the best of intentions, be trying to get the best out of a pupil. That may involve putting pressure on the pupil, perhaps even singling them out, but certainly not intending it to be an act of bullying. Is there any danger that the two situations could become confused and perhaps produce what you might describe as a vexatious allegation?

Ms Yiasouma: There is a danger that that may happen in any circumstance. A child could say that another child is bullying them when they have actually had a falling out. I think that vexatious complaints are few and far between, but, when you are talking about somebody's career and livelihood, you have to take that very seriously. It will then fall to how the school handles it and how open it is about it. That could happen in any circumstance, not just with bullying. The reason for having adult involvement in the bullying legislation is that it is dealt with without using some of the more process-driven disciplinary measures. It could be dealt with in another way to establish the facts first. It may actually have the opposite effect. If there is a challenging relationship between a child and their teacher, that may manifest itself in different ways. I do not think that this will add to that risk. It may give comfort to children that they have a mechanism by which to seek resolution.

Mr Hazzard: Thanks again for the information. Last week, we looked at the need to maybe have something in here about support for the child who has been bullied and for the child who has been caught up in the bullying. Do you think that we should look at that? Is it doable in this legislation?

Ms McCafferty: In schools, we have the post-primary counselling provision, and I know that the Department hopes and intends to roll that out in the primary-school sector. That is one aspect of supporting a child who has been bullied. What we are looking at here is a systemic approach to bullying per se in the school. That will involve the young person or the pupil who is perceived as the bully. Often, schools can address bullying behaviour effectively if they do it openly and constructively. Koulla has already mentioned the strategies that some schools adopt. It is about being open about it and making sure that we support the bully. Very often, if a child bullies it is because they are being bullied elsewhere in their life. It is about identifying that and providing support, Chris; you are absolutely right.

Ms Yiasouma: You may wish to amend clause 2(1)(a), where it says that a board of governors has a duty to secure measures "to prevent" bullying, to add "and resolve". You may want to add to that, because that should be included in the measures. The measures and the guidance attached to the Bill should say the following: how do we identify, record and prevent bullying and how do we ensure that the adults and the young people involved receive the proper supports to make sure that it does not happen again? We need to ensure that any lasting effects are mitigated, perhaps through counselling, so that they can move on. We may want to look at using the phrase "prevent and resolve" to make sure that the measures are end-to-end.

I stopped, but I wanted to talk about recording and motivation.

The Chairperson (Mr Weir): I am sorry.

Ms Yiasouma: No; it is just because you talked a lot about the list in clause 3(3) and how we would do that. We think that there is a real challenge around a list, because it can never be exhaustive. The discussion that you had was that it should be a guide that should be research- and evidence-based as well as guided by section 75. I am not averse to the suggestion that the Equality Commission made about children's gender identity. Gender assignment is not likely to affect many children because they have rarely been through the process at school. Sometimes they have, but it is about how they identify themselves. Young carers should be specifically mentioned as a category because people with caring responsibilities are mentioned in section 75 but also because the evidence and the research tell us that young carers, for a range of reasons, experience bullying, labelling and all sorts of things. Not everyone knows about it, but we would argue strongly that children with caring responsibilities, not just young mothers, should be added in a separate section.

The Chairperson (Mr Weir): We want to make sure that whatever is there is got right. There are arguments about whether even the 10 grounds are necessary or the wording is precisely right. People will argue about the different grounds and ask how comprehensive it is. I wonder whether clause 3(3) may need to be amended to enable the Department to make regulations. I am thinking about adaptability. Whatever list we come out with, even if there is some form of catch-all category, I am conscious that we will have in primary legislation a list to which, in six months' or a year's time, somebody else will want something included that was not included at the time. Perhaps we should have something to allow for additions to the list. I am conscious of the fact that when you put through primary legislation — I know that the Equality Commission talked about a review in five years' time — and you make a mistake by way of omission, it is not as easy to add something to it. On the other hand, if you had a clear mechanism to put it in legislation, there may be an argument for that as well.

Ms Yiasouma: That is right, and I would endorse what colleagues said about socio-economic status, which is not mentioned in section 75 but is clearly an issue. We say that it should be evidence-based and that the regulations and guidance attached to the Bill need to be broad enough. Our submission is based on what groups of young people say. This speaks to the measures that schools can take generally around different groups of young people who are, particularly, LGBT, marginalised, newcomers or from black and ethnic minority (BME) communities. We are not plucking these out of thin air.

The Chairperson (Mr Weir): I understand that.

Ms Yiasouma: We need sufficient scope to allow for that. Many children are bullied as a result of a falling-out. They have just fallen out, and then one is isolated from the friendship group and the others start bullying them. It is unlikely that such a child will fit into any category, and that is a huge challenge. We have to capture that information.

The Chairperson (Mr Weir): I suspect that this was being drafted a year ago and one issue raised was that of refugees. That may not have occurred to people or it may not have been seen as a priority a year ago because Northern Ireland did not have much of a history of taking refugees, but it may move to be a bigger priority. It is about having a level of adaptability.

Ms Yiasouma: Absolutely. The world is changing all the time, and legislation is a snapshot of a moment in time.

Mrs Overend: The Bill addresses bullying in grant-aided schools. Have you had interaction with schools that are not grant-aided?

Ms Yiasouma: It should be any education establishment, independent school and education other than at school; it should be across the piece.

Ms McCafferty: Independent schools were included in the work that we did on shared education. There are 14 school types, so we wanted to make sure that the sample that we were working with was robust. That work was about the experience of shared education, but, again, bullying was cited as an issue for the children and young people. It is a current issue that is prominent in young people's minds. So, just to reassure you, Sandra, yes.

Ms Yiasouma: To be wherever a child is.

The Chairperson (Mr Weir): I am just wondering out loud. It seems to be a very logical thing to say, "There's no great reason why 14 schools should be excluded". Maybe the Department needs to make a legal or technical adjustment". It seems a bit odd that they were not included, other than simply the way it was drafted. I cannot think why there would be a legal difficulty with that.

Ms Yiasouma: We just have to find a way to overcome it because it includes children educated in small projects other than at school, who are particularly vulnerable. There is a range of sectors.

The Chairperson (Mr Weir): That is something we will want to explore with the departmental officials, adding to a long list of things. Koulla and Mairéad, thank you very much. That was extremely helpful for our deliberations.



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Addressing Bullying in Schools Bill:
Ulster Teachers' Union

20 January 2016

NORTHERN IRELAND ASSEMBLY

Committee for Education

Addressing Bullying in Schools Bill: Ulster Teachers' Union

20 January 2016

Members present for all or part of the proceedings:

Mr Peter Weir (Chairperson)
Mrs Sandra Overend (Deputy Chairperson)
Mr Jonathan Craig
Mr Chris Hazzard
Mr Robin Newton
Mr Seán Rogers

Witnesses:

Ms Sandra Brown	Ulster Teachers' Union
Ms Julie Orr	Ulster Teachers' Union

The Chairperson (Mr Weir): We welcome the representatives from the Ulster Teachers' Union: Julie Orr, president of the union; and Sandra Brown, a former president. If you make a short presentation, we will then open it to members.

Ms Julie Orr (Ulster Teachers' Union): Thank you very much. Sandra and I are primary-school teachers. Although I am seconded out for the year, I am usually a primary 5 teacher. We want to bring to you the point of view of practising teachers and principals. I will speak for a little bit, then Sandra will speak for a little bit, and then you are welcome to ask questions. Hopefully, it will be useful to you.

The Ulster Teachers' Union thanks the Education Committee for the opportunity to give oral feedback on the Addressing Bullying in Schools Bill. As teachers and principals, we take bullying seriously and welcome any supportive measure that will help to tackle and prevent bullying in schools. Although we agree with the Minister's concern about the need to address the ongoing issue of bullying, we are concerned about aspects of the Bill. We hope that you found our written response helpful in highlighting some of the concerns raised by our members and that this presentation will help to outline those further from the viewpoint of practising teachers and principals. We want to take a closer look at the definition of bullying as outlined in the Bill. As teachers and principals, we know only too well the difficulties that schools can face when attempting to clarify whether alleged incidents or behaviours are, indeed, bullying. As a primary-school teacher working with young children, I know that the definition of bullying can initially be difficult for children to understand, despite teachers' best efforts to help pupils. Young children can find it difficult to distinguish between simple disagreements and incidents of bullying. We work hard in schools to support the children in our classes as they continue to develop their social skills of sharing, turn taking and working as part of a group, and we daily encounter natural frictions between groups of children. Simple issues such as who gets to be first in the line can seem vital to a seven-year-old. As for who gets first pick —

The Chairperson (Mr Weir): That can also apply to a few Committee members.

Ms Orr: It never changes. It also applies to golden time and who gets to choose the balls or hula hoops first. Those are examples of issues that teachers navigate and, it is important to note, resolve daily. The Ulster Teachers' Union, therefore, welcomes a clear definition of bullying to help to clarify the issue not only for pupils but for schools and parents. We agree with the definition of bullying in clause 1(1):

"(a) the repeated use of a verbal, written or electronic communication or a physical act (or a combination of those),

(b) by a pupil or a group of pupils,

(c) against another pupil or group of pupils,

(d) with the intention of causing physical or emotional harm to that pupil or group of pupils."

However, the UTU remains concerned about the reference in clause 1(2), where bullying is defined as an "omission", as we feel that it is almost impossible for education practitioners to judge that dividing line between an act and an omission when deciding whether bullying has taken place.

I know that you discussed the issue this morning, but the UTU also has concerns over when and where schools are responsible for the prevention, recording, interpretation of and dealing with incidents of bullying. While the Ulster Teachers' Union understands the important responsibility of schools in the prevention of bullying through anti-bullying policies in schools, personal development and mutual understanding (PDMU) lessons, learning for life and work lessons, circle times and anti-bullying assemblies, the union is concerned that schools may be put under impossible and unreasonable pressures to account for incidents that could be considered grey areas, as you discussed, beyond what can be reasonably expected from the duty of care of a school.

One such area that is highlighted in the Bill is the reference to pupils travelling to or from school during the school term. Our written response mentions the difficulties in assessing the motivation of such incidents and in the gathering of evidence or information about what may or may not have happened in order to fulfil the expectations of clause 3. I know that you join me in asking questions and seeing it from a different point of view. At what point on a journey home is the school no longer to be held responsible for recording and dealing with bullying incidents? Are secondary school students who walk home, stop off at some shops, meet friends for coffee or head to the park still on their journey home?

I will expand on our concerns on those grey areas. We also consider cyberbullying and ask in what circumstances a school should be responsible for a cyberbullying incident. Are schools responsible if the cyberbullying happens using school equipment? Are schools responsible if it happens during lunchtime using personal mobile phones? Are schools responsible if it happens after school over Facebook or Twitter? How can schools deal effectively with those matters? What adequate disciplinary procedures should be put in place? Do they vary depending on where and when the incidents take place?

As other witnesses were talking, I was reminded of the fact that the Bill is about addressing bullying in schools. I suggest, therefore, that there may be some confusion not over whether an incident is bullying but whether it is the responsibility of schools to deal with it.

The UTU feels that schools must be provided with clear, up-to-date and relevant guidance that not only details how and when appropriate action should be taken but details what appropriate action can be taken to ensure that bullying is addressed in a consistent manner.

I move on to clause 2. The Bill clearly states the duty placed on boards of governors to determine and secure measures to prevent bullying as well as their duty to record all incidents or alleged incidents of bullying involving a registered pupil at a school. The Ulster Teachers' Union wants to highlight to the Committee the fact that governors are appointed in a voluntary, unpaid capacity and, in many cases, do not come from educational backgrounds. Given the weight of responsibility that the Bill places on schools and their boards of governors, it is simply unacceptable to propose that the Department may, from time to time, publish guidance on how a board of governors is to comply. It is unarguably the responsibility of the Department to ensure that sufficient training and guidance is provided to boards of governors and schools prior to the implementation of legislation. We want clarification of the support,

training and guidance that will be made available to boards of governors and schools to help them to carry out the role.

Ms Sandra Brown (Ulster Teachers' Union): My thanks to the Committee for the opportunity to be here today. We recognise that a vital part of the success or otherwise of any Bill in operating effectively and for the purpose intended is the perspective of the actual practitioners, so I am very much presenting on behalf of teachers and the perception of what the Bill might entail at a practical level.

I will first look at record-keeping. The following areas were highlighted to us. Should it be standardised? Should it be in digital format? Should it be accessible to the Department and the Education and Training Inspectorate (ETI)? It would probably be good to have it standardised, which would make things easier administratively across schools when children move. We have no problem with records being in digital format. We have some concern about the use of data and sharing it with the Department and its arm's-length bodies, particularly the inspectorate. We see a danger, unfortunately, of it having the potential to become something that it should never be.

Without elaborating on the unfortunate journey of data usage in the context of assessment in our schools, surely the gathering of bullying data has the potential to lead to misleading interpretations or some kind of bullying league table, as was mentioned this morning. League tables are perceived to have become a part of the school landscape. To be placed on a bullying league table is not a particularly good place for schools to be. Whilst we recognise that transparency and openness have their part to play in all public organisations, we ask whether the reporting of cold, often out-of-context data is in the best interests of schools, which often work against all manner of difficulties in order to progress constantly the raising of standards in their unique setting. As was said this morning, schools sit in a great range of settings. The level of bullying in one school is not at all reflected across all sectors in all environments. That can no more tell the story of a school than any similar kind of reporting of assessment data can. Much of teachers' focus is on what is being done with all the data that we submit to the system and how that will come back to bite us when the inspectorate arrives at our door. Every man's reality is their own perception, but it is a real perception, shall we say.

As I said, we have some experience of how the Department can use data for dual purposes. We sometimes question the motives behind that, so we question the motivation for requiring all this data. We have concerns about how the inspectorate might choose to interpret it.

I will stay with recording. I highlight the Department's consultation document on addressing bullying in schools. The overview states, at point 15, that the latest survey, which was undertaken in 2011, showed that 39% of year 6 and 29% of year 9 children had experienced bullying in schools in the two months preceding the survey. I do not know what definition the Department used to determine an act of bullying or if it simply allowed children's subjective assessment. The fact remains that around one third of the children felt themselves to have been bullied. As teachers, we put that into context: a class of 30 children can, in any two-month period, expect to have 10 reported cases of bullying — at least one a week every week.

I note the suggestion put to you last week by the Northern Ireland Anti-Bullying Forum for a monitoring and recording mechanism. It would include the motivation involved, an outline of the incident, a report on the support offered to both victim and perpetrator and an ongoing record of support and interventions, including a note on the effectiveness of the intervention. Should the Department decide to adopt such a mechanism, it should be understood that that involves a huge time budget. As teachers, we already have grave concerns about ever-growing administrative demands that interfere with our ability to prepare and teach our young people. Our question is along these lines: if this becomes such a bureaucratic exercise that it takes up more time than we already give to addressing bullying in schools, which is already considerable, what do we stop doing in order to implement a further layer of bureaucracy? It is not that we do not want to deal with it — we cannot not deal with it — but the reporting and recording trigger a warning sign. We have so many layers of this for so many things. Time is our ever-present bully. As teachers, we find that there is never enough time. So we request —

The Chairperson (Mr Weir): Time is our bully as well, Sandra. *[Laughter.]*

Ms Brown: I can finish now if you wish.

The Chairperson (Mr Weir): OK. I will pick up on two points. Your submission expresses concern about clause 2 and the absence of a role and responsibility for parents: will you expand on that a little?

Ms Brown: That is one of my points. The Minister said, through his Education Works campaign:

"Parents are the first people a child will learn from."

That highlights the vital role that families can play in helping children to do well at school and improve their chances. As we see it, surely there is room in any Bill to include the specific responsibilities of the Department to engage with parents and educate them as to the nature of bullying and what constitutes bullying, as well as taking the bull by the horns and helping them to understand the effects not only on their child but on other children, because parents often perceive that their child is always the victim. There has to be a realisation that, if 30% of our children are victims of bullying, there are, in theory, 60% who are doing the bullying. If the Department says that it wants to engage with parents and sees their role as vital, it needs to teach parents not only about the definition but about how they as parents ought to guide their children and young people. We cannot do it all in schools.

Ms Orr: I will pick up on that point. It is important that there is partnership in schools. Schools work very much alongside parents on the ethos and policy of schools, and it is important that there is a combined vision of what we want from our anti-bullying policies and what we expect to happen if they have a concern about bullying. Quite often, the perception — I heard it this morning — is that teachers are not doing anything about it. We want to make it very clear that we take bullying seriously, we want to resolve it, and we work with the children but need parental support to be able to do that.

The Chairperson (Mr Weir): Julie's point is valid. Everybody has to be careful to ensure that we do not view this as a meteor from outer space and that, if something is not in the Bill, it is not happening or that a range of things are not happening already.

I have one final point. A number of members want to ask questions, but I want to give you the opportunity to respond. We have received mixed evidence about the scope of the Bill, specifically on whether, from a definitional point of view, bullying should be seen and defined as being between pupils or whether it should also include teacher-on-pupil bullying. There are different views on that, but I will give you the opportunity to respond with your view.

Ms Brown: It is our view that the Bill ought to confine its remit to pupil-to-pupil bullying. That in itself has a lot of grey areas. As was mentioned this morning, there are other pathways whereby other kinds of bullying ought to be pursued, probably with greater weight.

The Chairperson (Mr Weir): I just wanted to give you the opportunity to respond. A number of members have questions, so they should try to be reasonably brief.

Mr Craig: I will try to be brief. I am looking at your comments about the unenforceability of tackling bullying outside the physical school boundary: will you elaborate on that? I do not see how it is unenforceable.

Ms Orr: If an incident outside school has been reported, it is difficult to know exactly what happened. That is one of the grey areas, because you are going on reported incidents that you do not have control over. You do not know the motivation behind it or what was going on, which can be difficult. As I said, the Bill addresses bullying in schools. We are simply raising those questions as well. There are boundaries. It involves pupils in your care, which we address, as I said, through circle times, PDMU lessons, looking at cyberbullying and at how we travel on buses, but the difficulty is in reporting it and dealing with it. We need further guidance and support on that, which is what we are calling for. Sandra, do you have any comments?

Ms Brown: I have a comment, based on what I heard in this morning's discussions and trying to determine the reach and remit of the Bill. We talked a lot about timing and geographical distance. I am throwing this out here as a thought. Perhaps that needs to be shifted away from the time and geographical setting towards the impact on young people. If the reach and remit of the Bill is to address bullying as it impacts on children as opposed to the time and distance from a particular geographical space — the school — I do not know what that adds to the thought process here this morning.

The Chairperson (Mr Weir): That is useful. To be fair, we are trying to get our heads around the way that that is dealt with.

Mr Craig: Julie, I am trying to figure out what you mean by its being unenforceable or more difficult to enforce than anything else. The one thing that I have learned about bullies is that they are rather clever individuals. They will not do it in front of a teacher or principal, because everything would then be very black and white. They do it behind the bike shed or wherever. It will be out of sight and out of mind, so doing it outside of school is no more difficult to prove than if it were in school. I have seen all that happen. You bring pupils in, question them and get five different viewpoints on what actually happened, and you then make a judgement call. That is what it is.

Ms Orr: That is the difficulty. A lot of responsibility is placed on teachers to make a judgement call on something that has happened that is completely out of their control. That is why I am saying that clarification and guidance are needed. If something happens at a youth club, where does the responsibility for the leaders of that youth club lie? If it happens at 8.00 pm in a park, how do we have control? It is an investigative process to find out exactly what happened. It is difficult to know what to do in those areas, and a big responsibility is being placed on schools. There is a concern about that level of responsibility. We must ensure that, if we have that responsibility, we will be supported in that role. That is the difficulty in placing pressures on schools. We want to carry out our jobs to the best of our ability, but we need support to do that. Overall, a lot more discussion is needed on what I classify as grey areas, especially with cyberbullying, and at what point it becomes such an issue that you need to involve outside agencies and bodies, which should have the proper people to deal with those incidents. I do not have all the answers. I am raising those points as questions.

Mr Newton: I thank the delegation for coming up. Would it be true to say that, generally speaking, you are anti the legislation?

Ms Orr: No.

Ms Brown: No, not at all. In fact, we very much welcome the willingness to have a definition. We have been looking for that. We have a concern because we did not understand it, and there was not enough about what "omission" means in the context of the Bill as it is just mentioned at clause 1(2). Is that an omission on behalf of teachers and schools to know about a bullying incident or to do something about it? We do not know, and we need guidance.

In schools, there is a certain fear — I use that with a small "f" — about the point at which we almost become investigators. Julie mentioned that. We have been trained not to investigate pastoral care and sensitive issues. That is for other agencies to do. Teachers are a bit nervous about the point at which they are determining the motivation — we find that difficult — behind an act or an omission, whatever that is. We may overstep a mark that makes us investigate where we would not investigate if it was under the umbrella of pastoral care or child protection. There are too many unknowns. We are not against there being legislation, but we need more clarity.

Ms Orr: I go back to something that was said earlier. It is a short Bill that has huge implications, and a lot more information needs to be pulled out of it as to how it will work in a practical sense. We are simply raising some of those issues to help you to think about it. It is not that we are anti the Bill in any way, but issues need to be considered and teased out.

Mr Newton: To use Sandra's phrase, we are struggling with the "reach and remit" of the Bill as it stands.

You expressed your concerns about the roles of boards of governors and made the point about their being there in a voluntary capacity, having other employment and giving their time freely. In your professional opinion, what might need to be put in place for boards of governors if the legislation goes ahead?

Ms Orr: We mentioned that support and training should be available for boards of governors. That is very important. If they have a duty to fulfil, there should be adequate training, support and guidance from the Department of Education to allow them to fulfil that duty correctly. It will be important that they have a good understanding of what is expected from schools and how they go about implementing it. It is about ensuring that that support is available for schools to make that possible.

Ms Brown: Support and education for governors as well as for teachers — practitioners at all levels — needs to come before a Bill comes into force. We cannot put the cart before the horse, because somebody will fall foul of the legislation.

Mr Newton: Incidents when pupils are travelling to and from school have repercussions for the school day; you pursued that with Jonathan a wee bit. I cannot imagine that you would not be aware of such incidents.

Ms Orr: It is important to note that schools already deal with incidents. They have a duty of care for pupils in their schools, and they deal with incidents. I think that the concern is especially about the reporting of incidents, the motivation behind that and the implications that come from it. Already, it is more that there is guidance on how schools are meant to deal with these incidents. Is it sufficient to say that we have been made aware that there are problems travelling to and from the bus and that we will, therefore, tackle that in our assemblies and PDMU lessons? Is that meeting the requirements, or is more expected through investigating and recording independent incidents and the motivation behind them? Again, it is about how it actually works out on a practical, day-to-day basis. The aim of this is to standardise how bullying is tackled in schools. We would hope, then, that it would help to clarify some of those situations to help make it more standardised so that schools know what to do when these incidents occur.

Mr Hazzard: Thanks for your presentation. Following on from what Robin said, I took it that you were not welcoming the Bill, especially given your submission. It is perhaps the first submission we have had that does not overtly state at the start that this is a welcome development in tackling bullying. You have maybe cleared that up a bit.

I still remain a wee bit confused about your point about travelling to and from school. For example, I feel that what you are suggesting would nearly be a retrograde step in how schools have managed this in recent years. Jonathan is right about bullies being smart. It used to be a case of, "Wait until you get outside school" or "Wait until you get to the bus stop" and that sort of stuff. However, schools have now got to the point where, as soon as you put your uniform on in the morning, you are an ambassador for the school, so, when that uniform is on, your behaviour has to be impeccable. I think that the vast majority of school buses have cameras. It is nearly easier to identify bullying on a school bus than on the football pitch or in the changing room in a school, so, again, I find it strange that you suggest that we should not look at travelling to and from school as an area that we need to address as well.

Finally, I take some of your concerns about data on board. We know through anecdotes that, in a large number of incidents, there has been a failure of schools to deal with homophobic bullying. If we had the data, we might be able to do a lot more with that. For me, certainly, recording and disaggregating data will be crucial to going forward. You seem to suggest — again, for whatever reason — that we should stay away from that. Again, those are probably more statements than questions, but maybe —

The Chairperson (Mr Weir): If you want to respond, go ahead.

Ms Brown: Our concerns are about the purposes for which the data are used. They may be used specifically in the Department to help schools progress to a better place for all young people and, ultimately, to eradicate a lot of what happens in a school that makes it an uncomfortable place for children. However, they may also be used almost as a weapon by other arm's-length bodies in the Department. As we have seen in the past, instead of giving the proper data, schools have tried to steer ways around that. We do not want to be labelled as the school that fails to deal with bullying in the same way that we do not want to be labelled as the school that fails to reach so many GCSEs at grades whatever-it-happens-to-be at any moment in time.

Schools do not want to not deal with things that make it difficult for children to learn effectively, comfortably and with as high a degree of safety and security as possible. We would look for assurances that data are going to be used only for the purposes of determining where help is needed. It is not just anecdotal that schools have found themselves in the unfortunate position of not having the right data determining outcome of their inspection report. That may have been through no fault of the school. It may have been opened only a number of years, so it did not have the data available.

Ms Orr: Can I add one point very quickly? We are concerned not just about workload implications but about clarification over some of the details, whether it is incidents of bullying or alleged incidents.

There is a difference, especially in primary schools, where that definition can become unclear to the children. They may feel that it is a bullying incident, and, when it is investigated, it is found that it is actually just because those involved both wanted to be in team A in the football or whatever. I think that that is important for recording through a centrally based recording system. Is it an incidence of bullying that has been dealt with and where there were issues, or is it an alleged incidence of bullying? Clarification is needed. We are not trying to be negative about a Bill that is going to help —

The Chairperson (Mr Weir): No.

Ms Orr: We very much welcome anything that will help schools deal with bullying, but there are a lot of details that we would like clarification of.

Mrs Overend: Thank you for the discussion this afternoon. I want to ask about recording the information. From what I understand, the Bill is intended to bring in best practice, so a lot of recording is probably happening already. It is not about adding unnecessary bureaucracy but about creating best practice across all schools. It is not intended to burden you with something unnecessary. What best practice goes on at the minute?

Ms Orr: That is important to know. We raise that because we have not had clarification about what will be expected of us in that. As you know, schools already record any incidence of bullying. It is best practice to record details of who was involved, what happened and how it was resolved. However, because there are no details on how it is to be recorded, using the system and what details have to be recorded, that is just a concern that we raise.

Mrs Overend: That is why I ask. I am not a teacher; I do not know. What do you do?

Ms Orr: If there is any instance of bullying, a teacher speaks to the principal and follows school procedures and policies on how it is dealt with and recorded.

Mrs Overend: What detail is recorded?

Ms Brown: Schools differ in what they record.

Mrs Overend: What do you see as good practice? That is really what I am trying to get at.

Ms Brown: Good practice is to look for both sides or the multiple sides of whatever the issue has been and to record everybody's perception of it. It aims to resolve it, with adult suggestions on how children can progress from the stalemate or whatever it is.

I am a primary-school teacher. In a primary school, incidents are probably less complicated; at least they are in my setting. However, in other settings, perhaps in the city, they are more complicated. Quite often, with us it is just a matter of one child wanting his self-will over another. It is not terribly long-term, but it gets noted. Usually, it is put into the book. Our parents like to be informed, and with us they just get informed as a matter of course. They may be told, "This happened today. We spoke to so-and-so about it, and this is the outworking of it. Keep a wee eye to it, see if you hear anything else about it and feed back to us".

With primary schools, it is perhaps a less formal intervention in the children's lives, because we are loath to label children, certainly at primary level and even at post-primary level, or to make them somehow criminally responsible for something. We do not like to judge people's behaviour and potential behaviour on their teenage years. I think that would be very unfair to every one of us as well if we were never able to live out and beyond what we were perhaps thought of as in our teenage years. We do not want to label children in any way that comes back on them.

Mrs Overend: I am sure that you learn from how you have dealt with one incident about how to deal with another one in the future. How often do you look back on your recording of incidents?

Ms Brown: As the senior management team, we would do an audit once a year. We do an audit of all those things, whether it is special needs, pastoral care and so on. All that comes within the overview on an annual basis.

Mr Lunn: Thanks, ladies, for your presentation. I am sorry about this, but I am still on recording and so on. To what extent do you think the records that are demanded by the Bill, which effectively tidy up what should already be there, to be honest, should be made available and to what use should they be put? You would not, I am sure, argue about the necessity to collate this information for the purposes of overall statistics to see what the trends are and what perhaps needs to be done about it at a higher level by the Department. I wonder what needs to happen beyond that. To me, the most important line is in clause 3(2)(b):

"include information about how the incident was addressed."

If I was a parent who was thinking about a school, I would fear that the publicity around this legislation may prompt other parents to start asking questions about bullying that they probably would not have asked in the past. If a parent at an open evening asks about a school's anti-bullying policy, they would be given a copy of it. In future, if they ask about the incident rate and what the school has done about it, to what extent do you think they should be given any information along those lines, and in what form should it be given? Should it be verbal or written, should it be redacted, or should they not be given anything at all and just be told what the policy is?

Ms Brown: We would possibly be tied to whatever they are legally obliged to be able to access, which would be over and above what we in an individual school might want. It was a concern for us, especially where intent is concerned. If we, as practitioners, put down even a primary intent, a young person might come back and say, "That is not why I did it at all". Yet that is logged as the incident, and that is what the data show. They will show that we, as practitioners, felt that that was the primary intent or motive. We have difficulty with the idea of motive, and, as Chris said, we have difficulty with it because not everything is clear enough for us at the moment. Do we determine that motive from what they tell us, or do we do our own subjective thinking on it? If we record one thing and they have access to what has been recorded and come back to us at a later stage and say, "That is not why I did that", where do we stand? It raises more questions.

Ms Orr: I will return to the issue that I raised about support. In dealing with incidents of bullying and how you offer support after one has been reported, I feel almost as though the rates are much higher than I, as a teacher, seem to experience. I think a lot of the incidents are very easily dealt with and are not bullying incidents.

When a serious incident of bullying has happened, schools will deal with that, but I am saying that they need additional support. Teachers need support, as do principals and boards of governors, to make sure that bullying is effectively dealt with. We would hope that their effectiveness in dealing with bullying is 100%. If we are aware of a problem, we will do whatever we can to resolve it. We do not tolerate bullying in our schools, and I think schools make that clear. When they know about it and can deal with it, they will do so.

Mr Lunn: I am sorry to ask you a hypothetical question. Let us imagine that you were a parent who was assessing a school and you perhaps heard anecdotally that it had some problems. The school may have been able to give you certain information. On the one hand, it might say, "Yes, in the last year we have had 12 incidents of bullying, and this is how they were dealt with". On the other hand, the school might say, "Sorry; we have not had any incidents of bullying". Which one would you believe, and which one would you pay more attention to? The statistics, as you said, Sandra, indicate that in a class of 30, 10 will probably have been bullied, although I am sure that it varies from class to class.

Ms Orr: That again shows the differences in perception. There is also a difficulty in perception and intent, and that can be very difficult. It is very difficult, especially with young children. Anecdotally, I taught a child in my class who had difficulties with his movement. When he turned around to pick up a pencil, he would accidentally thump somebody with his elbow. As he turned around to apologise to them for thumping them, he would knock somebody else out of the way.

The Chairperson (Mr Weir): Trevor has been trying to get away with that one for years. *[Laughter.]*

Ms Orr: The poor child was mortified. Children would go home and tell their parents, and I would have to say to parents after school, "I am so sorry. Your child got a knock today. There was no intent in it. There was no bullying involved. It was simply a difficulty that that child had". The child himself was very apologetic, and the other children in my class were lovely about it and would say, "Don't worry. It is no problem".

Mr Lunn: OK. I still wonder to what extent —

Ms Brown: I will answer your question more directly perhaps —

Mr Lunn: What I am really driving at is staying away from league tables completely. There must be some midway point where parents or parents of potential pupils are entitled to some sort of information.

Ms Orr: Surely if parents know that schools will deal effectively with bullying, it should not matter what the bullying rate is in that school. It is about having confidence in the school and being able to say, "I know that, if I have a serious concern, I can go in and get reassurance from that school". That is the important issue. It should not be about percentages of this happening and that happening and whether it is this type of bullying or that type of bullying. It is about reassurance and the perception that schools take bullying seriously and will, with whatever power they have and to the best of their ability, deal with the issues that they face. There are sometimes incidents that are difficult for us, as practitioners, to deal with. We would like additional support to ensure that we can speak with confidence to our parents and children and say, "Listen, we are an anti-bullying school, and we will deal with incidents".

Mr Lunn: Sorry, Sandra. I interrupted you earlier.

Ms Brown: No, I interrupted you, I think, Trevor. As a parent, I would have more confidence in the school that would say, "We have had 12 incidents". That would prompt me to ask, "How effective was your outworking of all that?". If nothing else, that would highlight to me that these people know what it is, can identify it and are doing their best. Their best may not be brilliant, but I would know that they were trying.

Mr Rogers: This is a very quick point. You mentioned parents quite frequently, and I think all schools want to get parents involved in the learning of their children. We all know that, where parents are involved, children generally achieve more. Do you think that there is a place in clause 2 for some reference to the role of parents in anti-bullying policy development to give it more teeth?

Ms Orr: Do parents not already have to be involved in the policymaking of schools? There is an element of informing parents and making sure that they are fully aware.

Mr Rogers: Should there be some reference to parents in the Bill?

Ms Orr: What sort of reference are you suggesting?

Mr Rogers: I know that there is a reference to parents in the handing out of the written statement. Should there not also be a reference to parents having an involvement in the development of the anti-bullying policy? If the reference is there somewhere else, should there not be some link to it?

Ms Brown: The difficulty is that you cannot make parents do things in the way that you can make schools do something. There will always be a cohort of parents who, for all sorts of reasons, do not get involved. In school, we look for parental views on policies, and we get them from the same people all the time.

Mr Rogers: Maybe not make them but encourage them.

Ms Brown: We are always encouraging. You really need to know how inventive we can be in getting parents there for a meeting on the basis of one thing so that we can have them there for something else. *[Laughter.]*

The Chairperson (Mr Weir): You may be giving away trade secrets, Sandra.

Ms Brown: There is a role for parents. How you enforce that in legislation I do not know. What we could put into the legislation somewhere is —

Mr Rogers: There could be something that would reiterate that encouragement to work with the school.

Ms Orr: Parental involvement is very important.

Ms Brown: In whatever the Department gives out to inform everybody generally there must always be a direct focus on parents as part of whatever the campaign may be. However, it is difficult. It is always a battle, especially with some parents.

The Chairperson (Mr Weir): Julie and Sandra, thank you very much your evidence. It has been a useful session, and it will form part of our consideration as we work our way through these things. As you indicated, a lot of this will be not purely about what is in the legislation but about what support and guidance will be there. That will be critical as well. Thank you.

Ms Brown: Thank you very much. We do not envy your task. *[Laughter.]*



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Addressing Bullying in Schools Bill:
Departmental Response

27 January 2016

NORTHERN IRELAND ASSEMBLY

Committee for Education

Addressing Bullying in Schools Bill: Departmental Response

27 January 2016

Members present for all or part of the proceedings:

Mr Peter Weir (Chairperson)
Mrs Sandra Overend (Deputy Chairperson)
Mr Chris Hazzard
Mr Danny Kennedy
Mr Trevor Lunn
Mr Robin Newton
Mr Seán Rogers
Mr Pat Sheehan

Witnesses:

Mr Alan Boyd	Department of Education
Mrs Caroline Gillan	Department of Education
Mr John Anderson	Education and Training Inspectorate

The Chairperson (Mr Weir): We welcome the officials — some familiar faces — from the Department: Caroline Gillan, director of access, inclusion and well-being; Alan Boyd, the head of the pupil behaviour management team, and John Anderson from the Education and Training Inspectorate (ETI). This will be a public session. The Committee will review the clause-by-clause table and seek clarification from the officials.

I also ask members to give an informal indication of their views on all the proposed amendments. They should indicate informally whether they wish to pursue each amendment. This will guide the Committee's formal deliberations. It will not preclude any individual or party from pursuing their own position as regards any amendment or, indeed, from tabling amendments.

I welcome the officials. Maybe you want to make an opening statement. I ask you to respond particularly to recent queries from the Committee on pastoral support and cyberbullying.

Mrs Caroline Gillan (Department of Education): Thank you, Chair. Alan Boyd will open with some general observations on the evidence, the themes that are coming through and the context for the legislation. We also have John Anderson with us. He is a managing inspector in the ETI and is responsible for pastoral care and safeguarding. He will comment on how the ETI inspects those arrangements in schools.

Mr Alan Boyd (Department of Education): As the Committee is aware, the origins of the Addressing Bullying in Schools Bill lie in 2013, when the Minister asked the Northern Ireland Anti-Bullying Forum to undertake a review of current legislation, policies and practice in schools. It is worth reflecting that the findings of that review did not highlight any major deficiencies in the current arrangements and

nothing that required immediate or substantive change; rather, it concluded that the general standards of pastoral care and anti-bullying practice in schools were good. Most schools fully understand the potential impact of bullying on their pupils' lives and already undertake stringent efforts to respond to that problem. I believe, as you will hear from Mr Anderson, that that view is reflected in the evidence from school inspections.

The chief failing that the review identified was the lack of consistency in practice across all our schools and a lack, in some instances, of hard data to allow schools to monitor their performance, to monitor how effectively they address bullying and to respond to any emerging trends in the schools. The lack of robust data on the overall volume and nature of bullying at the regional level was also judged to be a weakness in the Department's ability to meet its policy development needs. Accordingly, the Bill aims to address those issues and provide the consistency that is necessary to ensure that all pupils are protected to common best-practice standards.

The submissions and the oral evidence that the Committee has received over the past few weeks have reflected a diverse range of opinions. Some have argued that the Bill goes too far, while others believe that it does not yet go far enough. Some have made the case that we should have followed existing definitions of bullying more closely, while others have suggested that it is the perception of the victim, even in a one-off case, that should determine whether an incident is classed as bullying. We have given careful consideration to all these views, but we remain convinced that, at its heart, the Bill provides a workable framework to address the core problem identified, namely the need for greater consistency.

The definition in the Bill, we believe, provides a common baseline for what all schools must recognise as bullying, but, because the definition is open-ended and inclusive, that already allows schools freedom, where they deem it appropriate, to classify other incidents as bullying. Recording bullying incidents is already recognised as best practice and is undertaken in most schools. Formalising that duty will provide for greater consistency, but it is only where the duty is not being met that the Bill will create a new administrative burden for any school.

Requiring the board of governors to take on a more direct role in anti-bullying policies and procedures is intended to provide additional focus on this important problem. Governors already carry overall responsibility for ensuring that discipline and good behaviour are promoted in the school and that the pastoral care needs of pupils are met. While the Bill asks them to take a more hands-on approach to bullying, the recording of incidents will ensure that the management information they need to fulfil these new duties should be readily available.

Much has been said about the need to do more to tackle cyberbullying. By specifying electronic communications in the definition, the Bill will require all schools to recognise this important and growing problem, but the problem is more complex and has significant criminal justice implications that cannot be ignored. We believe that schools lack the legal authority, time and skills to investigate many such complex cases; nor can DE or schools unilaterally absolve pupils from the potential criminal offences that cyberbullying may involve them in. We consider it essential that schools have clear boundaries separating those situations in which we will expect them to act and those where it will fall to parents, perhaps in conjunction with the PSNI, to take action. We believe that the Bill defines these boundaries in a way that is both measured, easy to understand and fair for all concerned.

The Department fully recognises the distress and serious damage that bullying can cause to any young person who experiences it. That is why the Department's position has always been that all forms of bullying are unacceptable and must be challenged wherever found. We would not pretend that the Bill will solve the problem of bullying in our schools, but we believe that it can result in a tangible improvement and provides an opportunity to take a further step along the road to addressing bullying in our schools.

The Chairperson (Mr Weir): I appreciate that we will get into the clause-by-clause stuff shortly. Have members queries specifically about the opening remarks?

Mr Lunn: You touched on cyberbullying. From the start of our deliberations, that has grown and grown. In particular, clause 2 limits the duty on the board of governors to what happens:

"(i) on the premises of the school during the school day;

(ii) while travelling to or from the school during the school term; or

(iii) while the pupil is in the lawful control or charge of a member of the staff of the school".

That does not really cater for cyberbullying at all, and yet we hear anecdotally from school principals that it is seriously underestimated and probably the biggest and most damaging form of bullying. Do you see any merit in the Bill being adapted to include incidents that, although they happen outside school hours, impinge on pupils during school hours? I am sure that you know exactly what I am talking about.

Mrs Gillan: I know that it was debated on the Floor of the Assembly. In practical terms, schools cannot be responsible for pupils 24/7, so it is difficult for them to feel that they can take action on something that happens at the weekend or at midnight. That said, incidents of cyberbullying will bleed into the behaviour of pupils and the relationship that exists between pupils during the school day. It would be good practice for schools to be made aware of incidents that occur outside school time that then affect their pupils and relationships during the day.

We have confirmed with the Anti-Bullying Forum that it will do a piece of work for us this financial year on guidance for schools on cyberbullying. We envisage that the guidance we will issue alongside the Bill will elaborate a bit more on handling, but, realistically, there will be a bleed into potential behaviour during the school day. However, there is a risk of inserting something in the Bill that places a duty on boards of governors to act on what would be, effectively, 24-hour behaviour. That is the difficulty.

Mr Lunn: If a pupil is suffering in school and perhaps reports to the teacher and through to the principal what has been happening, the pupil can, in modern terms, show them their phone to show what they have been receiving and where it is coming from. If it is coming from another pupil, it seems to me that, on the basis of what is before us and if the sending of that text happens within school hours, the school can do something about it. If it happens outside school hours, the school cannot do something about it, but it is exactly the same offence. I could take you to a school principal who told me, off the record, that she has a drawer with pupils' phones in it waiting for the parents to come and be shown what is on them. The sending of the offensive material clearly took place in the evenings.

Mrs Gillan: That school is dealing with it appropriately. This is the problem. If something happens in the evenings, that is for the parent to address. Obviously, the school has become aware of it and is doing the right thing by making the parent aware of it.

The Chairperson (Mr Weir): At some stage, we may get into the specifics, because some of the stuff will relate to potential amendments. I ask members to be brief because we have a lot of legislation to get through.

Mr Rogers: You are very welcome. I know that the Bill has to be very short on the definition of bullying, and you made a reference to pastoral care. There has to be a strong emphasis on pastoral care. In the guidance, will there be a strong emphasis on the pastoral care aspect?

Mrs Gillan: Absolutely. We discussed that before we came here today. John can talk about how the ETI approaches inspection in relation to pastoral care and safeguarding. At the moment, anti-bullying is dealt with in pastoral care and, to some degree, safeguarding arrangements. We envisage the guidance almost cross-referencing with the discipline policy in school and pastoral care as well and even the whole emotional health and well-being and respect for others aspects. It is all interlinked, and the guidance will pick that up. We envisage that we will work with colleagues who are leading on safeguarding issues and wider pastoral care issues to ensure that it all makes sense and is not just seen in silos.

Mr Rogers: Following on from that, will it also pick up on the particular concern of the teachers of children with special educational needs and teachers at special schools? Will it help to allow some discretion for them?

Mrs Gillan: I noticed that in the evidence, and we can go through it clause by clause. As Alan emphasised, because of the way the Bill has been drafted, the definition at the moment is not exclusive; it is inclusive.

Mr Hazzard: We are going to get into a lot more of the detail of the clauses, so I will just pick up on something that Trevor raised around electronic devices. Are schools entitled to take a phone off a

pupil? Can they take screenshots from that phone or go into the phone and take whatever information they want out of it?

Mrs Gillan: Therein lies the legal challenge. Some schools may own iPads and things like that, and that is a different situation. I do not know what each school does, but I know that some have a policy that you are not allowed to bring phones into the school, and they may have set out clearly what will happen in circumstances where a child is found to have breached that policy by bringing a phone into school. However, this is a tricky area. We totally understand the desire to tackle cyberbullying, but, equally, we cannot impose duties and arrangements on schools that mean that they become responsible and, effectively, the parent 24 hours a day. This is why we would prefer to tease out the cyberbullying element through guidance with the Anti-Bullying Forum and the Safeguarding Board's e-safety strategy. If you look across England and Wales, you will see that, although some guidance exists, it keeps acknowledging that this is a very difficult area. I would be loath to rush to put duties in legislation that we then find create more of a problem than a solution.

The Chairperson (Mr Weir): On the rights of schools, another issue goes into slightly more difficult territory. If a pupil at the back of a class is constantly distracted because they are busy texting, they might be told that the phone is being confiscated until the end of the lesson or the end of the day and that they can pick it up then. Chris's point goes a step further to where an incident has happened or an allegation has been made and to what extent the school can use a screenshot or look at the information that is in the phone, iPad or whatever.

Mrs Gillan: You are talking then about criminal law issues, the PSNI being informed etc.

Mr Lunn: In the circumstances I described, where something emanates from outside school hours but affects a pupil during school hours, the principal may hear about it and confiscate the phone. This may or may not be legal, but I am sure that they will give the phone back. However, the action they have taken is to report the incident to the parent. With a more straightforward, traditional form of bullying, the action that the school takes may or may not involve that aspect. It could also be a detention or whatever form of retribution the schools thinks is appropriate. Surely, there is scope to, at least, allow the principal to do that. If this type of thing happens, the school can notify the parents and let them know what is happening. It is then up to the parents, really, because it happened outside school hours. Is there any mileage in this action?

Mrs Gillan: Think of things like texting, screenshots, Snapchat and Facebook: the pupil might say, "It was not me. It was on my phone. Somebody took it. Somebody has broken into my account". There are a lot of ins and outs that we need to tease out. You might have a principal saying, "Right, this happened at 9.00 pm" or "This happened during the school holidays". You are then so far divorced from the operation of the school and what the principal has visibility of that it can be quite challenging. Would something that happens in the middle of school holidays —

The Chairperson (Mr Weir): We will come back to the issue of scope.

Mr Newton: My point is on the duties and responsibilities of boards of governors. If I read the legislation right —

The Chairperson (Mr Weir): Sorry to interrupt, Robin. We will be going through all of this on a clause-by-clause basis. It might be appropriate to deal with it then.

Mr Newton: It is a general question, Chair.

The Chairperson (Mr Weir): If it is a general question, fire away. I do not want to be accused of bullying. *[Laughter.]*

Mr Newton: I am not a member of a board of governors, but, as I understand it, we are asking for greater commitment from them and for them to move away from a nearly passive role — without being disrespectful to them — and take a more hands-on role that requires a higher degree of knowledge and additional skills. Indeed, in that role, boards of governors could be liable to legal action against them. Am I right in that?

Mrs Gillan: Boards of governors, as I understand it, would already be liable potentially.

Mr Newton: Are we increasing the potential?

Mrs Gillan: I guess that, if there is a court case and the school's actions are being considered, schools sometimes fall down, for example, where there has been a lack of attention or lack of recording. If anything, some of the things that we are asking schools to do should increase their focus on bullying and protect them should they be challenged about failing to deal with a case of bullying. John will be able to talk about how the ETI goes in and looks at particular cases and give examples of good practice. As Alan emphasised, some schools do this really well already. What we are doing is capturing good practice to ensure that it is rolled out consistently, because not everybody applies it consistently.

I take your point about whether this will afford extra opportunities for legal challenges. I would say that boards of governors are already vulnerable to legal challenges, but, if they can show that they are fulfilling their statutory duties and are following departmental guidance, that, if anything, will provide them with a much more robust defence.

Mr Newton: If the Bill is enacted, what support, training or measurement of skills will be offered?

Mr Boyd: What we have discussed is that in developing the guidance we intend to engage with all stakeholder groups — governors, principals, staff and other bodies such as the ETI — to build a good, collective picture of exactly what support and guidance is needed, so that the guidance clarifies as much as possible. Furthermore, determining the detail to be contained in the guidance will help make it very plain as to the additional training needs that will need to be met for governors, staff and principals potentially. We cannot say at present that that is work to be undertaken, but we are very clear that there will be training needs and that, as they are identified, we are happy to commit to saying that they will be met.

The Chairperson (Mr Weir): We will get down to the specifics of this. For the guidance of the Committee, as we did in the informal session earlier, we will take it area by area.

Mrs Gillan: Would you like to deal with the ETI's role during the clause-by-clause discussion?

The Chairperson (Mr Weir): Probably, yes; that might be best. John, if you are dealing with any specifics that might come up in relation to that it might be useful, unless there is anything in particular that you want to say at this point.

Mr John Anderson (Education and Training Inspectorate): I am happy to do that, Chairperson, but you asked two specific questions of the inspectorate that I can address, if that helps. If you do not mind, I will precede that by briefly summarising how we go about inspecting pastoral care and safeguarding.

First, pastoral care and safeguarding are a consistent part of inspectorate training. In fact, at the start of this school year we had a particular focus on anti-bullying as part of our training, for a reason that I will explain in a moment. Before we conduct an inspection in a school, we send out questionnaires to parents and staff. Of 19 questions, about five deal with aspects of pastoral care, bullying behaviour, the care and well-being of young people, the parents' knowledge of safeguarding procedures and their knowledge of their ability to complain if they have any concerns, and the staff training for safeguarding and child protection issues. We also give schools a detailed and comprehensive safeguarding self-evaluation tool in a pro forma that has about 30 questions in very great detail, so that they can audit all aspects of their policies, procedures and practices with regard to safeguarding and child protection. We encourage schools to do that, not just because they are to be inspected but because it is good practice each year. We have that available publicly to them at any time.

Informed by the feedback from those questionnaires and from the safeguarding pro forma, we conduct interviews with the pupils in the school during the inspection. We have discussions in post-primary schools usually with every year group and, in primary schools, with the children in P6. We also have discussions and interviews with staff about their roles and responsibilities with respect to pastoral care, bullying behaviour, safeguarding and child protection issues. We conduct two discussions of case studies with schools. That is how we test the validity of what schools say they are doing. Traditionally, we always talk through a child protection case study where a child may be subject to abuse and a school is dealing with the context of the abuse, often outside the school. From the start of September in this school year, we added a second discussion of a case study on anti-bullying to test the effectiveness of schools' procedures and practices in dealing with bullying issues in schools.

On the basis of the collection of all that evidence, we come to two evaluations. One is the overall evaluation of pastoral care as a whole: the care and support that a school gives to young people, addressing the issues that may be barriers to their learning and understanding how to create a conducive learning environment. It includes everything that adds up to what we might call the ethos of a school that is conducive to learning. We have an evaluation for that, which I will report to you. Separately, we evaluate safeguarding in one of three ways. We look at all the evidence that we have and maybe concur that it is "comprehensive". If there is any shortcoming, we will say that it is "satisfactory". The issues that make it satisfactory are never regarded as minor, but they may be relatively straightforward to address and resolve in the short term. If there are significant flaws in the safeguarding policy and practice, we evaluate that as "unsatisfactory". Those two evaluations will be in every school inspection report.

The other model of inspection that we keep available to us is an unannounced inspection. It is very rarely used, but, if there are concerns, particularly triggered by child protection, safeguarding or bullying issues, we can conduct an unannounced inspection of a school. That, briefly, is the method.

This is what we have found. Of all the things that we evaluate in schools, pastoral care is the one aspect of school provision that is strongest. In the inspectorate's evaluations, it consistently comes out as the most effective aspect of provision. In the 'Chief Inspector's Report 2012-2014' and in inspection evidence from 2014-15, pastoral care was described as "very good" or "outstanding" in around 85% of schools and "good" or "outstanding" in about 96% of schools. Our schools are very effective at being caring. I report this because that is what we find, but I am not doing that with any complacency, because, when you encounter issues related to child abuse or bullying, they are very serious and significant. I simply put them in that perspective.

I turn to our findings on safeguarding. Broadly, we find that safeguarding in most of our schools is comprehensive, but we found a significant difference, particularly in the 2014-15 school year, when we were only able to evaluate the safeguarding of nearly a quarter of primary schools as "satisfactory". That was significantly different from the proportion in post-primary schools. The weaknesses tended to be that either the governors' training or staff training was not completely up to date or that school documentation may not have been recently reviewed, so it was not in line with current best guidance and practice. We use the Northern Ireland Anti-Bullying Forum as a benchmark of best practice for documentation and policies on anti-bullying. Perhaps aspects of staff vetting were not complete. There may simply have been difficulties in record-keeping not being complete or not being kept sufficiently confidential. Those are some of the reasons why we might evaluate safeguarding as being less than comprehensive. If we find that it is unsatisfactory, we follow it up within six weeks by another visit to make sure that the issues have either been addressed or that an action plan is in place that will clearly resolve the issues. We find that difference in primary schools rather than post-primary schools. One may speculate on the reasons for that. It could be that there are fewer staff, with more responsibilities being distributed across fewer leaders in a school, or it may simply be that there is a smaller board of governors and the designated governor or chairman may not have had up-to-date training.

I am happy to answer questions, but, in a nutshell —

The Chairperson (Mr Weir): I am keen for questions to be asked as we come to the sections.

Mr J Anderson: That sets the context.

The Chairperson (Mr Weir): From members' point of view of, there are two things. We have a reasonable amount of material to get through. After this session, we have about five minutes to deal with the remainder of business. We will need a cut-off point at about 1.20 pm. In an ideal world, our aim would be to get through all this, but we will try to get through as much as we can. Perhaps we can meet again on Tuesday lunchtime from about 1.15 pm onwards to deal with anything outstanding.

Mrs Gillan: Do you want us back next Tuesday?

The Chairperson (Mr Weir): Yes. Maybe I am judging this wrongly, but there is a lot of meat in this. Maybe everybody will say that everything is fine and members will not want to ask any questions, but I suspect that that will not be the case. We will get through as much as we can in the next hour, and then we can have our informal deliberations next Tuesday.

We will start with clause 1. I remind members of the clause-by-clause table, where the comments have been broken down. We will take it in sections. The first area will be comments 1.1 to 1.5. Members may want to ask a specific question. At comment 1.5, the Department has suggested a technical amendment. Caroline, will you talk us through that briefly?

Mrs Gillan: It is presentational more than anything else. We felt that it was much better to break the definition down to make it clearer and look less like hurdles. We revisited the drafting and decided that it looked better in the revised version. With all the comments from stakeholders, it is important to emphasise that the definition states that bullying "includes" the following. We say that, as far as we are concerned, this is bullying and, therefore, must be recorded, but there will be other circumstances and schools will make other judgements on what can be bullying behaviour.

The Chairperson (Mr Weir): In comments 1.1 to 1.5, the main issue that was raised with us — members may want to come in on this — is the position of special schools and whether it is appropriate that a definition for bullying be applied to special schools and, if it is applied, whether, given the circumstances, it should be the same. Do you want to comment on that?

Mr Boyd: As drafted, the Bill does not permit any school discretion on the duty to record an incident of bullying if it meets the definition set out in clause 1. However, as was said, by using the word "includes", the definition has been created to be non-exhaustive and to allow schools flexibility. Schools will not, by virtue of any of the Bill's provisions, lose any aspect of their current freedom to set their own discipline and anti-bullying policies. We believe that this will give schools sufficient flexibility to consider and take account of special educational needs or any other factors that they determine to be relevant in applying what action they take in response to an incident. While the current draft would require all schools to record each incident, we believe that this could still be advantageous, even in settings such as special schools, because it will still allow information to be captured that will inform boards of governors in their future deliberations. Even in a special school, if for any reason a large number of incidents were occurring, it would be appropriate that the governors become aware of that and consider why that had arisen and whether there are any steps that they could take to address it. We do not, therefore, consider that we need to exclude special schools specifically or make special provision for them.

The Chairperson (Mr Weir): I will bring Trevor in in a wee second. First, however, I welcome our friends and visitors. Which primary school are you from?

Mrs Gillian McDowell: We are from Currie Primary School. This is the school council.

The Chairperson (Mr Weir): I inform the school council that we are considering a Bill that looks at what we can do about bullying in schools. We have the officials up from the Department of Education, and we are quizzing them on various aspects. You are very welcome to join us.

OK, Trevor.

Mr Lunn: Are we still on special schools?

The Chairperson (Mr Weir): Yes.

Mr Lunn: There is a school of thought out there, so to speak, that this legislation is not suitable for special schools. Never mind adapting it or allowing discretion in the wording that lets special schools deal with their circumstances, the feeling is that it should not be applied to some categories of special school at all. The definition clearly implies that an act, if it is to be interpreted as bullying, has to be deliberate. It has been put to us that that just does not apply — I am trying to choose my words carefully — in the situation of a special school, where something that would be regarded as deliberate in another setting is not deliberate at all but is the type of behaviour that special schools have to deal with. They have special expertise to deal with it. If you are asking us, Chair, to state our reservations, that is one of mine; I query whether it should apply to special schools at all.

Mrs Gillan: Absolutely. As Alan explained, we feel that there is flexibility. As I said, this is one definition that we are using that is not exclusive. It says that there should be the intention of causing harm. In some circumstances and for some children, there may be an altercation or repeated behaviour with no intent. In that case, that would not fall under the definition, but a school might deal with it in a different way. It could be a challenging behaviour issue. The flip side is that, by excluding

special schools, are we really saying that no bullying goes on? Is it all schools? Is it moderate learning difficulties (MLD) schools? What about learning support centres? What about children in mainstream schools who have statements? I worry that we are maybe saying that we are not going to give those children the protection and the focus on bullying if we say, "No, special schools are out". Alan is right: the schools still have flexibility with policies and measures and the actions that they take. As I said, a school will interpret whether a particular circumstance meets that definition. We worry about removing them completely and what that may say to the school population in special schools.

Mr J Anderson: In a special school, the teachers know each child very well. They know their special needs, and, if something appeared to be a violent or aggressive incident of some sort, they would know immediately whether there was intent or whether it arose from that child's particular circumstances and needs. I agree: it is quite acceptable that a special-school teacher would be able to make that evaluation.

The Chairperson (Mr Weir): There is a difficult balancing act between the fact that certain things are automatic — boxes are ticked, it will be recorded and that will be the case — and what the level of flexibility is.

Mrs Gillan: Schools still have to decide whether the box is ticked; they will decide whether there is a repeated verbal, written or physical act and whether it is with the intention of causing physical or emotional harm. As John said, in the particular circumstance of a special school, it will be able to make that judgement and take all the factors into account.

The Chairperson (Mr Weir): I am going to ask two questions of the Committee. There is a departmental amendment in this section. I presume that there is no problem with that. This is not binding as to whether we even agree anything on any section, but are there any amendments that anybody wishes to see drafted or brought on this, at least so that they can be considered?

Mr Hazzard: Are you referring to the definition?

The Chairperson (Mr Weir): It is very specifically on comments 1.1 to 1.5. I will take each part separately because there will be different issues in the next group. The issue of repeated or not repeated acts of bullying will come up. We will get a Committee view on each section.

Mr Lunn: Issues about the words "repeated", "omission" and so on are coming up in the next section.

The Chairperson (Mr Weir): Are members looking for any amendments on special schools, or are they content with what they have heard?

Mr Newton: On the basis of what Caroline said, it may have implications for clause 3 and recording.

The Chairperson (Mr Weir): Do you feel that that could be dealt with when we get to clause 3?

Mr Newton: I hope that we can seek some assurance from that if special schools are to remain in.

Mr Hazzard: I suggest an amendment to clause 1:

"In this Act 'bullying' includes but is not limited to —".

Mrs Gillan: I noted that comment; I think that it was from the Children's Law Centre. Such an amendment changes nothing. We feel that it is not necessary because, in the legal definition, it is well understood that "includes" means that it is not exhaustive.

Mr Hazzard: I am happy with that.

The Chairperson (Mr Weir): At this point, there are no requests for a Committee amendment.

Comments 1.6 to 1.8 deal specifically with the definition and whether bullying is repeated or singularly repeated. I appreciate that some of this may happen through guidance. Members are trying to understand what the reporting mechanism is. When there is an incident, what is the process? How is

it recorded? If the Bill defines bullying as being "repeated", what happens in the first incident? Will you talk the Committee through that?

Mrs Gillan: The word "repeated" is there because it is the characteristic of all academic and legal definitions of bullying. Generally, a one-off incident would fall under a school's discipline policy. We want to emphasise that we are not saying that one-off altercations should not be recorded or dealt with by a school; that is already proactively dealt with, and good schools deal with and record it under their discipline policy. The nature of bullying is that it is repeated. That said, we go back to the fact that the definition of bullying uses the word "includes", so there is some flexibility. If something happens that is not necessarily of a repeated nature or there is a question mark over it, a school could still say that the circumstances are more than simply a one-off fight or altercation.

The Chairperson (Mr Weir): This is a bit of a catch-22 situation. A school may have a certain feeling about the nature of an incident, but, for something to be repeated, it has to happen for a first time. If it is not recorded that first time as part of an overall bullying process, how do you then get the repeated

Mrs Gillan: It then goes into the mechanism of how you record an incident and prove that it is repeated. Under clause 3, there is a duty to keep a record of all incidents or alleged incidents, and, while we still need to work up the detail of how we want that element recorded, it would have to capture a pupil saying that he or she was being bullied and stating where it started. There would have to be a record of the first or second incident or the pattern of behaviour.

Mr J Anderson: Schools record breaches of what is commonly called positive behaviour policy; it used to be called a discipline policy. The idea is to promote positive behaviour as much as sanctioning poor behaviour. It is recorded. There is often a points system: negative points for breaches and positive points to reward positive behaviour. There are sanctions such as detention or suspension. When a sanction is used, it is recorded in the school information management system (SIMS) for that pupil. There is routine record-keeping for breaches of positive behaviour policy. When it becomes the start of a series of persistent intentional events that turn into a bullying incident, we check that schools are keeping a record over time. That often becomes a case, and, if that case is persistent, it ends up in a tribunal or court. It is important, therefore, that schools have long-term record-keeping.

Mr Rogers: Bullying incidents often start outside school and are then taken into a school so, for that school, it is a first offence, even though the act has been repeated. There is a suggestion about amending the clause to "singular or repeated use": would that give more flexibility?

Mrs Gillan: As I said, if we use the word "singular", schools, effectively, would be required to record absolutely every event. That would be a huge burden. That said, there is flexibility, and, in the circumstances of a particular case, a school may feel that there is bullying. Maybe there is some history and an incremental effect. I worry about saying that bullying is any act against another pupil: that would immediately open every discipline incident, and every action would become bullying. I do not know whether that is where we want to go.

Mr Rogers: How do we create that flexibility? Consider, for example, the scenario where two boys have a tiff at a youth club and the parent calls the school the next morning to ask it to keep an eye out because there has been an incident. The school will say that it can be recorded only if it is a repeated incident.

Mrs Gillan: When we are drafting the guidance, we envisage talking to schools and parents because we would probably want to include some specific case studies. Although we are majoring on the word "repeated", because that is what the understood definition is, we have acknowledged that there may be incidents in which schools judge that something, which technically and within their remit has only happened once, can, due to the nature of the incident, be understood as bullying. I think that we would want to work with some real examples in order to provide schools with a decent case study and advice on that.

The bullying policy and that element is only one part of the story. As John says, all schools will have a discipline policy and can take action under that. It may be that bullying sanctions are things like detention, suspension and expulsion, but those are sanctions under the discipline policy, so it is not that any child will fall through the cracks as such. The discipline policy is there and in place.

Mr J Anderson: Schools are expected to — in some cases are required to — have a range of policies and procedures. They are expected to have a promoting positive behaviour policy, a code of conduct for staff, an anti-bullying policy, an online safety policy and so on. There is a list of those. We are looking at whether those are up to date, conform to best practice, and whether they integrate well with each other to form a coherent picture of overall child protection and pastoral care arrangements. These already exist. So, in terms of what you are saying, it will require changes to existing behaviour policies and anti-bullying policies, but the important thing is that these already exist and they deal with the different aspects that are being discussed, as I read them in Hansard.

The Chairperson (Mr Weir): Like a lot of members, I am trying to square the circle in relation to this. I appreciate what has been said so far, and I am not even sure where the drafting would be in this, but is there some flexibility in terms of the wording of the legislation that could allow schools to at least interpret bullying as a single incident if it was of a particularly severe nature? The problem at the moment seems to be that the word "repeated" is key. I can understand the argument that, in a lot of singular cases, it would not be within the scope, but I wonder to what extent it ties the hands of schools in that they are excluded from deciding that a single incident is —

Mrs Gillan: We would like to emphasise that in the guidance, because if we put —

The Chairperson (Mr Weir): The only problem with that, Caroline, is that guidance is all very well and can be very useful. If, however, there is a legal definition that seems — the way I have been reading it and the way any interpretation would be — on the face of the legislation to be restricting it to "repeated", how do you then enable the guidance to provide the flexibility that allows for, in extreme cases, a singular incident to count as bullying?

Mr Boyd: I think that would be covered by the current definition by virtue of it being inclusive. Effectively, the definition in the Bill will specify situations where schools must classify an incident as bullying if it is repeated and if there is intent. But it is inclusive and schools could still, in response to a particularly serious incident, decide that the one-off incident warranted being recorded as bullying. An example was cited where a school had been informed by parents that there was a history of altercations or fights going on outside the school. Although they may not sanction the pupil for the first incident beyond the school, they could, having understood the context, record that one-off fight within the playground as bullying even though it was the first incident in the school. The flexibility is already there for schools to respond to one-off incidents.

Mr Hazzard: We will get on to recording, I suppose, in more detail, but a lot of this is to do with the Department being able to furnish the disaggregated data going forward to guide policies etc. Is there a danger that, if we allow a lot of these disciplinary actions to be designated as a one-off and not bullying, statistics may be altered because we are leaving room for something that is not bullying but just a one-off? A school may be wary of the fact that its numbers for bullying may be higher. Will the one-offs tally also go with the data back to the Department?

Mrs Gillan: I do not want to overemphasise it, but the reason for recording is that it is a good way for schools to focus on their incidents and to be able to use that information for themselves. However, we will investigate. The bonus for us is that there will be consistent recording. If we decide to go out on a regular basis or every so often to review the effectiveness of the legislation and policy, we have consistent information. However, we have work to do on how we would do that. We can talk about it. The counter side of saying, "Let's include one-off incidents" is that all recognised research, understanding and definitions of bullying talk about repeated behaviour. If our definition of bullying is one-off and repeated incidents, we will not have any comparators.

The Chairperson (Mr Weir): I appreciate what you say, but I just want to come back to a point that, I think, Chris made. The Children's Law Centre talked about the phrase "Bullying includes but is not limited to". You may argue that those additional words are superfluous but —

Mrs Gillan: You would like it to be more blatant, maybe.

The Chairperson (Mr Weir): That might make it a little more blatant and give a bit of scope to schools so that, if they felt of a particular incident, "We need to record this as bullying because of the severity of it", and not simply the fact that it is not a repeated thing, which excludes it. To my mind, it would simply state, "Here is a list that includes this". Because there are then specific unrepeated incidents, it might mean that there are other grounds. That might be one possible way round that.

Mr Lunn: I think, Caroline, you have said that the wording states:

"In this Act 'bullying' includes—

(a) the repeated use"

It is not exclusive of a single act. If you turned it on its head and said, "Bullying means an act of verbal, written" or whatever, that would not exclude repeated acts. I wonder how the Bill would look or how effective it would be if it just did not say "repeated" at all. Never mind about "singular" or "repeated"; if it just said, "Bullying includes the use of a verbal" etc and leave out —

Mrs Gillan: That would bring in absolutely every altercation, whether verbal, an act of omission etc. That would make it impossible for schools to not record absolutely everything. Every incident or physical act by one pupil against another would become bullying. If anything, it would almost lose the focus that we are trying to put on what we feel bullying is.

Mr Lunn: It would place too much emphasis on single acts.

Mrs Gillan: It would be the discipline policy, effectively. We would be back to where we are with just discipline policy.

The Chairperson (Mr Weir): Let me wrap up this element. I suggest to the Committee, again without prejudice to any final decision that we take, that a way round it, at least by way of us considering an amendment, might be the amendment suggested by the Children's Law Centre of, "but is not limited to". That gives a wee bit more emphasis to that element of things.

The third section under clause 1 — points 1.9 to 1.11 in the table — makes reference to the more explicit linkage with section 75 on race and disabilities. Are there any comments on that? Obviously, this would be an issue raised with stakeholders. There do not appear to be any members pressing this. Does the Department want to comment on its position on 1.9 to 1.11, just for our records?

Mr Boyd: The Department would argue that, in identifying the section 75 groups, there is a logic to identifying the groups for which we have clear statutory duties. To go beyond that and single out particular incidents or motivations and give them still further weight seems to us to be unnecessary and possibly even actively unhelpful. One of the comments was around the need for schools to adopt preventative strategies. Schools are already encouraged to adopt preventative strategies to address all forms of discipline, not simply bullying. We consider that these are not helpful and are not required.

The Chairperson (Mr Weir): I move now to paragraphs 1.12 to 1.17. There are a couple of issues. One area in which there seems to have been mixed opinion in the responses relates to what should be included. At the moment, it is restricted to pupil-on-pupil issues, but what about pupil-staff issues? At present, what procedures are there to protect any potential abuse of power, particularly between staff and pupils?

Mrs Gillan: We have corresponded with the Committee, precisely referencing the procedures. Essentially, it is already dealt with under the disciplinary procedures for teachers. That includes teachers' misconduct in relation to staff, pupils, parents or visitors. So, it is very clearly dealt with under particular guidance, which is, as I said, referenced in the correspondence that we sent you. In addition, the General Teaching Council has the power to consider cases of serious teacher misconduct and, where appropriate, remove a teacher from its register. So, it is very much dealt with under teachers' employment. As I said, all the references have been provided separately.

Mrs Overend: There is the thought that, if the definition does not include the specific wording of "imbalance of power", every fight in the playground will have to be recorded. It might not necessarily be bullying. If two people fall out, there is not necessarily an act of bullying. One of them is not making the other feel bad; they are making each other feel bad. That sort of incident would need to be recorded as an act of bullying rather than be dealt with through the discipline procedure.

The Chairperson (Mr Weir): Allied to that, Caroline, the lack of a subsection on the definition and "imbalance of power" came up consistently from the likes of Stranmillis, the Anti-Bullying forum, Tor Bank School and the head teachers. You have mentioned it in a different context. One of the reasons why we have gone for a definition of this nature is that it is fairly compatible with what is there

internationally and what is recognised internationally. To be fair, most of those making the argument have agreed with you on the other points, which is to say that the definition is repeated use of the various actions and that it involves pupils and the intention of harm, but they have also said that the other aspect, which is the international definition, is the concept that it is an imbalance of power issue as well and that that has tended to be another definition. I suppose the issue is why this is not included.

Mrs Gillan: I could be accused of picking and choosing my accepted definitions of bullying. We are aware that the academic definitions of bullying include "imbalance of power"; interestingly, we could not find legal definitions where "imbalance of power" had been listed in law. There is one, apparently.

In considering how we would capture that and whether to put it in the legislation, we felt that it could be difficult to define and very difficult for schools to make the judgement in some circumstances. It was interesting. A lot of the stakeholders said, "You're creating a lot of hurdles for schools to judge whether that criterion has been met". To us, putting in "imbalance of power", if anything, would allow a lot of incidents not to be classed. I think of two children of the same age, same build, same stature and same background, for example. One child could be bullying the other on a repeated basis, but there might not be an obvious imbalance of power that the teacher in the school could pick up. I feel that this is creating another hurdle and, potentially, a justification for not recording incidents and making it difficult for schools to make a judgement. The legal advice was that it could be difficult for schools in every instance to judge and carefully judge whether there was an imbalance of power. It tends, with the one exception, to not make it into legislation, although it is in academic research.

Mr Hazzard: On that example, is it not the case that, if you have those two individuals, it is the imbalance of power that makes it bullying? It is not just an altercation between two alpha males who regularly challenge each other: if there is an imbalance in power, it becomes bullying.

The Chairperson (Mr Weir): We do not want to be sexist: it could be two alpha females.

Mr Hazzard: It could, yes.

Mrs Gillan: This is where you get into the interesting debate on what teachers would have to do. For example, you could have two such boys, one of whom continues to punch the other. Over time, is an imbalance of power eventually created because one is doing it? It could be difficult for schools to make that judgement. When does an imbalance of power arise? Does it become bullying only when it arises? There might not have been an imbalance of power in the first place.

The Chairperson (Mr Weir): To play devil's advocate, could the current definition, taking the example of two alpha males who, for whatever reason, do not like each other and do not have any particular motivation for fighting other than that, lead to a situation where, on the basis of the recorded incidents, both are deemed to be bullying each other and be victims of each other? Bullying includes the repeated use of a physical act, although it is not exclusive to that. There may be two pupils who fight each other once a week in the playground with the intention of causing physical harm. If pupil A is hitting pupil B, pupil B is hitting pupil A and that is happening on a number of occasions, does that mean that they are both bullies and are both victims?

Mrs Gillan: Gosh. Under the technical definition, I am trying to think whether that is likely to arise. Would they be a series of one-off incidents or would they become repeated behaviours?

The Chairperson (Mr Weir): If they are meeting every Monday lunchtime to fight the bit out, for instance, I suspect that that probably constitutes repeated incidence.

Mrs Gillan: Should the school not be dealing with it? Is it bullying? If so, it should be dealt with.

Mr Kennedy: That goes back to John's evidence, namely that there are other measures for dealing with it. If it is a persistent issue between the two guys and becomes a regular event, it is almost recreational bullying.

Mr J Anderson: From a practical point of view, where two friends fall out for whatever reason, the school will want to deal with that; it will not want to see that behaviour becoming persistent. If it persists, the school's positive behaviour policy is failing to work. The point is that it should be dealt with so that it does not turn into something longer-term and more invidious. I look at it practically.

Mr Hazzard: To use a working example, it may occur quite regularly in PE. If you take football for example, you may have two fellas who are very competitive and, every week, challenge each other aggressively and everything else. That is not necessarily bullying. However, if there is a power imbalance where a strong player is targeting the weaker player every week, surely that is bullying. It is because of the power imbalance that that is bullying. That is a working example of where a power imbalance is key.

Mrs Gillan: The issue is whether we need every incident to have a power imbalance. The risk is that a lot of things do not get recorded or dealt with as bullying because it is not easy for the school to say that there necessarily is a power imbalance. That does not mean to say that your example would constitute bullying because of the imbalance and, because it is not exclusive, the school could act. We are not saying that there cannot be a power imbalance; all that we are saying is that we do not require the school always to have to identify a power imbalance in order for it to be classed as bullying.

Mr Newton: I think I know the answer to this question, at least I hope I do. I just want reassurance. When you answered Trevor on the imbalance of power issue, you referred to the teachers alone and the guidance and legislation that covers the teachers. The issue of other staff in the school was raised in the Committee.

Mrs Gillan: The references that we have absolutely are in relation to teachers. I think that behaviour and disciplinary matters related to other staff would be dealt with under employment conditions.

Mr J Anderson: I am not disagreeing, but I understand that the code of conduct for staff applies to all staff.

Mr Newton: All staff.

Mr J Anderson: That is my understanding.

Mr Newton: Whether you are a teacher or whether you are a caretaker, it applies.

Mr J Anderson: It is about adults and young people. I need to confirm that.

Mr Lunn: On the imbalance of power issue, I wonder how you would ever frame this. I am agreeing with you for once. I am thinking of a small, aggressive pupil with a strong personality who is bullying a larger, non-aggressive pupil with an easy-going personality. That happens. There is no imbalance of power there except perhaps force of will or force of personality. How on earth would you legislate for that? I see in our notes, which you probably have, that there is a reference to an Ontario Bill that lists any amount of circumstances, but I cannot see one that would cover that.

Mr Boyd: We also consider that, where a school is ever having to face a challenge over its actions, it would be better that a school had recorded as a bullying incident that form of repeated behaviour and repeated fighting where there is not an obvious imbalance of power and demonstrated the actions that it had taken, rather than saying that, on the balance of no obvious imbalance of power, "We did not classify it so we have not recorded it".

Mr Lunn: Yes, I think that is pretty much what I am saying. It is still bullying but there is no imbalance.

Mr Kennedy: Surely that means that you have to write everything down if you are the school.

Mrs Gillan: Record-keeping is key, and, very often, John would say in reference to ETI that it is your procedures and recording and acting on them that is important. Most schools will record significant discipline issues anyway, but we are asking them at the very least to record the sorts of incidents that are defined in clause 1.

Mr Kennedy: Rather than being grey about it, do you need it to be black and white so that it says that everything should be recorded?

Mrs Gillan: We feel that that is what says and that what we have captured in clause 1 is as certain as possible for schools, whereas introducing things like imbalance of power may make it greyer.

The Chairperson (Mr Weir): Are members seeking amendments related to paragraphs 1.12 to 1.17 in the table? I am not sensing any great desire, so I think that we have got that area sorted out.

Paragraphs 1.18 to 1.24 cover the issue about various stakeholders on the issue of intention of harm. The issue that has been raised relates to whether intention is the key thing or whether the effect or perceived effect on the victim is more important from a definitional point of view. Do you want to comment on that?

Mrs Gillan: Again, that is where we go back to the notion of "Bullying includes but is not exclusive to". We are requiring a record to be made where there is clear intention. However, there may be circumstances where there is not a clear intention but schools may still choose to class it as bullying. Saying that intent is not required would potentially open it up very widely to whether you can say that a P1 child who constantly hits out and does not understand the impact of what they are doing has intent and can be classed as a bully. There is also the scenario of some children with special educational needs who do not have a clear understanding of the impact of their actions on another child. Therefore, we feel that intention is a key characteristic. That is the characteristic of academic and legal definitions. Again we emphasise that, if there are situations where a school decides that there was actually no intent but that, because of all the circumstances, there has been an impact on the child and they feel they are being bullied, there may be flexibility.

Mr Rogers: Do you think that there is enough flexibility in the phrase "causing physical or emotional harm" to cover distress, fear, exclusion and that type of thing? Is there enough flexibility within the phrase "physical or emotional harm" to cover the fear element, say, if somebody keeps winding somebody else up to annoy them?

Mrs Gillan: This is where we have to be realistic and to think of where the responsibility lies with schools. Where the fear of emotional and physical harm is concerned, if we extend it to the wider, less precise impact, that potentially opens up a school's responsibility to something that would be hard to put your finger on. We are in the midst of taking legal advice on whether there could be a further extension to that, but there are negatives with the fear of harm. It is about how you prove those other impacts. Our worry is that it opens it up a lot for schools in what they can be responsible for and the actions they have taken. This definition appeared to be the most concrete and clear way of capturing it. We took into account some of the comments that were made, and we are certainly looking at that. Certainly, our advice to date is that there would be drawbacks with trying to open it up further. We will continue to absolutely exhaust that before we come to a conclusion.

Mr Hazzard: What about material harm, such as the taking of money or goods, which is very common? It does not seem to be covered.

Mrs Gillan: To me, that would just be theft and a criminal matter. Would it not be?

Mr Hazzard: Would regularly taking someone's dinner money not be one of the —

The Chairperson (Mr Weir): I suppose there are two issues with that. Theft is clearly a criminal offence. I could see a situation — say, the taking of dinner money — where schools would be reluctant to go down the route of having it as a criminal offence. Presumably, there could also be situations that would fall short of theft —

Mr Hazzard: Damaging a school bag.

The Chairperson (Mr Weir): Yes, either by way of some level of damage or even just saying, "We are taking it off you. We are going to hide it on you. We are going to make sure that you do not get it back for a while". They might eventually give the item back to the person who is being bullied, but they may use it almost as a —

Mrs Gillan: You could say that is with the intention of causing emotional harm.

The Chairperson (Mr Weir): OK; it might be.

Mrs Gillan: It is like you are picking on the person continually. To me, it would be.

The Chairperson (Mr Weir): Maybe, therefore, it could be ensured that, when guidance is issued, it covers something of that nature.

Mrs Gillan: Yes.

The Chairperson (Mr Weir): OK. Are members seeking or detecting any amendments in paragraphs 1.18 to 1.24?

The next bit is paragraphs 1.25 and 1.26 on the definition of bullying and acts and omissions. Again, I can see some sort of rationale for wanting to cover all situations, but, if we are talking about omissions counting as bullying, do you have any worked example of what would count as an omission leading to bullying to help us to get our heads round that?

Mrs Gillan: Freezing somebody out of a social group, not talking to them and not including them.

The Chairperson (Mr Weir): Is that an omission or an act of excluding someone? What constitutes an omission?

Mrs Overend: Is it when the person who is left out feels left out? If they do not care, it does not matter, does it?

Mrs Gillan: When is an omission not an act? Say, for example, you were supposed to catch somebody in PE — I am sure they do not do that any more — omitting to do it is an omission, but, actually, not putting your arms up is an act. I think it is legalese.

Mr Kennedy: What school did you go to? *[Laughter.]*

The Chairperson (Mr Weir): Clearly, on one level, guidance will have to be given.

Mrs Gillan: I am sure PE has changed since I was at school.

Mr McCausland: It is a bit more subtle.

The Chairperson (Mr Weir): Unless there is clear guidance, I can see a situation in a school where, when it comes to the recording, the schoolteacher or principal is scratching their head and asking, "What do you mean by 'omission'?". It might be helpful to get that clarified. I am not necessarily objecting to it being there, but there does seem to be a lack of clarity on what it specifically means.

Mrs Gillan: That is a good point. We will do that. I think that in general, legally you will very often say —

The Chairperson (Mr Weir): I understand that. It is probably there as a catch-all.

Mrs Gillan: We are being a little bit belt and braces about that. In my head, I thought it would probably be where the child is omitting to be included in particular activities on a repeated basis. That could equally be an omission.

The Chairperson (Mr Weir): It could be, although it could also be classified as a deliberate act to try to do that type of thing, but yes, I understand.

From that point of view, I am not sure that anybody is looking at a particular amendment to that. Again, if a wee bit more clarity could be brought back to us on that, it would be helpful. Again, I will just check this with the Committee: is anybody looking at an amendment on that element?

Do you want to comment on paragraph 1.27? I know that you touched on the definition of cyberbullying before, but do you want to comment on paragraph 1.27?

Mrs Gillan: Alan can talk a bit about what the Anti-Bullying Forum is doing, and I can update you on the e-safety strategy from the SBNI.

Mr Boyd: We would say, as we already have, that through the reference to electronic communications, the Bill clearly recognises cyberbullying and its impact and requires schools to take action on that. We are actively working with the Northern Ireland Anti-Bullying Forum and the Safeguarding Board. As Caroline mentioned, the Anti-Bullying Forum has been asked within the current financial year to develop a specific additional section for its school resource pack, 'Effective Responses to Bullying Behaviour', which will focus on the issue and try to provide greater clarity and guidance to schools on what is recognised best practice in tackling cyberbullying issues.

From a departmental perspective, we are clearly not ignoring this problem; we are seeking to address it. However, we are acutely conscious of the complexities of the area, involving at least four pieces of criminal justice legislation. We propose to address that in a lot more detail in the guidance, preferably by way of worked examples in other circumstances, as Caroline alluded to, so that we can help schools to understand the boundaries and what they can do when it falls to them to take action.

That is a brief summary. We consider that the Bill adequately addresses cyberbullying and that a rush to more detailed provision could actually backfire. We would not want to rush to introduce provisions that actually made life more difficult for schools.

Mrs Gillan: The Committee asked us for some detail. We referenced the e-safety strategy, and the Executive approved funding for the Safeguarding Board to commission an e-safety strategy. Part of that will include elements of educating and supporting children and young people and those responsible for their care and safety to develop skills and knowledge to stay safe online. We and the Anti-Bullying Forum are on project teams for that. The SBNI has given us an update to say that it is currently consulting and doing interviews with stakeholders. It hopes to submit a strategy to its project board in the springtime, and the likelihood is that there will be a public consultation in late summer. It is aiming towards launching the strategy and action plan on e-safety day in February 2017. That is the end date, but, obviously, that has to go through the Executive and, with the end of this mandate, there will be a bit of a time lag. As Alan said and as the Minister said in the Assembly, we have to carve out some reasonable space where schools are responsible, but at the same time we have to recognise that there are wider agencies and, indeed, parents, etc, who also have responsibilities outside the school responsibility. The guidance will need to talk about the two working in tandem, and that has obviously been taken into account.

Mr Kennedy: I suspect that it is a wee bit grey for some of us. "Acts" or "omissions" — omissions have come back in — have to be defined. I suppose there is the issue of where cyberbullying begins, whether it begins at home or outside the school environment and how and at what point it becomes applicable to the school setting.

Is there any other legislation in place or that has been proposed in any other legislature that we could get guidance from? Is there anything in Scotland or Wales or anything local? I know Ontario seems to be the one that is put forward.

Mrs Gillan: When we were researching the basis for the legislation, we found that the guidance in England and Wales and a lot of the legal advice acknowledges that where school responsibility ends is an extremely difficult and grey area to capture. Therefore, we felt that we did not have the knowledge at that point, with all the other issues that we wanted to achieve, to really batten it down and resolve it. We feel that it is a bigger issue and that, if we were to try to put legislation in place, we would need a lot more time and a lot more engagement with the Department of Justice, etc, and to look at best practice elsewhere, particularly on that issue. We did not feel that we wanted to tackle that within the Bill.

Mr Kennedy: The other thing is that, with the speed of the digital age, who knows what will be available in five or 10 years' time. We are creating legislation that is talking about cyberbullying, and we are listing, or at least referring to, some devices that will probably be obsolete by then.

Mrs Gillan: That is why we referred to "electronic communication" in general. The other thing that I point to is the important work that we do on emotional health and well-being and respect for others. Tackling cyberbullying is not just about coming in at the end of it almost as a discipline issue; it is about educating children at the beginning about not only staying safe online themselves but respecting each other, whether on a face-to-face basis or through the Internet. I think that is probably important work that we do not want to forget about, and that is where the e-safety strategy and a lot of actions within it will also be important.

The Chairperson (Mr Weir): A couple of members want in. I am maybe slightly jumping ahead, but the issue impacts on the scope of a couple of the other clauses. I appreciate the argument that has been used about cyberbullying in particular and about something happening at home, etc. It will obviously be defined in the scope, but is there not an argument about it being "lawful control" when it happens on the premises or travelling to and from school? That appears in clauses 2 and 3 and, to some extent, has implications for clause 1. Clause 2(1)(b) is obviously the specific bit about the duty of boards of governors, but that is replicated to some extent in clause 3(1).

I would not say that we should take a halfway house, but is there not an argument to perhaps include the words:

"where it is demonstrated that there is an impact during school hours"?

I appreciate that it is very difficult to police something that goes over the Internet late at night, but an issue has been raised with us about situations in which the text message, email or whatever postings have been made are then shown around school or forwarded or whatever. That might be during the time frame of school, but it may or may not be on the premises. Is there not some catch-all to cover that that means that it can be demonstrated as being one limb that impacts on the school day?

Mr J Anderson: That is the point where a school will become concerned — where it has a negative impact on the opportunity to learn at school. The school, of course, has the broader responsibility to educate to protect and enable young people to protect themselves, and the perpetuation of bullying by electronic means is only a small part of the broader range of online risks. Schools address that through education programmes, not least because it is a requirement of the Northern Ireland curriculum to have online safety as part of Using ICT.

The Chairperson (Mr Weir): I understand that. I suggest there is perhaps a need for some sort of catch-all in the three limbs in clauses 2(1)(b) and 3(1) where it can be demonstrated that it has an impact during the school day.

Mrs Gillan: What we are doing is saying that we very much accept that a lot more can go on, but for the purpose of the duty on the boards of governors under the policy, measures and recording, it absolutely must cover those incidents. That is not to say that the board of governors and the school could not decide that its policies, and probably its existing policies, could be wider and could record those other ones. It is whether we want to be so specific here.

The Chairperson (Mr Weir): Without prejudging the view of the Committee, would the Department have a major problem if some sort of additional phraseology were added to cover behaviour shown to have an impact during school hours or something of that nature?

Mrs Gillan: I think it is just that. We would really need to think carefully about how the school would feel about that. It is whether it would make the school responsible for behaviour that it had literally no ability to control. I think we need to look at how we capture it.

The Chairperson (Mr Weir): The only thing to consider is the ability to control, I think, for quite reasonable reasons. A school could very easily make the argument that somebody walking to or from school, which is covered, is not something under its control. By the same token, there is obviously a logical reason for that. You do not want a situation where people will say, "This will not count as school bullying if we wait outside the school gates to attack the pupil". That is also something that, to be fair, is outside the school's control, but it might be something that can be demonstrated to be impacting clearly during school hours.

Mrs Gillan: We can have a look at the language.

The Chairperson (Mr Weir): I think at least three members want in, so maybe we can take those comments and then close the meeting.

Mr Lunn: On the same track, I appreciate how difficult this is, because the more it is explained to us the more difficult it gets. Take an example. If a pupil reported an offensive email from another pupil to a teacher, that would be a singular event. I am thinking about repetition and so on. The teacher would have to say, "Let us see how it develops", but, if the pupil then said, "They sent me five last

night on the same topic. This is actually the sixth", could the school take those into account under the Bill?

Mrs Gillan: That is what we were saying. We would want to get those worked examples. There will be examples where the school will want to look at the wider context and where a singular event is bullying because of the history and the wider history. The duty on boards of governors is to determine measures to be taken with a view to preventing bullying on the premises, travelling to and from school and while you are under lawful control. What measures would a school be able take to prevent bullying at 10.00 pm or on a Saturday night? I am just wondering what that would look like in a policy and in what the school would do.

Mr Lunn: I have no suggestion to make here. I think there must be some scope for account to be taken of those circumstances. In practical terms, I know for sure what a principal — I nearly said "headmistress" — would do. As things stand, if the principal found that situation, I am pretty certain what they would do. They would confront the pupil causing the aggravation, presumably and hopefully take their phone off them, if that was the source of the aggravation, and call their parents in to have a chat with them. That is what would happen. However, that would be outside the scope of the Bill.

Mrs Gillan: It may be a wider pastoral care issue.

The Chairperson (Mr Weir): Time issues mean that we will have to wind up the meeting. We will resume later on the other aspects. Robin, you indicated that you wanted to speak.

Mr Newton: I wanted to ask about what happens outside school hours.

Mrs Gillan: We have the policy on travelling to and from school during the school term that covers some elements of what happens just outside the school gates.

The Chairperson (Mr Weir): I appreciate that you will be coming back to us, but it is fair to comment that, from the Committee's point of view, the elements where we would at least look at having an amendment drafted to consider something along the lines of, "where it is demonstrated to have an impact during the school day". I cannot come up with the exact wording, but you know the gist of what I am getting at.

We will leave it there. Caroline, we will see you again. I appreciate that this is like a forced march, but we want to ensure that we get this through. We will have another session on Tuesday. Thank you very much. It has been very helpful.



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Addressing Bullying in Schools Bill:
Department of Education

2 February 2016

NORTHERN IRELAND ASSEMBLY

Committee for Education

Addressing Bullying in Schools Bill: Department of Education

2 February 2016

Members present for all or part of the proceedings:

Mr Peter Weir (Chairperson)
Mrs Sandra Overend (Deputy Chairperson)
Mr Chris Hazzard
Mr Danny Kennedy
Mr Trevor Lunn
Mr Nelson McCausland
Mr Robin Newton

Witnesses:

Mr Alan Boyd Department of Education
Mrs Caroline Gillan Department of Education

The Chairperson (Mr Weir): I welcome back Caroline Gillan, the director of access, inclusion and well-being, and Alan Boyd, the head of the pupil behaviour management team. I advise members that this is a public session.

The Committee will seek to review the clause-by-clause table and seek clarification from departmental officials if required. I want to put it on the record that members should give an informal indication of their views on all the proposed amendments to the Addressing Bullying in Schools Bill and should indicate informally for each of the proposed amendments whether they wish to pursue it. That obviously does not preclude the pursuit of whatever amendments members want outside of the direct Committee phase.

I welcome the officials. We concluded the informal scrutiny of clause 1, and the table has been updated to indicate the Committee's informal decisions. I refer you first to comment 1.27 on cyberbullying. The table now includes a suggested amendment for the Department to consider. It has been suggested that the amendment is a little widely drawn and may greatly extend the obligations on schools. I ask Caroline to comment on that.

Mrs Caroline Gillan (Department of Education): Would you mind reading out the proposed amendment?

The Committee Clerk: The proposed amendment states:

"At end insert –

'(iv) in circumstances other than those listed in heads (i) to (iii) to an extent likely to have a detrimental effect on a pupil's education'."

This is about cyberbullying. The scope of a school's responsibility extends to when pupils are under the lawful control of the school — when they are travelling to and from school, during the school day etc. Members felt that cyberbullying was a very important issue and that it would be easy for a would-be cyberbully to evade the scope of the school's responsibility by merely tweeting, texting or doing whatever they were going to do outside of the scope set out in the Bill and yet still have a very significant impact on their victim. The Committee informally wanted an amendment that would extend a school's responsibility to capture that situation. However, there had been a suggestion from stakeholders that, if such a thing was quite widely drawn, it might open schools up to a pretty big liability. Chair, I think that you were seeking the Department's views on that and the possibility of a slightly different amendment.

The Chairperson (Mr Weir): Yes.

Mrs Gillan: First, as we mentioned last week, we absolutely recognise the need to deal with the issue through guidance and clarity, and we explained that we have work under way through the Anti-Bullying Forum and the e-safety strategy. The real concern about extending the duty on schools would be that the area is likely to become more litigious as time moves on and we could be increasing the liabilities of schools in an unreasonable way. If you were to extend the duty, it would be key to do so in the context of reasonableness and what schools could be reasonably expected to deliver on.

The current chair of the forum, Dr Purdy, gave you evidence some time ago. The research that he carried out, in 2013, in schools North and South acknowledged absolutely the need for legal clarity on cyberbullying. It did not necessarily find that there needed to be additional legal duties, but it absolutely emphasised the need for guidance and training. I thought that that focus on guidance and training was interesting. We would prefer to go down that route rather than, at this stage, potentially increasing schools' liability without really teasing out all the issues.

The Chairperson (Mr Weir): We will probably come back to that at a later stage. The proposed amendment in front of us perhaps goes a little bit wide. We had looked at considering something about the impact during the school day or within school premises where you maybe had something from outside school influencing that. The part of the amendment that refers to a:

"detrimental effect on a pupil's education"

seems to be pretty widely drawn.

Mrs Gillan: In some of the case studies in Dr Purdy's study, the teachers commented that they came in on a Monday and received reports from parents of what had happened over the weekend on Facebook, and they ended up spending most of Monday trying to ascertain exactly who did what while respecting the rights of the alleged victim and the alleged bully. It is about whether we would increase that duty. The issue absolutely needs to be resolved, but it is about whether it is for schools or parents to do so.

It is interesting whether there would be an ability to put into that amendment something like "as far as is reasonable" or "as far as is reasonably practicable" — something that recognises that schools cannot be expected to investigate and be a judge in every scenario. As I said, my real fear is about the extension of the duty on boards of governors and whether they can reasonably deliver on that.

The Chairperson (Mr Weir): Does anybody else have any other comments on that? No. It is an area that we will have to consider during the formal consideration. We will move on.

The Committee Clerk: Is the Committee content to consider another option?

The Chairperson (Mr Weir): To be perfectly honest, I think that we have to look at what options there are. As I said, I feel that the way that the amendment is drafted is possibly a little wide. That does not mean that nothing should go in there. I take on board what has been said about some level of qualification of what is there.

We will move on to clause 2, which is described as requiring the board of governors of each grant-aided school to determine measures to prevent bullying involving registered pupils at their school under certain circumstances and to ensure that policies designed to prevent bullying are pursued. Again, we will break it down into different sections.

Comments 2.1 to 2.7 refer to anti-bullying policy obligations. The first issue in relation to that is whether the Department supports the suggestion that the Bill needs to be rewritten to place an explicit statutory duty on boards of governors to have an anti-bullying policy and a separate duty to ensure that the policy is implemented. The other issue that arises from that area is an explanation of why the Bill does not extend to independent schools, early years settings and pupils who are in education other than at school (EOTAS).

Mrs Gillan: First, I will comment generally on the terminology used in clause 2. The reference to "policies" and then "measures", which is the more detailed element, is the standard drafting across education legislation. When we deal with discipline policies and safeguarding, it is around policies and measures. Schools are well used to and familiar with that terminology, and, for consistency, that has been carried through. We would prefer to stick with that wording. The suggestion has been made that we should be a lot more detailed about exactly what we mean, but for us that level of detail is not required or appropriate in primary legislation. That is exactly what we will draw out in the guidance, and there is specific reference to the guidance that schools have to have regard to. Some stakeholders requested specific references to certain types of bullying, but which types do you reference and which do you leave out? We are better with a blanket reference to all bullying in schools.

Members will be aware that all the duties on boards of governors are for boards of governors of grant-aided schools; the duties do not touch on independent schools. The whole structure to date has not brought independent schools into the mix in terms of duties on their boards of governors. The only powers that the Department has at present over independent schools relate to registration and inspection. Independent schools must be registered, and the Department may remove registration. The Education and Training Inspectorate (ETI) is able to inspect in relation to the efficient instruction. That is the extent of the duty, and to go down the route of pulling in independent schools, just for this provision, would be a massive departure.

The Chairperson (Mr Weir): Mention was made of the early years setting. Was it felt not to be appropriate to include that?

Mrs Gillan: Again, it comes back to the definition of pupils, which is pupils at grant-aided schools, and it relating to boards of governors of grant-aided schools. Bringing in early years settings has not been explored in the consultation. We have not engaged with stakeholders on what practically would be expected of early years settings.

The Chairperson (Mr Weir): The other issue, and we were talking about potential problems with the application to special schools, is proving the intent to bully in three-year-olds or whatever. What about EOTAS?

Mr Alan Boyd (Department of Education): I will address that point. The Department issued guidance in September 2014 on the minimum standards that were expected to be provided for any pupil in EOTAS. It said at a very early stage, paragraph 4.4, that pupils were entitled to expect that all their needs would be met as effectively and to the same standards as in the mainstream. Paragraphs 6.11 to 6.14 of the guidance went further by explicitly stipulating that all EOTAS settings must have positive behaviour, pastoral care, safeguarding, and anti-bullying policies that comply with all relevant DE circulars and legislative requirements. All EOTAS settings are subject, as is any school, to regular ETI inspections. We consider, therefore, that EOTAS settings already fall within the scope of the Bill.

The Chairperson (Mr Weir): I will open up to members. Trevor. Sorry. Sometimes we sit up here like bad auctioneers. Robin. I do not know if Trevor is going to do a bit of ventriloquism. I will hear Trevor's voice coming out.

Mr Newton: On the point about reassurance, when ETI comes along to inspect the records, does it expect to see commonality across the schools, or would there be variations in the way that a school might keep the records?

Mrs Gillan: On the duty to keep records, we will specify in guidance what might be good practice. We referenced previously the pilot done in 2008 using the C2k SIMS system, where schools kept them on that.

Mr Newton: That means nothing to me.

Mrs Gillan: OK. The legal duty does not specify how the school is to keep the record, so there is a degree of flexibility. In reality, when we come to develop the guidance, we will want to talk to schools and ETI to see what is the easiest way for schools to keep these records, because we do not want to create a huge bureaucratic burden. When ETI is inspecting — I think that John Anderson mentioned this — it already expects to see, and good practice would already dictate, that the school keeps records in dealing with discipline and, indeed, bullying cases. We will, to some degree, say in the guidance, "Here is the way you should keep your records." The legislation already says the sorts of things that should be covered. The ETI already goes into schools and asks for case studies on particular bullying incidents. As part of that, we expect them to look from the very beginning to the very end in terms of the record keeping. There will be an element of consistency, as set out in this legislation, but there will obviously be some flexibility for schools in how they keep a record and the manner in which they keep it. That is something that we want to explore with the schools and others when we develop that part of the guidance.

The Chairperson (Mr Weir): Are there any other comments on this section? Is anyone seeking an amendment on this? I will take the silence as no.

We move on to the next section, comments 2.8 to 2.10, which cover the review process for anti-bullying measures. Will the Department explain why there is no fixed time in the Bill for a review or an obligation to consult pupils in the development of anti-bullying policies? Can you also explain why it is not necessary to amend the Bill in order to place an explicit responsibility on ETI or the Education Authority to monitor compliance by the governors?

Mr Boyd: On the length of a review period, as John Anderson referenced last week, we believe that most schools are already following good practice in this area, and we did not wish to be unnecessarily restrictive in the duties we imposed upon schools. As we understand it, typically, schools will review their policies on a four-yearly cycle, as the change in boards of governors takes place. As part of that, they will commonly also review the school's scheme of management. That is a natural break point, but we did not want to deny schools the flexibility if they had, at any stage, a significant change in the composition of their board.

If, as a result of the recording, they identified a particular problem with some aspect of bullying — such as disablist bullying or homophobic bullying — we considered that it would be appropriate for them to have the flexibility to react and immediately move into a review of their policy. So, we felt that it would be unhelpful and unnecessary to specify tighter time frames.

The Chairperson (Mr Weir): The one direct amendment that has been suggested has been proposed for clause 2(1)(f) and is about consultation taking place on the review. There has been a suggestion from a number of organisations that pupils be included in the list of those who should be consulted on the development of policies.

Mrs Gillan: The Bill already provides for that. It talks about the principal, registered pupils at the school and parents of those pupils. That is provided for in clause 2(1)(d) and clause 2(1)(f).

The Chairperson (Mr Weir): OK, so that covers it.

The other issue is the monitoring arrangements of the ETI and the Education Authority. Will you comment on that?

Mrs Gillan: We are using the traditional monitoring arrangements of the ETI inspections. They always pick up the discipline and pastoral care requirements, and, as I said, they already pick up the anti-bullying practices in how schools deal with particular cases. We feel that those are the correct monitoring requirements, rather than taking another additional duty to monitor.

Mr Newton: In second-level education, with the school committees and prefects, do you intend there to be a formal mechanism for consultation on the review?

Mrs Gillan: How schools want to engage with their pupils is very much for the schools to decide. Some schools may use a school council method or incorporate it into the curriculum through learning for life and work or personal development and mutual understanding (PDMU). You could work it into the teaching in the school. We would not want to be overly prescriptive with schools on how they

engage with their pupils. Every school already has processes in place for how they bring pupils into the development of policies and measures that apply to the school.

Mrs Overend: I appreciate what you said about reviewing the policy as and when in order to give schools that flexibility. However, maybe you should also put in a time-bound aspect for a review at least every year or two years, as had been suggested. A review could be done more often if they wanted, but if they find that they have not reviewed it in five years, that would be a concern.

Mrs Gillan: A year or two years would be very short. You would not necessarily have a lot of data. Knowing what schools have to do every year, that would be quite frequent. As Alan said, if issues arise, they would immediately go into a review if they are taking their duties seriously.

The Chairperson (Mr Weir): Maybe there would need to be an amendment to have a default position that says that, at a minimum, it should be done every five years.

Mrs Gillan: "But at the very least".

Mr Boyd: We could make a clear recommendation in the guidance that, "Good practice would suggest that it should be no later than — ". It is whether or not that needs the force of inclusion in the Bill.

The Chairperson (Mr Weir): Perhaps we could take that on board, Sandra. Do you want to have the draft of an amendment for something of that nature that we could at least consider?

Mrs Overend: Five years maybe would be the right time. When there have been incidents and you find out, "Well, this hasn't been reviewed in 10 years", that is concerning.

Mrs Gillan: Yes. OK.

The Chairperson (Mr Weir): As for the exact time frame, if we have a draft amendment, we can look at it from a Committee point of view. We may or may not pursue that. We may look at whether that is a different time frame or not, but those are all issues that we can at least put on the table.

The third group — 2.11 to 2.21 — relates to the scope of school responsibility. We have touched on some of the issues, such as the scope of protection for particular groups and explicit reference to extracurricular activities. You have, to some extent, addressed some of those already. A specific issue was raised about why there is no explicit reference to the role of parents in tackling bullying, which is at 2.17.

Mrs Gillan: We dealt with some of the issues in relation to the cyberbullying amendment. Arguably, this is the same issue, and maybe that is where your amendment would go in. There is a suggestion at 2.13 that the clause should be amended to read:

"while the pupil is engaged in education and/or associated services".

We feel that that is more clearly dealt with in the current draft with "at the school" or:

"while the pupil is in the lawful control or charge of a member of the staff of the school".

Do you want to go over the issues on cyberbullying again? I think that we exhausted those.

The Chairperson (Mr Weir): No, that is fairly consistent. We mentioned the issue of whether we need to extend the scope, but have a caveat about reasonableness, such as it being during the school day. There will probably be a follow-through on that, as well, on how that would be phrased. To some extent, we have gone through those issues already. I do not think that there is anything additional. Specifically, there is the point about the role of parents.

Mrs Gillan: That is 2.17.

The Chairperson (Mr Weir): That comment comes from the National Association of Head Teachers (NAHT) and the Ulster Teachers' Union (UTU).

Mrs Gillan: It calls for DE to advise parents on their role. It is hard for us to be prescriptive about the role of parents. We would see that being dealt with in training materials, guidance and e-safety guidance. Interestingly, the Safeguarding Board for Northern Ireland (SBNI) is developing two apps around e-safety and keeping children safe online, one of which is aimed at parents. That is probably a better route to go down than being restrictive and placing duties on parents. How would we enforce those and what would we do if we got a parent —

The Chairperson (Mr Weir): That comment is not just about the cyberbullying side of it but that there should be a role for parents more generally and whether that needs to be flagged up explicitly in the legislation.

Mrs Gillan: The default role is for parents except where you are dealing with behaviour in school, which is what we have tried to carve out here. If we went down the route of trying to capture the role of parents, I cannot imagine what that would look like in a clear way. That is the old chestnut: when is it parental responsibility, and when does it become the school's responsibility?

The Chairperson (Mr Weir): Does anybody have any comments on that? I would like to go back to a point in the previous section about the explicit responsibility of the ETI or the Education Authority. Why is this not directly referenced?

Mrs Gillan: We feel that those are already part of the ETI's inspection duties. The ETI inspects discipline and pastoral care, as it will with anti-bullying, so that is already covered under its role. When we talk about child protection duties on boards of governors or the wider discipline duties, we do not particularly go in and say that the ETI will inspect. That is just not the way that the system has developed. It is taken as read there.

The Chairperson (Mr Weir): Do members have any comments on this section?

Mr Newton: On paragraph 2.17?

The Chairperson (Mr Weir): Yes.

Mr Newton: I would say only that I thought that the NAHT and the UTU were making a fairly strong call on this matter. They are asking for DE:

"to advise parents on their role and reasonable expectations from schools."

The UTU is calling for the Bill to be amended in order to:

"reference the role of parents".

It does not seem to be unreasonable to request that this should be in the Bill.

Mrs Gillan: We will draw out the roles and responsibilities of parents in the supporting guidance. The guidance will be not just for schools; we envisage developing guidance and information for parents. Also, if a school is developing its particular measures and is consulting parents, it would not be unreasonable then, in light of what we have said in the guidance around clarifying what is expected of parents, for it to elaborate that in its policies and measures. The issue is around making sure that everybody is absolutely clear, which is, obviously, what the UTU wants. I do not think that the legislation is the correct vehicle for this, given the research and, indeed, some previous court cases.

Every parent has a different standard as to what they expect, potentially, from their child, and behaviour is a very hard thing to define. One person's good behaviour is another's bad behaviour, or one person's bad behaviour could be someone else's free-spiritedness. It is different if you are talking about school attendance, for example, where the role of parents is referenced; you either attend school or you do not. It would be difficult to capture something like this in legislation — something that would be reasonable. That is why I think that it is better left to the guidance and to the engagement that we will have with parents' groups as well as schools and teachers.

Mr Newton: Why do you think, then, that the two professional bodies that represent practitioners feel, as I determine it, fairly strongly that they want this in the Bill?

Mrs Gillan: It is probably because they want to manage expectations. The issue is that schools feel, increasingly, that they are taking on the role not only of teaching and educating pupils but almost, at times, the parental role. Pastoral care issues are ever-expanding, hence the concern about expanding this further through any amendment without being absolutely clear about what we expect. It is about clarity, but we feel that clarity can be better achieved through development of the guidance and materials for teachers, not only on the anti-bullying issue but on e-safety issues.

Mrs Overend: I want to ask you about ETI inspection not being part of the Bill. Would it make sense for that to be mentioned in the schedule instead of in the Bill?

Mrs Gillan: As I said before, we would reference in the guidance that schools will be expected to produce evidence, probably on inspection. But, I think the way to deal with this is through the role of the ETI and what it expects. I think that, last week, John Anderson mentioned that before inspectors go to a school they produce a whole schedule of questions on whether the school is doing x, y, and z. The anti-bullying policy and those duties will be referenced. The inspectors already go in and ask for a case study. They do not just allow the school to pick and choose its case study; they speak to pupils also. It is developed depending on their engagement with the pupils at the school as well.

I think that, rather than us needing to reference it, the ETI is well set up to look at all those wider safeguarding and welfare issues. I should also point out that the ETI does not exist in legislation. The Department appoints inspectors to carry out inspections, and that is referenced to those inspection powers. I think that if you wanted to put anything in, you would have to trace it back to the powers of inspection, rather than doing it, in an isolated way, through this legislation.

Mr Lunn: Going back to paragraph 2.17, I imagine that the reason why the NAHT and the UTU made that request was because of their exasperation at the failure of parents to acknowledge their responsibilities in certain situations. I do not mean all parents. I agree with you, and I cannot see what place this would have in legislation or even in regulations or guidance. I do not know if the Department ever issued any advice to parents about bullying before, but there is no reason why it should not do so. It does not need —

Mrs Gillan: I am not sure if part of the Anti-Bullying Forum's materials include advice to parents, but we would want to do a parents' leaflet as part of this new package of guidance.

Mr Lunn: That is as far as it needs to go. I do not understand what the UTU is looking for if it is calling for the Bill to be amended to reference the role of parents.

Mrs Gillan: My worry is that enforcement could be in the Bill —

The Chairperson (Mr Weir): Does anybody wish to produce any specific amendments? We move on to the next section, which comprises paragraphs 2.22 to 2.25, on the transfer of anti-bullying responsibility from school principals to school governors. I am at a bit of a loss, especially as regards clause 2(3), about the removal of direct responsibility from principals. Why is that necessary?

Mr Boyd: Under current legislation, in article 3(3)(a)(ii) of the 1998 Order, the principal is charged specifically with the responsibility to determine measures to prevent all forms of bullying among pupils. The Bill proposes that we will elevate that responsibility to the board of governors. This is simply an attempt to correct an anomaly whereby, without this change, we would have the same duty being vested, both singularly in the principal and collectively in the board of governors.

The Chairperson (Mr Weir): Is there not merit in having some kind of dual responsibility here? Presumably, on a practical day-to-day basis, the principal would be the one who is doing this.

Mrs Gillan: The Minister's policy relates to the fact that the board of governors needs to step up to the mark and take responsibility for this. The principal is the key factor, but the Minister wants to ensure that the duty, to see the policies through and determine the actual measures, rests with the board of governors. As far as I understand it, in law, you cannot have two people doing the same duty. That, if anything, could create an element of confusion. We feel that the principal will be properly brought into the new duty, in terms of having to be consulted and having to determine the actual measures etc. Also, at practical level, the principal will be responsible for implementation. At the end of the day, the legal duty is to rest with the board of governors, and so we had to take out the anomaly.

The Chairperson (Mr Weir): I understand, but I am not 100% convinced. Do members have any comments?

Mr Lunn: Can the board of governors instruct the principal to take actions on bullying?

Mrs Gillan: The board of governors simply has to ensure that the policies are there and are being pursued, and that the actual measures are in place. It will be for the board of governors then to manage the school internally and develop and implement those policies. At the end of the day, the board of governors has to be happy that its statutory duties are being discharged.

Mr Lunn: When you say "ensure that the policies are there and are being pursued" in the school, that effectively brings in the principal and the staff.

Mrs Gillan: Through the implementation, yes.

The Chairperson (Mr Weir): Does anybody wish to pursue an amendment? In the absence of any comments, we will move on to paragraphs 2.26 and 2.27, on the issuing of guidance by the Department in relation to determining and reviewing anti-bullying measures. Can you explain why there is not a more formal obligation?

Mrs Gillan: Paragraph 2.26 is about directions issued by DE under clause 2(2). It will allow us to direct all schools, a group of schools, or an individual school to undertake a review of anti-bullying policy. It is purely about reviewing the policy as opposed to allowing us to direct or intervene in particular cases. It might be that we become aware of something at system level or, indeed, there may be concerns about a school's anti-bullying policy coming from an inspection report. It may be reasonable and appropriate for us to direct a school to review its policies.

The Chairperson (Mr Weir): Has anybody any comments? No. On that basis, we will not seek any amendments to that. That concludes clause 2. We will move on to clause 3. The first item at paragraph 3.1 or 3.2 is the issue of the words "must" and "may" versus the word "shall".

Mrs Gillan: Apparently, the word "must" is now the plain English preferred by the Office of the Legislative Counsel (OLC) draftsmen. It means the same, but this is the preferred drafting style now.

The Chairperson (Mr Weir): That probably covers paragraph 3.1 — I understand that — but paragraph 3.2 is a suggestion that the word "may" be changed to "shall" in the motivation bit.

Mrs Gillan: That does not make sense, because clause 3(3) is designed to be a menu of possible motivations but not the end of the story. If you put in the word "shall", you are saying that every incident of bullying "shall" include the following. It just would not make drafting sense. It is not the way the clause is designed. It would change the meaning.

Mr Lunn: I think that we nearly came to the same conclusion ourselves. If you put in the word "shall", you would have to say, "but not exclusively" or something like that.

The Chairperson (Mr Weir): To be fair, with any of these things, we want to get a view on every comment that has been made to us.

I move on to the next area, which is the issue of record keeping, at comments s 3.3 to 3.11. They cover the obligation on school authorities to keep a record of incidents of bullying. Does the Department accept that the Bill should specify that records include details of the incidents; for instance, whether they took place on social media information etc? Can you comment on 3.11, which suggests that the victim's permission be sought prior to a record being kept or maintained? What is the position regarding data protection assurance? One of the major concerns we have had is the need to avoid any unofficial league table in this area.

Mr Boyd: I will begin by addressing the scope of the record envisaged. The Bill, as we have drafted it, establishes the duty to record and specifies a core one or two issues that were felt to be key. We do not envisage and have never envisaged that that would be the scope, in its entirety, of the record we are proposing be collected. We consider that we would need to have a dialogue with stakeholders, including schools and governors, to determine exactly what was necessary to fully capture the incident

without collecting unnecessary information, both to minimise the overall administrative burden on the school and to ensure that no unnecessary details are captured that might lead to the school being challenged for collecting more data than needed. One of the fundamental principles of the Data Protection Act is that, where data is collected, the minimum amount necessary for the function is recorded. We felt that it was worth identifying the key areas that we feel are essential. Motivation is one of the core issues. It is one of the issues flagged up in the forum's report and in subsequent work. If data on motivation is not collected, schools cannot identify potential problems with specific issues, such as disablist bullying, homophobic bullying or bullying on the basis of race or ethnicity. That is why those are written into the Bill but others are not. As I say, we envisage and the 2008 pilot that Caroline referenced has envisaged a much wider series of data fields that schools —

The Chairperson (Mr Weir): We will come on to the data fields on motivation. What about the retention of records? There is clearly a balance to be struck. We want to have good information that can be used. However, the concern is how we avoid creating a situation where a media source makes an FOI request and then publishes a league table. You can see the headlines now: "The Most Bullying School in Northern Ireland". How do we ensure that that unintended consequence does not happen?

Mrs Gillan: On how the retention of records would be managed, schools are clearly data controllers under the Data Protection Act. Indeed, the Department issued guidance last year clarifying their role. Associated with this, the Department has already issued a records disposal schedule with suggested lengths of time that schools have to keep information. On the retention of records, the current disposal schedule refers to the discipline record element, for example, being kept until the pupil becomes 23 and then destroyed. We want to revisit that schedule and decide what is appropriate for any records on bullying. It is likely to be a similar length of time because it is linked to discipline and welfare issues.

On FOI and data protection, again, because the information is held at school level, it would be for a school to make the decision if it receives an FOI request. One would imagine that records linked to individual pupils would not be releasable because you would be able to use the personal information exemption. If schools are developing reports for their boards of governors involving very high level statistics, or are monitoring like that, there is an argument that those should be releasable. Obviously, the FOI Act does not require schools to create information, so it really would be for a school to make the decision.

The Chairperson (Mr Weir): You talk about high level figures. The problem is that those are exactly the figures that are likely to be used for a league table. If a school says that, this year, there were 111 instances of bullying, and a neighbouring school, which has recorded on a similar basis, says there were 75 or whatever, although that cannot identify the individual instances or particular circumstances or motivations, those will be the very figures that will be discoverable and can then be used. Is that not the case?

Mrs Gillan: Of course, this is the difficulty. As we may have said in previous sessions, the issue is that we are trying to create a system that protects pupils and ensures that schools deal adequately with bullying. If, as part of that, there is a risk that the school is concerned with its reputation and some organisations are deciding to publish league tables, where is the balance? Do we worry more about the reputation of a school, or are we more concerned about having effective anti-bullying policies operating in that school? Bullying goes on in every school. Parents can be quite understanding when schools are upfront about that and are shown to be proactive. I do not think that any parents are naive enough to think that, if there has been no bullying in a school in the last six months, that it is a true picture. Likewise, if it was shown that bullying was really prevalent in some schools, that may be an indicator for boards of governors to think, "Gosh! Why is that? Do we need to do more preventative behaviour". I do not really have an answer about FOIs. I think that it is —

The Chairperson (Mr Weir): We are struggling with it. There is another issue. If you have information that is discoverable, to what extent may that influence the way information is recorded in some schools? Will we get situations in which, consciously or subconsciously, there would be an ethos of minimising incidents or not recording them on the grounds that they would show up in the statistics?

Mrs Gillan: The counter to that is the civil law case, that members are probably aware of, that was taken against a school last year. What was interesting in that case was that the judge was very much focused on the need for schools to clearly record incidents and for there to be good quality records

and accurate records of the complaint and the response. If schools do not record, they will leave themselves open to further criticism or to a case that comes along.

The legislation is clear about record-keeping, because it is good practice. We are also clear in the guidance that it is good practice. If schools choose not to do that, when the ETI goes in, or, indeed, if they get a challenge from a pupil or parent and are not keeping good records, they will leave themselves open to criticism if the justification is only because they were worried about possible FOIs.

Mr Kennedy: There is also the issue of liability for boards of governors and the possibility that individuals might take a case later. That is also why the timescale is important. Consideration should be given to a period beyond the school life of the individual but that does not stretch into the future and allow someone to come back and say, "In 1945, I was bullied at that school, I never got over it and I am entitled to compensation". The year 1945 is a bad example.

Mr Newton: It is outside the time — 23 years.

The Chairperson (Mr Weir): I know the point you are getting at.

Mrs Gillan: Absolutely. We will look at this with our information management colleagues when we look at that disposal schedule and how long records should be kept. That is a good point.

The Chairperson (Mr Weir): No amendments are being sought in that area.

We will move on to the next section, which deals with, in particular, the list of motivations for bullying. There is a range of things. I appreciate that the wording is "may" include, but why is there not something that creates a catch-all or that takes in other factors. Some people will look at a list, ask where they should put something on that list, and not think outside the list.

Mrs Gillan: You would only put the catch-all/other factors item in if you had the wording "shall include this, this, or other factors". By implication, the fact that the wording is "may" means there is a catch-all.

The Chairperson (Mr Weir): Yes, I understand that, but that will not necessarily be the way that people interpret it. If you provide a list of whatever length — whether it is 10 or whatever — the tendency may be for people to ask which of the 10 it comes under and they may not say that if it falls outside the 10 that they will record it separately.

Mrs Gillan: We acknowledge that there will be motivations for bullying other than those given here. Our policy aim was to focus on the section 75 categories and any others that are already in legislation, hence the gender reassignment and pregnancy elements.

The Chairperson (Mr Weir): One of the issues raised concerned some of the subgroups of the section 75 groups — for instance, dependents.

Mrs Gillan: I was going to say that we have realised that we have overlooked dependents. We would be minded, subject to the Minister's approval, to put dependents in. That was merely an oversight.

The Chairperson (Mr Weir): We have heard suggestions about what should be in. Quite often, we have a debate about what should be in primary legislation, regulations and guidance. Although the wording is "may" and is therefore widely drawn, it seems to be quite a lengthy list and it seems prescriptive to have those groups in the legislation. That is slightly surprising. You mentioned an oversight: the issue of dependents being missed out in relation to this. Is there not a reasonable argument that the provision should be for the Department to make regulations on the motivation? The other issue is that, irrespective of whether you add in an extra category or two, we may, two or five years down the line, think that we are not really capturing such and such on that list. Rather than seeking to amend primary legislation, would you not be better having something that said that the Department "shall" make regulations?

Mrs Gillan: As far as we are concerned, the way in which we have drafted it does not require us to amend later down the line because we are not trying to be exhaustive. Our worry about taking a power to add to the list is whether it is a good use of resources to try to capture different motivations at regular intervals. It does not enhance anything for the pupil —

The Chairperson (Mr Weir): It may well be that some of those issues are things that, five or 10 years ago, would not necessarily have entered people's heads as being a potential motivation for that. These things change over time in that regard. I would have thought that it is a good argument that, if they were contained in regulations, which are secondary legislation, they could be changed or amended an awful lot more easily than being faced, in three years' time, with having to make a change to primary legislation to include something of that nature.

Mrs Gillan: That argument is precisely the reason why you do not even want to capture it all in legislation. Things change over time. We are conscious that there will be particular circumstances in particular schools.

The Chairperson (Mr Weir): Is that not an argument to have it in the code of practice?

Mrs Gillan: The guidance can develop what motivations might be and the fact that the school will have to look at all the circumstances of a case. That is why we wanted to include what we felt, in a legislative context, would be the absolute minimum. Again, that harks back to section 75 and the other statutory protections in place. There could be a list as long as our arm, and new ones would come. That is not a good use of legislation. The fact that —

The Chairperson (Mr Weir): Are there any other comments? I would like at least the option of an amendment that has the list of motivations by regulation so that there is a requirement on the Department to bring forward a regulation. That might mean that the Department brings forward the same list as it has or with that amendment. I am not convinced that having a definitive list — I appreciate that there is a "may" in it — is the best way of going forward with that.

Mrs Gillan: Does that mean that you do not want an inclusive list? Do you want an exhaustive list that we have to capture in regulation —

The Chairperson (Mr Weir): You would have in the legislation a requirement for the Department to bring forward regulations stipulating what motivations may include, or words to that effect. I am slightly drafting off the top of my head. I am not saying that the Committee will necessarily agree to that, but I would like at least that as an option. Personally speaking, that is a better way of doing it than having a list that, however much it talks about "may", will be seen as being exhaustive. That will run into difficulties at future points on that side of it.

Comments 3.26 to 3.30 refer to obligations to report and address mechanisms and the issuing of guidance by DE. Does the Department wish to comment?

Mr Boyd: Article 17 of the 2003 Order already places a statutory duty on schools to promote and safeguard the welfare of their pupils. We very much see it as being best practice and a logical extension of the safeguarding duty that schools would require their staff to report any bullying incident. We can look to recommend that as a requirement in a school's anti-bullying policy, but we propose to do that as a recommendation in the guidance. We do not think that it is necessary to include it in the Bill. If we were to include it in the Bill, it would almost require us to give consideration immediately to what monitoring and enforcement mechanisms we would put in place to support it; and there would be the issue of what is the merit of creating an additional statutory duty if we do not have any meaningful way of monitoring or enforcing it.

The Chairperson (Mr Weir): Have members any comments to make in relation to that? If not, are there any amendments to this section? Is there anything that you want to say on 3.27 or 3.28?

Mrs Gillan: Paragraph 3.27 is about using best practice from other jurisdictions. When we come to develop the guidance, we will look widely at best practice elsewhere. We see the duty to record the method of bullying as definitely to be elaborated and drawn out in the guidance as to what detail should be recorded. As to the duty for us to issue guidance, we have very clearly said that this is definitely part of the package. We will not fail to issue guidance, because it is in our interests for this to be done properly and for there to be consistency and for schools to be supported. So we want to have the guidance in place before we go live with the duties on schools.

The Chairperson (Mr Weir): At this stage, I would like to welcome some visitors to the Public Gallery. Just to inform you: we are going through the informal clause-by-clause process on the anti-bullying

Bill. It is probably nearing completion in today's meeting. Those may be fatal last words, however. That concludes clause 3.

Mr Newton: Sorry, I have something to add.

The Chairperson (Mr Weir): Sorry, Robin.

Mr Newton: My point is tied in with the issue of guidance to boards of governors. Last week you said that you were —

Mrs Gillan: Training?

Mr Newton: Yes, you were not clear as to what exactly that training might be.

Mrs Gillan: We are no clearer this week either. We need to turn our minds to engaging with schools and boards of governors to see exactly what would be the most helpful type of training. Obviously, some of it could be incorporated into the general board of governors training, but it may be that we will want to develop something additional and bespoke for the purpose. We do not yet know how we want to roll that out. We are conscious that governors are volunteers and are limited to night-times, etc, so we will look at the most effective way of rolling out the training to boards of governors. That absolutely needs to go hand in hand with the written guidance.

Mr Newton: Just for clarity, do boards of governors get training at present?

Mrs Gillan: Yes. Training is given to all new governors in certain modules. There is also specific training for child protection, which is mandatory. So there are different elements of training.

Mr Newton: So, you would look at the current programme of training being beefed up, if you will excuse the expression, to match the —

Mrs Gillan: We would want to talk to the EA about that: whether there is space in the new governor training programme, or whether we would want to use some of that but also do some bespoke training. We are yet to go down the route of what exactly that would imply.

Mr Kennedy: Just on that point, how is it tracked at present? How do you make sure that members of boards of governors are appropriately trained and complying with the training that is potentially available but perhaps not?

Mrs Gillan: Because it is not my area, I am not 100% sure about the training that is rolled out. I know that, in relation to child protection, we ask for assurance from the Child Protection Support Service for the coverage of the child protection training. They proactively go out to schools to ensure that the training is covered on the child protection front.

Mr Kennedy: So, the anti-bullying training would come under that?

Mrs Gillan: It probably would not come under child protection, as such. We need to think about how we want to approach it. We will look to see how the child protection training is rolled out, because it is a specific duty, and we will also want to talk to the governor training folks to see how they do other elements of it. We are happy to look at it and, as you say, see what monitoring needs to be put in place and how we would do that to ensure that boards of governors are availing of it and that there is suitable coverage.

The Chairperson (Mr Weir): There is just one issue that I realise we have not touched on. In paragraph 3.30, the Children's Law Centre highlighted its concern over the lack of independence within school processes. I wonder whether you want to respond to that.

Mrs Gillan: I am not sure what happened yesterday with the Public Services Ombudsman Bill — I think that there was an Exceptional Further Consideration Stage — but my understanding is that it will provide an element of independence and redress of maladministration there. However, we do not intend to create a separate investigative, independent role that would allow us to look at the role of

schools. The Public Services Ombudsman Bill will at least introduce a certain level of independence that people could avail themselves of, and schools will be brought under its remit.

The Chairperson (Mr Weir): OK. We move on to clause 4. Nobody has made any comments on this clause, so I just want to check whether members are seeking any amendments to it — even for the sake of it?

Mr Kennedy: Even for our visitors?

The Chairperson (Mr Weir): Even for our visitors. We will be writing to the 'Guinness Book of Records' because this is probably the most people the Education Committee has ever had in the Public Gallery. *[Laughter.]* You are very welcome in that regard.

Clause 5 is the short title. Unusually, for a short title clause, two comments were received. The first is about a review mechanism, and the second suggests that the Bill should have a different title. Do you have any comments on those suggestions?

Mrs Gillan: Again, you would not naturally build a review mechanism into legislation. The Department will probably review the effectiveness of the operation once we have had adequate time and have good data on the effectiveness of our guidance and the duties. However, I do not think that it would be appropriate to tie into reviewing a Bill as such; that would be more of a policy role for the Department and, obviously, it is for the Committee to scrutinise us in that respect. We are happy with the title.

The Chairperson (Mr Weir): If it was changed, as UTU suggested, from "addressing" to "eradicating", would that possibly raise expectations?

Mr Boyd: Yes. At last week's session, we said that we do not expect the Bill to solve the problem of bullying in our schools. However, it will be a helpful step in addressing the problem, no more and no less, and the title reflects that.

The Chairperson (Mr Weir): Do members have any other comments?

Mr Kennedy: It would be ambitious to say that it was going to eradicate bullying. It might alleviate it, but I doubt very much whether it will eradicate it.

The Chairperson (Mr Weir): I just want to check whether members are seeking any amendment to clause 5.

I understand that our visitors in the Public Gallery are from Rotary International and you are here because you won a leadership competition; is that correct? Maybe you should be here and we should be there. *[Laughter.]* I will not tempt the members because they may take up the offer.

There is a miscellaneous section in the clause-by-clause response table and there are 10 further comments that do not fit in with any particular clauses. The comments deal with, among other things, guidance, training for schools, arrangements for special schools, cyberbullying, anti-bullying research, consultation, duties in respect of young carers, policy alignment, and the consistency of mental-health provision in schools. Do you want to say anything about those issues?

Mrs Gillan: I will begin with the issue of legal guidance in respect of out-of-hours bullying. Again, we have discussed the issue of providing guidance for schools on what they can legally and reasonably be expected to do. Out-of-hours bullying touches on cyberbullying and the Committee's amendment, but we want to produce case studies on some of those issues so that we can provide as much clarity as possible for schools, within what is reasonable.

As we have said before, we are looking at training and guidance, so we do not envisage enacting the Bill until guidance and suitable training is in place; that would be unreasonable for boards of governors.

The Chairperson (Mr Weir): We have possibly just broken the second record of the day. After having the maximum number of people in the Public Gallery, we now have the maximum number leaving an Education Committee meeting at any one time. *[Laughter.]*

Mrs Gillan: We will not take it personally.

Mr Kennedy: Clearly, it was a very moving speech. *[Laughter.]*

Mrs Gillan: I will have to work on my presentation skills. *[Laughter.]* With regard to comments 6.3 to 6.5, we are not going to have a separate consultation. We feel that we dealt with the issue of special schools, and SEN pupils generally, last week, and the flexibility that there is for schools to adapt their policies and measures according to their pupils. We have asked the forum to develop the cyberbullying guidance this year, and our guidance will look more widely at cyberbullying.

With regard to anti-bullying research, the Department will want to turn its mind to looking at the effectiveness of our policies and look at what research we would want to do on addressing their effectiveness. We would look at the full range of schools and at the nature of the pupils in them.

Comment 6.6 refers to consulting parents. Again, that is about trying to clarify the role of parents. We are looking at guidance or information for parents. Moreover, schools will, in the measures and policies — on which they will consult with parents — be able to set what the relationship should be between school and parent.

Mr Boyd: We envisage four separate guidance documents or leaflets arising from this. There will be a detailed one for schools; one for governors, teasing out their new duties and responsibilities; one for parents, emphasising the boundaries and where parental responsibility kicks in; and one in child-friendly language for pupils on how they should react and whom they should approach when they encounter problems with bullying.

Mr Hazzard: A connected issue in my mind is relationships and sexuality education (RSE). The Department has guidelines that every school should have an up-to-date policy on RSE. However, if not half, certainly a large proportion of schools do not do that. I see a link between how a school tackles, say, homophobic bullying and a good, up-to-date policy on RSE. Will the Department look at that after this Bill? If it is not to be part of the Addressing Bullying in Schools Bill, it is certainly consequent to the passing of it. We are looking at research and different ways of tackling bullying. Will we be looking at the need, perhaps in legislation, to ensure that every school has an up-to-date RSE policy?

Mrs Gillan: On the curriculum side, I am not that certain, but my understanding of RSE is that some folks will want it tied down in legislation; equally, a vocal body will not want it tied down in legislation. Therein lies the difficulty for the Minister.

Where we see the benefit of this legislation and the monitoring of incidents is that if a school found that there was an issue, we would expect to see mechanisms put in place to address it. Whether that is through the teaching of RSE, if it has not previously been done, or through the I Matter-type work, I am not sure. As far as the Department is concerned, the guidance and curriculum are there, but legislating further has, as I understand it, been a challenge.

Mr Hazzard: Difficult.

Mrs Gillan: Yes.

Mr Newton: Maybe Caroline has not reached 6.10 and the comment from Erasmus+ Connections, where a group of young people, under the European support programme, looked at mental health issues for pupils and found a great deal of variation, school by school, in how those were addressed.

Mrs Gillan: That is possibly under a slightly different arena within my directorate, the emotional health and well-being side of things. We have our school counselling service, but, more than that, you want to get into the preventative arena rather than relying purely on counselling. We have been looking at our I Matter leaflets and supports, which encourage good mental health and which signpost pupils if they have problems. The Department will be looking at ways of rolling out that feeling of positive mental health and positive attitudes to pupils in schools as part of the leadership programme in place for teachers. There was a pilot done some time ago with the Public Health Agency (PHA) that produced quite good results. However, we wanted to mainstream that into some of the training that is already going on for teachers, because we found that, if the leadership and the principal of a school fully bought into the approach of positive mental health and respecting others, that was the best way

to get it filtered through a school. That is not for this Bill, but I will absolutely take it on board when we look at our other area of work. If there is a report that we could look at, we would be more than happy to do that.

Mr Newton: Chair, Caroline is saying that if the report was available to her she would look at it: could we ensure that the report goes to her?

The Chairperson (Mr Weir): Yes. I am sure that was very wise.

Mrs Gillan: He does not know what he has agreed to, but that is fine.

Mr Newton: You agreed to that, Chair.

The Committee Clerk: It has been forwarded to the Department, and commentary has been sought. You may have replied already.

Mrs Gillan: Has it? I may have. Sorry.

The Chairperson (Mr Weir): It is better to say "may" than "shall". *[Laughter.]*

Mrs Gillan: It could well have been sent. We are happy to look at it if we have not done so already.

The Chairperson (Mr Weir): The only amendments that we have missed out are those at 6.8 and 6.9 in the table from NICCY and the Human Rights Commission.

Mrs Gillan: The creation of a statutory duty on educational bodies to support young and student carers would be outwith the remit of the Addressing Bullying in Schools Bill. It is something that we want to look at separately.

With regard to 6.9, which suggests that other policies should be brought into line with the Bill, we are already looking at the child protection guidance, namely DENI circular 99/10. We are looking to update that, and there will be a good opportunity to do so in light of the new duties. It already touches on bullying, so it is useful that that review is going on at the same time.

The Chairperson (Mr Weir): If there are no other amendments to that bit of the Bill and members do not have amendments that they want to bring forward that have not been touched on, I thank the officials for being with us.



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Addressing Bullying in Schools Bill:
Formal Clause-by-clause Scrutiny

3 February 2016

NORTHERN IRELAND ASSEMBLY

Committee for Education

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Members present for all or part of the proceedings:

Mr Peter Weir (Chairperson)
Mrs Sandra Overend (Deputy Chairperson)
Mr Jonathan Craig
Mr Chris Hazzard
Mr Trevor Lunn
Mr Nelson McCausland
Ms Maeve McLaughlin
Mr Robin Newton
Mr Seán Rogers

Witnesses:

Mr Alan Boyd	Department of Education
Mrs Caroline Gillan	Department of Education

The Chairperson (Mr Weir): Our main item of business today is the Committee Stage of the Addressing Bullying in Schools Bill. We have to do the formal clause-by-clause scrutiny. Obviously we have done it informally, but while there have been areas where we have agreed informally not to pursue any amendment, if members want to raise anything today, they are more than welcome to do so. There is an updated clause-by-clause table, and in the tabled papers there is a copy of the amendments. Hard copies of the Bill and the explanatory memorandum are available for members. The Committee will formally determine its position on each of the proposed amendments and each clause. If there are any Divisions, the Committee will divide as necessary. All decisions from the Committee's point of view will be final. That does not bind anybody when it comes to the debate in the Chamber.

It is anticipated that the Committee will conclude all formal deliberations at today's meeting. The Committee will then have a short meeting to agree its report on 8 February. I welcome to the meeting the following departmental officials, who are here to answer any questions that members may have: Caroline Gillan, the director of access, inclusion and well-being; and Alan Boyd, who is the head of the pupil behaviour management team. I appreciate that we have gone through these issues, but are there any brief comments that you want to make on the Bill or the proposed amendments?

Mrs Caroline Gillan (Department of Education): No, I am happy to wait until we go through each amendment and just comment on them as they arise.

The Chairperson (Mr Weir): OK. That is fine.

Clause 1 (Definition of “bullying”)

The Chairperson (Mr Weir): Clause 1 prescribes an inclusive definition of bullying. Previously, the Committee agreed informally to consider an amendment to clause 1(1) that would introduce some flexibility to the definition of bullying to try to cover the issue of repeated bullying. The proposed amendment states:

"bullying' includes (but is not limited to)".

Does the Department want to make any remarks on that?

Mrs Gillan: As we mentioned previously, we feel very strongly that this is not required, because "includes", in legal interpretation, means "is not limited to". We have consulted the Office of the Legislative Counsel (OLC), which has very strongly advised us that putting that amendment in will cast doubt where "includes" is used in other legislation; it could be implied that "includes" does not mean "is not limited to". The way to deal with this, if there is any lack of clarity, is through very clear guidance. In areas like child protection or pupil behaviour management, the schools tend to have the departmental guidance on their desks as they operate the policy, as opposed to necessarily going back to primary legislation. So we have strong concerns about putting that in, in terms of the impact on other legislation in Northern Ireland. Also, it is just not required.

The Chairperson (Mr Weir): OK. We are trying to find a way through this. A concern that was raised with us fairly consistently was that of the definition. There is obviously a specific reference to "repeated use". If that is not in any way qualified in what it can also include, I am not altogether sure that it simply includes repeated use. That wording sends out a signal that there can be a single one-off incident.

Mrs Gillan: And that is what we would deal with in the guidance. As we discussed last week, there will be circumstances where, because of the circumstances of an event or indeed the history or significance of it, a single event may be bullying. We can take that back, in developing the guidance, that we specifically want to deal with that point. Indeed, from doing a bit of research, I see that it is mentioned in some guidance in England etc. Not every event will be a single event of bullying — that is dealt with under the discipline policy — but we absolutely want to acknowledge that it does not necessarily require a repeated event, and we will deal with that in guidance. We can give that undertaking and assurance.

Mr Craig: Caroline, I just want to be absolutely sure about this. The guidance will need to be very clear and specific around this. Unfortunately, I must admit that I have come across cases where a one-off incident, because of the nature of it and the force used, went right up to the very last issue that you would try to implement around disciplinary procedures with children. It can happen; that is what I am saying, Caroline. It happens out there in the real world, so we need to be clear about that. If you write legislation that excludes from governors the final sanction, you have tied our hands.

Mrs Gillan: Obviously, you still have all the sanctions under your discipline policy for dealing with significant events. Without wanting to draft the guidance in our heads now, we see there being a substantial section on "What is bullying?". Obviously, it will outline the main understanding, but it must also go on to say, "However, this is not the only situation" and elaborate further. That will be a key component of the guidance.

The Chairperson (Mr Weir): Are there any other comments in that regard? Is there any wording that could be used that talks about the repeated use of something and then maybe explicitly references the legislation to also include individual or single cases?

Mrs Gillan: From reading some of the stuff, I know that we need to be very careful how we frame it. I think that we would rather talk to schools, pupils and stakeholders to see what those examples would be. As I have said, some events will be one-offs that should just be disciplined and should not be regarded —

The Chairperson (Mr Weir): I understand that.

Mrs Gillan: I worry about trying to draft something quickly, without having the benefit of discussions with schools to see what would be the most appropriate way to describe bullying and the examples that we would want to give them.

The Chairperson (Mr Weir): I appreciate what has been said by the draftsmen or draftspeople on that, but I am still not entirely convinced that "but is not limited to" will entirely throw up doubts in terms of inclusion, to be honest. It might be seen as a degree of reinforcement or tautology in that regard, but I do not see where it particularly undermines things.

Mrs Gillan: I can only pass on what the draftspeople say. That is how we draft legislation in Northern Ireland. When you start to clarify it in one piece of legislation, it might call into question the interpretation in other legislation where they do not feel the need to clarify it.

The Chairperson (Mr Weir): OK. I am in the hands of the Committee. What does the Committee want to do on this?

Mr Craig: I do not know, Chair. I am fearful of the message that will be sent out. Unfortunately, the interpretation of it will tie the hands of governors more than the reality of it. I think we have all seen examples of how that occurs in legislation.

Mr Lunn: Do you want us to flag up whether we intend to bring something privately?

The Chairperson (Mr Weir): It is entirely up to you in that regard, Trevor.

Mr Lunn: I will keep my powder dry, then.

The Chairperson (Mr Weir): OK. Reading between the lines, it may well be that you understand that side of things.

Mrs Overend: It would be helpful to know what the schools think. I appreciate what Caroline has said on the issue and what it is bringing out. Sometimes you just cannot tell whether it is bringing further implications on the school or what their consideration is. I do not know; it is a difficult decision.

Mrs Gillan: We will want to make it clear to schools that there is a risk, as we said before, that, if we go too far to say that it can be one-off events, we almost dilute the meaning of bullying and the long-term aspect of it, other than the very significant one-offs. That is why we would like to tease out with schools and stakeholders, including the Northern Ireland Commissioner for Children and Young People (NICCY) and the Children's Law Centre (CLC), as to how exactly they want it framed and the message that we want to put to schools and parents. I hope that that is helpful.

Mr Craig: Caroline, I am just going to give you an example, which was publicised widely across the airwaves. There was a bullying incident in a school — let us face it, there was physical contact; they were basically punching each other. There was one case that says that, ultimately, one punch can kill and, unfortunately, in this incident that is exactly what occurred. That has to bypass what is a repeated offence, because even the law is not going to see it that way.

Mrs Gillan: But remember that the sanctions for discipline and bullying are essentially the same, and the school will want to decide the sanction in the context of the case. It could be detention, suspension, expulsion or, obviously, in some cases, reporting to the police, so I do not think that anybody can escape that.

Mr Craig: Yes, Caroline, but the worry is that, if you place something in legislation — I see how these things happen — all of a sudden it will be the principal who will look at the legislation and go, "It is not a repeated offence; we cannot do that". We have to get some mechanism around —

Mrs Gillan: It could be dealt with under the discipline policy.

The Chairperson (Mr Weir): Yes, but whatever is there in terms of guidance or, indeed, other policies, I have some concerns that people will simply look at this and go, "Repeated use of" — well, it is not a repeated use" irrespective of what is in the guidance. There needs to be something in there. I appreciate what you have said in relation to that. Sorry, Jonathan.

Mr Craig: No, no. The Chair has got it absolutely right here. In those circumstances, the school has only one sanction, which is expulsion. The police and the law will take care of the rest of what occurred there. I can clearly see that, if there is something in there that says that it has to be a repeated offence, the principal will look at it and go, "Well, this is the first time that this individual has ever done anything, but look at the severity of what they have actually done".

Mrs Gillan: It may not be bullying; it could be a discipline issue. If there has been no history of engagement between the two pupils, it is absolutely a bullying issue that could be acted on.

Mr Craig: I agree with you: it can be or it cannot be, but ultimately I do not want someone sitting there thinking, "I cannot do this. I cannot give that sanction".

Mrs Gillan: It is not that this duty says, "I cannot do anything with this pupil": the discipline policy, the bullying policy and the pastoral care are the whole package. This is not the end of the story; this is only for these types of bullying issues in schools. The principal will not say, "It is not bullying, therefore I cannot discipline the pupil".

Mr Craig: The difficulty is, Caroline, that I have met every armchair lawyer in the country when it comes to these things. Trust me: there are a lot of educated people out there who will use legislation like this against you. I know how school governors think. In those circumstances, they will want to give the ultimate sanction, which is expulsion, but you do not want some armchair lawyer coming to you and saying, "Well, actually this legislation prohibits you from doing that".

Mr Newton: I just want to make a comment. The Committee, the Department and the Minister all know the position that we want to get to; it is just about the route that we travel to get to that position. Am I right, Chair, that we have to take our position today?

The Chairperson (Mr Weir): Yes, possibly. I will wait until other members have had their say. I have a wee bit of thought that something might be able to be done, but it will not be very specific.

Mr Rogers: You are very welcome. It is just what members have said earlier. Caroline, I remember that you mentioned the word "appropriate" in relation to this. Whether it is a discipline issue, bullying or maybe a case in a special school where the child has particular special educational needs, once an incident happens, people will go to the bullying legislation and see use of the word "repeated", but it might be the first time that this has happened in this special school. You talked about "appropriate": can you tease that out?

Mrs Gillan: The definition we are using here is not inclusive. The duty is on the board of governors to ensure that policies at the school are pursued and to determine measures. Once this is enacted, boards of governors will have to develop their bullying policies and the more detailed measures underneath them, so they will have thought of all these issues. They may say, "Right, in our school, we're aware of situations in the past that have caused problems", so they will be able to shape the policies and the appropriate preventative measures and sanctions that can be taken. Those will be consulted on with the pupils, teachers and parents. This legislation will not be in isolation, never mind our guidance.

I was flicking through a few anti-bullying policies last night. Some schools' policies are actually already very detailed about what they will do and how they will sanction bullying events in the school and who should be informed. It will be for the board of governors, taking into account the context of their school and pupils, to decide how they approach preventing and addressing bullying. They will have that flexibility.

Mr Rogers: I know it is the responsibility of the board of governors, but it is putting an awful onus on the board of governors to develop that. What guidance and support are they going to get from the Department or through in-service training? I do not think that this can be covered by one two-hour session by the Education Authority.

Mrs Gillan: Alan will be able to elaborate. When we say "guidance", we mean good, full guidance that is properly developed in conjunction with schools and stakeholders. We envisage using some sample anti-bullying policies and measures within those to give schools an idea. All schools already have an anti-bullying policy, and some are fulsome.

Alan, maybe you can give an idea of how we are thinking of approaching the guidance and training.

Mr Alan Boyd (Department of Education): In terms of guidance, as Caroline said, we recognise completely that we need to take in the views of governors, principals, staff and other stakeholders. In proceeding with the Bill, we have not had time to undertake that exercise, so we are aware that that is lacking. Until we get that information, we do not accurately understand what concerns governors will have and what training they believe will be appropriate. We are happy to undertake and have undertaken that we will ensure that the guidance addresses all the concerns that they have, even if that takes longer to develop. As far as we are concerned, that is an essential element of the process before we can bring the Bill into effect. What form that training might be will become apparent once we start to understand what those concerns are and not before, unfortunately. As policy officials, we cannot have a detailed understanding of what those practical, on-the-ground situations are like and what concerns they may give rise to. So we have not thought it through. We are acutely aware that that is a hole that needs to be filled as we work forward from the Bill.

Mr Rogers: Could we get into a situation where a school develops its own anti-bullying policy out of this, and, once an incident happens — it does not need to be a repeated incident — they see it as a bullying incident? Could we get into a situation where the legislation says "repeated bullying" and a school is saying the first hit, for want of a better word, is bullying?

Mrs Gillan: As we said, the legislation is uses "'bullying' includes"; the legislation does not prevent one-off incidents. You would never get a situation, even in the legislation as it stands, in which schools would be precluded from developing policies that recognised that there can be other scenarios that they view as bullying. Schools are absolutely entitled to do that. What I am saying is that the guidance will assist schools in developing what those other events or situations might be or what they might want to take into account.

To assure you, the elements here are the key usual elements of bullying, but that is not to say that bullying cannot take place that does not exactly fit in with what we have put on the page. That is fine; the legislation gives the flexibility to schools to recognise other instances as they may wish to develop in their policy and measures. As Alan said, the guidance will assist them in that.

As you said before, we all want the same thing: we want to ensure that schools are able to tackle bullying and that pupils are protected from bullying, regardless of how it emanates. We are all on the same page. We just feel that we are not restricting ourselves to the definition on the page, but I appreciate that there are concerns.

Mr Hazzard: My point is about the repetition thing. Are we conflating two issues? I am not, of course, taking away from the fact that a one-off incident can be very severe, but I caution that there may be certain unintended consequences from classing one-off incidents as bullying.

The Chairperson (Mr Weir): The issue is that we want to make it fairly clear that it can be a one-off. My concern is that simply saying "includes ... repeated" does not make it clear enough that it can be bullying. That is the concern. I will take that as a comment.

Mr Lunn: We are in danger of taking an extreme example of a one-off incident, which could be bullying or, frankly, attempted murder, and using that as our benchmark, when most one-off incidents will be relatively minor. If they were repeated over a period, they would constitute bullying, but, in themselves, they are just one-offs. Did I hear you right, Caroline? Did you say that the legislation as it is proposed does not preclude one-off incidents from being treated as bullying incidents?

Mrs Gillan: No.

Mr Lunn: I do not know how many times I have read it, but I have not come to that conclusion.

Mrs Gillan: It is around that definition — "'bullying' includes" — but that is not the end of the story. It includes those elements, but, by implication, it can include other elements. That is maybe where the nub of the issue is.

Mr Lunn: I was as concerned about the use of the word "repeated" as anybody else right from the start. Frankly, the more I think about it, the more I do not know what amendment the Committee could come up with.

The Chairperson (Mr Weir): I am going to make a suggestion that might not entirely find favour with the Department but may, at least, try to find some way through. We have an amendment here that says "not limited to", which I appreciate is not ideal. I suggest to the Committee that we agree that amendment, but suggest that the Department finds its own amendment. I would like to see something in the legislation. If the Department was to come up with a better formula, I would be happy, on behalf of the Committee, not to move our amendment and to accept the departmental amendment. That may be the way to do it. To entirely leave it with what is there in terms of the advice is a little weak: I want to see something in the legislation that governs the situation.

Mrs Overend: I appreciate what you are saying, Chair. Something just came to me, because there has been debate about the words:

"For the purposes of subsection (2)(a), motivation may include".

We know already, from the explanation that has been there, that that could include others and is not an exhaustive list. If you changed it to "may include", would that be something similar?

The Chairperson (Mr Weir): The only slight complication is that I am not sure that it clarifies the issue greatly, and I have problems with what is in the later bit. I think that there is a better way of dealing with it.

Mrs Overend: That is fair enough. It was just about a uniformity of language.

The Chairperson (Mr Weir): I suggest that, without prejudice, we put that forward very much with a plea to the Department. We need something in the Bill: if you can find a more appropriate amendment, I would be happy not to move that.

Mrs Gillan: Do you want the amendment to deal with the fact that you want to emphasise that there are situations other than this, or is it that you are purely concerned about repetition versus single act?

The Chairperson (Mr Weir): It is principally about repetition as opposed to a single act. There should be something around that. As you say, this is probably a situation in which we are all trying to arrive at the same destination. I am just not sure that it is satisfactory to not have anything in the legislation, but we are not doctrinaire on the wording.

Ms Maeve McLaughlin: I am mindful of the research that the Committee has received. The academic practice is to recognise repetition, but, increasingly, the practice or the trend is a single act. The approach that the Twenty-six Counties is taking to this is interesting: repetition is a criterion, but there is a single offence in relation to some acts, in particular cyberbullying. I am with the Chair on this: the Department should explore something that deals with it. The obvious concern is that repetition may be an obstacle in deciding where these acts start and how we tease that out. However, it is also worth reflecting on the academic trend to view bullying as repetition but the practice is increasingly a single act.

Mrs Gillan: We will definitely do that. My concern is whether we can capture adequately in legislation a single act of that nature while not wanting to capture every event in the school. Guidance allows you to develop that in more detail and have examples, whereas legislation requires you to try to capture it in a single sentence. However, we will certainly explore that. We will bring it back to the Minister.

Mr Rogers: Caroline, I have a very small point that you may be able to clarify for me. The first single act should really be caught by the discipline policy; is that right?

Mrs Gillan: Yes.

The Chairperson (Mr Weir): Trevor, did you want to add to that?

Mr Lunn: I wanted to talk about a different aspect of clause 1.

The Chairperson (Mr Weir): OK. We will come back to that. Are members agreed with that as a potential way forward? Are members content with the amendments on the understanding of what we have said?

Members indicated assent.

The Chairperson (Mr Weir): We then move to point 1.5. Obviously, the Committee had —

Mr Lunn: We kind of skated past point 1.1, which is on the rights or wrongs of including special schools in the legislation. It is yes or no really. The departmental response appears to just say that it would be wrong to exclude them. That is the argument really, isn't it? Some of us think that they should be excluded, and the Department thinks that they should not be. The rationale for excluding them is that teachers may be able to have a much closer relationship with pupils who have behavioural problems and deal with those. What might be perceived as bullying in a normal situation is completely different in a special school or a special unit. I am not speaking for anybody else here, but there is a case for special schools not being included in this legislation at all. What is the Department's view on that? It is not good enough just to say, "We disagree".

Mrs Gillan: I think that, the last time that I was here, I elaborated a bit more to capture the key points. Perhaps Alan wants to reiterate that.

Mr Boyd: In essence, the argument is that there are more scenarios in which special schools — it is not limited to special schools — can ensure, by virtue of the board of governors still having flexibility over the policies and the detailed measures that they put in place, that those give additional flexibility where they believe it is required, whether that is based on the specific needs of the child, where they are in the special needs code or other wider circumstances that the school feels are pertinent. They can then choose to graduate the severity of any sanction that they apply. It was touched on the last day that, in special schools, the ability to determine intent is very often lacking. That will automatically remove the incident from being classed as bullying under the current definition. For those incidences where the definition still fits, it is appropriate that schools record them so that they can monitor their own performance and see if there are any underlying issues in the school. However, they have flexibility in how they respond to that.

Mr Lunn: You are saying that you would like the legislation to apply to all schools but the board of governors of a special school will have some flexibility in how they draw up their anti-bullying policy and in how they apply the rules. Does the Department intend to offer any guidance to special schools in that regard?

Mrs Gillan: When engaging with stakeholders, it is important that we speak to all the sectors. We will undertake to speak to special schools and mainstream schools with learning support centres to see what particular aspects they want to see addressed in the guidance —

The Chairperson (Mr Weir): Sorry, Caroline, I appreciate the strength of the argument that you do not want complete exclusion of schools but want to retain a reasonable level of flexibility, particularly in certain circumstances and as regards intent. If there was a debate, could Mr Lunn or any other Committee member make an intervention on the Minister so that he could give that assurance on the Floor?

Mrs Gillan: Absolutely. I am sure he would be content to do that.

Mr Lunn: I just wonder what assurance he would give and whether this means the Department will draw up guidelines specifically applicable to special schools to advise them how to interpret the law. To start with, the same law will apply to them.

Mrs Gillan: I think there will be advice on the issues they want to take into account when developing their policies and their measures. We have to acknowledge, in all of this, that it is about protecting pupils. We want to give pupils in special schools and learning support centres the same protection as pupils in other schools. That said, we understand that it needs to be done in a way that is workable. We will ensure that the Minister touches on that aspect in the debate.

Mr Lunn: So will we. *[Laughter.]*

The Chairperson (Mr Weir): OK. I just want to touch on one other aspect of clause 1, and then I will open it up for members as regards any other issues with clause 1.

At 1.5 in the table, there is an amendment from the Department that was largely technical in its nature: informally, the Committee had agreed to support this. I wonder if the Department has any final comments on that.

Mr Boyd: Our position is still that this is a technical amendment with no material policy impact.

The Chairperson (Mr Weir): Are members content with the proposed amendment?

Members indicated assent.

The Committee Clerk: By way of tactics for the Committee on the earlier amendment about "but is not limited to", would the Committee be content to support the Department's amendment, as members have just indicated, but then table an amendment to the amendment? I have taken advice from the Bill Office, and that is probably the best way.

The Chairperson (Mr Weir): OK. We will do that. On that basis, if there is an amendment from the Department, I think we would be content to do that. OK.

Does anybody have any other issues they want to raise on clause 1?

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 2 (Duty of Board of Governors to secure measures to prevent bullying)

The Chairperson (Mr Weir): Point 2.8 in your tabled papers relates to clause 2 and requires that the board of governors review anti-bullying measures at least once every 5 years. Has the Department any comments on that?

Mrs Gillan: The Minister is content to support an amendment of that nature. I just wonder if the actual wording of "no more than" could be formalised in legalese — for example, "at intervals not exceeding". I do not know what the appropriate drafting would be.

The Chairperson (Mr Weir): That came from the Bill Office, so I assume that is the wording. We can go back —

Mrs Gillan: Yes, but the Minister is supportive of that requirement.

The Committee Clerk: Can the Clerk take it that the Committee supports the amendment if the wording is slightly different but with the same effect as previously?

Mr Lunn: I am a bit behind the curve here. Which amendment are we talking about?

The Chairperson (Mr Weir): It is in the tabled papers. The amendment is:

"Clause 2, page 2

Leave out line 22 and insert —

'(i) at intervals of no more than 5 years; and'.

Mr Craig: The only query that I have — I have wondered about this — is why the period of five years was chosen. The life of a board of governors is actually four years because they are tied in with local government, which has a four-year period.

Mrs Gillan: Yesterday, we discussed four or five years. We highlighted the four-year lifespan. Very often, boards of governors review it every two years, but we felt that, absolutely, for those who are not being proactive, we would not want it to drift on. I have a feeling that we talked about four or five years.

Mr Craig: Given the lifespan of a board of governors, it should be four.

The Chairperson (Mr Weir): Would the Committee be happy if the lifespan were four years?

Mr Newton: The discussion that Sandra and I had across the table yesterday was that it should be "not more than".

The Chairperson (Mr Weir): Yes. It is "not exceed" or "not more than". We can get the exact wording. I am asking whether the timescale should be four years.

Mr Newton: Yes. Four years is sensible.

The Chairperson (Mr Weir): OK. With that slight change, are members content with that amendment?

Members indicated assent.

The Chairperson (Mr Weir): The next area that we have flagged up is at 2.11. We had informally agreed to consider an amendment in respect of cyberbullying. Here, in the tabled papers, you have two versions: one that would extend the school's responsibilities generally and the other refers only to electronic communications. You could go for only one amendment at most. You may not actually want either of them. Maybe we could tweak what is there slightly. First of all, I invite the Department to comment on both of them.

Mrs Gillan: The Minister has indicated that he would be extremely concerned about imposing an additional duty on boards of governors in that way. From our perspective and having done some brief research last night on the duties imposed on schools on cyberbullying, we feel that there is a range of varieties and indeed a lot of research papers that debate the effectiveness or otherwise of the legal liabilities of boards of governors. If the Committee were to put forward an additional duty which, let us face it, is on a group of people, not necessarily institutions, without being absolutely clear what the legal implications are, the Minister would have great concerns.

We are aware that schools are looking for clarity and guidance on cyberbullying. As we have said in previous evidence, we have commissioned the Anti-Bullying Forum to bring forward guidance in the immediate term. We are also working with the Safeguarding Board for Northern Ireland (SBNI) to look at the e-safety strategy. We feel that the appropriate thing to do would be to see how that additional guidance is working and whether that assists schools before we move to looking at legislation.

Even in looking at legislation, we would want to research what happens elsewhere, the implications for schools and how it is working, before drafting up and saying, "Here is the policy and the additional duties that we want to put on schools", and saying to drafters, "Here is what we have decided we want in consultation with various stakeholders", and then draft legal duties to respond to that, as opposed to, in this circumstance, putting legal duties down and be faced with having to do, if you like, a post hoc rationalisation of what the implications will actually be. I know that the Minister is extremely concerned that we do not legislate for duties of that nature on boards of governors in that way.

The Chairperson (Mr Weir): Are there any comments? Do not all shout at once.

Mr Lunn: I hear what Caroline says. I think that the first amendment that is suggested with the wording:

"is likely to have a detrimental effect"

should keep it fairly simple. It is pretty much down the road of what we wanted to see.

The Chairperson (Mr Weir): It continues: "on a pupil's education". The only thing about the reference to a pupil's education is how widely drawn that is.

Mr Lunn: That is what schools do. I do not mean to be facetious.

The Chairperson (Mr Weir): I know. At least, that is what the intention of the school is.

Mr Lunn: We are not trying to be psychologists here, but we are trying to ensure that pupils can enjoy their education unhindered. That indicates something that has a detrimental effect on a child's education, which is what the rest of the Bill does too.

The Chairperson (Mr Weir): I wonder whether "a detrimental effect on a pupil's education" is a bit widely drawn. I am thinking off the top of my head. There is a reference in clause 2(1)(b)(i) to:

"on the premises of the school during the school day".

I throw this out as a suggestion: what about "or having a detrimental impact on the school day"?

Mrs Gillan: Again, how far does the Committee want schools to get into situations and events that arise entirely outside the school's control?

The Chairperson (Mr Weir): As I said, Caroline, I was speaking off the top of my head, but we appreciate that there can be a general impact from cyberbullying that occurs somewhere else. I appreciate that it is difficult for the school to deal with that. However, you will have a situation in which something will have happened overnight and it is having an impact. It may not have occurred within the school, but it is having an impact in the school during the school day. It is about getting some level of that captured.

Mrs Gillan: Yes, but I believe that the Committee is introducing a duty on boards of governors without having a clear idea of what it reasonably expects boards of governors to do in those situations. It is wide open. What would you expect a school to do? You are clarifying there that the school and board of governors have a duty to put in place measures to address bullying in any scenario where it has an impact on the school day. You will have a situation that happens in the holidays, for instance. Do you want the policy and measures to, somehow, reach into monitoring Facebook accounts?

The Chairperson (Mr Weir): Presumably, if that is having an impact on what is happening from 9.00 am to 3.30 pm or whatever it is, it is relevant.

Mrs Gillan: Are we saying that we will ask the schools to say, "During holiday times or during weekends"? I do not believe that we can draft off the top of our head or, indeed, say, "Surely, this might mean that". I do not think that in this situation, where you have legal liabilities on a group of governors, we can impose additional duties in this way. I would much rather have a more considered process and legal advice.

The Chairperson (Mr Weir): I understand that. There is also the argument on balance, which I appreciate is the two sides of the one coin. The child has to get to and from school. Obviously, you want to prevent a situation in which the bully is waiting outside the school gates. On the other hand, that could be fairly loosely defined as well.

Mrs Gillan: The pupil has to go to and from school. There is a finite element to that journey. Translink is involved; there is guidance in place around bullying on buses. It is a much more definable situation and the pupil has no choice with regard to travelling to and from the school. If you were getting into a situation involving any other bullying event or one-off event that has a detrimental effect — I think of our previous conversation — I would not know off the top of my head what that might mean, nor would I want to guess what it might mean. Obviously, it would be for a court to decide. We would have the Committee imposing an additional duty on boards of governors and, then, obviously, the Department having to take legal advice to see what that means and then, as I said, post hoc, trying to give some advice. Certainly, in this situation, I would much rather that we had a considered view and proper research and consideration.

The Chairperson (Mr Weir): A number of members want to speak. I am not sure whether they are comments are questions.

Mr Hazzard: The warning from the Department is quite stark. I know that we want to get something in around cyberbullying or something like that, but I fear what the implications will be for boards of governors. At times, we have raised issues on the capacity and ability of boards of governors to tackle issues. We may be overstepping the mark here and setting down a duty that they will not be able to meet.

The Chairperson (Mr Weir): There is something that I want to pick up. Two alternative versions were drafted. I appreciate what the Department has said about a duty. It is clear that the amendment at 2(1)(b)(iv), which simply talks about where they must do things, is imposing a duty. The second draft amendment, which is the addition of subsection (1A), simply says:

"may consider measures to be taken."

That would give them a power to do things but not necessarily impose a duty. Would that alternative wording be an option?

Mrs Gillan: Again, I feel, as with everything in this arena, we should look at developing the guidance, seeing how that goes and engaging on it before we move to deciding whether we need to legislate. Even in that, "measures to be taken" can be preventative, but it is also about addressing it. Preventing bullying, in one situation, also means intervening in those situations. What is:

"reasonably likely to have a detrimental effect"?

What is "a detrimental effect"? The Department honestly feels that drafting in this way, to impose additional duties, is not the right way to do it. I know that I have harped on about it.

The Chairperson (Mr Weir): Sorry, with respect, "may consider measures" is not actually imposing an additional duty; it is a permission, which is a different thing. It would be a stronger argument if it said, "must consider measures".

Mrs Gillan: In a situation where you have a board of governors that decides not to consider the measures, is there an issue there?

The Chairperson (Mr Weir): Surely, if you have given somebody a power and they do not exercise it, it is within their power not to actually do something. That is the nature of it.

Mrs Overend: We have talked about this over and over, have we not? I know that schools are calling out for guidance on cyberbullying, and they are looking to the Bill to see where the responsibilities start and finish. The Bill has to be clear. We have talked about how the impact of bullying that might start at night-time or the weekend affects the child in school. I also relate that thought back to anything else that might happen a child at night or at the weekend. For instance, if the parents split up and there is a family drama, it will impact on a child's ability to participate in school work. Surely, a school deals with that.

Mrs Gillan: Absolutely, through pastoral care. What we have said in previous evidence is that, if the school is aware of incidents that take place through whatever means, if the parents inform the school, the school will, from its pastoral care perspective, take that into account. Also, from the discipline perspective, it will take that into account in practice in monitoring situations or relationships between pupils. That already happens, and it can be clarified further.

Mrs Overend: That is what I am trying to get at. The school does not need to fix what is happening outside school, but it needs to help the children. If one or two children are involved in that bullying incident, the school must deal with the children in school to fix the environment in the school. Maybe it would help if we had sight of the legislation or guidelines with regard to pastoral care, so that we can see how it impacts on cyberbullying incidents and whether it includes that, so that we do not need to amend this because we know it includes cyberbullying and the child can contribute properly at school. Can we have that?

Mrs Gillan: That is the reality of the pastoral care scenario, and schools, in operating discipline and general school life, take into account information that is brought to them about other factors. We are reviewing the pastoral care guidance, which is much more about child protection, at the moment. There is promoting positive behaviour guidance, dating from 2003, that probably needs to be updated. As it was written in 2003, it probably does not explicitly refer to cyberbullying as such. We can certainly provide copies of that and references to the current duties in relation to the wider welfare of pupils.

Mrs Overend: If we had an oral commitment from the Minister that that guidance would be updated, that would suffice.

Mrs Gillan: I think that we can deal with it. We can deal with precisely those issues in this bullying guidance. We can make sure that we cross-reference all the duties that schools have on the welfare and safeguarding of pupils. We can elaborate that clearly around the information that may come to them about things that are not necessarily happening in school but which, as you say, affect the operation of the school and the school day.

Mr Lunn: The Bill, as it stands, subject to bits and pieces of amendment, deals adequately with what we are trying to do, except it ignores possibly the biggest and most harmful form of bullying, outside of physical violence, that there is. I would like something in place that allows principals, in particular, but also boards of governors to set standards and do what they already do anyway. I will not go on about drawers full of phones again, but that is the kind of thing that I mean. It is just as likely — in fact, far more likely — to have a detrimental effect. I know that you say that you are uncomfortable with this. It is the usual argument — you could introduce guidance and so on — but I really would like this to be in the Bill.

The second amendment is so woolly, frankly, that a board of governors could probably do that anyway, even without an anti-bullying Bill. It is framed in such a way as to be completely ineffective and harmless. The first one is far more meaningful. It may not be perfect and maybe we need to tweak it a bit more, but something like, "likely to have a detrimental effect on a child's education due to circumstances linked with the school but outside school hours or lawful control" seems perfectly valid to me. Somebody quoted a figure of 16% for such bullying incidents, but that is widely ridiculed. It is far more serious than that, and I do not see how we can ignore it.

Mrs Gillan: You are saying that you want the first amendment to say that boards of governors "must" determine measures to be taken at the school with a view to preventing bullying involving their pupils:

"in circumstances other than those listed".

That would mean that a board of governors "must" have measures in place in circumstances including those when children are not at school. Without elaborating on what the measures might be, that is extremely wide, and it is not even caveated by "reasonable". Any court or board of governors would blanch at that very wide duty.

Mr Lunn: I did not say that it was perfect. I love the word, "reasonable" in a lot of circumstances. You could just say, "in reasonable circumstances". The more you water it down —

Mrs Gillan: As part of the preventative education element of the curriculum, schools already do a lot to educate pupils about staying safe online, protecting themselves and respecting healthy relationships. There is a lot that schools are good at doing that impacts not only on how pupils behave at school but on how they behave in their daily life. The Minister is concerned that we are expecting boards of governors to police and ensure the safety of pupils even in situations that are outside their reach. Schools do a great job and already, in circumstances in which it is practical to do so, intervene when they are aware of issues affecting the welfare of a pupil, but inserting a duty of that nature increases their responsibilities to such an extent that the Committee cannot today be sure where they end. We will find out only when the first case reaches court: for example, when wee Jimmy has been bullied at a youth club on Saturday night, both pupils go to the same school and the school is asked what it has done about that. That seems frivolous, I know, but we have strong concerns about inserting a duty of that nature without really knowing the beginning and end of it.

Mr Lunn: Is the Department comfortable with principals already, in effect, exceeding their authority by intervening in that sort of situation? Say, for example, that a child sitting in class bursts into tears, the teacher asks what is wrong, and the child replies, "Look at my phone". The teacher sees that half a dozen messages of a disgraceful nature were sent the night before by another pupil who happens to be sitting in the same class. We all know how a principal would deal with that, but, at the moment, they act informally — off their own bat. That is why some of us would like something in the Bill to at least strengthen their hand.

The Chairperson (Mr Weir): Without arguing for or against it, would the second amendment not provide a degree of cover for that situation? I appreciate what you said about it being the woollier of the two.

Mr Lunn: It is woolly. You can either strengthen the second one or tone down the first. The proper wording is in there somewhere.

Mr Craig: Not for the first time, I find myself in agreement with Trevor on this. It is probably the biggest bugbear that principals and boards of governors deal with today. I will not mention any names, but — trust me — my daughter could give you 20 names, half of which I have never heard tell of. It is a major issue for schools. If we miss addressing in some way, shape or form what is now the biggest problem for schools, we will have failed. We cannot ignore it. I am inclined to go with the second amendment. The other difficulty — I know that the police struggle with this — is how to get the definitive evidence to prosecute. Schools are no different. How do they get the information that allows them to go through the sanction process? It is a lot more difficult than you think. You can even get printouts, but the trouble is that, if something is deleted, it is gone from the system, and then you struggle.

Mrs Gillan: Therein lies the problem. You have talked about the problems that the police have, but they have much wider powers to confiscate property etc. How do you expect a school to deal with the issue when, as you said, it is very difficult to get the information?

Mr Craig: It is, but — I have to be honest — schools do not ignore the situation at present. Trevor is 100% right: we are flying by the seat of our pants, if the truth be told. There is nothing in the Bill to cover what school principals and governors are doing. That is why the second amendment is probably the one to go with. I could not care less about whether it needs to be beefed up — maybe it should be beefed up slightly — but we need to put something in the Bill to cover what schools are doing.

The Chairperson (Mr Weir): Irrespective of whether the wording of an amendment was not perfect, if it was agreed by the Committee and the House, there would be an opportunity, albeit not for the Committee, to tweak it at Consideration Stage.

Mr Lunn: I do not want to disturb the camaraderie — it is nice that Jonathan agrees with me — but the question is about evidence. Cyberbullying is where you are most likely to have firm evidence. When it is stored in a cloud, it is there for all time. Perhaps that has made it easier to prove cyberbullying than some other forms of bullying.

Mr Newton: I very much understand where Caroline and Alan are coming from. Caroline talked about taking a considered view and doing a lot more research. There is a coming together. There is recognition that it is a major problem. At the moment, as Trevor said, principals are taking action, but they do so in a vacuum, and we have to take decisions to address the issue in a bit of a vacuum as well. We do not know what support you will finally offer principals and boards of governors and what training and information you will support them with. The Committee's desire is to see something in the Bill, and we can work together to ensure that that is the case.

Mr Hazzard: I wonder what protection the second amendment adds to what is already there. It says that a board of governors "may consider measures", but I am sure that they have that power already. For me, the first amendment is definitely out. It would mean that, if someone was bullied on holiday and was still affected by it after going back to school, the board of governors would be liable.

The Chairperson (Mr Weir): Possibly. That would be more accurate for the first amendment than the second because there is a duty —

Mr Hazzard: Yes, that is what I am saying. The first one, for me, is definitely out, on the grounds that it leaves the board of governors liable for absolutely everything. It would place a duty on the board of governors that does not apply to parents or anybody else. To me, that is a crazy situation. I do not know what the second amendment would actually do. This is legislation: what is the point in putting something in if it is not going to —

Mr Lunn: It is somewhere between the two.

Mrs Gillan: The second one asks a board of governors to take measures against bullying

"where that bullying is reasonably likely to have a detrimental impact".

It does not have to have a detrimental impact. Is it only if it is "reasonably likely" to?

Mr Hazzard: As things stand, can a board of governors "consider measures" anyway?

Mrs Gillan: At the moment, it is the duty of the board of governors to safeguard and promote the welfare of pupils attending the school at all times. Clause 2 refers to "on the premises" and "in the lawful control of". However, under wider safeguarding and the general duty of care, boards of governors take into account situations where, if they have concerns about the safety or welfare of a child, they must act under child protection. Some bullying incidents that take place outside are so severe that they merit child protection arrangements, and the police have to be involved in some circumstances. My understanding is that, at the moment, schools take into account the less severe incidents when providing support to the pupil who is the victim, but they are also aware of the wider discipline situation and the general operation of the school.

As I said before, we have commissioned the Anti-Bullying Forum to produce specific guidance on cyberbullying, and that is being drafted. The forum is made up of a wide range of stakeholders. I would like to see that.

The Chairperson (Mr Weir): You mentioned "reasonably likely". The Department will be wary of any amendment in this area, but, if it was akin to the second amendment and included "reasonably likely", would that be a better form of words?

Mrs Gillan: My reading — I saw the amendments only on walking in here today — is that the second amendment is about measures that may help to reduce bullying by means of electronic communication:

"where that bullying is reasonably likely to have a detrimental effect".

I ask why "reasonably likely" is there.

The Committee Clerk: The Committee's thinking on this was that, when it comes to cyber communication, the board of governors has the power reasonably to protect pupils from actions that might have a detrimental impact. The idea is that a board of governors does not have to wait until there is a detrimental impact but should "consider measures". Members introduced some anecdotal evidence about what schools do currently, and the feeling was that this would give them some comfort and record the Committee's expectation.

The Chairperson (Mr Weir): Also, prevention is better than cure.

Mrs Gillan: If you want to introduce some sort of reasonableness —

The Chairperson (Mr Weir): This is without prejudice to your undying opposition to any amendment.

Mrs Gillan: This is without prejudice to our position. Perhaps this would be better: "The board of governors of a grant-aided school may, to such extent as is reasonable, consider measures".

Mr Lunn: That would be an improvement.

Mrs Gillan: What you are trying to capture there is that you want boards of governors only to do something that is reasonable.

Mr Lunn: Would we leave out the other "reasonably"?

Mrs Gillan: Yes, I think so.

The Chairperson (Mr Weir): So we now have, "may, to such extent as is reasonable, consider measures".

Mr Lunn: Chair, I think that Caroline means to leave out the other "reasonably".

Mrs Gillan: Yes, the one after "that bullying", but you can take advice from your drafters.

Mr Lunn: Putting "reasonably" there has no effect at all.

Mrs Gillan: You could leave it in. You want to capture the reasonableness, but I do not know that putting it there does that.

The Chairperson (Mr Weir): I understand, and I can see both points of view. Adding "reasonably likely" might confuse things. The flip side of the coin is that it might be slightly preventative, and I can see the merit in that. OK, members, we will call it the Gillan amendment. *[Laughter.]*

Mrs Gillan: The Minister will not be happy. *[Laughter.]*

The Chairperson (Mr Weir): I was going to tell you not to worry, Caroline, because there will be nine new Departments, and you will have plenty of opportunities in future. *[Laughter.]* The wording that you suggest is sensible, and everyone accepts it. Are members content to drop the second "reasonably"?

Members indicated assent.

Mrs Gillan: The Department does not agree with these amendments —

Mr Newton: You want that on the record.

Mrs Gillan: The second amendment states:

"consider measures to be taken by the school ... or other persons"

Boards of governors only have control over measures to be taken by the school and the staff; I do not know who those "other persons" would be. When we come to interpret all this, people will ask the same question.

Mr Rogers: That comes from clause 2(1)(b):

"whether by the Board of Governors, the staff of the school or other persons".

Mrs Gillan: So it does — my mistake. I wonder what that means. *[Laughter.]*

The Chairperson (Mr Weir): We may be confusing, but at least we are consistently confusing.

Mrs Gillan: We will work that out.

The Chairperson (Mr Weir): Maybe, as a parting gift, Seán will get the award for being eagle-eyed.

There are two questions: whether we agree to table an amendment and, if we do, which of the two versions we choose.

Are members agreed that we table an amendment?

Members indicated assent.

The Chairperson (Mr Weir): Chris, do you want to be recorded as dissenting?

Mr Hazzard: Yes.

The Chairperson (Mr Weir): We have the slightly reworded second amendment or the first amendment, which begins, "in circumstances other". We have agreed to table one of the two at Consideration Stage, and it may have to be tweaked. Although we have agreed, I have to put the Question on the amendment formally. May I have a show of hands so that it can be recorded? Sorry —

The Committee Clerk: If I understand it correctly, Chair, the Committee is considering the first amendment on the list, as that is the one that cuts first on the clause. The Committee is then being asked to indicate whether Aye, it wants to adopt that amendment; No, it does not; or to abstain.

The Chairperson (Mr Weir): The two amendments are exclusive of each another, so I will ask, first, whether members are in favour of the first amendment, which would insert sub-paragraph (iv).

Members indicated dissent.

The Chairperson (Mr Weir): Nobody is in favour of that. Next is the second potential amendment to clause 2.

Mr Lunn: Is that amended as suggested?

The Chairperson (Mr Weir): It has been amended by adding "to such extent as is reasonable" and leaving out the second "reasonably". Any further changes will probably have to be made at Further Consideration Stage, unless there is a specific amendment that you want to make now.

Mr Lunn: No, not on the hoof like this.

The Chairperson (Mr Weir): I understand that.

The Committee Clerk: If members agree the amendment on a without prejudice basis now, I will have the revised wording by the time we come to agree the report on Monday.

The Chairperson (Mr Weir): In principle and without prejudice, are members in favour of the second amendment?

Mr Newton: In principle and without prejudice.

The Chairperson (Mr Weir): I need a show of hands.

Mrs Overend: I will abstain because I would like to see the information that I referred to earlier.

Mr Rogers: Is this based on what we will see on Monday?

The Committee Clerk: It is on a without prejudice basis.

The Chairperson (Mr Weir): Are members in favour of the second amendment?

Question put.

The Committee divided: Ayes 6; Noes 2; Abstentions 1.

AYES

Mr Craig, Mr Lunn, Mr McCausland, Mr Newton, Mr Rogers, Mr Weir.

NOES

Mr Hazzard, Ms Maeve McLaughlin.

ABSTENTIONS

Mrs Overend.

Question accordingly agreed to.

The Chairperson (Mr Weir): It is probably just as well that we do not have more amendments. Does anybody have any final remarks on clause 2?

Mr Rogers: It is a very small point, Caroline. The clause refers to reviewing policies within five years: why do we not have something there to ensure that it is part of the school self-evaluation process?

Mrs Gillan: The ETI would expect to see evaluation and for it to be tested.

Mr Rogers: In the school policy.

Mrs Gillan: In everything that schools should be doing for self-evaluation. It covers everything that they do and all their policies. John Anderson said that, when the ETI inspects schools, it asks them to fill in a questionnaire about all aspects of the school. Very often, those schools use the questionnaire even when they are not being inspected as a mechanism or tool for self-evaluation. That is good practice generally.

Mr Rogers: Will that be addressed in the guidance in some way or other?

Mrs Gillan: Yes.

Mr Rogers: That is fine.

The Chairperson (Mr Weir): We have dealt with clause 2.

Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 3 (Duty to keep a record of incidents of bullying)

The Chairperson (Mr Weir): Clause 3 has a table of motivations. Concerns were raised about the list of 10 motivations, such as what should be added and whether it is the right list. Caroline, you specifically referred to one motivation that had been omitted. There are a couple of possible amendments, but they are mutually exclusive. The first amendment would allow the Department to add to those 10 motivations by way of an order. The second amendment would put a requirement on the Department to bring forward regulations listing the motivations. Do you want to respond?

Mrs Gillan: The Minister's position is that we would not support any amendments to clause 3. The reason for the list, non-exhaustive as it is, being there is that the clause is about ensuring that schools keep a proper record, including the circumstances of the bullying and the motivation. The reason for the motivations being there is that it gives schools a flavour of whether there are any issues in the school that need to be addressed. We did not have to include a list, but we thought that it would be helpful to give schools an idea of what we mean when we talk about motivations. We have been criticised elsewhere for not putting stuff in the Bill, so we thought that we would try to be helpful about the type of issues, but, in doing so, we are conscious that a lot of stakeholders want their identity or motivation to appear. We felt that the clearest and fairest way to deal with that was to look to the section 75 groups and any other legislation that specifically has protected elements. That is why it is there.

Our fear about putting too much emphasis on the list and getting too hung up about it is that, if you want us to do particular regulations or expect the list to be updated, that could send a message out to schools that that is the list, that only motivations on the list are important and that, if you are not on the list, you are somehow of less importance or, indeed, cannot be counted. I come back yet again to the guidance. It will emphasise that those are some motivations but that there may be others to do with identity and other aspects. Our fear is that the Committee, by proposing these amendments, almost elevates the list to something that it is not designed to be.

The Chairperson (Mr Weir): Caroline, to play devil's advocate, the counterargument is twofold. First, I find it difficult to accept that we are elevating it. If you are saying that, although the list of 10 is boldly in the legislation but that, by making it by way of regulations, we are somehow raising it to something of greater significance, that is a little counter-intuitive, to put it mildly. Secondly, we had quite a few — I would not say controversy — submissions in which people said things like, "This is worded wrongly. This should be included in the list". As I said, while I appreciate that this is largely derived from section 75, some things on the list are moveable. I appreciate that the list of 10 is preceded by "may include", but, if you want to add to it in the future, primary legislation would be required.

Mrs Gillan: We feel that, because it is not exhaustive, schools have the freedom to identify other motivating factors, and we will assist with that in the guidance.

The Chairperson (Mr Weir): My concern is that, if you are given a checklist of 10, but you may include anything else, people will automatically look to the checklist as being comprehensive, and people with different attitudes take different views. There are things that are unforeseeable now, but you may, two years down the line, really want them on the list. Regulations give a little more flexibility to deal with future developments.

Mrs Gillan: The ultimate flexibility is there at the moment. Anything unforeseeable can be listed as a motivating factor for a school. Especially with the second amendment to clause 3, if the Department is to make regulations about motivating factors, we will have to consult, look to stakeholders and ensure that we have a full list, which would not be possible. Other motivating factors will always come along, we would then come to the Committee and spend time looking at them, and you would take evidence. This list, however, is not the end of the story anyway, and flexibility is already there.

The Chairperson (Mr Weir): I accept that. On some of the early arguments, the Department and the Committee have flipped sides. On other issues, we have said that we intend to bring such and such forward, and we will go out to consultation and get the views of schools and people as to what should or should not be there. On this issue, however, there is a concern that, to produce a final list, or at least as good a list as possible, you must have a consultation process. To be fair, I suspect that the Committee has flipped on the other side of that as well. It seems to run contrary to the arguments used earlier on other subjects. To be fair, that is a —

Mrs Gillan: We are putting great emphasis on, arguably, using a lot of resource in the Department and in the Assembly on something for which we have ultimate freedom. The guidance can give flexibility. Schools will be able to determine the motivating factors. There will be all sorts of motivating factors that will change over time. By implying that there should be regulations with a simple list, schools will then be wedded to that list, and we will tell them —

The Chairperson (Mr Weir): Again, the list —

Mrs Gillan: In terms of section 75 and other legislation, the list is minimal. It does not give the impression that we are leaving out other extra factors. We are acknowledging that there are lots of other motivating factors.

The Chairperson (Mr Weir): Regulations may simply say, "The motivation under this may include", followed by a list. At that stage, it does not have to be exclusive.

Mr Rogers: Caroline, there will be much emphasis on the guidance. Could this list not be in the guidance rather than in the Bill?

Mrs Gillan: Equally, when we went out to consultation, a lot of stakeholders wanted to see something in the Bill. A lot of the identities are prime identities where you will find bullying. There will always be others, but, as I said, when we recently tried to capture what was reasonable, we realised that we could not go on listing things forever and a day. We could never hope to cover it fully. That is why, in consultation with lawyers, we felt that it was best to rely on the current section 75 and a number of other legislative duties.

Mr Rogers: I agree with you, but —

Mrs Gillan: Ironically, we were responding to stakeholders in trying to facilitate that.

Mr Rogers: Unfortunately, people will see just the list and not the preceding words "may include".

Mr Lunn: I am looking at the first suggested amendment:

"The Department may by order ... amend subsection (3)."

Why put it in there? The Department can do that anyway. On that basis, what is the Department worried about?

The Chairperson (Mr Weir): No, Trevor, the Department could not do it anyway. Given that this is primary legislation, unless you put something of that nature in the Bill, amending it would require primary legislation as opposed to an order.

Mr Lunn: Fair enough.

The Chairperson (Mr Weir): I prefer the second amendment to the first one, but that is the technical reason for the first amendment.

Mr Hazzard: The list is not exhaustive, but it is important to have it in the Bill. For me, socio-economic background and physical appearance are the most prominent reasons for bullying in schools, yet they do not appear. Is it just a case of sticking closely to section 75?

Mrs Gillan: We stuck closely to section 75 and to other legislation. As we develop the guidance, we accept that socio-economic status, appearance and so on need to be drawn out and recognised.

The Chairperson (Mr Weir): Is it not sending a mixed message that some motivations are in the legislation because they mirror section 75, but the guidance will state that there are other things that we could also include? Would those not be interpreted by schools as being secondary factors that are given a lot less weight than those in the Bill?

Mrs Gillan: I do not think so. The guidance already talks about bullying and lists reasons and motivations for bullying. The guidance that is already out there draws out those issues.

Mrs Overend: I was also thinking that socio-economic factors and physical appearance are prime issues in bullying. If clause 3(3) and the whole list were removed, what effect would it have?

Mrs Gillan: We are responding to the consultation and the agreed policy of the Executive, who agreed to put the list in. The key thing is that schools record the details and motivations.

Mrs Overend: They would still be able to do that.

Mrs Gillan: They would still be able to do that, but, from a policy perspective, the Executive agreed to this policy and the drafting in this way. They could still do that.

Mrs Overend: Would it affect your guidelines if it were not there?

Mrs Gillan: No.

The Chairperson (Mr Weir): There are two possible amendments, and they are mutually exclusive. If you wish, I will put the Question on each amendment to the Committee. If you do not want either amendment, you vote against both. However, if the first amendment is agreed, I will not put the Question on the second one.

The second amendment states:

"Leave out from line 37 to line 4 on page 3 and insert — 'any one or more factors prescribed in regulations to be made by the Department, subject to the draft affirmative procedure.'"

Essentially, it gives the Department the power to make amendments rather than to amend, for want of a better word. Is that clear to everybody?

Mrs Overend: Say that again.

The Chairperson (Mr Weir): The second amendment to clause 3 would more or less compel the Department to make regulations. The first amendment, which refers to negative resolution, leaves the current list in the Bill and gives a power to add to it by way of amendment.

The Committee Clerk: As the Chair says, the second amendment would delete the list:

"(a) age;

(b) disability;

(c) gender reassignment;

(d) marriage;"

blah, blah, blah. It would then leave it to the Department to bring regulations, to be subject to draft affirmative resolution by the Assembly.

The first amendment would leave the list in but would add on:

"The Department may by order subject to negative resolution amend subsection (3)"

so that it could add to or, indeed, take away from the list.

The Chairperson (Mr Weir): I do not know whether this adds to the confusion or brings clarification, but the amendment that starts "Clause 3, page 3, line 4" is listed first on the page, but we are voting on the second amendment first because it comes in the legislation first. As I said, if you are in favour of either of them, it is an either/or; if you are against both amendments, you would vote against both.

Mr Rogers: Chair, could you clarify something? I thought that you said that the second amendment would leave the list in the Bill.

The Chairperson (Mr Weir): No. It is the amendment that we vote on second. The amendment that leaves the list in the Bill is the one that states:

"At end insert '() The Department may by order subject to negative resolution amend subsection (3)."

It leaves the list in the Bill but has the power to add to it. The second amendment — the one that we will vote on first — would more or less make it by drawing up the list in regulations.

Mrs Overend: Which one would be more complicated for the Department to deal with?

Mrs Gillan: It would be the regulation-making one for both the Department and the Committee, because we would prescribe motivations. Our starting point would be the list that we have, but another factor could arise or someone might argue for another motivation being added. We all could get ourselves tied in knots about where we end with the list.

The Chairperson (Mr Weir): That is probably true if you accept either of the amendments, because you are looking at what should and what should not be added.

Mrs Gillan: I reiterate that we will be clear about the meaning in the guidance to schools, pupils and parents. With all the pressures from all the issues that we have to address in the schools sector, do we want to tie ourselves in knots over something that we do not feel is fundamental to addressing bullying?

The Chairperson (Mr Weir): The amendment is:

"Clause 3, page 2, line 37

Leave out from line 37 to line 4 on page 3 and insert — 'any one or more factors prescribed in regulations to be made by the Department, subject to the draft affirmative procedure.'"

Question put.

The Committee divided: Ayes 4; Noes 4; Abstentions 1.

AYES

Mr Craig, Mr McCausland, Mr Newton, Mr Weir.

NOES

Mr Hazzard, Mr Lunn, Ms Maeve McLaughlin, Mr Rogers.

ABSTENTIONS

Mrs Overend.

Question accordingly negatived.

The Chairperson (Mr Weir): The other amendment is:

"Clause 3, page 3, line 4

At end insert '() The Department may by order subject to negative resolution amend subsection (3)."

Question put.

The Committee divided: Ayes 5; Noes 2; Abstentions 2.

AYES

Mr Craig, Mr McCausland, Mr Newton, Mrs Overend, Mr Weir.

NOES

Mr Hazzard, Ms Maeve McLaughlin.

ABSTENTIONS

Mr Lunn, Mr Rogers.

Question accordingly agreed to.

The Chairperson (Mr Weir): There is a departmental amendment that adds to the list persons "with dependants". That group had been omitted. It is probably relatively uncontroversial.

Mr Lunn: Where is it?

The Committee Clerk: It is not on the list.

The Chairperson (Mr Weir): When the Committee dealt with the subject yesterday, it was indicated that the list of 10 motivations reflected section 75. However, there was a realisation that one of the section 75 categories had been left out: persons with dependants. The Department is seeking an amendment that adds those "with dependants" to the original list. Broadly speaking, people were happy enough with that yesterday.

Mr Rogers: Would that cover all carer situations?

Mrs Gillan: Yes, it would.

The Chairperson (Mr Weir): Are members content with the amendment from the Department?

Members indicated assent.

The Chairperson (Mr Weir): There are no other issues that members want to raise under clause 3.

Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.

Clause 4 (Interpretation)

The Chairperson (Mr Weir): We agreed informally not to pursue any amendments to clause 4. There are no other issues that members want to raise under clause 4.

Question, That the Committee is content with the clause, put and agreed to.

Clause 5 (Short title and commencement)

The Chairperson (Mr Weir): Surprisingly, we did have proposals to amend the clause, which rarely happens. The Committee informally agreed that it would not pursue any amendments. There are no other issues that members want to raise under clause 5.

Question, That the Committee is content with the clause, put and agreed to.

The Chairperson (Mr Weir): No other amendments were suggested informally by the Committee during our discussions yesterday. Other than amendments that members want to table as individuals or as a party, am I right in saying that nobody wants the Committee to table any other amendments?

Members indicated assent.

Question, That the Committee is content with the long title, put and agreed to.

The Chairperson (Mr Weir): That concludes the formal clause-by-clause scrutiny of the Addressing Bullying in Schools Bill. I thank the officials and appreciate that we have probably left you with a little more work to do. The Committee will hold a short meeting on 8 February at 3.45 pm to consider the Bill report. We are looking to tweak — for want of a better word — at least one aspect.

Mrs Gillan: We want to register our thanks and appreciation for facilitating the consideration of the Bill. The Minister very much appreciates the constructive engagement.

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Black and Minority Ethnic
Women's Network

**Submission to the Department of
Education**

Addressing Bullying in Schools Bill

January 2016

Introduction

- 1.1 The Black and Minority Ethnic Women's Network (BMEWN) is a women led organisation that advocates for change on issues affecting black and minority ethnic (BME) women in Northern Ireland (NI). The aim of the network is to develop the capacity of ethnic minority women so that they can support and assist their communities in accessing services, furthering their human rights and developing sustainable community based leadership.
- 1.2 The Network welcomes the opportunity to report on the 'Addressing Bullying in Schools Bill' and notes the particular difficulty of racial bullying that many BME pupils face within schools in Northern Ireland.¹ The Network also notes the importance of educational achievement in maximising employment opportunities and life chances. To this end, the Network is concerned that increasing numbers of BME pupils are underperforming at school and previous high levels of achievement are decreasing.² Research by NICEM has indicated that many BME pupils face racial harassment at school which is unaddressed.³ This has led to many BME pupils feeling estranged from the school community as they do not feel that school promotes a safe learning environment and as a result their education suffers.⁴

Legal Framework

- 2.1 The Network notes that a number of human rights instruments are applicable in relation to children's right to an education, discrimination and the protection from all forms of violence. In particular, the UN Convention on the Rights of the Child (UNCRC); Article 28 – the right to an education which may be breached if schools do not implement anti bullying policies which adequately address 'drop out' rates of children due to bullying, Article 19 – protection from all forms of violence which may be breached if schools do not implement anti

¹ P Connolly and M Keenan, 'The Hidden Truth: Racist Harassment in Northern Ireland' Northern Ireland Statistics and Research Agency 2001 page 9

² Equality Commission 'Key Inequalities in Education' 2015
http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Education-KeyInequalities_DraftStatement.pdf page 14 - 19

³ NICEM 'Promoting Racial Equality in Northern Ireland's Post Primary Schools' page 28

⁴ Equality Commission (n-2) page 14

bullying policies which adequately address the physical and psychological harm caused to children by bullying, Article 2 – protection from discrimination which may be breached schools do not adopt sufficient anti bullying policies to address when a child is bullied due to difference or perceived difference.

- 3.1 The European Convention on Human Rights is also applicable; Article 3 prohibits inhuman and degrading treatment – many children subjected to bullying find that it is akin to torture, Article 14 prohibits discrimination and the individual’s ability to enjoy other rights.

Definition of Bullying

- 4.1 The Network welcomes the effort to provide a legal definition of bullying in schools. However, it notes three areas in which the proposed definition is too narrow in scope and in which it may be in breach of human rights obligations. Firstly, the Bill defines bullying as a ‘repeated act’;

(Bullying is...)**(a) the repeated use of a verbal, written or electronic communication or a physical act (or a combination of those)**

- 4.2 To define bullying in this way does not allow for a ‘single act’ to be classed as such. This is particularly relevant for instances of racial bullying. Research has indicated, for example, that a distinction can be made between ‘hot and cold’ racial harassment; ‘cold’ racial harassment has a calculated intent to cause harm to an individual because of their racial identity whereas ‘hot’ racial harassment usually occurs in the heat of the moment - with the intention of causing harm to an individual because of their racial identity in a single act which is not repeated.⁵ Either way, hot or cold, repeated or singular act, the intention of the bully is cause harm.

- 4.3 This can be evidenced in pupil responses to the frequency in which they take part in bullying activities. For example, 23.9% of Year 9 boys admitted bullying other pupils once or twice yet only 4.2% of Year 9 boys bullied in a

⁵ Connolly and Keenan (n-1) 18

more frequent repetitive fashion.⁶ Similar responses are recorded for Year 9 girls; 15.2% admitted bullying behaviour once or twice while only 1.7% bullied in a more frequent repetitive fashion.⁷

- 4.4 The definition of bullying should not, therefore, place additional weight on the repetitiveness of an action at the expense of the intention of the bully's actions and the harm caused to the recipient of the bullying; it is simply irrelevant whether the harm caused is through a repeated or a single act.
- 4.5 To record a single act as bullying would also give schools a chance to direct early intervention measures at the child/children engaging in bullying behaviour. If, as suggested, bullying is a pattern of behaviour then an early intervention offers the best chance to challenge this before it becomes a repetitive activity.
- 4.6 Further, if bullying is defined as a repetitive action then it is suggested that singular acts actioned by a pupil against another pupil should be defined as 'aggressive behaviour' and subjected to individual schools' internal disciplinary processes.⁸ The Education and Libraries (NI) Order 2003 requires grant aided schools to introduce an anti-bullying component to their discipline policy, but as schools are not deemed public authorities and are therefore unaccountable, it is unclear whether all grant aided schools in Northern Ireland follow equality guidelines and give due regard to section 75 in formulating their disciplinary processes. This is particularly important if there is a racial element to the 'aggressive behaviour' as vulnerable BME pupils may clearly be subject to racial harassment but because it is defined by a school as a single incident it is termed instead as aggressive behaviour. BME pupils may therefore not be receiving the support and guidance they require when faced with racial harassment and schools may not be taking any steps to address racial harassment through their disciplinary processes. This may be in breach of the UK's human rights obligations (see paragraphs 2.1 and 3.1).

⁶ G Livesey et al, DOE, 'The Nature and Extent of Bullying in Schools in the North of Ireland' 2007 page 46

⁷ Ibid

⁸ Consultation Document DOE 'Addressing Bullying in Schools' 15

4.7 Secondly, the Network notes that the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003 Article 4A defines racial harassment as;

(1) A person (A) subjects another person (B) to harassment in any circumstances relevant for the purposes referred to in Article 3 (1B) where, on the grounds of race or ethnic or national origins, A engages in unwanted conduct which has the purpose or effect of – (a) violating B’s dignity, or 9b) creating an intimidating, hostile, degrading or offensive environment for B. (2) Conduct shall be regarded as having the effect specified in sub-paragraphs (a) and (b) of paragraph (1) only if, having regard to all the circumstances, including, in particular, the perception of B, it should be reasonably considered as having that effect.’

This is a much wider framework than the proposed definition for bullying. It eliminates the bully’s ‘intent’ and replaces with ‘purpose and effect’, it places more weight on how the recipient of the bullying perceives the bullying and it recognises that racial harassment creates an ‘intimidating, hostile, degrading or offensive environment.’ This is of particular importance in the school environment as racial bullying is often excused as ‘everyday banter’ and ‘kids being kids.’⁹ For those BME children who are subjected to this kind of bullying it increases a sense of ‘otherness’ and erodes a sense of belonging within the community. The Network proposes therefore that the definition of bullying should be;

(a) the *singular* or repeated use of a verbal, written or electronic communication or a physical act (or a combination of those), (b) by a pupil or a group of pupils or *teacher/staff*, (c) against another pupil or group of pupils or *teacher/staff* (d) with the *purpose and effect* of causing physical or emotional harm to that pupil or group of pupils or *creating an intimidating, hostile, degrading or offensive environment for that pupil or groups of pupils.*

⁹ Connolly and Keenan (n-1) page 25

4.8 Thirdly, the Network notes that the proposed definition of bullying is limited to between pupils only.

(b) by a pupil or a group of pupils, (c) against another pupil or group of pupils, (d) with the intention of causing physical or emotional harm to that pupil or group of pupils. (2) For the purposes of subsection (1), “act” includes “omission”.

Academic guidelines suggest that a power imbalance is inherent within bullying¹⁰ and as such a definition of bullying should include pupil toward teacher/staff and also staff/teacher toward pupil. The current proposals suggest that these should be classified as ‘aggressive behaviour’ and should, as before, in para 4.6 be dealt with under the individual school’s internal disciplinary processes.¹¹ As before, if there is a racial element to the ‘aggressive behaviour’ then this may not be recorded as such by the school under their discipline policy. This may be in breach of equality and human rights guidelines. (see para 4.6)

Proposed Changes

4.9 the definition of bullying should be widened to:

(a) the *singular* or repeated use of a verbal, written or electronic communication or a physical act (or a combination of those), (b) by a pupil or a group of pupils or *teacher/staff*, (c) against another pupil or group of pupils or *teacher/staff* (d) with the *purpose and effect* of causing physical or emotional harm to that pupil or group of pupils or *creating an intimidating, hostile, degrading or offensive environment for that pupil or groups of pupils.*

¹⁰ N Purdy and C McGuckin ‘*Cyberbullying and the Law*’ 2013
<http://www.stran.ac.uk/nont4docs/PurdyandMcGuckinCyberbullyingandtheLaw.pdf> page 6

¹¹ Consultation Document DOE ‘Addressing Bullying in Schools’ page 3

Duty of Board of Governors to secure measures to prevent bullying

5.1 The Network welcomes the role of the Board of Governors in ensuring that policies designed to prevent bullying are pursued at schools and also in determining measures to be taken at schools to prevent bullying. However, section 2 (c) (1) proposes that the measures taken by the Board of Governors are reviewed from time to time. Given the speedy evolution of forums for bullying through internet social media and its ever growing dominance over young people, the statelier rate of review 'from time to time' of measures designed to prevent bullying will, perhaps, be inadequate. The Network suggests therefore that the Board of Governors review of preventative measures is conducted yearly, contained perhaps within an annual report which is made readily available to school staff, parents, pupils, DOE and any other interested party.

Proposed Change

5.2 The Board of Governors should review its bullying preventative measures yearly and record this within an annual report.

Duty to keep a record of incidents of bullying

6.1 The Network welcomes legislation placing a duty on schools to keep a record of incidents of bullying and to record the motivating factor for bullying. However, the Network notes two areas in which the proposed legislation should be clarified.

6.2 Firstly, the proposed bill will require schools to keep a record of bullying incidents that occur;

- (a) on the premises of the school during the school day;**
- (b) while travelling to or from the school during the school term; or (c) while the pupil is in the lawful control or charge of a member of the staff of the school**

This leaves a gap in which bullying may still take place through modern forms of social media (i.e. Twitter, Facebook) but outside of school hours, at the

weekend and during holidays. The Network acknowledges that this is a difficult legal area for schools in terms of responsibility for pupil's actions, especially when the bullying occurs on social media where the identity of the bully may not always be immediately apparent. However, if the identity of the bully can be ascertained then the Network suggests that schools should work in collaboration with the victim of the bullying and keep a record of the 'bullying event' (i.e. a screenshot of social media posts) so that it may be passed on to the relevant authorities (PSNI). The Network would also like to see schools strongly engaging with those pupils who are bullied in this way; offering support and guidance and ensuring that the pupil feels safe within the school environment. The Network further notes that outside of the context of the school environment, instances of 'bullying' that occur through social media are termed as harassment and can result in criminal prosecution; if the harassment is racial in content then it can result in a recorded hate incident. Schools should therefore form strong communication forums between pupils, parents and the PSNI to ensure that instances of this kind of behaviour are dealt with quickly; the safety and support of the victim should be paramount. Further guidance from schools working in collaboration with the PSNI should be issued to all parents and pupils regarding this difficult legal area.

- 6.3 Secondly, section 3 (3) requires that schools record a motivating factor for the bullying. While the Network welcomes that race is recognised as a motivating factor in school bullying it would encourage the addition of ethnicity to the list. Although the Race Relations Order 2003 recognises racial groups as including ethnic minority groups there may arise some situations in which a child is bullied for multiple reasons. The recording of bullying motivating factors in this way may provide some assistance to schools in recognising if children of a particular race or ethnicity are more vulnerable targets for bullying. In turn this may enhance early intervention or anti bullying education programmes schools could employ. The Network proposes therefore that the legislation should read 'race and/or ethnicity.'

Proposed Changes

- 6.4 A clear set of guidelines should be drawn up (with involvement of DOE and PSNI) in relation to responsibility for pupil bullying that occurs out of school hours. The guidelines should be issued to all pupils and parents. For those pupils and parents whose first language is not English, the guidelines should be translated.
- 6.5 As the legal responsibilities for out of school hours bullying are currently unclear, the Network suggests that if the identity of the bully can be ascertained then the 'bully event' should still be recorded by the schools and then (if necessary) passed on to the relevant authorities (i.e. PSNI).
- 6.6 Section 3 (3) g should read race and/or ethnicity

Preventing bullying

- 7.1 The Network notes that the proposed legislation makes no mention of measures to prevent bullying and would welcome proposals which schools could take to prevent racial bullying and promote a safe learning environment for all children. The KiVa programme offers a good practice example; 'holistic' behavioural modification (of the bully) reinforced throughout the whole school environment.¹²

¹² K Laitinen 'Children's Rights and a Safe Learning Environment; KiVa A National Anti Bullying Programme for Finnish Schools' 2012
http://www.oph.fi/download/143565_Kristiina_Laitinen_Pestalozzi_KiVa_04_10_2012.pdf

Addressing Bullying In Schools Bill

Response by The Council for Catholic Maintained Schools (CCMS)

January 2016

- 1.0 The Council for Catholic Maintained Schools welcomes the introduction of this Bill, in its identification of bullying as a significant issue in the lives of young people, in providing a definition of bullying in its various forms and in the duties it places upon Governors to be pro-active in addressing it.
- 2.0 We would concur that a consistent approach by all schools in terms of developing appropriate policies and implementing them rigorously is essential to tackling an issue the gravity of which should not be underestimated.
- 3.0 The development of a system of record keeping to 'track' bullying is seen as a major step forward in terms of communication in a given school and between schools.
- 4.0 It is noted and warmly welcomed that the Bill recognises emotional as well as physical bullying, and the psychological damage, often long term, which can be inflicted by the former
- 5.0 In pursuing these aspirations CCMS would suggest that the following might inform elements of the process of implementing relevant strategies to support the Bill;
 - 5.1 Recognising that bullying is highly likely to be an issue for all schools and that complacency by any school would be unwise
 - 5.2 Awareness raising for pupils, be they a potential victim or perpetrator or neither, is central to the implementation of this Bill and that this can be best achieved through the curriculum, most notably through PDMU at Primary level and through the Personal Development strand of LLW at Post Primary age
 - 5.3 Pupils should be rigorously consulted by any school in their formulation of policies in this regard, and a move away from any 'tokenistic' consultation of young people should be emphasised given the gravity of this issue
 - 5.4 As with safeguarding, pupils should know how to report incidents of bullying and be made aware of the key members of staff to whom they can go in relation to the issue
 - 5.5 Policies in this regard should align with other key pastoral policies in the school and with other significant DE policies such as the Community Relations, Equality and Diversity (CRED) policy which gives due regard to the Section 75 Groups and promotes a respect for the rights of the individual
 - 5.6 Governor training in respect of this issue is essential and should become part of any Governor training programme at the earliest opportunity
 - 5.7 Awareness by all teaching and other school staff is equally an essential part of the process and should be realised through effective communication between Governors and school Senior Managers



Addressing Bullying in Schools Bill

Submission to Education Committee

Children's Law Centre
5th January 2016

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Introduction

The Children's Law Centre (CLC) is an independent charitable organisation which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a legal advice, information and representation service. We have a dedicated free phone legal advice line for children and young people and their parents and carers called CHALKY and a youth advisory group called Youth@clc. Within our policy, legal, advice and representation services we deal with a range of issues in relation to children and the law, including the law with regard to some of our most vulnerable children and young people, such as looked after children, children who come into conflict with the law, children with special educational needs, children living in poverty, children with disabilities, children with mental health problems and children and young people from ethnic minority backgrounds.

Our organisation is founded on the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

From its perspective as a children's rights organisation working with and on behalf of children, both directly and indirectly, CLC is grateful for the opportunity to respond to the Education Committee's call for evidence in relation to the Committee Stage of the Addressing Bullying in Schools Bill.

CLC welcomes the Addressing Bullying in Schools Bill and is very supportive of the purposes for which the Bill has been introduced. In providing this submission we seek to work with the Education Committee and the Department of Education to ensure this Bill provides maximum protection against bullying in schools in Northern Ireland.

Clause 1: Definition of Bullying

CLC continues to have concerns in relation to the definition of bullying as set out in Clause 1 of the Addressing Bullying in Schools Bill.

In general terms, Clause 1 requires some further consideration. The layout and language of the clause reads as a set of relatively high barriers that one must traverse in order to conclude that there has been “bullying”. CLC believes that it would be beneficial to broaden the scope of the clause by using more inclusive terminology which will enable schools to act, will make it more difficult to stand over inaction and which will not be unduly restrictive.

It is notable that Ryan Collins’ case against Abbey Grammar School in Newry [2014 NICty 4] resulted in a settlement with £10,000 compensation for psychological damage caused by bullying. It is in the interests of both schools and pupils that the law is clear and comprehensive, to enable proper record-keeping and tracking of actions so that there is no doubt about when action is required and so that all opportunities to intervene and prevent harm are fully exhausted at the earliest possible opportunity.

Clause 1(1)(a): “Repeated”

The definition of bullying may be improved if further consideration is given to whether requiring repetitive behaviour is helpful or unhelpful. The word “repeated” in the definition is potentially unhelpful and unclear. It may detract from the core purpose of the Bill. The purpose of the Bill is to prevent bullying, which should involve stepping in at the first instance rather than allowing repeated incidents to occur. The main issue that we see in our casework is a lack of decisive early action which can enable a culture of bullying to develop and thrive.

Requiring “repetition” is likely to introduce a lack of clarity about when school staff should step in to prevent bullying, when in fact staff would benefit from knowing that they should prevent bullying immediately that it appears. For example – how close together do incidents have to be to amount to “repetition”? What if there is a time lapse between a number of incidents? Are these fresh “first” incidents or a “repeat” activity? What if one child causes distress to another and then a different child carries this forward a week later – is this repetitive or is it two single incidents? What is “repetition” in terms of cyber-bullying? Removal of the word “repeated” may serve to protect schools from incurring legal liabilities as they will be guided to act immediately, from the first instance.

Clause 1(1)(a) Communications, Acts, Omissions or a combination of those

CLC would suggest further consideration is given as to how best to describe bullying behaviours in a way that is clear and yet broad in scope. It may be clearer to describe these as behaviours intended to have a negative impact upon others and to then define “behaviours” either within the clause (as is presently the case) or separately in an interpretation clause.

Clause 1(1)(d): “Intention” and “Harm”

CLC believes it would be beneficial to consider further whether “intention” is strictly necessary as it is conceivable that children may engage or “join in” with bullying without considering the negative consequences for another child. Looking from the perspective of the child who has suffered adverse effects, it is no less distressing by virtue of having been unintentional.

The question may also arise as to how should intention be established and what proofs would be required. For example, would carelessness as to the consequences of an action amount to “intention”? Intention presupposes foresight of consequences. Will a 5 year old or an 8 year old be capable of forming the requisite intention? How will a teacher or staff member determine if a 5 year old child foresaw and understood the consequences of his actions? This difficult determination will become even more challenging if the child has a learning disability or other additional needs. Determining what is effectively the capacity of a potentially very young child is onerous and challenging, and is not in CLC’s view required to give effect to the purpose of the Bill. Some further consideration of this point would therefore be welcome.

It may be more useful to use a term around the “adverse/detrimental effects” of the bullying behaviour rather than around the intent or motivation of the child who bullies another.

CLC is concerned about the restrictive quality of the term “harm” given that the intention of the Bill is to prevent bullying so that the point of being “harmed” is not reached. Proving that one child “intended to cause physical harm” or “intended to cause emotional harm” to another child is setting the bar much too high, is too restrictive and is reminiscent of thresholds for criminal matters.

CLC takes the view that a broader terminology would better achieve the purpose of the intended legislation. We believe there should be broader reference to adverse consequences (including but not limited to) distress, alarm, hurt, fear, exclusion, harassment and/or physical or emotional harm.

Imbalance of Power/Inclusion of Adults in the Definition

CLC would like to see reference within the definition to the imbalance of power which appears to be inherent in all bullying cases. In our view, it is not necessarily about “intent” to cause “harm” which may or may not in fact be present. Bullying is about one party abusing their power over another (for a wide array of potential reasons) and the detrimental effects following on from that abuse.

Linked to that point, is CLC's view that all forms of bullying in schools should be addressed by this legislation, including those cases where it is an adult who is involved in bullying behaviour, given that there is an imbalance of power between adults and children in school. To protect children from bullying in school and to promote mutual respect throughout the school community, all potential sources of an abuse of power which may lead to bullying should be covered.

Clause 2: Duty upon Boards of Governors – Prevention

CLC would suggest that the duty upon Boards of Governors is intended to be a mandatory statutory duty and such a duty would more effectively be expressed as "*The Board of Governors of a grant-aided school shall...*" (rather than "must").

Determining and Implementing a Policy

The meaning of Clause 2(1)(a) requires some further clarification i.e. is the duty to pursue policies that have been designed or is the duty to design policies and then pursue them? The clause as currently worded is open to both interpretations. It is important to ensure that there is a clear duty to have an anti-bullying policy and a clear duty to act upon it. Importantly Clause 3(3), a crucial provision, which sets out some of the potential motivations for bullying, is linked back to clause 2(1)(a). A lack of clarity in clause 2(1)(a) will therefore likely be damaging in terms of recording disaggregated data about bullying under Clause 3.

It may therefore be advisable to create firstly, a duty to determine an anti-bullying policy which will apply to registered pupils and secondly, a duty to implement that policy at the school. The policy should be produced in a child-accessible format appropriate to the age and profile of the pupils registered at the school.

Clause 2(1)(b) might then be used to expand, that in making a policy the Board of Governors shall "*determine the measures to be taken at the school.*"

Clause 2(1)(f) also refers to a duty to "*prepare a written statement of such measures*". This appears to be an obligation to have a written anti-bullying policy. It may be clearer if it were directly stated in plain language that there is a duty to have a written anti-bullying policy rather than referring to "measures" so that school clearly understand what is being asked of them. It may also be beneficial for clarity to put this provision at the beginning of Clause 2.

Clause 2(1)(g) may be a very useful and important provision but needs to be clarified. It is a duty to "secure that such measures are taken". There are a number of references to "measures" throughout which appear to be references to the anti-bullying policy and it is important to be clear about the duty that is being imposed. We suggest that it is clarified that the Board of Governors has a duty to secure "that the measures set out in the anti-bullying policy are taken".

Boundaries of School Responsibility

CLC believes the scope of Clause 2 and Clause 3 (where they define the boundaries of the Board of Governor's responsibilities as being in relation to bullying on school premises, while travelling to or from school or while under the care of school staff) may be too narrow. For example, it does not cover cyber-bullying sufficiently. We acknowledge that cyber-bullying crosses boundaries between home, school and the community and that this is a complex matter but nonetheless, it seems to us to be artificial to treat as "separate" those incidents which cross boundaries where they form part of a continuous "campaign" of bullying. CLC would like to see that the protections for school children are maximised through the Bill and would welcome further consideration of the issue of cyber-bullying and other forms of bullying which may be linked between home, school and the community.

In clause 2(b)(iii) (and clause 3(c)) it may be worthwhile to consider whether the phrase "...lawful control or charge of a member of the staff of the school" should be changed to include when the child is in the "care" of the staff or alternatively simply to state "while the pupil is engaged in education and/or associated services". This phrase is used in anti-discrimination legislation to define when discrimination protections apply (SENDO 2005) and it covers activities in and out of school which are managed or supervised by school staff, including school trips.

Clause 2(1)(c): Review of Policies/Measures

CLC takes the view that the timescale for review of policies should be set out to ensure that the policies are effective. For example instead of providing for review "from time to time" the clause could provide for annual review or bi-annual review. It is unclear what the rationale is for excluding a timescale. There are many good arguments for setting an appropriate timescale. The review process, taking into account the obligation to consult pupils, is an excellent opportunity to open up discussion in school regularly about bullying, giving pupils a chance to let staff know about any concerns and to reinforce positive messaging throughout the school community.

Clause 2(2): Directions

CLC would welcome clarification about the power granted to the Department to give directions, including what its purpose is, what form such directions may take and whether they would be enforceable.

Clause 2(3): Removal of the existing Duty on Boards of Governors

It is proposed that the existing duty upon Boards of Governors to prevent all forms of bullying among pupils is removed from the Education (NI) Order 1998. CLC would welcome further consideration about the necessity of this deletion from the 1998 Order (under the part of that Order dealing with school discipline). It may be artificial to assume that we can separate bullying from school discipline and treat these entirely separately. There will be overlap between all policies dealing with unwanted behaviours and the school discipline policy which will provide for sanctions in certain cases.

Clause 3: Duty to Record Incidents

Under clause 3(1) and (2) the statutory duties would be best stated as “The Board of Governors...**shall**” (rather than “must”) to signal the mandatory nature of the duties.

CLC takes the view that there should be a **duty upon all staff** within school to report any incidents of bullying that they witness so that these may be recorded.

Clause 3(3): Motivation

CLC welcomes Clause 3(3) as it appears to cover all protected 9 groups within Section 75 of the Northern Ireland Act 1998 and it will therefore be possible when designing a new IT system, to ensure that disaggregated data is collected.

We would like to see explicit reference in Clause 3 to the fact that the grounds listed in Clause 3(3) are not exhaustive.

CLC is concerned that there is no reference to **socio-economic status** as a motivation for bullying and would suggest that this is added, since it appears to us to be a significant factor related to power imbalances between pupils. It would then be possible to use FSME data alongside bullying data to analyse whether there is a disproportionate impact from bullying upon pupils from a poorer socio-economic background.

CLC is also concerned that there while the category of “pregnancy” is included, there is no reference to the Section 75 category of “those with dependants”. In our view this category should be added to Clause 3(3) to ensure school age parents are protected and appropriate data is recorded.

Under Clause 3(2)(a) the school has a duty to record bullying incidents. CLC believes, drawing on our case work experience, that schools should be asked to record the facts, circumstances and nature of the incident; to investigate and to draw conclusions; followed by taking the necessary actions as set out in the school policy. The current draft seeks only to establish a record of the “motivation” and we strongly feel that this is too limited. There are inherent difficulties in trying to look solely from the point of view of intent or motivation, as described previously above (re the definition of bullying in Clause 1). CLC would therefore raise a concern about use of the word “motivation” on clause 3(a) and (b). We do not believe that “motivation” is the correct terminology to use in this clause. We understand and agree with the aim of the clause, which is to establish linkage between protected characteristics and the incidence of bullying and we would very much welcome further discussion and consideration about alternative forms of wording to ensure good recording and investigation of incidents, as well as the gathering of disaggregated data.

Enforcement and Redress in Disputed Cases – Independent Mechanisms

CLC has concerns around the lack of independence within schools’ processes for reviewing and making decisions about bullying incidents in those cases where perhaps the most effective courses of action have not been taken or where disputes have been allowed to escalate. In our experience within case work, parents and

children often struggle for extended periods of time to seek redress in such matters and find that schools have very considerable autonomy so that challenge is difficult, time consuming and often results in a poor outcome (merely aggravating an already difficult situation).

The only redress currently available is via an Article 101 complaint to the Department once all school processes have been exhausted or via judicial review of the school or by way of a negligence action if there is provable damage. None of these mechanisms are speedy or effective enough to remedy the problems at source. The Bill could be used as a vehicle to introduce greater independence into resolution of these cases perhaps drawing upon the Department, the EA or upon an independent body to aid decision making in specified circumstances. CLC would recommend some further consideration as to how greater independence might be introduced into schools processes to ensure full and fair resolution of disputed matters.

Monitoring and Review

CLC believes that monitoring of the recording of incidents of bullying in schools by a body other than the school is critical to ensure that the purposes of the intended legislation are met. We suggest that the ETI might have a role to play in this monitoring as part of the schools inspection process and/or that the EA is directly involved in monitoring and review.

Conclusion

CLC is grateful to have this opportunity to make this submission to the Education Committee in relation to the Addressing Bullying in Schools Bill. We look forward to engaging further with the Committee and the Department as the Bill progresses to ensure the Bill delivers the important policy aims set out by the Department of Education. We would like to give oral evidence to the Committee in relation to the Bill.

05/01/2016

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Committee for Education

Addressing Bullying in Schools Bill – Committee Stage scrutiny

I. SUMMARY

Early Years – the organisation for young children warmly welcomes this opportunity to submit evidence to the Committee’s scrutiny of the Addressing Bullying in Schools Bill. During 2015-16 the organisation is celebrating 50 years of working to promote and develop high quality, evidence-informed, cross community early childhood services for young children, their families and communities.

We have successfully worked in all communities, including some of the most divided interface areas in Northern Ireland, in delivering projects and activities relating to child focused community based health and education; tackling social and educational inequalities; working with young Traveller children and their families; shared spaces, community development and working with children, practitioners, management boards, parents and carers to develop a culture of respect to the various forms of difference in our society

This submission, in the advancement of draft Bill, welcomes in principle a number of elements contained in the draft Bill, queries some of the terminology presently utilised and ultimately emphasises the following:

- Adopting an approach beginning at the earliest levels of education and building on this consistently up through the tiers of the education pathway
- Embracing an ecological approach actively incorporating wider support networks involving parents, families and all communities as well as staff and leadership within schools and education providers
- Utilisation of current best practice and evidence locally and internationally

1.	INTRODUCTION
1.1	Early Years – the organisation for young children ¹ is the largest voluntary organisation working with and for all young children 0-12 in Northern Ireland and the Republic of Ireland. It is a non-profit making organisation and during 2015-16 is celebrating 50 years of working to promote and develop high quality, evidence-informed, cross community early childhood services for young children, their families and communities.
1.2	Our vision is that children are strong, competent and visible in their communities; physically and emotionally healthy; eager and able to learn and respectful of difference. Members of Early Years across the statutory, community, voluntary and independent sectors support the child care and early education needs of over 30,000 children on a daily basis. We also have a leadership role in ten Sure Start projects supporting 15,000 children 0-4 and their families. Our projects and activities relate to child focused community based health and education; tackling social and educational inequalities; working with young Traveller children and their families; community development and working with children, practitioners, management boards, parents and carers to respect the various forms of difference in our society.
2	Terminology in the draft Bill
2.1	The intention of the draft Bill to provide an inclusive definition of ‘bullying’; introduce a duty to secure measures to prevent bullying; and introduce a duty to keep a record of incidents of bullying is welcomed.
2.2	We would also wish to make a more general comment on the terminology used in, and also the required focus of, the Bill. Throughout the draft document reference is made to ‘schools’ or ‘grant-aided schools’.
2.3	However, experience has taught us that this inevitably leads to an assumption that the fundamental stage before formal school commencement, of which the Department has a significant role in, is not worthy of consideration.
2.4	Based on domestic and international evidence and practice it is vital that any initiatives embrace an ecological framework approach beginning in the earliest years and continuing through primary and secondary education levels. In developing a positive sense of self and others it is essential to address issues of inclusion and exclusion from an early age. It is well documented in early childhood research that children as young as three years old are aware of difference and by age six can develop negative attitudes and behaviour towards others who are different (Too Young to Notice? The Cultural and Political

¹ For more see <http://www.early-years.org/>

	Awareness of 3-6 Year Olds in Northern Ireland Connolly, P., Smith, A. & Kelly, B. 2002). Specific reference to the important pre-school phase of the education pathway should also be included in this document, the ultimate policy and any associated guidance.
3.	Monitoring, recording, and required training
3.1	In terms of monitoring and recording of incidents it will be essential moving forward that this aspect does not merely in practice become one where there is an undue focus on adhering to required procedures rather than on the significance of meaningful engagement.
3.2	We would also add to this the importance of associated anti-bullying, cultural awareness and diversity training, ongoing support and age and stage appropriate resources and in these respects offer the good practice example of the robustly evaluated Media Initiative for Children (MIFC) Respecting Difference Programme (for more see http://www.early-years.org/mifc/). This programme also reflects the importance of beginning in the earliest levels of the education pathway and building up and promoting a culture of respect for difference with children, practitioners, management committees and boards and family members.
3.3	The MIFC Respecting Difference Programme, developed by Early Years and the Peace Initiatives Institute, is currently linked to relevant curricula for children aged from two to eight years in Northern Ireland and the Republic of Ireland and consideration is being given to further development of the programme covering the timeframe right through to the end of primary school. The programme incorporates a range of messages associated with acceptance and respect for those from different traditions, the traveller community, minority ethnic communities, disability/physical difference and a specific message around bullying behaviours. Through the work of the project, the support provided to implement the programme and the associated development of age and stage appropriate pre-school, school and Irish medium training and resources settings are also very much encouraged to develop cross community and cross border partnerships.
3.4	Many elements associated with the MIFC Respecting Difference programme make clear links into the pre-school and primary curriculum by addressing such themes as self-awareness, similarities and differences, relationships and feelings and emotions. The key strengths of the programme are that it places a strong emphasis on promoting socio-emotional development as the foundation upon which diversity work can be undertaken and it looks at diversity and inclusion in all its aspects focusing on ability, race, cultural ethnic and religious identity through age appropriate programmes.

3.5	<p>The programme looks first at sameness before addressing difference. The children see the points of similarity and subsequently the points of difference. This serves as an ideal practical approach to encourage the development of empathy, understand helpful and hurtful behaviours, promote self-regulation, avoid labelling and to see a situation from another's perspective. The programme also clearly contributes to not only respecting difference in the classroom but also at home by embracing that much needed holistic and child-rights centered approach, in recognition of the various circles of influence that a child encounters in their daily life, through implementation of such aspects as teacher training, parent workshops, Management Committee/Board of Governors training and ongoing support. This approach realises a range of outcomes at different levels including the children's own attitudes and behaviours towards difference; practitioners' or governors' understanding of or capacity around difference and diversity work and parents' appreciation of diversity issues and confidence to address this with their children and others across communities.</p>
3.6	<p>Many of the above principles, particularly relating to supporting social and emotional development, understanding children's temperaments, conflict resolution, self-regulation and connecting with children in partnership with teachers, practitioners and family members as a vitally important foundation for all learning and overall well-being, are also clearly reflected in the HighScope approach implemented by Early Years as the base of the HighScope Ireland Institute (for more see http://www.early-years.org/highscope/). HighScope provides children with opportunities to engage in an active participatory learning process; to develop self-confidence, initiative, creativity and problem-solving skills; to learn about social relationships and to develop positive attitudes to self, others and future learning.</p>
3.7	<p>A further key message from both of the above approaches is the importance of focusing both on the child who is the recipient of the behaviour and as well as the child initiating the behaviour, who needs the support as much as the other if not more.</p>
4	Departmental Guidance
4.1	<p>The draft Bill states that the Department may from time to time publish guidance on this area. It would be imperative that such guidance reflects and is influenced by reference to anti-bullying responses/approaches in other jurisdictions. One such example is provided through a KiVa program, developed at the University of Turku in Finland with funding from the Finnish Ministry of Education and Culture (http://www.kivaprogram.net/program). KiVa is an innovative evidence-based anti-bullying program which has been developed using cutting-edge research on bullying and its mechanisms and focuses on prevention, intervention and monitoring.</p>

4.2	The effects of the KiVa anti-bullying program have been evaluated in studies both based on data collected and analysed internally and independent data collected by the National Institute for Health and Welfare indicates that bullying and victimization have decreased in Finland since the broad rollout of the KiVa program. KiVa is also being evaluated in several other countries including the Netherlands, Estonia, Italy, and Wales are emerging, showing that KiVa is effective outside of Finland as well.
5	Expression of interest in the further submission of evidence
5.1	Early Years welcomes this opportunity to submit written evidence. The organisation would also be willing to further participate in the process by giving oral evidence to the Committee on anything contained in this submission.

Addressing Bullying in Schools Bill (Bill 71/11-16)

Equality Commission Evidence Submission (Committee Stage)

Key point briefing:

We welcome progress in the implementation of the Bill, which has the potential to make significant improvements in preventing and addressing bullying in schools.

We are keen to ensure that the protection provided by the new legislation has an impact upon Section 75, groups including groups such as gay or lesbian pupils, Trans pupils, pupils with SEN or a disability and BME pupils including Irish Travellers

Definition

- We support the proposal to introduce a common definition of bullying as it will ensure a more consistent approach across schools to tackling bullying.
- We note however, the importance of provisions being made to take account of more than 'intentional' and 'repeated' acts, and note language from the anti-discrimination laws regarding any acts which have the "*purpose or effect of*".

Duty to Secure Measures to Prevent

- We welcome the duty on Boards of Governors to secure measures to prevent bullying.
- We suggest however that a focus on bullying "involving" pupils registered at a school may provide wider coverage (e.g. inter school) than the current focus on bullying "among pupils" registered at the school.
- We recommend that the provisions for review of measures include a provision for a review after a specified period, to ensure the effectiveness of measures.
- We stress the importance of Schools going beyond providing copies of a 'written statement of measures' to actually promoting awareness of the existence, content and intent of the policy and procedure within the schools; and respective roles, responsibilities and expected behaviours
- We recommend that in support of the policy-making role of Boards of Governors, that the Department provides guidance on this role and that school management bodies provide training to facilitate effective implementation.
- We recommend that the review of measures produced by Boards of Governors to tackle bullying, should be time bound, to provide certainty and support the effectiveness of the legislation.

Duty to Record Incidents

- The Commission supports the Department's proposal to introduce a requirement for all grant-aided schools to centrally record complaints of bullying behaviour, including motivating factors behind the bullying and outcomes.
- We suggest the recording of motivating factors should comprise a primary factor and associated ones, to allow coverage of multiple identities.
- We note that the list of 'Motivations' set out in 3(3) moves beyond the broader definition of bullying set out in 1(1). The Department may wish to explicitly clarify, via the Bill or associated Guidance, that the definition in 1(1) covers groups and motivations wider than the indicative list set out at 3(3).
- In relation to categorisation of the motivating factors, we suggest that consideration is given to the inclusion of:
 - Community background.
 - Dependents
 - Gender identity (rather than gender reassignment).
 - That the Race heading also explicitly includes Roma and Irish Travellers.
- We also note the potential to include wider categories such as: Asylum seeker; refugee; free school meal entitlement; and social class.
- Finally, we note that the Bill may benefit from the inclusion of review provisions to ensure the effectiveness of the legislation, with a review scheduled to occur after a fixed period (e.g. 5 years)



Addressing Bullying in Schools Bill (Bill 71/11-16)

Equality Commission Evidence Submission (Committee Stage)

Introduction

The Commission welcomes progress in the implementation of the Act, which has the potential to make significant improvements in preventing and addressing bullying in schools.

The need to tackle the high incidence of prejudice based bullying, both within schools and the wider community is a key challenge for Government and has been recognised as such by the international treaty bodies, such as UNCRC Committee, CEDAW Committee an CERD Committee and the Advisory Committee on the Framework Convention on National Minorities. Findings from 2012 research supported by the Commission noted that whilst all schools were required to have an anti-bullying policy in place, it appeared that information on the content of each policy (for example, the range and types of bullying covered) and the number of bullying incidents recorded under each policy was not routinely collected or considered.¹

As highlighted in our recent draft statement on Key Inequalities in Education², a number of equality groups are more vulnerable to bullying, or more likely to be bullied, in schools, including: Trans pupils, minority ethnic students, students with SEN or a disability, and students with same sex attraction. For example,

- the 2013 Grasping the Nettle³ report found that transphobic bullying is a significant problem in schools settings and: ‘such experiences left young people feeling profoundly isolated to the extent that they suffered depression, self harmed and had suicidal thoughts’. Research by Whittle et al (2007) on transphobic bullying in Great Britain found that 64% of young Trans men and 44% of young Trans women experience harassment or bullying at school.
- Minority ethnic students report racist bullying in school and research has noted the impacts on academic success⁴. Research from Queen’s University Belfast in 2013 found that the most negative experiences of education were encountered by Irish Traveller children⁵. Research by

¹ ECNI 2012 [Indicators of Equality and Good Relations in Education](#)

² [ECNI 2015 Draft Statement on Key Inequalities in Education](#)

³ McBride, RS 2013 [Grasping the Nettle: The Experiences of Gender Variant Children and Transgender Youth Living in Northern Ireland](#), Belfast: Institute for Conflict Research

⁴ RSM McClure Watters (2011) [The Nature and Extent of Pupil Bullying in Schools in the North of Ireland](#)

⁵ Biggart, A. et al. (2013) [A need to belong?: The prevalence of experiences of belonging and exclusion in school among minority ethnic children living in the 'White hinterlands'](#),

NICEM⁶ (2011) suggested that a barrier to addressing bullying in schools is that schools tend to lack knowledge of how to effectively confront the issue of racist bullying and may in some cases have difficulty acknowledging that a problem exists.

- DE research (2010) on the nature and extent of bullying in Northern Ireland Schools found that ‘there is evidence that disabled children and young people are more vulnerable to bullying’⁷. A report by the ELBs (2010) also indicates that there is a clear link between the incidence of bullying and SEN⁸.
- The limited quantitative data available, which reflects findings within literature, and from qualitative data, demonstrates that young people who report same sex attraction are more likely to be bullied in school than their peers who report opposite sex attraction only. Research by Queen’s University⁹ (2013) highlights that there appears to be reluctance by schools in Northern Ireland generally to address homophobic bullying with the same rigour as other forms of bullying.

We are keen to ensure that the protection provided by the new legislation has an impact upon Section 75, groups including groups such as gay or lesbian pupils, Trans pupils, pupils with SEN or a disability and BME pupils including Irish Travellers.¹⁰ Prejudice-based bullying at school can blight the lives of many young people, negatively affecting attendance, attainment and having a long-term impact on their life chances. We are of the view that identity based bullying will be most effective if it is dealt with in a range of ways throughout the school (‘a whole school approach’). This should include addressing and exploring prejudicial attitudes and identifying issues proactively through the curriculum in an age appropriate way.

Our comments below follow the order as set out in the Bill, and reaffirm where relevant our consultation response from February 2015¹¹. We note that a number of recommendations made in our response to the Consultation have not been adopted into the Bill and so include relevant comments here also.

⁶ NICEM (2011) [Promoting racial equality in NI post primary schools](#),

⁷ RSM McClure Watters (2011) [The Nature and Extent of Pupil Bullying in Schools in the North of Ireland](#)

⁸ Northern Ireland Education and Library Boards (2010) [It’s Good to Listen – Experiences of Pupils with Special Educational Needs](#)

⁹ Queen’s University Belfast (2013) [Education reform in Northern Ireland: A Human Rights Review](#)

¹⁰ [Burns et al 2015 Education Inequalities in Northern Ireland](#)

¹¹ [ECNI 2015 Response to Consultation on 'Addressing Bullying in Schools'](#)

<i>Text from the Bill</i>	<i>Equality Commission comment</i>
<p>Definition of “bullying”</p> <p>1.—(1) In this Act “bullying” includes—</p> <p>(a) the repeated use of a verbal, written or electronic communication or a physical act (or a combination of those),</p> <p>(b) by a pupil or a group of pupils,</p> <p>(c) against another pupil or group of pupils,</p> <p>(d) with the intention of causing physical or emotional harm to that pupil or group of pupils.</p> <p>(2) For the purposes of subsection (1), “act” includes “omission”</p>	<ol style="list-style-type: none"> 1. We support the proposal to introduce a common definition of bullying as it will ensure a more consistent approach across schools to tackling bullying. (Para 3.1 of ECNI response to consultation) 2. We note that it is proposed that bullying is to be defined as ‘repeated’ acts or omissions and therefore isolated incidents of aggressive behaviour would not meet the definition. Pupils can experience isolated incidents of prejudice-based aggressive behaviour that, although one-off incidents, can be demeaning, humiliating and very upsetting. It is important that, if dealt with these are also accurately recorded, including the nature, motivation and outcome. We recommend that provisions are made to ensure these are dealt with, either via this Bill, or via means such as the school’s discipline policy (as appropriate). (Para 3.9 and 3.10 of ECNI response to consultation) 3. Whilst we note that it is also proposed that the definition of bullying should only cover ‘intentional’ acts or omissions, consideration should be given to encouraging schools to proactively addressing wider acts that can cause harm, fear or distress to pupils covered by the Section 75 groups. For example, pupils may use homophobic or disabilist terms without the intention of causing harm or distress, or realising that their comments are inappropriate, but which cause distress to the recipient of the comments (Para 3.11 of ECNI response to consultation) 4. We draw attention to the approach used in anti-discrimination legislation (for example Article 6A of the Sex Discrimination (NI) Order 1976) which includes a focus on acts which have the “purpose or effect of” (our

	<p>emphasis) violating dignity.</p>
<p>Duty of Board of Governors to secure measures to prevent bullying</p> <p>2(1) The Board of Governors of a grant-aided school must —</p> <p>(a) ensure that policies designed to prevent bullying among pupils registered at the school are pursued at the school;</p> <p>(b) determine the measures to be taken at the school (whether by the Board of Governors, the staff of the school or other persons) with a view to preventing bullying involving registered pupils at the school—</p> <p>(i) on the premises of the school during the school day;</p> <p>(ii) while travelling to or from the school during the school term; or</p> <p>(iii) while the pupil is in the lawful control or charge of a member of the staff of the school;</p> <p>(c) review those measures—</p> <p>(i) from time to time; and</p> <p>(ii) (without prejudice to sub-paragraph (i)) at such times as the Department may direct;</p> <p>(d) before determining or revising those</p>	<p>5. We welcome the duty on the Board of Governors to secure measures to prevent bullying.</p> <p>6. We note that S2(1)(a) refers to bullying “<i>among</i> pupils” registered at the school (our emphasis). We suggest that the wording at S2(1)(b) bullying “<i>involving ...</i> pupils” registered at the school (our emphasis) is used to broaden the scope (and/or make clear the focus) of the legislation as including acts against pupils from other institutions.</p> <p>7. We recommend that a review also occurs after a specified period (either via specification in this Bill, or direction from the Department) to ensure the effectiveness of measures and support the implementation of the legislation</p>

<p>measures, consult (in such manner as appears to it to be appropriate) the principal and the registered pupils at the school and the parents of those pupils</p> <p>(e) in determining or reviewing those measures, have due regard to any guidance given by the Department;</p> <p>(f) prepare a written statement of such measures and secure that—</p> <p>(i) a copy of that statement is given or otherwise made available, free of charge and in such form as the Board of Governors considers appropriate, to the parents of all registered pupils at the school and to the staff of the school; and</p> <p>(ii) copies of the statement are available for</p>	<p>8. We suggest that Section 2(e) (or similar) could mirror the format of Section 3(4) in relation to conveying the power on the Department to publish guidance as to how a Board of Governors is to comply with the duties set out under this section of the Bill.</p> <p>9. It is recommended that the supplementary guidance which the Department intends to produce, provides specific guidance to schools, including Governors and the senior management team on the role they will play. (Para 5.4 of ECNI response to consultation)</p> <p>10. We also recommended that this guidance encourages schools to consider the views of pupils’ parents, carers and staff, as well as Section 75 groups, when implementing, monitoring and reviewing bullying policies and practices. (Para 4.12 of ECNI response to consultation)</p> <p>11. We recommend that in support of the policy making role of Boards of Governors, the Department provides guidance on this role and school management bodies provide training to facilitate effective implementation.</p> <p>12. We stress the importance of promoting awareness of the existence, content and intent of the policy and procedure within the schools; and respective roles, responsibilities and expected behaviours (Para 5.9 of ECNI response to consultation)</p>
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<p>inspection at the school at all reasonable times, free of charge and in such form as the Board of Governors considers appropriate; and</p> <p>(g) secure that such measures are taken</p> <p>(2) Directions under subsection (1)(c)(ii) may be given— (a) in relation to grant-aided schools generally; (b) in relation to a class or description of grant-aided school; or (c) in relation to any particular grant-aided school or schools.</p> <p>(3) In Article 3(3)(a)(ii) of the Education (Northern Ireland) Order 1998 (duty of the principal to determine measures) omit the words “and, in particular, preventing all forms of bullying among pupils”.</p>	<p>13. We are of the view that identity based bullying will be most effective if it is dealt with in a range of ways throughout the school (a ‘whole school approach’). This should include addressing and exploring prejudicial attitudes and identifying issues pro-actively through the curriculum in an age-appropriate way. (Para 5.11 of ECNI Response to consultation)</p>
<p>Duty to keep a record of incidents of bullying</p> <p>3.(1) The Board of Governors of a grant-aided school must ensure that a record is kept of all incidents or alleged incidents of bullying involving</p>	<p>14. The Commission supports the Department’s proposal to introduce a requirement for all grant-aided schools to centrally record complaints of bullying behaviour, including motivating factors behind the bullying and outcomes. (Para 4.1 of ECNI response to consultation)</p>

<p>a registered pupil at the school that occur —</p> <ul style="list-style-type: none"> (a) on the premises of the school during the school day; (b) while travelling to or from the school during the school term; or (c) while the pupil is in the lawful control or charge of a member of the staff of the school. <p>(2) A record under subsection (1) must—</p> <ul style="list-style-type: none"> (a) state what, from all of the circumstances, appears to be the motivation of the incident; and (b) include information about how the incident was addressed. <p>(3) For the purposes of subsection (2)(a), motivation may include—</p> <ul style="list-style-type: none"> (a) age; (b) disability; (c) gender reassignment; (d) marriage; (e) political opinion; (f) pregnancy; (g) race; (h) religion or belief; (i) sex; (j) sexual orientation. 	<p>15. The Commission is of the view that recording incidents of bullying will assist the Department and schools in understanding the magnitude, motivations and impact of bullying and to track trends over time and design interventions and policies. (Para 4.12 of ECNI response to consultation)</p> <p>16. At Section 3(2)(a) we suggest the recording should comprise a primary motivating factor and any other associated motivating factors, to ensure consideration of multiple identities.</p> <p>17. The Commission welcomes Section 3(3) which lists the motivating basis for prejudice-based bullying. The Commission has to date, for example advocated that the 'Department considers placing a duty on schools to record disaggregated data on incidents of racist bullying in order to improve their understanding of, and responses to it.¹² The Commission considers that such information is crucial since without this baseline data it is impossible for schools to either know the extent of prejudice-based bullying or be able to monitor the impact of their interventions.</p> <p>18. We note that the Categories set out in 3(3) moves beyond the broader definition of bullying set out in 1(1). The Department may wish to explicitly clarify, via the Bill or associated Guidance, that the definition in 1(1) covers groups and motivations wider than the indicative list set out at 3(3).</p>
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¹² ECNI, May 2014, [Promoting Racial Equality – Priorities and Recommendations](#),

	<p>19. We note that the motivations set out in 3(3) approximate, but do not replicate Section 75 categories. We make the following comments:</p> <p>20. Consideration could be given to the inclusion of ‘community background’ in the list of motivations. Firstly, the motivation may not be expressly linked to an actual ‘religious belief’ or ‘political opinion’, but actually the community background of the individual. Secondly, in some cases, there may be potential difficulties in ascribing a religious belief or political opinion to children and young people. Further, in light of the increasing numbers of people from a Protestant community background describing themselves as having no religious belief, this terminology may be more reflective of identity in our society¹³.</p> <p>21. We note the inclusion of pregnancy, but not of having ‘dependents’. This would ensure coverage of young parents and carers.</p> <p>22. In light of the potentially early stage of transition of pupils, it is suggested that the term ‘gender identity’ may be more fitting than ‘gender reassignment’. Gender reassignment is defined in the Sex Discrimination (NI) Order 1976, as amended as: ‘<i>a process which is undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex, and includes any part of such a process.</i>’¹⁴ This definition may not include Trans pupils who may be subject to bullying as a result of their gender identity.</p> <p>23. We recommended that the race category is further broken down by Roma and Irish Traveller. Consideration could also be given to further breakdowns as appropriate.</p> <p>24. Although the list at Section 3(3) is not exhaustive, we suggest that this is made clearer. We further suggest that the list of motivations could include</p>
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¹³ [Shuttleworth and Doebler \(2014\) Religion and national identity in Northern Ireland.](#)

¹⁴ Article 2(2)

<p>(4)The Department may from time to time publish guidance as to how a Board of Governors is to comply with the duty to keep a record under this section; and in complying with the duty under this section a Board of Governors must have due regard to any guidance for the time being published under this subsection.</p> <p>(5) In subsection (3)— “disability” has the same meaning as in the Disability Discrimination Act 1995; “gender reassignment” has the same meaning as in the Sex Discrimination (Northern Ireland) Order 1976.</p>	<p>a wider set of indicative motivations, such as asylum seeker; refugee; free school meal entitlement; and social class.</p> <p>25. We reiterate our recommendation that any duty placed on schools should include appropriate safeguards to encourage schools to be open about reporting incidents of bullying. (Para 4.12 of ECNI response to consultation)</p> <p>26. We note that the Bill does not explicitly include detail as to how schools report to the Department on the incidents of bullying that they have recorded (or how they will use the information generated from the IT system), or how their anti-bullying policy has been implemented. Guidance as to how this is intended to operate, how the Department will ensure compliance and publish the information would be welcome.</p>
<p>Interpretation</p> <p>4.(1) In this Act— “the Department” means the Department of Education;</p> <p>“pupil”, when used without qualification, means a person of any age for whom education is provided under the Education Orders except a</p>	

<p>person for whom education is provided by a nursery school.</p> <p>(2) Other words or expressions which are defined in Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 have the same meaning in this Act as in that Order.</p> <p>Short title and commencement</p> <p>5.—(1) This Act may be cited as the Addressing Bullying in Schools Act (Northern Ireland) 2015.</p> <p>(2) This section comes into operation on the day after this Act receives Royal Assent.</p> <p>(3) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.</p>	<p>27. The Bill may benefit from the inclusion of review provisions to ensure the effectiveness of the legislation, with a review scheduled to occur after a fixed period (e.g. 5 years)</p>
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Mencap in Northern Ireland Response to Addressing Bullying in School, Committee Stage.

Mencap is the leading learning disability charity in Northern Ireland and works alongside children, young people and adults with a learning disability and their families to ensure their voice is heard. We provide a range of services including information and advocacy, employment, housing and personal support information, to people with a learning disability and their families at key times of their life.

It is estimated that 2% of the population – around 33,000 people in Northern Ireland have a learning disability. The Bamford Review highlighted the myriad inequalities experienced by people with a learning disability and their families in accessing and benefiting from the same opportunities as others in their community.¹

Our studies have shown that a concerning 8/10 children and young people with learning disabilities are bullied at school, on public transport, in the park and in their youth clubs because of their learning disability. 4/10 children noted it did not improve when they reported the bullying to an adult. Bullying can affect all areas of a person's life in a variety of different forms including: physical, mental and cyber. It is worth noting bullying is not only experienced by a child or young person with a learning disability, it can also be experienced by their siblings and family.²

Mencap in Northern Ireland would find it helpful if the Bill or its associated regulations and guidance specifically identified children and young people with a learning disability as at greater risk of bullying. It would also be helpful if schools' policies and procedures were required to specifically address instances of bullying linked to learning disability and programmes for addressing these.

We note that the Bill does not specifically consider preventative strategies for building better understanding and relationships for children who are more at risk of bullying. Mencap has run a very effective self-esteem and anti-bullying programme with a number of schools in Northern Ireland called "Super Me", [as part of our Young People Together project](#).³ This programme is suitable for use with all children and seeks to build self-esteem in the broadest sense while also addressing specific differences that may be linked to bullying. It also builds an appreciation of diversity among children and communities and in doing so addresses many of the root causes of bullying. We have delivered this programme in 20 [schools](#) across Northern Ireland to over 1,300 pupils.

¹ *Equal Lives Review of Mental Health and Learning Disability DHSSPS 2005*

² Mencap: [Stop It Don't Stick It Stop It](#) (2007)

³ *Super Me: External Evaluation of [Early Years Programme Young People Together project](#) (2016) Unpublished*

| This programme has included both primary and post primary ~~and~~ mainstream and special schools. It has had very positive feedback from both Principals and teachers. It is important that the Department of Education makes available resources associated with the Bill which will allow schools to effectively address bullying by availing of such programmes. Mencap would be delighted to share our experience of the “Super Me” preventative programme with them if it would assist in their consideration of the Bill.

| Mencap can also provide expertise, particularly in informing policies and in creating guidance for Schools and Boards s of Governors in Northern Ireland.

Mencap in Northern Ireland welcomes the opportunity to comment on the above Bill and looks forward to the outcome of the Committee Stage.

If you require any further comments or information, please do not hesitate to contact us.

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NAHT (NI) response Education Committee call for evidence: Addressing Bullying in Schools Bill

Closing date: Tuesday 5th January 2016

Introduction

NAHT (NI) welcomes the opportunity to respond to this call for evidence. In addition to our written response, we would be happy to provide oral evidence to the Committee.

NAHT is an independent trade union and professional association with 29,000 members in England, Wales and Northern Ireland. Members include principals, vice principals, assistant head teachers, bursars and school business managers. They hold leadership positions in early years, primary, special, secondary and independent schools, sixth form colleges, outdoor education centres, pupil referral units, social service establishments and other education settings. The membership represents 40 per cent of secondary and 85 per cent of primary schools in England, Wales and Northern Ireland. Since September 2014, we also represent middle leaders in schools through NAHT Edge. This places the NAHT in an excellent position to provide an informed practitioner position which covers the viewpoint of leaders across all phases of education.

NAHT (NI) welcomes the proposal to bring forward new initiatives that will support school leaders tackling bullying in schools. We have, however, a number of concerns regarding the proposed legislation as outlined below. This response follows concerns raised in our February 2015 response to the "DENI Addressing Bullying in Schools Consultation". Currently, responsibility lies with the Principal in the first instance to ensure that a school's discipline policy is followed. Therefore, it is essential that the views contained in this response are carefully considered.

From the outset, it must be acknowledged that much good practice exists within schools in Northern Ireland and that the development and implementation of such initiatives has been driven by school leaders. Many schools have stand-alone anti-bullying policies in addition to their discipline policies. While such initiatives should be highly commended,

it is recognised that bullying continues to be a persistent problem within schools for a variety of complex reasons.

Tackling bullying must be a government priority. Every child must feel safe and secure in their school environment in order to get the best start in life. School leaders must be supported in developing tailored initiatives to consider the needs of their schools as this is addressed. It must be acknowledged that considering the needs of children and young people goes beyond the remit of individual schools. NAHT(NI) believes all stakeholders concerned with the wellbeing and development of children must work collaboratively to address bullying and, in this respect, tackling bullying is beyond the limited scope of the proposed legislation.

NAHT (NI) wishes to provide comment on each of the following clauses of the Bill as outlined below;

Clause 1: Definition of Bullying

1. Provision of a common definition of bullying

a. Concerns in respect of placing the proposed definition on a statutory footing

NAHT (NI) welcomes the development of a definition of bullying yet we are concerned at potential unintended consequences of placing such a definition on a statutory footing. Currently, there is not a common definition of bullying, however, it is recognised that schools do have legally defined responsibilities. Greater clarity would be welcomed in respect of these responsibilities. Schools must be provided with guidance in the form of a clear statement of responsibilities incorporating a definition of bullying. Such a definition will assist school leaders in ensuring the rights of all children are upheld in conjunction with obligations.¹

In administering such a definition, consideration should be given to the fact that different schools have different circumstances. While a definition is welcome, uniformly holding each school to account under the same legal standard will not reflect the different challenges faced by schools throughout Northern Ireland.

In particular, we are concerned that applying a mainstream bullying definition to a special school may have unintended detrimental consequences. Many special school leaders and staff tailor specialist bullying policies to reflect the highly complex needs of

¹ contained within the United Nations Convention on the Rights of the Child (UNCRC) notably Article 28 which states that children have a right to an education and that school discipline must be administered 'in a manner consistent with the child's human dignity'.

the children within their often greatly diverse educational setting. All stakeholders involved with pupil wellbeing, including governors, parents and staff, must work collaboratively to address bullying. Therefore, tackling bullying in such a content is beyond the limited scope of the proposed legislation and a uniform statutory definition. For a more detailed explanation of the acute difficulties in applying a statutory definition to a special school setting, NAHT would endorse the submission made by Tor Bank School to this consultation.

In addition, we are concerned that putting this definition on a statutory footing may have unintended consequences for vulnerable learners in any school setting that have above average rates of behavioural issues and disadvantage. Such schools may have excellent policies and procedures and staff initiatives in place, yet barriers and factors beyond the control of the school may mean the school will struggle to fulfil the legislative requirements. This may have implications with regard to inspection, thus damaging staff morale and inhibiting tailored initiatives.

It must be recognised that a definition alone cannot prevent bullying: such a new policy/legislative change must be supported by guidance and adequate resourcing as part of a collaborative, inter-departmental strategy. As it is the intention of the Assembly to develop a statutory definition, we have commented in this response as to how this definition could be strengthened. We would, however, recommend that further consultation and piloting of the definition in schools is undertaken before it is placed on a statutory footing.

b. Concerns in respect of the content of the draft definition:

- i) Omission of “Power imbalance” from the definition;

International best practice recognises that there are three key defining criteria for bullying, namely repetition, intent and power imbalance.² Whilst the proposed definition of the Bill does include reference to intent and repetition, (referred to below) it does not reference the key element of a power imbalance. We wish to know the rationale for this highly concerning omission. Schools and school leaders possess a great deal of experience and expertise with regard to pupil relations and are capable of distinguishing between bullying (where there is an imbalance of power) and deliberate, repeated aggressive behaviour between equals (e.g. playground fights). Those who are closest to the children are often best placed to identify situations. To omit such a crucial aspect of the definition will have detrimental consequences and will undoubtedly lead to schools having to record many more (non-bullying) incidents than necessary, thus inflating the statistics.

- ii) Clause 1. (1) a) use of “repeated”

² See footnote 17 of Assembly research paper NIAR 612-15

We are cautious that the Bill identifies repetition as a key criterion for bullying. Whilst repetition can be a crucial element in many instances of bullying, it must be acknowledged that the actions of the perpetrator are central, whether they act once or repeatedly. In order to address scenarios related to the complexity of cyberbullying, we would also recommend the committee should explore a provision to allow for single acts which may be shared repeatedly. In consideration of this, the actions and intent of the original perpetrator should remain central.

iii) Clause 1. (1) a) use of “electronic communication”

NAHT (NI) recognises that the increasing use of technology can add to the insidious nature of the problem of bullying, therefore, clear guidance on this complex area is necessary. It is beyond the scope of this legislation to adequately address all the ramifications of such a multi-faceted and legally complex emerging area. We recommend that DENI develop a separate policy and accompanying consultation process on tackling cyber-bullying. This is an area of significant concern to our members and, as such, DENI must provide clarity as a priority.

iv) Clause 1 (1) d) use of “intention”

We welcome that the definition recognises the intention to cause physical harm, whilst emotional harm may be a consequence of bullying. Further clarification as to what is meant by this is required. Accompanying guidance should give recognition of the impact of the bullying behaviour upon the victim (as it does in Scotland). This must be accounted for in initiatives leading on from the Bill.

A statutory definition incorporating intent could cause unintended detrimental consequences within a special school setting. This concept needs to be carefully applied in the context of children with behavioural and learning difficulties. For example, children with severe learning difficulties often do not “intentionally” hit out in an attempt to bully another person. A staff member with a high degree of experience and expertise who knows the child best is in the best position to be able to distinguish what is bullying as opposed to uniform application of a statutory definition.

Clause 2 : Duty of Board of Governors to secure measures to prevent bullying

As the Assembly research paper highlights, a review of the effectiveness of legislated bullying definitions in the US found that a key component of any effective law was the requirements for the development and implementation of local policy.³ We welcome that the Bill enables individual schools to continue to develop their own policy. In addition, we also welcome that this section of the legislation sets out the scope in which it operates. However, there are a number of areas in which greater clarity is required;

³ Assembly research paper NIAR 612-15

i) Clause 2 (1) b) i) use of “during the school day”

We welcome that the legislation defines the scope of the school’s responsibility as that which involves “registered pupils at the school... on the premises of the school during the school day”. In the experience of our members, parents frequently approach schools to request they deal with incidents (more frequently cyber bullying) that have happened out of school hours. Schools and school leaders cannot be responsible for what happens outside of the school day. However, school leaders do recognise that bullying can be complex and what may start outside of school can have consequences within school.

The Department must thoroughly inform parents of the remit of school responsibility. When incidents have occurred which are beyond the remit of the school, parents should be provided with guidance and means of support to ensure situations are dealt with effectively. Tackling bullying effectively requires action by all agencies with responsibility for the welfare of children. A co-ordinated, inter-agency approach must be developed with the welfare of children its central priority.

ii) Clause 2 (ii) While travelling to or from school during the school term

Schools cannot be responsible for incidents that take place during journeys over which they have no control. Greater clarity is needed in respect of this provision, including the responsibilities of transport providers.

i) Clause 2, 3 (3)a) ii: Removal of the Principal’s duty in respect of bullying

Part II of the Education (NI) Order 1998 currently affords head teachers discretion in determining measures to regulate pupil conduct on a day to day basis in line with the school’s overall scheme of management. The Education Order already provides that the Board of Governors is responsible for policies for good behaviour and discipline of pupils. While central guidance to ensure consistency of approach would be helpful, autonomy of school leaders to tackle the acute issues faced in their schools must be given. Boards of Governors cannot be on site to implement policies on a daily basis and nor should they. NAHT(NI), therefore, is concerned at the proposed shift of legal responsibility to Boards of Governors.

The financial memorandum of the Bill states that this duty is removed in order to “prevent any conflict”. We are concerned that increased liability for voluntary boards of governors has the potential to increase conflict as opposed to preventing it. Whilst legislatively, the responsibility will lie with the governors, practically, the responsibility will lie with the school leader. Whilst governors provide an essential supportive function to schools, practically, governors are further removed from the day to day life of the school and therefore would not have the direct contact with pupils and parents that the school leader has that enables them to deal swiftly and effectively with incidents of bullying when they arise.

Whilst it may be useful to have a dedicated member of the Board of Governors with responsibility for anti-bullying policies, we would be concerned that this may be an unduly onerous burden on schools with smaller boards. Greater responsibilities on governors will lead to greater training needs which could potentially lead to difficulties in recruiting new governors. NAHT (NI) would support an initiative, where appropriate, to incorporate the role of a bullying policy coordinator into the existing Board of Governors child protection officer role. This would ensure that knowledge and expertise is developed within the Board of Governors without over-burdening with limited capacity.

Clause 3: Duty to keep a record of incidents of bullying

i) Clause 3 (1) & (2) Keeping a record of incidents

NAHT (NI) recognises the importance and value of centrally recording complaints of bullying. We have, however, concerns regarding the appropriate implementation of this initiative that could have the potential for duplication of existing practice and the impact on workload generally. In addition, we are also concerned at the potential development of a misleading “league table of bullying” which may occur as a consequence of the publication of statistics from a central record.

A key aspect of effective school leadership is the ability to handle difficult situations: handling accusations of bullying from parents and pupils requires strong interpersonal skills. When every aspect of a conversation has to be recorded as a mandatory requirement with a high level of detail, interpersonal diplomacy may become limited. This will hinder the ability of educational professionals to avert situations before they escalate. As the assembly research paper highlights, effective recording of incidents is usually dealt with by policy, not legislation, as a flexible approach is required in order to be effective, as opposed to rigorous bureaucratic monitoring.

While recording incidents is important, whether the recording happens during or after a meeting to address the incident is important. It is also essential to consider the level of detail required and whether duplications of recordings are likely. Head teachers and teachers already record and report on incidents of bullying through a variety of mechanisms. While in theory we welcome the development of a more efficient, concise method of recording incidents, this must not be done with the result of de-personalising the parent-teacher/pupil-teacher relationship and the introduction of an overly onerous, bureaucratic burden on an already over-stretched and under-resourced profession.

NAHT (NI) recognises that there is a clear and legitimate need for schools to record information on allegations of bullying, especially in respect of increasing litigation. Litigation can be costly and time-consuming and can result in increased stress for all parties involved. It can also delay the resolution of an incident thus compromising a child’s right to education. It should, therefore, be avoided where possible.

The recent case of Ryan Collins vs Trustees for the time being of Abbey Christian Brothers Grammar school (June 2014), found that the events in question had

“overwhelmed the principal and his staff”. In this case, the judge commented that the mother of the bullying victim in question had kept records of events that were of much higher quality than those kept by the school. The judge furthermore stated that the record-keeping efforts of the school “lacked a certain amount of structure”. Clear guidelines on how to structure and record incidents, along with adequate release time, would help to avoid such situations in future.

We recommend that an efficient, effective mechanism collating existing reporting mechanisms with robust guidelines and templates be developed. These should be created in partnership with stakeholders, including school leaders and should refer to the methods of bullying used and the motivation with any aggravating factors. Any new guidance or methodology must be piloted and all stakeholders must be consulted on its effectiveness. There should be clear steps for addressing incidents and definitions of terminology must be included in any such guidance.

Schools must be supported to promote a proactive, preventative approach as well as an efficient reactionary approach where incidents do occur. As pupils are more likely to report incidents to other pupils, we recommend that schools be supported to encourage a culture of reporting incidents. Peers could be encouraged to report if the victim feels they are unable to speak out themselves. Once again, to be effective, this requires a sensitive approach utilising staff interpersonal skills as opposed to new bureaucratic systems. Research shows that open condemnation of bullying leads to a reduction in its occurrence. Schools should be supported and resourced to develop approaches in partnership with parents, pupils and teaching and non-teaching staff to tackle issues holistically and foster an overall healthy school environment.

Clause 3 (2) & (4) The recording of sensitive data

Bullying records may contain sensitive data in respect of data protection and equality and human rights law. There must be clear guidance on the manner in which data should be kept to comply with requirements, including its retention and destruction. Guidance must be provided regarding the recording of witness statements and evidence in respect of incidents. The complications of recording such information regarding cyberbullying must also be considered.

Given the lack of clarity concerning this aspect of the Bill, we would recommend that Clause 3, article 4 be strengthened to compel DENI to publish guidance within a specified time scale.

ii) Clause 3) (3) motivation for bullying as a perceived characteristic of the victim

We welcome that this article gives recognition to the fact that bullying may be motivated or aggravated by a perceived characteristic of the victim. However, there should be recognition within the legislation that there may be additional aggravating factors beyond the scope of those listed. A power imbalance can relate to such factors along with physical strength, virtue of numbers, appearance, academic performance and

popularity within a peer group.⁴ There should be explicit mention of guidance in relation to section 75 categories including homophobic, racist, sexist, transphobic, sectarian and disability related bullying and bullying that may arise through having dependents. Beyond the scope of section 75, the guidance should incorporate bullying that may arise from a child's socio-economic status and bullying that may arise through association or being "looked after". There should also be recognition of the fact that children with special educational needs are often more vulnerable in such situations.

We recommend that the department develop clear supporting guidance. Such guidance should give explicit mention to the fact that the primary motivation for bullying behaviour can often be prejudice or discrimination on the basis of actual or perceived difference with respect to, but not limited to, the various groups listed within Section 75 of the Northern Ireland Act 1998.

Provision and cost of adequate support and training in respect of the Bill

The development of training courses to be rolled out identically across schools will not deal adequately with the acute bullying scenarios within each individual school. Expertise exists amongst school leaders in tackling and identifying bullying. School leaders must be given the autonomy, resources and support to tailor the most effective approach to meet the needs of their individual school.

Any new initiatives must be adequately resourced to ensure school staff and Boards of Governors are adequately equipped to deliver its implementation. The financial memorandum of the Bill states there will be additional costs involved with the new Bill in adapting and maintaining IT systems to record incidents; there is an estimate of £40k for this work which will be sought from existing 2015/16 resources.

Firstly, we wish to know, in the current overstretched budgetary climate, from where within the existing budget allocation this money will come from. With school budgets already overstretched, funding for new CPD initiatives to meet the needs of legislative duties must come from centralised funds. At the moment, 1% of the overall EA budget is allocated to teacher professional development.⁵ We want schools to have the funding option to either buy in the centralised School Improvement Services or to be supported, funded and empowered to find and develop CPD that best meets the needs of their school. Resourcing schools adequately is vital if bullying is to be effectively addressed.

Recent survey based research carried out by the NAHT(NI) has highlighted that a lack of investment in professional development for teachers is damaging the profession. Over half of respondents rated Education Authority support as poor with the majority stating increased CPD opportunities, with corresponding release time to undertake development opportunities, were needed. We are aware that DE intends to publish their

⁴ Footnote 3 in Assembly research paper NIAR 612-15

⁵ Gavin Boyd presentation at NAHT (NI) annual conference May 2015

strategy for “Teacher Professional Learning” imminently. This strategy must include effective means of supporting professional learning for teachers and school leaders. The complement of over 300 curriculum support officers has been reduced to 47 throughout Northern Ireland. We need to know what support mechanisms will be put in place to ensure schools can fulfil any new policy or legislated requirements.

Secondly, NAHT(NI) is highly concerned that warnings from the contractor delivering the IT system for monitoring, that such costs needed to be reviewed and are not accounted for, therefore, implying that the likely costs could be much higher. This figure should be reviewed and a thorough cost analysis undertaken before any legislative changes can occur.

In addition, there are other under considered resourcing issues in relation to the Bill, namely the periodic review of the school’s measures to prevent bullying, the consultation with the principal, parents and pupils and dissemination of information on bullying prevention measures to all relevant parties. A cost analysis must also be considered here. The current economic climate means that school budgets are already stretched to the limit. Without additional specified resources, schools cannot be expected to absorb the costs within existing funds.

Other areas of concern

NAHT (NI) is concerned at other areas not raised in the Bill such as teacher-pupil, pupil-teacher and teacher-staff bullying. We would agree that such issues may be beyond the scope of the current Bill but we assert that these are matters which must be addressed more fully. Wider discussion and consultation is required with stakeholders to ascertain what form this consultation should take.

Conclusion

Overall, we are concerned that if legislation is implemented without consideration of all ramifications and consequences, it will be of grave detriment to all staff, pupils, parents and stakeholders and may serve to exacerbate the serious problem of bullying. Schools and school leaders must be assured that adequate resources and support will be provided so they can implement any new legislative requirements. Implementation must be realistic and schools must be supported to meet requirements and ensure they are able to perform with regard to the on-going ETI inspection process.

In finding appropriate solutions, the Department must dedicate resources to develop detailed guidance and provide appropriate support, resources and assistance to school leaders to enable them to develop autonomous, tailored solutions to best address the acute needs of their pupils.

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NAHT(NI) Summary:

Committee for Education call for evidence: Addressing Bullying in Schools Bill

In addition to our full submission, please see below, a summary of our key points which we will address in our oral statement ;

1. We are concerned at the potential unintended consequences of placing a definition of bullying on a statutory footing given the complexity of the issue, and the different challenges faced by schools throughout Northern Ireland.
2. We are concerned that the proposal does not adequately acknowledge that addressing the needs of children and young people goes beyond the remit of individual schools. NAHT(NI) believes all stakeholders concerned with the wellbeing and development of children (including parents) must work collaboratively to address bullying.
3. We are concerned that the proposed definition does not incorporate international best practice by giving recognition to the key element of a power imbalance.
4. Whilst the Bill does address the issue of bullying by electronic communication, this legislation fails to adequately address all the ramifications of such a multi-faceted and legally complex emerging area. NAHT (NI) recommends that DENI develops a separate policy and accompanying consultation process to tackle cyber-bullying.
5. The Bill removes the Principal's duty to determine measures to prevent bullying as per the Education Order and confers the duty upon the Board Governors. We are concerned at the impact of increased liability for voluntary boards of governors. The Explanatory and Financial memorandum states that this duty has been removed "To prevent any conflict", it is not clear what is meant by this statement.
6. The Bill confers a duty to keep a record of incidents of bullying. NAHT (NI) recognises the importance and value of recording complaints, however, we have concerns regarding the appropriate implementation of this duty and the impact on workload and limited resources.
7. In addition, we are also concerned at the potential development of a misleading "league table of bullying" which may arise as a consequence of the publication of statistics from a central record. The creation of such a record would clearly be unacceptable as it would not reflect the widely varying circumstances of every school.
8. Lastly, we are concerned at resourcing issues in relation to the Bill. A cost analysis must also be considered. The current economic climate means that school budgets are already stretched to the limit. Without additional, specified resources, schools cannot be expected to absorb the costs of implementing this Bill within existing funds.

Addressing Bullying in Schools Bill – proposed amendment by NAHT

Clause 4, page 3, line 19, at end insert:

“school”, means any setting that teaches children of compulsory school age, excluding special schools and pupil referral units (PRUs)

Explanation

The amendment would ensure that special schools and PRUs are excluded from the remit of the Bill. This would allow experienced staff members to distinguish what is bullying in such settings, rather than relying on a blanket statutory definition.

Written Evidence to the Committee for Education on the Addressing Bullying in Schools Bill

5th January 2016

Executive Summary

Through ratification of the UNCRC, the Government is under an obligation to ensure that all legislative and policy developments are in compliance with the Convention. The UNCRC principles require the Government to ensure that children are not discriminated against - Article 2, their best interests are upheld - Article 3, they develop to their maximum potential - Article 6 and they are able to meaningfully participate in all aspects of their lives - Article 12. Articles 28 and 29 are the two main articles of the UNCRC which address children's rights in education. In addition, Article 19 places an obligation on the Government to take all measures to protect the child from all forms violence, injury or abuse; Article 36 protects the child against exploitation prejudicial; Article 37 provides for protection for the child from torture or cruel, inhuman or degrading treatment and Article 39 obliges the Government to take measures to promote the recovery and reintegration of a child victim of any form of cruel, inhuman or degrading treatment or punishment. NICCY therefore wishes to see the Addressing Bullying in Schools Bill explicitly underpinned and informed by the relevant articles of the UNCRC to ensure that all children have access to an education which develops their personalities, talents and abilities to enable them to live a full and satisfying life within society in line with the UNCRC.

The introduction of a statutory definition of bullying at clause 1 is welcome in that it should provide clarity and allow for accurate recording of bullying incidents while supporting schools to adopt a consistent approach in their efforts to prevent and tackle bullying. The definition describes bullying as a repeated act, which is generally accepted, however NICCY urges that schools do not dismiss 'one-off' incidents of bullying behaviour, but rather consider the potential for reoccurrence, taking appropriate preventative steps and effectively monitoring the situation. NICCY suggests that the Department considers how the potential for the repetition of bullying incidents may be accommodated in the statutory definition of bullying.

The proposed definition of bullying also refers to the intention of causing harm (clause 1(d)). There is no reference in the statutory definition to the perception of the victim. NICCY wishes to see the inclusion of the perception of the victim in the statutory definition of bullying.

NICCY is concerned that the proposed scope of bullying in the Bill at clause 1 will not offer protection for all children who are victims of bullying as it relates only to acts or omissions carried out by one pupil or a group of pupils on another pupil or group of pupils. It does not reflect the experience of children in schools who may experience bullying by adults and/or teachers. NICCY recommends that the proposed statutory definition being widened to include all forms of bullying suffered by all children in schools. All children who are being bullied in school should have the right to have their experience recognised as bullying and addressed in a proactive and comprehensive manner under the Addressing Bullying in Schools Bill.

NICCY welcomes the introduction of the legal requirement at clause 2 for Boards of Governors to be responsible for schools' anti-bullying policies and procedures. However, Governors are appointed in a voluntary capacity and they already have a range of roles and responsibilities. Furthermore, bullying is a challenging issue and given the potential for parents or guardians to register complaints with regard to a school's management of a bullying incident, it may prove difficult to recruit/appoint Governors. NICCY suggests that guidance and mandatory training for Governors tasked with developing and reviewing a school's discipline and anti-bullying policies are necessary to ensure they are appropriately prepared and equipped to deal not only with policy management, but also the effective resolution of complaints. Clarity about the role of the ETI and the Education Authority in monitoring Boards of Governor's execution of their duties and responsibilities is also necessary.

NICCY has concerns about the proposed scope of the Bill at clause 2(b) as we do not believe that the proposed scope is wide enough to address all incidents of bullying. This is particularly the case with regard to cyberbullying which will most commonly not take place on school premises. While we accept that this is a complex legal area, we wish to see the Addressing Bullying in Schools Bill affording maximum protections to children and young people who are victims of bullying, whether physical, mental or through the use of technology.

NICCY welcomes the obligation on Boards of Governors at clause 3 to ensure that a record is kept of all incidents or alleged incidents of bullying, the motivation behind bullying incidents and information on how incidents were addressed. A fundamental concern with the effective operation of the Bill is that schools will continue to have 'operational freedom' in school discipline matters. NICCY suggests that further consideration is given to mandatory reporting of all incidents of bullying by schools. We also wish to see the extension of this duty to include an obligation on all school staff to report any incidents of bullying they witness to ensure that incidents of bullying are dealt with promptly and without a requirement on a child - who may be concerned about being victimised - if they report incidents of bullying to the school.

NICCY has concerns about certain groups of children and young people who are more likely to experience bullying including children and young people of different races, including newcomer children, black and minority ethnic children and Gypsy, Traveller and Roma children, children of religions other than Catholic or Protestant, children with a disability, children who are lesbian, gay, bisexual and/or transgender (LGBT), children who are looked after and children with caring responsibilities. NICCY wishes to see the Department of Education taking proactive measures with regard to these groups of children who disproportionately experience bullying. Section 75 of the Northern Ireland Act 1998 places a proactive duty on designated public authorities to have due regard to the need to promote equality of opportunity between members of the nine section 75 categories. This will require the Department putting in place proactive measures for these groups of children to ensure that they are able to fully participate in their education in recognition of the high levels of bullying these groups of young people experience.

In compliance with Article 12 of the UNCRC decisions on the development of the Bill should be informed by the views and experiences of those who will be most directly impacted i.e. children and young people. NICCY strongly advocates that the Department of Education carries out ongoing, widespread direct consultation with pupils of all ages, from every type of school in Northern Ireland in a meaningful way on the issue of bullying in schools and that their views contribute to the further development of this Bill and associated Guidance.

1.0 Introduction

The Office of the Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. The Commissioner's remit includes children and young people from birth up to 18 years, or 21 years, if the young person has a disability or is / has been in the care of social services. In carrying out her functions, the Commissioner's paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

2.0 Background and Context

NICCY welcomes the clear commitment to addressing bullying in schools through the development and introduction of the Addressing Bullying in Schools Bill. Bullying in schools is a complex children's rights issue which NICCY has been working on for a number of years. We have provided detailed advice to the Department of Education in developing the Addressing Bullying in Schools Bill¹ and met with the Minister for Education and his officials in taking this legislation forward. We also recently responded to a request for information from the Special Representative of the UN Secretary General on measures being taken by States to address violence against children and specifically on bullying and included reference to this pending legislation.

NICCY's Legal and Investigations team deals with queries and complaints from children and their parents or guardians relating to a wide range of issues, including education related matters. In 2013-2014 bullying accounted for 12 per cent of the education-related enquiries received. These were made by both pupils and teachers.²

In 2006, NICCY published a report which examined the views and experiences of children and young people in relation to the development and review of bullying policies and

¹ February 2015, <http://www.niccy.org/media/1379/niccy-response-to-addressing-bullying-in-schools-consultation-february-2015.pdf>.

² http://www.niccy.org/downloads/2014/Publications/NICCY_Annual_Casework_Report_2014_-_final.pdf

procedures in schools. The Report revealed inconsistencies in the definition of bullying employed by schools and how bullying incidents were recorded. Some schools had stand-alone policies whilst others had incorporated their anti-bullying policy into their pastoral care policy. Few schools reviewed these policies on a regular basis and pupils had limited involvement in contributing to their development.

A recent review of anti-bullying legislation, guidance to schools, effectiveness of anti-bullying policies in schools and the support available through the five Education and Library Boards carried out by the Northern Ireland Anti-Bullying Forum (NIABF) at the request of the Minister for Education found very similar issues.³ There remain significant variations in the quality of schools anti-bullying policies and procedures, inconsistencies in their application across schools and issues with regard to the expediency with which they were applied and the degree to which their systems were regularly reviewed and updated. It also found that the legislation and guidance currently aiming to address bullying in schools do not go far enough in many respects. Consequently, practice across schools is often inconsistent both in terms of the content of the anti-bullying policies and the measures taken to respond to bullying behaviour.

NICCY is acutely aware of the prevalence of bullying in schools as well as the complexity of bullying and difficulties associated with identifying, monitoring and tackling incidents. NICCY is also extremely concerned about the pervasive and damaging nature of bullying and the potential long-term impact it can have on the lives of children and young people. Recent research by the Anti-Bullying Alliance⁴ found that out of almost 1,500 young people, around two thirds had been bullied. Of those who had been bullied, 44 per cent said the experience impacted on their mental health and that they experienced issues such as anxiety, depression, self-harm and suicidal thoughts. Nearly half (46 per cent) said that being bullied has had a long-lasting effect on their self-esteem and confidence since leaving school and almost 37 per cent of those bullied said it had a negative effect on their ability to form personal relationships. However, 70 per cent of teachers who were questioned said they feel ill-equipped to support children with mental health issues related to bullying. 92 per cent of family doctors surveyed said they had received no formal training, resources or information to help them support children and young people with symptoms relating to bullying. The Anti-Bullying Alliance has commented that bullying is a public health issue. We are therefore extremely supportive of the introduction of the

³ September 2013.

⁴ Children and Young People Now, 16th November 2015.

Addressing Bullying in Schools Bill and the intention by both the Minister of Education and the Department to address bullying. NICCY believes that the issue of bullying is one which requires cross-departmental and multi-agency co-operation and we would urge the Northern Ireland Executive to view this Bill as the first step of a co-ordinated strategy which should be employed across Government to fully and comprehensively address this very serious issue.

NICCY is aware that the Department of Education carried out substantial direct consultation with children and young people as part of its consultation exercise which informed the development of the Addressing Bullying in Schools Bill. Such consultation is central to compliance with both Article 12 of the UNCRC and section 75 of the Northern Ireland Act 1998. Decisions regarding the development of the Addressing Bullying in Schools Bill should be informed by the views and experiences of those who will be most directly impacted i.e. children and young people. NICCY strongly advocates that the Department of Education carries out ongoing, widespread direct consultation with pupils of all ages, from every type of school in Northern Ireland in a meaningful way on the issue of bullying in schools and that their views contribute to the further development of this Bill and associated Guidance.

3.0 International Children's and Human Rights Standards

3.1 The United Nations Convention on the Rights of the Child

Through ratification of the UNCRC, the Government is under an obligation to ensure that all legislative and policy developments are in compliance with the Convention. The Government also has an obligation to comply with the recommendations made by the UN Committee on the Rights of the Child following its examinations of the UK Government and its devolved administrations' compliance with the UNCRC. The 4 principles of the UNCRC are all relevant to the Addressing Bullying in Schools Bill. The UNCRC principles require the Government to ensure that children are not discriminated against - Article 2, their best interests are upheld - Article 3, they develop to their maximum potential - Article 6 and they are able to meaningfully participate in all aspects of their lives - Article 12.

Articles 28 and 29 are the two main articles of the UNCRC which address children's rights in education. NICCY believes that it is vital that the Addressing Bullying in Schools Bill reflects the obligations on the Department of Education under the UNCRC with regard to

the type of education that children and young people should be able to access. According to the UNCRC Committee's General Comment on Article 29 of the Convention – a statement of its meaning and objectives - education must be child-centred, child-friendly and empowering.⁵ The goal is to strengthen the child's capacity to enjoy the full range of human rights, to promote a culture which is infused by appropriate human rights values and to empower the child through developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. In this context, 'education' goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, whether individually or collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society. Educational programmes should be conducted in ways which promote mutual understanding, peace and tolerance, and which help prevent violence and conflict.

General Comment No. 1 on the Aims of Education is clear that a school environment must reflect tolerance, equality and promote peace and understanding. The General Comment is clear that there is an obligation on Government to ensure that schools which allow bullying, intolerance and inequality to thrive is in breach of Article 29 (1) of the UNCRC. It states that,

*"...the school environment itself must thus reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin called for in article 29 (1) (b) and (d). A school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of article 29 (1)."*⁶

We would also highlight Articles 19, 36, 37 and 39 as being of particular relevance to the Addressing Bullying in Schools Bill. Article 19 places an obligation on the Government to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Article 36 places an obligation on the Government to protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare. Article 37 provides for protection for the child from all forms of torture or other cruel, inhuman or degrading treatment or punishment and Article 39 obliges the Government to take all appropriate measures to promote physical and psychological

⁵ General Comment No.1: Aims of Education, UN Doc CRC/GC/2001.

⁶ Para 19, *Ibid.*

recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment.

In addition, Article 4 of the UNCRC provides that the Government should undertake all appropriate legislative, administrative, and other measures for the implementation of the rights contained in the Convention. The Government is also obliged to undertake such measures to the maximum extent of their available resources. NICCY therefore wishes to see the Addressing Bullying in Schools Bill explicitly underpinned and informed by the relevant articles of the UNCRC to ensure that all children have access to an education which develops their personalities, talents and abilities to enable them to live a full and satisfying life within society.

3.2 Recommendations of the UN Committee on the Rights of the Child

In its examination of the UK Government and its devolved administrations' compliance with the UNCRC in 2002, the UN Committee on the Rights of the Child expressed serious concern at the level of widespread bullying in schools. The Committee recommended that the UK Government take measures and adequate mechanisms and structures to prevent bullying and other forms of violence in schools and include children in the development and implementation of these strategies.⁷ In its most recent examination in 2008, the Committee reiterated its alarm with regard to bullying, which they stated, is a serious and widespread problem, which may hinder children's attendance at school and successful learning.⁸ The Committee recommended that the Government intensify its efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance.⁹

3.3 The European Convention on Human Rights

Article 2 of the First Protocol to the European Convention on Human Rights (ECHR) as incorporated by the Human Rights Act 1998, also provides that no one shall be denied the right to education. Taken together with Article 14 of the ECHR, the non-discrimination principle, the right to access available educational facilities must be secured to all children without discrimination. Article 3 of the ECHR protects against torture or inhuman or

⁷ Para 46e), CRC/C/15/Add.188

⁸ Para 66c), CRC/C/GBR/CO/4, 3 October 2008.

⁹ Para 67f), *Ibid.*

degrading treatment or punishment. It can be argued that in certain cases bullying can amount to torture for those experiencing it. It is NICCY's view that a failure by a school to intervene when they are aware of bullying, may constitute a breach of this article.

4.0 Addressing Bullying in Schools Bill – Clauses

4.1 Clause 1 – Definition of “bullying”

Clause 1 of the Addressing Bullying in Schools Bill provides a statutory definition of bullying. The introduction of a statutory definition of bullying is very welcome in that it should provide clarity and allow for accurate recording of bullying incidents while supporting schools to adopt a consistent approach in their efforts to prevent and tackle bullying. The definition describes bullying as, *“the repeated use of a verbal, written or electronic communication or a physical act”*. While it is generally accepted that bullying is an act or omission that has been repeated there is no consensus on this and NICCY has concerns that schools do not dismiss ‘one-off’ incidents of bullying behaviour, but rather that they consider the potential for reoccurrence, taking appropriate preventative steps and effectively monitoring the situation. We would therefore suggest that the Department considers how the potential for the repetition of bullying incidents may be accommodated in the draft statutory definition.

The proposed definition of bullying under clause 1(d) of the Bill refers to *“... the intention of causing physical or emotional harm.”* There is however no reference in the draft statutory definition to the perception of the victim. NICCY wishes to see this being addressed and the inclusion in the statutory definition of bullying of the perception of the victim. NICCY believes that the victim's perception of the behaviour and their resultant feelings are relevant in determining whether bullying has taken place.

NICCY has some concerns that the proposed scope as outlined in clause 1 of the Addressing Bullying in Schools Bill will not offer sufficient protection for all children who are victims of bullying. It is disappointing that the scope of bullying relates only to acts or omissions carried out by one pupil or a group of pupils on another pupil or group of pupils. This definition therefore does not reflect the experience of children in schools who may experience bullying by adults and/or teachers. Research carried out by the Rainbow Project and Cara Friend when asked how staff responded to homophobic language, found;

“69% of respondents reported that staff ignored the homophobic language and 8% reported that staff laughed along or joined in with the homophobic language.”¹⁰

NICCY recommends that the proposed statutory definition being widened to include all forms of bullying suffered by all children in schools. Bullying perpetrated by adults is equally if not more, damaging to children who suffer it. There is also an additional consideration relating to the power imbalance in such circumstances. All children who are being bullied in school should have the right to have their experience recognised as bullying and addressed in a proactive and comprehensive manner under the Addressing Bullying in Schools Bill. The failure to include bullying of children by adults in education in the statutory definition of bullying at clause 1 of the Bill serves to further disempower already extremely vulnerable young people and negate the trauma experienced by children who are bullied by adults. Furthermore Clause 1(2) states that for the purposes of the definition of bullying, physical ‘act’ also includes ‘omission’. While NICCY welcomes this, greater clarity on what is meant by ‘omission’ is necessary.

4.2 Clause 2 – Duty on Board of Governors to secure measures to prevent bullying

Clause 2 of the Bill places duties on Boards of Governors. NICCY welcomes the proposed introduction of a legal requirement for Boards of Governors to be responsible for schools’ anti-bullying policies and procedures. There are, however, a number of potential challenges in that Governors are appointed in a voluntary capacity and they already have a range of roles and responsibilities in their school. For example, NICCY is also aware that the draft SEND Bill includes a new statutory duty on Governors to ensure the effective implementation, monitoring and review of Personal Learning Plans. Given the existing and anticipated additional demands on Governors and the nature of their appointment, individuals may be reluctant to assume this additional responsibility. Furthermore, bullying is regarded as a challenging and controversial issue and given the potential for parents or guardians to register complaints with regard to a school’s management of a bullying incident, it may prove difficult to recruit/appoint Governors.

NICCY’s Legal and Investigations team has encountered circumstances where parents have been unhappy with a school’s response and, following a complaint to the Board of

¹⁰ Left Out of the Equation: A Report on the Experiences of Lesbian, Gay and Bisexual Young People at School 2011, The Education Equality Project, The Rainbow Project and Cara Friend.

Governors, have concluded that the Board simply endorsed the Principal's decision. If individual Governors are given responsibility for a school's anti-bullying policy and procedures, it will be important they have the independence and confidence to scrutinise and challenge a Principal's decision or actions concerning bullying incidents, where they believe there are justifiable grounds to do so. NICCY would strongly suggest that guidance and mandatory training are made available to Governors tasked with developing and reviewing a school's discipline and anti-bullying policies to ensure they are appropriately prepared and equipped to deal not only with policy management, but also the effective resolution of complaints. It will also be important to clarify what role, if any, ETI and the Education Authority will have in monitoring Boards of Governor's execution of their duties and responsibilities in this regard.

Clause 2(b) of the Bill details where bullying incidents may occur in order to come within the scope of the Bill. This includes on the premises of the school during the school day, while travelling to or from the school during the school term and while the pupil is in the lawful control or charge of a member of the staff of the school. We note that the Addressing Bullying in Schools policy had also included, 'whilst using school equipment'. This has not been translated into the Bill. In its advice to Government on the Addressing Bullying in Schools policy,¹¹ NICCY raised a number of concerns about the proposed scope of the Bill as we do not believe that the proposed scope is wide enough to address all incidents of bullying. This is particularly the case with regard to cyberbullying which will most commonly not take place on school premises. Cyberbullying is increasing as usage of electronic equipment increases and the Committee on the Rights of the Child has highlighted the obligations which the Government is under by virtue of ratification of the UNCRC to address cyberbullying. The Committee on the Rights of the Child's General Comment No. 13 specifically recognises that mental violence under Article 19 of the UNCRC can include psychological bullying including via information and communication technologies (ICTs) such as mobile phones and the Internet, known as cyberbullying.¹²

The Committee recommends that the Government takes educational measures to reduce risk and prevent violence against children through cyberbullying including providing accurate, accessible and age-appropriate information and empowerment on life skills, self-

¹¹ *Op cit.* 1.

¹² Para. 21(g), United Nations Committee on the Rights of the Child, General Comment No. 13 (2011) 'The right of the child to freedom from all forms of violence', CRC/C/GC/13.

protection and specific risks, including those relating to ICTs and education and advice on protection in the context of ICTs.¹³

The Committee also addresses the increased use of technologies in General Comment No. 17.¹⁴ While the Committee is supportive of the benefits of such technology it also expresses concern at evidence which indicates the extent to which these environments can contribute to significant potential risk and harm to children, such as cyberbullying, pornography and cybergrooming.¹⁵ The Committee states that,

“Bullying by other children can also be a major impediment to the enjoyment of the rights under article 31 (the right to play and leisure). Those rights can only be realized if States parties take all necessary measures to protect children from such acts.”¹⁶

The Committee states that the Government is required to introduce measures to promote online access and accessibility, as well as safety for children. These should include actions to empower and inform children to enable them to act safely online, to become confident and responsible citizens of digital environments and to report abuse or inappropriate activity when it is encountered. Measures are also needed to reduce impunity of abusive adults through legislation and international collaboration; limit access to harmful or adult-rated material and gaming networks; improve information for parents, teachers and policymakers to raise awareness of the potential harm associated with violent games and develop strategies for promoting safer and attractive options for children.¹⁷

It is extremely disappointing that the Department has not proposed to create a wider legal basis for schools to intervene in instances of cyberbullying. While we accept that this is a complex legal area, we wish to see the Addressing Bullying in Schools Bill affording maximum protections to children and young people who are victims of bullying, whether physical, mental or through the use of technology.

¹³ Para. 44(a), (b), *Ibid.*

¹⁴ Para. 45, United Nations Committee on the Rights of the Child, General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31) CRC/C/GC/17, 17th April 2013.

¹⁵ Para. 46, *Ibid.*

¹⁶ Para. 30, *Ibid.*

¹⁷ Para. 57(d), *Ibid.*

Clause 2(c)(i) places an obligation on Boards of Governors to review the measures taken by the school with a view to preventing bullying from, ‘time to time’. NICCY does not believe that this is specific enough, nor does it place clear enough legal obligations on Boards of Governors of all schools to review the measures consistently or regularly. NICCY would advise that this duty be amended so that it is much more specific and timebound to ensure that all schools are obliged to review their measures to address bullying on a consistent and regular basis. This is also the case with regard to the obligation on the Department of Education under clause 3(4) of the Bill to publish Guidance from ‘time to time’ as to how a Board of Governors is to comply with the duty to keep a record of bullying or alleged bullying incidents.

4.3 Clause 3 - Duty to keep a record of incidents of bullying

Clause 3 of the Bill places an obligation on Boards of Governors to ensure that a record is kept of all incidents or alleged incidents of bullying, the motivation behind bullying incidents and information on how incidents were addressed. While NICCY welcomes this, we believe that the Department of Education should issue clear Guidance on how incidents should be recorded so that potential for ambiguity is minimised. A fundamental concern with the effective operation of the Addressing Bullying in Schools Bill is the fact that schools will continue to have ‘operational freedom’ in school discipline matters. It is clear that if schools choose not to recognise and classify incidents as falling within the statutory definition of bullying in order either to avoid additional administrative burden or a perceived negative reflection on the school, the value of the Bill and the ability to address the issue of bullying will be significantly undermined. While NICCY understands that schools must have operational independence for school discipline, it will be vital to the success of the implementation of the Bill that the Department takes all possible steps to ensure that schools comply fully with the Addressing Bullying in Schools Bill, associated policy and Guidance. NICCY would suggest that further consideration is given to mandatory reporting of all incidents of bullying by schools. An additional necessary component of this will be to ensure that compliance with the Bill, associated policy and Guidance forms a central part of future school inspections. The views of children and young people must be sought as a central element of these processes so Inspectors are confident that the experience of pupils fully informs the development and implementation of policy and legislation on this issue. NICCY also suggests that the Department recognises those schools which can evidence best practice in addressing bullying.

NICCY also wishes to see the extension of this duty to include an obligation on all school staff to report any incidents of bullying they witness. NICCY is aware that many incidents of bullying go unreported. NICCY's 2006 report on bullying indicated that although a majority of schools had a dedicated member of staff to deal with bullying incidents, only 16 per cent of post-primary pupils indicated, that if they were bullied, they would speak to this individual. Sixty per cent of pupils indicated that it would depend on the circumstances. In seeking help in relation to bullying, most respondents believed that telling a teacher was not a helpful or effective option. We believe that this proactive measure has significant advantages over waiting for a child or parent to report an incident of bullying and ensure that incidents of bullying are dealt with promptly and without a requirement on a child - who may be concerned about being victimised - if they report incidents of bullying to the school.

NICCY welcomes the obligation on Boards of Governors to record the motivation behind incidents or alleged incidents of bullying. Research clearly shows that children and young people from certain groups are much more likely to experience bullying in schools. This has an extremely detrimental impact on the ability of children from these groups to enjoy equality of opportunity in education and on their educational attainment.

4.4 The level and extent of bullying experienced by certain groups of children and young people

The 2014 Young Life and Times Survey found that 39 per cent of the 16 year olds taking part in the survey had witnessed racist bullying or harassment in school.¹⁸ Difficulties have also been reported in placing newcomer children in Belfast based schools due to a fear of racist attacks when travelling to school.¹⁹ Research carried out by the Department of Education²⁰ found that more Year 6 pupils and Year 9 pupils from 'Neither' Protestant or Catholic communities and 'Other' religious communities reported that they had 'been bullied at school in the past couple of months' compared with pupils from the Catholic and Protestant communities. The research also reported that 6.9 per cent of Year 6 pupils and 4.1 per cent of Year 9 pupils admitted bullying other pupils 'with mean names or comments about his or her race or colour', with 14 per cent of Year 6 and 7.6 per cent of Year 9 pupils indicating that they had been bullied with such comments.

¹⁸ 'Young Life and Times Survey 2014' ARK.

¹⁹ 'The integration of newcomer children with interrupted education into Northern Ireland schools – A Belfast based case study,' Northern Ireland Strategic Migration Partnership, September 2014.

²⁰ The Nature and Extent of Pupil Bullying in the North of Ireland, Department of Education, October 2011.

Racist bullying is also a major issue for Gypsy, Roma and Traveller pupils and is often cited as the reason for self exclusion and/or being excluded. Both Traveller and Roma children experience extremely low educational attainment levels and very poor attendance rates.^{21 22} A recent report found that nearly 9 out of every 10 children and young people from a Gypsy, Roma or Traveller background have suffered racial abuse and nearly two thirds have also been bullied or physically attacked.²³

NICCY also has serious concerns about the experience of many transgender young people in education. Research by the Institute for Conflict Research²⁴ found that transphobic bullying is a significant problem in schools. Experiences of transphobic bullying were commonly found to involve sustained verbal abuse, which was perpetrated by pupils of all ages frequently in public spaces with many witnesses. On occasions, young people reported that staff who were aware that bullying was occurring did not offer support or attempt to end the harassment. The research found that typically staff lacked the appropriate awareness and knowledge to respond to incidences of transphobic bullying and that often a school's reaction is to view the young person as the problem rather than the bully and so are prepared to allow the young person being bullied to drop out of school rather than address the bullying behaviours. The report found that many young transgender people in Northern Ireland are dropping out of education permanently because of the negative impact transphobic bullying has on their lives and the inability of schools to adequately support them.²⁵

Lesbian, gay and bisexual (LGB) young people experience significant challenges in accessing education. The Schools Omnibus Survey of 2014 highlighted that, of those surveyed, 39.3 per cent had seen or heard derogatory references to same sex relationships in the classroom or school grounds once or twice per year, 17.3 per cent had seen or heard derogatory references to same sex relationships in the classroom or school grounds once or twice per term, 5.1 per cent had seen or heard derogatory references to same sex relationships in the classroom or school grounds once or twice per week and 1.4 per cent had seen or heard derogatory references to same sex relationships in the

²¹ Northern Ireland Peace Monitoring Report Number 3, P. Nolan, March 2014.

²² *Ibid.*

²³ National Federation of Gypsy Liaison Groups, 2014, Gypsy, Traveller, Roma: Experts by Experience

²⁴ Grasping the Nettle: The Experiences of Gender Variant Children and Transgender Youth Living in Northern Ireland, Ruari-Santiago McBride, Institute for Conflict Research, 2013.

²⁵ *Ibid.*

classroom or school grounds nearly every day. In the 2014 Young Life and Times survey, 50 per cent of 16 year olds surveyed stated that they had homophobic terms directed at them, regardless of their own sexuality, by another pupil and 78 per cent reported that this had happened to their classmates.²⁶ Research has also found that 75 per cent of LGB young people did not report incidents of bullying and harassment to school authorities. The most frequently cited reason for not reporting incidents was that young people thought that the school would not take it seriously (43 per cent). Of those who reported incidents to school authorities, 22 per cent believed that the school did not take their claim seriously and 40 per cent believed that the school took no action. When asked if, to their knowledge, their school made any efforts to tackle homophobic bullying 87 per cent of LGB young people said that their school made no efforts.²⁷

Research carried out by the Department of Education also highlights issues of bullying and barriers to the enjoyment of education among children and young people with a disability. Year 6 and Year 9 pupils with a disability were more likely to report that they have been bullied at least 'once or twice'; had some experience of being bullied verbally regarding their disability - 34.0 per cent of Year 6 and over 40 per cent of Year 9 at least 'once or twice'.²⁸

Concerns also exist around the educational experience of young people with caring responsibilities. Research has found that children as young as six who look after their sick or disabled parents are routinely bullied at school. The study found more than two-thirds of young carers face taunts from fellow pupils, who often mock their parents' appearance or disabilities. Many said they felt unsupported or misunderstood by teachers when they became tired, missed homework deadlines or could not get to school because of their responsibilities. 39 per cent of the 700 six to 18-year-olds questioned for the research said there was not a single teacher at their school who knew they were a young carer. Of those whose teachers did know, more than half did not feel supported.²⁹ The NIHRC has recommended that the Department of Education creates a statutory duty on educational bodies to support young and student carers.³⁰

²⁶ *Op cit.* 18.

²⁷ *Op cit.* 24.

²⁸ *Op cit.* 21.

²⁹ The Princess Royal Trust for Carers and The Children's Society, May 2010, <https://www.carers.org/news/over-two-thirds-young-carers-bullied-school>

³⁰ The Human Rights of Carers in Northern Ireland, Northern Ireland Human Rights Commission, November 2014.

A UK wide report by Barnardo's found much higher rates of bullying in the looked after children population than children who are not looked after, with those who had been bullied attributing this to being in care. Barnardo's has recommended that school bullying policies should have special regard to those children who may experience bullying because they are in care.³¹

4.5 Section 75 of the Northern Ireland Act 1998

It is NICCY's view that the Department of Education should take proactive measures with regard to certain groups of children who disproportionately experience bullying. Section 75 of the Northern Ireland Act 1998 places a proactive duty on designated public authorities to have due regard to the need to promote equality of opportunity between members of the nine section 75 categories. Equal application of a policy where there is evidence to suggest unequal enjoyment of equality of opportunity fails to recognise the societal inequalities which exist with regard to children and young people from various section 75 categories and their experience of education and bullying in schools in particular. It is unacceptable where inequalities have been identified, for a public body to take no additional proactive measures other than the adoption of a blanket policy which will impact on all young people equally. In order to comply with section 75 the Department is under a statutory obligation to address the inequalities which are identified through mitigation or the adoption of alternative policies. This will require the Department putting in place, proactive measures to ensure for example that newcomer young people, young people with disabilities, LGB or T young people, young people of religions other than Catholic and Protestant, are able to fully participate in their education by taking proactive measures to address the high levels of bullying these groups of young people experience in education. We also wish to see the inclusion of young carers and looked after children in the list of potential motivations under clause 3(3). This is particularly the case given the withdrawal of all earmarked funding for the Department of Education's Community Relations, Equality and Diversity (CRED) policy.

4.6 The Department of Education's CRED policy

The aim of the CRED policy was to contribute to improving relations between communities by educating children and young people to develop self-respect and respect for others, by providing children and young people, in formal and non-formal education settings, with

³¹ Failed by the System, Barnardos, http://www.barnardos.org.uk/failed_by_the_system_report.pdf.

opportunities to build relationships with those of different backgrounds and traditions.³² Funding for this policy was withdrawn after an equality impact assessment (EQIA) was carried out and consulted on for just over four weeks in February 2015.³³ The 2012 Young Life and Times Survey examined CRED and found high levels of young people reporting more positive attitudes towards those of different religious belief and political opinion, persons from different ethnic groups, those of a different age, different sexual orientation, different gender, or those persons with disabilities. In 2014, the same survey reported similarly high results in relation to young people's experience of CRED.³⁴ Just as the CRED policy contributed to young people displaying greater tolerance and understanding to certain groups of young people through participating in programmes which dealt with issues relating to their lives, we can assume that the impact of the withdrawal of all earmarked funding for CRED is likely to result in an increase in intolerance and negative attitudes towards certain groups of young people including young people with different religious beliefs, political opinions, race, sexual orientation, young males, females and transgender young people, young people with disabilities and LGB young people. While NICCY understands that it is the intention of the Department of Education to mainstream its CRED policy, we are concerned that the withdrawal of earmarked funding for the operation of discrete programmes under CRED could have an extremely detrimental impact on tolerance and understanding in schools and could also lead to an increase in bullying. NICCY believes that there is a pressing need for young people to be educated about difference, tolerance, self-respect and respect for others in school. Such education should be part of a whole school approach to addressing the issue of bullying. It will also be vital that teachers are equipped with the confidence, knowledge and skills to support all children and young people with whom they come into contact and to deal effectively with bullying in a proactive manner through education and the promotion of tolerance in the classroom, but also reactively where bullying has been identified through supporting all of the children involved. This will be a vital part of ensuring that all children are facilitated to fully participate in their education in line with the Department's obligations to protect and realise the right of all children to an effective education under the UNCRC.

³² Para 6.1, *Community Relations, Equality and Diversity in Education*. Department of Education, 2011.

³³ Department of Education's Consultation Equality Impact Assessment Proposal to End the Community Relations, Equality and Diversity (CRED) Earmarked Funding, February 2015.

³⁴ *Op cit.* 18.

5.0 Conclusion

NICCY is keen to give oral evidence to the Committee on the Addressing Bullying in Schools Bill and we would be happy to discuss anything in this submission or provide clarification or further information to Committee members if required. It would be preferable to give oral evidence to the Committee on 20th January 2015 if possible.



Written Evidence for Committee Stage of the *Addressing Bullying in Schools Bill*

**Dr Noel Purdy, Chair
4 January 2016**

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Introduction

The Northern Ireland Anti-Bullying Forum (NIABF) brings together over 20 regional statutory and voluntary sector organisations all acting together to end bullying of children and young people in our schools and in our communities. NIABF was formed by Save the Children, at the request of the Department of Education, in August 2004 and was formally launched in November 2005. NIABF is currently hosted by the National Children's Bureau (NCB).

The Northern Ireland Anti-Bullying Forum (NIABF) is working towards a society where children and young people can live free from bullying. Its vision is of a society where bullying is unacceptable; a culture where every child and young person is safe and feels safe from bullying, and where every child and young person is respected in their diversity; a society with a preventative, responsive and restorative anti-bullying ethos; a society where the views and contribution of children and young people are respected and they are valued participants; and where everyone has a role to play in taking a stand against bullying.

Its aims (as set out in its current Strategic Plan) are:

- To further develop the Northern Ireland Anti-Bullying Forum as the lead inter-agency forum in the planning and implementation of a coordinated approach to all aspects of anti-bullying policy and practice.
- To promote the voices of children and young people as valued participants in NIABF policy and practice.
- To influence and support schools and others settings in the development of effective anti-bullying policy and practice.
- To inform and influence public policy, legislation and opinion in all matters relating to anti-bullying.

Each year since its formation NIABF has continued to extend its reach, both in schools and in other places where children and young people come together. Over the past year NIABF has delivered many assemblies, workshops, presentations and other activities in schools and youth groups across Northern Ireland, directly communicating key anti-bullying messages to more than 12,000 children and young people. We have spoken to hundreds of parents and carers, giving them information on how to support their children to understand bullying behaviour and our collective role in tackling it. We have published articles in newspapers, magazines and online, raising awareness of bullying and its impact of our children and young people. We have worked with our colleagues across the sector, to promote a shared understanding of bullying and how, together, we can tackle it. And we have delivered presentations and facilitated workshops at conferences and seminars, right across Northern Ireland.

In September 2013 the Minister of Education invited NIABF to carry out a review of existing legislation, policy, guidance and practice in Northern Ireland in relation to bullying in schools. This comprehensive review was submitted to the Minister in December 2013 and identified four areas most urgently requiring attention:

1. Anti-Bullying Policies: All schools should be required through legislation and guidance to have an anti-bullying policy which includes an agreed DE definition of bullying; a focus on a comprehensive range of forms of bullying (including cyberbullying, homophobic bullying, transphobic bullying, disablist bullying, bullying due to race, faith and culture, sectarian bullying, bullying of Looked After Children etc.); details of measures to prevent and respond to incidents of bullying, including support for the child who is bullied and the child who is displaying bullying behaviour; reporting mechanisms; details of what pupils, parents and teachers should do in response to a bullying incident; details of the appeals procedure for parents dissatisfied with the school response to a bullying incident; and, information regarding the regular review and

updating of the policy. Such a policy should be accessible to all, and should be the result of meaningful and accessible consultation with all staff (teaching and non-teaching) as well as pupils and parents. In order to support schools in developing such policies, there is an urgent need for clear and regularly updated guidance, which might include templates, checklists, exemplars of best practice etc.

2. Recording of Incidents: All schools should be required through legislation and guidance to record centrally details of any incidents of bullying behaviour, using C2K SIMS and/or the Bullying Concern Assessment Form available in Effective Responses to Bullying Behaviour. Such a reporting mechanism should include details of the method and motivation involved, an outline of the incident, a report on the support offered to the child who is bullied and the child who is displaying bullying behaviour, and an on-going record of support and interventions including a note on the effectiveness of the intervention. It is also proposed that this central record should be made available to the school's Board of Governors and should be available for inspection by the ETI. Such a reporting structure would help avoid current inconsistencies in recording, would facilitate more effective management of bullying behaviour within individual schools and would allow more accurate collation of data. Notwithstanding the obvious benefits of this consistent approach, it is acknowledged that schools may be cautious about making such sensitive data publicly available.
3. Training/Resources: There is an urgent need for additional training and resources to be made available to schools as they seek to address new and complex forms of bullying in particular. This training must begin at the level of Initial Teacher Education where there is a need for an agreed common programme across all ITE providers in the province. There is also a need for in-service training for all school staff (teaching and non-teaching), and additional resources for schools (especially in relation to new and complex forms of bullying) as they seek to educate their pupils. The need for resources and funding for schools as they seek to engage with and educate parents about their crucial role in tackling bullying behaviour was also consistently highlighted by school leaders at the seminars on 4th November and 2nd December 2013. Schools should be encouraged to begin the developmental process by carrying out an initial audit of their training needs. Schools also need more curricular resources which are appropriate to the age and ability of their pupils and which tackle a wide range of forms of bullying behaviour. More extensive work could be done to highlight (perhaps on the DE website) the existing body of resources which NIABF has developed over recent years through its Anti-Bullying Week activities, but also including links to other useful websites and resources, including those which have been created by Forum members. Furthermore continued funding from DE is required to facilitate the ongoing development of resources by NIABF for use during Anti-Bullying Week and throughout the year and to ensure that all NIABF resources remain relevant and up to date. At the seminars on 4th November and 2nd December 2013 principals also called for more education of parents and carers and it is acknowledged by Forum members that parents and carers, as the primary educators of their children, play a vital role in tackling bullying. NIABF, with support from DE, is uniquely placed to provide support and information to parents and carers, as well as the wider public, around the issue of bullying and to promote the role that everyone has in taking a stand against bullying.
4. Evidence/Research: In all of the planned development of anti-bullying work, there is agreement that an evidence-based approach must be adopted at all times. The NIABF acknowledges the value of the three large-scale pieces of research funded by DE in 2002, 2007 and 2011. However, while acknowledging the international comparability offered by using a survey based on the Olweus model, it is suggested that in future, such a research instrument be adapted to encompass a wider range of methods of and motivations for bullying (as identified and represented by Forum members), and that the sample be extended to include children in non-

mainstream educational settings. It would also be valuable to consider extending the research to other year groups as well as years 6 and 9, acknowledging the need for research into the experiences of children in Early Years settings, and also the Foundation Stage and Key Stage 1, but also older children at Key Stages 4 and 5. Further DE funding for more focused research on particular aspects of bullying would also be welcomed in between the four-year cycle of large-scale studies. There are many areas urgently requiring research focus including the development of resilience among children, and the current provision and effectiveness of anti-bullying work in Initial Teacher Education. Article 31 of the UN Convention on the Rights of Persons with Disabilities also states that any research data should be disaggregated by disability to help “identify and address the barriers faced by persons with disabilities in exercising their rights”, and that all research findings should be made accessible to persons with disabilities. Finally all research undertaken must to be placed within the context of an international rights-based framework and involve the participation of children and young people, with the findings communicated to children and young people in an age-appropriate format.

When the Consultation Document *Addressing Bullying in Schools* was launched in January 2015, NIABF facilitated a number of consultative events with children and young people which helped ensure that a very high percentage of the 4800 responses came from pupils themselves (87%).

NIABF Response to the *Addressing Bullying in Schools* Bill

NIABF would like to welcome the Bill in broad terms as an important and timely step forward in DE’s work to support schools in their work to address bullying. In the following response, we will address each clause of the Bill in turn.

Clause 1: Definition of Bullying

NIABF welcome the efforts of DE to provide an agreed definition of bullying in schools in legislation and feel that this will end the current wide variation of definitions employed across schools in Northern Ireland (which was highlighted in NIABF’s 2013 Review). It is clear that there is much confusion among pupils, teachers and parents as to what exactly is meant by bullying, and that this can lead to inconsistent understanding by children and young people, but also inconsistent reporting and responses by schools. It is therefore fundamentally important that we have a robust definition of bullying in the Bill, as its implementation will determine incidence and reporting (as outlined in Clause 3).

Bullying is not just a problem for Northern Ireland; it is an issue in *every* school in *every* country. Similarly over the past forty years there has been a growing body of international research into bullying in schools, which has considered the nature and incidence of bullying but also the effectiveness of different forms of intervention. In responding to bullying in schools here in Northern Ireland it is therefore important that we don’t ignore this international body of knowledge.

There is now widespread international agreement that there are three core components to the definition of bullying behaviour which distinguish it from all other forms of aggressive behaviour:

1. The definition must include reference to an intention to harm (the behaviour is not accidental)
2. Bullying behaviour is repeated behaviour (not a one-off action)
3. There is an imbalance of power (in which the victim finds it difficult to defend him/herself)

This is of course not to suggest that other forms of aggressive behaviour which don’t meet these three criteria should be condoned by schools, but simply that they should be dealt with under the school’s discipline policy rather than its anti-bullying policy. So schools must continue to deal effectively with all acts of aggression which are non-intentional and/or one-off incidents and/or where there is no

imbalance of power. NIABF simply wishes to acknowledge the focus of the anti-bullying legislation which should relate to bullying alone.

In advocating a definition based around these three core criteria, NIABF refers to the leading anti-bullying experts in the world (key criteria are underlined for emphasis):

Dr Dan Olweus – University of Bergen, Norway “the father of bullying research”

“A student is being bullied or victimised when he or she is exposed, repeatedly and over time, to negative actions on the part of one or more other students... It must be stressed that the term bullying is not (or should not be) used when two students of approximately the same strength (physical or psychological) are fighting or quarrelling. In order to use the term bullying, there should be an imbalance in strength (an asymmetric power relationship): The student who is exposed to the negative actions has difficulty defending him/herself and is somewhat helpless against the student or students who harass” (Olweus, 1993, p. 9/10)

“A person is bullied when he or she is exposed, repeatedly and over time, to negative actions on the part of one or more other persons, and he or she has difficulty defending himself or herself.” (Olweus Bullying Prevention Program)

Prof Peter K Smith – Goldsmiths, University of London

“Although there is no universally agreed definition, there is some consensus, at least in the western research tradition, that bullying refers to repeated aggressive acts against someone who cannot easily defend themselves” (Smith, 2014, p.14)

Prof Smith has also confirmed in personal correspondence that the new European Anti-bullying Network decided in December 2015 to include imbalance of power in its definition of bullying

Prof Ken Rigby – University of South Australia, Adelaide

“Bullying involves a desire to hurt + hurtful action + a power imbalance + (typically) repetition + an unjust use of power + evident enjoyment by the aggressor and generally a sense of being oppressed on the part of the victim” (Rigby, 2002, p.51)

Reference must also be made to the existing DE definition which is included in its Child Protection guidelines and which defines bullying as “Deliberately hurtful behaviour, repeated over a period of time, where it is difficult for the victim to defend himself or herself” (DE, 1999). Similarly NIABF itself has defined bullying explicitly making reference to the abuse of power as follows: “The repeated use of power by one or more people intentionally to harm, hurt or adversely affect the rights and needs of another or others” (NIABF, 2005)

In terms of legislation NIABF would draw the committee’s attention to the Accepting Schools Act 2012 from Ontario, Canada. In this commonwealth country, whose legal system is based on the UK, the legislative definition clearly includes all three core criteria: intent to harm, repetition and the imbalance of power:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. (1) Subsection 1 (1) of the Education Act is amended by adding the following definition:

“bullying” means aggressive and typically repeated behaviour by a pupil where,

(a) the behaviour is intended by the pupil to have the effect of, or the pupil ought to know that the behaviour would be likely to have the effect of,

- (i) causing harm, fear or distress to another individual, including physical, psychological, social or academic harm, harm to the individual's reputation or harm to the individual's property, or
 - (ii) creating a negative environment at a school for another individual,
- and
- (b) the behaviour occurs in a context where there is a real or perceived power imbalance between the pupil and the individual based on factors such as size, strength, age, intelligence, peer group power, economic status, social status, religion, ethnic origin, sexual orientation, family circumstances, gender, gender identity, gender expression, race, disability or the receipt of special education; ("intimidation")

It is clearly important that the definition in the Bill is effective, and to that end we have contacted leading anti-bullying experts in Ontario, Canada. Prof Wendy Craig is Professor and Head of Psychology, and also Scientific Co-Director of PREVNet at Queen's University, Kingston, Ontario. When asked in personal correspondence if she knew of any difficulties with the inclusion of the imbalance of power criterion in the definition, she replied "No problems to my knowledge". The following is taken from Pepler and Craig (2014) *Bullying Prevention and Intervention in the School Environment: Factsheets and Tools*¹ and highlights how support can be provided to help schools differentiate between teasing, aggression and bullying.

How to identify Bullying, Aggression and Teasing

CRITICAL QUESTION	TEASING	AGGRESSION	BULLYING
Is this behaviour reciprocated?	Usually The teasing is shared equally.	Usually Not There is usually only one aggressor.	No There is a person who bullies and a person who is victimized.
Do both people look like they are having a good time?	Usually It takes place within a strong, positive, relationship.	No One person is the aggressor.	No One person is in distress or being harmed.
Is the behaviour fun?	Usually Both people enjoy the banter.	Usually Not It can alienate and be embarrassing.	No The person bullying intends to cause fear.
Has this happened before with these individuals?	Yes It occurs when there is a familiarity.	Possibly It may be a one-time event.	Yes Bullying is typically repeated behaviour.
Is there a power differential?	No It illustrates closeness and affection.	Possibly It can happen within a weak relationship.	Yes There is always a power imbalance.

Tool has been developed by PREVNet, www.prevnet.ca

In considering the proposed definition of bullying in Clause 1 of the Addressing Bullying in Schools Bill, NIABF would argue that:

¹ http://www.prevnet.ca/sites/prevnet.ca/files/prevnet_facts_and_tools_for_schools.pdf#page=8

- Only two of the three core criteria are included: repetition and intention to harm.
- There is no imbalance of power in the current definition of bullying.
- This weakens the definition and allows some forms of aggressive behaviour (e.g. repeated, intentional acts of aggression between equals) to be included as bullying behaviour when there is no imbalance of power.
- This will mean that schools will be mis-recording such behaviour as bullying which will inflate their incidence levels: schools will effectively be recording many more incidents than necessary.
- This makes our Northern Ireland definition different from and weaker than other definitions used and agreed internationally, including Ontario's legislative definition (Accepting Schools Act, 2012).

One proposed solution would be to leave the legal definition as currently written in the Bill, but include the imbalance of power criterion in the ensuing statutory guidance. However this would effectively create two definitions, which simply confounds the current situation when we are seeking precisely to agree one single robust definition. If schools are then asked to tick a box in the reporting system to indicate whether there is an imbalance of power, then surely they are capable of identifying this at the outset.

We are aware that the NAHT has raised concerns at the absence of the imbalance of power from the proposed definition in Northern Ireland has suggested that its members are indeed capable of distinguishing bullying from non-bullying aggressive behaviours.

Finally, and crucially, having provided evidence above that an imbalance of power can be successfully written into anti-bullying legislation (e.g. in Ontario, Canada), we would ask similarly that DE provides robust evidence and a convincing rationale on their part for not including the imbalance of power in the Bill's proposed definition.

Clause 2: Duty of Board of Governors to secure measures to prevent bullying

NIABF welcome the responsibility placed on the Board of Governors to ensure that the policies designed to prevent bullying among pupils registered at the school are pursued at the school, and are of the opinion that the limits set regarding the extent of that responsibility are reasonable (on school premises during school day, travelling to and from school during term, and while under school staff supervision).

NIABF recognises that this responsibility is best shared among the Board of Governors rather than being the responsibility of one sole governor. It is expected that the responsibility for the day-to-day outworking of the anti-bullying policy should be delegated to the principal.

NIABF feels that the timescale for the school to review its policies should be more strictly determined than simply "from time to time". There is evidence that many school anti-bullying policies are not regularly reviewed, and that these should be reviewed annually or biannually to ensure that they are up-to-date with the latest developments in bullying (e.g. cyberbullying where new technologies are evolving fast) and also in interventions (e.g. to take into account new research findings in relation to the effectiveness of specific strategies).

In the consultation with registered pupils and their parents (which has been statutory since 2003) it would be important for schools to have to keep a record of the date, nature and extent of that consultation process.

Clause 3: Duty to keep a record of incidents of bullying

NIABF welcomes this clause but would make the following suggestions to strengthen it:

It is important that there is a statutory requirement on schools to retain their records/reports of bullying incidents, since the impact of bullying behaviour has been proven to be enduring. Failure to have this set in legislation could lead some schools to delete their records with undue haste.

It would be important that there is a requirement in the Bill so that all schools must submit their reports to the Education Authority/DE. As NIABF noted in their 2013 Review, schools are apprehensive about the use of this data by the EA/DE and in particular are cautious of careless media reporting of incidence levels. It will be important here that the media are carefully briefed in relation to this, and made aware for instance that often the reported incidence of bullying can rise in a school following an intervention since pupils are more aware of the nature of bullying and also are more aware of how to report it.

In subsection 2, it is essential that schools record not just the *motivation* for the bullying (e.g. disablist, homophobic bullying) but also the *method* (e.g. physical, verbal, cyber, social exclusion, material, indirect). We had suggested this already in the 2013 NIABF Review.

While it is recognised that the list of possible motivations is not exclusive, it might be helpful to explain that these are based on the Section 75 categories. NIABF would argue that there are other important motivations for bullying behaviour such as physical appearance, social status, care status etc which should be mentioned in the legislation and/or guidance.

Further Information

Representatives from NIABF would welcome the opportunity to present oral evidence to the Committee on either 13 January 2016 or 20 January 2016.

For further information please contact Lee Kane, NIABF's Regional Anti-Bullying Coordinator, on leekane@niabf.org.uk or 028 9087 5006.



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Addressing Bullying in Schools Bill

Summary

The Northern Ireland Human Rights Commission ('the Commission'):

- **welcomes the general principles of the Bill which aims to address the issue of bullying in schools by defining bullying and placing duties on the Board of Governors to secure measures to prevent bullying and to keep a record of bullying incidents. The Commission advises that the general principles of the Bill are in line with a number of human rights treaties and standards (para 15);**
- **advises that given potential overlap between the Bill and existing criminal law, the Committee may wish to ask the Department of Education what engagement it has had with the Department of Justice, the PSNI and PPS, DHSSPS, and the Education and Training Inspectorate during the development of the Bill and underpinning policy (para 18);**
- **advises that human rights standards are not prescriptive regarding a definition of bullying, focusing more on the State's obligations to take appropriate measures. The Commission welcomes the definition of bullying contained within Clause 1 of the Bill which reflects the spirit of UNCRC General Comment No. 13. However, the Commission recommends that the Committee considers an amendment to Clause 1(d) stating 'with the intention of causing harm to the physical, psychological integrity or well being of that pupil or group of pupils'. This amendment will make it clear that human rights standards are being applied in the Bill (Para 22);**

- **advises that the State has a positive duty to secure the child's right to education regardless of whether they are in a private or public setting. Therefore bullying should be dealt with regardless of where the educational provision takes place. The Commission recommends that the Committee asks the Department how bullying will be addressed in respect of independent schools (para 25);**
- **In light of the ECtHR case law, the Commission advises that the Committee should give consideration to whether there should be an obligation for the school to report instances of criminal activity or human rights abuses that fall outside the scope of Clauses 2(b) and 3(1) to other public authorities to ensure a systematic approach. The Commission recognises the complexities attached to such an approach and that this will need careful consideration (para 28);**
- **The Commission recommends amending Clause 3(3) to include language, persons with or without dependents and 'other status'. This would address the Commission's concerns regarding the absence of socio-economic deprivation. The Commission advises that the inclusion of language and other status in particular would reflect the categories contained within the freedom from discrimination provisions under ECHR Article 14 and other relevant human rights standards (para 35).**

Introduction

1. The Northern Ireland Human Rights Commission (the Commission) pursuant to Section 69(4) of the Northern Ireland Act 1998, has a statutory remit to advise the Assembly whether a Bill is compatible with human rights. In accordance with this function the following statutory advice is submitted to the Committee for Education in

response to a call for evidence on the Addressing Bullying in Schools Bill.¹

2. The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. The relevant international treaties in this context include:

- The CoE European Convention on Human Rights, 1950;²
- The CoE Framework Convention for the Protection of National Minorities (FCNM);³
- UN International Covenant on Civil and Political Rights (ICCPR);⁴
- UN International Covenant on Economic, Social and Cultural Rights (ICESCR);⁵
- UN Convention on the Rights of the Child (UNCRC);⁶
- UN Convention on the Elimination of Discrimination against Women (CEDAW);⁷
- UN Convention on the Elimination of Racial Discrimination (ICERD);⁸
- UN Convention on the Rights of Persons with Disabilities (UNCRPD);⁹
- Charter of Fundamental Rights of the European Union (CFREU);¹⁰

3. The Northern Ireland Executive (NI Executive) is subject to the obligations contained within these international treaties by virtue of the United Kingdom (UK) Government's ratification and the provisions of the Northern Ireland Act 1998.¹¹

¹ The Bill was introduced in the Northern Ireland Assembly on 2 November 2015

² Ratified by the UK in 1951

³ Ratified by the UK in 1998

⁴ Ratified by the UK in 1976

⁵ Ratified by the UK in 1976

⁶ Ratified by the UK in 1991

⁷ Ratified by the UK in 1986

⁸ Ratified by the UK in 1969

⁹ Ratified by the UK in 2009

¹⁰ Ratified by the UK in 2000

¹¹ In addition, Section 26 (1) of the Northern Ireland Act 1998 provides that 'if the Secretary of State considers that any action proposed be taken by a Minister or Northern Ireland department would be incompatible with any international obligations...he may by order direct that the proposed action shall not be taken.' Section 24(1) states

4. In addition to the treaties, there exists a body of 'soft law' developed by the human rights bodies of the UN and CoE. These declarations and principles are non-binding but provide further guidance in respect of specific areas. The relevant standards in this context include:

- ICESCR General Comment No.13 on 'The Right to Education';¹²
- ICESCR General Comment No. 20 'Non-discrimination in economic, social and cultural rights'¹³
- UNCRC General Comment No.1 on 'The Aims of Education';¹⁴
- UNCRC General Comment No.10 (2007) 'Children's Rights in Juvenile Justice';¹⁵
- UNCRC General Comment No.13 'The Right to the Child of Freedom from all Forms of Violence'¹⁶
- The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, 2006;
- CoE European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No.10 on Combating Racism and Racial Discrimination In and Through Education;
- Beijing Platform for Action, 1995;
- CoE Parliamentary Assembly Resolution 1965 (2011) on Education against Violence in Schools;
- CoE Parliamentary Assembly Resolution 1803 (2011) on Education against Violence in Schools;

5. The Commission welcomes the opportunity to provide advice on the Bill. It recognises that the policy objectives underpinning the proposed legislation are progressive. It further makes a number of recommendations to enhance the protection of and ensure compliance human rights.

that 'a Minister or Northern Ireland department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act – (a) is incompatible with any of the Convention rights'.

¹² ICESCR General Comment No.13: 'The right to education (article 13 of the Covenant)', E/C.12/1999/10, para 37

¹³ ICESCR General Comment No. 20 'Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)

¹⁴ UNCRC General Comment No. 1(2001) Article 29(1)' The Aims of Education' CRC/GC/2001/1

¹⁵ UNCRC General Comment No.10 (2007) 'Children's Rights in Juvenile Justice' CRC/C/GC/10

¹⁶ UNCRC General Comment No.13 'The Right to the Child of Freedom from all Forms of Violence' 18 April 2011, CRC/C/GC/13

General Comments on the Bill

6. The Charter of Fundamental Rights of the European Union (CFREU) Article 1 provides that human dignity is inviolable and must be protected. Article 14 of the CFREU also provides for the right to education. The European Court of Justice has ruled that the fundamental right to dignity is part of EU law.¹⁷ An interpretation of Article 1 states:¹⁸

...none of the rights laid down on this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter.

7. The UNCRC Article 3 provides 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.' The Commission recognises that, to the extent the Bill promotes these two concepts i.e human dignity and the best interests of the child, it is progressive.

8. The ECHR Article 3 requires measures to be taken to ensure that individuals are not subject to inhuman or degrading treatment or punishment. This includes ill-treatment administered by private individuals.¹⁹ The ECtHR has ruled that measures should include effective protection, in particular of children and other vulnerable persons, and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge.²⁰ In order to amount to inhuman treatment under Article 3, the treatment must attain a minimum level of severity. It must cause 'either actual bodily harm or intense physical or mental suffering.'²¹ For treatment to be deemed degrading, the ECtHR has ruled that it is treatment 'such as to arouse feelings of fear, anguish and inferiority capable of humiliating and debasing them.'²²

¹⁷ *Netherlands v Parliament and the Council*, C- 377/98, 9 October 2001, para 70

¹⁸ Official Journal of the European Union, 14 December 2007, 2007/C 303/02

¹⁹ *E and Others v UK*, Application No.33218/96 (26 November 2002), para 88

²⁰ *E and Others v UK*, Application No.33218/96 (26 November 2002), para 88

²¹ *Kudla v Poland*, Application No. 30210/96 (26 October 2000), para 92

²² *Kudla v Poland*, Application No. 30210/96 (26 October 2000), para 92

9. In the case of *Đurđević v Croatia*, the ECtHR held that under the ECHR Article 3, the State is required to take measures covering school discipline in relations between pupils.²³ The Court also held that States have a duty under Article 8 of the Convention (the right to respect for private and family life, home and correspondence) to protect the physical and moral integrity of an individual from other persons. The Court stated 'To that end, they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals'.²⁴
10. In a different case, *Đorđević v Croatia*, the ECtHR held that states are required to take all reasonable measures to prevent abuse in order to comply with Article 3 of the Convention.²⁵
11. Article 8 may be relevant where there is a complaint of ill-treatment which does not meet the threshold required by Article 3. Article 8 as already outlined covers the moral and physical integrity of the person.²⁶ The ECtHR has ruled that there may be positive obligations on the State to ensure the right to private life under Article 8 and obligations may involve the adoption of measures designed to secure respect for private life, even in the sphere of relations between individuals.²⁷
12. The UNCRC also requires States to take measures to address relations amongst pupils. Article 19 requires States to take all appropriate legislative, administrative social and education measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. General Comment No. 13 makes it clear that mental violence includes psychological bullying by adults and other children.²⁸ Furthermore, Article 28(2) provides that States shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the Convention on the Rights of the Child. Article 29(1) requires States to ensure 'the development of the child's

²³ *Đurđević v Croatia*, Application No. 52442/09 (19 July 2011), para 104

²⁴ *Đurđević v Croatia*, Application No. 52442/09 (19 July 2011), para 107

²⁵ *Đorđević v Croatia*, Application No: 41526/10 (24 July 2012), para 148.

²⁶ *X and Y v Netherlands*, Application No. 8978/80 (26 March 1985) para 22

²⁷ *X and Y v Netherlands*, Application No. 8978/80 (26 March 1985) para 23

²⁸ UNCRC General Comment No.13 'The Right to the Child of Freedom from all Forms of Violence' 18 April 2011, CRC/C/GC/13

personality, talents and mental and physical abilities to their fullest potential'. The UNCRC Committee's General Comment No. 1 on the Aims of Education provides that 'a school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of article 29(1).'²⁹ The UNCRC Committee expressed concern following the UK's 2008 examination in its concluding observations, stating that 'bullying is a serious and widespread problem, which may hinder children's attendance at school and successful learning'. It recommended that the UK 'intensify its efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance.'³⁰

13. In addition to the ECHR and the UNCRC, a number of other human rights standards are relevant in the context of this Bill. This is because specific actions are required for particular groups, including on the grounds of gender, race, sexual orientation and disability. The relevant human rights instruments include: the ICCPR Articles 7 and 9,³¹ the ICESCR Article 13,³² the CEDAW Article 10,³³ the ICERD Article 5,³⁴ the UNCRPD Article 24,³⁵ the FCNM Article 12,³⁶ Principle 16 of the Yogyakarta Principles,³⁷ the CoE Parliamentary Assembly Resolution 1965(2011) on Education Against Violence at Schools³⁸

²⁹ UNCRC General Comment No. 1(2001) Article 29(1) 'The Aims of Education' CRC/GC/2001/1, para 19

³⁰ UNCRC 'Concluding Observations on the Examination of the United Kingdom of Great Britain and Northern Ireland' 2008, CRC/C/GBR/CO/4, paras 66 and 67

³¹ ICCPR Article 9 provides that everyone has the right to liberty and security of the person. Article 7 provides that no-one shall be subject to torture, inhuman and degrading treatment. The Human Rights Committee has stated in General Comment No. 20 that it is the duty of the State to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity. See HRC 'General Comment No.20: Article 7 (Prohibition of Torture, Inhuman and Degrading Treatment)' 1992, para 2.

³² ICESCR Article 13 provides that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms.

³³ CEDAW Article 10 requires the State to take all appropriate measures to eliminate discrimination against women in the field of education.

³⁴ ICERD Article 5 requires the State to prohibit and eliminate racial discrimination to guarantee the right to education.

³⁵ UNCRPD Article 24 requires the State to ensure an inclusive education system at all levels directed to 'The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity'

³⁶ Article 12 of the FCNM requires Parties to the Convention to undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

³⁷ The Yogyakarta Principles provide that States shall 'Ensure that laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment.'

³⁸ CoE Parliamentary Assembly Resolution 1965 (2011) considers that violence at school is a violation of children's rights and provides that there is a need to enhance policy design concerning education against violence at school

and the CoE Parliamentary Assembly Resolution 1803(2011) on Education Against Violence at Schools.³⁹

14. The Commission welcomes duties included in the Bill which will require Boards of Governors to record incidents of bullying. The ICESCR General Comment No.13 provides that States parties must closely monitor education - including all relevant policies, institutions, programmes, spending patterns and other practices - so as to identify and take measures to redress any de facto discrimination. Furthermore, educational data should be disaggregated by the prohibited grounds of discrimination.⁴⁰ The ECRI General Recommendation No. 10 on Combating Racism and Racial Discrimination In and Through School Education recommends that the governments of Member States gather the information required to identify problems facing pupils from minority groups in the school environment in order to introduce policies to solve these problems.⁴¹
15. **The Commission welcomes the general principles of the Bill which aims to address the issue of bullying in schools by defining bullying and placing duties on the Board of Governors to secure measures to prevent bullying and to keep a record of bullying incidents. The Commission advises that the general principles of the Bill are in line with a number of human rights treaties and standards.**
16. In accordance with Article 19 of the UNCRC which requires States to take all appropriate legislative, administrative social and education measures to protect the child from all forms of physical or mental violence, abuse and neglect, the Commission notes that there may be an overlap between the Bill and behaviour prohibited by criminal law. Examples include offences prohibited by the Protection from Harassment (Northern Ireland) Order 1997, the Sexual Offences (NI) Order 2008, the Offences Against the Person Act 1861 and the Communications Act 2003.

and better support the implementation of national policies aimed at counteracting all forms of violence affecting children and young people.

³⁹ CoE Parliamentary Assembly Resolution 1803 (2011) states penal and/or disciplinary standards should clearly prohibit all acts committed at school which can be qualified as “violent”, including physical or degrading punishment of pupils, violence against pupils by school staff, violence by third persons against pupils on school premises and violent behaviour by pupils against other pupils, school staff or school property.

⁴⁰ CESCR General Comment No.13: ‘The right to education (article 13 of the Covenant)’, E/C.12/1999/10, para 37.

⁴¹ CoE European Commission against Racism and Intolerance (ECRI) ‘General Policy Recommendation No.10 on Combating Racism and Racial Discrimination In and Through School Education’, adopted 15 December 2006, p 5.

17. There is also an overlap with policies that fall under the remit of other departments and bodies, including the DHSSPS Co-operating to Safeguard Children (2003) policy and the Regional Child Protection Policies and Procedures (2005). The Commission suggests that these policies should be amended accordingly to bring into line with this Bill. The Commission also recognises the important role of the Education and Training Inspectorate (ETI) in inspecting schools and clarity should be provided to the role of the ETI in monitoring the effectiveness of Boards of Governors in exercising its functions contained within the Bill.
18. **The Commission advises that, given potential overlap between the Bill and existing criminal law, the Committee may wish to ask the Department of Education what engagement it has had with the Department of Justice, the PSNI and PPS, the DHSSPS and the ETI during the development of the Bill and underpinning policy.**

Clause 1: Definition of Bullying

19. Clause 1 of the Bill defines bullying to include verbal and physical acts by a pupil or groups of pupils against another pupil or group of pupils. Although human rights standards do not provide a definition of bullying, UNCRC General Comment No 13 describes violence among children as including: physical, psychological and sexual violence, often by bullying, exerted by children against other children, frequently by groups of children.⁴²

20. The definition of bullying in Clause 1 includes the use of written and electronic communication. The Commission welcomes that the definition includes the use of electronic communication as a form of bullying as well as other more longstanding forms. UNCRC General Comment No 13 provides that mental violence includes psychological bullying via information and communication technologies such as internet and mobile phones, known as cyberbullying.

21. Clause 1 of the Bill also sets out the effect of such behaviour which is 'the intention of causing physical or emotional harm to that pupil or group of pupils.' UNCRC General Comment No.13 provides that violence among children includes violence:

⁴² UNCRC General Comment No 13 'The right of the child to freedom from all forms of violence', para 27

which not only harms a child's physical and psychological integrity and well-being in the immediate term, but often has severe impact on his or her development, education and social integration in the medium and long term.

22. The Commission advises that human rights standards are not prescriptive regarding a definition of bullying, focusing more on the State's obligations to take appropriate measures. The Commission welcomes the definition of bullying contained within Clause 1 of the Bill which reflects the spirit of UNCRC General Comment No. 13. However, the Commission recommends that the Committee considers an amendment to Clause 1(d) stating 'with the intention of causing harm to the physical, psychological integrity or well being of that pupil or group of pupils'. This amendment will make it clear that human rights standards are being applied in the Bill

Clauses 2 and 3 – Duties of Board of Governors of grant aided schools

23. The Bill makes reference to the duties of the Board of Governors of grant aided schools in securing measures to prevent bullying and keeping records of incidents of bullying (Clauses 2 and 3). The right to education is guaranteed by ECHR, Article 2 Protocol 1 and the Convention does not distinguish between State and private teaching institutions.⁴³

24. The Commission recognises that there are 14 independent schools in Northern Ireland.⁴⁴ Paragraph 3.50 of the Co-operating to Safeguard Child policy states 'The role of independent schools in relation to child protection is the same as that of any other school and similar policies and procedures should be adopted.'⁴⁵

25. The Commission advises that the State has a positive duty to secure the child's right to education regardless of

⁴³ *Kjeldsen, Busk Madsen and Pedersen v Denmark*, Application No: 5095/71; 5920/72; 5926/72 (7 December 1976) para 50

⁴⁴ <https://www.deni.gov.uk/articles/independent-schools>

⁴⁵ <https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/co-operating-safeguard-children-may2003.PDF>

whether they are in a private or public setting. Therefore bullying should be dealt with regardless of where the educational provision takes place. The Commission recommends that the Committee asks the Department how bullying will be addressed in respect of independent schools.

26. The Commission welcomes duties in the Bill on Boards of Governors to secure measures to prevent and record incidents of bullying. Clause 2(b) provides that the Board of Governors of grant aided schools must determine the measures to be taken at the school with a view to preventing bullying involving registered pupils at the school (i) on the premises of the school during the day; (ii) while travelling to or from the school during the school term; or (iii) while the pupil is in the lawful control or charge of a member of the Staff at the school. Clause 3(1) provides a duty on the Board of Governors to keep a record of incidents of bullying within the same scope as Clause 2(b). The Commission notes that there may be incidents of bullying that may fall outside the scope set out in these clauses, for example when schools have been informed of incidents involving registered pupils in the evening.

27. The case of *Dordević v Croatia* involved harassment of a vulnerable person with disabilities by children from a nearby school. The case concerned the issue of the State's positive obligations in a situation, outside the sphere of criminal law, where the competent State authorities are aware of a situation of serious harassment and even violence directed against a person with physical and mental disabilities. It concerns the alleged lack, in such a situation, of an adequate response to properly address acts of violence and harassment that had already occurred and to prevent any such further acts.⁴⁶ The Court, in finding a violation, noted that police interviewed some of the children allegedly involved in certain incidents and that the school authorities discussed the problem with the pupils and their parents. However, the Court found that no serious attempt was made to assess the true nature of the situation complained of, and to address the lack of a systematic approach to the issue. The Court held the findings of the police were not followed by any further concrete action: no policy decisions had been adopted and no monitoring mechanisms have been put in place in order to recognise and prevent further harassment.⁴⁷ It is therefore possible that a violation of the Convention could occur

⁴⁶ *Dordević v Croatia*, Application No: 41526/10 (24 July 2012), para 143

⁴⁷ *Dordević v Croatia*, Application No: 41526/10 (24 July 2012), para 148

where public authorities, including schools, have been informed of incidents that have occurred outside involving school pupils, but there is no mechanism to ensure they are appropriately dealt with by public authorities.

28. **In light of the ECtHR case law, the Commission advises that the Committee should give consideration to whether there should be an obligation for the school to report instances of criminal activity or human rights abuses that fall outside the scope of Clauses 2(b) and 3(1) to other public authorities to ensure a systematic approach. The Commission recognises the complexities attached to such an approach and that this will need careful consideration.**

Clause 3(3)-Motivation of incidents of bullying

29. Clause 3(3) of the Bill provides that motivation may include a number of grounds including: age, disability, gender reassignment, marriage, political opinion, pregnancy, race, religion or belief, sex and sexual orientation.
30. Although the Bill makes reference to race, the Commission notes that the Bill makes no reference to language which is included as a protected characteristic under ECHR, Article 14. This is important in the Northern Ireland context given the Department's duties in relation to the development of Irish Medium Education and provision of English as an additional language to support the integration of migrant communities.
31. The Commission notes that the Bill makes no reference to socio-economic deprivation in monitoring motivation of bullying incidents, socio-economic deprivation was an important focus in the Shared Education Bill. Although Article 14 (which prohibits discrimination) makes no explicit reference to socio-economic deprivation, it does refer to 'property'; furthermore the ECtHR has ruled that the words 'other status' has a wide meaning.⁴⁸
32. The Committee on Economic, Social and Cultural Rights has interpreted 'other status' under Article 2 (2) ICESCR (non

⁴⁸ *Carson v UK*, Application no. 42184/05 (16 March 2010), para 70. In this case, the Court held that residence was a personal characteristic for the purposes of Article 14

discrimination) to include economic and social situation. CESCR General Comment No 20 states:⁴⁹

Individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person's social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatisation and negative stereotyping which can lead to the refusal of, or unequal access to the same quality of education and healthcare as others, as well as the denial of equal access to public places.

33. A report by Children's Commission on Poverty in 2014 in the UK reported the impact of poverty which can make children feel 'singled out, stigmatized and bullied.' The report noted that 27% of children reported that they had been bullied as a result of their parents struggling with the costs of school.⁵⁰

34. The Commission notes that the policy underpinning the Bill states 'it is recognised that a primary motivation for bullying behaviour can often be prejudice or discrimination on the basis of actual or perceived difference. Section 75 of the Northern Ireland Act 1998 sets out the commonly recognised forms which this can take.'⁵¹ However, the Commission notes that clause 3(3) makes reference to pregnancy but does not reference school age mothers. Section 75 of the Northern Ireland Act 1998 explicitly makes reference to persons with and without dependents. The Beijing Platform for Action calls on States to 'promote an educational setting that eliminates all barriers that impeded the schooling of pregnant adolescents and young mothers.'⁵² ICESCR General Comment No.13 also requires States to remove gender and other stereotyping which impedes the education access of girls, women

⁴⁹ ICESCR General Comment No. 20 'Non-discrimination in economic, social and cultural rights' (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights) para 35

⁵⁰ The methodology of Inquiry included 13 in-depth interview with parents and children from low income families, twenty two in depth interview with children aged 8-16 living in poverty and entitled to free school meals and an original survey of 2000 households across Britain, including responses from children aged 10-17 and their parents. See the Children's Commission on Poverty 'At What Cost: Exploring the Impact of Poverty on School Life', available at:

http://www.childrensociety.org.uk/sites/default/files/At_What_Cost_Exposing_the_impact_of_poverty_on_school_life-Full_Report.pdf

⁵¹ DENI 'Addressing Bullying in Schools: Consultation Document' para 60

⁵² See Strategic objective B.1 (Ensure Equal Access to Education) Action 80g, <http://www.un.org/womenwatch/daw/beijing/platform/educa.htm>

and other disadvantaged groups.⁵³ UNCRC General Comment No.1 on the Aims of Education further provides that gender discrimination in education can be reinforced by unsafe or unfriendly practices which discourage girls' participation in education.⁵⁴

- 35. The Commission recommends amending Clause 3(3) to include language, persons with or without dependents and 'other status'. This would address the Commission's concerns regarding the absence of socio-economic deprivation. The Commission advises that the inclusion of language and other status in particular would reflect the categories contained within the freedom from discrimination provisions under ECHR Article 14 and other relevant human rights standards.**

⁵³ ICESCR General Comment No.13 'The right to education (article 13 of the Covenant)', E/C.12/1999/10, para 55

⁵⁴ UNCRC General Comment No. 1(2001) 'Article 29(1) The Aims of Education' CRC/GC/2001/1, para 10



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Peter McCallion
Clerk
Education Committee
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27 January 2016

Peter,
Dear Mr McCallion

Re: Addressing Bullying in Schools Bill

The Commission welcomes the opportunity to respond to correspondence arising from the Committee's evidence session on 20 January 2016.

The Commission was asked for its views on the constraints on school authorities on obtaining electronic information from personal communication devices owned by school pupils, in order to record or address incidents of cyber-bullying.

The Commission advises that the issue engages Article 8 of the European Convention on Human Rights, which provides for the right to respect for private life, family, home and correspondence. A similar provision is contained within Article 16 of the UN Convention on the Rights of the Child (UNCRC).¹ It should be noted that Article

¹ Article 16 of the UN Convention on the Rights of the Child (UNCRC) also provides for child's right not to be subject to arbitrary or unlawful interference with privacy, family and correspondence.

16 of the UNCRC can be circumscribed by the best interests of the child principle in Article 3 of the UNCRC.

Article 8 of the ECHR is not an absolute right, as Article 8(2) of the ECHR sets out the conditions on which public authorities may interfere with the right to privacy i.e. when it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The Commission advises that the European Court of Human Rights (ECtHR) does not appear to have considered the specific issue of interest to the Education Committee in its consideration on the bill, but advises that the ECtHR has recently considered the question of whether the monitoring of an employee's internet use and his resulting dismissal was justified.

In the case of *Barbulescu v Romania*², the court held that the fact that an employer accessed the applicant's professional internet account and that record was used in domestic litigation was sufficient to engage the applicant's right to private life and correspondence. The ECtHR found that it was not unreasonable that an employer would want to verify that employees were completing professional tasks during working hours. The ECtHR also noted that monitoring had been limited in scope and proportionate as the communications had been monitored, but not other data and documents. The ECtHR concluded that the domestic courts struck a balance between the applicant's Article 8 rights and the interests of the employer, thus there was no violation of Article 8.

While the facts of the case are different to the issues being considered by the Education Committee, the principles applied by the ECtHR may be applicable. **Therefore, schools may not be in violation of Article 8 if accessing a pupil's school account or monitoring use of school facilities and equipment, including devices in certain circumstances. However the Commission advises that any such monitoring is required to respect Convention principles: it must be transparent to pupils and parents that communications would be monitored (to comply with the 'in accordance with law requirement'); the monitoring must be for a legitimate purpose (in this case presumably to protect the rights of others) and must be proportionate.**

² *Barbaulescu v Romania*, Application Number 61496/08

The Commission draws attention to the Education Act 2011 in England and Wales, which gives teachers stronger search powers to tackle cyber-bullying by providing a specific search power to search and if necessary, delete inappropriate images or files.³ The UK Department of Education provided the Joint Committee on Human Rights (JCHR) with a Human Rights Memorandum during legislative scrutiny of the Education Act 2011. The memorandum stated that the intention of the provision is to allow the searcher to see whether there are, for example, any images of bullying or threatening messages that show that the device is being used for cyber-bullying. The Department of Education went on to acknowledge that the power to examine and erase data engages Article 8 and is justifiable to meet the legitimate aim of preventing and detecting crime and the protection of the rights of others.⁴ The Memorandum committed the Secretary of State to issue guidance in connection with the exercise of this power to meet concerns about the possible misuse.⁵ The Department also considered that the arguments in support of the conclusion that the provisions of this clause were compatible with Article 8 ECHR applied equally in respect of Article 16 UNCRC.⁶

The JCHR welcomed the inclusion in the Bill of measures to improve discipline and behaviour in schools. The JCHR report on the provision stated 'As the Government's Human Rights Memorandum correctly points out, such measures are, in principle, human rights enhancing measures, insofar as they enable all children better to exercise their right to education which is guaranteed by Article 2 Protocol 1 ECHR and Article 28 of the UN Convention on the Rights of the Child.'⁷

In respect of searching electronic devices, the JCHR stated:⁸

³ Section 2 of the Education Act 2011. See Department of Education 'Preventing and tackling bullying; advice for headteachers, staff and governing bodies' para p 6
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444862/Preventing_and_tackling_bullying_advice.pdf

⁴ HR Memorandum 1 February 2011, Ev 19-53. Human Rights Memorandum available at
<http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/154/15410.htm>

⁵ *ibid*, para 85

⁶ *ibid*, para 53

⁷ Joint Committee on Human Rights 'Legislative Scrutiny; Education Bill and other Bills', available at
<http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/154/15404.htm#a5>

⁸ *ibid*, para 1.25

'We accept the necessity for a properly circumscribed power to examine and erase data on a pupil's electronic device and we welcome the Government's intention to give guidance about the exercise of the power. We have concerns, however, about the width of the power as currently defined in the Bill. Given the potentially serious interference with a pupil's right to respect for private life, we recommend that the power to examine and erase "if the person thinks there is a good reason to do so" be replaced by a more tightly defined power which is exercisable "if the person has reasonable grounds to suspect that the device has been, or is likely to be, used for purposes which are unlawful or contrary to the school rules."

The Commission therefore advises that should consideration be given to introducing a clause to the Bill that allows for schools to examine pupils electronic devices, that cognisance is taken of the JCHR's recommendations in legislative scrutiny of the Education Act 2011, i.e. that any such power must be tightly defined and accompanied by guidance to prevent misuse of such a power.

I hope this is helpful in your deliberations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Les Allamby', written over a horizontal line.

**Les Allamby
Chief Commissioner**



Northern Ireland
Assembly

Committee for Education

Les Allamby
Chief Commissioner
NI Human Rights Commission
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22 January 2016

Our Ref:2489

Dear Mr Allamby

Addressing Bullying in Schools Bill – Committee Stage

Please pass on the Committee for Education's thanks to your colleagues David Russell and Fiona O'Connell for the very useful and informative briefing on 20 January 2016 as part of the Committee Stage of the Addressing Bullying in Schools Bill.

Following the briefing, the Committee agreed to write to the Northern Ireland Human Rights Commission seeking your views on the constraints on school authorities in obtaining electronic information from the personal communication devices owned by pupils, in order to record or address cyberbullying incidents.

As the Committee Stage is about to conclude, a response at your earliest convenience would be greatly appreciated.

The Committee expects to publish its report on the Bill in February 2016.

Committee for Education

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Further information on the Bill can be found at the following link:

<http://www.niassembly.gov.uk/assembly-business/committees/education/legislation---committee-stage-of-bills/addressing-bullying-in-schools-bill/>

Yours sincerely

Signed Peter McCallion

Peter McCallion
Clerk
Committee for Education

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**Response to the CALL FOR EVIDENCE to inform the COMMITTEE
STAGE OF Addressing Bullying in Schools Bill**

January 2016

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1.0 Introduction

- 1.1 PlayBoard is an independent charity and the lead organisation for the development and promotion of children and young people's play in Northern Ireland. Since our establishment in 1985, PlayBoard has been committed to supporting the child's right to play through a combination of: service delivery, service development; campaigning, lobbying; awareness raising and working in partnership with others to put play on the agenda of policy makers and resource providers. The organisation takes great pride in promoting best practice in Play, Playwork and play based School Age Childcare services.

PlayBoard's mission is to drive the play agenda, ensuring that at every level of decision-making across society, the child's right to play is not only recognised but is made a reality within the lives of children, young people, families and communities. Children and young people's views, aspirations and perceptions of themselves and the environment in which they live, are at the heart of PlayBoard's work. Our vision is of a society where the right to play is realised.

PlayBoard as the lead organisation for the promotion, development and delivery of play, playwork and School Age Childcare in Northern Ireland welcome the opportunity to inform the Committee Stage of the Addressing Bullying in Schools Bill.

- 1.2 In our response we welcome the introduction of the Bill, whilst acknowledging the ability of play and playwork to be protective factors in preventing bullying and the development of children's self-esteem through for example, better play opportunities in the playground, promoting self-directed play, the use of loose parts, the promotion of free-play and the need to engender positive playgrounds.

2.0 Addressing Bullying in Schools Bill as introduced

- 2.1 We commend the Bill for attempting to define bullying whilst recognising that as noted in a Committee hearing, from a legislative perspective *[t]here is no*

*clear, international, recognised definition of bullying*¹. Bullying is a very serious issue that 'causes immediate harm and distress to the victim and has negative long-term consequences for the victim's mental health'². Farrington also notes that one of the major definitional problems with bullying is deciding where teasing ends and bullying begins. Farrington's seminal paper indicated that bullies and victims were generally less prevalent in secondary schools (age eleven to sixteen) compared to in primary schools (age seven to eleven). Should this remain the case, bullying among younger children must be a priority for the Department and primary schools. On this note we are surprised that para. 4(1) appears to exclude nursery school pupils from the Bill. In light of the preventative approach being adopted by the proposed legislation, this is surprising and we would urge further consideration.

- 2.2 We accept that one of the biggest issue for policymakers, Boards' of Governors, parents, schools and pupils themselves is how to address bullying amidst the prevalence of social media and the likelihood of cyberbullying among children and young people. Therefore we warmly welcome the inclusion of '*electronic communication*' within the Bill.
- 2.3 We are grateful too, to the Committee for teasing out a number of issues that add to the complexity of legislating for addressing bullying in schools including: the requirement for schools to record bullying incidents on a central IT system, the possibility of 'bullying' league tables emerging, concerns regarding the ability of schools to deal with homophobic issues as part of Relationships and Sexuality Education (RSE), and in highlighting the need for the Department to not just deal with the after-effects of bullying but to proactively seek to prevent bullying.
- 2.4 The bullying literature consistently highlights bullying as being more likely to occur when adult supervision or surveillance is low, for example at playtime, in the school playground. Bullying also occurs in the classroom, hallways,

¹ Committee for Education (2015). Minutes of Evidence meeting on Wednesday 4 November

² Farrington, D. P. (1993). Understanding and preventing bullying. Crime and justice, 381-458.

lunchroom and on the way to and from school³. Given the last point, we welcome the inclusion of para. 2(1)(b)(ii) '*while travelling to or from the school during the school term*'.

- 2.5 In addition we would contend that the Department has a remit for addressing bullying where a school provides wrap-around childcare, homework clubs or extra-curricular activities. The wording of the Bill does not appear to be clear on how the school day is defined. Para. 2(1)(b)(i) states '*on the premises of the school during the school day*' but is 'the school day' the formal educational day or does it extend to the increasingly 'informal day', which encompasses childcare, homework clubs and extra-curricular activities. We believe it is important that the legislation includes activities provided by the school on the school premises during the 'informal school day'. Many of these activities are play-based, they promote children's personal development, self-esteem, confidence and resilience, all of which are critically important to developing the characteristics so often lacking in the victims of bullying.

3.0 Play as a protective factor, preventing bullying

- 3.1 Generally, bullies are aggressive, tough, strong, confident, and impulsive, while victims are unpopular, lonely, rejected, anxious, depressed, unwilling to retaliate and lacking in self-esteem⁴. Sometimes bullies are also victims and vice versa. Thompson and Smith (2011⁵, 2009⁶) rehearse numerous anti-bullying strategies that schools should consider introducing, many of which take place in the playground. Ttofi and Farrington⁷ in their systematic and meta-analytic review of the effectiveness of school-based programmes to

³ ibid

⁴ ibid

⁵ Thompson, F., & Smith, P. K. (2011). The use and effectiveness of anti-bullying strategies in schools. Research Brief DFE-RR098. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/182421/DFE-RR098.pdf

⁶ Thompson, F., & Smith, P. K. (2012). Anti-bullying strategies in schools: what is done and what works. British Journal of Educational Psychology, 9(II). Available at: http://www.bullyingandcyber.net/media/cms_page_media/55/Thompson-Smith2.pdf

⁷ Ttofi, M. M., & Farrington, D. P. (2011). Effectiveness of school-based programs to reduce bullying: A systematic and meta-analytic review. Journal of Experimental Criminology, 7(1), 27-56.

reduce bullying found 'more intensive programs were more effective, as were programs including ... improved playground supervision'.

3.2 For many years, PlayBoard's Positive PlayGrounds programme has recognised and supported schools, teachers and staff to facilitate children's self-directed play at playtimes. The lack of opportunities and time for children to play during their playtime emerged as a theme in the findings of the recent Kids Life and Times survey (2014). PlayBoard working with the Centre for Children's Rights QUB, raised a module on children's play opportunities in their homes, schools and communities⁸. The majority of children who responded to the KLT survey were positive about their opportunities to play but there were a number of notable issues relating to play in school, including:

- Almost a quarter (24%) of children feeling they did not have a good choice of things to play with in their school playground.
- Over a fifth (22%) felt they did not have enough time to play during the school day.
- Children reported being able to play more freely with friends in school (84%), compared with being able to play with friends when in their communities or homes (77%).
- Children reported feeling safer when playing in school (89%), compared with feeling safe when playing in their communities or homes (73%).
- Girls reported being more positive about play in the school context.

3.3 These findings underscore how important the school environment is for children's play. However the school playground is also consistently found to be a place where incidences of 'traditional' bullying are most likely to occur⁹. This leads us to contend that schools need to take the necessary steps to

⁸ McQuade, L., Kehoe, S., and Emerson, L. (2015). Are children getting the opportunities to realise their right to play, Kids Life and Times Survey
<http://www.ark.ac.uk/publications/updates/update98.pdf>

⁹ Op cit. 2

ensure the school playground is a safe, inclusive and positive experience for pupils, that the space is designed to be supportive of the United Nations Convention on the Rights of the Child (UNCRC), article 31 (the right to play), and is conducive to preventing bullying by facilitating play opportunities that may contribute to developing children's confidence, self-esteem and resilience, particularly for those children who might be susceptible to being the victims of bullies.

4.0 Concluding Comments

- 4.1 PlayBoard welcome the Department's Addressing Bullying in Schools Bill. We particularly welcome the inclusion of '*electronic communication*' within the definition; the duty placed on Boards' of Governors to 2(1)(a) *ensure that policies designed to prevent bullying among pupils registered at the school are pursued at the school*; the inclusion of 2(1)(b)(ii) *while travelling to or from the school during the school term*; and 2(1)(b)(iii) *while the pupil is in the lawful control or charge of a member of the staff of the school*.
- 4.2 However, given the likelihood of more schools providing wrap-around School Age Childcare, the growing prevalence of 'Homework Clubs' and extra-curricular activities, we contend that the wording of 2(1)(b)(i) which states '*on the premises of the school during the school day*' may, require further refinement, particularly as to what constitutes 'during the school day'. Arguably bullying is as likely to happen within the 'informal' school day context as during the 'formal' school day.
- 4.3 Going forward, we urge that when Boards' of Governors are revising measures as required by 2(1)(d) they consult in a meaningful way, particularly with the registered pupils at the schools, in an attempt to unearth the children and young people's perspectives on solutions to preventing and irradiating bullying in schools.
- 4.4 Lastly, we are surprised that children from nursery school appear to be excluded from the Bill and can only conclude that this is on the basis of their

age or because they are not attending statutory education. We would urge the Department to reconsider the exclusion of pupils attending nursery schools on the basis that enormous preventative work can be achieved with the younger age groups.

- 4.5 PlayBoard welcomes further discussion with the Department on any of the points mentioned above and is happy to be considered for oral evidence sessions in relation to the Committee's scrutiny of the Bill.

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STRANMILLIS UNIVERSITY COLLEGE
A College of Queen's University Belfast

*Ref: Written Evidence for Committee Stage of the Addressing
Bullying in Schools Bill*

Stranmillis University College would lend its full support to the comprehensive response submitted by the Northern Ireland Anti-Bullying Forum (NIABF), whose chair is Dr Noel Purdy, Director of Research and Scholarship and Head of Education Studies at Stranmillis.

In addition, Stranmillis University College would draw the Committee's attention to some very recent research carried out by Dr Purdy and Prof Peter K Smith (Goldsmiths, University of London) which is currently under review by an academic journal and which it is hoped will be published in full in 2016.

Entitled "A content analysis of school anti-bullying policies in Northern Ireland" the paper is based on a content analysis of 100 anti-bullying policies, obtained in November 2014 from schools right across Northern Ireland, 50 mainstream primary schools and 50 mainstream post-primary schools. A content analysis was used and adapted from Smith et al. (2012). As well as determining which region of Northern Ireland the schools were located in, two new categories were added to record whether the policies mentioned consultation with registered pupils and/or their parents, resulting in a total of 36 categories. The categories were divided into four sections as before: (A) 13 categories concerning the definition of bullying; (B) 11 categories concerning reporting and responding to bullying; (C) 6 categories concerning recording, evaluating and consulting on the policy; and (D) 6 categories on strategies for preventing bullying. For each category the school scored either one for meeting the criterion or zero for not meeting it. The total overall anti-bullying content score was generated ranging from zero to 36. The number of pages of the policy was also counted and recorded, which included cover pages but not extraneous or duplicate material such as letters to parents. Finally, an additional unscored category was added to record whose definition of bullying (if any) had been used in each school policy.

In Section A, on the definition of bullying behaviour, responses were high for having a definition (98%), making it clear that bullying is different from other forms of aggression (74%), and for mentioning physical (94%), verbal (90%), relational (91%), material (76%), and cyberbullying (71%). Responses were moderate for mentioning racist bullying (47%), and low for homophobic (28%), sexual (22%), adult/teacher-pupil (7%), and bullying due to disability (16%) or religion (28%).

When the definitions were analysed, it was found that just 20% of the schools chose to use the Department of Education definition of bullying (DENI, 1999), while 11% used the

definition of the Northern Ireland Anti-Bullying Forum (NIABF, 2005). A further 3% of schools used definitions taken from other referenced sources such as Olweus (1999). A majority of schools (57%) used an unreferenced definition, and when analysed further it was found that this was even more common among primary schools (68%) than post-primary schools (46%). Many of these definitions were written in child-friendly language but some failed to include the widely accepted essential criteria of repetition and imbalance of power (Smith, 2014). The following examples illustrate the weakness of some of the definitions used, since they do not mention either of the defining criteria of repetition and power imbalance (and the final one does not even specify actual behaviour):

“Bullying is behaviour intended to hurt another person resulting in pain and distress to the victim.”

“Bullying is any behaviour which is deliberately intended to hurt, intimidate, frighten, harm or exclude.”

“Bullying is the wilful, conscious desire to hurt another and put him/her under stress.”

In Section B, on reporting and responding to incidents of bullying, there were high responses for five of the eleven categories: 90 per cent of the policies stated what victims of bullying should do, 96 per cent said how teaching staff should respond to a report of bullying, 85 per cent clearly mentioned the responsibility of parents if they know of bullying, 78 per cent clearly mentioned the responsibilities of other pupils if they know of bullying, and 79 per cent discussed if, when or how parents would be informed. There were moderate levels of response for stating whether sanctions applied for bullying can vary (63%); for mentioning follow-up to see whether the sanctions were effective (52%); for discussing what action will be taken if the bullying persists (43%); and for suggesting how to support the victim (50%) and how to help the pupil(s) doing the bullying to change their behaviour (45%). The response was however very low (13%) in relation to clearly mentioning the responsibilities of non-teaching staff if they know of bullying.

In Section C, which focused on recording, evaluating and consulting on the policy, responses were very mixed. A high percentage (81%) of policies said that reports of bullying would be recorded, though it was noted that very few of these gave any further details as to how or where they would be recorded. Responses were moderate in terms of mentioning the periodic review and updating of the policy (61%), and in mentioning the (statutory) consultation with registered pupils (40%) and their parents (38%). Responses were low for saying who was responsible for coordinating the recording system (26%) and lower still for showing how records or survey data would be used to know whether the policy is working or not (8%).

Section D considered strategies for preventing bullying in schools. A high percentage of policies (73%) mentioned strategies to encourage co-operative behaviour, reward good behaviour, improve school climate or create a safe environment, while there was a moderate response (48%) in terms of providing additional advice for parents about bullying (beyond simply encouraging them to report it); and also for mentioning the preventative role of playground activities or lunchtime supervisors (34%). The other three items all received low responses: discussion of general issues of peer support (33%); discussion of issues of

inclusiveness (25%); and mention of the issue of bullying on the way to school or happening outside school (25%).

The implications of this research are clear.

First, there is an urgent need for clarity around what is meant by bullying, as currently there is a wide variation in understanding in schools, as evidenced by the range of definitions, some of which are inadequate. Stranmillis University College supports the recommendation of NIABF that we need a robust definition of bullying in schools, and feels that this should include the core elements of an intention to harm, repetition, and an imbalance of power. The current definition as outlined in Clause 1 of the Bill is weak in that it fails to include the imbalance of power.

Second, there is an urgent need for more guidance and/or exemplars of good practice for schools as they write their anti-bullying policies. This study highlights some encouraging progress but also many areas of concern e.g. where too few schools refer to specific forms of identity-based bullying within their policies; where there is limited or no information at all in relation to the nature of the support offered to children involved in bullying; and where there are too few references to how the information collated about bullying incidents will be analysed and used by schools to improve practice.

Third, the statutory guidance which will follow the Bill will be extremely important for adding the detail regarding the recommended approaches to preventing bullying and also responding to bullying incidents in schools. We would ask that this guidance be carefully considered, and written by a representative group which should include NIABF, but also teachers from all sectors, including special education. No expense should be spared in ensuring that this guidance is fit for purpose and appropriately disseminated to all schools.

In conclusion, this most recent research in Northern Ireland confirms the importance of the new Bill and ensuing statutory guidance, but also therefore the importance of getting things right from the start.

4 January 2016

the
rainbow



project

Addressing Bullying in Schools

Submission to the Committee for Education

January 2016
Gavin Boyd
Policy and Advocacy Manager

Submission to the Committee for Education

Addressing Bullying in Schools Legislation – Committee Stage

Introduction:

The Rainbow Project is the largest organisation in Northern Ireland which works to support the mental health and wellbeing of people who are lesbian, gay, bisexual and/or transgender and their families.

Founded in 1994 as a sexual health organisation for gay and bisexual men, The Rainbow Project has developed into an organisation which seeks to meet the needs of the LGB&T community in Northern Ireland through research, advocacy and the development of services.

Background:

In 2006 The Rainbow Project conducted research into the mental health of young gay and bisexual men.¹ This research identified that many gay and bisexual young men had experienced severe and prolonged periods of bullying because of their actual or perceived sexual orientation and that, those who had experienced bullying had significantly poorer mental health compared to those who had not experienced bullying.

In 2010, The Rainbow Project was funded by the Tudor Trust to develop and education equality project. This project developed training packages for teachers and a guide to include sexual orientation and gender issues within the curriculum. The project also developed a report on education in Northern Ireland which identified a number of short-comings in how the education services in Northern Ireland were failing to provide safe and welcoming environments for LGB&T students².

The recommendations arising from this report included:

- Placing a statutory duty to promote equality of opportunity, similar to section 75 of the Northern Ireland Act 1998 on schools and their boards of governors,
- Mandatory training for all teaching and non-teaching staff on sexual orientation and gender issues
- Reviewing the statutory curriculum to include sexual orientation and gender issues
- Anti-bullying legislation which specifically enumerates the different motivations for bullying including homophobic and transphobic bullying

¹Out on Your Own – McNamee 2006 http://www.rainbow-project.org/assets/publications/out_on_your_own.pdf

² Left out of the Equation – Boyd 2011 <http://www.rainbow-project.org/assets/publications/left%20out%20of%20the%20equation%20may%202012.pdf>

The Rainbow Project has been a leading voice in calling for anti-bullying legislation in Northern Ireland by working with umbrella organisations such as the Northern Ireland Anti-Bullying Forum and by making the issue a matter of public importance³.

Draft Legislation:

The Rainbow Project welcomes the decision of the Department of Education to bring forward draft legislation to address bullying in schools. We believe that legislation is necessary to create a uniform definition of bullying across all schools and to ensure that teachers and other staff are aware of their obligations to prevent bullying. Legislation is also required to ensure that there is adequate monitoring and recording of bullying incidents so that schools can demonstrate that they are responding to bullying appropriately but also to ensure that the Department has an accurate picture of the level of different forms of bullying in schools in Northern Ireland.

Section 1: Definition of bullying

The Rainbow Project agrees with the Department's definition of bullying as set out in the draft legislation.

Section 2: Duty of Board of Governors to secure measures to prevent bullying

The Rainbow Project believes that this section of the legislation should be amended. The greatest challenge to tackling homophobic and transphobic bullying in schools in Northern Ireland is that individual schools may determine what motivations for bullying will be included in their anti-bullying policies. Many schools in Northern Ireland do not specifically refer to homophobic and transphobic bullying in their policies and where these motivations are not specifically referenced in the policy, it places an undue burden on young people who have been the victims of homophobic and transphobic bullying to ensure that they are given equitable treatment by their schools. It also creates confusion among teachers who are often unsure of how or whether they are to tackle homophobic bullying when it is not included in school's policy.

The Rainbow Project believes that, if this legislation is to have a positive impact on LGB&T young people, it must be mandatory for schools to specifically refer to homophobic and transphobic bullying, as well as other prejudice-motivated bullying within their policies. This cannot be a decision left to individual Boards of Governors.

Therefore The Rainbow Project recommends that Section 2(b) be amended to include an obligation to specifically include, as a minimum, bullying motivated by:

- a) Racism
- b) Sectarianism

³ <http://www.bbc.co.uk/news/uk-northern-ireland-22217011>

- c) Homophobia
- d) Transphobia
- e) Sexism
- f) Disableism

Schools should feel able to supplement this list with additional motivations but as these are the characteristics for hate crimes, it is appropriate that all schools should specifically refer to these motivations as a minimum.

Section 3: Duty to keep a record of incidents of bullying

The Rainbow Project agrees with much of this section but believes that some amendments will be necessary.

The Rainbow Project believes that the recording of the motivations for incidents should be mandatory and therefore recommends that at section 3(3) 'may' should be replaced with 'shall'.

The Rainbow Project also believe that at Section 3(3)(c) 'gender reassignment' should be replaced with 'gender identity'. This is because many young trans people will not access gender affirming therapies until they have left school but are still vulnerable to transphobic bullying. The motivation of 'gender identity' is therefore a more accurate definition of the motivation for transphobic bullying.

Conclusion:

The Rainbow Project believes, that legislation is required to ensure that homophobic and transphobic bullying, along with all other forms of bullying are adequately tackled in schools across Northern Ireland.

The Rainbow Project thanks the Department of Education for bringing forward this legislation and thanks the Committee for Education for giving this important legislation its due scrutiny.

The Rainbow Project believes that many of the fundamental principles of this legislation are correct but in order for it to have a positive impact on LGB&T young people, one of the most vulnerable and marginalised groups in Northern Ireland, some minor amendments are required to ensure that homophobic and transphobic bullying are given the attention and statutory framework they require.

Should the Committee desire further information, The Rainbow Project would be very happy to provide the Committee with oral evidence.

TOR BANK SCHOOL (Special School) response Education Committee call for evidence: Addressing Bullying in Schools Bill

General Remarks in relation to Special Schools and SEN under Inclusion Agenda

Governors and staff welcome the proposal to bring forward any new initiatives that will support school governors, staff and leaders tackling bullying in Special Schools and other mainstream schools.

Contextual elements of a Special School. Tor Bank is an ‘Outstanding’ all age Special School which caters for 192 children and young people with severe to complex learning difficulties and acute medical needs. All pupils have more than one special need and/or disability and may also have a wide range of impairments affecting normal development. Children or young people therefore have one or more of the following special needs or disabilities: physical, communication, educational, emotional, behavioural, medial and/or social. Over 60% of these children are on the ASD spectrum and have associated sensory, communication and behavioural needs requiring specialist one to one intensive support. Most of the children and young people attending Tor Bank also have IQ levels of 50 and this often impacts on levels of understanding, comprehension levels, language development and emotional development.

Programmes used to address bullying. Tor Bank prides itself on being proactive in addressing the well-being and often complex pastoral needs of all children and young people. This is done through either individual or whole class programmes which are specifically designed to address individual needs. Bullying related issues are mainly addressed as part of the PDMU programmes, social and life skills programmes, health and well -being programmes and other personal effectiveness programmes throughout the school. They are also addressed within the individual articles and philosophy contained within UNICEF ‘Rights Respecting School’ charter (Tor Bank has got the highest award – level 2 status). The articles and principles have been interwoven into the all aspects of curriculum programme design, planning and delivery at both individual pupil, whole class level and whole school level and this has helped to staff and children alike to identify and eliminate ‘ intentional bullying-related’ behaviours immediately. Anti-bullying poster are clearly visible on walls throughout the school as are playground charters, all presented in a way in which children with low levels of literacy and reading can understand. We have therefore a number of concerns regarding the proposed legislation and its possible impact on a special school environment. These are summarised and highlighted below.

Applying a Mainstream Bullying Definition to a Special School – reservations. Governors trust and respect the specialist knowledge, skills and expertise of school staff, led by the Principal and Vice principal, to address ‘bullying’ proactively within the supportive nurturing framework they provide for all children. They are therefore

extremely happy with current specialist interventions, strategies and teaching methods being used to deliver such a successful on-site approach to supporting the welfare of children effectively. They have faith in the ability of the Principal and the Vice Principal in the first instance to monitor and deal with such incidents while ensuring that the school's discipline policy and appropriate support mechanisms are also followed. Being a special school Governors are actively involved in the monitoring of 'bullying-type' incidents and also receive regular feedback at Board of Governor meetings on individual cases as they arise. They also receive support programme updates as part of the on-going safeguarding procedures.

Like many other schools, Tor Bank Governors are pleased to be able to report that their stand-alone anti-bullying policies in addition to their discipline policies are also integrated and interwoven into all pastoral care programmes and policies focused on pupil well-being. While such initiatives should be highly commended, they recognise that bullying can still be a persistent problem within other schools for a variety of reasons.

While Governors appreciate that while tackling bullying must be a government priority, they also believe that every child with SEN must also feel safe and secure in their school environment in order to get the best start in life. Governors at Tor Bank School (Special School) believe that all stakeholders concerned with the concept of wellbeing must work collaboratively to address bullying and, in this respect, tackling bullying is beyond the limited scope of the proposed legislation.

Clause 1: Definition of Bullying – General Concerns for Special Schools

1. Provision of a common definition of bullying

a. Concerns in respect of placing the proposed definition on a statutory footing for all children and young people, including those with SEN in Special Schools

While Governors and staff welcome the development of a definition of bullying they remain concerned at the potential unintended consequences of placing such a definition on a statutory footing. It may have serious implications for Special Schools like Tor Bank School who have a complex schooling population with severe to complex needs.

Although currently there is not a common definition of bullying, it is recognised that schools do have legally defined responsibilities and Governors and staff at Tor Bank strongly believe that they undertake these in a highly beneficial and competent manner considering the resourcing limitations and constraints imposed upon them within a partially delegated framework. However, Governors and staff also welcome any proposals to give greater clarity in respect of these responsibilities confident that their on-going work in this field will be formally recognised as 'good practice' within a school for children with severe learning difficulties. They look forward to Special Schools and their complex SEN populations being provided with specialist guidance in the form of a clear statement of responsibilities incorporating a definition of bullying and how this can be applied to a special school They recognise that such a

definition will assist the Principal, Vice Principal and school staff with ensuring the rights of all children are upheld in conjunction with obligations.

In finalising and issuing such a definition however, Governors and school staff believe that consideration should be given to the fact that Special Schools have uniquely different populations than many mainstream schools which makes a common definition and interpretation of bullying extremely difficult to apply in a special school context which is often sensitive and complex. For example, often children with severe learning difficulties and challenging behaviours do not 'intentionally' hit out in an attempt to bully another person, but may do so as a response to non-compliance, sensory problems, motor control problems or ADHD. The staff member with a high degree of experience and expertise, and who knows the child best, is in the best position to be able to distinguish between bullying (where there is an in-balance of power) and deliberate, repeated aggressive behaviours between equals. The ability to use staff expertise and to trust staff opinion must be clearly contained within any definition otherwise this will cause major problems for Tor Bank and will lead to an increase in suspensions and expulsions.

While a definition is welcome, uniformly holding Tor Bank School to account under the same legal standard as mainstream provision will not reflect the different challenges faced by staff within the school in defining bullying under such limitations and this may also prove to be the case with high number of children with SEN throughout Special Schools and mainstream schools in Northern Ireland.

We are concerned that putting this definition on a statutory footing may have unintended consequences for vulnerable learners with SEN in schools that have above average rates of SEN children and young people with complex behavioural issues associated with their diagnosis and learning conditions. While schools like Tor Bank School may have excellent policies, strategies, interventions, procedures and staff initiatives in place, yet circumstances, barriers and factors (medical or otherwise) beyond the control of the school may mean Tor Bank staff will struggle to fulfil any future legislative requirements. This may also have implications with regard to inspection thus damaging staff, pupil and parental morale.

Governors would like to point out that a recognised definition alone cannot prevent bullying: such a new policy/legislative change must be supported by guidance and adequate staff training and appropriate resourcing as part of a collaborative, inter-departmental/agency Government strategy. Because of the severity of the needs of many of the children who attend Tor Bank School, Governors strongly believe that any behaviours deemed to be bullying, can best be supported in collaboration with Health Trusts and Counsellors who can provide additional specialist therapeutic input and expertise, training and input both within and outside the school context.

As it is the intention of the Assembly to develop a statutory definition, Governors have worked in collaboration with the Principal Mr Colm Davis and Vice Principal, Mrs Claire Breen and the NAHT and discussed how this definition could be strengthened (see section 'b' onwards of NAHT submission). Tor Bank recommends however, that further consultation and piloting of definitions should be undertaken in Special Schools and those schools with a high proportion of SEN children with

Statements before it is placed on a statutory footing. SEN should not be left to the end and treated as an 'add on'. Governors and staff are more than happy to work with ETI to get an insight as to how 'bullying' is addressed at all levels within a special school and we're confident that other special schools will be happy to be included in such a survey.

Governors would also recommend that the Assembly should carry out more research into SEN and Bullying in both mainstream and Special Schools as part of any present or future consultation process. Some research particularly worth studying relates to the work undertaken by University of Cambridge on behalf of the Anti-bullying Alliance in 2010 which focused on responding to Bullying among Children with Special Educational Needs and/or Disabilities before any definition is agreed and guidance issued. There are also interesting articles in the British Journal of Special Education written by Norah Fredrickson for a NASEN publication in 2010 and other article produced by MENCAP before making any final decisions and to ensure that the needs of all pupils are being met successfully within any future legal definition.

Over the last number of years, Tor Bank has participated in such campaigns as Mencap's 'Don't stick it, stop it' and Anti-bullying weeks organised by Anti-bullying Alliance and these too have been successful. Researchers have generally found that there was a substantially higher risk of being bullied 'all the time' for disabled children in mainstream schools compared to non-disabled children. Factors such as cognitive ability, age within the school year, socio-economic background – were taken into account and disabled children were at a higher risk of being bullied. Maybe the Assembly should look into running their own campaigns for SEN students in mainstream schools and Special Schools in the future. These projects should also be aimed at local communities too where the young person with SEN or disability struggles to cope with being included within their local community. There have been recent cases of physical violence, harassment and intimidation resulting in young people hospitalised and one of these cases received significant media attention over the past few years.

b. Concerns in respect of the content of the draft definition:

- i) Omission of "**Power imbalance**" from the definition;

International best practice recognises that there are three key defining criteria for bullying, namely repetition, intent and power imbalance.¹ Whilst the proposed definition of the Bill does include reference to intent and repetition, (referred to below) it does not reference the key element of a power imbalance. We wish to know the rationale for this highly concerning omission. Schools and school leaders possess a great deal of experience and expertise with regard to pupil relations and are capable of distinguishing between bullying (where there is an imbalance of power) and deliberate, repeated aggressive behaviour between equals (e.g. playground fights). Those who are closest to the children are often best placed to

¹ See footnote 17 of Assembly research paper NIAR 612-15

identify situations. To omit such a crucial aspect of the definition will have detrimental consequences.

ii) Clause 1. (1) a) use of **“repeated”**

We are cautious that the Bill identifies repetition as a key criterion for bullying, whilst repetition can be a crucial element in many instances of bullying it must be acknowledged that the actions of the perpetrator are central whether they act once or repeatedly. In order to address scenarios related to the complexity of cyberbullying, we would also recommend the committee should explore a provision to allow for single acts which may be shared repeatedly, in consideration of this the actions and intent of original perpetrator should remain central.

iii) Clause 1. (1) a) use of **“electronic communication”**

NAHT (NI) recognises that the increasing use of technology can add to the insidious nature of the problem of bullying, therefore, clear guidance on this complex area is necessary. It is beyond the scope of this legislation to adequately address all the ramifications of such a multi-faceted and legally complex emerging area. We recommend that DENI develop a separate policy and accompanying consultation process on tackling cyber-bullying. This is an area of significant concern to our members and, as such, DENI must provide clarity as a priority.

iv) Clause 1 (1) d) **use of “intention”**

We welcome that the definition recognises the intention to cause physical or emotional harm. Accompanying guidance should give recognition of the impact of the bullying behaviour upon the victim (as it does in Scotland). This must be accounted for in initiatives leading on from the Bill.

Clause 2 : Duty of Board of Governors to secure measures to prevent bullying

As the Assembly research paper highlights, a review of the effectiveness of legislated bullying definitions in the US found that a key component of any effective law was the requirements for the development and implementation of local policy.² We welcome that the Bill enables individual schools to continue to develop their own policy, in addition, we also welcome that this section of the legislation sets out the scope in which it operates. However, there are a number of areas in which greater clarity is required;

i) Clause 2 (1) b) i) **use of “during the school day”**

We welcome that the legislation defines the scope of the school’s responsibility as that which involves “registered pupils at the school.... on the premises of the school

² Assembly research paper NIAR 612-15

during the school day”. In the experience of our members, parents frequently approach schools to request they deal with incidents (more frequently cyber bullying) that have happened out of school hours. Schools and school leaders cannot be responsible for what happens outside of the school day. However, school leaders do recognise that bullying can be complex and what may start outside of school can have consequences within school.

The Department must thoroughly inform parents of the remit of school responsibility. When incidents have occurred which are beyond the remit of the school, parents should be provided with guidance and means of support to ensure situations are dealt with effectively. Tackling bullying effectively requires action by all agencies with responsibility for the welfare of children. A co-ordinated inter-agency approach must be developed with the welfare of children its central priority.

ii) Clause 2 (ii) **While travelling to or from school during the school term**

Schools cannot be responsible for incidents that take place during journeys over which they have no control. Greater clarity is needed in respect of this provision including the responsibilities of transport providers.

i) Clause 2, 3 (3)a ii: **Removal of the Principal’s duty in respect of bullying**

Part II of the Education (NI) Order 1998 currently affords head teachers discretion in determining measures to regulate pupil conduct on a day to day basis in line with the school’s overall scheme of management. The Education Order already provides that the Board of Governors is responsible for policies for good behaviour and discipline of pupils. While central guidance to ensure consistency of approach would be helpful, autonomy of school leaders to tackle the acute issues faced in their schools must be given. NAHT(NI), therefore, is concerned at the proposed shift of legal responsibility to Boards of Governors.

The financial memorandum of the Bill states that this duty is removed in order to “prevent any conflict”. We are concerned that increased liability for voluntary boards of governors has the potential to increase conflict as opposed to preventing it. Whilst legislatively, the responsibility will lie with the governors, practically, the responsibility will lie with the school leader. Whilst governors provide an essential supportive function to schools, practically, governors are further removed from the day to day life of the school and therefore would not have the direct contact with pupils and parents that the school leader has that enables them to deal swiftly and effectively with incidents of bullying when they arise.

Whilst it may be useful to have a dedicated member of the Board of Governors with responsibility for anti-bullying policies, we would be concerned that this may be an unduly onerous burden on schools with smaller boards. Greater responsibilities on governors will lead to greater training needs which could potentially lead to difficulties in recruiting new governors. NAHT (NI) would support an initiative, where appropriate, to incorporate the role of a bullying policy coordinator into the existing Board of Governors child protection officer role. This would ensure that knowledge

and expertise is developed within the Board of Governors without over-burdening with limited capacity.

Clause 3: Duty to keep a record of incidents of bullying

i) Clause 3 (1) & (2) Keeping a record of incidents

NAHT (NI) recognises the importance and value of centrally recording complaints of bullying, we have, however, concerns regarding the appropriate implementation of this initiative that could have the potential for duplication of existing practice and the impact on workload generally. In addition, we are also concerned at the potential development of a misleading “league table of bullying” which may occur as a consequence of the publication of statistics from a central record.

A key aspect of effective school leadership is the ability to handle difficult situations: handling accusations of bullying from parents and pupils requires strong interpersonal skills. When every aspect of a conversation has to be recorded as a mandatory requirement with a high level of detail, interpersonal diplomacy may become limited. This will hinder the ability of educational professionals to avert situations before they escalate. As the assembly research paper highlights, effective recording of incidents is usually dealt with by policy not legislation as a flexible approach is required in order to be effective, as opposed to rigorous bureaucratic monitoring.

While recording incidents is important, whether the recording happens during or after a meeting to address the incident is important. It is also essential to consider the level of detail required and whether duplications of recordings are likely. Head teachers and teachers already record and report on incidents of bullying through a variety of mechanisms. While in theory we welcome the development of a more efficient, concise method of recording incidents, this must not be done with the result of de-personalising the parent-teacher/pupil-teacher relationship and the introduction of an overly onerous, bureaucratic burden on an already over-stretched and under-resourced profession.

NAHT (NI) recognises that there is a clear and legitimate need for schools to record information on allegations of bullying, especially in respect of increasing litigation. Litigation can be costly and time-consuming and can result in increased stress for all parties involved. It can also delay the resolution of an incident thus compromising a child’s right to education. It should, therefore, be avoided where possible.

The recent case of Ryan Collins vs Trustees for the time being of Abbey Christian Brothers Grammar school (June 2014), found that the events in question had “overwhelmed the principal and his staff”. In this case, the judge commented that the mother of the bullying victim in question had kept records of events that were of much higher quality than those kept by the school. The judge furthermore stated that the record-keeping efforts of the school “lacked a certain amount of structure”. Clear guidelines on how to structure and record incidents, along with adequate release time, would help to avoid such situations in future.

We recommend that an efficient, effective mechanism collating existing reporting mechanisms with robust guidelines be developed. These should be created in partnership with stakeholders, including school leaders. Any new guidance or methodology must be piloted and all stakeholders must be consulted on its effectiveness. There should be clear steps for addressing incidents and definitions of terminology must be included in any such guidance.

Schools must be supported to promote a proactive, preventative approach as well as an efficient reactionary approach where incidents do occur. As pupils more likely to report incidents to other pupils, we recommend that schools be supported to encourage a culture of reporting incidents. Peers could be encouraged to report if the victim feels they are unable to speak out themselves. Once again, to be effective, this requires a sensitive approach utilising staff interpersonal skills as opposed to new bureaucratic systems. Research shows that open condemnation of bullying leads to a reduction in its occurrence. Schools should be supported and resourced to develop approaches in partnership with parents, pupils and teaching and non-teaching staff to tackle issues holistically and foster an overall healthy school environment.

Clause 3 (2) & (4) **The recording of sensitive data**

Bullying records may contain sensitive data in respect of data protection and equality and human rights law. There must be clear guidance on the manner in which data should be kept to comply with requirements, including its retention and destruction. Guidance must be provided regarding the recording of witness statements and evidence in respect of incidents. The complications of recording such information regarding cyberbullying must also be considered.

Given the lack of clarity concerning this aspect of the Bill, we would recommend that Clause 3, article 4 be strengthened to compel DENI to publish guidance within a specified time scale.

ii) **Clause 3) (3) motivation for bullying as a perceived characteristic of the victim**

We welcome that this article gives recognition to the fact that bullying may be motivated or aggravated by a perceived characteristic of the victim. However, there should be recognition within the legislation that there may be additional aggravating factors beyond the scope of those listed. A power imbalance can relate to such factors along with physical strength, virtue of numbers, appearance, academic performance and popularity within a peer group.³ There should be explicit mention of guidance in relation to section 75 categories including homophobic, racist, sexist, transphobic, sectarian and disability related bullying and bullying that may arise through having dependents. Beyond the scope of section 75, the guidance should incorporate bullying that may arise from a child's socio-economic status and bullying that may arise through association or being "looked after". There should also be

³ Footnote 3 in Assembly research paper NIAR 612-15

recognition of the fact that children with special educational needs are often more vulnerable in such situations.

We recommend that the department develop clear supporting guidance. Such guidance should give explicit mention to the fact that the primary motivation for bullying behaviour can often be prejudice or discrimination on the basis of actual or perceived difference with respect to, but not limited to, the various groups listed within Section 75 of the Northern Ireland Act 1998.

Provision and cost of adequate support and training in respect of the Bill

The development of training courses to be rolled out identically across schools will not deal adequately with the acute bullying scenarios within each individual school. Expertise exists amongst school leaders in tackling and identifying bullying. School leaders must be given the autonomy, resources and support to tailor the most effective approach to meet the needs of their individual school.

Any new initiatives must be adequately resourced to ensure school staff and Boards of Governors are adequately equipped to deliver its implementation. The financial memorandum of the Bill states there will be additional costs involved with the new Bill in adapting and maintaining IT systems to record incidents; there is an estimate of £40k for this work which will be sought from existing 2015/16 resources.

Firstly, we wish to know, in the current overstretched budgetary climate, from where within the existing budget allocation this money will come from. With school budgets already overstretched, funding for new CPD initiatives to meet the needs of legislative duties must come from centralised funds. At the moment, 1% of the overall EA budget is allocated to teacher professional development.⁴ We want schools to have the funding option to either buy in the centralised School Improvement Services or to be supported, funded and empowered to find and develop CPD that best meets the needs of their school. Resourcing schools adequately is vital if bullying is to be effectively addressed.

Recent survey based research carried out by the NAHT(NI) has highlighted that a lack of investment in professional development for teachers is damaging the profession. Over half of respondents rated Education Authority support as poor with the majority stating increased CPD opportunities with corresponding release time to undertake development opportunities were needed. We are aware that DE intends to publish their strategy for “Teacher Professional Learning” imminently. This strategy must include effective means of supporting professional learning for teachers and school leaders. The complement of over 300 curriculum support officers has been reduced to 47 throughout Northern Ireland and we need to know what support mechanisms will be put in place to ensure schools can fulfil any new policy or legislated requirements.

Secondly, NAHT(NI) is highly concerned that warnings from the contractor delivering the IT system for monitoring, that such costs needed to be reviewed and are not accounted for, therefore implying that the likely costs could be much higher.

⁴ Gavin Boyd presentation at NAHT (NI) annual conference May 2015

This figure should be reviewed and a thorough cost analysis undertaken before any legislative changes can occur.

In addition, there are other under considered resourcing issues in relation to the Bill, namely the periodic review of the school's measures to prevent bullying, the consultation with the principal, parents and pupils and dissemination of information on bullying prevention measures to all relevant parties. A cost analysis must also be considered here. The current economic climate means that school budgets are already stretched to the limit. Without additional specified resources, schools cannot be expected to absorb the costs within existing funds.

Other areas of concern

NAHT (NI) is concerned at other areas not raised in the Bill such as teacher-pupil, pupil-teacher and teacher-staff bullying. We would agree that such issues may be beyond the scope of the current Bill but we assert that these are matters which must be addressed more fully. Wider discussion and consultation is required with stakeholders to ascertain what form this consultation should take.

Conclusion

Overall, we are concerned that if legislation is implemented without consideration of all ramifications and consequences, it will be of grave detriment to all staff, pupils, parents and stakeholders and may serve to exacerbate the serious problem of bullying. Schools and school leaders must be assured that adequate resources and support will be provided so they can implement any new legislative requirements. Implementation must be realistic and schools must be supported to meet requirements and ensure they are able to perform with regard to the on-going ETI inspection process.

In finding appropriate solutions, the Department must develop detailed guidance and provide appropriate support, resources and assistance to school leaders to enable them to develop autonomous, tailored solutions to best address the acute needs of their pupils.



Transferor Representatives' Council submission to the Northern Ireland Assembly Committee for Education on the Addressing Bullying in Schools Bill

January 2016

The TRC welcomes the introduction of the Addressing Bullying in Schools Bill and the opportunity to provide comment. All kinds of bullying are wrong and should not be tolerated. We want schools to be safe and welcoming places for all children and young people.

Clause 1: Definition of “bullying”

The TRC broadly agrees with the definition set out in the Bill, which we believe will help to bring about a more consistent approach to tackling bullying.

We recognise that a power imbalance of some kind will feature in most incidents of bullying. However, this will not always be obvious or easy to determine. We can foresee circumstances in which inability to prove a power imbalance leads to difficulties in classifying otherwise clear cases of bullying as such. We therefore believe that exclusion of power imbalance from the definition is justified to ensure that the effectiveness of the legislation is not reduced.

The inclusion of repetition is helpful to demarcate from isolated incidents. However, we recognise that social media and other forms of electronic communication pose particular challenges in this regard, as single messages and posts can be repeatedly viewed, shared and distributed. We believe that further discussion is needed around the classification of hurtful messages or images posted on social networks or online public forums.

Clause 2: Duty of Board of Governors to secure measures to prevent bullying

The TRC welcomes the objective to enable boards of governors to play a more direct role in addressing bullying.

We share the desire for the Bill to enshrine appropriate roles and responsibilities for boards of governors and principals. It is important that legislation reflects the fact that boards of governors are not present in schools on a daily basis, and that principals have an absolutely vital role in implementing anti-bullying measures. We believe that the role of boards of governors under Clause 2(1)(g) and the responsibilities of principals to address bullying under the scheme of management require further clarification and exploration.



Clause 3: Duty to keep a record of incidents of bullying

As boards of governors take on a duty to ensure that a record is kept of all incidents and alleged incidents of bullying, it is important that they are provided with appropriate support by the Department. Particularly as this is a new and substantial duty, we would welcome an amendment to Clause 3(4) that would require the Department to publish guidance.

During the Second Stage debate, the issue was raised of whether the use of the word 'may' in Clause 3(3) restricts the possible motivations to those listed. We would welcome further clarification on this point, with a view to ensuring that the list of motivations under 3(3) is not exhaustive.

Transferor Representatives' Council

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EDUCATION & POLICY SUB-COMMITTEE

UTU Response: Addressing Bullying In Schools

The Ulster Teachers' Union (UTU) welcomes the opportunity to furnish you with our views on the effectiveness of the changes made to the school inspection process. UTU represents approximately 6,500 members of the teaching profession including principals, vice-principals, teachers and trainee teachers. UTU members are employed in all five area regions, across all the sectors in nursery, primary, post-primary (including grammar schools) and special schools. UTU welcomes the opportunity to provide a written submission that addresses the clauses of the Bill including any proposed amendments in accordance with your request.

1. Definition of Bullying

- UTU agrees with the Minister, in principle, that the issue of bullying has been an on-going and, continues to be, an ever-growing issue for schools across the sectors. While concurring with the strata on which bullying can occur, UTU is equally concerned about the vaguarity caused by s.1(2). While UTU appreciates the Bill's aim for completeness, a diagnosis of the presence of bullying based on equal weighting of "act" and "omission" is problematic. It is almost impossible for education practitioners to judge the dividing line that separates "act" from "omission" to rightly apply the legal description that denotes the presence of bullying or the lack thereof. Where s.1(2) exists in its current form, we are unsatisfied with the Bill's definition of bullying.
- While UTU acknowledges the attempts to define bullying, it remains concerned by the equally important, albeit vaguely applied, term that aims to point towards a solution in this Bill, namely, "addressing". The verb "addressing", as used in the title of this Bill and elsewhere in relating to bullying, needs further elaboration. It is unclear as to whether schools are being asked to address bullying as in to "say or write remarks"¹ about the issue in the bid to raise awareness or to "think about and begin to deal with (an issue or problem)"². The expectations being laid upon schools in this Bill with regards to the act of "addressing" [anything] must first provide clear guidance as to what is meant, implied

¹ Oxford Dictionary, Definition 2.2, <http://www.oxforddictionaries.com/definition/english/address>

² Oxford Dictionary, Definition 3, <http://www.oxforddictionaries.com/definition/english/address>

or expected by the term and its usage in this context; schools must be able to understand **exactly** what this Bill requires from them.

Role of Schools and their Boards Of Governors

- UTU would be quick to remind the Committee that Governors are appointed in a voluntary, unpaid capacity and already have a range of roles and responsibilities in supporting the principal and staff to deliver a high quality of education in their school. With the increased pressure to perform a duty enforced by law, schools may find recruiting or even retaining governors to be an arduous task.
- UTU agrees that the role of a governor is to contribute, within the bounds of their duties and responsibilities, to the process of school improvement, therefore it is logical that they should be involved in addressing bullying in schools. UTU is concerned, however, that in absence of any training for Governors, Principals and Teachers, that the implementation of this legislation is premature and recklessly exposes education professionals to the risk of litigation.
- The matter of governance is an issue for further reconsideration in this Bill. For example, the role of “preventing bullying involved registered pupils at the school” will undeniably prove to be problematic should bullying occur to or from school during the school term.
- UTU is disappointed that, despite the Minister’s recent statement that “Parents are the first people a child will learn from”³, parental partnership with schools in helping to address bullying has not been given more emphasis in this Bill. This puts this Bill at odds not only with current, professional practice and routines of schools within the context of school improvement, but also with the Minister’s own campaign: “*Education works better when you get involved*”.
- UTU believes that the Bill has stopped short in terms of providing specific instructions or a framework from which schools can evaluate their role of minimising bullying. Moreover, schools need specific guidance that not only details precisely how and when to take appropriate action, but what appropriate action can be taken.
- UTU believes that s.2(b)(ii) should be utterly removed. Not only is this unachievable and impossible to regulate, but it also contravenes current procedures that outline the extent of the duty of care extended to pupils, i.e. during the school day when pupils are on the school premises or during school-directed activities such as field trips and residential. It is contemptible to hold schools responsible for the behaviour of children off-site, be they part of a specific school community or another.

³ <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-de/news-de-210915-education-works-better.htm>

Duty to keep record of incidents and bullying

- UTU would strongly advise that s.3(1) should read: “The Board of Governors of a grant-aided school must ensure that a record is kept of all **reported** incidents or alleged incidents of bullying involving a registered pupil at the school...”. It stands to reason that incidents can only be recorded if they are reported. Schools cannot be held responsible for incidents that occur without the school’s awareness thereof and its subsequent inopportunity to handle the incident/s in question. The Bill does not make this distinction in s.3(1).
- As with the case of s.2(1)(b)(ii), UTU is concerned that schools are being put under impossible and unreasonable pressure to account for child behaviour “while travelling to or from school during the school term” (s.3(1)(b)). Adequate assessment of the events of the motivation would be unachievable when the facts surrounding an episode of bullying off-site would, most often, rely on accounts (of questionable reliance) from fellow pupils and/or parents. Verification of the details will result in exhaustive investigation and interviewing of all parties involved in the recorded incident in order to fulfil the expectations laid out in s.3(1) and (2).
- UTU believes that, within the context of s.1(d), s.3(2)(a) is unnecessary if not repetitious. The “motivation of the incident” must only be interpreted as laid out in this Bill, namely “with the intention of causing physical or emotional harm to that pupil or group of pupils”. The “appearance” of any other motivation would be irrelevant for the purpose of this Bill.
- Notwithstanding the seriousness of the issue at hand, UTU would like to remind the Committee that the procedures and responsibilities for carrying out the extent of this Bill will have serious implications for teacher paperwork and workload. UTU would urge careful consideration of what would be expected of teachers with regards to the administrative workload and to consult with teacher unions and stakeholders lest the currently unresolved workload issue surrounding assessment be replicated. Teachers are no less expected to violate the terms of the Teacher Workload Agreement in this matter than they have been in any other allotted responsibility thus far that would cause excessive workload-related stress and work-life imbalance. We would seek information as to how liaising and recording of bullying will be accommodated within staff time-budgets.
- UTU would urge that the Bill stipulate how the Department will regulate record-keeping, clearly describing how such information will be recorded and the degree of detail required. In accordance with the previous point, record-keeping must be manageable.
- Given the weight of responsibility upon schools and in particular their Boards of Governors, it is simply unacceptable to propose that “The Department may from time to

time publish guidance as to how a Board of Governors is to comply” (s.3(4)) with any aspect of the legislation. It is inarguably the responsibility of the Department to provide and expedite training and guidance prior to the implementation of the legislation. The use of “may” in this sub-section does not afford the urgency or sobriety that is rightly required in this Bill

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December 2015 - Equality and Human Rights Policy Screening for Addressing Bullying in Schools Policy

21 January 2016 – Departmental response providing clarification regarding children in Education Other than at School and Further information in respect of incidents of bullying involving children with Special Educational Needs.

2 February 2016 – Departmental response to issues raised during the Committee meeting of 20 January 2016.

2 February 2016 – Departmental response to issues raised during the Committee meeting of 27 January 2016.

5 February 2016 – Departmental guidance in relation to pastoral care in schools and the well-being and safeguarding of pupils.



Department of
Education

www.deni.gov.uk

DEPARTMENT OF EDUCATION

EQUALITY AND HUMAN RIGHTS POLICY SCREENING

FOR ADDRESSING BULLYING IN SCHOOLS POLICY

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Revised June 2014

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1. POLICY SCOPING

1.1 Title of policy

Addressing Bullying in Schools

1.2 Type of Policy Development

This is a new policy extending previous legislative requirements on schools to address bullying behaviour among their pupils.

1.3 Description of policy

The aim of this policy is: **To provide a common definition of bullying and facilitate and promote a more cohesive and uniform approach to addressing bullying; both inside individual schools and between all schools in the north of Ireland.**

The objectives of the policy are to:

- Provide a common definition of bullying;
- Place a requirement on all grant-aided schools to centrally record complaints of bullying and the actions taken by the school in addressing each complaint; and
- Place a requirement on each Board of Governors (**BoG**) to identify and designate one or more members with responsibility for anti-bullying policies and processes within its school.

The intended outcomes of the policy are:

- By creating a clear legislative framework, to ensure greater consistency in the identification, classification and treatment of incidents of bullying by all schools;
- Through standardised recording and collection of information on bullying incidents;
 - Create an evidence base which will better inform consistent operational decision making within schools;
 - Create an evidence base on the overall scale and motivating factors behind bullying behaviour to inform future policy development;
- By building knowledge and expertise within all BoG, to promote the increased use of best-practice in school policy making and operational practice;
- To enable schools to respond effectively to incidents of bullying, resolving problems effectively and to the satisfaction of all parties involved ; and
- By enabling pro-active identification and tackling of common causes of bullying, to decrease the number of incidents of bullying occurring with schools.

1.4 What factors could contribute to, or detract from the intended aim/outcome of the policy?

None	
Legislative	✓
Financial	✓
Others please specify)	✓

Others: Schools will retain their current operational freedom for school discipline matters. If a number of schools choose not to recognise and classify incidents as 'bullying behaviour', (*to avoid any administrative burden or a perceived negative reflection on the school*) the value of the resultant central data pool will be weakened. Schools will, however, then be liable, should their actions be challenged in civil court proceedings and be found to in breach of the legislation.

1.5 Main stakeholders affected

Pupils (Actual or Potential)	✓
Parents	✓
Teaching Staff	✓
Trade Unions or Professional Organisations	
Other Public Sector Organisations	
Departmental Staff	
Others (please specify)	✓

Others: Boards of Governors

1.6 Who is responsible for: (a) Devising the policy

The Department of Education (DE)

(b) Implementing it

DE, Education Arms Length Bodies, Schools, School Principals and Boards of Governors

(c) Explain the relationship?

DE establishes and monitors the policy. It will also implement a number of the key actions through provision of policy, guidance and analysis of recorded statistics. Other actions will fall to Education and Library Boards (or single Education Authority) for implementation. On the ground school principals and Boards of Governors will be responsible for the implementation of the policy and the recording of incidents of bullying.

1.7 Other policies or objectives with a bearing on this policy

Addressing Bullying in Schools policy has been particularly informed by the Report of the Northern Ireland Anti-Bullying Forum's (NIABF's) ***Review and Recommendations of anti-bullying legislation, existing guidance to schools, policies and practices within schools and support provided to schools by the ELB's*** (December 2013), ***The Nature and extent of Pupil Bullying in Schools in the North of Ireland*** (October 2011) and ***World Health Organisation's collaborative cross-national survey Health Behaviour in School-Aged Children in 2010*** (2010).

Addressing Bullying in Schools sits within a broader education policy framework aimed at promoting discipline and good behaviour within schools. This framework is set out within ***"Pastoral care in schools: Promoting positive behaviour (2001)"*** which provides guidance for schools in the development and of their policies and procedures surrounding the way pupils behave in schools. It reflects strategies and examples of good practice to help promote and maintain positive behaviour in schools.

Also of relevance is the NIABF's guidance ***"Effective Responses to Bullying Behaviour, (2013)"*** which was issued to every school in the north in 2013 and which illustrates current best practice in responding to all aspects of this problem.

2. EVIDENCE

2.1 What evidence/information (both qualitative and quantitative) have you gathered to inform this policy?

Section 75 Category	Details of Evidence/Information
<p>Religious Belief</p>	<p>In addition, the development of the policy has been informed by the fact that our education system largely reflects traditional divides in society. 92.6% of children and young people here attend either Catholic maintained schools or schools that are either state controlled or voluntary and that are mainly attended by Protestant children and young people.</p> <p>The Nature and Extent of Pupil Bullying in Schools in the north of Ireland report(2011) reported that more Year 6 pupils from 'Neither' Protestant or Roman Catholic Communities (43.8%) and 'Other' religious communities (49.5%) reported that they had <i>'been bullied at school in the past couple of months'</i> than pupils from the Roman Catholic (35.3%) and Protestant (39.7%) communities. Although lower levels of bullying were reported by Year 9 pupils by religion, a similar pattern is evident. More pupils from 'Neither' Protestant or Roman Catholic Communities(36.2%) and 'Other' religious communities (34.0%) reported that they had <i>'been bullied at school in the past couple of months'</i> than pupils from the Roman Catholic (27.5%) and Protestant (29.5%) communities.</p> <p>There is an extensive body of international research regarding the levels of bullying worldwide and the effectiveness of different approaches to bullying in schools.</p>
<p>Political Opinion</p>	<p>The need for and development of this policy has been informed by a range of academic studies and reports from a range of stakeholder organisations. The Nature and Extent of Pupil Bullying in Schools in the north of Ireland report (2011) details the continuing negative impact of bullying on religious and political grounds.</p> <p>The development of the policy has been informed by the fact that our education system largely reflects traditional divides in society. 92.6% of children and young people here attend either Catholic maintained schools or schools that are either state controlled or voluntary and that are mainly attended by Protestant children and young people.</p>

<p>Racial Group</p>	<p>Policy development has in part been informed by the increasing diversity of the school population in Northern Ireland.</p> <p>During recent years, schools here have been experiencing a steady growth in their enrolment of children from various parts of the world. The number of Newcomer pupils has increased from 1,366 in 2001/2 to 10,356 in 2013/14.</p> <p>The Nature and Extent of Pupil Bullying in Schools in the north of Ireland report (2011) reported 6.9% of Year 6 pupils and 4.1% of Year 9 pupils admitted bullying other pupils <i>‘with mean names or comments about his or her race or colour’</i>. Also, 14.0% of Year 6 and 7.6% of Year 9 pupils indicated that they had been bullied <i>‘with mean names or comments about my race or colour’</i>.</p>
<p>Age</p>	
<p>Marital Status</p>	<p>Due to their age, Marital status of pupils is not a consideration in the development and application of this policy.</p>
<p>Sexual Orientation</p>	<p>Results from the Year 9 pupil survey show that: ‘I was bullied with mean names, comments or rude gestures with a sexual meaning’ was the sixth most common form of bullying experienced by around 14% of pupils (about 16% of boys and 12% of girls). This was also the fifth most common type of bullying perpetrated by 6% of Year 9 pupils (9% of boys and 3% of girls). Almost 4% of Year 9 pupils (over 5% of girls and just under 2% of boys) had ‘received a message with unwanted sexual suggestions, jokes or threats’ and almost 5% (almost 4% of girls and over 6% of boys) had ‘received a message with insults calling me gay (whether true or not)’. Just over 1% of Year 9 pupils bullied other pupils in the following ways: -‘I sent him or her a message with unwanted sexual suggestions, jokes or threats’ and over 2% ‘I sent him or her a message with insults calling him or her gay (whether true or not).’ There was little difference between responses for boys and girls. (Note: Year 6 pupils were not asked these questions).</p> <p>The Schools Omnibus Survey OF 2014 highlighted that, of those surveyed, 39.3%</p>

	<p>had seen or heard derogatory references to same sex relationships in the classroom or school grounds once or twice per year, 17.3% had seen or heard derogatory references to same sex relationships in the classroom or school grounds once or twice per term, 5.1% had seen or heard derogatory references to same sex relationships in the classroom or school grounds once or twice per week and 1.4% had seen or heard derogatory references to same sex relationships in the classroom or school grounds nearly every day.</p>
<p>Men And Women Generally</p>	<p>The Nature and Extent of Pupil Bullying in Schools in the north of Ireland report (2011) reported that 11.4% of female pupils and 13.1% of male pupils had been bullied in the past couple of months with mean names or comments about their religion.</p> <p>In the Institute for Conflict Research report 'Grasping the Nettle (February 2014) stated that 'young trans people face numerous educational inequalities that act as barriers to them fulfilling their full potential. However, in comparison with other minority groups, the experiences of transgender pupils are least likely to be reflected in data and research (EHRC 2010).'</p>
<p>Disability</p>	<p>The Nature and Extent of Pupil Bullying in Schools in the north of Ireland report (2011) reported that Year 6 and Year 9 pupils with a disability:</p> <ul style="list-style-type: none"> • were more likely to report that they have been recipients of bullying behaviour at least '<i>once or twice</i>'; • had some experience of being bullied verbally regarding their disability (34.0% of Year 6 and over 40% of Year 9 at least '<i>once or twice</i>'); although most of these (23.6% of Year 6 and 25.3% of Year 9) had been bullied '<i>with mean names or comments about my disability</i>' only once or twice; • had bullied other pupils more often than pupils who recorded that they did not have a disability (27.1% of Year 6 pupils and 29.1% of Year 9 pupils with a disability perpetrated bullying compared to 20.8% of Year 6 pupils and 20.5% of Year 9 pupils without); • tended to bully other pupils '<i>with mean names or comments about his or her disability</i>' more frequently than pupils who did not record that they had a disability.

Dependants	Literature has shown that peer pressure (possibly leading to bullying) can be one of the underlying reasons for non-attendance amongst young people in care. http://www.deni.gov.uk/rb1_2011.pdf
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2.2 Taking into account the evidence gathered at 2.1 what are the needs, experiences and priorities of each of the categories in relation to this particular policy?

Section 75 category	Needs/Experiences/Uptake/Priorities
Religious Belief	Bullying because of actual or perceived Religious belief of the victim occurs in schools but there is no evidence that the needs, experiences, uptake and priorities of the victims in relation to this policy will vary according to Section 75 Category
Political Opinion	
Racial Group	
Age	
Marital Status	
Sexual Orientation	
Men And Women Generally	
Disability	
Dependants	

3. SCREENING QUESTIONS

3.1 What is the likely impact of this policy on equality of opportunity for each of the Section 75 equality categories?

Section 75 category	None	Minor	Major	Details of policy impact Level of impact?
Religious belief		✓		<p>This policy will have a minor positive impact for all pupils who are the victims of bullying irrespective of their Section 75 category as the intended outcomes of the policy are:</p> <ul style="list-style-type: none"> • By creating a clear legislative framework, to ensure greater consistency in the identification, classification and treatment of incidents of bullying by all schools; • Through standardised recording and collection of information on bullying incidents; <ul style="list-style-type: none"> ○ Create an evidence base which will better inform consistent operational decision making within schools; ○ Create an evidence base on the overall scale and motivating factors behind bullying behaviour to inform future policy development; • By building knowledge and expertise within all BoG, to promote the increased use of best-practice in school policy making and operational practice; • To enable schools to respond effectively to incidents of bullying, resolving problems effectively and to the satisfaction of all parties involved ; and • By enabling pro-active identification and tackling of common causes of bullying, to decrease the number of incidents of bullying occurring with schools.
Political opinion		✓		
Racial group		✓		
Age		✓		
Marital status	✓			
Sexual Orientation		✓		
Men and women generally		✓		
Disability		✓		
Dependants		✓		

3.2 Are there opportunities to better promote equality of opportunity for people within the Section 75 equality categories?

Section 75 category	NO	Yes	Provide Details
Religious belief		✓	Addressing Bullying in Schools policy is specifically intended to promote equality of opportunity, good relations, equality of identity, respect for diversity and community cohesion.
Political opinion		✓	
Racial group		✓	
Age		✓	
Marital status	✓		
Sexual Orientation		✓	
Men and women generally		✓	
Disability		✓	
Dependants		✓	

3.3 To what extent is the policy likely to impact on good relations between: people of different religious belief, political opinion or racial group?

Good relations category	No impact	Minor impact	Major impact	Details of policy impact
Religious belief		✓		The intended outcome is to Addressing Bullying in Schools policy is specifically intended to promote equality of opportunity, good relations, equality of identity, respect for diversity and community cohesion.
Political opinion		✓		
Racial group		✓		

3.4 Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?

Good relations category	NO*	YES*	Provide Details
Religious belief		✓	Addressing Bullying in Schools policy is specifically intended to promote equality of opportunity, good relations, equality of identity, respect for diversity and community cohesion. Against the background of a segregated education system, Addressing Bullying in Schools policy is a crucial way to break down barriers and improve community relations.
Political opinion		✓	
Racial group		✓	

3.5 Additional considerations - Multiple identities

Please provide details of data on the impact of the policy on people with multiple identities and specify relevant Section 75 categories concerned.

[Empty response box]

4. SCREENING DECISION

Not to conduct an equality impact assessment because no equality issues have been identified.

Please provide details which support the decision

Addressing Bullying in Schools policy is the organisation and delivery of education so that it:

- Meets the needs of, and provides for the education together of learners from all Section 75 categories and socio-economic status;
- Involves schools and other education providers of differing ownership, sectoral identity and ethos, management type or governance arrangements; and
- Delivers educational benefits to learners and promotes equality of opportunity, good relations, equality of identity, respect for diversity and community cohesion.

Addressing Bullying in Schools policy is specifically intended to increase equality of opportunity and good relations. Consequently, this policy will have a positive impact and no adverse equality issues have been identified.

5. TIMETABLING AND PRIORITISING

5.1 If the policy has been ‘screened in’ for equality impact assessment, then please answer the following questions to determine its priority.

On a scale of 1-3, with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

Criterion	Priority Rating
Effect on equality of opportunity and good relations	
Social need	
Effect on people’s daily lives	
Relevance to a public authority’s functions	
Total	

Details of the Department’s Equality Impact Assessment Timetable will be included in a Quarterly Screening Report.

5.2 If the policy is affected by timetables established by other relevant Public Authorities please provide details

6. MITIGATION

If you conclude that the likely impact is '**minor**' and an equality impact assessment is not to be conducted, you should consider: mitigation to lessen the severity of any equality impact, or the introduction of an alternative policy to better promote equality of opportunity or good relations.

Why and how will the policy/decision be amended or changed or an alternative policy introduced to better promote equality of opportunity and/or good relations?

7. MONITORING

Effective monitoring will help identify any future adverse impact arising from the policy, as well as help with future planning and policy development.

Please detail what data you will collect in the future in order to monitor the effect of the policy on any of Section 75 equality categories.

The policy has at its core the monitoring of incidents of bullying to develop effective practice.

8. DISABILITY DISCRIMINATION

8.1 Please state if the policy/decision in any way discourages persons with disabilities from participating in public life or fails to promote positive attitudes towards persons with disabilities.

No - the policy aims to encourage and facilitate collaborative working across educational providers, on a cross sectoral basis and will be equally applied to pupils with or without any form of disability.

8.2 Please state if there is an opportunity to better promote positive attitudes towards persons with disabilities or encourage participation in public life by making changes to the policy/decision or introducing additional measures.

8.3 Please detail what data you will collect in the future in order to monitor the effect of the policy with reference to the disability duties.

The policy has at its core the monitoring of incidents of bullying to develop effective practice.

9 CONSIDERATION OF HUMAN RIGHTS ISSUES

9.1 How does the policy/decision affect anyone’s Human Rights? I.E.

[The Human Rights Act \(1998\)](#)

[The United Nations Convention on the Rights of the Child \(UNCRC\)](#)

[The United Nations Convention on the Rights of Persons with Disabilities \(UNCRPD\)](#)

[The United Nations Convention on the Elimination of All Forms of Discrimination Against Women \(CEDAW\)](#)

Positive Impact	✓
Negative Impact (human right interfered with or restricted)	
Neutral Impact	

9.2 If you have identified a negative impact who is affected and how?

At this stage you should determine whether to seek legal advice and to refer to the issue to the Equality Team to consider:

- *whether there is a law which allows you to interfere with or restrict rights*
- *whether this interference or restriction is necessary and proportionate*
- *what action would be required to reduce the level of interference or restriction).*

9.3 Outline any actions which could be taken to promote or raise awareness of human rights or to ensure compliance with the legislation in relation to the policy/decision.

10 CONSIDERATION OF RURAL IMPACTS

10.1 Is there potentially a direct, or indirect, impact on rural areas?

YES	
NO	✓

10.2 If YES please attach a DARD Rural Issues Statement Pro-forma
(A Pro-forma can be found in TRIM Document DE1/14/117152)

11. APPROVAL AND AUTHORISATION

Screened By:	Position	Date
Gareth Dillon	SO, Pupil Behaviour Management Team	01/12/14
Approved BY:	Position	Date
Alan Boyd	G7, Pupil Behaviour Management Team	01/12/14

Note: A copy of the Screening Form must be approved and 'signed off' by a senior manager responsible for the policy.

The **TRIM** version of the completed Screening Form must be sent to the Equality Team (equality@deni.gov.uk) for quality assurance.

FOR COMPLETION BY EQUALITY TEAM

Quality Assured by: Richard Magowan Date: 31/12/14

Screening Decision Agreed

Date Directorate/Team Informed: 31/12/14

If your decision was to "Screen Out":

1 As soon as possible following quality assurance you must publish a copy of the screening form on the Department's website, with a link on the "Policy Screening" page

Placed on Internet by: _____ Date: _____

2 You must tell the Equality Team once your screening is published so it can fulfil the Department's statutory obligation to inform the Department Consultees when and where the screening was published

Consultees Informed by _____ Date: _____

3 You must store this completed screening form on TRIM and finalise it. Use the record naming convention "Completed Screening form of....."



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Your Ref: 2468

21 January 2016

Dear Peter

ADDRESSING BULLYING IN SCHOOLS BILL

Thank you for your letter of 15 January 2016 requesting clarification and further information on the Addressing Bullying in Schools Bill, following evidence briefing on 13 January 2016.

Clarification as to the application of the provision of the Bill for children in Education Other than At School

The Department's EOTAS guidance, issued in September 2014 outlines the general principle that Pupils in Education Otherwise Than At School (EOTAS) provision are entitled to expect their needs will be met as effectively, and to the same standards, as any pupil in mainstream education (**Para 4.4**).

Paragraphs 6.11-6.14 of the guidance explicitly stipulate that all EOTAS settings must have a positive behaviour, pastoral care, safeguarding and anti-bullying policies which comply with all relevant DE Circulars and all relevant legislative requirements. All EOTAS settings are also subject to periodic ETI inspection. We consider that these requirements, backed up by ETI inspection, will lead EOTAS settings to voluntarily adhere to the definition and duty to record set out within the Bill. This should be facilitated by the access which the settings now have to the C2k system.

Most EOTAS settings are directly operated by the Education Authority (EA) and they may not have a Board of Governors (BoG) or directly equivalent structure; potentially requiring an alternative arrangement to be made in respect of the new duties which the Bill will place upon BoG's.

We would propose to seek a reassurance from the EA that the requirements of the Bill will be followed, as completely as possible, within all EA EOTAS settings; and that it will make compliance with the Bill a requirement for those external/community-based EOTAS settings in which it purchases pupil places.

Further information on the protections for school children that are currently in place in respect of bullying by teacher

The responsibility for investigating parental complaints against a school teacher rests with the Principal in the first instance. Each school is required to have a Parental Complaints Procedure in place, which sets out the process for parents to raise concerns in relation to the staff or school environment. All complaints should be taken seriously and given due attention by the Board of Governors. Where necessary Board of Governors may seek advice from the relevant Employing Authority.

The guidance in TNC 2007/5, **Disciplinary Procedure for Teachers, Including Principals and Vice Principals, in Grant-Aided Schools with Fully Delegated Budgets** and TNC 2008/4, **Disciplinary Procedure for Teachers – Disciplinary Rules** applies in cases where there is an allegation of misconduct. Definitions of serious or gross misconduct (eg physical violence – actual or threatened; malicious damage; harassment, including sexual – of other staff, pupils, parents, visitors; abuse of authority; indecent conduct or obscene behaviour; corrupt or improper practices etc) can be found at Appendix 1 of TNC 2008/4.

<https://www.deni.gov.uk/sites/default/files/publications/de/disciplinary-procedure.pdf>

<https://www.deni.gov.uk/sites/default/files/publications/de/tnc-2008-4-disciplinary-notes-of-guidance-final-version.pdf>

In addition to these mechanisms, from 1 April 2015, the General Teaching Council for Northern Ireland (GTCNI) also has the power to consider cases of serious teacher misconduct and, where appropriate, remove a teacher, including a principal or vice-principal, from its register.

In order to ensure that cases of serious misconduct can be considered fully, BoGs must continue to inform their employing authority, as soon as possible, of the following:

- (i) cases where the alleged misconduct is considered so serious as to warrant precautionary suspension or dismissal;
- (ii) the circumstances that resulted in the precautionary suspension or dismissal; and

- (iii) cases where i and ii above would have applied but for the teacher resigning or leaving the school's employment under other circumstances.

The employing authority should inform the GTCNI to enable it to consider whether or not to remove the teacher from its register. These requirements apply to all incidences of serious misconduct including those relating to child protection matters. This approach is in keeping with the Department's "Pastoral Care in Schools: Child Protection" booklet which explains that schools are expected to do whatever is reasonable to safeguard or promote the safety and well-being of pupils and to maintain a child protection policy statement, which reflects both their legal duties.

Further information as to the degree to which the Bill will permit school authorities to use their discretion in respect of incidents of bullying involving children with Special Educational Needs (SEN) or children whose bullying behaviour can be linked to specific circumstances that require sensitive handling

As currently drafted, the Bill would not permit any school discretion in respect of the duty to record an incident which met the definition of bullying set out in Article 1. Under the Bill, all schools will, however, retain their existing freedom to set their own discipline and anti-bullying policies and to determine the range of processes, actions and sanctions (*the detailed measures*) which they will apply, ensuring these are appropriate, measured and take account of the wider school ethos and needs of its pupils.

A school could therefore specify within its policies that it would give consideration to identified SEN, and any other factors it deemed relevant, in determining how it responded to any individual incident.

Recording each incident would serve to provide valuable management information about the volume and nature of incidents within the school or Special School; allowing its Governors to identify recurring problems and take appropriate remedial actions.

Yours sincerely

Russell

RUSSELL WELSH
Departmental Assembly Liaison Officer



Northern Ireland
Assembly

Committee for Education

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Departmental Assembly Liaison Officer
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15 January 2016

Our Ref: 2468

Dear Russell

Addressing Bullying in Schools Bill

At its meeting on Wednesday 13 January 2016, the Committee for Education received briefings from the NI Anti-Bullying Forum; the Children's Law Centre; and Tor Bank Special School/NAHT as part of the Committee Stage of the Addressing Bullying in Schools Bill.

The Committee agreed to write to the Department seeking:

- clarification as to the application of the provisions of the Bill for children in Education Other Than At School;
- further information on the protections for school children that are currently in place in respect of bullying by teachers; and
- further information as to the degree to which the Bill will permit school authorities to use their discretion in respect of incidents of bullying involving children with Special Educational Needs or children whose

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bullying behaviour can be linked to specific circumstances that require sensitive handling.

A response as soon as possible would be greatly appreciated. If further clarification is required, please do not hesitate to contact me.

Yours sincerely

Signed Peter McCallion

Peter McCallion
Clerk
Committee for Education

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Your Ref: 2480

2 February 2016

Dear Peter

ADDRESSING BULLYING IN SCHOOLS BILL

Thank you for your letter of 21 January 2016 requesting further information on the Addressing Bullying in Schools Bill, following evidence briefing on 20 January 2016.

The scope of schools' responsibility in respect of bullying based on the repeated use of electronic communication which might take place outside of the limits set out at Clause 2(b) (i) to (iii).

As touched on in the oral evidence presented to the Committee on 27 January, the Bill as currently drafted places additional duties on Boards of Governors in respect of bullying which takes place within those boundaries specified in Clause 2 (b) (i) to (iii).

As the attending officials explained, parents may wish to report incidents of bullying involving pupils attending the school, but which take place outside the parameters of clause 2, and that the school would then be able to take account of this as relevant context for addressing any bullying incidents which occur within the scope of Clause 2 (b) (i) to (iii).

It should be noted that outside the proposed duties of the Bill, a Board of Governors has wider duties in respect of ensuring that policies to promote good behaviour and

discipline on the part of pupils attending the school, are pursued at the school. This duty is contained within Article 3 of the Education (NI) Order 1998. As officials highlighted at the session last week, it would be important that a school's policies on discipline, pastoral care and bullying would form a coherent package and therefore a school that becomes aware of a bullying issue that takes place outside of school may wish to use this information to provide Pastoral Care interventions, providing additional support to the child identified and alerting relevant staff to the potential for further incidents between the pupils concerned. We would intend to elaborate on this point within the supporting guidance to the Bill.

As officials also referenced on 27 January, cyber-bullying is particularly complex legal area potentially involving criminal offences requiring police investigation. It is not an issue in which DE can act or legislate alone and we would be concerned that without very careful consideration, placing specific cyber-bullying requirements on schools, as part of the current Bill, will only serve to increase both the administrative burden on schools and their exposure to legal challenge.

The agreed DE/ Northern Ireland Anti-Bullying Forum work programme for this year will see the NIABF provide additional guidance to schools on best-practice approaches to tackle cyber-bullying and both DE and the NIABF are working to support the Safeguarding Board (SBNI) in its development of an e-safety strategy for the region. We would expect this to include consideration of cyber-bullying in all forms and all settings.

We will consider cyber-bullying in more detail within the supporting guidance to the Bill and we will engage with schools, parents, pupils and other stakeholders in its development to ensure it provides practical advice for all parties on how to respond to cyber-bullying; particularly in those circumstances where the school is unable to take direct action itself.

The extent of schools' responsibility in respect of bullying where a pupil is under the lawful control of a member of school staff, e.g. where pupils are involved in a homework club, school trip or sporting event etc not taking place on a school day

When a pupil is under the lawful control of a member of staff, irrespective of whether this is on a normal school day or otherwise, the same principles will apply and the school will be expected to record the incident and take appropriate action in line with its published discipline and anti-bullying policies.

The consequences for schools who do not retain or dispose of records of incidents of bullying or who publish this information in an inappropriate manner

Schools are public authorities under the Data Protection Act 1988 (DPA), must be registered with the Information Commissioner's Office (ICO) and must adhere to the principles of the DPA in securely holding and processing any personal data or sensitive personal data they need to hold on their pupils.

The DPA principles include requirements that any personal data is:

1. is accurate and is processed fairly and lawfully;
2. is adequate, relevant and not excessive for its intended purpose;
3. is not kept for longer than is necessary;
4. is processed in accordance with the rights of data subjects; and
5. is protected by appropriate technical and organisational measures against unauthorised or unlawful processing and against accidental loss, destruction or damage.

Schools found to be in breach of these requirements can be reported to the ICO.

Further to point 5, each school maintains a records disposal schedule, which complies with the requirements of the Public Records Act (NI) 1923 and the Disposal of Documents Order (S.R.& O.1925 No 167). The following link provides schools with a template: [School disposal records schedule](#)

The Department also recently issued guidance on schools' obligations to manage data. A link to the guidance is:

<https://www.deni.gov.uk/sites/default/files/publications/de/circular-2015-21-school-obligations.pdf>.

Committee members may also wish to note that subject to Final Stage approval for the current Public Services Ombudsman Bill, from 1 April 2017, the Ombudsman will have the authority to investigate complaints of mal administration against the Board of Governors of any grant-aided school.

The suggestion that a record of an incident of bullying should only be made with the consent of the victim.

Recording of bullying incidents will be compulsory. Any discretion would undermine the consistency of recording and reduce its value as a means of allowing a school's governors to accurately monitor the scale and nature of the problem and the effectiveness of its policy and procedures. 'Recording with consent' could also potentially leave bullying victims vulnerable to intimidation not to consent to any recording of the incident.

Yours sincerely

Russell

RUSSELL WELSH
Departmental Assembly Liaison Officer



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21 January 2016

Our Ref:2480

Dear Russell

Addressing Bullying in Schools Bill

At its meeting on Wednesday 20 January 2016, the Committee for Education received briefings as part of the Committee Stage of the Addressing Bullying in Schools Bill.

The Committee agreed to write to the Department in order to seek commentary on:

- the scope of schools' responsibility in respect of bullying based on the repeated use of electronic communication which might take place outside of the limits set out at Clause 2(b) (i) to (iii);
- the extent of schools' responsibility in respect of bullying where a pupil is under the lawful control of a member of school staff, e.g. where pupils are involved in a homework club, school trip or sporting event etc. not taking place on a school day;
- the consequences for schools who do not retain or dispose of records of incidents of bullying correctly or who publish this information in an inappropriate manner; and
- the suggestion that a record of an incident of bullying should only be made with the consent of the victim.

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- the inclusion of independent schools in the provisions of the Bill.
- clarification as to how bullying data collected under the provisions of the Bill would be used in school inspections by the Education and Training Inspectorate.

The Committee also agreed to write to the Department seeking oral evidence on 27 January 2016 in respect of:

- the inspection evidence relating to the quality and consistency of the provision of pastoral care in schools including anti-bullying support for pupils; and
- the Department's progress with the Safeguarding Board in producing guidance that is to be issued to schools in order to tackle cyberbullying.

A response as soon as possible would be greatly appreciated. If further clarification is required, please do not hesitate to contact me.

Yours sincerely

Signed Peter McCallion

Peter McCallion
Clerk
Committee for Education

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Your Ref: 2492

2 February 2016

Dear Peter

ADDRESSING BULLYING IN SCHOOLS BILL

Thank you for your letter of 29 January 2016 requesting further information on the Addressing Bullying in Schools Bill, following evidence briefing on 27 January 2016.

The constraints applied to non-teaching school staff in respect of the bullying of school pupils, specifically whether a school code of conduct and related disciplinary measure will generally apply to non-teaching school staff

All staff, teaching and non-teaching, are in a position of trust and authority and have to adhere to the Code of Conduct in all aspects of their interaction with learners regardless of setting. The responsibility for investigating complaints against school staff rests with the Principal in the first instance. Each school is required to have a Parental Complaints Procedure in place, which sets out the process for parents to raise concerns in relation to the staff or school environment. All complaints should be taken seriously and given due attention by the Board of Governors. Where necessary Board of Governors may seek advice from the relevant Employing Authority.

The meaning and interpretation of 'omission' as set out in clause 1 of the Bill. Members sought, in particular, examples of omissions and confirmation that guidance to schools would provide adequate clarification.

We have been advised that in legal terminology, the word "cause" (*in terms of this Bill, Clause 1(1)(c) – "with the intention of causing physical or emotional harm..."*) may be both positive, in the sense that someone proactively causes harm, or negative; someone intentionally fails to act knowing that this failure will cause harm. "Omission" is a closely related concept identifying circumstances where someone fails to perform an act despite there being a legal duty or reasonable expectation that they should do so. For the purposes of the Bill, "omission" will principally relate to the deliberate exclusion or isolation of another pupil in circumstances where it would be easy or reasonable to include them; and where the decision to exclude is made with a deliberate intent to cause harm.

An example of where this could arise is where a pupil or group of pupils deliberately and unreasonably exclude another pupil from a group activity, where the participation of the additional young person could be easily accommodated (i.e. it would not cause a team to exceed a permitted maximum number of players); and where the exclusion of the individual is done with the deliberate intention of causing them emotional harm.

Yours sincerely

Russell

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Departmental Assembly Liaison Officer



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29 January 2016

Our Ref:2492

Dear Russell

Addressing Bullying in Schools Bill

Please pass on the Committee's thanks to officials for their briefing on Wednesday 27 January 2016 as part of the Committee Stage of the Addressing Bullying in Schools Bill.

Following this briefing, the Committee agreed to write to the Department seeking clarification regarding:

- the constraints applied to non-teaching school staff in respect of the bullying of school pupils, specifically whether a school code of conduct and related disciplinary measures will generally apply to non-teaching school staff;
- the meaning and interpretation of "omission" as set out in Clause 1 of the Bill. Members sought in particular, examples of omissions and confirmation that guidance to schools would provide adequate clarification.

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A response at your earliest convenience and prior to the informal deliberation session on Tuesday 2 February 2016 would be greatly appreciated.

Yours sincerely

Signed Peter McCallion

Peter McCallion
Clerk
Committee for Education

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Your Ref: 2502

5 February 2016

Dear Peter

ADDRESSING BULLYING IN SCHOOLS BILL

We acknowledge receipt of your letter of 5 February. Officials are preparing a full response and this will be provided before 19 February, as requested.

In the interim, the Committee have asked to see copies of the Department's current guidance in relation to pastoral care in schools; and the well-being and safeguarding of pupils. There are two documents relevant to this area, links are provided below.

Pastoral Care in Schools – Child Protection

<https://www.deni.gov.uk/sites/default/files/publications/de/Pastoral%20Care%20in%20schools%20child%20protection.pdf>

We would draw your attention to the Introduction and summary of advice (**pages 1-5**) which set out what constitutes physical or emotional abuse, the integration expected between pastoral care and child protection within schools and the overarching principle that the welfare of the child must be the paramount consideration.

Of further interest will be the recommendations on procedures to be followed in responding to reports of abuse and recommendations on the record keeping schools should undertake in all such cases (**pages 16-18**).

Pastoral Care in Schools – Promoting Positive Behaviour

<https://www.deni.gov.uk/sites/default/files/publications/de/pastoral%20care%20in%20schools.pdf>

This document again emphasises the integration which should exist between a school's policies on promoting good behaviour, managing challenging pupil behaviours in the classroom and wider school, tackling bullying and providing appropriate support for any pupil suffering emotional distress. **Paragraphs 97-145** are considered particularly pertinent.

It will be necessary to update both these documents in due course to ensure they reflect the changes introduced by the Addressing Bullying in Schools Bill; and that their recommendations for best practice reflect the Bill's supporting guidance and the Executive's e-Safety strategy, currently being developed by the SBNI.

Yours sincerely

Russell

RUSSELL WELSH
Departmental Assembly Liaison Officer

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3 December 2015 - Addressing Bullying in Schools Bill

3 December 2015 - Addressing Bullying in Schools Bill – Assessing the Costs

7 January 2016 - Addressing Bullying in Schools Bill: Views of Young People



Northern Ireland
Assembly

Research and Information Service Bill Paper

3rd December 2015

Caroline Perry

Addressing Bullying in Schools Bill

NIAR 612-15

This Bill Paper is prepared to support the Committee for Education in its scrutiny of the Addressing Bullying in Schools Bill. It provides background information on the prevalence of bullying and current practice in schools in Northern Ireland, and considers a number of issues arising from the Bill's individual clauses. A further Research and Information Service (RaISe) paper (NIAR 632-15; dated 3rd December 2015) provides a *Review of Bill Costs* to supplement this Paper.

This information is provided to MLAs in support of their Assembly duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice or as a substitute for it.

Paper XX/XX

December 2015

Research and Information Service briefings are compiled for the benefit of MLAs and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We do, however, welcome written evidence that relates to our papers and this should be sent to the Research and Information Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to RLS@niassembly.gov.uk

Executive Summary

Introduction

This Bill Paper is produced to support the Committee for Education in its scrutiny of the Addressing Bullying in Schools Bill (the Bill). It provides some contextual information on the Bill and highlights a number of key policy issues. A further RaSe paper provides a *Review of Bill Costs* (NIAR 632-15, dated 3rd December 2015). All references to “the Bill” are to the Bill as introduced.

Prevalence of bullying in Northern Ireland

In 2011, research commissioned by the Department of Education (DE) found that 39% of Year 6 pupils and 29% of Year 9 pupils had been bullied in the past two months. The research indicates that males were more likely to experience physical bullying, while female pupils were more likely to be bullied in other ways, including electronically.

Addressing Bullying in Schools Bill

In a 2013 review, the Northern Ireland Anti-Bullying Forum (NIABF) highlighted wide variation in policy and practice in addressing bullying in schools. It found that existing legislation and guidance was inadequate, and called for an agreed bullying definition.

In January 2015 the DE consulted on the main policy proposals for addressing bullying in schools. Subsequently, the Minister for Education introduced the Bill to the Assembly on the 30th November 2015.

Clause 1: Definition of “bullying”

There is currently no statutory definition for the term “bullying” in schools in Northern Ireland. The Bill provides such a definition, noting that bullying is a repeated verbal, written or electronic act or acts (or omission of an act), between pupils, with the intention of causing physical or emotional harm.

In many jurisdictions bullying definitions are not statutory. However, following the 1999 Columbine High School shooting, American state legislatures introduced a wave of anti-bullying legislation. A majority of states include a statutory definition of bullying.

There is wide variation across jurisdictions and organisations in regard to how they define bullying. However, there is broad agreement in the literature on three defining criteria:

- **Intent:** the perpetrator intended to cause harm;
- **Repetition:** the behaviour must be repeated; and,
- **Power imbalance:** there is an imbalance of power between the perpetrator and the victim.

The Bill includes the elements of repetition and intent, but does not refer to a power imbalance. While repetition is a well-established criterion for bullying, it presents challenges in the cyberbullying context, as it may not be clear where responsibility lies for the redistribution of the original act. In addition, the large potential audience may result in greater harm to the victim.

Over half (57%) of respondents to the DE consultation did not agree that the definition should apply only to bullying between pupils, and not include staff.

Further consideration could be given to the following in relation to the Bill's definition:

- The rationale for excluding a power imbalance between perpetrator and victim in the definition proposed under Clause 1;
- How the term "repetition" would be defined within the context of cyberbullying, for example, where an electronic act is distributed by someone other than the original perpetrator; and,
- The rationale for excluding school staff from the definition.

Clause 2: Duty of Board of Governors to secure measures to prevent bullying

This Clause places a number of duties on Boards of Governors to prevent bullying. Under existing legislation, principals are responsible for determining measures to prevent bullying; the Bill removes this duty. Clause 2 states that Boards of Governors must develop and implement policies applying to pupils:

- On school premises during the school day;
- While travelling to or from the school during the school term; and,
- While in the lawful control or charge of a member of school staff.

However, research in Northern Ireland suggests that cyberbullying is four times more likely to occur outside school hours, with incidents often "spilling over" into the school day. Teachers and principals have reported a lack of clarity around when they are responsible for addressing bullying.

Indeed, the evidence emphasises the importance of teacher education in preventing bullying. Research has identified a need for a review of teacher education and resources in Northern Ireland, particularly in relation to cyberbullying.

In addition, many respondents to the NIABF review suggested that school policies should refer to specific types of bullying, including cyberbullying and bullying due to race, disability and sexual orientation. Wider research suggests, for example, that homophobic bullying is less likely to occur where schools publicly acknowledge and condemn it.

Further consideration could be given to the following areas:

Boundaries between home and school

- The rationale for limiting the scope of policies to school hours; and,
- The implications of this for cyberbullying incidents.

Consultation and Board of Governor duties

- The potential implications of affording Boards of Governors wide discretionary powers concerning consultation; and,
- The implications of the duties for Boards of Governors, for example on workload and recruitment.

Policy

- The rationale for not requiring schools to ensure that their anti-bullying policies refer to specific types of bullying.

Training and guidance

- Whether the DE has conducted a training needs analysis around bullying;
- Whether the DE has reviewed ITE and CPD courses in this regard; and,
- Whether the DE would produce specific guidance on addressing cyberbullying, and on other forms of bullying.

Clause 3: Recording incidents

This Clause requires Boards of Governors to ensure that a record of all incidents or alleged incidents of bullying is kept within the school. The record must include the perceived motivation behind the incident and state how the school addressed it.

While there was much support for recording incidents among respondents to the DE consultation, there was less support for reporting through a common IT system (85% compared to 65% who supported recording centrally).

It is important to note that many pupils do not report experiences of bullying, and that those who do are more likely to tell a friend or parent than a teacher. There is also evidence that teachers do not always take sufficient action to address bullying.

It is likely that records of bullying would include sensitive personal data, as defined under the Data Protection Act 1998. Some respondents to the DE consultation highlighted concerns in this regard.

The Freedom of Information Act 2000 provides a general right of access to recorded information held by public authorities (including schools). While it includes a number of exemptions, there remains the potential for schools to release sensitive personal information about pupils, which could have human rights and equality implications.

Further consideration could be given to the following areas:

Guidance

- The rationale for stating that the DE “*may*” produce guidance (instead of “*shall*”).

Recording incidents

- How the DE would ensure that schools properly adjudicate information recorded on bullying incidents, ensuring due process;
- The purpose of including bystanders or witnesses in records of bullying incidents and how this would be addressed in relation to cyberbullying; and,
- Whether records of bystanders to a bullying incident would include school staff.

Data storage and protection

- The length of time records of bullying incidents would be maintained;
- The potential for schools to release sensitive personal information;
- The extent to which the DE has considered human rights and equality standards and law in relation to the potential release of sensitive information; and,
- The potential for third parties to produce “league tables” of bullying prevalence.

Under-reporting and actions to address bullying

- The potential implications of the duties to record incidents on the willingness of pupils and teachers to report and record bullying;
- How, if at all, the DE would monitor and address potential underreporting by pupils and teachers; and,
- The perception that many teachers take insufficient action in addressing bullying.

Motivation

- The motivations for bullying provided in the Bill, including the rationale for excluding looked after children and persons with dependents;
- The rationale for not including other motivating factors, such as appearance; and,
- The capacity of teachers to determine the motivation for bullying incidents.

Conclusion

This Bill Paper has considered a number of potential issues that could be given further consideration. These include the extent to which the Bill addresses issues such as cyberbullying and bullying due to race, faith, disability, gender reassignment and sexual orientation. It has also highlighted concerns around teacher education and capacity in relation to bullying, in addition to data protection issues.

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Introduction

The Education Minister introduced the Addressing Bullying in Schools Bill (the Bill) in the Assembly on the 30th November 2015. This Bill Paper is prepared to support the Committee for Education in its scrutiny of the introduced Bill, and focuses on the policy implications. A further Research and Information Service (RaISe) paper (NIAR 632-15, dated 3rd December 2015) provides a *Review of Bill Costs* to supplement this Paper.

To contextualise an examination of the key Bill clauses, this Bill Paper first provides background information on the prevalence of bullying and current practice in schools in Northern Ireland.

Thereafter, it considers a number of issues arising from the Bill's individual clauses, drawing on relevant sources, including the Department of Education's (DE) consultation on the Bill proposals in 2015. The Paper highlights issues for consideration throughout.

Please note: this information is provided to MLAs in support of their Assembly duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice or as a substitute for it.

All references in this Paper to "the Bill" are to the Bill as introduced.

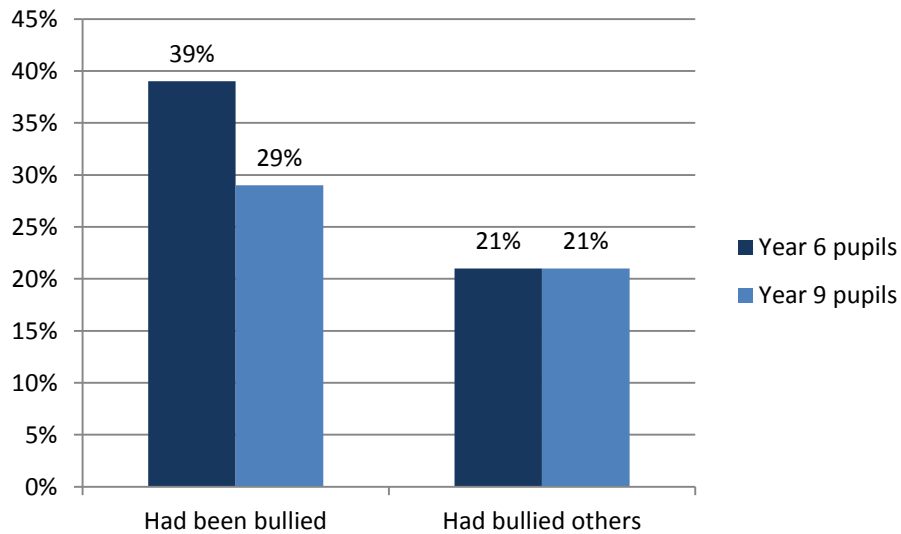
1 Prevalence of bullying in Northern Ireland

While bullying has reduced in prevalence in most countries,¹ the DE states that it has not declined in Northern Ireland.² Research commissioned by the DE and published by RSM McClure Watters in 2011 highlighted the number of pupils involved in bullying incidents within the past two months, as illustrated in Figure 1 overleaf.

¹ Currie, C., Zanotti, C., Morgan, A., Currie, D., de Looze, M. (2012) *Social determinants of health and well-being among young people: Health Behaviour in School-aged Children (HBSC) study: international report from the 2009/2010 survey* Copenhagen: WHO Regional Office for Europe

² Department of Education (2015) *Addressing Bullying in Schools: Consultation document* Bangor: DE

Figure 1: Prevalence of bullying in the past two months among Year 6 and Year 9 pupils in Northern Ireland in 2011³



The report found that boys were more likely than girls to be the victim of physical bullying. It noted that the most common types of bullying were:⁴

- Being called names or teased in a hurtful manner;
- Being left out and ignored (more prevalent among girls); and,
- Spreading false information about a pupil and trying to make others dislike them.

1.1 Trends

The Kids' Life and Times survey, conducted annually by the Economic and Social Research Council since 2008, asks Primary 7 pupils about their experiences of bullying. As illustrated overleaf in Figure 2, 22% of Primary 7 pupil respondents in 2014 stated that they had experienced physical bullying in the past two months, while 31% stated that they had been bullied in other ways.⁵

³ RSM McClure Watters (2011) *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* Bangor: DE

⁴ RSM McClure Watters (2011) *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* Bangor: DE

⁵ Economic and Social Research Council (2014) *Kids' Life and Times* [online] Available at: <http://www.ark.ac.uk/klf/results/Bullying.html>

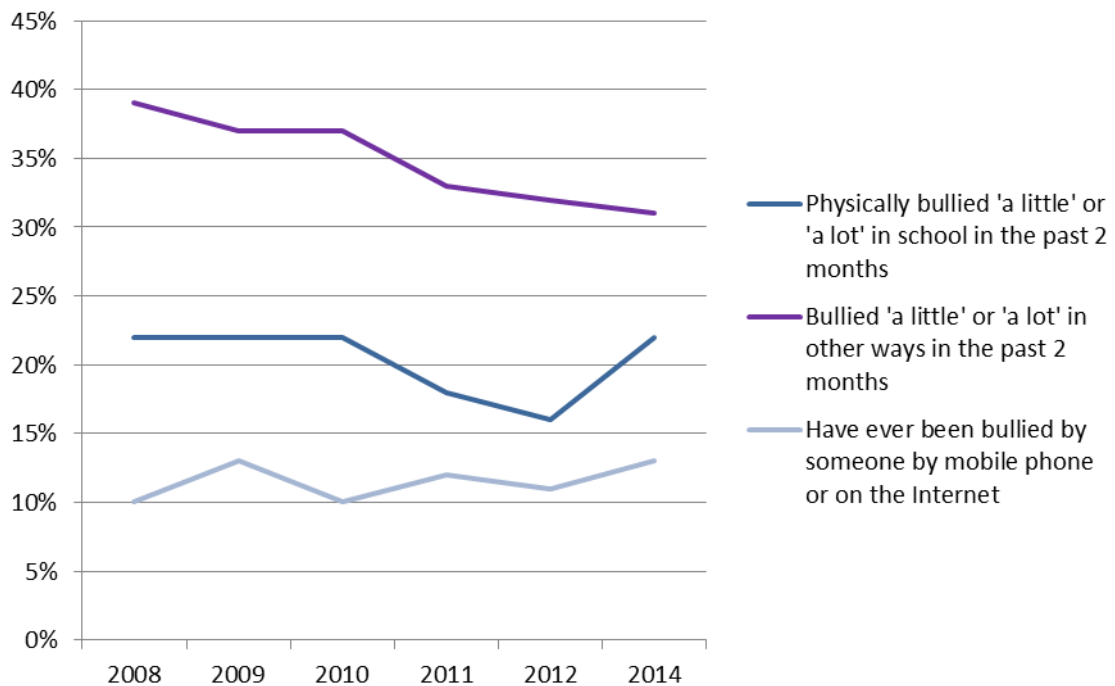
Figure 2: Extent of bullying experienced by Primary 7 pupils in Northern Ireland⁶

Figure 2 shows that physical bullying decreased between 2010 and 2012, but increased back to previous levels (22% of pupils) in 2014. However, between 2008 and 2014 bullying in other ways decreased from 39% to 31%.

Over each of the past six years a slightly higher proportion of male pupils reported physical bullying than their female counterparts. However, a greater percentage of female pupils stated that they were bullied in other ways, and that they had experienced cyberbullying, than male pupils.⁷

1.2 International comparison

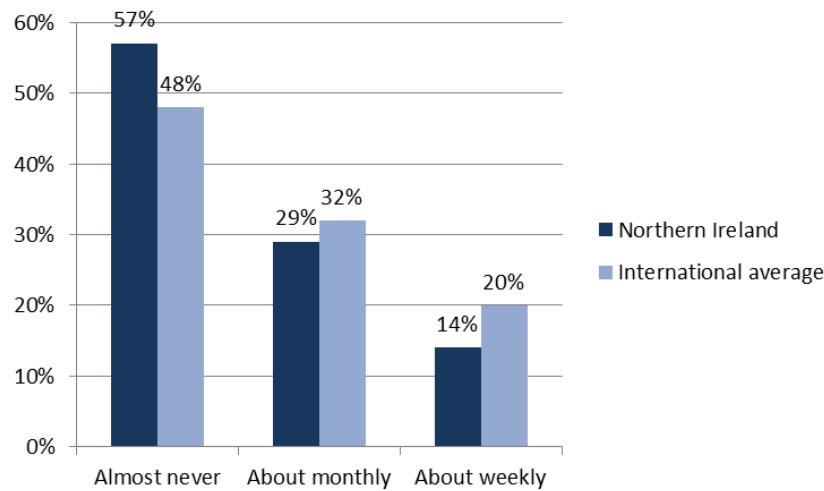
Evidence from the 2011 Trends in International Maths and Science Study (TIMSS) suggests that primary pupils in Northern Ireland experienced bullying less frequently than those in most other participating countries, as illustrated in Figure 3 overleaf. Only the Republic of Ireland and Finland reported lower levels of bullying.⁸

⁶ Economic and Social Research Council (2014) *Kids' Life and Times* [online] Available at: <http://www.ark.ac.uk/klit/results/Bullying.html> (Data not available for 2013)

⁷ Economic and Social Research Council (2014) *Kids' Life and Times* [online] Available at: <http://www.ark.ac.uk/klit/results/Bullying.html>

⁸ Sturman, L., Twist, L., Burge, B., Sizmur, J., Bartlett, S., Cook, R., Lynn, L., Weaving, H. (2012) *PIRLS and TIMSS 2011 in Northern Ireland: Reading, Mathematics and Science* Slough: NFER

Figure 3: Extent to which nine and ten year old pupils were bullied at school (2011)⁹



2 Policy and practice in schools

The commitment to bring forward legislation was based on research evidence and on a review of anti-bullying policies and practice in schools by the Northern Ireland Anti-Bullying Forum (NIABF).¹⁰ The review was commissioned by the Minister for Education in 2013.¹¹

It found that while schools were aware of their responsibilities to tackle bullying, there was wide variation in policy and practice. It noted that a lack of consistency in recording bullying incidents limits a school's ability to assess the scale of the problem, identify motivating factors and monitor the effectiveness of the policy's implementation. The review's other findings included:¹²

- Current legislation is inadequate, resulting in inconsistency between schools;
- Stakeholders called for an agreed definition of bullying;
- There should be a school requirement to centrally record details of bullying complaints; and,
- The DE should provide updated guidance on anti-bullying policies to schools.

⁹ Sturman, L., Twist, L., Burge, B., Sizmur, J., Bartlett, S., Cook, R., Lynn, L., Weaving, H. (2012) *PIRLS and TIMSS 2011 in Northern Ireland: Reading, Mathematics and Science* Slough: NFER

¹⁰ Department of Education (2015) *Addressing Bullying in Schools: Consultation document* Bangor: DE

¹¹ Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF

¹² Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF

3 Addressing Bullying in Schools Bill

The DE held a consultation between the 5th January and the 27th February 2015 on the main policy proposals for addressing bullying in schools, receiving 4,939 responses. Of these, pupils submitted 4,221 questionnaires while the remainder came from teachers, parents and other stakeholders.¹³ It also conducted an equality and human rights policy screening which did not identify any adverse equality issues.¹⁴

Following the consultation, the Minister for Education introduced the Addressing Bullying in Schools Bill to the Assembly on the 30th November 2015.

4 Clause 1: Definition of “bullying”

There currently is no statutory definition for the term “bullying” in schools in Northern Ireland. Clause 1 of the Bill provides such a definition of bullying, as outlined below.

1 (1) “In this Act “bullying” includes-

- (a) the **repeated** use of a verbal, written or electronic communication or a physical act (or a combination of those).
- (b) by a pupil or group of pupils,
- (c) against another pupil or group of pupils,
- (d) **with the intention** of causing physical or emotional harm to that pupil or group of pupils

(2) For the purposes of subsection (1), “act” **includes “omission”**.

4.1 Consultation responses

There was limited agreement among respondents to the DE’s consultation regarding the proposed definition. Some suggested that its scope was too limited, and there were mixed views on the extent to which it was easy to understand.¹⁵

The Bill’s consultation document recognises that the impact of the definition will depend on its interpretation when applied by schools and their willingness to implement related guidance. It notes that the Education and Training Inspectorate (ETI) will continue to monitor this.¹⁶

¹³ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

¹⁴ Department of Education (2014) *Equality and Human Rights Policy Screening for Addressing Bullying in Schools Policy* Bangor: DE

¹⁵ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

¹⁶ Department of Education (2015) *Addressing Bullying in Schools: Consultation document* Bangor: DE

4.2 Bullying definitions

The literature highlights a range of definitions of bullying, with variation across jurisdictions and organisations. However, there is broad consensus in the literature around three key defining criteria for bullying,¹⁷ first defined by Olweus in 1993¹⁸ and illustrated by Figure 4 below.

Figure 4: Key criteria for defining bullying according to the academic literature

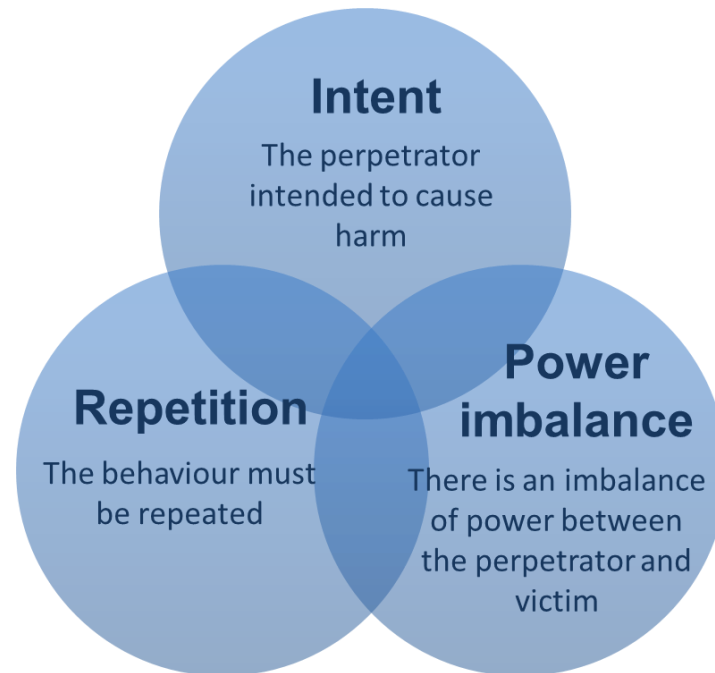


Table 1 overleaf considers a range of bullying definitions and highlights whether they include words around intent, repetition and a power imbalance between the perpetrator and the bullied person. The Annex specifies the definitions in full.

Table 1 further shows that definitions of bullying are not statutory in many jurisdictions. However, since 1999 American state legislatures have introduced many anti-bullying laws.¹⁹ The table also highlights variation in definitions of bullying across jurisdictions and organisations. Subsequent paragraphs consider these differences in more detail.

¹⁷ Corcorran, L., McGuckin, C., Prentice, G. (2015) "Cyberbullying or Cyber Aggression?: A Review of Existing Definitions of Cyber-Based Peer-to-Peer Aggression" *Societies* Vol. 5 pp. 245-255

¹⁸ Olweus, D. (1993) *Bullying at School: What We Know and What We Can Do* Oxford: Blackwell

¹⁹ Hatzenbuehler, M.L., Schwab-Reese, L., Ranapurwala, S.I., Hertz, M.F., Ramirez, M.Z. (2015) "Associations Between Antibullying Policies and Bullying in 25 States" *Jama Pediatrics* Vol. 169, No. 10

Table 1: Examples of bullying definitions²⁰

	Legislative	Intent	Repetition	Power balance
Addressing Bullying in Schools Bill	Yes	Yes	Yes	No
England	No	Yes	Yes	No
Finland	No	No	Yes	Yes
Republic of Ireland	No	No	Yes, although a single act on a public forum is included	No
Scotland	No	No	No	No
American states	Yes (majority)	Yes (majority)	No (included in fewer than half)	No (none)
Oxford Dictionary	-	No	No	Yes
NIABF	-	Yes	Yes	Yes
World Health Organisation	-	Yes	Yes	Yes

4.3 Intent

The Bill prescribes a definition that emphasises that bullying communications or acts are carried out with the intention of causing harm to others. As Table 1 above highlights, England and the majority of American states include intent within their bullying definition, while Finland, the Republic of Ireland and Scotland do not.

For example, the Scottish Government's definition emphasises the victim's feelings, rather than the perpetrator's intent. Indeed, the guidance notes that some bullying can be unintentional, stating that bullying can be defined as:²¹

“Behaviour which leaves people feeling helpless, frightened, anxious, depressed or humiliated”.

4.4 Repetition

The Bill defines bullying as a repeated communication or act, in line with many definitions,²² including those in England and Finland. The evidence suggests that

²⁰ See Annex for further information and citations

²¹ Scottish Government (2010) *A National Approach to Anti-Bullying for Scotland's Children and Young People* Edinburgh: the Scottish Government

repetition is a well-established criterion for bullying.²³ However, cyberbullying may present challenges in relation to this term.

For example, a single act through electronic communication could be viewed or distributed repeatedly by others,²⁴ and the perpetrator may anticipate this.²⁵ In addition, the victim may have greater feelings of embarrassment or shame, due to the large potential audience.²⁶

Indeed, while the Republic of Ireland defines bullying as acts repeated over time, it makes an exception where a single offensive or hurtful act takes place on social media or other public forum, which may be viewed or repeated by others.²⁷ A majority of American states do not include repetition within statutory bullying definitions.²⁸

Two thirds (66%) of respondents to the DE's consultation agreed that bullying behaviour is repetitive, while 22% disagreed. There was variation by type of respondents, with a higher proportion of teachers (83%) in agreement than pupils or parents (65%).²⁹

A recent article suggests that excluding repetition from bullying definitions could have important implications for mental health. It notes that removing repetition would mean that a young person would not have to experience multiple incidents before they are found to amount to bullying.³⁰

4.5 Power imbalance

There is agreement across much of the literature that power imbalance is a key criterion in bullying definitions. A power imbalance can relate to factors such as physical strength, virtue of numbers, socio-economic background or popularity within a peer group.³¹

²² Smith, P.K. (2015) "The nature of cyberbullying and what we can do about it" *Journal of Research in Special Educational Needs* Vol. 15 No. 3, pp. 176-184

²³ Langos, M.A. (2012) "Cyberbullying: The Challenge to Define" *Cyberpsychology, Behavior, and Social Networking* Vol. 15, No. 6 pp. 285-289

²⁴ Corcorran, L., McGuckin, C., Prentice, G. (2015) "Cyberbullying or Cyber Aggression?: A Review of Existing Definitions of Cyber-Based Peer-to-Peer Aggression" *Societies* Vol. 5 pp. 245-255

²⁵ Smith, P.K. (2015) "The nature of cyberbullying and what we can do about it" *Journal of Research in Special Educational Needs* Vol. 15 No. 3, pp. 176-184

²⁶ Slonje, R., Smith, P.K., Frisén, A. (2012) "The nature of cyberbullying, and strategies for prevention" *Computers in Human Behaviour* Vol. 29 pp. 26-32

²⁷ Department of Education and Skills (2013) *Anti-bullying Procedures for Primary and Post-primary schools*

²⁸ Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

²⁹ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

³⁰ Corcorran, L., McGuckin, C., Prentice, G. (2015) "Cyberbullying or Cyber Aggression?: A Review of Existing Definitions of Cyber-Based Peer-to-Peer Aggression" *Societies* Vol. 5 pp. 245-255

³¹ Purdy, N., McGuckin, C. (2013) *Cyberbullying and the Law: A Report for the Standing Conference on Teacher Education North and South SCoTENS*

However, the evidence suggests that an imbalance in power in relation to cyberbullying may be more difficult to determine, and may relate to factors such as Information and Communications Technology (ICT) ability and anonymity.³²

The definition set out within the Bill does not refer to an imbalance of power between the perpetrator and victim. This is in line with statutory definitions across the United States, and non-statutory guidance in England, the Republic of Ireland and Scotland.

However, many other definitions include words reflecting an imbalance of power.³³ For example, the World Health Organisation (WHO) states:³⁴

*“Bullying is the **assertion of interpersonal power** through aggression... It is defined as negative physical or verbal actions that have hostile intent, cause distress to victims, are repeated and **involve a power differential** between perpetrators and victims.”*

A 2012 study assessing young people’s views from six European countries³⁵ found that they were most likely to define a scenario as bullying where there was an imbalance of power between the perpetrator and the victim.³⁶

4.6 Staff involvement

The definition within the Bill applies only to bullying between pupils and does not include interactions between pupils and staff. However, in the consultation, 57% of all respondents disagreed that the legislation should only apply between pupils, compared to 24% who agreed.³⁷

Further consideration could be given to the following in relation to the Bill’s definition:

- The rationale for excluding a power imbalance between perpetrator and victim in the definition proposed under Clause 1;
- How the term “repetition” would be defined within the context of cyberbullying, for example, where an electronic act is distributed by someone other than the original perpetrator; and,
- The rationale for excluding school staff from the definition.

³² Slonje, R., Smith, P.K., Frisé, A. (2012) “The nature of cyberbullying, and strategies for prevention” *Computers in Human Behaviour* Vol. 29 pp. 26-32

³³ Smith, P.K. (2015) “The nature of cyberbullying and what we can do about it” *Journal of Research in Special Educational Needs* Vol. 15 No. 3, pp. 176-184

³⁴ Currie, C., Zanotti, C., Morgan, A., Currie, D., de Looze, M. (2012) *Social determinants of health and well-being among young people: Health Behaviour in School-aged Children (HBSC) study: international report from the 2009/2010 survey* Copenhagen: WHO Regional Office for Europe

³⁵ Italy, Spain, Germany, Sweden, Estonia and France

³⁶ Menesini, E., Nocentini, A., Palladino, B.E., Frisé, A. (2012) “Cyberbullying Definition Among Adolescents: A Comparison Across Six European Countries” *Cyberpsychology, Behavior and Social Networking* Vol. 15 No. 9 pp. 455-463

³⁷ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

5 Clause 2: Duty of Board of Governors to secure measures to prevent bullying

Clause 2 places a number of affirmative duties on Boards of Governors to prevent bullying. Clause 2 (1) requires Boards of Governors to develop and implement policies to prevent bullying among pupils. Included within the scope of these policies (including measures) are pupils:

- On school premises during the school day;
- While travelling to or from the school during the school term; and,
- While in the lawful control or charge of a member of school staff.

Clause 2 (1) places further duties on Boards of Governors in relation to the design and review of the measures. It states that they must:

- Review the measures from time to time and when the DE directs;
- Consult the principal, pupils and parents before determining or revising the measures (in a way that seems appropriate to them);
- Have due regard to the DE guidance when determining or reviewing the measures;
- Prepare a written statement of the measures, ensuring that copies are available to parents, staff and for inspection; and,
- Ensure that such measures are taken.

5.1 Current civil and criminal legislation

This sub-section outlines prevailing civil and criminal legislation in Northern Ireland which is relevant in the context of school bullying.

5.1.1 Civil legislation

The Education and Libraries (Northern Ireland) Order 2003 amends the Education (Northern Ireland) Order 1998,³⁸ prescribing a number of duties relating to bullying; in particular:³⁹

- Article 17 requires Boards of Governors to **safeguard and promote the welfare of pupils** when they are on school premises or in the lawful charge of a staff member;

³⁸ Purdy, N., McGuckin, C. (2013) *Cyberbullying and the Law: A Report for the Standing Conference on Teacher Education North and South SCoTENS*

³⁹ Legislation.gov.uk *Education and Libraries (Northern Ireland) Order 2003* [online] Available at: <http://www.legislation.gov.uk/nisi/2003/424/article/17/made>

- Article 18 places a duty on Boards of Governors to ensure that they have a **written child protection policy** in place, determining the measures the school will take to protect children from abuse, including abuse causing physical and mental harm;
- Article 19 requires Boards of Governors to **consult with pupils and parents** before making or changing the disciplinary policy; and,
- It also states that it is the **principal's responsibility to determine measures** to be taken for **preventing all forms of bullying** among pupils.

Clause 2 of the Bill removes the duty on the principal to determine measures that seek to prevent bullying, in order to “*prevent any conflict*”.⁴⁰

In 2014 a former pupil brought a legal claim against his post-primary school under the Education and Libraries (Northern Ireland) Order 2003 and the Education (Northern Ireland) Order 1998. The pupil claimed that the school had breached its statutory duty to protect him from bullying.⁴¹

The District Court found that in the end the school had taken adequate action, but that prompt intervention could have prevented the bullying. It consequently awarded the pupil (the applicant) £10,000. Qualifying its decision, it further noted that courts generally should be reluctant to award damages in similar cases.⁴²

5.1.2 Criminal legislation

Under criminal law, it appears that three pieces of legislation may be applicable where cyberbullying is at issue:⁴³

- The Protection from Harassment (Northern Ireland) Order 1997, which states that it is **unlawful to cause harassment, alarm or distress** by a course of conduct;⁴⁴
- The Malicious Communications (Northern Ireland) Order 1988: which makes it an offence to send an indecent, offensive or threatening letter or electronic communication, or a communication known or believed to be false, **which intends to cause distress or anxiety**;⁴⁵ and,

⁴⁰ The Addressing Bullying in Schools Bill: Explanatory and Financial Memorandum

⁴¹ NI Courts and Tribunals – Judicial Decisions (2014) *In the County Court for the Division of Armagh and South Down by the County Court Judge Between: Ryan Collins and Trustees for the Time Being of Abbey Christian Brothers Grammar School*

⁴² NI Courts and Tribunals – Judicial Decisions (2014) *In the County Court for the Division of Armagh and South Down by the County Court Judge Between: Ryan Collins and Trustees for the Time Being of Abbey Christian Brothers Grammar School*

⁴³ Purdy, N., McGuckin, C. (2013) *Cyberbullying and the Law: A Report for the Standing Conference on Teacher Education North and South* SCoTENS

⁴⁴ Legislation.gov.uk *The Protection from Harassment (Northern Ireland) Order 1997* [online] Available at: <http://www.legislation.gov.uk/nisi/1997/1180/contents>

⁴⁵ Legislation.gov.uk *Malicious Communications (Northern Ireland) Order 1988: Article 3* [online] Available at: <http://www.legislation.gov.uk/nisi/1988/1849/article/3>

- The Communications Act 2003: which states that a person is guilty of an offence if he sends, or causes to be sent, an indecent, obscene, menacing, or grossly offensive message, or a message known to be false, **through a public electronic communications network**.⁴⁶

5.2 Practice in schools

Research conducted by the National Children's Bureau Northern Ireland (NCB NI) for the 2013 NIABF review found that schools' anti-bullying policies tend to contain a number of key elements. These include procedures for dealing with incidents; preventing bullying; staff responsibilities; and a definition of bullying. The research identified a number of common deficiencies in existing policy, including:⁴⁷

- References to types of bullying motivated by specific differences, particularly homophobic, transphobic, sectarian bullying and bullying of people with disabilities (many refer in general to bullying on the basis of background, opinions, religion or tradition);
- Details of the consultation undertaken to develop the policy; and,
- Details of training available for staff and governors.

5.3 Boundaries between school and home

As outlined above, the Bill requires that schools record all incidents during the school day. However research in Northern Ireland suggests that cyberbullying was almost four times more likely to take place outside school hours.⁴⁸

In the 2013 NCB NI research, 65% of principals surveyed agreed that understanding the school's responsibility in tackling bullying occurring outside school is a significant challenge.⁴⁹

This finding is supported by a 2013 study conducted by Stranmillis University College and Trinity College Dublin for the Standing Conference on Teacher Education, North and South (SCoTENS). The study identified a perceived lack of clarity for schools in determining when they are responsible for preventing bullying.⁵⁰

Many participants in the SCoTENS research believed that cyberbullying presented particular challenges in this regard. Frequently incidents begin outside school hours,

⁴⁶ Legislation.gov.uk *The Communications Act 2003: Section 127* [online] Available at: <http://www.legislation.gov.uk/ukpga/2003/21/section/127>

⁴⁷ Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF

⁴⁸ RSM McClure Watters (2011) *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* Bangor: DE

⁴⁹ Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF

⁵⁰ Purdy, N., McGuckin, C. (2013) *Cyberbullying and the Law: A Report for the Standing Conference on Teacher Education North and South* SCoTENS

but involve pupils and “*often spill over*” into the school the following day. In addition, many parents approach the school to deal with incidents of cyberbullying that have occurred outside of school hours.⁵¹

In the US, 13 out of 46 states with anti-bullying legislation in 2011 (all 50 states now have such legislation) stated that schools are responsible for out-of-school bullying where it creates a hostile school environment.⁵²

There were mixed views among respondents to the DE’s consultation on the Bill about schools’ responsibility for cyberbullying. Over half (54%) said schools should not be responsible during term time even outside school hours, while 46% believed they should have a duty to address cyberbullying during such times. A much larger proportion of teachers (80%) thought that schools should not be responsible outside school hours, than pupils (52%).⁵³

5.4 Teacher education

The NIABF review in 2013 suggested that teacher education is of “*paramount importance*” in addressing bullying. In particular, it suggested that Initial Teacher Education (ITE) should include mandatory content on bullying, and that Continuing Professional Development (CPD) should provide greater opportunities and funding for training on bullying.⁵⁴

In 2011 RSM McClure Watters suggested that the DE carry out a training needs analysis of all school staff in relation to their ability to identify and address bullying. It also recommended a review of ITE and CPD courses to ensure they reflect current trends in bullying. Similarly, the 2013 NIABF review identified an “urgent need” for additional training and resources to support schools in light of new and complex types of bullying.⁵⁵

Research also suggests that staff require training to enable them to recognise the signs of cyberbullying.⁵⁶ Teachers participating in the SCoTENS study expressed a range of levels of knowledge and confidence in relation to cyberbullying, with over two thirds (67.6%) calling for more CPD.⁵⁷

⁵¹ Purdy, N., McGuckin, C. (2013) *Cyberbullying and the Law: A Report for the Standing Conference on Teacher Education North and South* SCoTENS

⁵² Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

⁵³ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

⁵⁴ Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF

⁵⁵ RSM McClure Watters (2011) *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* Bangor: DE

⁵⁶ Chisholm, J.F. (2014) “Review of the Status of Cyberbullying and Cyberbullying Prevention” *Journal of Information Systems Education*, Vol. 25 (1) Spring 2014 pp. 77-87

⁵⁷ Purdy, N., McGuckin, C. (2013) *Cyberbullying and the Law: A Report for the Standing Conference on Teacher Education North and South* SCoTENS

5.5 Reference to specific types of bullying

Respondents to the 2013 review by the NIABF called for school policies to refer to a wide range of types of bullying, including cyberbullying; bullying due to race, faith, culture or disability; homophobic bullying; sectarian bullying and bullying of looked after children.⁵⁸

For example, research suggests that LGBT pupils are less likely to experience bullying when their school acknowledges and publicly condemns homophobic bullying.⁵⁹ In addition, evidence indicates that where schools do not use anti-bullying and anti-racism procedures to address the bullying of Traveller children, they are less likely to attend school.⁶⁰

5.6 Governor responsibilities

Research conducted by PricewaterhouseCoopers (PwC) and commissioned by the DE in 2010 found that 59% of school governors in Northern Ireland thought that the role was time-consuming, and half believed that there is a high level of bureaucracy.⁶¹

Some respondents to the DE consultation highlighted concerns around the additional responsibilities for governors contained within the Bill. They suggested that governors may not have time to fulfil their new duties, particularly smaller Boards of Governors, and that this could have an impact on governor recruitment.⁶²

In addition, the Special Educational Needs and Disability Bill currently at the Further Consideration Stage in the Assembly, places a number of new statutory duties on Boards of Governors.⁶³

⁵⁸ Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF

⁵⁹ Cowley, J. (2012) "Homophobic Bullying in Northern Ireland's Schools: Perspectives from Young People" *Youth Voice Journal*, February 6, 2012 pp. 77-84

⁶⁰ Deuchar, R., Bhopal, K. (2013) "'We're still human beings: we're not aliens': promoting the citizenship rights and cultural diversity of Traveler children in schools: Scottish and English perspectives" *British Educational Research Journal* Vol. 39, No. 4, pp. 733-750

⁶¹ PricewaterhouseCoopers (2010) *School Governors: The Guardians of our Schools* Bangor: DE

⁶² Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

⁶³ See: Perry, C (2015) *Special Educational Needs and Disability (SEND) Bill* Belfast: Northern Ireland Assembly

Further consideration could be given to the following areas:

Boundaries between home and school

- The rationale for limiting the scope of policies for preventing bullying to school hours; and,
- The implications of this for cyberbullying incidents; for example, when bullying begins outside school hours but affects pupils during school.

Consultation and Board of Governor duties

- The potential implications of affording Boards of Governors wide discretionary powers concerning consultation, for example, whether such power could result in arbitrary, unfair or inconsistent decision-making; and,
- The implications of the duties for Boards of Governors, for example, on workload and recruitment.

Policy

- The rationale for not requiring schools to ensure that their anti-bullying policies refer to specific types of bullying (e.g. cyberbullying, racist and homophobic bullying).

Training and guidance

- Whether the DE has conducted a training needs analysis regarding identifying and addressing bullying;
- Whether the DE has reviewed ITE and CPD courses regarding the extent to which they reflect current developments in bullying; and,
- Whether the DE would produce specific guidance on addressing cyberbullying, and on other forms of bullying.

6 Clause 3: Recording incidents

Clause 3 places a duty on Boards of Governors to ensure that a record is kept of all incidents or alleged incidents of bullying involving a registered pupil at the school occurring:

- When the pupil is on school premises during the school day;
- While the pupil is travelling to or from the school during the school term; and,
- While the pupil is in the lawful control or charge of a member of school staff.

The record must include information on how the incident was addressed and the perceived motivation behind it. Clause 3(4) also states that the DE “may” publish guidance on the recording of bullying incidents, and further requires Boards of

Governors to afford “due regard” to such guidance. It is worth noting that the Clause does not *require* the DE to produce guidance in this area.

A large proportion (85%) of respondents to the DE consultation on the Bill agreed that schools should have to record the motivation, response and outcomes of bullying incidents. Of the different respondent types, there was greatest support from pupils (85%), followed by teachers (74%) and parents or the public (63%).⁶⁴

However, there was less support from respondents for recording incidents on a common IT system (65% overall). Teachers were least supportive, with 59% agreeing that incidents should be recorded on a common system, compared to 72% of pupils and 82% of parents or the public.

While some respondents to the DE’s consultation suggested that recording incidents would help to prevent bullying, others highlighted concerns, including:⁶⁵

- Staff and pupils were concerned about data storage, access and confidentiality;
- Monitoring alone would not bring about change: schools must act robustly in response;
- Determining the motivation for a bullying incident could be difficult.

Of 46 states in the US with anti-bullying legislation in 2011, 18 (or 39%) required schools to record incidents of bullying. Indeed, record keeping is more commonly addressed through policy than legislation in the US.⁶⁶

6.1 Current practice

Departmental guidance highlights variation in the recording of bullying incidents across schools. It notes that some schools electronically record incidents on an internal computer database, while others keep a hard copy register. The only data currently available to the DE in this regard are statistics on the number of suspensions or expulsions due to bullying behaviour.⁶⁷

6.2 Under-reporting of bullying incidents

The evidence indicates that many pupils do not report bullying incidents.⁶⁸ The 2011 survey on the nature and extent of bullying in Northern Ireland found that Year 6 pupils

⁶⁴ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

⁶⁵ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

⁶⁶ Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

⁶⁷ Department of Education (2015) *Addressing Bullying in Schools: Consultation document* Bangor: DE

⁶⁸ Smith, P.K. (2015) “The nature of cyberbullying and what we can do about it” *Journal of Research in Special Educational Needs* Vol. 15 No. 3, pp. 176-184

who do report incidents of bullying are more likely to tell their parents (34%) or their friends (25%), than their class teacher (18%) or another staff member (11%).⁶⁹

This is supported by wider research that suggests that young people are much more likely to report cyberbullying to a friend or parent than a teacher.⁷⁰ A 2015 UK survey highlighted a number of reasons why pupils chose not to report bullying, including that they:⁷¹

- Felt like they could deal with it alone (40%);
- Said it did not affect them enough (40%);
- Felt like it would not be taken seriously (33%);
- Were too embarrassed to tell anyone (32%);
- Were scared of it getting worse (26%); and,
- Have reported bullying in the past and nothing happened (18%).

In addition, the evidence indicates that many young people do not report their experiences of cyberbullying, instead coping with the experience on their own.⁷² Young people often perceive that adults lack the specific knowledge to help them, or are concerned that they will restrict access to devices.⁷³

The evidence also suggests that a large proportion of LGBT pupils do not report their experiences of bullying.⁷⁴

6.3 Action taken

The research highlights a perception that teachers do not always take sufficient action in response to bullying incidents. In a 2011 survey in Northern Ireland, over a third (35%) of pupils at both primary and post-primary stated that teachers or other adults try to stop bullying incidents at their school only “sometimes”, “once in a while” or “almost never”.⁷⁵

In the same survey almost a third (31%) of Year 6 pupils who had bullied others reported that teachers had not spoken to them about it. At post-primary the proportion

⁶⁹ RSM McClure Watters (2011) *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* Bangor: DE

⁷⁰ Smith, P.K. (2015) “The nature of cyberbullying and what we can do about it” *Journal of Research in Special Educational Needs* Vol. 15 No. 3, pp. 176-184

⁷¹ Ditch the Label (2015) *The Annual Bullying Survey 2015* Ditch the Label

⁷² Chisholm, J.F. (2014) “Review of the Status of Cyberbullying and Cyberbullying Prevention” *Journal of Information Systems Education*, Vol. 25 (1) Spring 2014 pp. 77-87

⁷³ Sticca, F., Perren, S. (2012) “Is Cyberbullying Worse than Traditional Bullying? Examining the Differential Roles of Medium, Publicity and Anonymity for the Perceived Severity of Bullying” *Journal of Youth Adolescence* Vol. 42 pp. 739-750

⁷⁴ Cowley, J. (2012) “Homophobic Bullying in Northern Ireland’s Schools: Perspectives from Young People” *Youth Voice Journal*, February 6, 2012 pp. 77-84

⁷⁵ RSM McClure Watters (2011) *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* Bangor: DE

of pupils was higher; with 45% of those involved in bullying others stating that teachers had not discussed their bullying with them.⁷⁶

In a 2015 UK survey, of the 92% of pupils who stated that they had told a teacher after being bullied, just over half (51%) were dissatisfied with the support they received.⁷⁷

6.4 Bystanders

The DE has indicated that witnesses or bystanders to a bullying incident would be included within the record.⁷⁸

However, the evidence indicates that the variety of bystander roles in cyberbullying is more complex than in traditional bullying,⁷⁹ and that there is a lack of clarity regarding whether responsibility for repeated views of content lies with the perpetrator or the victim.⁸⁰

6.5 Data protection

The DE's consultation document acknowledges the "sensitivities" in recording and sharing information on bullying, but asserts that comprehensive records would support the provision of guidance and promote best practice.⁸¹

However, some school staff and pupils responding to the DE's consultation expressed concerns around data storage and use, including that:⁸²

- Recording incidents may lead to unofficial league tables of bullying;
- Some schools may not keep accurate records in order to avoid negative publicity; and,
- Some schools may ignore incidents to avoid the additional administrative burden.

The sharing of data on bullying with other bodies must be undertaken with due regard to the Data Protection Act 1998. This Act requires bodies to gather and process data fairly, hold it securely and use it only for the purpose for which it was collected. The Act defines sensitive personal data, including data around racial or ethnic origin, political opinion or religious belief.⁸³

⁷⁶ RSM McClure Watters (2011) *The Nature and Extent of Pupil Bullying in Schools in the North of Ireland* Bangor: DE

⁷⁷ Ditch the Label (2015) *The Annual Bullying Survey 2015* Ditch the Label

⁷⁸ Northern Ireland Assembly (2015) *Official Report: Minutes of Evidence Report Committee for Education, meeting on Wednesday, 4 November 2015* [online] Available at: <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=15678&eventID=8740>

⁷⁹ Smith, P.K. (2015) "The nature of cyberbullying and what we can do about it" *Journal of Research in Special Educational Needs* Vol. 15 No. 3 pp. 176-184

⁸⁰ Corcorran, L., McGuckin, C., Prentice, G. (2015) "Cyberbullying or Cyber Aggression?: A Review of Existing Definitions of Cyber-Based Peer-to-Peer Aggression" *Societies* Vol. 5 pp. 245-255

⁸¹ Department of Education (2015) *Addressing Bullying in Schools: Consultation document* Bangor: DE

⁸² Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

⁸³ Legislation.gov.uk *Data Protection Act 1998* [online] Available at: <http://www.legislation.gov.uk/ukpga/1998/29>

The DE advised RalSe that it would collect data (excluding personal data) on bullying incidents annually, probably through the School Census. It is likely to publish a summary of the statistics.⁸⁴

The Freedom of Information Act 2000 provides a general right of access to recorded information held by public authorities. The Act includes a number of exemptions, including Section 40 which relates to personal information. For example, personal information whose disclosure would contravene the Data Protection Act 1998 is exempt. This includes where disclosure would:⁸⁵

- Be unfair;
- Be incompatible with the purpose for which it was obtained; or,
- Where the individual concerned had served notice that disclosure of the information would cause unwarranted substantial damage or distress.

The DE advised RalSe that schools would have to consider any requests under the Freedom of Information Act 2000 on a case by case basis, in accordance with the legislation. The DE would consider requests for data it holds in the same manner.⁸⁶

It also notes that, due to the personal nature of the information held within the records, exemptions may be relevant and that information may not be released, or released in redacted form.⁸⁷

However, there remains the potential for schools to release sensitive personal information about pupils. In this context it is important to note that the inappropriate release or redaction of information may subsequently raise issues regarding human rights and equality. Relevant standards and law should therefore be considered when deliberating on information release or redaction.

6.6 IT system for recording incidents

The DE has indicated that it will use the C2k system for schools to record bullying incidents, although it has not yet developed the module or system.⁸⁸ Schools and organisations responding to the DE's consultation on the Bill emphasised the need to ensure that any recording mechanism must be appropriately developed and piloted.⁸⁹

⁸⁴ Information provided by the Department of Education, November 2015

⁸⁵ Legislation.gov.uk *Freedom of Information Act 2000* [online] Available at: <http://www.legislation.gov.uk/ukpga/2000/36/contents>

⁸⁶ Information provided by the Department of Education, November 2015

⁸⁷ Information provided by the Department of Education, November 2015

⁸⁸ Northern Ireland Assembly (2015) *Official Report (Hansard) Anti-bullying Bill: Department of Education* Belfast: NI Assembly

⁸⁹ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

6.7 Motivation

The Bill sets out a number of potential motivations for bullying; including categories set out within Section 75 of the Northern Ireland Act 1998 (although it does not include Section 75's "*persons with dependents and persons without*") (see Figure 5 overleaf).⁹⁰

However, some schools responding to the DE's consultation felt they were not equipped to make a "*difficult and subjective*" judgement determining the motivation for a bullying incident.⁹¹

The 2013 report of the NIABF highlighted the changing nature of bullying in recent times, including homophobic, transphobic and sectarian bullying, bullying of people with disabilities, and bullying due to race, faith and culture. It also noted bullying of looked after children.⁹²

Indeed, the evidence in Northern Ireland suggests that the following pupils are more likely to experience bullying: LGBT pupils;⁹³ Black and Minority Ethnic children (particularly Traveller children);⁹⁴ and children with Special Educational Needs.⁹⁵ In this context it is important to ensure that due consideration is afforded to human rights standards and law, as well as those relating to equality.

While the groups discussed above are disproportionately more likely to experience bullying, research points to a range of other common motivations behind bullying incidents.

A 2015 survey across the UK, including a small sample from Northern Ireland, suggests that motivations for bullying vary widely. It found that a much greater proportion of young people perceived attitudes to appearance and interests as the main motivation for the bullying they had experienced; with smaller proportions stating that attitudes to disability, race or sexual orientation motivated the perpetrator.⁹⁶

⁹⁰ Legislation.gov.uk *Northern Ireland Act 1998* [online] Available at: <http://www.legislation.gov.uk/ukpga/1998/47/section/75>

⁹¹ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

⁹² Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF

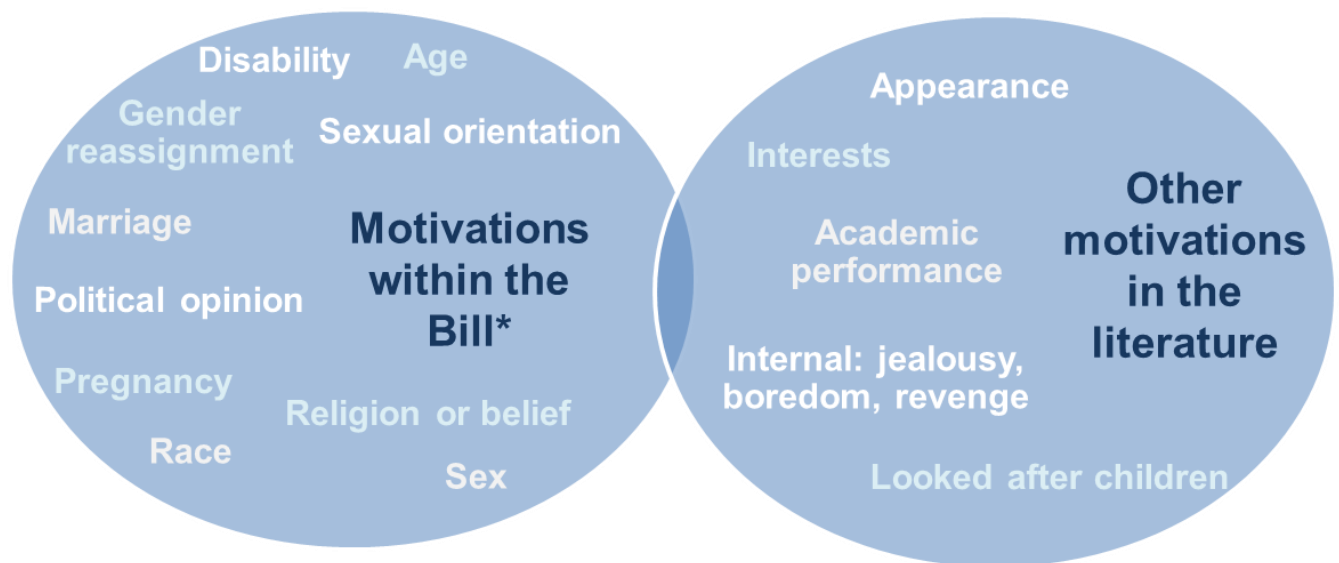
⁹³ Cowley, J. (2012) "Homophobic Bullying in Northern Ireland's Schools: Perspectives from Young People" *Youth Voice Journal*, February 6, 2012 pp. 77-84

⁹⁴ Biggart, A., O'Hare, L., Connolly, P. (2008) *A Need to Belong* Queen's University Belfast and NfER

⁹⁵ Purdy, N., McGuckin, C (2011) *Disablist Bullying: An investigation of student teachers' knowledge and confidence* SCoTENS

⁹⁶ Ditch the Label (2015) *The Annual Bullying Survey 2015* Ditch the Label

Figure 5: Motivations of bullying in the Addressing Bullying in Schools Bill and the wider literature⁹⁷



*Section 75 category of “persons with dependents and persons without” not included

6.8 Monitoring

In evidence to the Committee for Education in November 2014, the DE indicated that it would use the C2k system to provide information on the prevalence of bullying, rather than commissioning periodic research as it had done previously.⁹⁸

It noted that this would allow for greater analysis of bullying issues, as well as supporting policy development and monitoring.⁹⁹ However, this approach does not appear to take account of the potential for underreporting by pupils and/ or school staff.

⁹⁷ Ditch the Label (2015) *The Annual Bullying Survey 2015* Ditch the Label; Northern Ireland Anti-Bullying Forum (2013) *High level review of anti-bullying legislation, existing guidance to schools, effectiveness of current anti-bullying policies and practices within schools and support available to schools via the Education and Library Boards* NIABF; Varjas, K., Talley, J., Meyers, J., Parris, L., Cutts, H. (2010) “High school students’ perceptions of motivations for cyberbullying: An exploratory study” *Western Journal of Emergency Medicine*, Vol. 3 pp. 269-273

⁹⁸ Northern Ireland Assembly (2015) *Official Report (Hansard) Anti-bullying Bill: Department of Education* Belfast: NI Assembly

⁹⁹ Northern Ireland Assembly (2015) *Official Report (Hansard) Anti-bullying Bill: Department of Education* Belfast: NI Assembly

Further consideration could be given to the following areas:

Guidance

- The rationale for stating that the DE “*may*” produce guidance (instead of “*shall*”).

Recording incidents

- How the DE would ensure that schools properly adjudicate information recorded on bullying incidents, ensuring due process;
- The purpose of including bystanders or witnesses in records of bullying incidents and how this would be addressed in relation to cyberbullying; and,
- Whether records of witnesses or bystanders to a bullying incident would include school staff.

Data storage and protection

- The length of time records of bullying incidents would be maintained;
- The potential for schools to release personal information, including that of a sensitive nature, under the Freedom of Information Act 2000;
- The extent to which the DE has considered human rights and equality standards and law in relation to the potential release of sensitive information; and,
- The potential for third parties to produce “league tables” of bullying prevalence in schools.

Under-reporting and actions to address bullying

- The potential implications of the duties to record incidents on the willingness of pupils and teachers to report and record bullying;
- How, if at all, the DE would monitor and address potential underreporting of bullying by pupils and teachers; and,
- The perception that many teachers take insufficient action in addressing bullying.

Motivation

- The motivations for bullying provided in the Bill, including the rationale for excluding looked after children and persons with dependents;
- The rationale for not including other motivating factors, such as appearance; and,
- The capacity of teachers to determine the motivation for bullying incidents.

7 Comparison to anti-bullying legislation in the US

The US provides a useful comparison in terms of anti-bullying legislation. Following the 1999 shooting at Columbine High School, and a number of suicides linked to bullying,

American state legislatures passed a wave of legislation on bullying.¹⁰⁰ All 50 states now have anti-bullying laws in place.¹⁰¹

A recent review of these laws found that their effectiveness was positively associated with the inclusion of three key components. States whose laws included at least one of these elements reduced the likelihood of reported bullying by almost a quarter (24%), and the likelihood of cyberbullying by 20%, compared to states whose laws did not include them. The components are:¹⁰²

- A **statement of scope**: describing where the legislation applies and when the school is responsible for preventing bullying;
- A **definition** of behaviours that are considered bullying;
- **Requirements for districts to develop and implement local policy**, offering clarity for schools around their responsibilities.

The Bill includes a statement of scope, stating when Board of Governors are responsible for preventing bullying, and provides a bullying definition, in line with effective US legislation.

While the Bill does not require anti-bullying policies to be in place on a regional basis, as in the American state legislation, it does place a duty on individual schools to each develop their own anti-bullying policy. This difference is likely to be related to the very different school systems in place, whereby the US operates a system of school districts within individual states: these are locally administered public school systems.¹⁰³

The Bill differs from much of the American state legislation in regard to the duty to record incidents of bullying. Generally, states more frequently address the issue of recording bullying through policy, not legislation.¹⁰⁴

8 Conclusion

This Bill Paper has considered a number of potential issues arising from the Bill that could be given further consideration. These include the extent to which the Bill addresses issues such as cyberbullying and bullying due to race, faith, disability, gender reassignment and sexual orientation.

¹⁰⁰ Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

¹⁰¹ Baumann, L. (2015) *Gov. Bullock signs Montana anti-bullying bill into law* Great Falls Tribune [online] Available at: <http://www.greatfallstribune.com/story/news/local/2015/04/21/gov-bullock-signs-montana-anti-bullying-bill-law/26145567/>

¹⁰² Hatzenbuehler, M.L., Schwab-Reese, L., Ranapurwala, S.I., Hertz, M.F., Ramirez, M.Z. (2015) "Associations Between Antibullying Policies and Bullying in 25 States" *Jama Pediatrics* Vol. 169, No. 10

¹⁰³ United States Census *School Districts* [online] Available at: <http://www.census.gov/did/www/schooldistricts/>

¹⁰⁴ Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

It has also highlighted concerns around teacher education and capacity in relation to bullying. The Bill Paper has noted potential issues relating to human rights standards and law, and well as those relating to equality and data protection.

Annex: Definitions of bullying internationally

England

The Department for Education states that there is no legal definition and that schools should have their own definition. However, it notes that it is usually defined as behaviour that is:¹⁰⁵

- *“Repeated;*
- *Intended to hurt someone either physically or emotionally; and*
- *Often aimed at certain groups, e.g. because of race, religion, gender or sexual orientation.*

It takes many forms and can include physical assault, teasing, making threats, name calling and cyberbullying - bullying via mobile phone or online”.

Republic of Ireland

In guidance for schools on anti-bullying procedures, the Department of Education and Skills defines bullying as:¹⁰⁶

*“**Unwanted** negative behaviour, verbal, psychological or physical conducted by an individual or group against another person (or persons) and which is **repeated over time**. The following types of bullying behaviour are included in this non-exhaustive definition:*

- *Deliberate exclusion, malicious gossip and other forms of relational bullying;*
- *Cyberbullying; and*
- *Identity-based bullying such as homophobic bullying, racist bullying, bullying based on a person’s membership of the Traveller community and bullying of those with disabilities or special educational needs.*

*In addition, in the context of these procedures, **placing a once-off offensive or hurtful public message, image or statement on a social network site or other public forum where that message, image or statement can be viewed and/or repeated by other people will be regarded as bullying** behaviour.*

Isolated or once-off incidents of intentional negative behaviour including a once-off offensive or hurtful text message or other private messaging do not fall within this definition of bullying and should be dealt with, as appropriate, in accordance with the school’s code of behaviour”.

¹⁰⁵ Gov.uk (2015) *Bullying at school* [online] Available at: <https://www.gov.uk/bullying-at-school/bullying-a-definition>

¹⁰⁶ Department of Education and Skills (2013) *Anti-bullying Procedures for Primary and Post-primary schools*

Scotland

The Scottish Government's approach to preventing bullying provides a definition of bullying that focuses on the victim's feelings, noting that some bullying can be unintentional. In addition, it does not refer to bullying behaviour being repeated, and the guidance states that bullying can involve a single act. It states that bullying can be understood as:¹⁰⁷

“Behaviour which leaves people feeling helpless, frightened, anxious, depressed or humiliated. Bullying behaviours may include:

- *Name calling, teasing, putting down or threatening;*
- *Ignoring, leaving out or spreading rumours;*
- *Hitting, tripping, kicking;*
- *Stealing and damaging belongings;*
- *Sending abusive text, email or instant messages;*
- *Making people feel like they are being bullied or fearful of being bullied; and*
- *Targeting someone because of who they are or are perceived to be”.*

Finland

The Finnish Ministry of Culture and Education introduced a national anti-bullying programme, KiVa, in 2006. The programme has been successful, with the majority of schools taking part and reduction in bullying rates across schools.¹⁰⁸

Its innovative approach emphasises influencing bystanders, encouraging them to demonstrate that they are against bullying in order to support the victim, rather than the perpetrator.¹⁰⁹ This programme defines bullying as:¹¹⁰

“Systematic aggressive behaviour against a person who finds it difficult to defend him/herself against the perpetrator(s)”.

United States

The Columbine High School shooting in 1999, and a number of suicides linked to chronic bullying, prompted a wave of legislation across state legislatures defining acts of bullying and requiring schools to establish policies to address bullying behaviour. Of

¹⁰⁷ Scottish Government (2010) *A National Approach to Anti-Bullying for Scotland's Children and Young People* Edinburgh: the Scottish Government

¹⁰⁸ Eurydice (2012) *Strategies to counter bullying* Eurydice at NFER

¹⁰⁹ Eurydice (2012) *Strategies to counter bullying* Eurydice at NFER

¹¹⁰ Salmivalli, C. *KiVa: A research-based anti-bullying program* University of Turku, Finland

46 states that had bullying laws in 2011 (all states have such laws now), 29 included bullying definitions.¹¹¹

There is substantial variation in definitions used across states, although a number of terms are shared in many state definitions. Fewer than half of states define bullying as an act or acts repeated over time. No states require an imbalance of power between the perpetrator and victim for an act to be defined as bullying. Most note that bullying is intentional in nature, and emphasise harm to the victim.¹¹²

Colorado provides an example of a bullying definition reflecting practice in a majority of states, although all definitions differ slightly.¹¹³

*“Bullying’ means **any** written or verbal expression, or physical act or gesture, **or a pattern thereof, that is intended to cause distress** upon one or more students in the school, on school grounds, in school vehicles, at a designated school bus stop, or at school activities or sanctioned events. The school district’s policy shall include a reasonable balance between the pattern and the severity of such bullying behaviour”.*

Oxford Dictionary

The Oxford Dictionary defines bullying as:¹¹⁴

“[Using] strength or influence to harm or intimidate those who are weaker”.

Northern Ireland Anti-Bullying Forum (NIABF)

The NIABF states that bullying is the:¹¹⁵

“Repeated use of power by one or more persons intentionally to hurt, harm or adversely affect the rights and needs of another or others”.

World Health Organisation

The World Health Organisation (WHO) provides the following definition of bullying:¹¹⁶

*“Bullying is the **assertion of interpersonal power** through aggression. It is defined as negative physical or verbal actions that have **hostile intent**, cause distress to victims, **are repeated and involve a power differential** between perpetrators and victims.”*

¹¹¹ Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

¹¹² Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

¹¹³ Stuart-Cassel, V., Bell, A., Springer, J.F. (2011) *Analysis of State Bullying Laws and Policies* California: U.S. Department of Education

¹¹⁴ Oxford Dictionaries (2015) *Bully* [online] Available at: http://www.oxforddictionaries.com/definition/english/bully?q=BULLYING#bully_6

¹¹⁵ NIABF (2015) *What is bullying* [online] Available at: <http://www.endbullying.org.uk/what-is-bullying/>

¹¹⁶ Currie, C., Zanotti, C., Morgan, A., Currie, D., de Looze, M. (2012) *Social determinants of health and well-being among young people: Health Behaviour in School-aged Children (HBSC) study: international report from the 2009/2010 survey* Copenhagen: WHO Regional Office for Europe



Northern Ireland
Assembly

Research and Information Service Review of Bill Costs

Paper 000/00

3 December 2015

NIAR 632-15

Public Finance Scrutiny Unit

Addressing Bullying in Schools Bill – Assessing the Costs

On 30 November 2015 the Addressing Bullying in Schools Bill (the Bill) was introduced in the Assembly. This Review of Bill Costs provides a framework to facilitate Assembly financial scrutiny of the Bill. It should be read in conjunction with RaISe Bill Paper NIAR 612-15 (3 December 2015), wherein policy issues are addressed.

Introduction

On 30 November 2015 the Addressing Bullying in Schools Bill (the Bill) was introduced in the Assembly by the Minister of Education. The Bill is accompanied by an Explanatory and Financial Memorandum (EFM), which at paragraph 8 sets out the Department for Education's (DE's) assessment of the financial impact of implementing the Bill, if enacted as introduced.

This Review of Bill Costs is intended to supplement information provided in RaISe Bill Paper NIAR 612-15 (3 December 2015), wherein policy issues are addressed. The Review provides a framework to orientate the Assembly's financial scrutiny of the proposed Bill:

- Section 1 reviews key clauses of the Bill, as well as relevant paragraphs within the EFM; and,
- Section 2 provides concluding remarks, highlighting key observations relating to the financial implications of the Bill.

Scrutiny points are provided throughout the Review.

All references to "the Bill" are intended to refer to the Bill as introduced by the Minister.

1 Bill Clauses – as introduced

There are five clauses within the proposed Bill. This section reviews the estimated costs assigned to key clauses by the DE. It examines the DE's estimate, as specified in the EFM; while looking at the costs drivers and underlying assumptions.

1.1 Miscellaneous Clauses incurring no costs

Clause 1 provides an inclusive definition for the term "bullying", which would determine the scope of application of the other Bill provisions, if the definition is enacted as currently proposed. The EFM does not attach any costs to this Clause, which is reasonable given the Clause's definitional purpose.

Clauses 4 and 5 relate to the interpretation, short title and commencement of the Bill, and similar to Clause 1 would not incur costs, if enacted as introduced.

1.2 Clause 2: Duty of Board of Governors

Clause 2 prescribes a duty of care for Boards of Governors of grant-aided schools, requiring them to:

...determine and review measures to prevent bullying involving registered pupils at their school.¹

¹ DE (2015) The Addressing Bullying in Schools Bill – Explanatory and Financial Memorandum.

In addition, under Clause 2 Governors would:

... ensure [that] the policies designed to prevent bullying among pupils registered at the school are pursued.²

To protect against potential future conflicts of interest within schools, Clause 2 would:

...remove the Principal's duty in respect of bullying.³

For this particular provision, the Bill's EFM states that:

...it is not anticipated that any training costs will arise which cannot be met within existing Departmental resources.⁴

The PFSU sought clarification around the likely costs involved with training. The DE's response focussed exclusively on teachers' training regarding the use of the new system.⁵

The DE's reply appears insufficient in that it does not include training for Governors. Moreover, there seems to be no information about other costs potentially arising under this Clause, such as those relating to:

- the periodic review of the school's measures to prevent bullying;
- consultation with the principal, parents and pupils; and
- dissemination of information on bullying prevention measures to all relevant parties.⁶

Without further information, it is difficult to assess what costs Clause 2 would impose on the DE, or the Education Authority of the schools concerned. If additional information is sought and secured, it would be necessary to revisit the costing for Clause 2.

Issues for Consideration:

The Assembly may wish to enquire:

1. Whether the DE considered the training requirements for grant-aided school Governors regarding this duty and related financial implications?
2. What are the estimated costs of training for the Governors of grant-aided schools likely to be?
3. Would the DE consider costs could arise from the proposed review of measures to prevent bullying, from consultation with the principal, parents and pupils in respect of bullying, or from the proposed dissemination of the information on bullying?

² DE (2015) The Addressing Bullying in Schools Bill – Explanatory and Financial Memorandum.

³ DE (2015) The Addressing Bullying in Schools Bill – Explanatory and Financial Memorandum.

⁴ DE (2015) The Addressing Bullying in Schools Bill – Explanatory and Financial Memorandum.

⁵ DE (2015) Email to PFSU from DE dated 20 October 2015.

⁶ DE (2015) The Addressing Bullying in Schools Bill – Explanatory and Financial Memorandum.

4. Who would be responsible for the costs, e.g. the DE, the Education Authority or schools?

1.3 Clause 3: Duty to keep a record of incidents of Bullying

Clause 3 places a duty on grant-aided schools:

...to ensure that a record is kept of all incidents or alleged incidents of bullying which involve a registered pupil.⁷

The EFM states that this particular provision:

...will incur costs, principally associated with the adaptation and maintenance of the IT system to be used for the purpose of recording by schools and training to be provided to teaching staff using the system.⁸

It goes on to state that:

It is estimated that the adaptation of the IT system will cost in the region of £40,000. This funding will be sought from within existing resources for the 2015-16 financial year.⁹

The DE further advised that:

...the £40,000 cost identified was the initial estimate provided by C2k/Capita for building an anti-bullying recording module for the C2k Schools Information Management System (SIMS).¹⁰

The DE went on to state:

C2k provided this figure on an initial meeting at which [DE] outlined our envisaged needs for the system. A module was previously created to allow for recording of bullying incidents as part of a 2008 pilot project looking at electronic recording. C2k advised us that the projected costs were comparatively low because they expected that much of the code for the pilot project could be re-utilised. They have, however, warned us that the costs would need to be reviewed once a final detailed requirements specification for the software is agreed.¹¹

From the above, it appears that the contractor has not analysed the code of the pilot project, to assess whether it could be re-used. Furthermore, the code appears to be over seven years old, which raises a question as to whether it may require extensive re-writing. For example, it is likely that coding has advanced in those seven years, or

⁷ DE (2015) The Addressing Bullying in Schools Bill – Explanatory and Financial Memorandum.

⁸ DE (2015) The Addressing Bullying in Schools Bill – Explanatory and Financial Memorandum.

⁹ DE (2015) The Addressing Bullying in Schools Bill – Explanatory and Financial Memorandum.

¹⁰ Email to PFSU (20 October 2015): Information supplied by DE, 20 October 2015. Page 1.

¹¹ Email to PFSU (20 October 2015): Information supplied by DE, 20 October 2015. Page 1.

alternatively the SIMS system may have evolved, creating problems with interfaces in the system.

Issues for Consideration:

The Assembly may wish to ask:

5. What contingency plans would the DE put in place to fund the IT project, if it is unable to access the funding from existing resources as currently planned?
6. Would the DE re-visit the costs within the EFM to ensure that they are not significantly underestimated?

In addition to the costs of the IT system, the EFM states:

It is not anticipated that any training costs will arise which cannot be met within existing Departmental resources.¹²

The DE further advised the PFSU that:

We currently believe that, as the new module will be based on an IT platform already familiar to all teachers, a short online training lesson should be sufficient to allow them to use the new system.¹³

Given that the above training lesson would have to be designed and built, it is reasonable to assume that it would incur costs. In the absence of further information from the DE in this regard, no further comment can be made at this time. If such information is made available, it would be necessary to revisit the costing of Clause 3.

Issues for Consideration:

The Assembly may wish to request:

7. That the DE asks C2k to provide information on the cost to design and build a training course for the new anti-bullying module for SIMS, and that the DE share this information with the Assembly.
8. That the DE clarifies who would be liable for the above costs, e.g. the DE, the Education Authority or the grant-aided schools.

1.4 Other Issues

The Background and Policy Objectives of the EFM states that:

..the access to this information [records of bullying across NI] would allow the Department to accurately assess the level of bullying across our

¹² DE (2015) The Addressing Bullying in Schools Bill – Explanatory and Financial Memorandum.

¹³ Email to PFSU (20 October 2015): Information supplied by DE, 20 October 2015. Page 1.

*schools and provide tailored guidance to address emerging trends on an informed basis.*¹⁴

The EFM does not provide any further information on this issue.

Issue for Consideration:

The Committee may wish to enquire:

9. What additional staff resources would be required to analyse the bullying data and disseminate the DE guidance.

10. The costs associated with any additional staff.

In the absence of further information from the DE in this regard, no further comment can be made at this time. If such information is made available, it would be necessary to revisit the costing of this Bill.

2 Conclusion

The EFM estimates that the costs associated with the implementation of the Bill (if enacted as introduced) would be in the region of £40,000, with no recurrent costs for subsequent years.

Departmental information on the Bill's estimated costs is limited and relates mainly to the design and build of a new module for SIMS. However, the IT contractor has stated that the estimate is dependent on the fact that it hopes to re-use the code from a pilot system that it had designed in 2008. If however, the code could not be re-used, it is possible that the costs would increase, potentially significantly if the additional SIMS module had to be designed and built from scratch. Additionally, the DE has not included costs relating to:

- training for teachers on the new system;
- training for Boards of Governors of the grant-aided schools on their new role;
- reviewing bullying prevention measures,
- consultation on bullying;
- disseminating information on bullying;
- the design and build of a training course on the new IT module;
- the potential additional staff resources to analyse the bullying data and disseminate DE guidance; and,
- who is likely to be responsible for meeting these costs.

The Assembly may wish to seek further information from the DE about the Bill, as indicated throughout Section 1. If additional information is sought and secured, it would

¹⁴ DE (2015) Addressing Bullying in Schools Bill – Explanatory and Financial Memorandum.

enable better assessment of the likelihood and extent of potential costs to be incurred by the implementation of the Bill. This would allow the Assembly to assure itself that the DE has robustly considered the financial impact of the Bill.



Northern Ireland
Assembly

Research and Information Service Research Paper

7th January 2016

Caroline Perry

Addressing Bullying in Schools Bill: Views of Young People

NIAR 716-15

This Research Paper presents findings from a series of focus groups conducted to support the Committee for Education's scrutiny of the Addressing Bullying in Schools Bill.

Paper XX/XX

January 2016

Research and Information Service briefings are compiled for the benefit of MLAs and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We do, however, welcome written evidence that relates to our papers and this should be sent to the Research and Information Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to RLS@niassembly.gov.uk

Executive Summary

Introduction and methodology

The Education Minister introduced the Addressing Bullying in Schools Bill (the Bill) in the Assembly on the 30th November 2015. This Research Paper presents the findings of a series of focus groups the Research and Information Service (RaISe) conducted with post-primary pupils in order to gather their views on the Bill.

RaISe conducted 16 focus groups with post-primary pupils in November and December 2015, across all school management types. RaISe would like to thank all of the pupils and schools involved in the research for their valuable contributions.

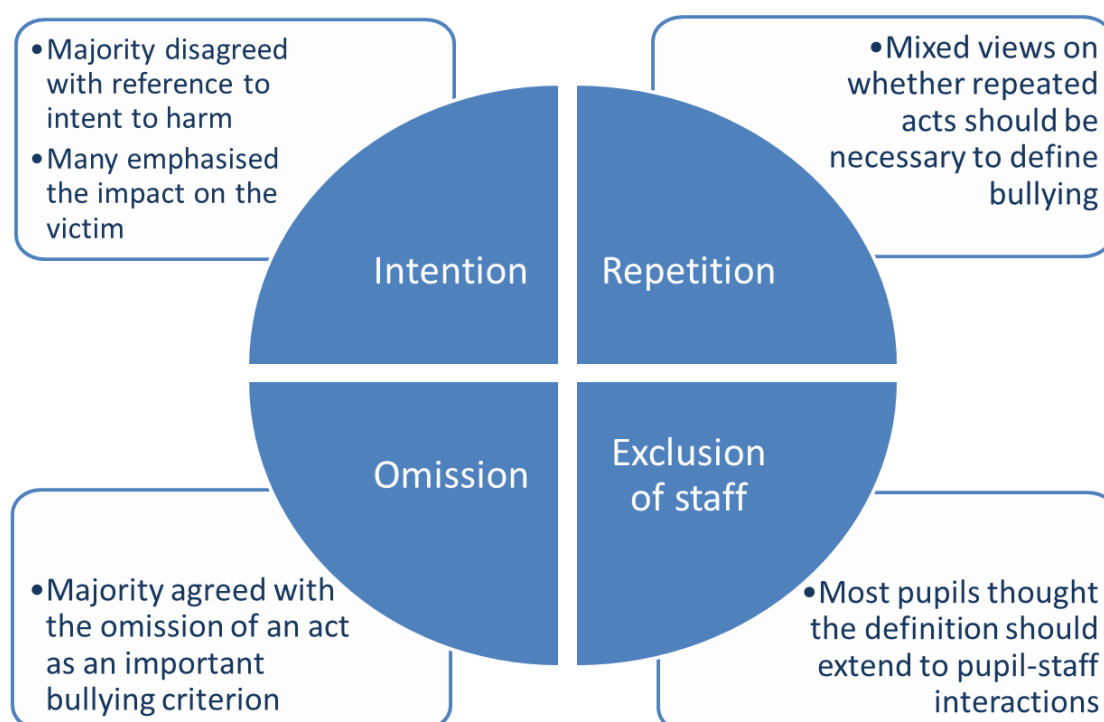
Views on bullying

Pupils participating in the focus groups discussed the harmful effects bullying can have on young people. Participants were particularly concerned about the extent of cyberbullying, which they thought could be more damaging than other forms, due to the potential for a large number of witnesses and due to its permanence.

Definition of bullying

The Bill provides a definition of bullying, describing it as a repeated verbal, written or electronic act or acts (or omission of an act), between pupils, with the intention of causing physical or emotional harm. The key findings of the focus groups in regard to the definition are illustrated in Figure 1.

Figure 1: Participants' views on key elements of the Bill's definition of bullying



Policies for preventing bullying

The Bill requires Boards of Governors to develop and implement policies to prevent bullying among pupils, applying to pupils:

- On school premises during the school day;
- While travelling to or from the school during the school term; and,
- While in the lawful control or charge of a member of school staff.

The majority of pupils participating in the focus groups thought that schools should be responsible for addressing bullying during school hours or when on school property, in line with findings from the DE survey.

While participants' views on extending schools' responsibility beyond this were more mixed, a majority supported the principle of schools being responsible outside school hours during term time (49% of survey respondents agreed). Many pupils thought that schools should be responsible while they are wearing school uniform. In particular, participants suggested that:

- Schools have a duty of care to their pupils;
- Bullying taking place outside school is likely to affect pupils at other times; and
- Bullying starting outside school is likely to continue within school (particularly cyberbullying).

Recording bullying incidents

The majority of pupils participating in the focus groups agreed with the Bill's requirements for Boards of Governors to ensure that a record of bullying incidents is kept within the school, in line with findings from the DE survey. However, participants highlighted a number of potential issues with this approach.

All participants stated that teachers are not always aware of bullying as pupils may choose not to report it. As such, statistics taken from school bullying records are unlikely to present a true reflection of the prevalence of bullying in schools. Participants highlighted a number of reasons why pupils may not report bullying, including:

- A fear that **reporting may worsen bullying**;
- A perception that **reporting is futile** due to the perceived widespread nature of bullying and an impression that it is often not addressed adequately;
- Pupils **may not wish to identify as being bullied**, due to feelings of embarrassment or shame;
- A view that **teachers often misidentify bullying or fail to take it seriously**; and,

- A perception that teachers are **less aware of electronic bullying** and that they often **struggle to address it**.

Some focus group participants also expressed concern around the implications of record keeping. In particular, they were concerned about implications for privacy; the attitudes of teachers towards those involved; future education and employment; and the maintenance of personal data.

In this regard, the majority of participants thought that the victim of bullying should have a say in whether an incident is recorded. They considered this to be particularly important where the motivation for bullying related to a personal matter or characteristic, or where a pupil was worried about retaliation.

Further issues related to whether schools would follow due process when recording incidents of bullying, and whether records would be held anonymously.

Motivation

Participants in the focus groups noted a wide range of potential motivations for bullying, with the most commonly perceived motives linked to factors outside those listed in the Bill. Pupils thought that internal motives tend to drive a large proportion of bullying, for example, jealousy, as an outlet for anger or as a way of dealing with problems at home.

Other factors related to social reasons, for example, to fit in with friends. Some pupils noted that appearance can act as a catalyst for bullying, while a smaller number highlighted other factors, such as race or religion.

In light of these findings, many participants suggested that it would be difficult for teachers to accurately determine the motivation for bullying incidents. In addition, some pupils indicated that it could be difficult to ascertain blame in cyberbullying incidents, which may be redistributed many times by others.

Conclusion

This Research Paper has presented the views of post-primary pupils from 16 schools on the Bill, and compared them to findings from the DE survey where possible. The findings suggest that pupils in principle support some aspects of the Bill, such as the inclusion of the word 'omission' within the definition of bullying, and the recording of bullying incidents.

However, focus group participants disagreed with other elements, such as the reference to intent to harm within the definition, and there were mixed views on other aspects, such as the repetition criterion. Participants also raised a number of concerns relating to some of the provisions. The box overleaf addresses these issues.

Further consideration could be given to the following areas:

Definition

- The emphasis pupils placed on the impact on the victim in defining bullying, rather than the intent to harm;
- Linked to this, the mixed views on the repetition criterion within the definition, and the emphasis placed on the impact on the victim in this regard; and,
- The exclusion of staff from the definition, in light of the view of most pupils that it should include pupil-staff interactions.

Policies for preventing bullying

- The evolving nature of bullying, particularly cyberbullying, and the implications of this for the scope of policies on preventing bullying and their implementation by schools
- The view of a majority of participants that schools' responsibility for addressing bullying should extend to outside school hours; and,
- The perception of some participants that schools' responsibility should include when pupils are wearing school uniform.

Reporting and recording bullying incidents

- How, if at all, the Department of Education (DE) will monitor the potential for underreporting of bullying (for example, whether it will conduct research with young people as a comparison);
- The barriers to pupils reporting bullying, including the perception that many teachers do not fully understand cyberbullying or fail to take bullying seriously;
- How long schools and the DE will maintain records of bullying;
- Who will have access to records of individual bullying incidents within a school under the proposed system;
- The view of the majority of participants that the victim of bullying should have a say in whether the incident is recorded;
- How, if at all, the DE will ensure that schools follow due process in recording bullying incidents; and,
- The motivations for bullying highlighted by pupils, for example, the rationale for excluding such motivations from the Bill.

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Introduction

The Education Minister introduced the Addressing Bullying in Schools Bill (the Bill) in the Assembly on the 30th November 2015. The Bill provides a definition of bullying, places new duties on Boards of Governors to prevent bullying and requires schools to record bullying incidents. Further information can be found in [Paper 136/15: Addressing Bullying in Schools Bill](#).

The Committee for Education commissioned the Research and Information Service (RaISe) to conduct a series of focus groups with young people to gather their views on the Bill. This Research Paper presents key findings from the focus groups which were conducted in November and December 2015.

It outlines the methodology used, and discusses participants' views on the key clauses. It also includes findings from the Department of Education (DE) consultation on the Bill held in January and February 2015, which included a survey with young people. This seeks to enable more robust consideration of the focus group findings, allowing for comparisons to be made between them and the DE survey results, in order to facilitate scrutiny of the Bill.

RaISe would like to thank all the pupils who took part in the focus groups for their valuable contributions. It would also like to thank their schools for supporting their participation.

1 Methodology

RaISe conducted a total of 16 focus groups with post-primary pupils. It held a series of focus groups, with schools visiting Parliament Buildings and making a number of outreach visits to schools, to ensure an appropriate balance of school management types (as far as possible). Table 1 outlines the schools involved.

Table 1: Profile of schools participating in the focus groups

Maintained	Controlled	Voluntary grammar	Controlled grammar	Integrated	Irish-medium	Special	EOTAS ¹	Total
3	3	3	1	1	1	2	2	16

Each group included between six and twelve participants (most of the groups contained eight), randomly selected from pupils volunteering to take part. Each lasted around 30 minutes, and participants discussed their thoughts and views on the key elements of the Bill. Figures and text boxes throughout the Paper present quotations from focus group participants.

¹ Education Other than at School providers

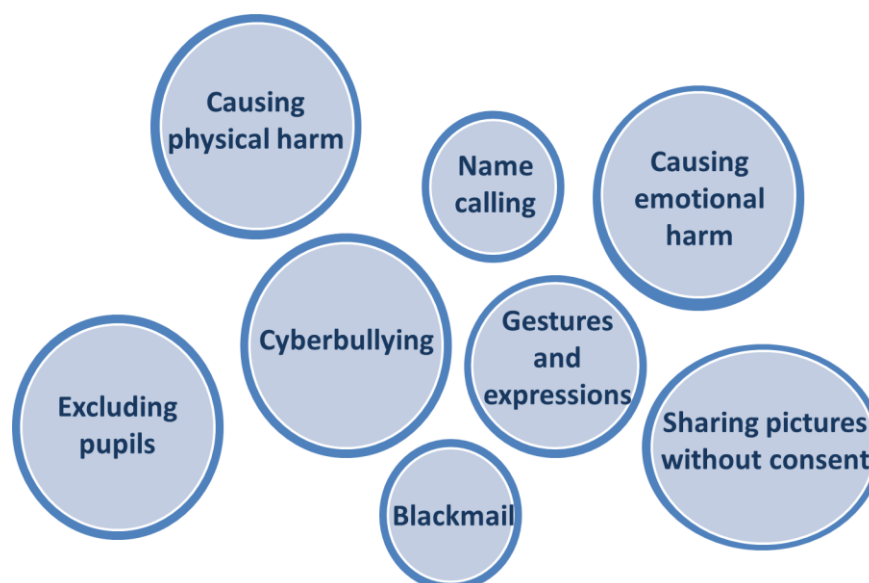
The focus groups took place after the DE consultation earlier in the year, which had consulted on the main policy proposals for addressing bullying in schools. The DE consultation received 4,939 responses to its survey, including 4,221 questionnaires completed by students (85% of responses), while the remainder came from teachers, parents and other stakeholders.²

In addition to the focus group findings, this Paper outlines some of the key results from the DE consultation to provide quantitative data. As noted earlier, the aim is to enable more robust consideration of the focus group findings, allowing for comparison with those from the survey.

2 Views on bullying

Pupils participating in the focus groups highlighted the potentially damaging effects of bullying, with some noting that it can have implications for mental health, even leading to suicide in certain cases. Pupils discussed a wide range of behaviours they thought constituted bullying, including those illustrated in Figure 2 below.

Figure 2: Bullying behaviours highlighted by participants



A common theme across all the focus groups related to pupils' concerns about the widespread nature of cyberbullying. Participants indicated that cyberbullying can be more harmful than other forms of bullying, due to the potential for a large number of people to witness incidents, and due to the permanent nature of electronic acts.

In addition, some pupils suggested that electronic forms of communication can facilitate bullying. In particular, pupils referred to the ease and accessibility of such forms of communication, as well as the anonymity it affords the perpetrator.

² Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

“I think it [cyberbullying] causes more damage, because it’s more permanent. If someone tells you something that upsets you, you can kind of brush it off. Whereas something on social media, everybody will see it, so you kind of feel attacked by everyone.”

Some focus group participants indicated that types of bullying can differ between girls and boys. In particular, they suggested that bullying is more likely to manifest physically among boys, while girls were more likely to carry out emotional or cyberbullying.

“Boys like to beat each other up but they’ll just be doing it for a laugh half the time. For girls, if they actually want to hurt someone, they’ll probably do it through their words, because girls don’t really like to fight.”

3 Definition of bullying

The Bill provides a definition of bullying, describing it as a repeated verbal, written or electronic act or acts (or omission of an act), between pupils, with the intention of causing physical or emotional harm. There were mixed views among participants regarding the extent to which the definition is easy to understand. This section considers participants’ views on the parties that should be included and on three key elements of the definition:

- Intention;
- Repetition; and
- Omission.

3.1 Intention

The majority of participants thought that the definition should not refer to the perpetrator’s intent to cause harm. Instead, many described bullying in terms of the impact on the victim, regardless of the perpetrator’s intention. This approach is used in a number of other jurisdictions, such as Scotland, which notes that bullying may not be intentional, and instead focuses on the victim’s feelings.³

“Intentionally or not it doesn’t matter; you still did it, the consequences are the same. That you didn’t mean to do it isn’t anything you can stand behind.”

“There are people who are bullies and who don’t realise they’re doing it. They’re just trying to be funny and impress their friends.”

³ Perry, C. (2015) *Addressing Bullying in Schools Bill* Northern Ireland Assembly Research and Information Service

3.2 Repetition

Just under two-thirds (65%) of pupil respondents to the DE survey agreed that hurtful or unhelpful behaviour becomes bullying only when it happens more than once.⁴ This is broadly in line with findings from the focus groups, in which pupils expressed mixed views regarding whether repetition should be included within the definition.

Some pupils suggested that repeated actions characterise bullying and separate it from other behaviours.

“There’s a one off... just a one off incident; but if it happens over and over again then that’s bullying.”

However, others suggested that a single incident can have a significant impact on the pupil being bullied. Participants again emphasised the impact on the victim rather than the number of times the perpetrator carries out hurtful behaviour.

“It lives in your head, even if it’s just one little thing that was said. It lives in your head and it never goes away. It just has to happen once.”

3.3 Omission

The majority of focus group participants agreed with the inclusion of the omission of an act within the Bill’s definition. Many pupils indicated that excluding others is a common form of bullying; and one that can be just as harmful as verbal, physical or electronic forms.

“Having omission in there, I would say is important... It shows that it’s not necessarily actually verbally, physically or electronically bullying someone. It is showing them that it’s what you’re not doing that also causes harm, like leaving people out, making them feel that they’re excluded.”

However, some participants were concerned that then definition could label them as bullies, when they may not deliberately exclude other pupils. Some noted that they may leave another pupil out, but may do so due to differences in personality or in relation to previous disagreements.

“If you’ve had an argument with somebody and you just ignore them, I wouldn’t see that as bullying – you’re just trying to get away from the negativity.”

⁴ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

3.4 Exclusion of staff

Just under a quarter (24%) of pupils responding to the DE consultation agreed that bullying only occurs between pupils, and does not include interactions between staff and pupils, while 56% disagreed.⁵

In the focus groups, almost all pupils believed that bullying could take place between pupils and staff, with both pupils capable of bullying staff members and staff able to bully pupils. As such, most pupils thought that the definition within the legislation should extend to interactions between pupils and staff.

“A teacher could be... cruel to that student by either making them feel bad in class, bringing a lot of attention to them and then degrading them.”

“Our old teacher; we didn’t call her by her right name... she used to get so frustrated and we never did any work... they would turn their desks around to face the back. That was so bad.”

When discussing the potential for teachers to bully pupils, many focus group participants suggested that the imbalance of power could make it more difficult for pupils to report and address incidents of bullying.

“They [students] feel like if they tell someone, they’ll get in trouble because the teacher has more power than they do.”

4 Policies for preventing bullying

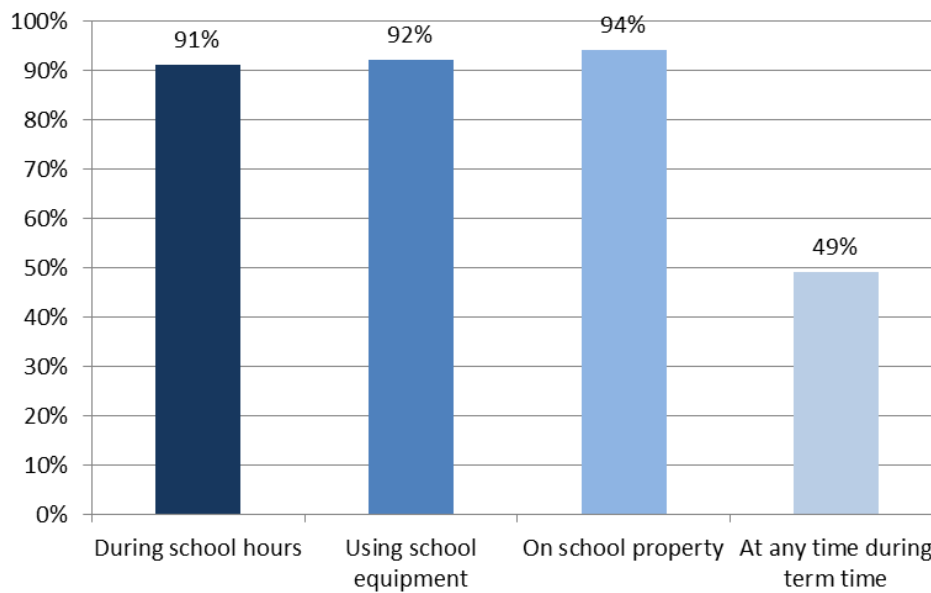
The Bill places a number of duties on Boards of Governors, including duties to develop and implement policies to prevent bullying among pupils. The policies apply to pupils:

- On school premises during the school day;
- While travelling to or from the school during the school term; and,
- While in the lawful control or charge of a member of school staff.

A large proportion of respondents to the DE survey (over 90% in each case) thought that schools should be responsible for dealing with cyberbullying during school hours, while using school equipment and on school property. Almost half (49%) believed that they should be responsible at any time during term time. These findings are illustrated in Figure 3 overleaf.

⁵ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

Figure 3: Consultation survey responses regarding when schools should be responsible for dealing with cyberbullying⁶



The focus groups findings were broadly in line with those from the survey. The majority of participants believed that schools should be responsible for addressing bullying during school hours, when using school equipment or when on school property. Views on extending responsibility to beyond such times were mixed, although a majority supported this.

Some participants believed that schools should be responsible for all bullying affecting their pupils, because bullying occurring outside school hours is likely to have implications for pupils during the school day.

Other participants referred to the school's duty of care for the pupils, and some suggested that bullying between two pupils outside of school is likely to continue during the school day. Figure 4 overleaf highlights these findings.

⁶ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

Figure 4: Participants' rationale for stating that schools should be responsible for all bullying affecting their pupils

Schools have a duty of care to their pupils

"The school has a duty of care to the pupils that go there. It's not like when it's half three it's not their problem anymore. They have to make sure pupils are ok."

Bullying likely to affect pupils at other times

"[Schools should be responsible] all the time because it can affect you mentally; it can affect your school work. The school should definitely pick up on it."

Bullying starting outside is likely to continue within school

"If it happens outside school it's obviously going to happen inside school too; it's not just going to stay outside school."

Most participants thought that schools should be responsible for dealing with incidents of cyberbullying, particularly if they are mentioned in school or teachers become aware of them. Some noted that teachers refuse to address incidents of cyberbullying when they happened outside school.

Pupils also emphasised the evolving nature of cyberbullying incidents, which may begin at home but continue to develop during school. Many participants thought that teachers and other school staff should address cyberbullying, as typically it is not confined to home.

"If people post stuff about you on social media and you go to a teacher, they say that it didn't happen in school so they can't do anything. But then you are forced to spend seven hours in the same room as them [the perpetrator]. They should do something about that."

"Things happen in school and you go home and they're all over Facebook. The teachers still wouldn't... They just dismiss it. They say it's happened on the internet; it's happened outside school, go to the local police, even though it's to do with school. They completely dismiss it."

Many pupils discussed the idea that when they are wearing school uniform they are representing the school. Some suggested that the school's responsibility for addressing bullying should extend to when pupils are wearing uniform.

“When you’re wearing your school uniform: I think that’s important as well. There’s a link to the school and the school has to be responsible.”

“The worst thing that you can do is show we are an aggressive school so the schools should step in when we are wearing the uniform.”

5 Recording bullying incidents

The Bill requires Boards of Governors to ensure that a record of all incidents or alleged incidents of bullying is kept within the school. The record must include the perceived motivation for the incident and state how the school addressed it.

While 85% of pupils responding to the DE survey agreed that schools should keep a record of bullying incidents (including their motivation), a lower proportion (72%) agreed that schools should use a common IT system to do so.⁷ Three-quarters (75%) of pupils agreed that recording such incidents could help schools reduce bullying in the future.⁸

In line with these findings, the majority of focus group participants supported the principle of recording bullying incidents.

“I think it’s good. They could go back and see if it hasn’t happened before; and if so, they can deal with it further and have more insight into it.”

5.1 Underreporting

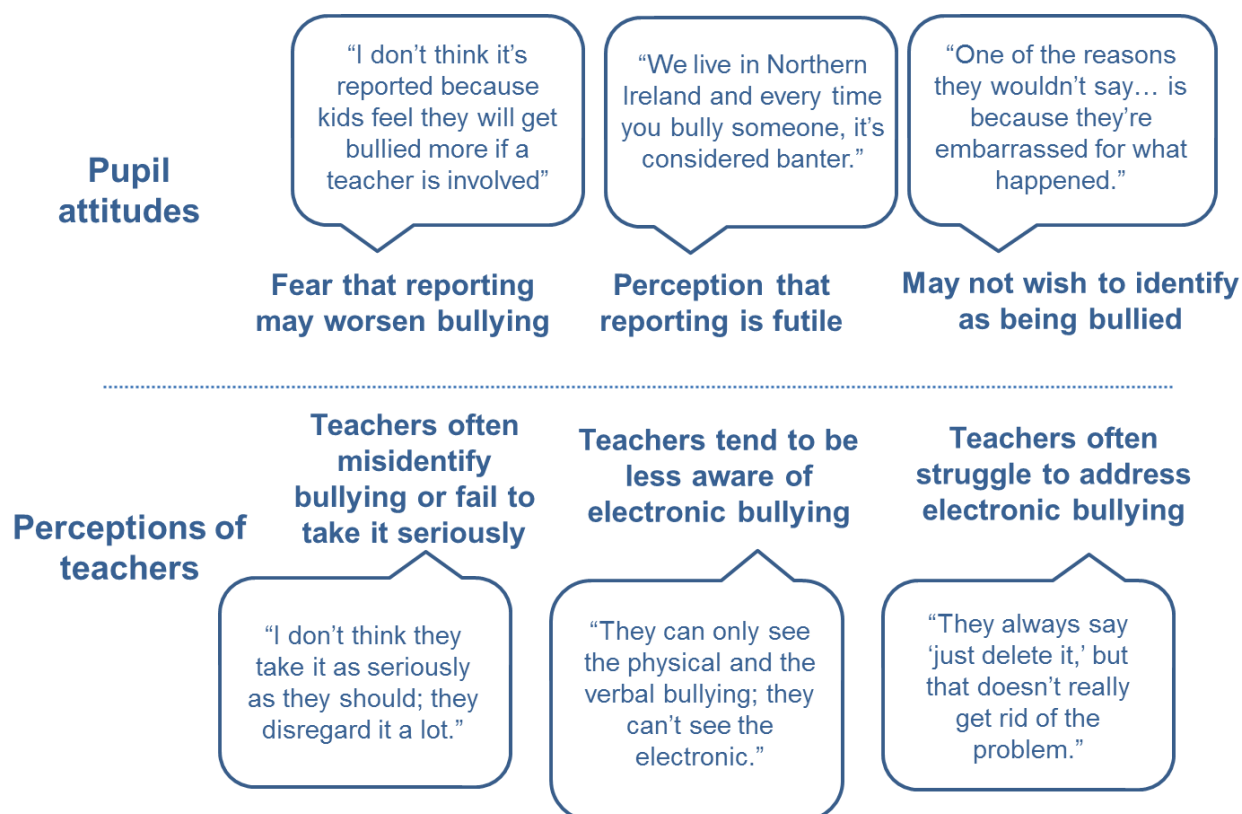
However, all pupils participating in the groups indicated that teachers are not always aware of bullying incidents within their school, suggesting that records of bullying are therefore unlikely to reflect a true picture of the prevalence of bullying within a school.

Participants discussed a range of reasons why pupils often do not report incidents of bullying to teachers or other adults in school. The reasons related both to pupil attitudes, for example, a fear that reporting may exacerbate bullying, and to perceptions of teachers, such as a view that teachers often fail to take bullying seriously. Figure 5 overleaf provides an overview of the key reasons for underreporting.

⁷ Note: the latter figure is drawn from a much smaller sample of pupils, so should be treated with some caution

⁸ Department of Education (2015) *Addressing Bullying in Schools: Summary Report of Responses to the Consultation* Bangor: DE

Figure 5: Participants' views on the reasons why pupils often do not report bullying



Some focus group participants were concerned that keeping records of bullying may further deter pupils from reporting incidents, due to a fear of further aggravating the bullying, or because they did not want what they experienced to be recorded.

“Some pupils getting bullied might be afraid to go to a teacher, and even more so if it's written down. So they mightn't go in case the bully goes harder on them.”

5.2 Implications for those involved in recorded incidents

Some participants in the focus groups highlighted further concerns around the implications of such record keeping. In particular, pupils expressed concern about implications for:

- **Privacy:** “You may not feel comfortable because people who aren't involved could see what had happened. Some people would want to keep it private”;
- **Perceptions of and attitudes towards those involved:** “If the teachers have seen it; that might taint how they think of you;”
- **Future education and employment:** “If you have a good career, it could stop your career if you accidentally release some information;” and,

- **The maintenance of personal data:** *“[If someone is experiencing bullying about] a photograph of themselves, would you want that on record? Would you want the Department of Education to see that, even if it’s anonymous?”*

Some pupils also expressed concern that records could lead to the creation of league tables of bullying. In this regard, many students suggested that records could be maintained anonymously.

5.3 Consent

The majority of focus group participants thought that the victim of bullying should have a say in whether the incident is recorded. Some pupils thought that this would be particularly important where the motivation behind an incident related to a personal matter or characteristic, or where a pupil feared retribution as a result of the incident being recorded.

“If the pupil says not to [record] we have to respect their privacy. If it’s something personal; about family or whatever.”

5.4 Due process

A number of pupils expressed concern about whether the school would follow due process in recording bullying incidents. Some suggested that the perpetrator and victim may provide conflicting accounts, while others highlighted the potential for pupils to falsely report that they had experienced bullying. Some pupils suggested that teachers could provide a biased account depending on their relationship with the perpetrator or victim.

“The bullies are going to say something completely different to what happened.”

“They mightn’t even feel that they are being bullied; they’re just doing it for the sake of getting the other person in trouble.”

5.5 Transfer of data

The majority of participants supported the provision of bullying data to the DE and the Education and Training Inspectorate. Many noted the potential for such data to support attempts to reduce bullying in schools. However, many emphasised the importance of ensuring that records are anonymous.

“It could improve the situation in schools.”

“Keep their name out of it. Just their statement, instead of their name.”

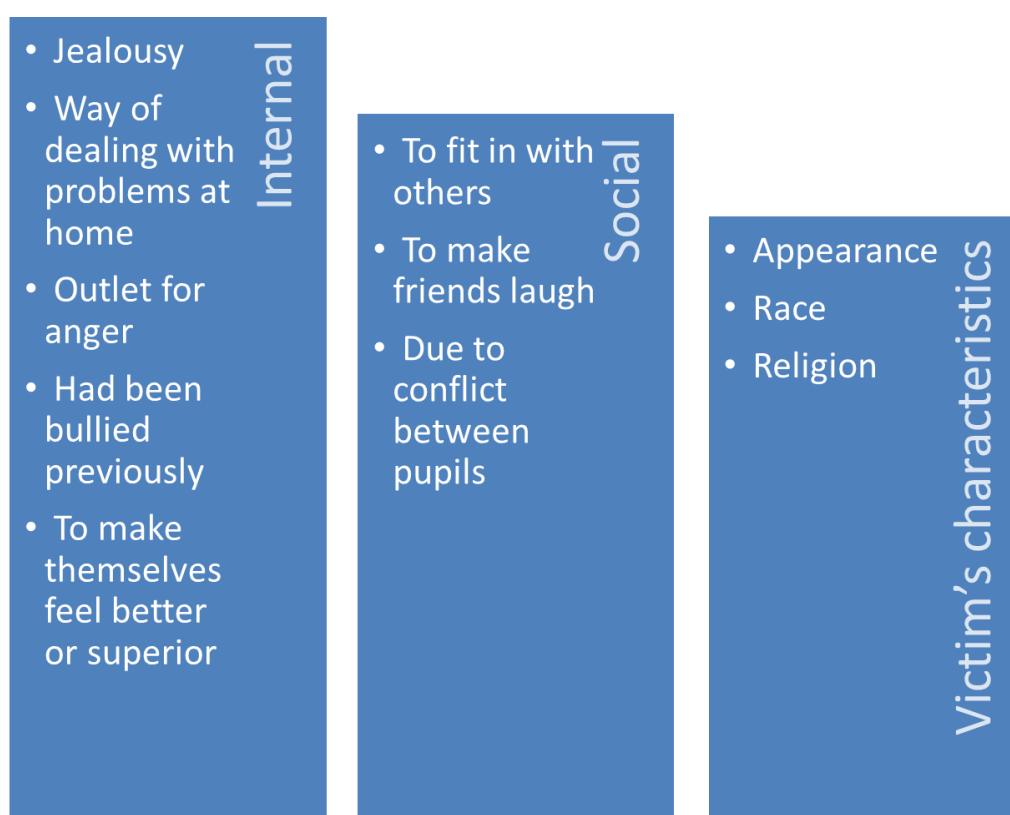
6 Motivation

Pupils highlighted a wide range of motivations behind bullying incidents. The most commonly perceived motivations were internal in nature, reflecting the perpetrator's own feelings or circumstances. For example, many suggested that pupils often bully others as a way of dealing with their own anger or as a result of jealousy.

Other participants indicated that some pupils bully for social reasons, for example, to fit in with their friends. Some pupils stated that appearance can act as a motivation for bullying, while a smaller number referred to other factors such as race or religion.

Figure 6 below illustrates the perceived motivations.

Figure 6: Participants' views on the most common motivations for bullying



"If there are problems going on with you, you could take it out on someone else."

"They do know it's harmful, but they would just do it to get a laugh with friends... because they want to look more cool."

"When I was younger I got bullied for my hair colour and having bad teeth. When I got my braces out people still did it, because I was smiling too much."

Many participants in the focus groups highlighted a number of potential issues for teachers in ascertaining the motivation behind a bullying incident, noting that teachers would only know what they were told about the incident. Potential challenges in this regard could include that:

- The victim may not understand why they were bullied;
- The perpetrator may not be truthful in discussing their motivation; and,
- It may be difficult to review incidents of cyberbullying.

“The bully would say: ‘I just did that for a laugh’. But deep down, it could be a physical outlet for anger, problems in the house.”

“If somebody is being bullied on the internet or through text messaging, they can’t go in and look at somebody’s private stuff.”

In one of the focus groups pupils suggested that it may be difficult to ascertain blame in cyberbullying incidents, as original material can be redistributed by many others.

“Who’s the person to blame? The person who started it first and then it keeps on changing? So if I were to say ‘I saw you with such and such’, then they say it to someone else, they are going to add something. It’s just natural.”

7 Conclusion

This Research Paper has presented the views of post-primary pupils from 16 schools on the Bill, as provided through the focus groups undertaken by RaISe, and compared them to results from the DE survey where possible. The findings suggest that pupils in principle support some aspects of the Bill, such as the inclusion of the word ‘omission’ within the definition of bullying, and the recording of bullying incidents.

However, pupils disagreed with other elements, such as the reference to intent to harm within the definition, and there were mixed views on other aspects, such as the repetition criterion. Participants also raised a number of concerns relating to some of the Bill’s provisions. The box overleaf addresses these issues.

Further consideration could be given to the following areas:

Definition

- The emphasis pupils placed on the impact on the victim in defining bullying, rather than the intent to harm;
- Linked to this, the mixed views on the repetition criterion within the definition, and the emphasis placed on the impact on the victim in this regard; and
- The exclusion of staff from the definition, in light of the view of most pupils that it should include pupil-staff interactions.

Policies for preventing bullying

- The evolving nature of bullying, particularly cyberbullying, and the implications of this for the scope of policies on preventing bullying and their implementation by schools
- The view of a majority of participants that schools' responsibility for addressing bullying should extend to outside school hours; and,
- The perception of some participants that schools' responsibility should include when pupils are wearing school uniform.

Reporting and recording bullying incidents

- How, if at all, the DE will monitor the potential for underreporting of bullying (for example, whether it will conduct research with young people as a comparison);
- The barriers to pupils reporting bullying, including the perception that many teachers do not fully understand cyberbullying or fail to take bullying seriously;
- How long schools and the DE will maintain records of bullying;
- Who will have access to records of individual bullying incidents within a school under the proposed system;
- The view of the majority of participants that the victim of bullying should have a say in whether the incident is recorded;
- How, if at all, the DE will ensure that schools follow due process in recording bullying incidents; and,
- The motivations for bullying highlighted by pupils, for example, the rationale for excluding such motivations from the Bill.

Table of Contents – Other Papers

Erasmus+ - Connections – Youth Mental Health Report



Northern Ireland
Assembly

10.12.15

Connections

Youth Mental Health



Erasmus+

Background

The Northern Ireland Assembly is working on a project called Connections which aims to promote dialogue between MLAs and young people. It is funded by the European funding stream Erasmus+.

The participants have been challenged to investigate an issue of their choice and communicate their findings to Assembly Committees. The group decided to focus on the issue of mental health. They made three short films based around interviews with experts in the field. They then conducted quantitative and qualitative research on this topic. This paper summarises the research undertaken by the young people.

Key Points

Some points that came out of the survey are:

- 84% of the respondents are aware of mental health services;
- 31% of the respondents feel that schools do not offer enough support;
- 46% of the respondents indicated that mental health is a big issue for young people in their area;
- Only 35% of respondents would feel comfortable contacting a mental health organisation;
- 17% of the respondents would not seek help; and
- 40% of the respondents feel there are not enough services for young people.

Many of the young people who responded to the open-ended survey questions suggested that:

There is a need for greater awareness of services available - through advertising and outreach.

There is a requirement for greater awareness of mental health issues in society as a whole - through education and training for parents and teachers.

Young people want more services and they want them to be easily accessible and informal.

Some points that came out of the Focus Groups are:

- Negative influence of drugs in some areas;
- Mixed views as to whether schools provided adequate services;
- Importance of early diagnosis and intervention;
- Problem of stigma and fear of judgement;
- Lack of education around mental health in general and need for more practical, workshop based education in the curriculum;
- More communication need between MLAs and young people;
- Various pressures on young people;
- Make mental health a top priority for government;
- More openness and honesty around mental health; and
- Increase in awareness of services available.

1. Methodology

The research involved a survey of schools and youth organisations and a series of focus groups with young people.

Three short films were also made on the topics of:

- Mental health of the community;
- Mental health and schools; and
- Mental Health Services for young people.

Experts in the field were interviewed as a component of making the short films. A list of the people and organisations who contributed to the content of the videos can be found in appendix 1. The three films can be viewed at:

<http://education.niassembly.gov.uk/video-gallery/video/mental-health-community/current-state-mental-health-our-communities>

<http://education.niassembly.gov.uk/video-gallery/video/mental-health-schools/short-film-explores-mental-health-schools>

<http://education.niassembly.gov.uk/video-gallery/video/mental-health-services/role-6-mental-health-services-available-northern-ireland>

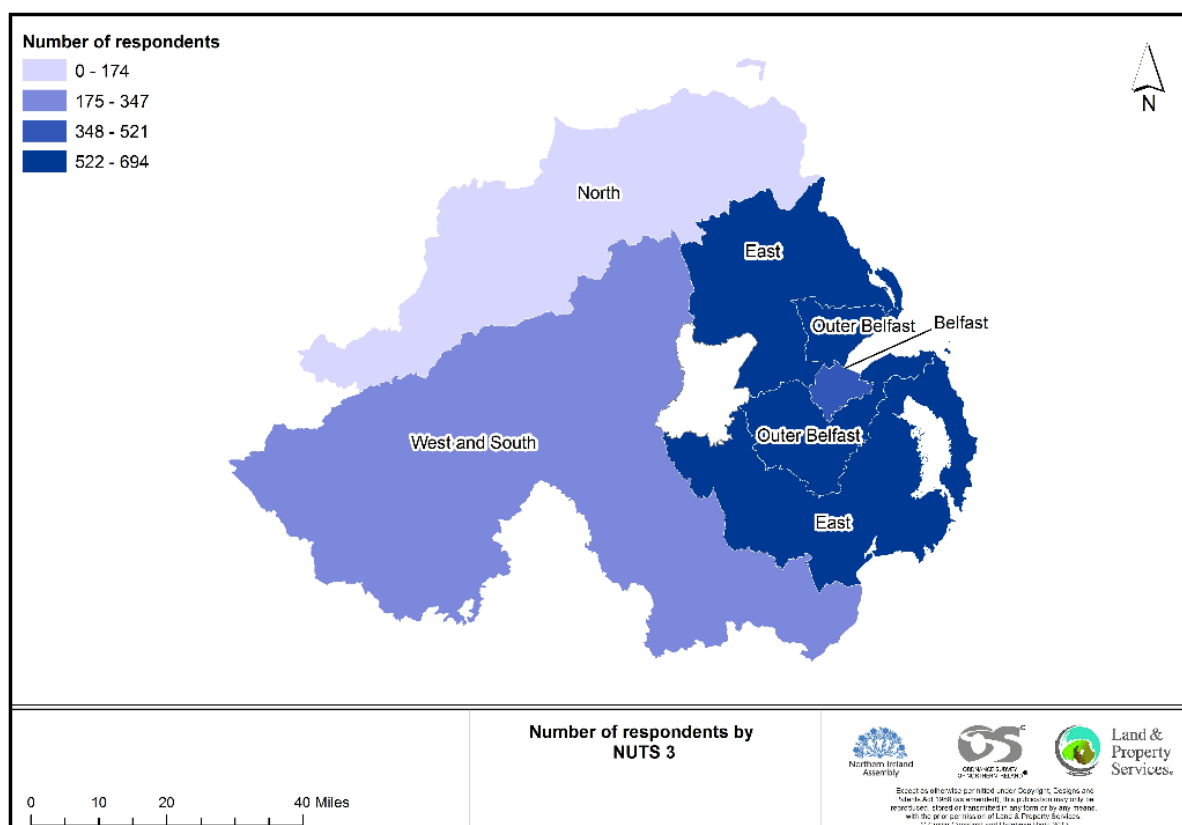


Survey

The aim of the quantitative survey was to gather information about young people's perspectives on mental health services in Northern Ireland. Interviews with experts in the field helped to inform the design of the questionnaire. The participants designed the survey with support from an Assembly Research Officer.

A total of 2,390 responses from young people aged 11-25 from across Northern Ireland were received. There was a good spread of respondents across Northern Ireland (see map1).

Map 1: Respondent Distribution



Focus groups

The qualitative phase of the research aimed to provide more detailed information about the perspectives of young people on mental health issues. The Connections participants led the focus groups after training from Dr Laura Dunne of Queen's University Belfast. Four focus groups were conducted:

- Non-selective controlled post-primary (NSCPP) – Urban;
- Integrated post-primary (IPP) – Rural;
- Maintained post-primary grammar (MG) – Urban; and
- Forum for young people Not in Employment, Education or Training (NEET) - Urban.

The focus group sessions concentrated on four broad themes:

1. What does mental health mean to you?
2. If you had a problem who would you ask for help?
3. What stops young people from getting help?
4. What is your message to politicians?

2. Research Findings

The following section summarises the outcomes of the survey and the focus groups.

2.1 Survey Results - Closed questions

Help in schools for mental health issues

- The majority of young people who participated in the survey (84%) said they are aware of what help is available in their school, college or university.
- Those at post-primary school (86%) were more likely than those at college (78%) or university (72%) to say that they are aware of what help is available in their education setting.
- 86% of young people said their school, college or university provides a counselling service while 80% said their school, college or university provides a teacher or lecturer responsible for pastoral care.

Support offered for young people

- 31% of young people who participated in the survey said they do not think their school offers enough support for young people with mental health issues.
- Males (44%) were more likely than females (28%) to say that their school, college or university offers enough support for young people with mental health issues.
- Catholics (38%) were more likely than Protestants (33%), those with other religions (34%) or those with no religion (32%) to say that their school, college or university offers enough support for young people with mental health issues.

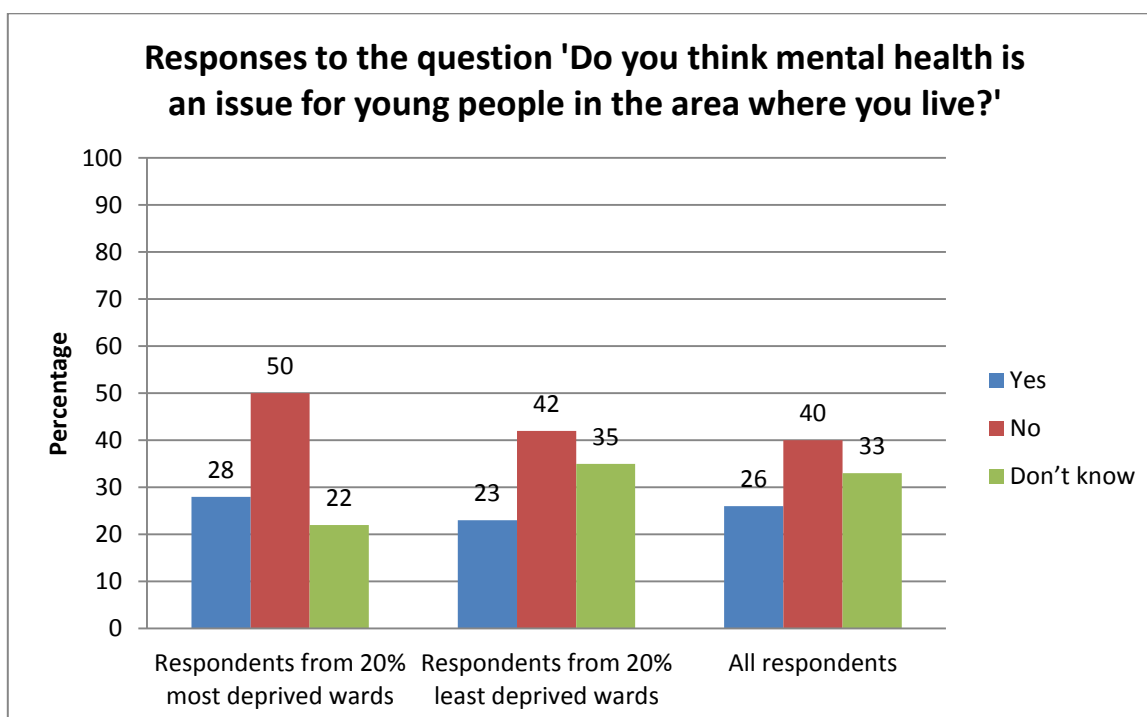
Mental health in your area

- 46% of young people who participated in the survey said that they think mental health is a big issue for young people in the area where they live.
- Females (57%) were more likely than males (33%) to say that they think mental health is a big issue for young people in the area where they live.
- Catholics (50%) were more likely than Protestants (42%) to say that they think mental health is a big issue for young people in the area where they live.
- Young people living in urban areas (51%) were more likely than young people living in rural areas (35%) to say that they think mental health is a big issue for young people in the area where they live.
- Young people living in the 20% most deprived wards in Northern Ireland (57%) were more likely to say that they think mental health is a big issue for young people in the

area where they live when compared to those living in the 20% least deprived wards (50%).

- 20% of young people think the area they live in affects their own mental health in a good way; 13% think the area they live in affects their own mental health in a bad way.
- Males (25%) were more likely than females (17%) to say that the area they live in affects their own mental health in a good way.
- Those with no religion (18%) were most likely to say they think the area they live in affects their own mental health in a bad way followed by those with other religions (17%), Catholics (14%). Protestants (10%) were least likely to say that the area they live in affects their own mental health in a bad way.
- Young people living in urban areas (15%) were more likely than those living in rural areas (9%) to think the area they live in affects their own mental health in a bad way.
- Young people living in the 20% most deprived wards in Northern Ireland (17%) were more likely to say that area they live in affects their own mental health in a bad way when compared to those living in the 20% least deprived wards (12%).

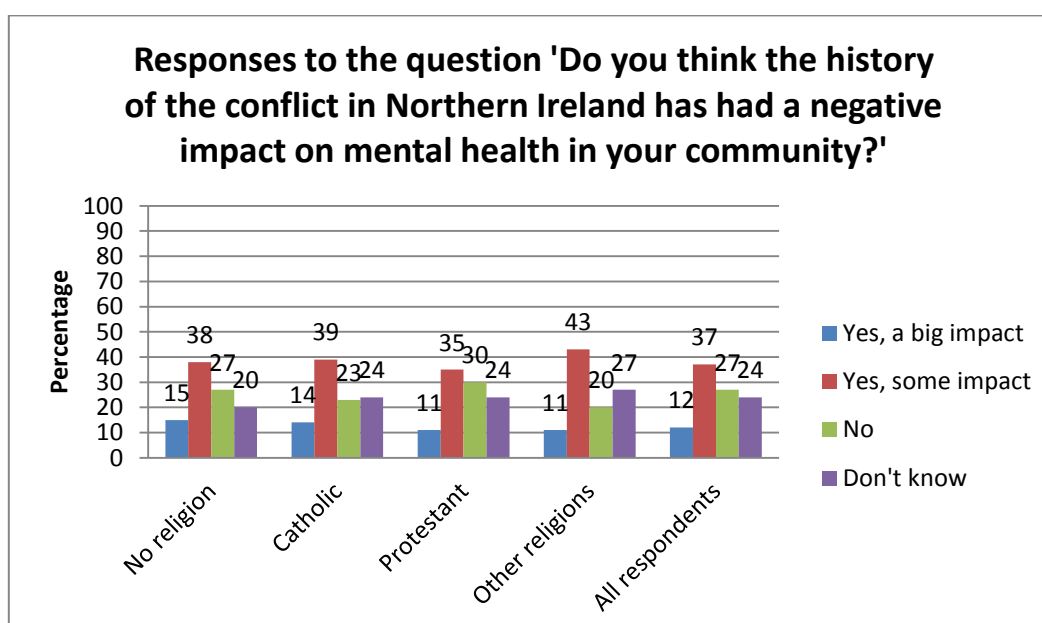
Figure 1



Impact of the history of the conflict (See Figure 2)

- 12% of young people who participated in the survey think the history of the conflict in Northern Ireland has had a big negative impact on mental health in their community while 37% think the history of the conflict in Northern Ireland has had some negative impact on mental health in their community.
- Those with no religion (15%) were most likely to say they think the history of the conflict in Northern Ireland has had a big negative impact on mental health in their community, followed by Catholics (14%). Protestants (11%) and those with other religions (11%) were least likely to say they think the history of the conflict in Northern Ireland has had a big negative impact on mental health in their community.
- Young people living in the 20% most deprived wards in Northern Ireland (19%) were more likely to say they think the history of the conflict in Northern Ireland has had a big negative impact on mental health in their community when compared to those living in the 20% least deprived wards (11%).
- 3% of young people who participated in the survey said they think the history of the conflict in Northern Ireland has had a big negative impact on their own mental health while 13% think the history of the conflict in Northern Ireland has had some negative impact on their own mental health.
- Young people living in the 20% most deprived wards in Northern Ireland (5%) were more likely to say they think the history of the conflict in Northern Ireland has had a big negative impact on their own mental health when compared to those living in the 20% least deprived wards (2%).

Figure 2



Sources of help for young people

- If they had a mental health issue, young people who participated in the survey said they would be most likely to turn to family (77%), a friend (71%), or a health professional (63%). 49% said would turn to a mental health organisation; 36% would turn to a counsellor in their education setting; 23% would turn to an online forum. 17% of young people who participated in the survey wouldn't get help.
- Males (68%) were less likely than females (74%) to turn to their friends for help.
- Males (82%) were more likely than females (73%) to turn to their family for help.
- Protestants (37%) were more likely than Catholics (24%) to turn to a youth leader or youth worker for help. Those with other religions (33%) and Protestants (31%) were more likely than Catholics (17%) to turn to Church for help. Young people with no religion (33%) were more likely than Catholics (23%), Protestants (21%) or those with other religions (21%) to turn to online forums.
- Young people living in rural areas (34%) were more likely than young people living in urban areas (28%) to turn to a youth leader or youth worker.
- Young people living in rural areas (29%) were more likely than young people living in urban areas (19%) to turn to a Church.

Mental health organisations

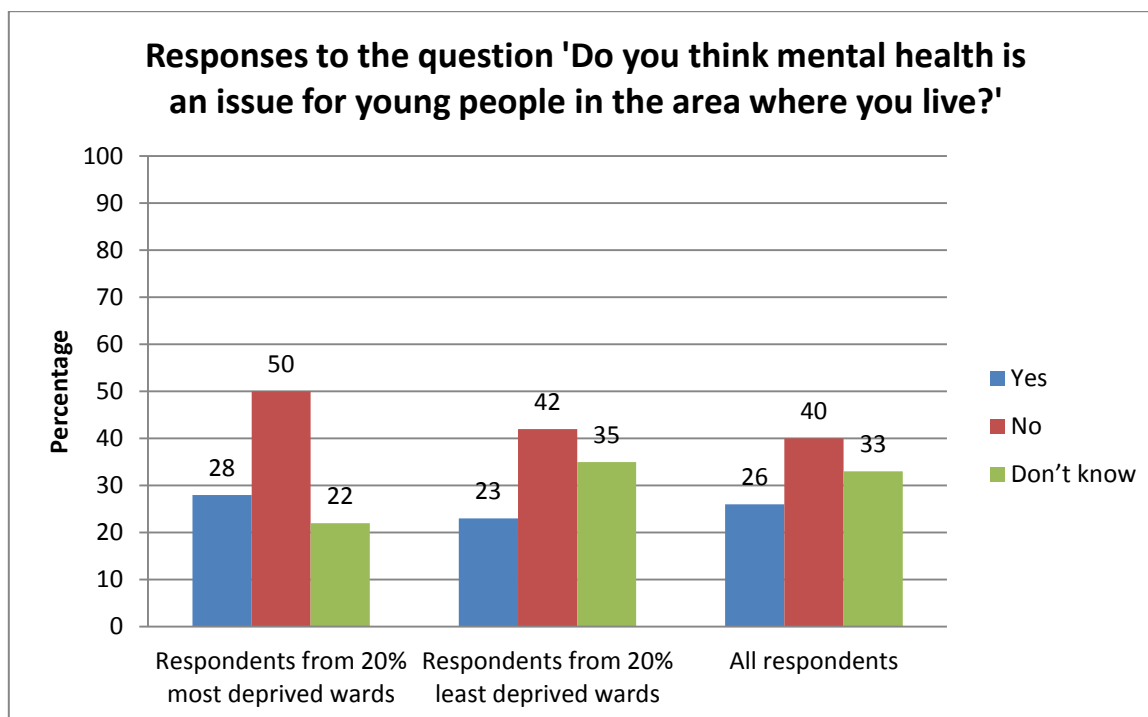
- 95% of young people who participated in the survey said they have heard of Childline; 85% have heard of Lifeline and 72% have heard of Samaritans.
- 35% of young people who participated in the survey said they would feel comfortable contacting a mental health organisation if they had a mental health issue.
- Males (40%) were more likely than females (31%) to feel comfortable contacting a mental health organisation if they had a mental health issue.
- Those with other religions (44%) were more likely than Catholics (37%), those with no religion (36%) or Protestants (33%) to say they would feel comfortable contacting a mental health organisation if they had a mental health issue.

Mental health services for young people

- 40% of young people who participated in the survey do not feel there are enough mental health services for young people in their area.
- Females (50%) were more likely than males (27%) to say they there are not enough mental health services for young people.

- 50% of young people living in the 20% most deprived wards in Northern Ireland said they do not feel there are enough mental health services for young people in their area.

Figure 3



2.2 Survey Responses- Open Ended Questions

Some broad themes emerged from the open ended survey questions. The following section summarises over 1000 responses focusing themes of:

- Awareness and advertising of mental health services;
- General awareness of mental health issues; and
- Service Accessibility.

Awareness and advertising of mental health services

The main issue which emerged in survey responses was that young people feel that awareness of the mental health services available to young people in Northern Ireland needs to be improved. The respondents suggested a combination of:

- Advertising; and
- Outreach visits to schools, higher education institutions, community organisations, and places of work.

Regarding advertising, the respondents stated that they would like to see more advertising of services on TV, online, on billboards and on the radio. There was also the suggestion that mental health organisations could go door-to-door, deliver leaflets, or hold community talks. Respondents indicated that people should be made aware of:

- What the services do;
- Where they are located; and
- How to access them if needed.

With reference to schools the respondents suggested that:

- Mental health organisations come to schools to talk to pupils;
- Mental health to be a larger part of the curriculum; and
- Young people are educated on self-help and other coping mechanisms for ill mental health.

Education in schools was described as a preventative measure, i.e. educating people on mental health would reduce the requirement for treatment at a later stage. Respondents also argued that educating young people on mental health could help reduce the stigma associated with mental health issues.

According to the respondents, schools could also improve advertising and quality of their own mental health services such as in-house counsellors or pastoral care arrangements.

For some respondents, youth clubs play an important role in developing positive mental health. It was suggested that they offer activities that contribute to positive mental health.

General Awareness of Mental Health Issues

The respondents demonstrated a broad desire to see a greater awareness of mental health across society, including moves to remove the stigma around ill mental health. Some respondents stated that they would like to see ill mental health treated as seriously by general society as ill physical health. The respondents emphasised the importance of:

- Education;
- Training for parents, i.e. coping strategies; and
- Training for teachers - identifying issues and providing support for young people.

Accessibility to Mental Health Services

A large number of the young people commented that mental health services need to be more accessible to them. They suggested that mental health services should be more welcoming, easier to get to and less formal. Suggestions included online chats, new facilities with relaxed settings, and peer support.

Waiting times were seen as a problem for young people responding to the survey. Some respondents stated that people were being turned away due to lack of capacity.

Many of the respondents suggested that more localised services would make them more accessible. Some commented on a centralisation of services in Belfast which does not sufficiently serve rural communities.

Some respondents stated that they would like to see more peer support as part of the services on offer. It was suggested that this could involve people who have experienced ill mental health supporting other people. Some comments suggested that that it would be easier for people to open up to someone around the same age, or who had been in a similar

“If workshops and educational programmes were provided both by young people for young people that treated the issue with delicacy... more young people would be able to open up and discuss their mental health.”

situation as themselves.

Many respondents would like to see a greater number of online services. Some indicated that being able to make appointments online, or being able to communicate with someone via messenger system would be preferable to phoning a hotline.

2.3 Findings from Focus Groups

Theme 1: What does mental health mean to you?

There was general agreement across the focus groups that emotional wellbeing is an important aspect of mental health. Some of the young people emphasised that emotional wellbeing involves the ability to understand emotions and use them to have a positive effect on life. A large portion of the respondents talked about how good mental health means having a positive outlook on life in general.

Many of the young people talked about factors which have a negative influence on mental health. They mentioned:

- Trauma;
- body image;
- stress of life in general;
- the impact of bullying;
- challenging family situations;

- difficulty learning, which leads to stress;
- social media pressure and trolling;
- peer pressure and pressure to succeed;
- exams;
- relationships;
- the ignorance of others / lack of understanding; and
- worrying about lots of little things.

The respondents from the non-selective controlled post-primary school stressed the negative influence of drugs in their community and the effect that it has on the mental health of young people. It is worth noting that this school is located in an urban environment, in one of the more deprived wards in Northern Ireland.

Some of the young people interviewed in the NEET forum suggested that mental health wasn't always taken seriously by the general public. One of the students from this group commented that mental health means different things to different people but there was a general agreement that it affects all aspects of people's lives.

Depression was mentioned as being a common cause of mental ill-health by several of the respondents in the Integrated post primary school. However, no other clinical conditions were mentioned by any of the respondents in any of the other groups.

Theme 2: If you had a problem who would you ask for help?

There was a dramatic difference between the responses to this question, depending on the group interviewed.

The Non-Selective Controlled Post Primary respondents were universally positive about the counselling service available in school. They commented on the good relationships between pupils and teachers and felt confident that they could approach teachers in privacy about problems. They described a proactive approach to mental health in school and were proud of the measures in place. The students indicated that they are aware of services delivered by Prevention of Suicide and Self Harm (PIPS).

'We have teachers we can trust and we all know what to do if we need help.'

The Maintained Grammar respondents were less satisfied by the services in school. They talked about a lack of privacy and having little confidence in pastoral care within the school. This group indicated that they were much more likely to seek support from friends than

teachers. They had some knowledge of Child and Adolescent Mental Health Services (CAMHS).

The general consensus of the Post Primary group was that they would seek help from friends and family. The students also expressed dissatisfaction with the support provided at school, the main barrier being lack of teachers they could trust.

**‘No-one makes use of the counsellor at our school-
there’s no trust’**

The young people in the NEET forum said that they would look towards friends and family for support. This group had little knowledge of support services available. They said that they would welcome more publicity and awareness for support services. It was suggested that, when they were in school, they would not have made use of the counsellor service for fear of being judged. The group advised that mentors with relevant experience would be a valuable form of support.

The young people across all the groups agreed that early intervention was necessary to help people who are experiencing mental health problems.

Theme 3: What stops young people from getting help?

The Integrated Post Primary group felt that there was a stigma associated with mental ill health. They expressed concerns around fear and embarrassment. Some students were worried that teachers would talk amongst themselves and they feared breaches of confidentiality. They also said that boys are more likely to express themselves in a small group rather than individually. There was a general consensus that there should be more practical content in the curriculum around mental health. Workshops were cited as useful measures that could be taken.

The Non-Selective Controlled Post Primary students said that some people may fear judgement by others. They also said that teenagers want to be more independent as they get older and feel that they should be able to deal with things themselves. It was suggested that this perception might stop people asking for help. Some of the students said that males are less likely to talk about mental health than females - this was not a unanimous position.

The Post Primary Grammar students also indicated that females were more likely to talk about their feelings and emotions than males. It was suggested that mental illness was often associated with older people. They said there needs to be more awareness of how mental health should be addressed at all ages. This group expressed concern about the lack of education around mental health in general.

The young people in the NEET forum emphasised the gender divide in seeking help.

‘Boys don’t tend to talk - they’re told to buck up’

One of the young people in this group suggested that some people only trust themselves so they feel that they can not rely on the services provided by people they don’t know. There was also a comment that some people feel so low that they can’t motivate themselves to access the services.

Theme 4: What is your message to politicians?

The Non-Selective Controlled Post-Primary students felt that there was a lack of communication between young people and those in power. They said that MLAs live in a bubble and do not appreciate what is going on “at street level”. The overarching message from this cohort was related to drugs. They also expressed a demand for more mental health services on the ground.

The Integrated Post Primary cohort described schools as very stressful and pleaded that MLAs listen to their generation. They said that the life is harder today for young people compared to previous generations. Improved assessment strategies to identify mental health problems were cited as being important. The students also asked for more medical checks and the development of workshops designed to prevent mental ill-health. It was suggested that there should be a greater variety of outlets for stress release. This group appealed to MLAs to make mental health a top priority.

The Maintained Grammar students indicated that mental health should be more prevalent on the curriculum. The group also argued that they are overeducated on drugs and alcohol but there is not enough focus on mental health at school. They pointed out that Learning for Life and Work (the part of the curriculum where mental health features) is replaced by Careers

‘Just when we need it most mental health education is lost in school- it’s replaced by a focus on careers education just when we are hit with exam stress.’

education (Key Stage 4) just when the stress levels ramp up from exam pressure.

The NEETs forum group also asked MLAs to think about revising mental health content in the curriculum. They commented that teachers who are responsible for mental health should have relevant experience and qualifications. They appealed for a more humanised approach to teaching about mental health. They also suggested that mental health education should be a strong feature of primary education. The NEET respondents also suggested that that early diagnosis was critical to the process of treating people who have a mental illness.

Concern was expressed around the regulation of social media and the young people appealed to politicians to exercise their influence in this area. The young people would like

there to be more openness and honesty surrounding mental health and they would like to see the services available have a higher profile.

3. Issues for Further Research

It is clear that this is an issue young people feel strongly about. Their responses have identified issues that should be addressed:

- Why did 17% of the survey respondents indicate that they would not seek help for a mental health issue?
- How can young people be made more comfortable in talking about mental health and approaching support organisations?
- How can the issue of accessibility to services be addressed?
- What can be done to make mental health more prominent on the curriculum?
- How can the good practice, with respect to mental health education, which was identified in some of the focus groups, be shared with others?

List of Witnesses

Date	Name	Organisation
04 November 2015	Mrs Caroline Gillan	Department of Education
	Mr Alan Boyd	Department of Education
13 January 2016	Mr Colm Davis	Tor Bank School
	Ms Helena Macormac	National Association of Head Teachers
	Mr Harry Greer	National Association of Head Teachers
	Mr Lee Kane	Northern Ireland Anti-Bullying Forum
	Dr Noel Purdy	Northern Ireland Anti-Bullying Forum
	Mrs Kathryn Stevenson	Children's Law Centre
	Ms Rachel Hogan BL	Children's Law Centre
20 January 2016	Ms Koulla Yiasouma	Northern Ireland Commissioner for Children and Young People
	Ms Mairead McCafferty	Northern Ireland Commissioner for Children and Young People
	Miss Caroline Perry	NIA Research Office
	Ms Fiona O'Connell	Northern Ireland Human Rights Commission
	Dr David Russell	Northern Ireland Human Rights Commission
	Dr Michael Wardlow	Equality Commission for Northern Ireland
	Ms Deborah Howe	Equality Commission for Northern Ireland
	Ms Julie Orr	Ulster Teachers' Union
	Ms Sandra Brown	Ulster Teachers' Union
27 January 2016	Mr John Anderson	Education and Training Inspectorate
	Mr Alan Boyd	Department of Education

	Mrs Caroline Gillan	Department of Education
02 February 2016	Mrs Caroline Gillan	Department of Education
	Mr Alan Boyd	Department of Education
03 February 2016	Mrs Caroline Gillan	Department of Education
	Mr Alan Boyd	Department of Education