

situation in front of them. It is important that the clause is broad enough to allow for this nuance and enable social workers to perform their function.

- **Clause 24** – Does this offence cover trusts.

A trust is a body corporate and so is covered by this clause.

- **Clause 33** - Directions to the Board. The Committee expressed concern around the Board's independence if this clause remains.

Clauses similar to Clause 33 are very common when setting up statutory bodies. For example:

- The Health and Social Care (Reform) Act (Northern Ireland) 2009 sets out the Department's power to give directions to certain bodies including the Patient and Client Council (PCC), the Public Health Agency, Business Services Organisation, and the former Board.
- Order 6 (2) of The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 gives the Department the power to direct the RQIA.
- Clause 4 of the Safeguarding Board Act (NI) 2011 gives the Department the power to direct the Safeguarding Board.

Organisations such as the PCC and RQIA hold their independence as central to their functions. Both organisations maintain operational independence to carry out their statutory functions and have the power to hold the Department and other Arm's Length Bodies to account. At the same time they cannot be fully independent and must be formally accountable to the Department that establishes and funds them. The Department must have governance oversight of their performance and their management of public money.

The Minister and the Department have an overriding responsibility to ensure the efficient and effective operation of such bodies, and there are occasions when it is necessary for the Department to exercise the power to make Directions. Some examples include:

- In 2013 the Minister Directed SBNI to carry out a thematic review of case Management Reviews which related to child exploitation of Looked After Children.
- In 2020 during the Covid 19 pandemic the Department gave a direction to RQIA to reduce the frequency of its statutory inspection activity, and to cease its non-statutory inspection activity.
- In 2024 the Department directed RQIA to assume responsibility for the Health and Social Care Quality Improvement function (this was agreed with both the PHA and RQIA before the transfer).

The mere existence of the power (rather than its exercise) is important in defining the relationship between a Department and one of its public bodies. The value of the provision lies in its existence rather than its routine exercise. It forms an important part of the governance and accountability framework between an Arm's Length Body and the Department, ensuring there is a clear mechanism for intervention should a significant issue arise. Removal of the clause would weaken this framework and could expose the Department in circumstances where no formal means of direction exists.

The Committee will note that one of the examples of this power being used above related to the Covid-19 pandemic in 2020. The Covid-19 pandemic required rapid action to be taken to change established processes to reflect unprecedented circumstances. This is a recent example of the reality that we do not always know what we do not know. Other such emergency situations may arise which would require the Department to issue directions to Arm's Length Bodies within its ambit of responsibility. Removing Clause 33 would mean the Department could not take such action.

When the Board is established the Board and the Department will work collaboratively to develop a Partnership Agreement which will set out an overall governance framework within which the Board will operate, and further define the roles and responsibilities of each organisation to each other.

- **Investigations by trust.** The Committee have concerns around a trust investigating a situation where the same trust had responsibility. The Committee asked the Department to explore whether our Statutory Guidance could set out directions around this – for example, that the investigation would have to be taken forward by a different trust.

The Department can issue guidance to a trust about the exercise of the trust's functions under Part 1. This covers inquiries and investigations and so the guidance could deal with situations where the trust should revisit what has been done under the powers of inquiry or investigation. The trust has a duty to have regard to any guidance, however there is no power of direction. As long as the independent person appointed by the trust was acting on behalf of the trust, this would amount to an exercise of the trust's function. What the guidance could not do is transfer the power of investigation from one trust to another one. Such a transfer of functions would require legislation.

I hope this information is useful to the Committee.

Kind regards,

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Head of Adult Safeguarding Unit

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