



Northern Ireland
Assembly

COMMITTEE FOR
HEALTH, SOCIAL SERVICES AND
PUBLIC SAFETY

OFFICIAL REPORT
(Hansard)

**Safeguarding Board Bill: Evidence
Session with Departmental Officials**

14 October 2010

NORTHERN IRELAND ASSEMBLY

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AND PUBLIC SAFETY**

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Members present for all or part of the proceedings:

Mr Jim Wells (Chairperson)
Mrs Michelle O'Neill (Deputy Chairperson)
Mrs Mary Bradley
Mr Mickey Brady
Dr Kieran Deeny
Mr Alex Easton
Mr Tommy Gallagher
Mr Sam Gardiner
Ms Sue Ramsey

Witnesses:

Mr Fergal Bradley)
Ms Patricia Nicholl) Department of Health, Social Services and Public Safety
Ms Isobel Riddell)

The Chairperson (Mr Wells):

Once again, I welcome Fergal Bradley, who has been with us a great deal recently. He is the head of the childcare policy directorate in the Department of Health, Social Services and Public Safety (DHSSPS). I also welcome Patricia Nicholl and Isobel Riddell from the childcare policy

directorate.

The meeting is an opportunity to try to iron out some issues that have arisen. I suspect that you followed our evidence sessions in Hansard. What has emerged is very clear: the principle of the Safeguarding Board Bill has been accepted, welcomed and supported unanimously. There is no problem with the concept of what you are trying to do. Arguments hinge on three or four issues that have come up time and time again. They were raised by members and witnesses. We have an opportunity to tease out the Department's reaction to that evidence and what you believe is the best way to address those concerns.

I refer members to a letter that the Committee received from the then Court Service in March 2010. It is relevant to the issue of whether the judiciary or the Northern Ireland Courts and Tribunals Service (NICTS) should be represented on the safeguarding board for Northern Ireland (SBNI). We will be dealing with the issue of who should actually sit on the board. The letter states:

“While the Lord Chief Justice does not consider there a case has been made for the judiciary to be represented on the proposed Safeguarding Board he is content that the Board should approach his office if it considers there are particular matters on which a judicial input would be useful.”

The Courts and Tribunals Service is also happy to interact with the board as and when required.

Does the Department want to make any opening remarks to set the scene before we go into clause-by-clause scrutiny?

Mr Fergal Bradley (Department of Health, Social Services and Public Safety):

Yes, if that is helpful. Thank you for the invitation to appear before the Committee and for providing us with the clause-by-clause summary table. It sets out some issues that have been raised by witnesses. Of course, we are aware of those issues from our evidence sessions. We also picked up on a number of issues from listening to evidence that has been given by other stakeholders in previous sessions. That has given us the opportunity to discuss possible changes with the stakeholders and reference group and also to enter into discussion with our draftsman about possible amendments to the Bill. We are still in discussion with the draftsman. We hope to be able to put proposals on suggested amendments to the Committee soon.

In particular, we considered possible amendments to be put to the Committee on clauses 3, 6, 7, 10 and 11. We hope that we can deal with other matters that were raised in evidence sessions

by providing clarification on how existing provisions in the Bill can already address them. The Committee's evidence sessions also helped us to record some matters that we would be happy to take on board but which, we have been advised, would be dealt with more appropriately in regulations rather than in the Bill, particularly using powers under clauses 1, 3 and 5. I will cover a few of those matters.

Obviously, we hope to be able to bring all those issues to the Committee's attention today and over the next couple of weeks. However, I want to address some issues that have been raised with the Committee that seem to have caused particular concern, with reference to clause 1— membership — clause 3 — functions — clause 4 — directions — and clause 6 — the annual report.

Clause 1 deals with membership. The purpose of the SBNI is to improve, at operational level, how agencies that deliver services to children and families work together to protect and safeguard children and to promote children's welfare. The member agencies that are listed in the Bill are organisations that have a statutory responsibility to deliver services to children and young people. Members who will represent the agencies that are listed must be able to speak and make decisions on behalf of their organisations and to commit resources on their behalf. It is our intention to ensure that membership will be subject to ongoing review. Under clause 1(3)(j), we will be able to prescribe additional people and bodies to be members of the SBNI if it is determined that additions need to be made.

Evidence from England suggests that the most effective local safeguarding children boards (LSCB) are of manageable size, ideally 20 to 25 members. That is similar to our proposal for Northern Ireland, and we want to try to stick to that. However, committees and subcommittees are also components of the SBNI. Therefore, although an agency may not be listed in the Bill or be a member of the top level structure of the SBNI, by participating in a committee or subcommittee, it will be part of the SBNI, and the duties on members that are set out in the Bill are applicable to it. That means that the SBNI has considerable scope to involve a wide range of agencies and sectors.

It has always been our policy to include medical representation on the SBNI. The matter of GPs' representation was raised in evidence sessions. They will have representation. However, the Committee will appreciate that GPs work as independent contractors. Therefore, the GP

representative will not, for example, be able to enter commitments on behalf of all GPs. However, we engaged with the Northern Ireland General Practitioners Committee to consider the best means of securing GP representation on the SBNI. We intend to use regulations to deliver in that regard.

Similar but more complex issues arise for the judiciary. I note that there was correspondence about that. In lay terms, there is complexity because a member of the SBNI who is also a member of the judiciary could be subject to scrutiny by the SBNI under clause 2(1). That could raise real issues about the independence of the judiciary. We are still trying to navigate our way through that, and we are talking to the judiciary and the Northern Ireland Courts and Tribunals Service. It is accepted, as was raised in evidence by a number of stakeholders, that the chairperson of the SBNI should be represented on the Children Order Advisory Committee (COAC), which is chaired by Judge Weir. He has indicated that he would be content with that.

I also stress our desire to take account of the views and wishes of the chairperson and members of the SBNI with regard to additional membership. That is why, under clause 1(4), if the SBNI determines that it needs representation from persons or bodies that are not represented, it can ask that those persons or bodies be added to the membership. We want to work with the SBNI chairperson and members to ensure that the agencies, professionals and key stakeholders whom they need are represented. We cannot predict in advance of nominations by member agencies which professional disciplines will be represented. However, under clause 1(4), we expect to address any deficits in membership that are identified by the SBNI.

Under clause 3(4), it has been suggested that we refer —

The Chairperson:

That is very useful. You have concluded on clause 1. Some of your suggestions are helpful. We will break the discussion into manageable portions and will now deal with clause 1. Some of your comments will cut down the amount of discussion that is required, which is good news. Members, we are considering clause 1 and trying to tease out any remaining difficulties regarding the membership of the board and also, to some extent, the role of the chairperson. Various groups suggested that the Ambulance Service and the Housing Executive should be represented. Did you consider those options and decide whether they were appropriate?

Ms Isobel Riddell (Department of Health, Social Services and Public Safety):

We engaged with the Northern Ireland Housing Executive (NIHE) about the possibility of its becoming a core member of the SBNI. It is represented on the SBNI reference group. We recognise that it has statutory duties under the Children (Northern Ireland) Order 1995, and we are aware that there is housing authority representation on the local safeguarding children boards in England. In view of that, we are negotiating with the NIHE. It is about ensuring that the NIHE is clear about what the duties that will be imposed through the legislation will mean for it before it decides on whether to join the SBNI or be listed as a core agency in the Bill.

The Chairperson:

If the Bill states that the judiciary will be represented, does it have a choice or is that something that you could not impose on it?

Mr F Bradley:

We could not impose something such as that on the judiciary. It would create a genuine tension. For example, a judge sitting in a case involving care proceedings could arrive at a judgement with regard to decisions that were taken by trust staff in circumstances in which some of those decisions may have been taken in line with policies and procedures that were developed by the SBNI, of which the judge is a member. It could cause real tensions for the independence of the judiciary.

The Chairperson:

Witnesses were unanimous in stating that the seniority of board members should be at least at director, deputy director or an equivalent level. It is implicit from them that that level will be appointed. However, is there any requirement for a senior member of staff to be appointed, or could it be a middle-ranking individual?

Ms Riddell:

We are currently in the process of drafting our regulations, which are under clause 1(5). We will specify the level of seniority that we require from the agencies that are listed in the Bill. That will specify whether we want a director or a chief executive to attend.

The Chairperson:

Therefore, that issue has been dealt with.

Ms Riddell:

Yes, it has.

Ms S Ramsey:

This discussion is useful. I have two points. Fergal, in your introduction, you said that there is a possibility that there could be some proposed changes. When do you hope to have those?

Mr F Bradley:

Much correspondence has back from the draftsman, and we are putting that together. I aim to have that with the Committee by next week. Obviously, however, we need to finalise some issues.

Ms S Ramsey:

We could be discussing something that you are going to change.

The Chairperson made a point about the judiciary. If the Bill did not name the PSNI, could it be imposed that it had to have a representative on the board?

Mr F Bradley:

I think of the judiciary as being particular and different. The PSNI is governed by the operation of the Policing Board. As I understand it, there is no equivalent for the judiciary. Individual members of the judiciary are independent, and, having worked with them, I know that it is difficult for one member of the judiciary to speak on behalf of all members. Members are individuals and, therefore, individually minded.

Ms S Ramsey:

You said the same about GPs, but a way around that has been found.

Mr F Bradley:

GPs would not be named in the Bill. However, we could bring them onto the board. We have not dismissed the possibility of a member of the judiciary being brought onto the board or specified under the regulations. We are trying to navigate our way around the problem that I described.

The Chairperson referred to a communication from the judiciary indicating that, although its members may want to feed into SBNI issues, they are — if I understand it correctly — content not to be members of the SBNI.

The Chairperson:

The Lord Chief Justice has made it quite clear that the judiciary is content not to be a member of the board. If the judiciary cannot be compelled to be a member and does not want to be one, we are wasting our time.

Mr F Bradley:

As I understand it, the legislation is before the Committee and the Assembly, which could legislate. However, I suspect that that would create legal difficulties about the judiciary's role as required by the courts. Putting it in laypeople's terms —

Ms S Ramsey:

I do not want to sound critical because we all want to ensure that there is a safeguarding board for children. However, if there is an issue about GPs being independent members but speaking for all GPs, which we seem to have found a way around, where are the PSNI and the judiciary?

Mr F Bradley:

Members of the judiciary sit in family courts and arrive at judgements that are based on evidence that is put before the courts by bodies such as the health and social care trusts and the police about the future of the children involved and whether they become the subject of care proceedings or emergency protection orders. The judiciary is independently adjudicating on the actions of the trusts in individual cases.

Ms S Ramsey:

Are you still considering the issue?

Mr F Bradley:

We are talking to people about it.

Ms S Ramsey:

That is a start.

Mr F Bradley:

However, we are running into issues. Under clause 2(1), the effectiveness of members of the SBNI in delivering their function can be looked at. The SBNI would review:

“the effectiveness of what is done by each person or body represented on the Board (by virtue of section 1(2)(b) and (4)) for the purposes of safeguarding and promoting the welfare of children.”

Judges arrive at decisions on the safeguarding of children with regards to, for example, care proceedings. Therefore, a legal difficulty would be created if the judiciary were represented on the safeguarding board. However, the Children Order Advisory Committee is chaired by Judge Weir and all stakeholders sit around the table. It gives the judiciary the opportunity to engage with stakeholders about the operation of the law, how the courts operate with regard to those proceedings and how agencies work with them in that setting. If the SBNI chairperson was brought onto COAC, that would build a significant bridge between the SBNI arrangements and the judiciary.

We will also consider the involvement of organisations such as the Northern Ireland Courts and Tribunals Service on some of the subcommittees. Much of what affects children in the courts is due to the physical environment, and some of that is dictated by judges. Therefore, there is a possibility that the NICTS would be involved in a subcommittee to consider those types of issues.

Mr Gallagher:

I would like clarification about the position of GPs and whom they will represent. Will GP representatives be able to represent GPs and speak for their colleagues?

Ms Riddell:

We liaised with the Northern Ireland General Practitioners Committee, which is a committee of the British Medical Association. We also had discussions with the Health and Social Care Board. It has been agreed that a member of the Health and Social Care Board will represent the interests of all GPs on the safeguarding board.

Mr F Bradley:

However, that person cannot commit all independent GPs to particular courses of action.

Therefore, the GP perspective will be represented and reflected on the SBNI as will the issues that affect primary care in the GP setting. However, that representative will not be able to commit all GPs to undertake a particular type of action, because GPs are independent contractors.

Mr Gallagher:

Is that satisfactory from the Department's point of view?

Mr F Bradley:

It deals with the reality that GP practices are independent of one another and are independent contractors.

Ms Riddell:

The key person on the board will link in with GP contracts. That is where the natural line will be.

Ms S Ramsey:

They can be kept under control then.

Mr F Bradley:

GP contracts tend to be operated nationally. However, we will find out more about that.

Ms S Ramsey:

We have been pushing for years to get that done locally.

Ms Patricia Nicholl (Department of Health, Social Services and Public Safety):

We have been in discussions with the potential GP rep, through the Health and Social Care Board, who will be representing the individual responsible for the procurement of GP services in Northern Ireland. It is our intention to draft a membership agreement stating that that member of the SBNI will not be representing the interests of the health and social care trusts per se but those of GPs, both sessional and local. Our membership agreement will also include an expectation that that member creates the systems, processes and conduits of communication to enable him or her to represent GP interests sufficiently and effectively.

The Chairperson:

If members are content with the issue of membership, we will move on to the appointment of the

chairperson, the physical process of which is dealt with in clause 1. At this point, we are not talking about salary or terms and conditions.

You heard evidence about the two models from the boards based in GB. In model one, a person goes through the public appointments process, and the Department oversees that. In model two, the board is created, and it then either elects someone from the board as its chairperson or undertakes the selection process itself. However, the horse has bolted slightly in that regard. In fact, it is galloping over the hill because the Department has already placed an ad in the papers, issued the packs and is going through the process. At any stage, did you give any consideration to the board appointing the chairperson rather than the Department?

Mr F Bradley:

The starting position was to consider how local safeguarding children boards actually operated. To be honest with you, it is a little bit ironic that we, the Department, are here at this stage defending the public appointments process because a range of Northern Ireland stakeholders lobbied us very heavily not to go down the route that applies in England. We were lobbied about that because, if we were to follow the scenario that you mentioned for a local safeguarding children board, the chairperson of the SBNI would be selected, through some method, by the members of the SBNI, including the Department, the Health and Social Care Board, the Youth Justice Agency, the police and all the statutory agencies and would, ultimately, be in some way accountable to all those member agencies. As is the case in a number of local safeguarding children boards, the chairperson can be employed by any of those agencies.

The point about the public appointments process is that the person appointed is independent of all the member agencies. As regards the role of chairpersons appointed through the public appointments process, I know that concerns were raised about the role of the chairperson vis-à-vis the Minister, but it does not work like that in practice. The public appointments process gives the chairperson a significant amount of independence in deciding what he or she can say and do. The accountability arrangements for someone appointed through a public appointments process are straightforward. There will be an annual appraisal with a senior official in the Department and twice-yearly accountability meetings with the SBNI chairperson, which will focus on the discharge of the functions as set out in the legislation. There are limited circumstances in which a chairperson who is appointed through the public appointments process may be removed, and those circumstances are primarily to do with significant misconduct.

It is an open and transparent process. The appointment of the chairperson is overseen by the Commissioner for Public Appointments. There is a three-person panel. In this case, one panel member will come from an independent pool of people that is maintained by the Office of the First Minister and deputy First Minister (OFMDFM). That is to ensure that the process is operated fairly. In this case, the second member of the panel will be Jan Horwath, who is an expert in safeguarding. One member of the panel will be the Chief Social Services Officer.

The public appointments process gives the chairperson more say and greater independence from member agencies. We were never averse to the original idea that the chairperson of the SBNI could be appointed by the member agencies. However, as I say, it is a bit ironic because we were lobbied very hard and persuaded to ensure greater independence for the chairperson.

The Chairperson:

I accept that the evidence that you received locally went down that route. The only reason that it became apparent to us was that, when we took evidence from the English-based safeguarding boards, we discovered that they had a different way of doing it. The argument is balanced — it is not black and white — and either side could be right. The only slight issue is that, had we decided on any other route, we could not have taken it have because you have gone and done it.

Mr F Bradley:

You could still do that, because the appointment will be as a chairperson designate. We are going through a public appointments process. If the legislation does not support it ultimately, the chairperson will not be appointed. You referenced the director of children's services from a local authority — I do not want to use names — who line-manages the chairperson. I know that she stressed the level of independence, and I read some of her comments about her great respect for her chairperson and the level of independence. However, ultimately, she line-manages that chairperson. A chairperson appointed in that way would be line-managed by the equivalent of the director in the Health and Social Care Board. Had we tried to legislate in that way, I do not know whether people would have felt that it would have been independent.

Ms Nicholl:

We asked a specific question in the public consultation. Some 72% of people said that they wanted an appointed chairperson who was independent of the member agencies. The public

appointments process was seen as the way to do that. We have an issue about the chairperson being appointed from one of the SBNI members, as an equivalent to the English arrangements. Given the intention to move away from the former area child protection committees, which viewed child protection as the business of social care organisations only, towards the chairperson or the director of the Health and Social Care Board being the person who oversees and appoints the chairperson of the safeguarding board, it felt as if that would not move us very far forward in changing the former area child protection committee administrative arrangements.

The Chairperson:

On a point of clarification: what happens if the public appointments procedure is followed and the Minister does not like the choice?

Mr F Bradley:

The Minister makes the final decision. It will be clearly on the record that an arm's-length public appointments process was followed and that the Minister decided not to go with the recommendation of the panel. The same applies for any public appointment in such a process.

The Chairperson:

Effectively, there is a power of veto.

Mr F Bradley:

You say that there is a veto, but every public appointment is ultimately made by a Minister. The Minister makes the final decision, but it will be based on a recommendation by a panel that operates under certain procedures.

Ms Nicholl:

We are hopeful that we may get one or two candidates over the line as we put forward a panel of suggested candidates. However, ultimately, it is the Minister's decision.

Mrs M Bradley:

You state that you want one member from each council. How will that be managed?

Ms Nicholl:

Our policy intent was to have councils represented through the Society of Local Authority Chief

Executives and Senior Managers (SOLACE). We would have two such representatives. We have been in negotiations with the Northern Ireland Local Government Association (NILGA), and we continue to discuss the best way to represent local government interests on the SBNI.

Mr F Bradley:

Two options are being considered and discussed. One is to have two representatives from SOLACE. The other is that there will be one representative from SOLACE and one representative from NILGA, but there will be two representatives from district councils.

Mrs M Bradley:

It is difficult to get them together.

Ms Riddell:

During our negotiations with NILGA, it revealed that there are NILGA representatives on other bodies — elected members who represent the interests of elected members. If we could work with NILGA and decide what exactly we are looking for as regards representation, that would help to ensure that we get the right person for that position.

The Chairperson:

It is worth mentioning that NILGA no longer represents all the district councils. There might be an experienced person in, say, Newtownabbey, but he or she would not be considered.

Mrs M Bradley:

That is a problem.

Ms Nicholl:

The original thinking was that the chief executives would be in a position to secure agreement on the resources and the general number of councils so that they would be able to gather them together and galvanise the process through general agreements rather than through individual local government members.

Mr Gardiner:

We talked about a chairperson, but is there a deputy chairperson? If the chairperson is not available, who stands in?

Ms Nicholl:

We propose to provide for that in regulations. It is not in the Bill. We plan to ensure that there is a potential for the SBNI to have a deputy chairperson.

Mr Gardiner:

I could find nothing in the Bill, which is why I am asking. Is it a salaried post?

Ms Nicholl:

I can only go on my understanding of how it operates in other health and social care arm's-length bodies, which is that the SBNI would put in place a deputy chairperson who is not remunerated but who sits in for the chairperson in his or her absence.

Mr Gardiner:

I do not want the SBNI to collapse because the chairperson is not there.

Ms Riddell:

Regulations will take account of situations when the chairperson is ill. It will be set out in the regulations that if a chairperson is absent for a certain time, perhaps because of ill health, a deputy will be appointed.

Mr Gardiner:

You are still looking at that?

Ms Riddell:

We are still developing that in our regulations.

Mr Gardiner:

I accept that.

The Chairperson:

That is the end of the discussion on clause 1. Sue Ramsey raised the issue of the judiciary. Do we want the Department to come back to us on that matter or are we content to let clause 1 proceed?

Ms S Ramsey:

I am also concerned that there are possible amendments to other clauses and that there are still ongoing discussions on the Bill in general. We could agree or disagree material but find that discussions are still ongoing.

The Chairperson:

Fergal will give us those.

Ms S Ramsey:

There are also ongoing discussions with stakeholders and others.

Mr F Bradley:

Membership issues will be addressed through the regulations. We are not proposing to look at any proposed changes to clause 1. Under clauses 1(4) and 1(3)(j), there are powers to bring additional members onto the SBNI, and we will also prescribe the membership in regulations. The sort of issues that we are talking about will be —

Ms S Ramsey:

I appreciate that. However, you want us to agree to something with which I have a difficulty. However, if you explain an issue to me next week, I might be OK with it. I am just concerned about having to agree now.

The Chairperson:

Presumably, the Committee will be consulted in the normal way about those regulations.

Mr F Bradley:

The regulations will come through the Committee.

The Chairperson:

We will have a second bite at the cherry on membership.

Ms S Ramsey:

I understand the Department's arguments on the general issues in clause 1. I still have

difficulties, but I could be reassured on those through further discussion on the regulations.

Ms Riddell:

The issue is whether the Committee feels strongly that an organisation should be named in the Bill, as opposed to our proposal, which is that the capacity to bring additional organisations onto the board can be addressed through regulations and clause 1(4). If the Committee feels strongly that another organisation should be named in the Bill, the Department would have to address that.

The Chairperson:

My difficulty is that it is quite clear that the judiciary do not want that. That is not our Department, so we are considering legislation that instructs another Department to do something that it clearly does not want to do. The last thing that we want to do is to drag someone along reluctantly as a token Department of Justice representative, whose Department is putting him or her there only for the sake of it. It would be better if the Department of Justice were to agree to the proposal itself. However, we have another bite at the issue. If we do not like the proposed regulations, we can ditch them. It is up to the Committee. Do members feel so strongly about the issue that they want to put down a marker that we are not happy or are we content to let it go through and wait for the subordinate legislation?

Ms S Ramsey:

I understand both arguments.

The Chairperson:

That is also my problem. It is not a black-and-white situation.

Ms S Ramsey:

If we are forced to make a decision today, I will say that I am not content, and I do not want to give the Department any other problems.

The Chairperson:

We can come back to the issue next week.

Ms S Ramsey:

I would like some clarification. I am not trying to mess you about.

Mr F Bradley:

Do you want clarification about the judiciary?

Ms S Ramsey:

Yes, I do. However, there is also an issue with GPs, NILGA and even the Housing Executive.

Ms Nicholl:

We will bring GPs on board. If there is an issue about the Committee wanting representation from NILGA and SOLACE, we will negotiate further with them.

Mr F Bradley:

I was unaware that NILGA did not represent all local councils, so we have to examine that.

The Chairperson:

Newtownabbey Borough Council pulled out.

Ms Riddell:

As regards GP representation, the Bill names agencies as opposed to professions. GPs will be included under clause 1(5)(a), so it will set out the level of seniority and what person from what agency will be represented on the safeguarding board. One of those board representatives will be the person who represents the interests of GPs, so GPs will be brought on board. However, the intention is that they will be brought onto the board through regulations and will not be listed in the Bill.

Ms Nicholl:

We have some anxieties about bringing NILGA on side in light of some of the information we received today. We have been, and continue to be, in negotiation with the Northern Ireland Housing Executive.

Mr F Bradley:

We have committed to review after 12 months. We also said that the legislation, as it is currently written, gives us the power, with the agreement of the Committee and the Assembly, to prescribe additional organisations to be members. There is an element of flexibility. Again, I emphasise

that we want the chairperson and members of the SBNI, after they have nominations, to identify gaps in the membership that we can address through clause 1(4).

Ms S Ramsey:

Do you know whether the Minister has vetoed any appointment over the past year?

Mr F Bradley:

We have no idea. We have no idea whether any Minister has ever done so. My understanding of the way in which the public appointments process works is that, through a panel, a decision is reached about which people are regarded as suitable. I am not sure that an overall recommendation would be made; that goes to the Minister who then says yea or nay. It is the same process with all public appointments.

The Chairperson:

We will come back to the issue next week. If we feel very strongly about it, we can always propose an amendment. I do not know whether this is territory on which we would normally table an amendment; it is a grey area. I can be easily persuaded by the departmental representatives, because there are strong arguments on both sides. However, we need to think about the matter for a week and come back to it to see whether we are content that it is dealt with under regulation. Apart from that issue, the Department is offering no amendments to clause 1.

We will move on to clause 2. Mr Bradley, you do not intend to give any evidence on clause 2, and there has not been much questioning or comment on it. I have just one question on the wording:

“to co-ordinate and ensure the effectiveness of what is done by each person or body represented on the Board”.

That goes into the issue of a representative of one body or more holding a representative of another agency to account, and that agency being a member of the board. How will that mechanism work in reality? Presumably, it will be difficult for one body to say that it believes that the performance of another body is very weak. How will that be done when both persons work together on the board, day and daily?

Ms Nicholl:

Without rehearsing some of our earlier discussions, much of that is down to the skill of the chairperson and the director. The chairperson will lead the discussions on developing the vision

and the action plan/strategic direction of the SBNI. The SBNI will hold all its member agencies to account on the effectiveness of their actions on the promotion, safeguarding and welfare of children. Clause 12 contains a number of duties about the expectation that those member agencies will put arrangements in place in their organisations to do so under their duty to co-operate with one another.

In the event that any member body of the SBNI seeks to challenge the effectiveness of another body, we anticipate that the board will have a protocol for that. We anticipate that that would be drafted in the membership agreement and that there would be memorandums of understanding or information-sharing protocols with the regulatory bodies and the sponsor branches of each of the bodies represented. We also anticipate that that would happen in a genuine problem-solving approach and that there would be a clear protocol for how the various stages of addressing those challenges are progressed, not least through the annual report, the membership agreement and the chairperson's challenge function, which is with each of the individual agencies. In the absence of being able to address the matter at that level, the SBNI chairperson would take that through to the chairperson and chief executive of the relevant organisation and their sponsor branch. Ultimately, there would be a naming-and-shaming sanction of the annual report.

I do not think that it is intended that there would be a slanging match across the table, in which one department would challenge another department about not meeting its duty. We would like to think that we would develop protocols to address such an issue efficiently, robustly and professionally.

Mr F Bradley:

That does not in any way diminish the fact that many of those agencies have statutory responsibilities that they must continue to undertake under legislation. All the agencies are regulated by independent inspectorates of some description, and their function will not be diminished. Many of the healthcare professionals will be members of regulatory bodies that require that they act in particular ways, and they would put their membership of those professional bodies and their role within that profession at risk if they did not respond in appropriate ways to certain matters. None of that is diminished.

The Chairperson:

Will those protocols be publicly available?

Ms Nicholl:

We can certainly ensure that they are.

The Chairperson:

Therefore, if there is any doubt, people will have a document to which they can refer and say that they are content that a set of protocols is in place.

Mr F Bradley:

The Department will not be parachuting those into the SBNI. We will sit down with the SBNI chairperson and members to try to develop protocols to ensure that there is buy-in from all the stakeholders so that we are confident that they will work. Once the protocols are developed, they will be in the public domain.

The Chairperson:

This afternoon's evidence session will emphasise the role of the chairperson. Clause 2 indicates a role for a chairperson that would not be usual for a public body. I make that point because the SBNI chairperson will be in a slightly different plane than a normal chairperson.

Ms Nicholl:

The competence required of the chairperson of an arm's-length body to problem-solve and negotiate conflict resolution across board members and inter-agency groups is standard for the health and social care bodies of which I am aware.

The Chairperson:

It would be unusual for one board member to be investigated or criticised by another member within the same board.

Ms Nicholl:

I suppose that we would have to raise the issue as to whether it is an investigatory role as such. The issues of investigation and inspection lie with the regulatory and inspection bodies of those organisations. It would be for the SBNI to reflect those issues appropriately, rather than the SBNI engaging in any inspection of a body.

The Chairperson:

I am paid to chair this meeting not to investigate whether the SDLP or Sinn Féin are adequately performing the role of scrutinising health and social care. A chairperson who adjudicates on the work role of an organisation takes his or her role onto a higher plane. However, as we go through the Bill this afternoon, the issue of the chairperson, who will undertake very important work, will emerge time and time. I hope that the chairperson will not do what I do, which is to look at a list of names and point at the next member around the table to speak. That leads me on neatly to Sue.

Ms S Ramsey:

In an ideal world, the legislation is very good, and I commend the Department for it. Over the past number of years, cases have proven that, sometimes, statutory agencies do not talk to one another, never mind challenge one another or hold one another to account. Without getting into it, the Donagh case is a recent example. I would love agencies to challenge one another around the table because that shows a duty of care. If one agency believes that another agency or Department is not playing its part, it may feel that it needs to hold it to account.

I take on board what Fergal said about protocols being developed. However, as the Chairperson said, it is important that the SBNI chairperson and deputy chairperson are the relevant people for the position and have the authority to do that because protocols will be developed. If the legislation is passed as it is, we need to ensure that protocols are in place from the very start. I know that we will come to the issue of the board's annual reports. There is an issue about the independence of the board, the chairperson and the annual reports. I respect and take on board what you are saying, but we do not live in an ideal world. The Donagh and McElhill cases are two recent examples that have proven that to me.

Mr F Bradley:

When we last gave evidence to the Committee, one of the points that we made was that, in times of financial difficulty, the temptation is for agencies to revert to their core functions. Inter-agency working may suffer.

Ms S Ramsey:

To protect themselves.

Mr F Bradley:

That is not to protect themselves, but they could revert to their core statutory functions. In those circumstances, inter-agency working may be vulnerable, which is why, paradoxically, we think that this is the time to move ahead with the SBNI. The reasons for doing it are stronger and will focus on cross-agency working.

The Chairperson:

Are you happy enough?

Ms S Ramsey:

I am never happy, Chairperson.

Ms Nicholl:

We are considering proposing an amendment to clause 6. Some of the organisations gave us to believe that they may be reassured by an amendment to clause 6 that stipulates the requirement for annual reports to be published, a list of all reports that are submitted to the SBNI and a list of all directions that are given out by the SBNI.

The Chairperson:

We will come to that when we discuss clause 6. We have a number of questions, but that has perhaps headed some of them off at the pass, as it were. I want to get clause 2 out of the way. There has not been a great deal of debate or evidence given about clause 2. Are there any questions on clause 2? Are members content that we allow clause 2 through? Fergal, I think that you have a comment —

Ms S Ramsey:

For the record, I do not want to be seen to be stopping the legislation, but the protocols are important because they will determine how the process works on the ground. If we agree on the clause going forward as it is and are not happy with the protocols, what input do we have? They are all interconnected.

The Chairperson:

There will not be subordinate legislation; there will simply be guidance for the SBNI. Our role is somewhat limited, but I assume that the protocols are based on similar situations in GB.

Ms Nicholl:

We propose to put in place guidance on clause 12 that is similar to the GB arrangements. To answer Sue's question: if the Department, through its accountability arrangements, felt that the protocols were insufficient or not robust enough, under clause 5, we have the capacity to bring forward guidance on any of the functions of the SBNI. If we felt that it was not adequately undertaking those functions, we could guide it and regulate for it under clause 5.

The Chairperson:

Are members content that we allow clause 2 to go through as it stands, with those assurances?

Members indicated assent.

The Chairperson:

We will move on to clause 3.

Mr F Bradley:

I will not read from my speaking note, because it became a bit disjointed. I will address a number of points that were raised in evidence. In relation to clause 3(4), which deals with case management reviews, a couple of bodies suggested that we should add other reviews to that clause. The Department does not want to do that, because it would mean that the SBNI could not undertake other reviews unless we prescribed them, which would be a significant hold on the independence of the SBNI and its ability to operate flexibly and take forward work in whatever way it wishes.

I draw the Committee's attention to clause 3(10), which states:

"The Safeguarding Board may also engage in any other activity that facilitates, or is conducive to, the achievement of its objective."

That clause gives the SBNI a huge amount of flexibility to undertake whatever work it needs to do in order to discharge its functions without reference to the Department or the need for the Department to prescribe exactly how it will do it. That is quite a powerful clause in that it asserts the independence of the SBNI in how it will work and what it will do. That is a critical issue.

The Chairperson:

It is interesting that although all those who provided evidence read clause 3(10), most of them picked up on the issue of a much wider power to carry out investigations well beyond case management reviews. They did not want the SBNI simply to react to individual cases. If there were a much wider theme that was causing concern, the SBNI could immediately initiate an investigation of its own volition, yet those who provided evidence did not see that power outlined in clause 3(10).

Mr F Bradley:

We will talk to stakeholders about that subsection and what it means. We considered the possibility of including other reviews under clause 3(4) but, as I said, that would mean that the SBNI could not undertake any other type of review unless the Department prescribed it.

The Chairperson:

Why could it not be left totally open-ended, so that the board could undertake a review either if the Department prescribed it or if the board wanted to do it.

Ms Nicholl:

Our legal advice is that we can take on some of those helpful suggestions given in the evidence sessions. We can address all those in the regulations. Under clauses 3(4) and 3(5), which deal with the regulations for case management reviews and the regulations governing child death review processes, we can ensure that we prescribe for such matters as ensuring that action plans are in place and the lessons learned are disseminated. Under clauses 3(7) and 5(1), we can issue regulations on the way in which the SBNI undertakes its functions in relation to communication and engagement with children and young people.

In essence, clause 3(10), in our view and in the view of our legal advisers, enables the SBNI to cover as many functions, other than case management reviews and those listed in Bill, as it may seek to undertake in order to meet its function and objective. The powers are drafted in the legislation to bring forward subordinate legislation to take account of all those helpful suggestions. The primary legislation will tell us what we want to do, and the subordinate legislation will set out how we want to do it.

Mr F Bradley:

We learn as we go along, the same as everyone else. We asked about the possibility of listing specific types of work in clause 3(10). The advice was that, if some types of work are listed but others are not, that would call into question the generality of the power of the SBNI to undertake any work that it wants in order to discharge its function. That is the conundrum. The draftsman tells us — which is what we understood originally — that clause 3(10) states that the SBNI will do any work it wants or feels it needs to do, in whatever way it wants to, in order to discharge the safeguarding function. It does not have to refer to the Department to ask what it should do or how it should do it.

The Chairperson:

Therefore, if the SBNI wishes to carry out a major review of child protection in borstals or primary schools, for example, it could do so under that clause? There is no restriction on the board whatsoever?

Mr F Bradley:

It could do so as long as the review related to one of that wide range of functions.

Ms Nicholl:

We propose to set out clear memorandums of understanding and information-sharing protocols with existing regulatory bodies. An existing body is already tasked to carry out inspections of child protection in children's homes. The SBNI is required to meet its functions and objective. The issue is about inter-agency working arrangements. Any review would consider how those agencies work together and the policies that underpin that. It would be clear about the work of the SBNI vis-à-vis the work of the regulatory bodies overseeing its members.

Mr F Bradley:

That power enables the board to undertake whatever sort of review it wants.

The Chairperson:

When the Minister makes his statement to the House, it would be useful if it included a line about that. That could be quoted in a legal situation.

Mr F Bradley:

One reason why that power is provided is that we cannot actually anticipate for all time, or even for the next number of years, what sort of issues the SBNI might want to examine. Previously, we have used a particular example. When I came into my job seven years ago, we did not talk about Internet safety, digital technologies or safeguarding on social networking sites, as we do now. Our approach, focus and concerns change over time. In 2010, an organisation could have an excellent system and agencies could work well together. In two years' time, however, something might happen to reverse that situation totally. Therefore, the SBNI needs to have a fair amount of flexibility to respond to such events. The clause gives it that flexibility to do whatever it has to do in support of those functions.

Mrs O'Neill:

I listened to your comments. I accept that primary legislation sets out what you want to do and secondary legislation sets out how you want to do it. NILGA HAS suggested that the requirement to produce an action plan be included at the end of clause 3(4). Of course, an action plan and recommendations will naturally follow a case management review. However, I am still not convinced by your argument about why that requirement could not be included in the clause.

Mr F Bradley:

An action plan is part of a case management review. The monitoring of an action plan's implementation is part of a case management review. Regulations will specify those requirements. They will set out the need for an action plan and for the SBNI to monitor its implementation.

Ms Riddell:

They will also set out the need to disseminate key learning from case management reviews. However, as Patricia pointed out, under clause 5, the Department has the power to make regulations on the manner in which the safeguarding board exercises its functions. Therefore, the board's functions will be those that are listed from clause 3(1) to 3(10). The Department also has the power under clause 3(4) to prescribe functions specifically for case management reviews, which would include, for example, criteria and conduct. That is why we created a power under clause 3(4) that relates specifically to case management reviews. Therefore, as Fergal says, it is our intention that any regulations that are drafted will stipulate that there must be action plans, follow-up and dissemination of key learning from those reviews.

Mrs O’Neill:

I also want to ask about clause 3(3). The Department of Education suggests that it should also be amended. Clause 3(3) states:

“The Safeguarding Board must keep under review the effectiveness of what is done by each person or body represented on the Board”.

The Department of Education wants its scope to be widened to ensure that cross-agency co-operative working is legislated for in the Bill.

Ms Nicholl:

Again, I refer you to clause 3(10). Rather than the Department including in the Bill everything that we believe that the SBNI needs to or should do, and to future-proof it into now and beyond, clause 3(10) gives the SBNI maximum flexibility to undertake whatever activity it requires to do with regard to its functions and objective.

Mr F Bradley:

As I said, the more that we specify — to quote legal advice — the more that calls into question the generality of that power, basically, to do anything: if everything that we want to do is so important, why is it not included in the Bill? We cannot anticipate everything that the board will want to do.

The Chairperson:

I want to move on to an issue that will come up time and time again. It relates to the first part of clause 3(9)(c), which is the phrase:

“subject to the approval of the Department”.

A whole raft of groups and individuals state that that provision could fetter, control and bridle the SBNI. Why is it required? Is there a way in which it can be toned down?

Mr F Bradley:

I will explain why it is required, and I will then say how it can be toned down to address concerns. It is there primarily because the SBNI is not a legal entity in its own right. It cannot be sued. Ultimately, the buck for whatever the SBNI produces will stop with the individual members of the SBNI, the Public Health Agency — which is its host body — and the Department.

As to toning it down, we listened to the evidence, and it was never our intention to use the subsection as some sort of censoring device; it is, rather, a safety mechanism. It is not to protect special interests or the interests of the Department.

The Chairperson:

Chief Whips tell us that as well: they are only out to protect us and look after us.

Mr F Bradley:

We really, really mean it. *[Laughter.]*

Having listened to the evidence, we have a suggestion to make in the interests of openness and transparency. This affects clause 3(9)(c) and clause 4. It will be helpful if I deal with both together.

The Department has direct power to issue directions to a number of bodies, but it is a rare occurrence. We propose that the Committee consider an amendment that would require that all departmental directions to the SBNI must be included in the annual report, with details, including the dates, of any reports submitted to the Department for publication. We asked about prescribing that in the Bill but have been told to do it in regulations. Everyone will be able to see what had been sent to the Department and what had been published. It is not our intention to censor. The only areas in which we have concerns are issues such as factual accuracy, anything that raises concerns about named individuals, and so on. That is a way to bring openness and transparency so that, if something is not published, the Committee would be able to summon departmental officials and ask what is going on. We have said all along that individual member agencies would not go along with any attempt at suppression. Suppression was never our intention. We hope that this offers reassurance. We could bring forward an amendment to clause 6, which prescribes that both must be published every year.

The Chairperson:

Why do you not use the words:

“subject to consultation with the Department”

rather than:

“subject to the approval of the Department”?

You intend to be the friend of the SBNI and protect it from the big bad world out there. Why does the SBNI have to be so starkly subject to the “approval” of the Department, which still adds

to the impression that the board comes, cap in hand, to ask the Minister whether it can do something or other? What is wrong with the word “consultation” rather than “approval”?

Mr F Bradley:

I do not know. I will have to ask

Ms Nicholl:

I suppose the intention was to cover occasions when, rather than “consult” but “publish and be damned”, it was a case of factual inaccuracy or defamatory information, and we would not approve publication.

Mr F Bradley:

We do not think that this is likely to happen, but it is a safety net. We want, and are not afraid of, openness and transparency. We are happy for that information — what has been sent, what publications have been prepared and what directions have been issued — to be in the public domain. We are open to challenge on what we do.

The Chairperson:

The problem is that that will happen a long, long time after the event. If that happens in April and the report is for the financial year, we will not find out about it until 18 months later.

Mr F Bradley:

The worst-case scenario is that you find out about it for this scenario. As we said, being a member of the SBNI does not preclude member agencies from doing what they normally do: speaking out, lobbying, canvassing and bringing issues of concern to the attention of other bodies.

As to issues that concern safety in other organisations — such as the trusts, the police or the criminal justice system — there are statutory responsibilities on those agencies. Inspectorates are responsible for inspecting those agencies, and they also have responsibilities to individuals. We would expect them to share information. If we were trying to suppress something about a safeguarding matter, we would expect the chairperson to be beating down the door of the Minister.

The Chairperson:

Yet another role for the chairperson.

Mr F Bradley:

Yes. We would also expect member agencies to act. We would not be able to suppress such a matter. Any chairperson of any of our public bodies would be expected to raise an issue of major concern at that level.

Ms Nicholl:

Some of the evidence from one of the local safeguarding children board chairpersons in England asserted that that issue could arise in their safeguarding board and that it would be the subject of lively debate. We anticipate that that would also be the case here, and there would be a lively debate on any consideration of not publishing or approving a report. The debate is the important aspect; it should be had.

The Chairperson:

The next issue relates to clause 3(7) which states:

“The Safeguarding Board must take reasonable steps to promote communication between the Board and children and young persons.”

No doubt, you read the evidence that was given to the Committee by Voice of Young People in Care (VOYPIC) and the GB representatives. There was also a great deal of material from sources such as the Children’s Commissioner, Barnardo’s and the Department of Education, which all requested that the Department beef up that provision.

Mr F Bradley:

We are happy to do that. We spoke to the draftsman and considered the possibility of putting more in the Bill. However, the draftsman suggests that we should use clause 5, and the regulations therein, to take up most of the points that were raised in evidence on how the safeguarding boards must consult with children. We propose to take on board many of the issues that were raised in evidence and put them into the regulations.

The Chairperson:

That will mean the Committee’s putting much trust in you as far as the regulations are concerned. We will agree to something, and the regulations will be introduced much later.

Mr F Bradley:

We will see what we can do to offer reassurances on that, but that is our intention. We spoke to

the draftsman about what should be in the Bill and what should go into the regulations. We were advised that that is not for primary legislation.

We have no problems with many of the issues that were raised in evidence, and we are happy to do something. We considered the legislation that deals with other bodies. We could also consider the specific details of the types of issues that were raised in evidence and which we could put into the regulations. However, until we get there, you will not be able to see them.

The Chairperson:

Another difficulty with regulations is that we cannot prepare them. We get what the Department lays down, and we can either accept or reject them. Indeed, it is much easier for us to amend legislation than amend regulations. How can we trust you? You could put all this through, and the regulations may not be particularly palatable.

Mr F Bradley:

All I can say is that we considered the issues relating to clause 3(7) and other issues. We are happy to accept much of the evidence, but when we spoke to the draftsman, we were advised to put it into regulations rather than in the Bill. Other than that, I do not know what answer any official could give. It is the way that the process works: anything that must be set out in regulations will be dealt with at a later date when the regulations are made.

Mr Easton:

Perhaps you could write to the Committee and tell us what you intend to put into the regulations. That would reassure us.

Mrs O'Neill:

Yes; you could do that on all the issues that have been raised.

Mr F Bradley:

We would have to go through the transcripts. However, we could go through quite a lot of it and put it on the record. Would that offer sufficient reassurance?

Ms S Ramsey:

We want that from the Minister.

The Chairperson:

In his own blood. *[Laughter.]*

Ms S Ramsey:

Officials can move on.

The Chairperson:

All the organisations that gave evidence said that they want an amendment to be made to that clause. Would it be too revolutionary to use a phrase such as “must ensure” to try to beef up the provision? To “take reasonable steps to promote” is too weak. There must be a way to strengthen that line, in addition to the regulations.

Mr F Bradley:

We can look at that. The phrase “take reasonable steps” is lifted from the legislation that deals with the Children’s Commissioner.

The Chairperson:

She is one of the people who said that that phrase is too weak.

Mr F Bradley:

I noticed that.

The Chairperson:

Does that tell you something?

Mr F Bradley:

I think that “reasonable steps” has a particular standing in legal parlance.

The Chairperson:

There must be a halfway house that satisfies all those groups. There is a raft of them, and they are all unhappy with the wording, including those that have it in legislation already; that tells you something. There must be a way. We could perhaps use a phrase such as “an active duty to engage”, which could then be beefed up through the regulations.

Ms Nicholl:

All the legislation to date, including the regulations, has been widely consulted on with our reference group. We certainly want to take those issues further with the reference group to find out whether it could be assured that the regulations will set out and clearly prescribe how the SBNI will address the issues of engagement and communication with children. Would the Committee be content with that?

The Chairperson:

You have not given me an argument as to why it cannot be in the Bill. We are talking about a five- or six-word amendment. As it stands, it does not really compel them to do anything.

Mr F Bradley:

We have been running all the suggested wordings past the draftsman. Is there any one of those suggestions from those who gave evidence that the Committee is minded towards?

The Chairperson:

The problem is that we have a plethora of suggestions. The Belfast Health and Social Care Trust suggests the use of the words:

“must establish appropriate processes and mechanisms to ensure”.

Barnardo’s states:

“The Safeguarding Board must promote communication and consultation with children and young people.”

The Northern Ireland Children’s Commissioner states that there:

“should be an active duty to engage with children and young people”.

Quite clearly, all those are inclined to move away from the use of the words “reasonable steps”.

Mr F Bradley:

I think that is where we will get to with the draftsman. Of the examples, one is about communicating, but it does not necessarily deal with listening; the other is about listening but not necessarily communicating. The Department of Education suggestion is that:

“The Safeguarding Board must communicate effectively with children and young persons about its work and keeping safe.”

That does not necessarily involve listening. The suggestion of the Belfast Trust was that the words “take reasonable steps to promote” should be replaced with:

“must establish appropriate processes and mechanisms to ensure”.

When we went through all those suggestions with the draftsman, there were all the different parts of what is required for engagement with children. Some of them emphasised some issues and some emphasised others. What we are saying is that we could do that with the regulations and try to reflect all aspects of engagement, including listening and communicating, and altering messages communicated to children to reflect the different ages and levels of ability and disability, and so forth.

Ms Nicholl:

It also boils down the fact that, in relation to the means by which the SBNI will engage with children and families, the Department was concerned to ensure that we worked with, for example, Children in Northern Ireland (CINI) and VOYPIC. We set up a seminar with a local safeguarding children board in Barking and Dagenham, and representatives from here travelled over. It is through those auspices that VOYPIC was able to deliver a telling model of how we might undertake that work. We have been commissioning that through the voluntary sector, so there is certainly an indication of our intent to get the legislation right. Some of the evidence suggests how we might strengthen the clause, and our legal advice is that the way to do that is through regulation.

The Chairperson

There is a smoke-filled room somewhere with a dark, shadowy figure called the legal expert who gives advice. We have no idea who that person is or why he is saying some things. He probably wants to protect the Department. Two great shields are health and safety and legal advice; a multitude of sins can be concealed using those phrases. Your legal adviser clearly has a vested interest in doing the best for your Department, and I do not know if his interests are those of the young people who will be directly affected.

Mr F Bradley:

The draftsman is not there to advise the Department on policy; he is there to try to produce legislation that is as tight as possible. We are happy to consider any way in which it can be strengthened. Our difficulty is that different suggestions emphasise different aspects about engaging with children. We need to come up with a clause that deals with all those without the exclusion of others. As I said, that is about listening to children, communicating messages to them and doing so in a way that takes account of their different ages and levels of ability and disability, and so forth. It is about finding a mechanism that takes care of all that. In the

regulations, we can stipulate, in much greater detail, how that will be done to cover as many of those elements as need to be covered. It is difficult to do it all in one clause in the Bill. We are considering that type of enabling measure. We are open to suggestion on how to tighten and strengthen the provisions.

The Chairperson:

The people sitting around this table could come up with better wording, but I do not know whether we could do it within the next five minutes. We may have to come back to the issue next week. It may be incumbent on the Department to consider different wording.

Mr F Bradley:

We looked at that. As I said, it is about coming up with a phrase that deals with everything in the Bill. We will go back again —

The Chairperson:

I am sure that the legal adviser, if prompted, could help you. What do members think? Are we too far down the road? There are several options. Option one is that we let it sit as it is. Option two is that we ask that something more appropriate be drafted. I am certainly not happy with it as it is drafted, but I do not —

Ms S Ramsey:

I agree.

Ms Riddell:

Is the issue about the terminology “reasonable steps”? Does the Committee see that as being too weak?

The Chairperson:

Yes.

Ms Riddell:

If those words were removed, clause 3(7) would read:

“The Safeguarding Board must promote communication between the Board and children and young persons.”

That would still allow the regulations to set out how that will be done.

The Chairperson:

That is a step in the right direction, but we need to go through all the submissions carefully to see whether you can come up with something better.

Ms S Ramsey:

In general, the whole Bill is written in regulations and protocol.

Mrs O'Neill:

What is "reasonable"? It is very much open to interpretation. You are right, Chairperson. When we scrutinise legislation, we are always told about legal opinion. We should not just bow to that. Perhaps legal advisers need to talk to us about why they think that we cannot do something.

Ms S Ramsey:

Is that your legal advice?

Mrs O'Neill:

Yes.

Mr Gardiner:

That is a judge speaking.

The Chairperson:

Do we ever get a chance to speak to those legal people?

Mrs M Bradley:

Judge Judy.

Mr F Bradley:

We can check with the draftsmen to find out whether they are happy for us to share the material that they gave to us.

Ms S Ramsey:

Take them out of their wee room and into the real world.

Mrs M Bradley:

Tell them that you are being reasonable.

The Chairperson:

It is quite clear that the Committee is not content. We want to revisit the clause.

Mr F Bradley:

We saw nothing in the evidence with which we were unhappy. We are quite happy to reflect the sentiments that were contained in the evidence. It is about finding a way to cover everything. Regulations were suggested. If the Bill could mop it all up, we would be equally happy with that.

The Chairperson:

I think that the Committee is content with clause 3, with the exception of clauses 3(7) and 3(9)(c), although you gave us some reassurance in that regard. We will move on to clause 4.

Mr F Bradley:

Similar clauses to clause 4, which deal with directions, feature in various pieces of legislation. In the several years in which the Regulation and Quality Improvement Authority (RQIA) has existed, I do not think that a direction has ever been issued from its sponsor branch. We talked to some of the reference groups, stakeholders and people who gave evidence to the Committee. Based on our discussions with them, they would be reassured if the legislation allowed us to prescribe that directions must be included or published in the annual report. If the Committee wants something done in that regard, we can consider it, but we have no problem with openness and transparency around matters for which we issue directions. It will be about reminding the SBNI of its core functions or, more likely, asking it to focus on a specific safeguarding issue about which we have concerns.

The Chairperson:

Do members have any questions about clause 4? Will you propose an amendment, Fergal? Will there be any changes to the wording?

Ms Nicholl:

There will be an amendment to provide the Department with the power to issue regulations on the

annual report, expecting that the annual report will then contain the matter of the directions having been issued and any publication of reports.

Ms Riddell:

That amendment will be to clause 6, not to clause 4.

The Chairperson:

In evidence, the bulk of discussion was on the issue of directions. Do members have any other questions on clause 4? We aim to be finished by 3.30 pm. We may have time to discuss another clause — perhaps two, because there is not much in clause 5.

Ms S Ramsey:

Are you saying that if clause 6 is amended, it means that annual reports will be published?

Ms Riddell:

Annual reports would include details of directions that the Department has issued to the SBNI. They would relate only to the exercise of the safeguarding board's functions.

Ms S Ramsey:

Therefore, any directions from the Department would be published?

Ms Riddell:

Details of those directions would be published in annual reports under clause 6.

Mr F Bradley:

As would details of any reports that are sent by the SBNI to the Department.

Ms S Ramsey:

Therefore, if the SBNI wants to publish something, and the Department says that it does not want to publish it —

Mr F Bradley:

The annual report would record the fact that the board had sent a report to the Department. People would know that the report had not been published. I anticipate that information about the

fact that the Department did not want to publish a report would be made public well in advance of the annual report.

The Chairperson:

It may not be simply that black and white. Alterations could be made to a report. How would the public know whether that had been the case?

Mr F Bradley:

Communications between the Department and the SBNI would be a matter of record because they would be reflected in the minutes of the board's meetings.

Ms S Ramsey:

That is assuming that meetings would be constantly scrutinised.

Mr F Bradley:

SBNI members include a number of non-statutory bodies and agencies that are not within the gift of any Department.

The Chairperson:

A few months ago, we had a classic example —

Ms S Ramsey:

That depends on whether the Department funds those bodies and agencies.

The Chairperson:

Allegedly, a senior departmental official tried to amend the report of an independent body. It took someone to ferret away following a request that was made under the Freedom of Information Act 2000 for that to be dug out and exposed. It would never have come out in a million years had that request not been made. The independent body did not take it upon itself to say that it had, allegedly, been nobbled.

Mr F Bradley:

I cannot comment on that case. I can say that the board submitting the annual report would include organisations such as the NSPCC and other voluntary and community sector

organisations, lay people and a number of people from other organisations that are not within the gift of any single Department nor under the leadership of a Minister. Therefore, it is a different scenario from that which you describe. I cannot comment on what happened in that case. However, had that report been produced by a group that included that diverse range of people, all those people would have known that something had happened.

The Chairperson:

Is there provision for some of the SBNI's meetings to be held in public?

Mr F Bradley:

I would have thought so. I imagine that the situation would be the same as it is for the Committee: discussions on certain issues would take place in closed sessions for particular reasons — for example, if a case involves a named family or if children appear to give evidence. It should, however, be a fairly open and transparent process.

The Chairperson:

When will we see the wording of what is promised?

Mr F Bradley:

With regard to?

The Chairperson:

With regard to any amendment that you have suggested.

Mr F Bradley:

We will try to get as much detail as possible to you by next week. We still have to clear a few bits and pieces. We will do that as quickly as possible. I hope that it will be ready by next week, or by the following week at the absolute latest.

The Chairperson:

To protect the Committee's interest, we reserve the right to go back to a clause if we are not happy with the wording that has been suggested.

Mr F Bradley:

We fully accept that.

The Chairperson:

That will keep us right.

Are members content that we leave clause 4?

Members indicated assent.

The Chairperson:

There does not seem to have been much comment on clause 5. I wonder whether we should agree it or park it until next week. Clause 5 deals with the general functions of the safeguarding board.

Ms S Ramsey:

We heard that some subsections of clause 6 will deal with clause 3. Is there any way that any of the proposed amendments could impact on any of the other clauses that we are dealing with? Will any of the proposed amendments impact on clause 5?

Mr F Bradley:

No.

Ms Nicholl:

Obviously, we will discuss any proposed amendments with the Office of the Legislative Counsel, which will look at the potential impact on other clauses.

Ms S Ramsey:

It is important that we get some idea about that. We may agree to the amendments and find out that they have unintended consequences.

The Chairperson:

We are going to have to call it a day at this stage. We will commence clause 5 at next week's meeting.

Mr Gardiner:

Is there much in clause 5? Perhaps we could wait if that would help us to get through it.

The Chairperson:

There is one issue relating to clause 5. Rather than rush through it and keep our next set of witnesses waiting, we will call it a day here.

Mr Gardiner:

We could do it in five minutes.

The Chairperson:

That will also give us the opportunity to see wordings, which will be helpful. Thank you very much for your help. The session has been informative, and we look forward to meeting again next week.