



Northern Ireland
Assembly

COMMITTEE FOR
HEALTH, SOCIAL SERVICES AND
PUBLIC SAFETY

OFFICIAL REPORT
(Hansard)

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

21 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
Dr Kieran Deeny
Mr Alex Easton
Mr Tommy Gallagher
Mr Sam Gardiner
Mr Paul Girvan

Witnesses:

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

The Chairperson (Mr Wells):

We have some stuff to go through here, but I will ask the experts on this scheme to come forward. It is the same team again. I am sorry about this, Fergal; we have had a lot of material come in, and we think that we need to have a sort of confidential chat about it before we bring you forward for your questioning.

I am afraid that there is a lot of material here to consider, and I want to just go through what

we have. First, there is the clause-by-clause summary. It is up to date. It is going to be difficult for members to keep all these documents in front of them. There is the Hansard report from 17 October 2010; then there are the two advertisements, one for the chairperson of the safeguarding board and one for the Northern Ireland Social Care Council. Then we have a very interesting letter from Kath Tunstall. That has been tabled; and the one from Sue Woolmore is in your packs. They give their views on the proposed status and pay of the chairman of the safeguarding board.

The Committee Clerk has a briefing paper for us on the chairperson's appointment and salary, and there is a further memo from the Committee Clerk which is a discussion of clauses 1 to 4. That is where we got to last week. What makes this complicated is that a helpful letter arrived from the Department yesterday evening, at about 6.00 pm. That has been tabled, and it outlines various changes proposed. It came too late, after we had all gone home. There has not been time for me and the Committee Clerk to talk through it and think through its implications.

Clearly, the Department has been listening on some points and has come forward with changes, but it is very much a moving target. We have not been able to put that into the clause-by-clause section or into any of the briefings that went out in the packs. That makes this quite a complex session to chair. Has everybody got a copy of the letter dated 20 October?

As members can see, it is quite complex. It is from the Minister. This may be complex, to put it mildly, but at least we are moving in the right direction. To make matters even more complicated, clauses 1 to 4 are the ones that generated the most controversy and difficulty in the Committee. Had it been the other way round, it might have been easy, but we are now dealing with the substance of the Bill.

Has everybody managed to assimilate all the material? You have all got the Minister's letter and the Committee Clerk's list of amendments for ease of reference, which has also been tabled. Let us try and go through this privately, as it were, and then we will tackle the representatives from the Department.

Before we go into the changes, can we go back to the memo that the Committee Clerk wrote on 18 October? This is an attempt to recap where we are.

Clause 1 deals largely with the membership of the SBNI. The Committee was initially concerned about the fact that the judiciary is not named in the Bill as a member of the SBNI. We had considerable discussions on that at the previous meeting, and it was quite clear that the Department was not happy about adding the judiciary. Moreover, it was quite clear that the judiciary does not want to sit on the body. The Department's response is that the agencies that are listed in the Bill are organisations that have a statutory responsibility to deliver services to children and young people and that there will be an ongoing review into membership. The Department has the power under clause 1(3)(j) to prescribe additional people and organisations as members of the SBNI as required. Therefore, if it becomes a pressing issue and the opinion on it changes, someone can be added to the board.

Clause 2(1) is about co-ordinating and ensuring the effectiveness of the work of each body that is represented on the board. There could be issues raised about the independence of the judiciary if it sits on the SBNI. Judge Weir indicated that he is content that the chairperson of the SBNI sits on the Children Order Advisory Committee. That is yet another duty for that chairperson and gives that person a different level of responsibility to that of any other chairperson. The SBNI gives the judiciary the opportunity to engage with stakeholders on the operation of the law and on how the courts operate, and clause 1(4) allows the SBNI to ask for persons or bodies to be added to the membership if it feels that they are required.

I have had a chance to look at that and to consider the evidence from last week. In my opinion, that assurance is probably enough to ensure that we do not need to divide or table an amendment. However, that is only my opinion. More importantly, if the judiciary is not prepared to throw its weight behind the Bill enthusiastically, it will be very difficult to ensure that it performs that role. You can lead a horse to water, but I cannot see how you can make it drink on this occasion. That was a sticking point for some members last week. Does anyone feel that we need to pursue that further with the Department?

Mrs O'Neill:

I agree with you. As you say, you can take a horse to water, but you cannot make it drink. There is no point in us pushing for a body to be represented on the board if it is not wholeheartedly involved. We want people who are wholeheartedly involved. The fact that the chairperson of the SBNI can sit on the Children Order Advisory Committee gives a link-in at least.

The Chairperson:

He is going to be a busy man, or woman. Are we happy, or does anyone want to give the Department officials a grilling? We should not give them a warning about that; we should ambush them as we normally do. Are we happy enough to let that sit?

Dr Deeny:

Is the judiciary saying that it wants nothing to do with the board?

The Chairperson:

No. Judge Weir, who is a very senior member of the judiciary, said that he sees a potential conflict of interest. Do members have any thoughts on that?

Mr Gallagher:

I agree with you. If the judiciary does not want to be on the board, there is no point in us fighting any further on that front.

The Chairperson:

If the situation becomes unworkable and it becomes quite clear to everybody, including the board members, that it is not effective without the judiciary, there will be an opportunity to add such a person without primary or secondary legislation. We are not closing the stable door completely.

Dr Deeny:

It is not just about having members of the judiciary on the board; we need some way to communicate with them to hold members of the judiciary to account. I have come across some decisions where people, through the courts, are allowed back into homes even though health professionals and social workers say that it is dangerous. I have heard it said numerous times before that some people are out of touch and that their view differs with everybody else's view, yet a person is allowed back into a home because of a judgement that is made in court.

The Chairperson:

The Children Order Advisory Committee (COAC) is the opportunity for that liaison between the two groups. The chairperson will be on that automatically. If he has those concerns, they could be raised at that body. That is an important suggestion.

Dr Deeny:

The terrible fire in Omagh was one example. The man responsible had two previous sentences. Everybody asked afterwards how in God's name he was ever allowed back in to a home with children. The chairperson must be accountable. If they make a decision that is not in agreement with everybody else who is involved in the care of children, they should be brought to book or asked to explain the decision. The judiciary should not feel that it is on its own, that it can do what it wants and that it is nobody else's business.

The Chairperson:

The COAC should cover that. Do members have any other thoughts? We move on to the concern about a medical representative not being named on the face of the Bill. The Department's response was that it has been agreed that a member of the Health and Social Care Board who is named on the face of the Bill will represent the interests of GPs on the SBNI. The membership agreement will specify that the person who is on the SBNI will represent the interests of GPs rather than the trusts. That is important. The membership agreement will also specify that the member will create systems and processes of communication to enable him or her to represent GPs' interests sufficiently. However, the representative will not be able to commit all GPs to particular courses of action because GPs work as independent contractors.

As a consequence of the Minister's letter of 20 October, he now advises the Committee that the regulations under clause 1 will provide for GP representation on the SBNI. The previous position has changed. I think that that satisfies members' concerns that were expressed last week. The Department listened to those, and I think that that is a reasonably good resolution. We can safely set aside that issue.

As regards the issue of representation, the Department said that it is currently negotiating with the Housing Executive about whether it should be named on the face of the Bill as a member agency. Some members felt quite strongly about that last week and others were fairly neutral. In the overall scheme of things, although the Housing Executive has a role, it certainly would not be as primary as some of the other agencies. The latest is that the Minister is negotiating with officials from the Northern Ireland Housing Executive (NIHE). He said that it is likely that inclusion will be dealt with under clause 1(3)(j), which gives the Department the power to prescribe "such other relevant persons or bodies" to be added to the board. I do not see the NIHE as being as important as the GPs and the judiciary. It has a role, of course, but it is implicit in the

Minister's letter that if things do not work out, other agencies can be added later. He does not propose to amend clause 1 to have the NIHE named on the face of the Bill.

How does the Committee feel about that? Are members neutral on this?

Members indicated assent.

The Chairperson:

I suspect that we will not propose an amendment to clause 1 to cover that. There was also a concern about the process for local government representation on the SBNI. The Department's response was that two options are being considered. The first was to have two representatives from SOLACE, which I am sure that you all know is the Society of Local Authority Chief Executives, and the second was to have one representative from SOLACE and one from the Northern Ireland Local Government Association (NILGA). One of the problems is that NILGA does not technically represent all of local government. If one were an authority on the subject, one would know that Newtownabbey Borough Council is not covered. We would not want to exclude anybody from that council from potentially being on the board. Would that not be terrible, Mr Girvan?

Mr Girvan:

It would be very bad.

The Chairperson:

We do not know why that council is no longer a member of NILGA, but that is the situation.

Mr Girvan:

That is a debate for another day.

The Chairperson:

I do not think that there is anything about that.

No amendment to that has come back from the Minister.

Mrs O'Neill:

For other bodies, the public appointments process is used for advertising for councillors to come on board. Can that be used in this case? Councillors could be selected on merit.

The Chairperson:

Yes. It could be done through standard public appointment procedures, and councillors could apply. I think that there is precedent for that in the appointment processes for other public bodies.

Mrs O'Neill:

That will also attract only those who are genuinely interested in the posts.

The Chairperson:

Yes; rather than Tommy or Seamus being nominated at some council AGM to do it.

Mrs O'Neill:

That would never happen.

The Chairperson:

We will raise that suggestion with officials. We are now getting down to the minor aspects of board membership, rather than anything that would make or break it. SOLACE still represents all 26 councils. I do not think that there is any problem there.

We will move on to discuss amendments to clause 2, which sets out the objectives of the SBNI? There was concern as to how the members of the SBNI would hold one another to account. The Department's response was originally that the skill of the chairperson and the director would play an important role. A protocol would be developed for one member of the SBNI to challenge another member, and that would be part of the membership agreement. The protocol would not take the form of subordinate legislation. If the Department believes that the developed protocols are insufficient, it can bring forward regulations under clause 5 to deal with this issue. The organisations in the SBNI are already regulated by independent inspectorates, such as the RQIA. The protocols will be developed by the Department in conjunction with the chairperson and SBNI members and will then be put into the public domain.

Last week there was concern that the Department was putting a lot of trust in protocols or

subordinate legislation. One Member — and I think that it was the Deputy Chairperson — suggested that subordinate legislation could be rejected or accepted in its entirety, but the Assembly would not have the normal powers to amend it, as it would have with a Bill. Do members have any thoughts on that issue? If not, we will come back to it.

Last week, members were generally content, and nothing of any significance has come back from the Department. Therefore, I think that we are content to leave that subject.

The Department has not proposed any amendments to clause 3. Are we left with any outstanding issues on it? There was the issue of the powers of SBNI. There was concern that the clause was not taken to mean that the SBNI could do only case management reviews and no other types of reviews. There was also concern that the need to produce action plans following a review is not included in the Bill.

Members may remember that quite a few organisations lobbied the Committee last week, saying that the SBNI should not simply be reactive to individual cases but that it should have power to investigate issues of concern that had arisen, even in the absence of a case or incident. The Department responded, if I remember correctly, that clause 3(10) gives the SBNI the powers that it requires to carry out any work that it wants to. However, there was concern that a quite a few of the consultees did not see that in the wording. I can see their point of view.

The Department's response, last week, was that to list other types of review under that clause would mean that the SBNI could only do them if the Department was to prescribe them. I could not actually see that argument. However, the view was that if the Department was to list things, the SBNI would not be able to do anything more than that. The Department also felt that it would limit the independence and flexibility of the SBNI and that clause 3(10) allows the SBNI to do whatever work it wishes to do, without reference to the Department. That was the argument made. The Department will bring regulations under clause 3(4) to ensure that action plans are produced and lessons learned and disseminated.

We have just received a letter that advises us that the Department has stated in the letter from the Minister that follow-up action plans and compliance monitoring in relation to case management reviews and child death reviews will be required in the regulations.

That is welcome, but I do not know whether that is entirely what we wanted. We should flag that up to the officials again. Those provisions are fine, but I do not see how that will give the SBNI the power to initiate a wide-ranging review of something that did not arise from either of those. Perhaps clause 3(10) covers that, but I want that clarified and we will raise that when we bring Mr Bradley and his team back. Apart from that, are there any other issues on clause 3 that we wish to pursue with the Department?

Mrs O'Neill:

Clause 3(7).

The Chairperson:

Yes. There is concern that the wording of clause 3(7) is not strong enough and that the term “reasonable steps” was too vague. Last week, the Department said that it intends to use clause 5, and the regulations therein, to deal with how the SBNI must consult with children and young people. If members remember, VOYPIC was one of the groups that raised that issue. The Department suggested that it could write to the Committee to set out what it intends to put in the regulations about how the SBNI must consult with children and young people. The Committee suggested that as well as putting it in regulations, the Department should strengthen the wording of the clause and that the words “reasonable steps” should be omitted. The Department responded that it intends to look again at clause 3(7), which shows that it is listening to the Committee. We wanted to beef up the role of young people, which clause 3(7) intends to deal with, and it will be interesting to see what the Department comes up with.

We then come to the very difficult issue contained in clause 3(9)(c). The Committee was concerned about why publications of the SBNI needed to be approved by the Department. The Department said that that provision was needed as the SBNI is not a legal entity in its own right, it cannot be sued — lucky people— and the Department has ultimate responsibility for it. The Department went on to say that clause 3(9)(c) provides a safety mechanism and not a censoring device, and that it is only concerned with factual accuracy and defamatory information.

Initially, the Department did not propose any changes to clause 3(9)(c), but it has now proposed to amend clause 6, so that the annual report will list, with dates, any reports submitted by the SBNI to the Department for publication and what reports have actually been published. My concern is that that could occur 18 months after the event. I am also worried about the view

that the board cannot be trusted to issue its own reports without consulting the Department, because there is a fear that it may make a factual inaccuracy. Given the high powers the organisation will have, I would have thought that the chairperson, the director and the deputy director would be professional enough to seek legal advice if there is any issue that concerned them, and that they would check carefully before issuing any report. It is a bit like this Committee only being able to issue a report if Mr McGimpsey has the right to check it for factual accuracy. We would chase him or the permanent secretary if they suggested that, because we have a right to publish and a right to be wrong. The SBNI also has a right to be wrong, but 99 times out of 100 that will not happen. There is something about the principle of referring publications for approval that does not ring true as far the independence of the body is concerned, and there is still a lack of clarity on that issue.

The Committee questioned why clause 3(9)(c) could not be amended to read:

“subject to consultation with the Department”

That would be safe enough and it would mean that the Department could see the reports and make its observations. The Department would have the right to point out, for example, that £12 million was spent on childcare last year rather than £9 million. The SBNI could then thank the Department and make the correction, or tell it that it was not interested, that it was right and publish. That would be the compromise between ensuring factual accuracy while not trying to bridle the work of the SBNI. Mr Bradley, if you are listening in the Public Gallery, I would be very surprised if the issue was not raised again in the next few minutes. I do not know whether members have any thoughts on that, but officials did agree to look at the possibility of using the word “consultation.”

We are also concerned that the proposed amendment to clause 6 would not deal with a situation in which the Department asks for a report to be amended, which, of course, could mean neutered and watered down. Therefore, it will probably not be a black and white issue. It relates to when the Department is generally quite happy with a report, but it contains one or two phrases that are, perhaps, quite embarrassing or difficult. An amendment is made. It is much more difficult for the public to be made or become aware of that amendment than of downright rejection of the report. Therefore, we need to look at that.

The Department stated that communication between it and the board would be recorded in the minutes of the board’s meetings. Members made the point that someone would have to scrutinise

carefully the SBNI's proceedings to pick up on such a scenario. Certainly, you would have to be quite a clever guy to pick up much from minutes, which are simply a purely factual account of what happens in a meeting. They do not give you a flavour of the discussion. To be fair to the Department, however, it said that meetings would be held in public.

Therefore, do members still have concerns about that and the proposed amendment to clause 6? Do you believe that the amendment covers that issue? Do you still believe that we should try to persuade the Department to change the wording of clause 3(9)(c)? Can we take it that when the Department comes back to the Committee, we will raise that issue?

Members indicated assent.

The Chairperson:

Clause 4 gives the Department the power to give the SBNI directions. The Department did not propose to make any changes to the clause. We asked why it is necessary. The departmental response was that it applies to RQIA and that directions are likely to be about reminding SBNI about its core functions or asking it to focus on specific safeguarding issues. That is like my party's Chief Whip reminding me of my core interests in the Assembly and telling me to do something.

I get the impression that that clause could be used by irresponsible individuals in the Department to, basically, control the SBNI's activities. Again, it reminds me of the proposed amendment to clause 6 which provides that all departmental directions to the SBNI must be included in the annual report. I understand that the Department has brought examples of directions. It will be interesting to be talked through those examples of what has happened in other organisations. We need to decide whether we are content with the proposed amendment to clause 6, which, obviously, relates back to clause 4. That will come up during discussion.

That covers everything in the letter dated 20 October 2010. I refer members to a helpful memo from the Committee Clerk on the appointment and salary of the board's chairperson. During our last meeting, we had considerable discussion on how the chairperson would be appointed. When the process is in train, the post of chairman or chairwoman will have been advertised, and folk will have, no doubt, sent in their application returns, appointment will be by one of two models that were discussed at last week's meeting. The first model is the public

appointments process that is favoured by the Department. The second is that the board would take some form of responsibility for the chairperson's appointment. For example, the board might undertake the appointment of an external person to be its chairperson, or it might appoint someone who is already a member to the post.

Last week, Mr Bradley made a valid point. He said that if the board members end up appointing, for instance, the head of child protection of a certain organisation as their chairperson, that causes a problem for the chairperson's independence. I understand that point of view. Having listened to the Department at last week's meeting, I believe that the independent appointments process is the best way. Although I do not like the scale, salary and level at which the post is being pitched, the public appointments process ensures that the chairperson is genuinely independent, rather than beholden to board members.

I use "he" in the general sense; it could be a "she", of course. If he is appointed by the board in any shape or form, he may feel under some obligation to board members. If he has been appointed totally independently, the perception and reality of independence is more firmly guaranteed. The only reason I threw that out last week is because several of the boards in England have appointed from within. There may be a concern that the Department had gone ahead and done it anyhow, and the horse had bolted. However, I will not be dying in a ditch over what the Department has done on procedures.

Do other members have strong views on that? Is everyone happy enough to let it sit and retrospectively approve the public appointments procedure? It is a question of members holding their peace.

Members indicated assent.

The Chairperson:

We move on to the issue of the chairperson's status and salary. The letters from Kath Tunstall and Sue Woolmore are very telling. I do not believe that the Department has had a chance to see them yet. Both are very scathing and both believe that this salary will not attract the right sort of person and does not reflect the importance of the position. It is very telling that we have two people at the coalface of this issue in GB and who are extremely concerned and shocked by what they have seen.

I refer to Kath Tunstall's letter. She says that, in England, chairpersons are paid between £500 and £800 per day, for two or three days per month. That salary works out equivalent to £65,000 to £104,000 for two-and-a-half days per week. I do not think we can advocate £104,000; we would all be rushing out the door to get the forms so I cannot see that happening. However, that is the sort of status, pro rata, that these positions have in GB. We know that the chairperson in the newspaper advertisement that we have before us is being offered £17,060 for two-and-a-half days per week. In England, the chairperson generally works for two-and-a-half days or three days per month. You need to take that into account when you are considering the figures. Kath also states that the arrangements for the chairperson must give him or her sufficient authority and experience to manage a director and an assistant director. She feels that it is unlikely that the money offered will attract that kind of person. We saw last week the sort of salaries that are being considered for the director and the deputy director. They are in the range of £60,000 to £65,000, with a total package worth £80,000 for the director; yet the chairperson will get a small pittance by comparison.

Here is a point I keep making. Is it reasonable to expect a chairperson on such a salary to undertake the management and supervisory functions that keep coming up in every part of the legislation? In the Bradford Safeguarding Children Board, the business manager is line-managed by the assistant director of the Children's Social Care Board.

I was almost convinced of this, but became totally convinced when I saw provided this list of equivalent bodies in Northern Ireland. It is clear from this that, even in a Northern Ireland context and without looking at GB, the chairperson will be very much the poor relation. I will give you a few examples: the chairperson of the Health and Social Care Board gets £33,000 for three days a week; and the chairperson of the Public Health Agency, £33,000. The chairpersons work differing numbers of days per week, so it is hard to judge the salaries. Here is an advertisement from the Guardian Ad Litem agency, the equivalent of which would be £28,000. The salary of the chairperson of the Blood Transfusion Service, for working one day a fortnight, works out at £28,000.

Am I missing something? The role of chairperson of the Blood Transfusion Service strikes me as fairly important but standard. That person aims to maximise the amount of blood that is given to our hospitals. Does that role carry more responsibility than that of the chairperson of the

SBNI, given the huge range of responsibilities and the importance of that post? The figures confirm to me that, as Kath Tunstall and Sue Woolmore's letters clearly state, the Department has simply got it wrong. That is my honest view.

We are not for one minute suggesting that the salary should be £104,000 a year. However, we are suggesting that it should be higher than the salary for the chairperson of the Public Health Agency, the Blood Transfusion Service or for one of the health trusts. It is interesting that one of the letters suggests that the presence of the four subcommittees below the board makes the chairperson's position more responsible rather than less responsible because the chairman will have to supervise those as well. Those are the facts. Do we want to raise the matter again with the folk from the Department?

Mr Gardiner:

We are trying to defend the health budget from cuts, and we have a recommendation from the Department that the salary should be £17,000. However, the Committee wants to increase that salary because it is not enough. It is like robbing Peter to pay Paul, and one thing is laughing at the other.

Mrs O'Neill:

I do not agree with that assumption. The chairperson will have a very important role in the Health Service. That person will safeguard and protect children, and we cannot sit back and allow budget restraints to have any impact on that position. I do not know whether the process can legally be stopped at this stage. However, I think that the second option is the best, namely to ask the Department to, if possible, stop the current process and re-advertise the post at a higher salary that is more reflective of the seriousness of the role. If we start off on the wrong footing, the whole process will be wrong. In my view, we need to get it right from the start.

The Chairperson:

We have the option of not increasing the existing budget but slightly downgrading the salaries of the director, deputy director, chief executive and deputy chief executive and redistributing some of that money to the chairperson on the basis that the position of chief executive will still be very attractive. We can maybe do that in a cost-neutral way.

Mr Girvan:

I was about to make that point. Last week, we got a figure of about £170,000 for the budget to cover all those areas. We should try to maintain that figure and offer an adequate amount to make the salary attractive enough. It should be worth between £180 and £200 a day to make the annual salary between £28,000 and £33,000. We should give some guidance on that, because so much emphasis has been put on the importance of having a chairperson who will take the role and run the board properly. We need to ensure that that is right.

I am happy to work with the £170,000 mentioned. However, management fees should come out of that, including payment for the assistant, the manager and the chairperson, and we must ensure that those are covered adequately. That would be fairer breakdown, as opposed to somebody earning £80,000. I appreciate that they will work two additional days a week in the job. I do not believe that they will work any more than five days a week, and the chairperson will work two or three days. That is my opinion on it.

The Chairperson:

That leads us to the point that the Deputy Chairperson alluded to, that there are basically three options that we could pursue. We could do nothing and allow the Department to continue with the public appointments process on the basis of the salary advertised and wait to see whether someone is appointed. We will know that by 19 November. We could also ask the Department to stop the public appointment process, which is the Deputy Chairperson's view, and re-advertise the post at a higher scale. Finally, we could ask the Department to stop the process and re-advertise the post at the same salary scale but with a lesser time commitment. Members will notice that Sue Woolmer suggested that that would be one way round the problem; that the amount of hours expected for the same salary could be reduced.

Mrs O'Neill:

I imagine that that could not be done. One cannot just change that in the middle of the process when it the job terms have already been advertised.

The Chairperson:

I agree. One would have to start again, because the people who are applying are doing so on the basis of working two to three days a week rather than three days a month.

Mr Gardiner:

As far as I am concerned, the process has run so far that I would let it run its course and see the results. We can then assess the situation more accurately.

Mr Easton:

As the Deputy Chairperson said, if we get this wrong now, it is going to set the tone for the whole thing and it is just going to be a mess. I am not convinced by the arguments from the Department about the salary, and I do not believe that many of the members here have also been convinced. I think that the whole thing needs to be stopped. The advertisement needs to be looked at again, the salary is pathetic, and the person who is meant to be doing the job is going to have such a huge responsibility looking after our children. I believe that it is in the best interests of the Department to stop the process and shift the salaries around as the Chairperson has suggested. It will not cost any extra money to do so; it will just be a bit of tweaking here and there, and I believe that that would be the sensible option for our children and for the way forward. I would go with plan B, which the Deputy Chairperson offered.

Dr Deeny:

One could suggest lesser time. However, we want this person to be involved in this important issue. The less time that someone puts into something, the less he is really committed to it and gets into it. Also, I think that the less time a person spends doing a job suggests more and more to me that we are looking for a figurehead and that it is the other people who will be doing the work.

To me, this is a big issue. We have been looking at comparative salaries. However, some of the posts involved are within trusts, and there are five trusts in Northern Ireland. This is a regional Northern Ireland position, representing the whole of the North, so, I imagine that it is more likely that the chairperson will be doing three days a week. If one looks at what the chairs of the trusts do, they are getting up around £30,000 for three days a week. I suggest that it would be better all round for the chairperson to be doing three days a week and be really involved in the issue, and to get his or her teeth into it, because it is such an important issue.

I support option 2, along the lines, as Paul said, that we should actually quote a figure similar to what the chairpersons of the trusts are getting, which is close to £30,000 for three days a week.

The Chairperson:

We will invite the departmental officials to make a statement on this. I think that it would be very surprising if they were not aware that this was coming up. We will listen with interest, because they have moved with us on other issues and I am sure that they are dying to move towards our point of view on this as well and they are just looking an excuse to do so.

After we have considered this matter with the officials present, we will have to make a formal decision on whether we push the Minister, because the chairman's salary and working conditions, etc, are not included in the Bill. We cannot put them in; so therefore, this will be a ministerial decision taken outside the legislation.

Dr Deeny:

When I look at Sue Woolmore's letter, I think that the public would feel a lot more content that they have a chairperson who is in a very responsible position and is paid as such.

One can juggle around with the figures — and I understand why the director and assistant director get what they are getting, because they do most of the work — but the chairperson's position is very important. When the public hear about someone who works one day a week for a salary that does not reflect the importance of the position, it will not inspire confidence in them. Everybody who makes a presentation to the Committee tells us that the position of chairperson of the safeguarding board for Northern Ireland is very important. Therefore, we must ensure that the right person is selected and paid appropriately for their responsibilities.

The Chairperson:

Are there any other thoughts before we bring in the witnesses? Fergal, please bring your team to the table.

I was not here last night to get your letter — one or two other issues were going on — and things were quite complicated because I was trying to draw into one strand material that we had plus new material, so, if you had difficulty in following it, you were not the only one. However, given that you undoubtedly had input to the Minister's letter, you are probably much more aware of the matter than any of us. Nevertheless, I think that we are picking up the thread. We appreciate that you have moved on with certain issues, and you have helped us by coming up with good reasons why we should not move on a subject and, where you thought our position was

reasonable, by agreeing with us. We are now down to a small number of items, some of which are relevant to the legislation and some of which are extraneous; they are not, and could not be, in the Bill. For instance, the chairperson's hours and salary could never be specified in the Bill. We want to quiz you about the chairperson a bit more, and then we will move on to the legislation. I am sure that you have a flavour of what has been discussed. Has the Department anything to say on the status and pay of the chairperson?

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

We received a few communications from the Committee Clerk asking us to provide information on how the process works —

The Chairperson:

And do you have some on this?

Mr F Bradley:

— and on the timing. Today is the closing date for applications. Shortlisting is scheduled to take place on 2 and 5 November, and interviews will be held on or around 15 November. Obviously, vetting checks and so forth also have to take place. We were asked to advise the Committee on what happens if no suitable candidate is found. As with any public appointment, if there is no suitable candidate, the sponsor branch — ourselves — will be advised, and it will be up to us to work out the way forward. That is how the public appointments process normally works. I do not know the final figure, but I understand that several people have applied for the position.

The Chairperson:

What is your definition of “several”: do you mean several hundred, several dozen or three?

Mr F Bradley:

More than three, but fewer than 10. We are very clear about keeping the public appointments process at arm's length. Therefore, although we are trying to be helpful to the Committee, I do not want to be too involved in the process, or ask too many questions about it and, thus, get too close to it. As I understand it, in this case, “several” means about half a dozen.

I understand the position being put forward by some of our colleagues in GB. However, from our perspective, it is very simple; we tried to benchmark the position against those in other

bodies. For example, the chairperson of RQIA, which is not an insignificant body and has a very important role, is of particularly high standing. We cannot state categorically that the level of remuneration that we arrived at will definitely deliver a candidate of the right calibre. We can say, however, that the public appointments process is designed not to allow someone who does not meet the criteria through. In this case, we have a process in which the interviews and the final decision will be undertaken by a three-person panel: one of whom is Jan Horwath, who is an expert on safeguarding from England; one of whom will be an independent person drawn from a panel of independent persons maintained for the purpose of public appointments by OFMDFM; and the third will be the chief social services officer.

We have no interest in the appointment of someone who is not capable of doing the job. We have a process, which is ongoing, and it will conclude within the next couple of weeks. At that time, there will be no speculation. One or more candidates who meet the criteria, are able to do the job, and to do so at this level of remuneration will have come forward. It will not be a question of speculation by us, and it will not be a question of speculation by some of our counterparts in GB.

I have not had any dealings with Kath Tunstall. We have had discussions with Sue Woolmore, but we are not setting up arrangements that are the equivalent of a local safeguarding children's board. We are setting up different arrangements. For that reason, it is difficult to read across. They have a particular view. We are not guaranteeing that our view in this is absolutely correct; we are saying that the process is in train, and it will identify whether the level of remuneration that is on offer is capable of attracting candidates of the right calibre. The proof of the pudding will be in the eating. We will know shortly whether that has been successful.

It is not a question of trying to cut corners in respect of cost. We are trying to resource this position well. We are trying to give the SBNI chairperson his or her independent resource in order to advise them and provide them with briefings, etc. We have looked carefully at the arrangements for LSCB s in England. Those are not perfect, and they do not work as well as what we hope the SBNI will work. However, the process is ongoing, and we will be prepared to wait and see the outcome.

As I said, the Bill team and the staff in the sponsor branch are not involved in the public appointment process. It is independently managed and operated. One or more candidates will

meet the criteria and the standard, or they will not, and we all know then.

The Chairperson:

We were a wee bit in the dark last week when we were talking to you about this, until we saw the table of the equivalent positions. Why is being chairman of the Blood Transfusion Service more responsible and demanding than being the chairperson of the SBNI?

Mr F Bradley:

It has a budget of £10.3 million. That is one of the issues with regard to the Blood Transfusion Service. The SBNI chair is on the same remuneration level as the chairperson of the RQIA.

The Chairperson:

You keep bringing up the RQIA, but that is the only body with which you can draw direct comparison when compared with the other bodies that are much better paid.

Mr F Bradley:

We have tried to pitch this as best we can with regard to the size of the organisation, the size of the budget and the size of responsibility. I think that the chairperson of the Blood Transfusion Service is paid £7,000 per annum based on one day a fortnight. I know that there are differences in the days per week, the size of budget and the size of the organisations, but we have tried to pitch this in respect of organisational size. The RQIA is particularly significant, because its status and level of responsibility is equivalent to that expected for the chairperson of the safeguarding board.

This is not an exact science. I am happy to say that there is no public appointment read across from any of the HPSS bodies. In exactly the same way, there is no equivalent read across from the arrangements that are being described by the people who have corresponded from GB. This does not read across to a LSCB arrangement. We believe that we have come up with a reasonable level. If we are proved wrong, we will know that shortly.

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

When reviewing the current public bodies and the remuneration of the chairperson, we saw that there is a vast range in remunerations. They range from £34,333 per annum for the chairs of trusts to £7,014 for the likes of the Blood Transfusion Service and the Northern Ireland Guardian

Ad Litem association. In the middle of that, we saw organisations, such as the Northern Ireland Social Care Council and RQIA, which seem to have a similar remuneration and be similar to the type of agency that we are trying to establish. Two things determined our thinking. One was that most of those organisations have a larger budget than it is anticipated the SBNI will have.

The SBNI will have a budget of £750,000. Most of those organisations have budgets of millions. The trusts range from £400 million to £900 million for the Belfast Health and Social Care Trust. The Blood Transfusion Service has a budget of £10.3 million. RQIA and the Northern Ireland Social Care Council have budgets of £6.3 million and £2.2 million respectively. They are all organised and established as non-departmental public bodies that bring with them certain responsibilities on the part of the chairpersons and their subordinates in relation to governance and accountability arrangements, whereas the SBNI will piggyback on arrangements in the Public Health Agency. That is how we managed trying to come to a considered approach about the remuneration for the SBNI.

The Chairperson:

It is not the budget; it is the crucial importance that the board will have to the young people of Northern Ireland. I do not know the legislation that established some of those bodies, but I am sure that, for the Blood Transfusion Service, the legislation sets out that there will be a chairperson and six board members. That is probably the last reference to the chairman in the legislation. There is a very important role for the chairperson of the board in every clause that we come across here. It cannot simply be looked at in money terms. Some of the functions are very important, but I cannot see anything more important than a body that will keep a very close scrutiny on how our children are protected from abuse. You have just looked at the pounds, shillings and pence — not that you are old enough to know what I am talking about, but the older members will. You are looking at the money rather than the crucial nature of the role. I am worried when you tell me that roughly only six people have responded because we should not be looking for an adequate person for the job; we should be looking for the best person for the job.

Mr F Bradley:

We have no idea who the candidates are. We are not saying that the candidates are adequate, not adequate or anything else. We know that a number of people have applied. I would not have thought that that number is not typical of the numbers who apply for public appointments. Until the process is complete, we do not know whether candidates are up to scratch and will be able to do the job as we want them to have come forward at that level of remuneration. We would be prepared to wait and see the outcome of the process. At the end of the day, we have no interest in

the appointment of someone who is not capable of doing the job.

The Chairperson:

You miss my point. I am sure that you can find people who are capable. However, given the history of Northern Ireland and the fact that we have clear evidence of institutionalised child abuse — there are very high instances in certain trust areas — we are looking for the best possible person, rather than someone who is capable but happens to be in the pack. That is no disrespect to anybody who gets the job; there may be very capable people out there who have not applied because of the very small remuneration.

Mr F Bradley:

We do not know that. We do not know what has motivated people to apply and we do not know what has motivated people who may not have applied.

The Chairperson:

We have gone out on the limb publicly, so it is very difficult not to appoint someone. It would be a major climb down if, having made this so public, you say that you will not appoint anybody.

Mr F Bradley:

As I understand it, the process for some public appointments has been completed without recommending someone for the position. The public appointments process will not deliver someone who is not able to do the job. An appointment will not be made just to avoid embarrassment. It will be made only if there are people who have come forward, who are willing and able and have the competence to do the role. A panel is in place. The independent person from the Office of the First Minister and deputy First Minister (OFMDFM) is there to ensure that the process is fair, open and transparent. Jan Horwath, who is one of the three people who the Committee originally contacted, is also a member of the panel. She is there for her national safeguarding expertise. The other representative will be the chief social services officer.

There will be no appointment unless there are candidates who are up to spec. As I said, I do not know the candidates, nor will we ask who has come forward. We have to keep the process at arm's length for it to be seen as fair and independent.

The Chairperson:

We will have to give some thought on where we will take the matter. If no one has further comment to make, we will move to clauses 1 to 4. You have heard the discussion, and various members have questions to ask. Fergal, do you have an opening statement?

Mr F Bradley:

A number of my points are contained in the Minister's letter. Since our previous appearance before the Committee, we are proposing a couple of amendments to clause 1. One is in response to concerns that the Committee raised on the power to remove the chairperson from the SBNI. We propose to amend clause 1(5)(a) to include reference to the circumstances in which the chairperson or members of the SBNI cease to hold office or may be removed or suspended from office. The Committee will be able to agree or not agree. The regulations will set out openly and transparently the circumstances in which the chairperson can be removed from their position. It will relate to areas such as gross misconduct, and you can imagine the sorts of issues that would come under that heading, and indictable offences.

We also ask the Committee to agree to a slight amendment to clause 1(5)(c) so that we are able to use the clause to specify the host body. That will future-proof the SBNI so that, in that clause, we will be able to specify that the Public Health Agency will be the hosts, as is the case under the current arrangements. It is a technical amendment to make that clear in the Bill.

The Chairperson:

Are members content with those amendments?

Members indicated assent.

The Chairperson:

The Department heard our discussion on the judiciary and on the NILGA appointment. We have generally accepted the arguments on the judiciary, and we are content with the proposal on GP representation through the Health and Social Care Board. That is sorted out. Have you anything more to give us on the Housing Executive issue?

Mr F Bradley:

We are continuing to have discussions with the Housing Executive and its sponsor Department,

DSD. It is important for us that, if the Housing Executive ends up as a core member of the SBNI, that is owned by the sponsoring Department and, obviously, by the Housing Executive itself. If, at the conclusion of this, we can reach agreement that that is appropriate, clause 1(3)(j) would allow us to add it as a core member. Rather than trying to push and rush for negotiations and sort all of that out, we will we have a mechanism to bring it on if it is agreed at the end to do so.

The Chairperson:

Are members happy with that?

Members indicated assent.

The Chairperson:

I will ask the Deputy Chairperson to talk about the appointment of local government representatives. Perhaps you are not aware that one major council, which is represented by Mr Girvan on the Committee, has opted out. I have doubt that Mr Girvan will declare an interest if he takes part in any of this.

Mrs O'Neill:

You did not hear our earlier conversation. Can the public appointments process be used to attract local government representation?

Mr F Bradley:

We have not thought of a public appointments process to attract local government representation. Clause 3 provides for representation from district councils, so having representation from NILGA and SOLACE would not necessarily require a change to the Bill. In the membership regulations, we believe that we can specify where that representation can come from. We are still open to discussions on that.

Originally, we suggested that two members from SOLACE be included. Representations were made from NILGA that one member should come from NILGA and one from SOLACE. SOLACE is happy with that, but the added complication is that not all district councils are now represented on NILGA. We have not arrived at the position of being clear on what we want to do on that. We are open to influence and views from others on how to navigate our way around that. All 26 district councils are members of SOLACE, so, if the Committee were in agreement,

SOLACE could provide both representatives.

As part of the discussion, we are saying that we have to get our heads round it and try to navigate a way through, but it could be sorted out in the regulations; it does not necessarily require a change in the Bill, particularly given that we have no view on it at this time. I do not know whether the Committee has a strong or defined view on how to get round this.

Ms Nicholl:

Clause 1(2)(c) gives us the power to bring on local government representation through a public appointment process as lay members. The issue for us was that in coming in, those lay members would not represent a local government body, they would represent their own. It is about how best to balance bringing local government representation onto the SBNI, but we can do that.

Mrs O'Neill:

I do not favour taking on two from SOLACE, because that comprises chief executives, not elected members.

The Chairperson:

The next issue raised was in clause 3(4), clause 3(7) and clause 3(9). Clause 3(4) brings us back to the issue of the power that the board will have to initiate its own investigations and reports. Last week, you set out why you felt that clause 3(10) was more than enough. I offered a compromise, which I still think should be considered. In his opening remarks on the debate, the Minister should state that clause 3(10) gives those powers.

Mr F Bradley:

For clarification purposes, I will take you through this. Some people who responded to the Committee suggested that clause 3(4) should be amended to refer to “other reviews”. Our point about that was that if that phrase was added, the SBNI could undertake them only if we prescribe them. If the phrase were included, the SBNI could not undertake any other type of review, unless we set it out in regulation for them. We did not want that power, and we do not want it. That is the first thing.

The second suggestion made to us relates to clause 3(10), which, as far as we are concerned, is a power. I will refer to the Minister’s letter, which goes some way towards what you are

suggesting, Chairperson. If we put it into clause 3(10), the advice from the draftsman was that it would give the SBNI the power to undertake whatever other types of activity, reviews, etc, that it wants to do to deliver on its functions, according to its own methodology. If we were to mention “other reviews” or any other type of specific activity, it would be mentioning a particular activity but call into question the generality of the clause. That is the advice that we received. In his letter, the Minister said:

“Clause 3(10) as drafted gives the SBNI the power to undertake any other activity in accordance with whatever methodology it wishes to deploy in the achievement of its objective.”

As far as we are concerned, clause 3(10) gives that. We would be happy if in his opening statement the Minister repeated that and gave the example of including any other type of review that the SBNI wanted to undertake, if that would address the concerns of the Committee.

The Chairperson:

There is a legal difference between a letter from the Minister and something said on the Floor of the House and recorded in Hansard. Apparently the latter can be quoted in court cases as giving an indication of the intent of a particular passage of legislation.

Mr F Bradley:

The only difficulty that I have, and I have to get the Minister to agree, but it is stated there that the Minister is content that clause 3(10) is a general power that will give the SBNI the power to undertake whatever activity it needs to do. I would not have thought that there would be any difficulty with the Minister including the specific example of “other reviews” in his opening remarks or speaking remarks in the Assembly.

The Chairperson:

If he does not say it, I will ask him. He had better have the answer ready. To be serious about it, that, I think, is enough to cover that and clear up any ambiguity. We do not want the SBNI to be called to book by someone saying that clause 3(10) does not give it the powers. I am still concerned that all of the organisations that commented on that felt that clause 3(10) did not give the powers that they were looking for, but I think that that statement would clarify it for them.

Mr F Bradley:

When the reference group had a discussion on this, there was a “I see what you mean” moment. Due to the fact that “other reviews” were not mentioned, I do not think that people had

appreciated that clause 3(10) was an all-embracing power. It is a catch-all that covers whatever the SBNI needs to do to deliver on its functions. I think that there is a broader understanding now among a lot of the stakeholders who appeared before the Committee. We can get that statement included in the Minister's speaking notes.

The Chairperson:

Hopefully, that is resolved, and we can move on to clause 3(7). The Deputy Chairperson had a concern about it in the previous meeting. We do not think that it is strong enough. We have had representations from groups such as VOYPIC about it.

Mrs O'Neill:

Is there a proposal to amend that clause to take out the phrase "must take reasonable steps" and to insert instead "must consult"?

Mr F Bradley:

We are proposing to take out the words "reasonable steps". The Minister's letter sets out the sort of thing that will go into the regulations. Again, we will consult with groups such as VOYPIC and other members of the reference group before we bring the final regulations to the Committee. We think that the regulations should state that the SBNI:

“seek assistance from organisations who communicate with children and young people; communicate with a wide age range of children and young people; seek the views and opinions of children and young people;

provide age appropriate information where necessary;

consider the rights of the child or young person;

have regard in particular to the ascertainable wishes and feelings of the child or young person (considered in the light of his age and understanding); and

must have regard for the importance of the role of parents in the upbringing and development of their children.”

That introduces the idea of consulting not only with children, but with their carers.

The Bill is drafted in a way that sets out what must be done, and in the regulations, we are trying to cover the detail of how it must be done. In discussion with the draftsmen we are simply saying that, rather than list that detail in the Bill, which would be inconsistent with the way the rest of it is drafted in stating what must be done, we would cover all that in the regulations. We are open to views from other people as to how that can be further strengthened, but that is the sort of detail that we will go into in the regulations.

Mrs O'Neill:

So, you propose that clause 3(7) will read:

“The Safeguarding Board must promote communication”?

Mr F Bradley:

Yes. That is a very strong function in the draftsmen's view.

The Chairperson:

Are members content to leave clause 3(7)?

Members indicated assent.

The Chairperson:

Good. We are making progress. Let us hope the next one is just as successful. We move to clause 3(9)(c), where there is an issue about the annual report, and setting out in that report any reports submitted by the SBNI to the Department to be published. You have heard the general tone of the discussion: we can envisage problems here.

That would be 18 months later, and it may not be just as black and white as a report being turned down or pushed to one side; it may be more subtle than that. There is still a perception that the clause is an attempt to bridle the SBNI. We cannot see why, for instance, you could not use the word “consult”. Most importantly, the SBNI will have a director and a deputy director, one on £69,000 a year and one on around £40,000 a year, it will have a chairperson who will hopefully be a very high-powered and capable individual, and the Department is saying that it has to look over their shoulders and decide what they can or cannot publish in case those individuals make a mistake. Do they not have the right to be wrong?

Mr F Bradley:

They have a right to be wrong, but it comes down to where the liability lies. The clause is not an intention to gag the board, it is just a safeguard. We have proposed amending clause 6 so that details of reports, and of when they are submitted to the Department, will be published. We have also suggested that clause 6 include details of directions issued by the Department. We can look again at the wording of the clause. We have tried the word “consult”, and it is not something that we are having a lot of success with at the moment. However, we will look at the language again

and come back to the Committee.

The Chairperson:

Would the use of the word “consult” give you the opportunity to remind the SBNI that some statistics were wrong or that something will potentially get it into trouble? The board could then make the decision having had your opinion, so the Department could then argue that it told the board not to do that. Any stronger wording than that gives you the power to bridle the work of the board.

Mr F Bradley:

We will have another look at the wording, but we are struggling because of the drafting language. It is not unwillingness; we are trying to come up with drafting language that works around this. However, I take it even with that, the Committee would not have a problem with what we are proposing with clause 6 with respect to including details of when the reports are submitted to the Departments?

The Chairperson:

There is nothing wrong with that per se: that is fine. However, we do not think that it gets over the problem, because there is a real danger that the Department could come to a section hidden somewhere in a report that you instruct the board to amend, but the whole thing will go under the radar and not be discovered.

If the Department tries to ban a publication, I am pretty certain that alarm bells will begin to ring. There would be no problems in that case, but, I do not think that it will ever be as black and white as that. We saw direct parallels in another Department during the past two months, which are almost uncannily reminiscent of what could happen under this provision.

Mr F Bradley:

As I indicated before, I cannot talk about that. However, I would again ask you to look at the composition of the SBNI and the organisations that will be around the table. There will be statutory agencies that report to at least three different Ministers, non-statutory agencies and those who represent various sectors such as GPs and other professional groups. The possibility that we would have that level of influence and control is purely theoretical. It would never actually happen in practice.

We have indicated that we are willing to look at the provision through an amendment to clause 6. The Department is accountable, and if what the Committee feared occurs and the Department held up a report, the Committee can call officials to appear before it and question them on what has gone on and what actions were taken. We will look at the wording again with the draftsmen to try and find a form of wording with which everyone is more comfortable. The provision is absolutely not intended as a gag.

The Chairperson:

To be fair to you, there has been harmony and movement on nearly everything else, but the Committee would like to see movement on this issue by the time of its next meeting on 4 November. If there is no movement, I know having tested the mind of the Committee that it will probably propose an amendment to bring the legislation into line with what we perceive should be going on. The proposed amendment to clause 6 is fine, and, by all means it should be kept in. However, I do not think that that will satisfy us.

Dr Deeny:

I thank Isobel and Fergal for coming before us again and for all their work. The reason given for the provision is that the SBNI is not a legal entity. I do not think that any of you are solicitors and nor am I, but you mentioned the composition of the board, and that they cannot be sued. I am a GP and I know that individuals can be sued.

Mr F Bradley:

The SBNI is a non-incorporated statutory body. Any of the individuals on the board could be subject to legal action or constraint, as they could in any walk of life. We would prefer it is there were some form of safety mechanism for its publications, but we are happy to look at the wording and see if we can come back with a different form of words.

Dr Deeny:

Has someone in the legal profession looked at the make-up of that substantial body and advised you that it cannot be sued?

Mr F Bradley:

Yes; the SBNI is not a legal entity in itself. It would not be individual members of the board who

would be publishing reports, but the SBNI as a whole. It is a non-incorporated statutory body. Don't worry about it; this was all new to us until very recently.

The Chairperson:

I hope that we can resolve the issue. It has all been very happy and pleasant up to now, and I hope that we can reach an agreement by 4 November.

Mr F Bradley:

I want to make a few statements about directions.

The Chairperson:

Are you moving on to clause 4 Fergal?

Mr F Bradley:

Sorry, yes. Is there anything else that we have not addressed?

The Chairperson:

There is tabled information that will give Committee members examples of similar directions. It is important that we look at that information so that we know what we are talking about. Fergal, can you talk us through this and explain what a direction usually means and involves.

Mr F Bradley:

A departmental direction is issued under statutory powers and an organisation must comply with it. The power to issue directions is in a number of pieces of legislation, but it is a very rarely used power for any purpose. If the Committee looks through the examples given, much of the situations in which directions are applied are for nerdy things like complying with employment requirements or dealing with codes of conduct, etc.

Number 1 directs the Northern Ireland Social Care Council to undertake functions on behalf of the Department on the training of social workers, particularly in relation to drawing up occupational standards and determining the need for training. Basically, we gave a direction to the Northern Ireland Social Care Council, which is the organisation responsible for the regulation of the social work workforce, that it should draw up the standards for the occupation and look at the training needs of social workers. Number 3 is an example of direction to NISCC that it must

implement the code of conduct for managers of health and social services bodies, and the next one is a direction to NISCC that it must establish a committee of registrants that represent those that are registered by the council. Another direction requires NISCC to prepare its annual accounts in compliance with FReM requirements. Those are examples of typical directions.

We are saying that, for the SBNI, the most likely scenario — outside of ensuring that it must comply with the terms, the code of conduct and so on — is that, if there is concern about an emerging safeguarding issue, we might end up giving a direction to the SBNI to undertake a piece of work on that. In all likelihood, if that sort of issue emerges and the Department is concerned about a safeguarding matter, it will almost certainly be a matter of concern to the SBNI. Therefore, the sort of directions that we are talking about issuing will probably be along the lines of areas such as accounting, personnel and codes of conduct. We struggled to find many directions to use as examples for the Committee because we do not use them on a regular basis.

The Chairperson:

I have a few questions on that. Was the RQIA report into the case in Donagh done by direction or by a letter from the Department?

Mr F Bradley:

It was not a direction. The Department sent a letter to ask it to do so.

The Chairperson:

Can you direct an organisation not to do something as well as instruct it to carry out a certain task?

Mr F Bradley:

I imagine that we could. However, the Committee can see that the sorts of directions that are outlined in the document are not the sorts of things that we normally do. As we have said, we are quite happy for the legislation to state that directions from the Department must be published in the annual report. We have no difficulty with that because the sorts of issues on which we will issue directions will not be issues of particular concern. We will need to issue directions, but there is no hidden motive or underhandedness. We are quite happy for there to be openness and transparency around directions.

The Chairperson:

If an organisation is doing a report that may make some government agencies feel rather uncomfortable or inadequate, it will give you the power to direct it to cease that piece of work.

Ms Nicholl:

We can only direct in relation to their functions. We must take advice from the Departmental Solicitor's Office. However, if an organisation is undertaking a piece of work in relation to its functions, we can only direct in relation to those, and it is usually a positive direction. I am not sure that we can direct them not to do something.

Mr F Bradley:

We would have to take legal advice on that. However, as I said, we are quite happy for the legislation to state that our directions will be published.

The Chairperson:

So, we will know when they have been bridled. *[Laughter.]* That is very reassuring.

Mr F Bradley:

It will be very clear. If there is concern about safeguarding in our services and agencies, we want to know about that and want to address it. We are not in the business of trying to conceal information about problems. The systems and arrangements will be put in place, and the Department is leading on that. As is the case with the RQIA, such bodies are established as part of the checks and balances to make sure that safeguarding arrangements work as we want them to work. Therefore, it would not be consistent with the overall policy and with what the Minister wants to do for us to issue directions that inhibit something that is being done to improve safeguarding.

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

Clause 4(2) says that the Department should consult the board before it issues any directions. Therefore, it is not just about publishing those in the annual report; it is also about negotiating and talking to the board before we issue direction unless an emergency situation arises and we do not have time to do so.

The Chairperson:

Are there any questions on that issue?

Mrs O'Neill:

We are naturally cynical. *[Laughter.]* Given that the Department will have to publish any direction that it gives, there will be a fair understanding if it tries to stop any publication. Therefore, I am reasonably content.

The Chairperson:

Will this body be subject to the Freedom of Information Act 2000?

Ms Nicholl:

Yes, it will.

The Chairperson:

So, could somebody acquire the information sooner through an FOI request than by waiting for a report to be published?

Ms Nicholl:

That is what I understand.

Mr F Bradley:

Are you asking about a direction or a report? If the Department issued directions that were trying to stop the SBNI from publishing something about a safeguarding issue, I do not think that you would have to wait for an FOI request for the information to be released, to be honest.

The Chairperson:

Equally, if someone was waiting for the report to be published, could they ask months in advance whether anything they considered controversial was included? Is it the same as it is for the Housing Executive or any other body including the health trusts in that there is no protection against FOI requests?

Mr F Bradley:

No; and just to reiterate, some members of the SBNI are members of a professional organisation

that would require them to adhere to certain codes of conduct, and some of the agencies represented on the SBNI are subject to independent scrutiny, especially by other bodies. So, there are a number of mechanisms by which problems can be identified and dealt with.

The Chairperson:

Are members content with the explanations given and examples quoted on clause 4?

Members indicated assent.

The Chairperson:

Let us move on to clause 5, or we will not be home for supper. Clause 5 relates to the general provisions of safeguarding board's functions. It states that:

“Regulations may make provision as to the manner in which the Safeguarding Board is to exercise its functions.

(2) The Safeguarding Board must, in exercising its functions, have due regard to any guidance given to it for the purpose by the Department.”

The Children's Commissioner, the Parents Advice Centre and Action for Children have all said they are concerned that the clause may impact negatively on the capacity of the board to operate independently and effectively, and that legislation should clarify the status of the safeguarding board's independence. A lot of this is material that we have rehashed in the first four clauses. Is there anything new that you can add about clause 5?

Ms Riddell:

In looking at clause 3(7) and the draft regulations that we might propose under it, we looked closely at the power that we had under clause 5(1) for the provision on the manner in which the safeguarding board is to exercise its functions. Legally, the words “manner” and “procedure” sometimes overlap, and we wanted to make sure that we had the power to prescribe for both the manner and the procedure of functions as set out in subsections 3(1) to 3(10). The proposed amendment to clause 5(1) is a suggestion that we include manner and procedure; it is expanding the clause to ensure that we are not making draft regulations that are outside our power.

Mr F Bradley:

Clause 5(1) is the main regulation-making power that we are using to stipulate all of the detail, as referred to in the Minister's letter, in order to provide clarity around some of the concerns that have been raised. Again, it will be in the form of regulations, which will come before the Committee. They will come to the Assembly through that process. Nothing will be hidden: you

will have the chance to say yea or nay, and it will be quite clear what those regulations are stipulating.

Ms Riddell:

The reference group will also see and be involved in the drafting of those regulations, so those who made those comments will see the kind of regulations that we are drafting under that power.

The Chairperson:

Do members have any questions? No. Are members content with clause 5?

Members indicated assent

The Chairperson:

Cause 6 looks, hopefully, totally uncontroversial. No concerns seem to have been expressed. It just stipulates that the safeguarding board must prepare a report to the Department about the exercise of its functions, which must be laid before the Assembly. You have proposed an amendment to that?

Mr F Bradley:

We are proposing to amend it so that we will be able to prescribe the content of the annual report in regulations. That will allow us to set out in regulations that the annual report must include details of departmental directions and details of any reports submitted by the SBNI to be sent to or consulted on with the Department, whatever they end up as.

We would like to amend that to give us the power to be able to prescribe some of the content of the annual report to ensure that it covers certain aspects. Those regulations will come before the Committee.

The Chairperson:

Will that be covered in the regulations?

Mr F Bradley:

If we were to take that power in the regulations, we would say that the annual report must include details of directions and of reports sent to the Department.

The Chairperson:

Of course, the Committee will see that. Are members generally content with the indicative amendment to clause 6?

Members indicated assent.

The Chairperson:

Clause 7 is all about committees and subcommittees and contains a long list of those. You are proposing an amendment to clause 7(4). Will you speak to that?

Ms Nicholl:

The amendment is simply to add that the regulations may provide that the committees and subcommittees must include such representatives and such relevant pertinent bodies as may be prescribed. It gives us power to prescribe the different types of representatives on committees and subcommittees. A few times in the evidence sessions and in speaking to the reference group, the issue came up that, although our view was that the SBNI will include committees and subcommittees, we have sometimes been asked to make that clear. It has always been our policy intention to ensure that there is a representative body in the safeguarding panel, for instance at trust level, that replicates the membership at SBNI level. We want to ensure that that is in the legislation.

The Chairperson:

Is that included on the back of the NSPCC suggestion?

Ms Nicholl:

I cannot remember who raised it.

The Chairperson:

Only one comment was made on that clause, so it looks as though it did come from the NSPCC and that it has been taken on board. Clause 7 is mostly factual. Are members happy to agree to the suggested amendment?

Members indicated assent.

The Chairperson:

Clause 8 is on the functions of the committees and subcommittees. It outlines what each safeguarding panel is expected to do. We had only a couple of comments on clause 8(3), which are from the Children's Commissioner and CiNI. Clause 8(3) states:

“Each committee and sub-committee must, in exercising its functions, have due regard to any guidance given to it for the purpose by the Department or the Safeguarding Board.”

Those organisations suggest that the reference to the Department be taken out. That would mean that the Department would not be allowed to issue such guidance. They suggest that two different sources of guidance may cause duplication, and they suggest a single line of accountability from the Department to the SBNI to its committees. I can see that there could be room for confusion with two bodies giving guidance to the subcommittees. Have you given any thought to that? There is no suggested amendment to clause 8.

Ms Nicholl:

Under subsections 5(1) and 5(2) we can prescribe and provide guidance to the SBNI in relation to any of its functions. The suggestion is to provide for a replication of that for the committees and subcommittees. The Department will have the power to provide guidance to the SBNI, and that includes its committees and subcommittees.

The Chairperson:

There is no question of the Department providing guidance straight to the subcommittees. It is always done through the SBNI, so there will not be duplication.

Ms Nicholl:

Technically, the SBNI is the sum of its parts, which includes its committees and subcommittees. However, throughout the process of developing the legislation, people often wanted to see committees and subcommittees drafted in the Bill, and we have done that.

Mr F Bradley:

In practice, guidance issued to a subcommittee would be issued through the SBNI. We would not write to the chair of a subcommittee; we would go to the SBNI.

The Chairperson:

Are members content to approve clause 8?

Members indicated assent.

The Chairperson:

Clause 9 seems completely uncontentious, and I hope that it is. It states:

“At least once in every 12 month period, each committee must prepare and send to the Safeguarding Board a report about the exercise of its functions.”

There is no proposal from the Department for any amendment. The issue did not attract much interest. One comment advocates a joined-up, coherent, annual reporting framework and, therefore, recommends the linking of clauses 6 and 9 so that the report of each of the committees on the exercise of their functions is incorporated into the SBNI’s overall annual report.

In other words, so that you do not get a report from the SBNI and five or six sub-reports as it were. I presume that —

Ms Nicholl:

That is the intention behind the legislation.

Mr F Bradley:

That is how COAC works. Its subcommittees prepare reports that go to COAC, and it reflects the work that has been done by those subcommittees in one or two paragraphs of its annual report. The annual report of the SBNI would not totally and entirely reproduce the reports of each of its individual subcommittees. However, it is important to have a proper record and detail of what each subcommittee did to ensure that they have a purpose, that they are delivering and are doing more than could be reflected in a few paragraphs of an annual report of the SBNI.

The Chairperson:

Would the best option not be to have the full SBNI annual report and include the reports of each of its subcommittees included in the appendices to that report?

Mr F Bradley:

That could be the way that it ends up being done. We want to ensure that each subcommittee has

a full and proper report of what it has done and achieved throughout the year. That is the only reason why that is in the Bill.

The Chairperson:

OK. Are members content with clause 9?

Members indicated assent.

The Chairperson:

Clause 10 deals with the duty to co-operate. Clause 10(1) states that:

“The Safeguarding Board must co-operate with the persons or bodies specified in section 1(3) and with any persons or bodies referred to in section 1(4) in the exercise by the Board of its functions.”

I understand that there is an amendment to that clause from the Department. Do you want to speak to that and explain its purpose.

Ms Nicholl:

Again, this is a very similar amendment to the last one, and it will include the committees and subcommittees of the SBNI. Through the amendment we will specify that although the SBNI is the sum of its committees and subcommittees, the duty to co-operate extends not just to the SBNI, but also to its committee and subcommittees.

The Chairperson:

The Committee received one observation on that clause. It is quite complicated, so I will read it.

The response stated that:

“That raises a second issue about how individual members of the board can be held to account for the way in which they implement the duty to co-operate. As I understand it, the various agencies are responsible to different Departments and Ministers, in addition to voluntary organisations, and, as is the case in England and Wales, the safeguarding board has no control over the internal operation of any agencies represented on the board. That has serious implications for the board’s power to ensure that member agencies discharge their functions.”

I understand the point. The board will be made up of a raft of independent, voluntary and statutory bodies. Do you see clause 10 causing a problem?

Mr F Bradley:

Much of the detail will be taken care of in the individual membership agreements with each agency, which will set out the relationships clearly. There will not be a conflict with any agency

that is ultimately accountable to another Department and Minister, because the agreements will be tailored for each agency. They will also set out exactly what that agency is expected to do and it will be agreed with them. The agencies will help the SBNI and the Department to draft the content of what those membership agreements will be, so that conflict will not arise.

The Chairperson:

Clause 10 provoked only one response of concern and that respondent was only looking for clarification from the Department. Hopefully, we now have that.

Mr F Bradley:

We are satisfied with the amendment to clause 10(1), but we are working with the OLC to see whether some other parts of clause 10 also need to be amended to refer to committees and subcommittees. We may come back with those amendments for subsections 10(2) and 10(3), but we are checking that with the draftsmen.

The Chairperson:

Are members happy with clause 10?

Members indicated assent.

The Chairperson:

Clause 11 deals with the supply of information requested by the safeguarding board. Again, I see that the Department has proposed an amendment to subsection 11(1) to include a time frame. Will the Department explain the reason for that proposed amendment?

Ms Nicholl:

Some of the evidence expressed concerns that the clause, as drafted, was far too open-ended and suggested that there should be a time frame. We propose to amend the clause to provide the information as soon as is reasonably practical after the receipt of a request.

The Chairperson:

That addresses one of the concerns expressed during consultation. The PSNI suggested that any reasonable request should be complied with within a reasonable time frame. Again, this deals with that point, which is relatively uncontroversial.

Mrs O’Neill:

The Department of Education asked for clarification on the actions that the board will take when information is not provided following a request or when deliberately misleading information is provided, and does that need to be specified?

Ms Nicholl:

One issue that emerged was about whether a request for information might compromise an organisation or agency that is working under its own legislation. We intend to ensure that that issue is covered in both the membership agreement and in any guidance that the Department issues in respect of clause 12. In the event of someone failing to provide, or being tardy in providing, information, we anticipate that the chairperson’s challenge function will kick in, and each member will hold other members to account on their duty to co-operate, not least on their duty to provide information under clause 12.

The Chairperson:

Is everyone happy?

Ms Nicholl:

An amendment to subsection 11(6) is also being considered. We are liaising with the Office of the Legislative Counsel on a possible amendment to allow the board’s committees and subcommittees to use information supplied to SBNI. I want the legislation to make it crystal clear that the provisions apply to SBNI’s committees and subcommittees.

The Chairperson:

Is everyone happy with clause 11?

Members indicated assent.

The Chairperson:

Clause 12 has caused of a fair degree of concern, and there have been a large number of representations from bodies, such as NSPCC, Barnardo’s, the Department of Education and RQIA — just about everybody. Action for Children also expressed concerns. I note that there is no suggestion of an amendment in the Minister’s letter. We have not really discussed those

concerns; we have only dealt with those four paragraphs. What is your reaction to the submissions?

Mr F Bradley:

Having talked to various people who made representations, we managed to allay their concerns. The guidance issued by the Department will be relevant only to the membership of the SBNI. It cannot affect any work or issue outside SBNI's membership. We talked to NSPCC and other agencies, and they advised us that they are content with that explanation, which what the legislation is intended to do and say. We can issue guidance, but only to SBNI and its membership.

The Chairperson:

Where, specifically, is that in the legislation?

Mrs Nicholl:

Clause 5(2) states:

“The Safeguarding Board must, in exercising its functions, have due regard to any guidance given to it for the purpose by the Department.”

Therefore, any guidance that is issued must relate to the functions of SBNI.

The Chairperson:

It does not refer specifically to functions being the work of SBNI. Could that be tightened up so that people are clear about what it means?

Ms Nicholl:

We have allayed agencies' concerns about our intent to issue guidance under clause 12, which places a duty on all member organisations to put in place arrangements to safeguard and promote the welfare of children. We agreed in both the membership agreement and the guidance that guidance will be bespoke to member agencies, which, as Fergal said, will assist us in drafting guidance. Expectations and responsibilities under clause 12 and any guidance under SBNI's functions will be set against the legislation under which their member organisations work. There was some concern that they might take action in line with one piece of legislation but contravene the duty to safeguard and promote the welfare of children. We have allayed those fears by involving them in addressing the guidance.

The Chairperson:

The NSPCC is quite firm about that. Would there be anything wrong with making it crystal clear in the wording of the legislation that it refers simply to the work of the board, or, from a draftsman's point of view, would that cause you difficulties?

Mr F Bradley:

We can ask the draftsman.

The Chairperson:

Is it a line that can be dropped into a ministerial statement to save the need to do that, so that people are clear and that there is no ambiguity around the fact that this is simply about controlling individuals when they are operating as a board member and not in their other functions.

Ms Nicholl:

Yes, but it is for the Department to propose an amendment on that.

The Chairperson:

That does not make it specific.

Mr F Bradley:

It does not cause us any great concern. We can look at one or other. We can talk to the draftsman and, if not, we can look at whether the Minister's statement in the Assembly could cover that.

The Chairperson:

Are members content with clause 12?

Members indicated assent.

The Chairperson:

We are on a bit of a roll.

There are no suggested amendments from the Department on clause 13. There was little in the

way of comment on clause 13, and there is nothing to come in. Clause 13 deals with the ancillary and transitional provisions. It looks extremely boring, and it looks like something that is in any other piece of legislation. Is there anything significant that we should note?

Mr F Bradley:

It allows us to do whatever we need to do in order to make this happen. It contains the functional things that allow the SBNI to come into being. It is a practical power to allow us to make the transition from the existing arrangements to the new statutory arrangements.

Ms Nicholl:

It is also taking account of any consequential amendments to other pieces of legislation, such as the Freedom of Information Act 2000, which will add this as a body.

The Chairperson:

The fact that none of the consultees picked up on this indicates that they think that it is routine. Are members content with clause 13?

Members indicated assent.

The Chairperson:

Clause 14 deals with regulations. It is boring and necessary. No concerns were expressed in the consultation, and there were no proposed amendments. Are members content with clause 14?

Members indicated assent.

The Chairperson:

Every Bill must have interpretation, and that is included in clause 15. Clause 15 includes the definition of a child, the Department, prescribed and the usual terms. There were no comments on it from the public or from any consultees. There is no suggestion of an amendment. Are members content with clause 15?

Members indicated assent.

The Chairperson:

Clause 16 deals with the commencement. That is standard. Clause 17 is the short title and states that the Act may be cited as the Safeguarding Board Act (Northern Ireland) 2010. It might be 2011 by the time that it is passed, but, perhaps, we will get it through.

Are members content with clause 16?

Members indicated assent.

The Chairperson:

Are members content with clause 17?

Members indicated assent.

The Chairperson:

That brings us to the end of the various considerations. As you can see, we are down to one or two small points. A lot has been achieved as a result of this exercise, and the Department has met us and the consultees halfway or full way on some of them. When you check the record, you will find that we are down to one point, which I think is significant, and the rest is relatively minor and can be clarified through the Minister's statement.

Ms Riddell:

I want to correct something that Fergal said about the Freedom of Information Act 2000. The body is not classed as a legal entity, because it is a non-incorporated statutory body, but it is classed as a public authority. It meets the criteria for a public authority as set out in the Freedom of Information Act 2000. Therefore there will be a consequential amendment, which will include the safeguarding board in the relevant freedom of information schedule. It will be subject to freedom of information.

The Chairperson:

I assume that quite a bit of the material that it will be dealing with will come under some of the exclusions, because of their nature.

Ms Riddell:

Yes. It may.

Mr F Bradley:

I interpreted the question differently. I thought that you were looking for reassurance that if someone was used to seeking views to establish whether something untoward was going on, they would be able to use the freedom of information mechanism.

The Chairperson:

That was the intent of my question, but it is interesting to have that additional information about the scope of the application of the Freedom of Information Act 2000 to the group.

This is the end of this part of the process. We will be back on 4 November with what hopefully will be a short paper. You have suggested that you would like a few amendments brought forward, and there are one or two big issues. If members are content, we will call it a day on this and move on to other business.

We have one issue to discuss. Fergal, if you want to sit and listen that is fine; it is up to yourself.

Mr F Bradley:

When we go at it the next time, we will be hoping to get a gift.

The Chairperson:

You will have to be here a lot longer than this to get a gift from this Committee.