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Safeguarding Board Bill

NIAR 204-10

This Bill research paper sets out the historical background and context of the Safeguarding Board Bill, including current legislation, relevant statistics, recent work on child protection in Northern Ireland and the need for reform. The paper then introduces the Bill with some overarching issues that merit attention as a backdrop to the consideration of the Safeguarding Board for Northern Ireland. The main clauses of the Bill are outlined highlighting areas of concern and issues that have been raised during consultation on and consideration of the proposals to date.

Executive Summary

This Bill provides the legislative framework for the creation of the new Regional Safeguarding Board for Northern Ireland (SBNI) to be sited within the Public Health Agency. The Bill also provides the legislative framework for the creation and structure of Safeguarding Panels (one in each HSC Trust area) to support the work of the SBNI. A series of statutory regulations and statutory guidance will underpin the arrangements. The Bill contains 17 Clauses. Sections 3 to 12 of this research paper provide detail on the main clauses of the Bill and highlight issues that have been raised to date during consultation on and consideration of the proposals.

The primary legislation governing the delivery of child protection services in Northern Ireland is The Children (Northern Ireland) Order 1995¹, which places a statutory duty on the key agencies. The Health and Social Care (HSC) Trusts hold the primary statutory responsibility for safeguarding children and conducting any necessary investigations in this regard.

The major DHSSPS guidance document relating to child protection in Northern Ireland is *Cooperating to Safeguard Children 2003*.² It provides guidance on the operation of the Area Child Protection Committees (ACPCs) and Child Protection Panels (CPPs), which were established under 1989 DHSS guidance. With the amalgamation of the four HSS Boards into one Regional HSC Board, the DHSSPS implemented one Regional ACPC (RCPC), which first met on 27th November 2009, pending the implementation of the Safeguarding Board for Northern Ireland.

Much work has been undertaken in this area in recent years by the OFMDFM and the DHSSPS. In recognition of the issue of safeguarding children as a priority for the Executive the OFMDFM published the policy statement *Safeguarding Children* in June 2009³. This forms an important part of the OFMDFM's *10 Year Strategy, Our Children and Young People – Our Pledge* which has the prime aim of ensuring that “*all children fulfil their potential by 2016*” and has six measurable outcomes⁴.

In addition to the proposed SBNI, *Safeguarding Children* highlights a number of key initiatives in the area of safeguarding children including, new Gateway teams established in each HSC Trust; new regional child protection standards; and the

¹ www.opsi.gov.uk/si/si1995/uksi_19950755_en_1

² *Co-operating to safeguard children*, DHSSPS, 2003

Guidance to assist Area Child Protection Committees develop strategies, policies and procedures to safeguard children who are assessed to be at risk of significant harm.

³ *Safeguarding Children – A cross-departmental statement on the protection of children and young people by the Northern Ireland Executive*, 2009, OFMDFM

⁴ *Our Children and Young People – Our Pledge – A Ten Year Strategy for Children and Young People in Northern Ireland 2006-2016*, 2006, OFMDFM page 7

introduction of a regional assessment model *Understanding the Needs of Children in Northern Ireland* (UNOCINI).⁵

Despite efforts to improve child protection through the ACPCs, the structures have received considerable criticism over the years and their capacity to deliver effective co-ordination and co-operation was the focus of criticism in Lord Laming's report into the death of Victoria Climbié. While the ACPCs across Northern Ireland have undertaken some very good work, a number of specific criticisms and recommendations within the DHSSPS 'Overview' Report included that representation on ACPCs should be at a more senior level; inconsistent attendance by members was common, making it difficult to build an effective working forum; and ACPC and CPP activities focused on Board and Trust business with less focus on the inter-disciplinary and interagency responsibilities of child protection.⁶

It was recognised in Northern Ireland that the ACPC and CPP structures required reform. The culmination of this process is the establishment of the proposed SBNI with reforms along similar lines as those in recent years in England and Wales with the introduction of the Local Safeguarding Children Boards (LSCBs) as established by the Children Act 2004.⁷ The main Clauses in the Bill are now outlined.

Clause 1 places a duty on the DHSSPS to establish the SBNI, that the SBNI must include a Chair appointed by the DHSSPS and representatives of the persons/bodies listed in 1(3). The bodies specifically named in this clause are the Regional HSC Board, Regional Agency for Public Health and Social Well-being, HSC Trusts, PSNI, Probation Board, Youth Justice Agency, Education and Library Boards, District Councils, and NSPCC. Regulations will make provision for the appointment of the Chair, members and staff of the SBNI; and the procedure of the SBNI. The intention is to have an Independent Chair and much of the debate around this Clause in the paper reflects the issue of independence of the Chair, the accountability of the post and the size and membership of the SBNI (including the seniority of member required).

The SBNI will be sited within the Public Health Agency (PHA) and will have its own annual budget of £750,000. The DHSSPS have highlighted that this compares favourably with the funding for the LSCBs in England and it is expected that 'support in kind' will be provided by member agencies.

Clause 3 describes the main duties and powers of the SBNI, which include undertaking Case Management Reviews and reviewing information of deaths of children in Northern Ireland as may be prescribed in regulations; taking reasonable steps to promote communication between the SBNI and children and young people and making arrangements for consultation in relation to safeguarding children; compiling and

⁵ Information extracted from NI Assembly Research Paper entitled *Developing New Child Protection Safeguarding Structures in Northern Ireland* (February 2010), pages 5-6

⁶ Information is extracted from DHSSPS (2006) *Our Children and Young People – Our Shared Responsibility – Inspection of Child Protection in Northern Ireland (Overview Report)*, Social Services Inspectorate, Pages 56-58

⁷ Children Act 2004, http://www.opsi.gov.uk/acts/acts2004/ukpga_20040031_en_1

analysing information; and publication of any matter concerning safeguarding subject to the approval of the DHSSPS.

Much of the debate around this Clause in the paper concerns establishing the core business with such a wide range of functions; how the voice of children and young people will be heard and acted upon; and concerns over the perception of lack of independence of the SBNI if it cannot publish material concerning safeguarding/promoting welfare of children without the approval of the DHSSPS

Clause 4 gives the DHSSPS the power to give directions of a general or specific nature to the SBNI as to the exercise of any of its functions. The DHSSPS maintain the aim is not to fetter the independence of the SBNI but to deal with exceptional situations.

Clause 6 places a duty on the SBNI to produce an annual report for the DHSSPS. The DHSSPS must lay a copy before the Northern Ireland Assembly. It is planned that the performance management framework for the SBNI “*will be explicitly linked to the OFMDFM ‘Our Children, Our Pledge 10 Year Strategy’ (2006-2016)*”, with performance indicators for the safeguarding agenda predominately fitting under the heading ‘Living in Safety with Stability’.⁸

Clause 7 deals with the structure underpinning the SBNI and places a duty on the SBNI to establish certain committees – a prescribed number of ‘Safeguarding Panels’; the ‘Child Death Overview Panel’; and the ‘Case Management Review Panel’. In addition to these, the SBNI also has the power to establish one or more other committees and one or more other subcommittees. With regard to the Safeguarding Panels, five are proposed (one within each HSC Trust area) and Statutory Regulations will define much of their function. Concern has been raised around the extensive subgroup support structure of the SBNI and the potential impact this may have on the organisations involved.

Clause 10 places a reciprocal duty to co-operate on the SBNI and its constituent bodies and any other bodies that may be included in the SBNI. To support this duty a ‘specific partnership agreement’ is planned which will be a contract setting out the expectations and obligations to participate in the co-operative working of the SBNI. There appears to be wide support for such a duty.

Clause 12 places a duty on the bodies to which this clause applies to make sure they have due regard to the need to safeguard and promote the welfare of children in exercising their functions and to have due regard to any guidance provided by the DHSSPS in the exercise of this duty.

Clause 14 notes that except for the regulations made under Clause 2(2), which will be made by affirmative resolution, all other regulations in this Bill are subject to negative resolution.

⁸ *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal, DHSSPS, August 2009 paragraph 17*

The paper finishes with Section 13 looking at several areas for further consideration with further discussion around the areas of Children's Services Planning, the involvement of children and young people with the SBNI and safeguarding across jurisdictions.

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1. Context and Background of the Bill

The Safeguarding Board Bill provides the legislative framework for the creation of the new regional Safeguarding Board for Northern Ireland (SBNI) to be sited within the Public Health Agency. The Bill also provides the legislative framework for the creation and structure of Safeguarding Panels (one in each HSC Trust area) to support the work of the SBNI. A series of statutory regulations and statutory guidance will underpin the arrangements.

1.1 Current Legislation

The right to be protected as a child is enshrined in the UK government's commitment to the United Nations Convention on the Rights of the Child (UNCRC).⁹ The primary legislation governing the delivery of child protection services in Northern Ireland is The Children (Northern Ireland) Order 1995¹⁰, which places a statutory duty on the key agencies to deliver child protection services and impacts on all who work with and care for children.¹¹ The Health and Social Care (HSC) Trusts hold the primary statutory responsibility for safeguarding children and conducting any necessary investigations in this regard. The Children Order also places duties on other bodies and authorities to assist the Trusts with their inquiries.¹²

The Northern Ireland Commissioner for Children and Young People (NICCY) has stated that the guiding principles of the UNCRC should be more clearly reflected in the proposals for the SBNI, particularly the right of the child to have their views taken into account on all matters affecting them.¹³ The UNCRC acknowledges the unique relationship between parents and their children and the importance of this relationship was highlighted by the Western HSC Trust - "*parents and families must be supported in their role of caring for children and where tensions arise between state intervention and family life, all actions should be taken in the best interest of the child*".¹⁴

The major guidance document relating to child protection in Northern Ireland is *Cooperating to Safeguard Children 2003*¹⁵ which sets out the role of the Boards (refers to the legacy Boards, now one Regional Board), Trusts and other agencies and how

⁹ *Safeguarding Children – A cross-departmental statement on the protection of children and young people by the Northern Ireland Executive*, 2009, OFMDFM, page 6

¹⁰ www.opsi.gov.uk/si/si1995/uksi_19950755_en_1

¹¹ NI Assembly Research Paper entitled *Developing New Child Protection Safeguarding Structures in Northern Ireland* (February 2010), page 8

¹² *Our Children and Young People – Our Shared Responsibility, Overview Report*, December 2006, SSI, DHSSPS, paragraph 1.6

¹³ Submission by the Northern Ireland Commissioner for Children and Young People to the HSSPS Committee on the proposed Safeguarding Board for Northern Ireland, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/NICCY.pdf>

¹⁴ Proposed Safeguarding Board, Western HSC Trust Submission to HSSPS Committee http://www.niassembly.gov.uk/health/2007mandate/Submissions/Western_Trust.pdf

¹⁵ *Co-operating to safeguard children*, DHSSPS, 2003
Guidance to assist Area Child Protection Committees develop strategies, policies and procedures to safeguard children who are assessed to be at risk of significant harm.

they should co-operate to promote children's welfare and to protect them from abuse or neglect. It also provides guidance on the operation of the Area Child Protection Committees (ACPCs) (one in each Health Board at that time) and Child Protection Panels (CPPs), which had been established under DHSS guidance (1989).¹⁶ Reflecting the amalgamation of the four HSS Boards into one Regional Health and Social Care Board, the DHSSPS implemented one Regional ACPC (RCPC), which first met on 27th November 2009, pending the implementation of the SBNI.

1.2 Relevant Statistics

During 2008/09 there were a total of 28,552 children in Northern Ireland referred to children's social services. Of this total, 3,825 were Child Protection referrals and as at 31st March 2009, there were 2,488 children on the Child Protection Register, an increase of 20% from 2008 (a total increase of 76% from 2004¹⁷). Neglect is the most common category of abuse with 50% being deemed at risk of neglect.¹⁸

From 2003/04 to 2008/09, the number of Child Protection Investigations has increased by 48% from 1,928 to 2,856 and over the same period Child Protection Registrations increased by 90% from 962 to 1,829. De-registrations from the register also rose over this period by 22% from 1,154 to 1,404.¹⁹

As Child Protection Registers primarily focus on abuse within a family context, it is informative to look at police statistics reports of abuse relating to children in a range of contexts to potentially gain a fuller picture of harm to children.²⁰ A total of 5,958 offences against the person and sexual offences against children and young people under the age of 18 were recorded by the PSNI in 2008/09, including 1084 recorded sexual offences against children and young people under 18 years old.²¹

All of the above statistics relate to those cases known to the authorities, however, research has shown that there is often under-reporting of child abuse and neglect.²² Research evidence also suggests "*child abuse and neglect occur as a result of complex interaction between different factors which impair parenting including domestic violence; low self-esteem; social isolation; mental health problems; and substance misuse...it is important to recognise that many families experience the same social or personal disadvantages and abuse does not occur. Abuse can also happen in families where none of these factors are present*".²³

¹⁶ DHSS (1989) *Cooperating to Safeguard*

¹⁷ Children Order Statistical Trends for Northern Ireland 2003/04-2008/09, DHSSPS, NISRA, 16th April 2010

¹⁸ Children Order Statistical Tables for Northern Ireland (2008/09), DHSSPS, NISRA, 16th April 2010

¹⁹ Children Order Statistical Trends for Northern Ireland 2003/04-2008/09, DHSSPS, NISRA, 16th April 2010

²⁰ *Safeguarding Children – A cross-departmental statement on the protection of children and young people by the Northern Ireland Executive*, 2009, OFMDFM, page 10

²¹ Key Child Protection Statistics in Northern Ireland, June 2009, NI Policy and Research Unit, NSPCC, page 23-24

²² *Safeguarding Children – A cross-departmental statement on the protection of children and young people by the Northern Ireland Executive*, 2009, OFMDFM, page 11

²³ *Safeguarding Children – A cross-departmental statement on the protection of children and young people by the Northern Ireland Executive*, 2009, OFMDFM, page 11-12

1.3 Recent Work in Northern Ireland

The UK Inquiry led by Lord Laming into the death of Victoria Climbié in 2003 produced a report containing 108 recommendations, including that agencies conduct an audit of their child protection services against key themes and an audit of child protection services against the Laming recommendations was conducted by DHSSPS during 2004.

Much work has also been undertaken by the OFMDFM and the DHSSPS to further protect children and young people. In recognition of the issue as a priority for the Executive, the OFMDFM published *Safeguarding Children – A cross-departmental statement on the protection of children and young people* (June 2009).²⁴ This policy statement forms an important part of the OFMDFM's *10 Year Strategy, Our Children and Young People – Our Pledge* which has the prime aim of ensuring that “*all children fulfil their potential by 2016*”. The strategy has six measurable outcomes to ensure that children and young people in Northern Ireland are healthy; enjoying, learning and achieving; living in safety and with stability; experiencing economic and environmental well-being; contributing positively to community and society; and living in a society, which respects their rights. 25

The OFMDFM policy statement *Safeguarding Children* is taking forward the outcome of ‘living in safety and with stability’ of the 10 Year Strategy. In addition to the proposed SBNI, *Safeguarding Children* highlights a number of the key initiatives in the area of safeguarding children that have been established or reinforced over the last few years, for example²⁶:

- New Gateway teams have been established in each Health and Social Care (HSC) Trust to act as a point of first contact for child referrals to social services and there are new Principal Practitioner posts to ensure expertise is retained in front line roles;
- The DHSSPS has published new regional child protection standards applicable to all public bodies, organisations and persons who provide statutory services to children and young people²⁷; and
- The DHSSPS have developed a regional assessment model *Understanding the Needs of Children in Northern Ireland* (UNOCINI) to help professionals across a range of disciplines take a systematic approach to the assessment of children’s needs against agreed areas and it provides a common format for referral to social services.

²⁴ *Safeguarding Children – A cross-departmental statement on the protection of children and young people by the Northern Ireland Executive*, 2009, OFMDFM

²⁵ *Our Children and Young People – Our Pledge – A Ten Year Strategy for Children and Young People in Northern Ireland* 2006-2016, 2006, OFMDFM page 7

²⁶ Information extracted from NI Assembly Research Paper entitled *Developing New Child Protection Safeguarding Structures in Northern Ireland* (February 2010), pages 5-6

²⁷ Available at www.dhsspsni.gov.uk/standards_for_child_protection_services.pdf

1.4 The Need for Reform

Despite efforts to improve child protection through the planning and co-ordination of interagency work by ACPCs, the structures have received considerable criticism over the years and in 2008, the Joint Chief Inspectors report was highly critical of ACPCs²⁸, “*In the majority of areas the ACPC is a weak body that was not exercising effective leadership of the safeguarding agenda across agencies effectively*”.

The capacity of ACPCs to deliver effective co-ordination and co-operation between key agencies was the focus of criticism in Lord Laming’s report into the death of Victoria Climbié, including that the ACPCs were weak, lacking authority and unable to intervene in failing situations.²⁹ While the ACPCs across Northern Ireland have undertaken some very good work since their inception, a number of specific criticisms and recommendations within the DHSSPS ‘Overview’ Report concerning the ACPCs included³⁰:

- Representation on ACPCs should be at a more senior level;
- Inconsistent attendance by members was common making it difficult to build an effective working forum and to address issues of interagency significance;
- The agendas drifted with items of business never reaching a conclusion;
- ACPC annual reports were weak with little comment on how outcomes would be measured and who had lead responsibility for actions; and
- ACPC and CPP activities focused on Board and Trust business with less focus on the inter-disciplinary and interagency responsibilities of child protection.

The Government’s response to Lord Laming’s Inquiry into the death of Victoria Climbié was the introduction of the Green paper *Every Child Matters* and the Children Act 2004.³¹ Sections 13-16 of the Children Act 2004 relate to the establishment of the LSCBs in England and Wales to replace the non-statutory ACPCs. In Northern Ireland 2002, Patricia Lewsley (then MLA, now the NI Commissioner for Children and Young People) proposed a Private Members Bill, designed to strengthen the functions of the ACPCs by placing them on a statutory footing. Suspension of the Assembly prevented this Bill from being taken forward. There was wide consultation at the time and “*much of the debate at this time is reflected in the current deliberations*”.³² A further consultation on the proposals for the SBNI took place in 2007 and 47 responses were

²⁸ Department of Health (2002) *Safeguarding Children – a joint chief inspectors report on arrangements to safeguard children*, The Stationary Office, cited in Vincent, S. (2008) *Inter-agency Guidance in Relation to Child Protection: A UK Comparison*, Centre for UK-Learning in Child Protection

²⁹ NI Assembly Research Paper entitled *Developing New Child Protection Safeguarding Structures in Northern Ireland* (February 2010), page 9

³⁰ Information is extracted from DHSSPS (2006) *Our Children and Young People – Our Shared Responsibility – Inspection of Child Protection in Northern Ireland (Overview Report)*, Social Services Inspectorate, Pages 56-58

³¹ The Children Act 2004, http://www.opsi.gov.uk/acts/acts2004/ukpga_20040031_en_1

³² Establishment of a Regional Statutory Safeguarding Board for Northern Ireland, Summary Policy Proposal, DHSSPS, August 2009, paragraph 4

received with the DHSSPS stating that “almost 80% of respondents indicating their support for the proposal”.³³

The DHSSPS recognised that the ACPC and CPP structures required reform. The culmination of this process is the establishment of the proposed SBNI. The proposed reforms are along similar lines as reforms in recent years in England and Wales with the introduction of the Local Safeguarding Children Boards (LSCBs) as established by the Children Act 2004.

Given the integration of health and social care in Northern Ireland and the different role of local government in England, the DHSSPS proposes that “it is not appropriate to replicate all the provisions of the Children Act 2004 in Northern Ireland...the arrangements which we are proposing... have been customized to take account of particular needs in Northern Ireland. This will place Northern Ireland in a unique position in that one regional body will be able to take a comprehensive, co-ordinating and strategic view of safeguarding practice here”.³⁴

One of the main parallels between the LSCBs and the proposed SBNI is the key responsibility to widen the safeguarding agenda beyond traditional child protection duties (with emphasis on the family support model of work³⁵) once its core business of child protection responsibilities is strong.³⁶ Once the Safeguarding Board in Northern Ireland becomes operational, Scotland will be the only part of the UK which has not replaced non-statutory Child Protection Committees (CPCs) with a statutory process.

2. Introduction to the Bill

This Bill provides the legislative framework for the creation of the new Regional Safeguarding Board for Northern Ireland (SBNI) to be sited within the Public Health Agency. The Bill also provides the legislative framework for the creation and structure of Safeguarding Panels (one in each HSC Trust area) to support the work of the SBNI. A series of statutory regulations and statutory guidance will underpin the arrangements.

As this paper moves to the consideration of the issues surrounding the Clauses of the Bill, there are some overarching matters that merit attention as a backdrop to the

³³ Establishment of a Regional Statutory Safeguarding Board for Northern Ireland, Summary Policy Proposal, DHSSPS, August 2009, paragraph 5

³⁴ Establishment of a Regional Statutory Safeguarding Board for Northern Ireland, Summary Policy Proposal, DHSSPS, August 2009, paragraph 9

³⁵ The family support model is based on the work of Pauline Hardiker and her colleagues (1991). The Hardiker model (four levels) is recognized throughout the UK and internationally as a robust flexible tool for planning services to meet children's needs. It is used to capture the services and supports provided by any sector including families, community, voluntary and statutory services both locally and regionally. Level 1 – services/supports for all children and young people; Level 2 – services/supports for children who are vulnerable, though an assessment of need; Level 3 – services/support to families and children where there are chronic or serious problems; and Level 4 – services/support to families and children where the family has broken down permanently or temporarily. (*Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009, Appendix 1, Family Support Model)

³⁶ NI Assembly Research Paper entitled *Developing New Child Protection Safeguarding Structures in Northern Ireland* (February 2010), page 22-23

consideration of the establishment and operation of the SBNI. These are now briefly outlined.

The scope of the role of the SBNI is broader than the existing RCPC, however addressing child protection responsibilities will remain fundamental to its business. The scope includes four broad elements to safeguard and promote the welfare of children. These are³⁷:

- Protecting children who are suffering or at risk of suffering significant harm;
- Safeguarding and promoting the welfare of children who are potentially more vulnerable than the general population, for example, children who are detained and children from a minority or ethnic group;
- Activities that affect all children to safeguard them from maltreatment and or impairment of health and development; and
- Proactive work to target specific groups.

The DHSSPS has highlighted the importance of the SBNI establishing ‘firm connections’ with the Children’s Services Planning process, which was legislatively introduced into Northern Ireland in 1998 with the establishment of four Children and Young People’s Committees - *“It will, therefore, be necessary and appropriate for the SBNI to participate directly in the children’s planning process to ensure that the issue of safeguarding children and young people within Northern Ireland is highlighted and acted upon accordingly”* (see section 13.1 for further discussion).³⁸

A key issue for consideration is to ensure that the final Bill means the SBNI has the *“authority, autonomy and flexibility to conduct its business effectively”*.³⁹ In connection with this, Children in Northern Ireland (CiNI) highlight the aim to develop a SBNI that *“is unfettered in its independent scrutiny of the HSCB and the Trusts...and quite distinct from the current RQIA, the SBNI must not become an inspection body”*.⁴⁰

There appears to be some confusion over the degree to which the delegation of statutory functions will be affected by the proposals for the SBNI.⁴¹ The Regulation and Quality Improvement Authority (RQIA) have indicated an overarching concern that it is not clear from the proposals how the SBNI will impact on the Scheme.⁴² However,

³⁷ Extract from: Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal, DHSSPS, August 2009 paragraph 5.1

³⁸ *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 12

³⁹ Submission by the Southern HSC Trust to the NI Assembly Committee for HSSPS on the SBNI, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/SouthernHealthSocialCareTrust.pdf>

⁴⁰ Evidence, Safeguarding Board for Northern Ireland, to Assembly Committee for HSSPS, CiNI, February 2010, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/cini.htm>

⁴¹ Currently in Northern Ireland there is a statutory Scheme of Delegation between the DHSSPS, the HSC Board and the Five HSC Trusts, which deals with functions within the Children (NI) Order 1995, the Adoption (NI) Order, Mental Health Order (1986) and the Children (Leaving Care) Act 2002.

⁴² Proposed Safeguarding Board for Northern Ireland, RQIA, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/RQIA.pdf>

for example, the Southern HSC Trusts and the Belfast HSC Trust appear to be clear that the proposals do not affect their delegated statutory functions.^{43, 44}

Professor Jan Horwath, Professor of Child Welfare at Sheffield University, highlighted the issue of resources and that the creation of an effective safeguarding board was only *“half the problem...unless the developments in what is perceived to be good quality practice go together with resources that enable that practice, there is a limit to what the safeguarding board can do”*.⁴⁵ *The RQIA and Northern HSC Trust highlighted similar concerns given “the acknowledged 30%+ underfunding of children’s social services in Northern Ireland”*.^{46, 47}

The Bill contains 17 Clauses and the remainder of this paper goes into detail on the main clauses of the Bill and identifies and highlights areas of concern and issues that have been raised during consultation on and consideration of the proposals to date.

3 Clause 1 – Establishing the SBNI

3.1 Details of the Clause

Clause 1 provides for the establishment of a Safeguarding Board for Northern Ireland (SBNI) and places a duty on the DHSSPS to establish the SBNI. 1(2) provides that the SBNI must include a Chair appointed by the DHSSPS and representatives of the persons/bodies listed in 1(3) as may be prescribed by regulations. The bodies specifically named in this clause are the Regional HSC Board, Regional Agency for Public Health and Social Well-being, HSC Trusts, PSNI, Probation Board, Youth Justice Agency, Education and Library Boards, District Councils, and NSPCC. The expansion of this specified list appears to be covered in two ways:

- 1(3) j allows for expansion of this list by “such other relevant persons or bodies that may be prescribed in regulations”; and
- 1(4) allows for expansion of this list “subject to the approval of the Department” as the SBNI may also include representatives of relevant bodies/persons as the members of the Board consider should be on it.

Clause 1(5) notes further regulations to make provision for the appointment, tenure, vacation, remuneration and allowances of the Chair and members of the SBNI; the procedure of the SBNI; the staff, premises and expenses of the SBNI; and that

⁴³ Submission by the Southern HSC Trust to the NI Assembly Committee for HSSPS on the SBNI, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/SouthernHealthSocialCareTrust.pdf>

⁴⁴ Briefing Paper for the Committee for HSSPS on the Proposed Safeguarding Board Northern Ireland (SBNI), paragraph 5.3, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/bhsc.htm>

⁴⁵ Evidence Session on Safeguarding Board for Northern Ireland with Professor Jan Horwath, 4 March 2010, Committee for HSSPS, Official Report (Hansard), page 14

⁴⁶ Proposed Safeguarding Board for Northern Ireland, Submission to HSSPS Committee, RQIA, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/RQIA.pdf>

⁴⁷ NHSC, Proposed Safeguarding Board, Submission to HSSPS Committee http://www.niassembly.gov.uk/health/2007mandate/Submissions/Northern_Trust.pdf

proceedings of the SBNI will not be invalidated by any vacancy on the SBNI or any defect in a member's appointment or qualifications.

3.2 Independent Chair

Although there is no specific statutory requirement for independence of the Chair referred to in 1(2) it is the policy intention of the DHSSPS that the Chair of the SBNI will be independent of any of the agencies represented on the Board and appointed by the Public Appointments Process to serve a maximum of two terms with each term lasting no more than four years. The caveat to the independence of the Chair is that the Department envisage that it must be someone with "*sufficient knowledge and experience to discharge the responsibilities of the post to a high standard*"⁴⁸ and that "*the arrangements seek to ensure that the Chairperson of the SBNI is independent of the people who provide and commission the services that the SBNI will consider and review*".⁴⁹

The proposal for an independent Chair appears to be widely acceptable and is compatible with the thinking of Lord Laming who recognised in his 2009 review that having independent Chairs who are also sufficiently experienced in safeguarding and child protection services is critical.⁵⁰

France et. al. (2010) carried out a study in England to determine whether the structures and processes of the LSCBs have overcome the identified weaknesses of ACPCs. With regard to the Chair of the LSCB, across the case study areas the Independent Chairs were seen as effective in leading the Boards but some problems were identified including difficulties that independent Chairs could have in becoming embedded in broader strategic networks and activities; under-resourcing of the post or insufficient administrative support leaving the Chair with insufficient time for wider strategic functions; and in terms of accountability, some problems existed over the separation of accountability from management.⁵¹

3.3 Membership of the SBNI

The initial core membership is outlined as follows in 1(3) of the Bill⁵²:

- A Chief Executive (representing the HSC Trusts);
- The Director of Children's Services from each HSC Trust;
- Two District Council Members (employees of the Council);
- ACC – PSNI;

⁴⁸ *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 9.4

⁴⁹ *Departmental Briefing to the Committee for HSSPS on the Safeguarding Board for Northern Ireland*, 22 April 2010, Official Report (Hansard), page 4

⁵⁰ *The Protection of Children in England: A Progress Report*, The Lord Laming, March 2009, TSO, page 74

⁵¹ France, A., Munro, E.R., and Waring, A. (2010) *The Evaluation of Arrangements for Effective Operation of the New Local Safeguarding Children Boards in England*, Department for Children, Schools and Families, March 2010

⁵² *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 11.1

- Chief Executive PBNI;
- Chief Executive – Youth Justice;
- Education Representative (Education Skills Authority);
- Regional Director – NSPCC;
- Chief Executive from voluntary sector;
- Patients and Clients Council;
- Lay Members;
- Director of Social Work (HSC Board);
- Director of Nursing (Public Health Agency);
- Assistant Chief Social Services Officer (in attendance but not a voting member).

The DHSSPS have initially identified the ideal size of the SBNI to be about 20 members and the decision to include the NSPCC in this core membership ahead of other voluntary groups reflects “*by provision of its royal charter, it has the authority to exercise a statutory function for protecting children*”.⁵³ It is anticipated by the DHSSPS that the successful operation of the SBNI will depend on the participation of the voluntary sector at subcommittee level.⁵⁴

The policy intention is that Members will be of a senior level in the organisation with a strategic role in safeguarding and promoting the welfare within their organisation, as “*Members must be able to represent their organisation and commit it to policy and procedural matters, and hold their organisation to account. Nominated officers may only delegate their responsibilities following agreement with the SBNI Chair...in exceptional circumstances*”.⁵⁵

The English LSCBs range in size from 12 members to more than 90, so care must be taken that “*membership reflects the key issues without broadening out so much that we do not do the work or deliver on the work that is required*”.⁵⁶ The LSCBs appear to have taken one of two approaches to membership⁵⁷:

- Exclusive – limiting the number of people on the LSCB thus increasing the “*chance of creating shared understanding and focused programme of work. However, communication with wider groups and links with operational practice may be weak*”; or
- Inclusive – with broader membership and “*able to draw upon the experience and expertise of people from a wider range of backgrounds, however, there is a risk of*

⁵³ *Departmental Briefing to the Committee for HSSPS on the Safeguarding Board for Northern Ireland*, 22 April 2010, Official Report (Hansard), page 10

⁵⁴ *Departmental Briefing to the Committee for HSSPS on the Safeguarding Board for Northern Ireland*, 22 April 2010, Official Report (Hansard), page 10

⁵⁵ *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 10.1

⁵⁶ Evidence Session on the Safeguarding Board for Northern Ireland with the RCPC, Committee for HSSPS, Official Report (Hansard), 25 February 2010, page 14

⁵⁷ France, A., Munro, E.R., and Waring, A. (2010) *The Evaluation of Arrangements for Effective Operation of the New Local Safeguarding Children Boards in England*, Department for Children, Schools and Families, March 2010

communication breakdown across the infrastructure of the Board and that a shared sense of vision and focus is lost’.

Professor Jan Horwath noted that many of the English LSCBs have moved towards having professional representation at board level as observers and advisers, resulting in clearer decision-making.⁵⁸

There are proposals for a medical representative to be on the SBNI from, for example, from Belfast HSC Trust.⁵⁹ The British Association for the Study and Prevention of Child Abuse and Neglect (BASPCAN) propose that a senior doctor is a core member of the SBNI *‘given the very valuable contribution that medical practitioners make to the identification and management of abuse and neglect*’.⁶⁰ In a similar suggestion the Northern HSCT advocated the Designated Doctor role as a core member, but also noted that there was a need to clarify the roles and responsibilities of members of the SBNI in relation to nursing, particularly the role of the Designated Nurse for Safeguarding Children and the difference between the Director of Nursing PHA and the Designated Nurse roles.⁶¹

The judiciary are not part of the core membership as the DHSSPS note that *‘the independence of the judiciary is fundamental to the welfare of children who come before the courts*’.

It may be possible for the SBNI to be represented on the Children Order Advisory Committee (the mechanism by which those concerned with the well-being of children liaise with the judiciary to exchange views)⁶² as suggested by the British Association for the Study and Prevention of Child Abuse and Neglect (BASPCAN) who proposed that the Chair of the SBNI become a member of the Children Order Advisory Committee.⁶³ CiNI recommend that a relationship be established between the SBNI and the Children Order Advisory Committee.⁶⁴

The Patient and Client Council particularly welcomed the involvement of lay members but noted *‘due care must be taken by the Chair and members that lay members are properly supported and given their voice*’⁶⁵.

⁵⁸ Evidence Session on Safeguarding Board for Northern Ireland with Professor Jan Horwath, 4 March 2010, Committee for HSSPS, Official Report (Hansard), page 9

⁵⁹ Briefing Paper for the Committee for HSSPS on the Proposed Safeguarding Board Northern Ireland (SBNI), Belfast HSC Trust, paragraph 6.8, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/bhsc.htm>

⁶⁰ Submission to the Assembly Health Committee Enquiry on the Safeguarding Board for Northern Ireland by the British Association for the Study and Prevention of Child Abuse and Neglect, BASPCAN, February 2010, www.baspcan.org.uk/files/BASPCAN%20Response%20to%20Assembly%20Health%20Committee%20Feb%202010.pdf

⁶¹ Submission to HSSPS Committee on Safeguarding Board, NHSCT, http://www.niassembly.gov.uk/health/2007mandate/Submissions/Northern_Trust.pdf

⁶² *Departmental Briefing to the Committee for HSSPS on the Safeguarding Board for Northern Ireland*, 22 April 2010, Official Report (Hansard), pages 11-12

⁶³ Submission to the Assembly Health Committee Enquiry on the Safeguarding Board for Northern Ireland by the British Association for the Study and Prevention of Child Abuse and Neglect, BASPCAN, February 2010, www.baspcan.org.uk/files/BASPCAN%20Response%20to%20Assembly%20Health%20Committee%20Feb%202010.pdf

⁶⁴ Evidence, Safeguarding Board for Northern Ireland, to Assembly Committee for HSSPS, CiNI, February 2010, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/cini.htm>

⁶⁵ Safeguarding Board, Response from Patient and Client Council, http://www.niassembly.gov.uk/health/2007mandate/Submissions/Patient_and_Client_Council.pdf

The intention is that individual members of the SBNI will remain accountable to the organisations that are their employers and the organisations, as agencies, will be accountable to the SBNI Chair. The SBNI through the office of the Chairperson “*will be accountable for delivery on key aspects...to the Minister of HSSPS, who will ultimately be responsible to the Northern Ireland Executive*”.⁶⁶ It has been suggested that there are two possible interpretations of this accountability of the Chair to the Minister, “*the SBNI chairperson will be accountable to the Minister, but will he or she be accountable on behalf of the Board or in his or her own right?*”⁶⁷ Further discussion on issues of accountability is found in Section 6.3 of this paper.

3.4 Funding

With reference to 1(5), The SBNI will be sited within the Public Health Agency (PHA) and will have access to its financial accounting system but will have its own annual budget of £750,000. The DHSSPS have highlighted that this compares very favourably with the funding for the LSCBs in England with average funding of around £150,000. It is expected that ‘support in kind’ will be provided by member agencies, although experience of ‘support in kind’ for the LSCBs has been mixed in this regard.⁶⁸ The NSPCC and the Southern HSC Trust, for example, favour the establishment of a ‘funding pool’ to which all key agencies would contribute to ensure a more integrated approach.^{69, 70} Belfast HSC Trust advocate “*full funding on a cross-agency basis of costs associated with additional requirements arising out of the operationalising of the Safeguarding Board and Local Panels*”.⁷¹

BASPCAN highlighted some concerns around the funding, including lack of clarity as to how the Safeguarding Panels (see Clause 7) will be funded; particularly the fact that ACPCs historically provided an extensive training programme at no cost, underpinned by the social services training budget. They felt it unlikely that this could continue under the SBNI and that as the main costs would be core staff, media and public awareness campaigns there should be more detail on these issues to ensure these costs are covered.⁷² The Public Health Agency⁷³, the South Eastern HSC Trust⁷⁴ and

⁶⁶ *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 18.8

⁶⁷ Evidence Session on Safeguarding Board for Northern Ireland with Professor Jan Horwath, 4 March 2010, Committee for HSSPS, Official Report (Hansard), page 5

⁶⁸ *Departmental Briefing to the Committee for HSSPS on the Safeguarding Board for Northern Ireland*, 22 April 2010, Official Report (Hansard), page 5

⁶⁹ Submission by the NSPCC Northern Ireland to the Assembly Health Committee on the Safeguarding Board for Northern Ireland, February 2010, paragraph 19, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/nspcc.htm>

⁷⁰ Submission by the Southern HSC Trust to the NI Assembly Committee for HSSPS on the SBNI, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/SouthernHealthSocialCareTrust.pdf>

⁷¹ Briefing Paper for the Committee for HSSPS on the Proposed Safeguarding Board Northern Ireland (SBNI), Belfast HSC Trust paragraph 13.2, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/bhsct.htm>

⁷² Submission to the Assembly Health Committee Enquiry on the Safeguarding Board for Northern Ireland by the British Association for the Study and Prevention of Child Abuse and Neglect, BASPCAN, February 2010, www.baspcan.org.uk/files/BASPCAN%20Response%20to%20Assembly%20Health%20Committee%20Feb%202010.pdf

⁷³ Submission to HSSPS Committee on Proposed Safeguarding Board http://www.niassembly.gov.uk/health/2007mandate/Submissions/Public_Health_Agency.pdf

⁷⁴ Safeguarding Board for Northern Ireland, SE HSC Trust, Submission to HSSPS Committee http://www.niassembly.gov.uk/health/2007mandate/Submissions/South_Eastern_Trust.pdf

the Northern HSC Trust also highlighted concerns over the funding of the Safeguarding Panels so that they will be able to fulfil their responsibilities in full.⁷⁵

The DHSSPS believe that “*the aims of the SBNI sit well within the ethos of the PHA as the SBNI...will have a wider safeguarding agenda, with a significant function of focusing on prevention and promoting safe behaviour and practice*”.⁷⁶ It is anticipated that the SBNI will be managed by an Executive Officer to support the Chair. In addition, the Executive Officer will be supported by a number of professional advisors and further additional posts may be required for a number of core functions such as research, information and trends analysis, audit functions, training, policy and procedures; and case management reviews.⁷⁷

4. Clause 2 – Objective of the SBNI

The main objective of the SBNI is described as co-ordinating and ensuring effectiveness of what is done by each person or body represented on the SBNI and for the purposes of safeguarding and promoting the welfare of children. Regulations may amend this objective for the purposes of safeguarding and promoting the welfare of children.

In considering the overall objectives of the SBNI it may be useful to consider the five inter-locking objectives of effective child protection systems proposed by The British Association for the Study and Prevention of Child Abuse and Neglect (BASPCAN)⁷⁸:

- Reduce the prevalence and incidence of child abuse and neglect through preventative approaches;
- Reduce the child mortality rate (as a consequence of having an effective child protection system);
- Prevent children identified as being in need of protection from experiencing harm;
- Address the effects on development of children who have experienced harm (resulting in improved psychological and social functioning and educational attainment); and
- Address the needs of other family members so they are in a better position to provide the care and future protection of the child.

⁷⁵ NHSCT, Proposed Safeguarding Board, Submission to HSSPS Committee

http://www.niassembly.gov.uk/health/2007mandate/Submissions/Northern_Trust.pdf

⁷⁶ *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 1.10

⁷⁷ *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 16

⁷⁸ Submission to the Assembly Health Committee Enquiry on the Safeguarding Board for Northern Ireland by the British Association for the Study and Prevention of Child Abuse and Neglect, BASPCAN, February 2010, Introduction, www.baspcan.org.uk/files/BASPCAN%20Response%20to%20Assembly%20Health%20Committee%20Feb%202010.pdf

5. Clause 3 – Functions of the SBNI

5.1 Details of the Clause

This clause describes the main duties and powers of the SBNI, as follows:

- (1) To develop policies and procedures around safeguarding and promoting the welfare of children;
- (2) To promote awareness of the need to safeguard and promote welfare of children;
- (3) To review effectiveness of what is done by each person or body represented on the SBNI;
- (4) To undertake Case Management Reviews as may be prescribed in regulations under the circumstances that may be prescribed in regulations;
- (5) To review such information as may be prescribed in regulations of deaths of children in Northern Ireland in such circumstances as may be prescribed in regulations;
- (6) To advise HSC Board and Local Commissioning Groups in relation to safeguarding and promoting the welfare of children, both after receiving a request for advice and in other cases as the SBNI thinks are appropriate;
- (7) The SBNI must take reasonable steps to promote communication between SBNI and children and young people;
- (8) The SBNI must make arrangements for consultation and discussion in relation to safeguarding and promoting the welfare of children;
- (9) The SBNI may, in connection with safeguarding and promoting the welfare of children;
 - Compile and analyse information
 - Provide advice or information
 - Publish any matter concerning safeguarding/promoting welfare of children subject to approval of the DHSSPS; and
- (10) The SBNI may take part in any other activity that facilitates or is conducive to the achievement of its objective.

5.2 Overview of Functions

France et. al. (2010) note that to be effective the LSCBs in England “*need to set realistic plans and appropriate parameters around the activities they are undertaking*”. LSCBs have embraced the wider safeguarding agenda with mixed results, as some areas have not had the resources necessary to fulfil all functions. Those LSCBs that have been most successful in England have been those that have “*concentrated on the*

'core' business of child protection and then expanded into preventative activities as and when resources have permitted'.⁷⁹

Concern has been expressed over the breadth of functions of the SBNI. The RQIA particularly note the *"volume of work arising from case management reviews, near misses and the amount of monitoring required to ensure the implementation of resultant action plans by the various agencies"*.⁸⁰ Professor Jan Horwath, noted that a crucial issue is what is meant by the 'core business' of the SBNI as *"the most vulnerable children in society are those who are knocking on the door of the child protection system but not accessing it. The placing of strict controls on what constitutes core business could leave extremely vulnerable children at risk"*.⁸¹

5.3 Case Management Reviews

3(4) With regard to Case Management Reviews (CMRs), the DHSSPS propose that the SBNI will assume lead responsibility for deciding if CMRs will be carried out. The Chair of the SBNI will be required to liaise with the current RCPC to review existing CMRs in the system.⁸² The DHSSPS 'Overview Report' (2006) found that ACPCs encountered problems in securing and resourcing independence and impartiality in the Chairmanship and composition of CMR Panels and in securing appropriate expertise in panel members. The CMR reports produced had varied significantly and ACPCs were struggling with the volume of recommendations generated by CMRs and with their potential application across the region.⁸³

In June 2008, the DHSSPS commissioned Queens University Belfast and the NSPCC to undertake a review of the CMR process and the report published in January 2009 highlighted the issue of the responsibility for CMRs being split between the DHSSPS and the ACPCs. The ACPCs (now one RCPC) are responsible for commissioning and overseeing the conduct of a CMR and producing an action plan, meanwhile the DHSSPS is responsible to ensure lessons for policy and practice are acted upon. The majority of those interviewed for the evaluation felt that the move to the SBNI provided an opportunity for these split functions to be amalgamated.⁸⁴

⁷⁹ France, A., Munro, E.R., and Waring, A. (2010) *The Evaluation of Arrangements for Effective Operation of the New Local Safeguarding Children Boards in England*, Department for Children, Schools and Families, March 2010

⁸⁰ Proposed Safeguarding Board for Northern Ireland, RQIA, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/RQIA.pdf>

⁸¹ Evidence Session on Safeguarding Board for Northern Ireland with Professor Jan Horwath, 4 March 2010, Committee for HSSPS, Official Report (Hansard), page 3

⁸² *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 13.14

⁸³ *Our Children and Young People – Our Shared Responsibility – Inspection of Child Protection in Northern Ireland (Overview Report)*, Social Services Inspectorate, DHSSPS (2006) Pages 56-58

⁸⁴ Lazenbatt, A et. al. (2009) *An Evaluation of the Case Management Review Process in Northern Ireland*, QUB/NSPCC, January 2009: 42

5.4 Child Deaths

3(5) provides the framework for two interrelated statutory processes for reviewing child deaths.⁸⁵ Firstly, an overview of all child deaths by a committee of the SBNI to be known as the Child Death Overview Panel (CDOP) and secondly, the Child Death Review Procedure, which will come into effect only when a sudden or unexpected death of a child has occurred. The intention is that a CDOP, Chaired by a Designated Paediatrician, will conduct a paper review of all child deaths, based on information available from those who were involved in the care of the child, before or immediately after the death occurred, and other sources, potentially including the Coroner. The purpose is to prevent such deaths in the future and identification of issues to report to the SBNI.⁸⁶

5.5 Communication

France et. al (2010) found that in England communication of the LSCBs to the wider public and to children and young people was underdeveloped, however a number of examples of good practice did exist and opportunities exist (for example, engaging with Youth Parliament) to develop ways of more actively engaging young people.⁸⁷

It is the policy intention of 3(7) that “*the voice of the child and young person should be heard in all that the SBNI do in relation to safeguarding and promoting the well-being of children and young people within Northern Ireland*”⁸⁸ and it is envisaged that the SBNI will promote both formal and informal networks in engaging with children and young people (see section 13.2 for further discussion).

5.6 Compilation and Analysis of Information

The compilation and analysis of information is referred to in 3(9). The NSPCC⁸⁹ and BASPCAN, for example, support the proposal to integrate the child protection registers of the five HSC Trusts but BASPCAN cautioned against “*any move to introduce a version of the English integrated children’s system into Northern Ireland, as its worth has not been proven, based on research conducted to date*”.⁹⁰ The RQIA suggest that the integrated child protection register could be a function of the HSC Board, rather

⁸⁵ Approximately 207 deaths of children under 18 years are registered each year in Northern Ireland, *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 13.18

⁸⁶ *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 13.19

⁸⁷ France, A., Munro, E.R., and Waring, A. (2010) *The Evaluation of Arrangements for Effective Operation of the New Local Safeguarding Children Boards in England*, Department for Children, Schools and Families, March 2010

⁸⁸ *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 22.2

⁸⁹ Submission by the NSPCC Northern Ireland to the Assembly Health Committee on the Safeguarding Board for Northern Ireland, February 2010, paragraph 19, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/nspcc.htm>

⁹⁰ Submission to the Assembly Health Committee Enquiry on the Safeguarding Board for Northern Ireland by the British Association for the Study and Prevention of Child Abuse and Neglect, BASPCAN, February 2010, www.baspcan.org.uk/files/BASPCAN%20Response%20to%20Assembly%20Health%20Committee%20Feb%202010.pdf

than the SBNI, given its remit for child protection under the scheme of delegation of statutory functions.⁹¹

5.7 Publication Issues

In consideration of 3(9) where the publication of any matter by the SBNI concerning safeguarding/promoting welfare of children requires the approval of the DHSSPS, it may be useful to consider the DHSSPS understanding of this aspect of the Clause and whether or not this understanding is widely held. The DHSSPS hold the view that it is normal practice, for an arm's-length body, to share an annual report or any report for publication with the DHSSPS in advance of publication to ensure there is clarity of understanding and an opportunity to check for factual accuracy. According to the DHSSPS it is "*not intended to be a veto or a censoring mechanism*".⁹²

6. Clause 4 – Directions to the Safeguarding Board

This clause gives the DHSSPS the power to give directions of a general or specific nature to the SBNI as to the exercise of any of its functions. The SBNI must comply with these directions and the directions can be revoked or varied by subsequent directions. There are some caveats in that the Department is required to consult the SBNI prior to giving the directions except in circumstances when the DHSSPS believes that the matter is of such urgency that it will not consult prior to giving the directions but will, "*as soon as is reasonably practicable*" give notice to the SBNI of why it took that action.

The DHSSPS highlight that "*situations could arise that were not foreseen*" and that the policy intention of this power to direct the SBNI is to cover exceptional circumstances when the DHSSPS directs the SBNI to do exceptional work that falls outside its programme of work. The DHSSPS believes that "*this is not the same as directing it in its day to day work and fettering its independence*".⁹³

It would appear that the intention for the SBNI is to work closely with the DHSSPS and be different in constitution and purpose from a usual Non-Departmental Public Body and it is possible that the inclusion of this clause may cause concern over the independence of the proposed SBNI. There appears to be no such equivalent provision in the Children Act 2004 for the LSCBs in England and Wales.

⁹¹ Proposed Safeguarding Board for Northern Ireland, RQIA, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/RQIA.pdf>

⁹² *Departmental Briefing to the Committee for HSSPS on the Safeguarding Board for Northern Ireland*, 22 April 2010, Official Report (Hansard), page 9

⁹³ *Departmental Briefing to the Committee for HSSPS on the Safeguarding Board for Northern Ireland*, 22 April 2010, Official Report (Hansard), page 5

7. Clause 6 – Annual Report

This clause places a duty on the SBNI to produce an annual report for the DHSSPS and the DHSSPS must lay a copy before the Northern Ireland Assembly. It is envisaged that the SBNI's annual report will account for its activities throughout the year and link these activities to performance indicators. It is planned that the performance management framework for the SBNI "*will be explicitly linked to the OFMDFM 'Our Children, Our Pledge 10 Year Strategy' (2006-2016)*", with performance indicators for the safeguarding agenda predominately fitting under the heading 'Living in Safety with Stability' and likely indicators related to 'Being Healthy' and 'Enjoying Learning and Achieving'.⁹⁴

The British Association for the Study and Prevention of Child Abuse and Neglect (BASPCAN) suggest an enhanced level of accountability, by every agency represented on the SBNI having a legal duty to publish an annual statement detailing their contribution to the work of the SBNI and their actions in promoting the safeguarding of children within their work.⁹⁵

BASPCAN and the RQIA comment that accountability is a challenge when agencies on the SBNI will operate under their own separate legislative and policy priorities, however BASPCAN notes that the issue can be resolved by "*ensuring that there are separation of functions and transparency in the operation of the Board... the chairing arrangements of the Board are key*".⁹⁶ The RQIA highlight "*it is difficult to know how it will be able to discharge this function, other than by a process of mutual agreement*".⁹⁷ BASPCAN believe there is strength in the proposal that the Chair will be accountable to the Minister rather than officials within the Health and Social Care Board.⁹⁸

The RQIA is expecting to have an "*oversight of the governance arrangements of the SBNI in accordance with The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003*".⁹⁹

⁹⁴ *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 17

⁹⁵ Submission to the Assembly Health Committee Enquiry on the Safeguarding Board for Northern Ireland by the British Association for the Study and Prevention of Child Abuse and Neglect, BASPCAN, February 2010, www.baspcan.org.uk/files/BASPCAN%20Response%20to%20Assembly%20Health%20Committee%20Feb%202010.pdf

⁹⁶ Submission to the Assembly Health Committee Enquiry on the Safeguarding Board for Northern Ireland by the British Association for the Study and Prevention of Child Abuse and Neglect, BASPCAN, February 2010, www.baspcan.org.uk/files/BASPCAN%20Response%20to%20Assembly%20Health%20Committee%20Feb%202010.pdf

⁹⁷ Proposed Safeguarding Board for Northern Ireland, RQIA, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/RQIA.pdf>, section 3

⁹⁸ Submission to the Assembly Health Committee Enquiry on the Safeguarding Board for Northern Ireland by the British Association for the Study and Prevention of Child Abuse and Neglect, BASPCAN, February 2010, www.baspcan.org.uk/files/BASPCAN%20Response%20to%20Assembly%20Health%20Committee%20Feb%202010.pdf

⁹⁹ Proposed Safeguarding Board for Northern Ireland, Submission to HSSPS Committee, RQIA, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/RQIA.pdf>

8. Clause 7 – Committees and Sub-committees

This clause deals with the structure underpinning the SBNI and places a duty on the SBNI to establish certain committees – a prescribed number of ‘Safeguarding Panels’; the ‘Child Death Overview Panel’; and the ‘Case Management Review Panel’. In addition to these the SBNI also has the power to establish one or more other committees and one or more other subcommittees. As with Clause 1 regulations will make provision for the appointment, tenure, vacation, remuneration and allowances of the Chair and members of the committees and sub-committees; the procedure of the committees and sub-committees; their staff, premises and expenses; and proceedings of the SBNI will not be invalidated by any vacancy on a committee or sub-committee or any defect in a member of such a committee or sub-committee’s appointment or qualifications. Members of these committees and sub-committees may be persons who are not members of the SBNI and, in the case of sub-committees, do not need to be members of the committee which established it.

With regard to the Safeguarding Panels, five are proposed (one within each HSC Trust area) and Statutory Regulations will define much of their function. Following implementation, it is intended that they will be more operationally inclined and feed into the strategic processes of the SBNI, including ensuring that the SBNI “*fully embraces the transitional arrangements from child protection under the ACPC arrangements to the wider safeguarding agenda covering prevention and promotional activities*”.¹⁰⁰ The Chair of each Safeguarding Panel will be accountable to the Chair of the SBNI. It is expected that each Safeguarding Panel will be required to develop the following standing sub-committees, in addition to ‘as an when required sub-groups’¹⁰¹:

- Service developments and Interface;
- Communication and Training; and
- Business Planning and Governance.

Aside from those specifically mentioned under the duty in the Bill, other Committees envisaged are, for example, monitoring and evaluation, communication and raising awareness, policy and procedures, youth justice, and young people’s group.¹⁰²

The Probation Board for Northern Ireland noted the extensive scope and outcomes envisaged for the SBNI and that this would require an extensive sub-group structure, such as appears to be outlined in the Clause, however this “*will have an impact on agencies capacities...further exacerbated by the proposal that the Safeguarding Panels will also have a significant number of sub-groups*”.¹⁰³

¹⁰⁰ *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 4.5

¹⁰¹ *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 9.11

¹⁰² *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 9.6

¹⁰³ Submission to HSSPS Committee on Safeguarding Board, PBNI,

http://www.niassembly.gov.uk/health/2007mandate/Submissions/Probation_Board_NI.pdf

The PSNI highlighted that “*how we move from strategic intent to practitioner level through the mid-level manager*” is important and that is where the sub-committees of the SBNI will become important as “*it is a matter of how to build local relationships...although we create the right environment at strategic level, delivery is the important part*”.¹⁰⁴

OFMDFM has highlighted the important role that communities play in safeguarding children through preventative action, development of local resources, empowerment, and self-help measures; and propose that enabling communities to undertake this work should be an important part of the work of the Safeguarding Panels.¹⁰⁵

Both Professor Jan Horwath¹⁰⁶ and the Northern HSC Trust¹⁰⁷ propose that the Chairs of the Safeguarding Panels should be core members of the SBNI in order to ensure more effective lines of accountability between the Panels and the SBNI. CiNI propose that the chairperson of each Safeguarding Panel should be the corresponding HSC Trust Director of Children’s Services and that these two statutory functions should not be separated, and that consideration be given to the appointment of ‘Co-Chairs’ from the voluntary or education sector.¹⁰⁸

9. Clause 10 – Duty to co-operate

9.1 Detail of Clause

This Clause places a reciprocal duty to co-operate on the SBNI and its constituent bodies and any other bodies that may be included in the SBNI as follows:

- SBNI must co-operate with the persons or bodies specified in section 1(3) and (4); and
- The persons/bodies in section 1(3) and (4) must co-operate with SBNI.

9.2 Policy Intention

The DHSSPS highlights that the duty to co-operate is “*at the heart of the new arrangements*”, however it is not intended that sanctions will be imposed on people or organisations for not turning up at meetings. The DHSSPS believes that “*failure to discharge a statutory function is a serious breach that cannot be casually*

¹⁰⁴ Evidence Session on the Safeguarding Board for Northern Ireland with the Police Service of Northern Ireland, Committee for HSSPS, Official Report (Hansard), page 17

¹⁰⁵ *Safeguarding Children – A cross-departmental statement on the protection of children and young people by the Northern Ireland Executive*, 2009, OFMDFM, paragraph 3.39

¹⁰⁶ Evidence Session on Safeguarding Board for Northern Ireland with Professor Jan Horwath, 4 March 2010, Committee for HSSPS, Official Report (Hansard), page 5

¹⁰⁷ Submission to HSSPS Committee on Safeguarding Board, NHST, http://www.niassembly.gov.uk/health/2007mandate/Submissions/Northern_Trust.pdf

¹⁰⁸ Evidence, Safeguarding Board for Northern Ireland, to Assembly Committee for HSSPS, CiNI, February 2010, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/cini.htm>

disregarded".¹⁰⁹ In addition a 'specific partnership agreement' is planned which will be a contract setting out the expectations and obligations to participate in the co-operative working of the SBNI, including requirements for attendance, arrangements for deputising, and will place on a statutory footing a requirement prescribing the level of attendance for member organisations. It is proposed that it will be a "*function of the Chairperson to challenge member organisations if there is evidence of regular non-attendance or that an organisation is failing to discharge its statutory duty to co-operate*".

9.3 Issues Around the Duty to Co-operate

There appears to be wide ranging support for the inclusion of a duty of co-operation, for example NICCY, Northern HSC Trust Western HSC Trust, Patient and Client Council, PBNI, PSNI, The Regional Child Protection Committee, CiNI and Professor Jan Haworth all indicated support for such a duty.

The NSPCC notes that the Children Act 2004 has served as a "*loose model*" for the SBNI and it contains two duties. Firstly a Section 10 duty to 'co-operate to improve well-being' which deals with the requirement on a range of agencies to make arrangements to improve the well-being of children (related to the five higher level outcomes in the 'Every Child Matters Strategy' in England). Secondly, a Section 11 duty *imposed* on a range of named agencies to make arrangements to safeguard and promote the welfare of children (Clause 12 appears to provide a similar duty for Northern Ireland). The NSPCC advocate that the legislation for Northern Ireland "*should also deal with a well-being duty to place the high level outcomes of the Children's Strategy [for Northern Ireland] on to a statutory basis*" (see section 13.1 on Children's Services Planning for further discussion).¹¹⁰

Children in Northern Ireland (CiNI) believe that the duty should be "*to co-operate to safeguard children*" and that these should not be separate legal requirements. CiNI believe this is "*the crucial ingredient needed to address previous shortcomings identified by Laming and others in relation to poor-coordination and failure to share information*".¹¹¹

There is opinion, for example from Belfast HSC Trust that mandated co-operation will not in itself deliver improvement but that meaningful co-operation must be "*earthed in organisational commitment to safeguarding*".¹¹² This appears to be the rationale behind Clause 12. The work of France et. al. (2010) indicates that progress is being

¹⁰⁹ Departmental Briefing to the Committee for HSSPS on the Safeguarding Board for Northern Ireland, 22 April 2010, Official Report (Hansard), pages 14-15

¹¹⁰ Submission by the NSPCC Northern Ireland to the Assembly Health Committee on the Safeguarding Board for Northern Ireland, February 2010, paragraphs 10-12, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/nsppc.htm>

¹¹¹ Evidence, Safeguarding Board for Northern Ireland, to Assembly Committee for HSSPS, CiNI, February 2010, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/cini.htm>

¹¹² Briefing Paper for the Committee for HSSPS on the Proposed Safeguarding Board Northern Ireland (SBNI), Belfast HSC Trust, paragraph 9.4, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/bhsc.htm>

made with the LSCBs in terms of co-operative interagency working, “*professional cultures and practices are difficult to change but evidence suggests progress is being made*”. Ongoing challenges include information sharing (especially Adult Services) and engagement with GPs.¹¹³

10. Clause 11 – Supply of information requested by the SBNI

This Clause places a duty on bodies and persons to supply information requested by the SBNI but there are conditions to be met and the information must be supplied if the first and second conditions are met together with either the third or the fourth condition:

- The first condition is that “*the request is made for the purpose of enabling or assisting the SBNI to exercise its functions*”;
- The second condition is that the request for information is made to a person or body whose functions or activities make it likely that they will have such information;
- The third condition is that the information relates to “the person or body to whom the request is made”, “*a function or activity of that person or body*”, “a person in respect of whom a function is exercisable, or an activity is engaged in by that person or body”; and
- The fourth condition is that the information is “requested by the SBNI from a person or body to whom information was supplied in compliance with another request under this section” and “is the same as, or is derived from, information so supplied”.

The information covered in this clause may be used only for the purpose of “*enabling or assisting the Board to exercise its functions*”.

11. Clause 12 – Arrangements to safeguard and promote the welfare of children

A duty is placed on each person and body to whom this section applies (see Clause 1 for list) to make arrangements for ensuring that:

- 12 (2a) their functions are exercised having due regard to the need to safeguard and promote welfare on children; and
- 12 (2b) any services provided by another person pursuant to arrangements made by the person or body in exercise of their functions are provided having due regard to that need.

The clause also places a requirement on bodies to have due regard to any guidance provided by the DHSSPS in relation to the exercise of this duty.

¹¹³ France, A., Munro, E.R., and Waring, A. (2010) *The Evaluation of Arrangements for Effective Operation of the New Local Safeguarding Children Boards in England*, Department for Children, Schools and Families, March 2010

The British Association for the Study and Prevention of Child Abuse and Neglect (BASPCAN) understand that *“this does not alter their legislative requirements on their own agency, rather it requires them to carry these out in a way that safeguards and protects children”*.¹¹⁴

The current RCPC highlight that one of the most complex areas of work is engaging with the voluntary, community and statutory sectors on accountability and it believes *“it is about working together and ensuring that individual agencies take account of safeguarding in their plans and that, when they sign up to the SBNI, they take into account the fact that safeguarding, and how it works across different systems, is the central tenet of their work. It is not about diluting the accountability of individual agencies in anyway”*.¹¹⁵

Evidence from the work of France et. al. (2010) suggests that LSCBs in England have improved the information available to both frontline and managerial staff to support their work. The LSCBs have reinforced the importance of procedures and one of the most positive developments was that interagency working and information sharing was improving.¹¹⁶

12. Clause 14 - Regulations

Except for the regulations made under Clause 2(2), which will only be made once a draft of the regulations has been laid before and approved by resolution of the NI Assembly (affirmative resolution and the most stringent form of Assembly control for sub-ordinate legislation), all other regulations in this Bill (found in Clauses 1(5), 3(4), 3(5), 5(1), 7(1), 7(4) and 8(2)) are subject to negative resolution. These have the effect of law as soon as the ‘comes into operation’ date is reached. They can be annulled by the Assembly within the statutory period, 30 calendar days or 10 sitting days (whichever is longer). For it to be annulled a Member of a committee must table a motion known as a Prayer of Annulment in the Business Office for debate in the Assembly and the Assembly must vote in favour.¹¹⁷

¹¹⁴ Submission to the Assembly Health Committee Enquiry on the Safeguarding Board for Northern Ireland by the British Association for the Study and Prevention of Child Abuse and Neglect, BASPCAN, February 2010, www.baspcan.org.uk/files/BASPCAN%20Response%20to%20Assembly%20Health%20Committee%20Feb%202010.pdf

¹¹⁵ Evidence Session on the Safeguarding Board for Northern Ireland with the RCPC, Committee for HSSPS, Official Report (Hansard), 25 February 2010, page 14

¹¹⁶ France, A., Munro, E.R., and Waring, A. (2010) *The Evaluation of Arrangements for Effective Operation of the New Local Safeguarding Children Boards in England*, Department for Children, Schools and Families, March 2010

¹¹⁷ From ‘Guidance on Handling Subordinate Legislation (Statutory Rules) for Chairpersons and Members of Statutory Committees’. NI Assembly

13. Areas for Further Consideration

13.1 Children's Services Planning

As mentioned earlier, in sections 2 and 9.3, the importance of the SBNI establishing 'firm connections' with the Children's Services Planning process has been highlighted, *"It will, therefore, be necessary and appropriate for the SBNI to participate directly in the children's planning process to ensure that the issue of safeguarding children and young people within Northern Ireland is highlighted and acted upon accordingly"*.¹¹⁸

The NSPCC¹¹⁹ and the RQIA, for example, have suggested that the Bill should be more specific on this issue and include a duty related to that found in Section 10 of the Children Act 2004 which links the safeguarding agenda to the regional children's services planning framework and to the six high level outcomes of the OFMDFM Strategy for Children and Young People. In addition, the RQIA propose *"it may be appropriate for the SBNI to work within a framework of enabling legislation that places the higher level outcomes of the children's strategy onto a statutory basis"*.¹²⁰

Given that the DHSSPS has noted the 'firm connections' required between the SBNI and the Children's Services Planning Process, it has been suggested by CiNI that there should be *"one single legislative framework reinforcing this important relationship and recognising that safeguarding is an essential consideration in the planning of all services for children and young people"* and advocate consideration of the scope for a *"legislative duty to co-operate to plan and commission services for all children and young people, with a specific requirement on key agencies to co-operate to safeguard and promote the welfare of children"*.¹²¹

13.2 Young Person's Reference Group

The Departmental consultation paper on the Safeguarding Board for Northern Ireland (January 2007), proposed that a Young Person's Reference Group would be established to support the work of the SBNI and that the group would be available to the SBNI through the Chair. Membership of the group was to be representative of the general population with particular emphasis on those groups of young people who are in need of or have received safeguarding services.¹²²

The Bill does not appear to specifically mention such a Young Person's Reference Group but does refer in Clause 3(7) to the fact that *"The Safeguarding Board must take*

¹¹⁸ *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 12

¹¹⁹ Submission by the NSPCC Northern Ireland to the Assembly Health Committee on the Safeguarding Board for Northern Ireland, February 2010, paragraphs 10-12, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/nspcc.htm>

¹²⁰ Proposed Safeguarding Board for Northern Ireland, Submission to HSSPS Committee, RQIA, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/RQIA.pdf>

¹²¹ Evidence, Safeguarding Board for Northern Ireland, to Assembly Committee for HSSPS, CiNI, February 2010, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/cini.htm>

¹²² Consultation Paper on the Safeguarding Board for Northern Ireland, DHSSPS, Section 7 (January 2007)

reasonable steps to promote communication between the Board and children and young persons". There is no specific mention of this process being conducted through a Reference Group.

CiNI welcomed the original DHSSPS proposal regarding the proposed function of considering "*how best to engage with young people, which ensures that the young persons voice is heard in all that the SBNI do*".¹²³ It may be useful to consider Clause 3(7) in the light of the original proposal. NICCY have highlighted the importance of developing a range of ways to engage young people and recommended that a clearer structure and process for engagement was developed.¹²⁴

VOYPIC (Voice of Young People in Care) believes that the key to the success of children and young people's involvement in the SBNI is "*that they have a supportive mechanism to address key issues that are relevant to them and an opportunity to have their views heard. To do this effectively, it is important that children and young people are supported by an agency that has the skills and experience in developing participative practice methods*". VOYPIC have said they would welcome the opportunity to work alongside the SBNI to enable them to design and establish a specific model of children and young people's involvement.¹²⁵

13.3 Safeguarding Across Jurisdictions

The OFMDFM has highlighted the importance of excellent co-ordination with neighbouring jurisdictions regarding effective safeguarding, "*as those who pose a risk of harm may not be restricted by borders or national boundaries*".¹²⁶ A number of developments have been put in place including ensuring that safeguarding is a topic for consideration at the North South Ministerial Council and the British Irish Council. It was agreed at a meeting in February 2008 that DHSSPS and the Office for the Minister for Children in the Republic of Ireland will co-chair a cross-border group of officials to intensify co-operation on child protection and five work streams have been identified¹²⁷:

- Information Sharing;
- Media awareness;
- Internet safety;
- Vetting and barring;
- Research.

¹²³ Evidence, Safeguarding Board for Northern Ireland, to Assembly Committee for HSSPS, CiNI, February 2010, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/cini.htm>

¹²⁴ Evidence, Safeguarding Board for Northern Ireland, to Assembly Committee for HSSPS, CiNI, February 2010, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/cini.htm>

¹²⁵ Evidence, Safeguarding Board for Northern Ireland (SBNI), HSSPS Committee, 22 April 2010, <http://www.niassembly.gov.uk/health/2007mandate/Submissions/voypic.htm>

¹²⁶ *Safeguarding Children – A cross-departmental statement on the protection of children and young people by the Northern Ireland Executive*, 2009, OFMDFM, paragraph 3.18

¹²⁷ *Safeguarding Children – A cross-departmental statement on the protection of children and young people by the Northern Ireland Executive*, 2009, OFMDFM, paragraph 3.19

The DHSSPS envisage that the SBNI will be responsible for contributing to the North South Ministerial Council meetings and to the British Irish Council arrangements, although there is no specific reference to such contribution in the Bill.¹²⁸

There has been increasing collaboration and co-operation between government departments, police and probation services in the jurisdictions of Northern Ireland, the Republic and Great Britain. Children's charities and NGOs have also played an important role in helping the governments develop in this regard. An Assembly briefing note: Safeguarding children between the jurisdictions of Northern Ireland, Great Britain and the Republic of Ireland outlines some of the key work that has taken place over recent years to improve the safeguarding of children across the jurisdictions.¹²⁹

¹²⁸ *Safeguarding Board for Northern Ireland (SBNI), Detailed Policy Proposal*, DHSSPS, August 2009 paragraph 13.17

¹²⁹ NI Assembly Research Paper entitled *Safeguarding children between the jurisdictions of Northern Ireland, Great Britain and the Republic of Ireland*, April 2010, <http://www.niassembly.gov.uk/researchandlibrary/2010/7310.pdf>