Northern Ireland Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Special Educational Needs and Disability Bill: Irish National Teachers' Organisation, National Association of Schoolmasters/Union of Women Teachers

17 June 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Peter Weir (Chairperson)
Mr Jonathan Craig
Mr Chris Hazzard
Mr Trevor Lunn
Mr Robin Newton
Mrs Sandra Overend
Mr Seán Rogers
Mr Pat Sheehan

Witnesses:

Ms Mary Dorman	Irish National Teachers' Organisation
Ms Caroline McCarthy	Irish National Teachers' Organisation
Mr Seán McElhinney	National Association of Schoolmasters/Union of Women Teachers
Mr Darren Northcott	National Association of Schoolmasters/Union of Women Teachers

The Chairperson (Mr Weir): I welcome our witnesses. With us are Caroline McCarthy, the Irish National Teachers' Organisation (INTO) representative for the Belfast area; Mary Dorman, the INTO representative for the southern area; Darren Northcott, the national official from the National Association of Schoolmasters/Union of Women Teachers (NASUWT); and Seán McElhinney, the organising official from NASUWT. Please make an opening submission of 10 to 15 minutes between you, and then we will open the floor to questions.

Ms Mary Dorman (Irish National Teachers' Organisation): Thank you for the opportunity to engage with you today. I am a teacher with almost 30 years' teaching experience, and, due to pension arrangements, I will be teaching for some years to come. I have a master's degree in special educational needs (SEN) and I have always had a very big interest in it. My role today is to represent the views of teachers, who, at this moment, are working in classrooms trying to perform the educational equivalent of the miracle of the loaves and the fishes in trying to make the resources meet the demands. INTO/Ulster Teachers' Union (UTU) research from 2014, 'SEN – A Failed Generation', which was sent to the Committee, highlights the issues arising at the chalkface, or, nowadays, the interactive whiteboard. As a teacher in a large primary school, I have extensive experience in the area of SEN as a classroom teacher, learning centre teacher and support teacher. I understand the strengths and flaws of the current system.

My experience has been further informed by the fact that I am a parent of two children who have experienced learning needs in school. I have been involved in the SEN and inclusion review, representing INTO members since 2006. We were very supportive of the initial aims to reduce bureaucracy; improve early identification and intervention; and develop inclusion and capacity building.

As teachers, we are witnesses on a daily basis to the flaws of the existing system, and we were hopeful of achieving improvements through this process. Regrettably, as teachers, we are underwhelmed by the content of the Bill. It falls significantly short of the vision set out at the first meeting that I attended. There is very little in the Bill to assist teachers in their efforts to meet the needs of pupils, and teachers are the ones who are going to have to deliver this.

Responsibilities and plans can change, but it is the teacher in the classroom, with the child, who will make the difference. The Bill does not reduce bureaucracy or improve early identification or intervention, nor does it develop inclusion or capacity building. Indeed, inclusion seems to have fallen off the face of the earth. We are particularly concerned that the Bill will instead actually increase the responsibility, workload and liability of boards of governors and teachers, without the commensurate commitment to ensure appropriate support and resources. We welcome the placement of the child at the centre of the process. However, it is our considered opinion that, in practice, resources and not needs will be driving provision.

In our response, INTO made a range of recommendations, and we have included in that the reasons and rationale for them. I am willing to provide further clarification of that if required. I am aware that Committee members share our concern about the absence of the details of the regulations, and the Northern Ireland Commissioner for Children and Young People (NICCY) has just expressed that as well.

The Bill, the regulations and the code should be considered together. INTO feels that it is important to include practitioners in the drafting of regulations. Unfortunately, we have experienced the difficulty of regulations having been drafted without the input of teachers. Then, they have been imposed on the education system, and they just do not work. The assessment procedure is a very clear example of that. If they are to work at the classroom level, regulations must have input from practitioners, the people who are expected to deliver them. Practitioners can ensure that the aspiration can be translated into daily practice.

I draw the Committee's attention to our submission in relation to clause 3. That clause specifically increases the responsibility, workload and liabilities of boards of governors. As the Committee members will be aware, school governors are volunteers who are already asked to undertake significant and challenging duties. Many of those challenges will be passed to our members: principals, special educational needs coordinators (SENCOs), and classroom and support teachers.

We have particular concerns about personal learning plans (PLPs) being included in the legislation. The current equivalent of the PLP, the non-statutory individual education plan (IEP), is viewed by many teachers as a paper exercise. The emphasis on SMART targets and collection of evidence can negatively skew pedagogy. If you cannot evidence it, you cannot include it, so we go with the nonsense of lists of words that the child will read, rather than the reading strategies that we need the child to use. This can have a detrimental impact on the experience of pupils. We strongly urge that PLPs are not included in legislation and that meaningful engagement takes place with stakeholders to ensure that a workable mechanism is developed.

I listened to DE's contribution a few weeks ago, indicating all the different mechanisms for capacity building. The feedback we receive from our members indicates that there is a gap between policy and the classroom. Indeed, INTO has run several capacity-building courses for our members, who give up their own Saturday mornings to attend our office to have training in SEN because it is just not available in the format and way that they require it.

Meaningful, appropriate and effective capacity building is essential. As a teacher representative, a classroom practitioner and a parent, I ask whether this Bill will improve the experience of the child. It will not in its current form. As teachers, we are encouraged to use the assessment mechanism "two stars and a wish". So, looking at the Bill, I would give it a star for the aspiration to improve SEN provision, another for embedding the pupil voice, which is very important; but I wish that it would recognise the need for transparency and clarity to ensure that resources and support match the needs that we experience in the classroom.

Despite my many years of teaching and significant involvement in SEN, it remains a mystery to me and many of my colleagues exactly what the benchmarks, hurdles and barriers are to try to access support. My own daughter went through the education system and received no additional support at all, other than an occasional additional photocopy with clarity for her visual impact. When she reached third-level education, she was immediately provided with a laptop, printer and money for ink. I would not even have asked for that in school. You would not have got it because her threshold of need

would have been so much lower than many others. However, when she got to third level, all of a sudden, she got all of that.

We do not get the support in the classroom and, in many cases, we have stopped asking. I hand over to my colleague Caroline, who will address some of the other clauses.

Ms Caroline McCarthy (Irish National Teachers' Organisation): I am a teacher in a large school for pupils with severe learning difficulties and have taught for the last 18 years. I have extensive experience of statements and transition, and I would like to respond to clauses 4, 9 and 10.

The duty of DE to request relevant and purposeful support from Health and Social Care (HSC) bodies through the Bill makes a minor and, we believe, ineffective amendment from "may request" to "shall request". The opportunity has been missed to highlight the Education Authority and teaching belief that real, effective, accessible, specific and quantified input from HSC bodies is essential to the educational development and individual achievement of a majority of pupils identified as having SEN, and the support of teachers necessary to nurture that.

To illustrate that point, I would like to take you into the classroom to understand the best efforts of teachers to meet the individual and often challenging needs of some of our pupils. Currently, the majority of pupils who have statements are being failed by loose and non-quantified statements used when relating to HSC input. In my experience, wording that has become common includes "will have access to speech therapy".

DE refers to the importance of measurable outcomes on the statement. The necessary therapy input identified is apparently, however, exempt from that. At this point, the statement fails pupils and teachers. The Bill should specify the obligation for HSC bodies to identify outcomes that would enable pupils' learning to reach its full potential.

Referring back to the word "access", in mainstream schools that may be facilitated through community access for a set period, for example six to eight weeks. That is highly unlikely to meet the needs of pupils with SEN as it does not occur within the context of their learning environment and support the teaching provided within schools.

What is the practical and real input that is meeting the individual pupil's needs and helping the teachers to ensure that they reach their potential? I am sorry to say that it is minimal. The Bill should outline the obligation for HSC bodies to work in a coordinated way. The requirements of input identified on individual statements are not separate issues; they are inherent in the overall teaching and learning for an individual pupil.

In special schools, we have access to the HSC support. In my school, for example, approximately two pupils have access to 1·6 full-time equivalent occupational therapists. Their statements can be said to be met. We at least have the opportunity to benefit, as teachers in a special school setting, of being able to consult directly and refer issues as they arise for individual pupils to qualified therapists on site. Yet, there is so much potential. Statements should at the very least be transparent documents that outline to the parent and child or young person what they need to develop and attain identified outcomes. That is best achieved through a joint, holistic approach between education and health.

I am fortunate in that I have experience in my school setting to see the impact on teaching and learning experience for children and young people with a focused approach. Non-verbal pupils or those with limited communication can be given a voice through a targeted communication programme of speech therapy, assessing and identifying the best augmented communication aid.

There are a huge range of options available to meet most individual needs. Without a voice, a pupil may display challenging behaviours, frustration, a withdrawal from education and a limit to their progress, despite the best efforts of the teachers and support workers around them. With appropriate support, pupils with delayed speech may still develop their full potential. There are key skills introduced by speech therapy that need to be brought into the classroom.

Occupational therapy supports pupils with sensory needs, for example ASD, learning difficulty, global developmental delay and cerebral palsy. Individuals may benefit from sensory diets, a technique developed by occupational therapy. There is also sensory integration and physical changes to the learning environment that can enable the pupils to become active learners. Those are simple techniques or tools that remove barriers to learning and enable active participation in their day amongst their peers.

Teachers can implement and give support within the classroom, but we are failing the pupils if they are denied the professional input that is necessary. As inclusion becomes a greater part of the mainstream system and numbers of pupils with SEN increase, it is essential that we get the provision right, not just for the pupil with SEN but for their peers in the class. Barriers to learning can also be barriers to friendship.

We are all aware that the resources available to education from HSC have been dramatically impacted by budget cuts, and not just in recent years, but introducing a Bill that does not aspire to achieve the optimum for our pupils feels like education is being short-changed. It has already been outlined at the Committee at previous meetings that effective HSC provision is central to the educational development of a significant number of SEN pupils. It should, therefore, be central to statements where appropriate.

Parents are currently fighting for provision if they know about its benefits for their child. Teachers are requesting support and referring if they know about the potential therapy input that is available. All of that is dependent on them knowing about the availability and the positive impact on teaching and learning. Currently, there is not even the luxury of a postcode lottery or a school lottery, but possibly a pupil lottery for what is available. DE has outlined the meat on the bones that will eventually be delivered through regulations and the code of practice. As the Chair highlighted at a previous meeting, the Committee signing off on the Bill is, effectively, a blank cheque.

Teachers in classrooms are all too aware, as pupils with SEN are sitting in their classrooms, that, at times, they do not have the tools necessary to meet their needs. The negative impact on workload and stress for teachers is apparent to everyone who asks them. Coordinated and quantified support from HSC is essential. The SEND Bill fails pupils if it does not aim to achieve that.

I will briefly cover clauses 9 and 10, though with no less weight. Pupils of non-compulsory school age are recognised as being entitled to continued educational support. I commend DE for highlighting and specifying that in the SEND Bill. As a special needs teacher, I am very aware of the essential teaching and learning that can occur for those students during those three years. It is not an understatement to say that it transforms futures. Essential skills are focused on to enable young people to reach their full potential as productive and included members of our society. The long-term potential is priceless and will hugely benefit a significant number of young people. The Bill does not, however, outline how and where that provision will be.

Within the special schools sector, provision to 19 is already being delivered or being introduced in a number of schools. However, what about the pupil in the mainstream system? Are they to be re-diagnosed with a more severe or moderate learning difficulty to access the special system? Will mainstream schools be committed to facilitating educational provision that has, in the main, previously not been part of their remit? How will that be facilitated, financed and staffed? More questions arise due to the lack of detail in the Bill. Again, we are waiting for regulations and codes of practice to specify that. Will it be workable in the school and class setting?

I would like to very briefly share with you a story of a young man that I know well. I will call him M. He was 16 on 6 June. He has moderate learning difficulties and ASD. He was in a mainstream school with support from a learning support centre. That school does not have the facilities or resources to provide his education beyond the beginning of June. He has left school with essential skills level 1 in numeracy and literacy. His options have been limited to accessing special school provision or tech. If he had gained level 2, he would not have been entitled to the SEN support available at tech.

The option chosen by M and his family — after much stress and turmoil to all members of the family, though M's learning disability actually protected him from the gravity of the decision — has been tech. I wish him successful and productive final years for his education. The support that was outlined as essential through his education to date will, as outlined by DE on 20 May, not be carried out by DEL. That poses concerns for me as a professional, knowing how essential the correct support is to ensure the full learning potential of every pupil, regardless of level of need. The empowerment of young people to seek assessment is dependent on whether it ensures provision suitable to meet their needs. The concerns regarding the current effectiveness of the system by the Children's Law Centre in the case of LC raise questions about the actual accessibility of that option.

The devil is in the detail. Without the regulations and code of practice supporting the SEND Bill, the Committee and the stakeholders cannot be sure about the real impact on educational provision for the pupils that it aims to support. Thank you for your time.

The Chairperson (Mr Weir): Is there anything that you would like to add, Darren?

Mr Darren Northcott (National Association of Schoolmasters/Union of Women Teachers): I will make some brief comments.

The Chairperson (Mr Weir): We have to be fair to all the submissions and witnesses.

Mr Northcott: Of course, and our colleagues have set out some very real concerns.

The Chairperson (Mr Weir): We have the joint submission as well.

Mr Northcott: Indeed. We share the concerns that you have just heard. You have our submission so I do not intend to plough through that, given the time. I will just highlight some key issues raised about the Bill, which may be of interest to the Committee.

The first key theme that our submission addresses is the degree of confusion about the way that the Bill appears to omit some of the key themes set out in the summary of revised proposals put out by the Minister in, I think, 2012. There is still a lack of clarity around coordinated support plans, mechanisms for placing pupils with SEN into preschool settings, and reducing the framework from five to three levels. Those are important areas, and it is critical that everyone in the system is clear about what the direction of travel is going to be.

I echo the comments made earlier by the Commissioner for Children and Young People. We are also concerned that you have a Bill that has been published, but there is no accompanying code of practice or information about what the subordinate legislation will contain. It is very difficult to assess the Bill properly if you cannot place it in context, and you cannot do that, particularly without the code of practice.

You had a very long and interesting conversation with the commissioner about article 12 and its implications for SEN policy. We think that that is right. Article 12 has to be embedded in policy across the education system, but it has to be done in a way that is consistent with other articles of the United Nations Convention on the Rights of the Child (UNCRC), particularly articles 28 and 29. We do not want to undermine one dimension of the convention by emphasising another inappropriately. There are important issues that were touched upon in your earlier conversation about the extent to which giving children a right directly to appeal is necessary to be fully compliant with article 12. There is a case for assessing the extent to which young people are already involved in that process, because there could be some unintended consequences of doing that, which we have set out in our evidence.

I just have a couple of final points. You also touched on the issue of governors. In the Bill, governors are given quite significant responsibilities. We are keen, if governors have those responsibilities, that they have the capacity to discharge them. What assessment has been made by the Department of the current state of boards of governors to discharge those functions?

Critically, I picked up on a comment that was made earlier about the learning support coordinator (LSC) role that is envisaged in the plans. SENCOs are already overburdened and struggling to cope with the demands made of them. The Bill would perhaps give LSCs, the replacements for SENCOs, the prospect of being given even more responsibilities than they have at present. There are massive workload pressures that SENCOs in particular are buckling under. It is important that they are supported in their work, not undermined by policies that may not have been thought through as well as they should have been. I will stop there.

The Chairperson (Mr Weir): I have a few questions, picking up on a couple of things, particularly on what you said, Darren. First, you expressed concerns about the capacity issue from a governor's point of view. There are two things, were the Bill to go ahead on that basis. First, is it simply that we do not know whether there is capacity, or is there a feeling that there is not capacity? Secondly, if there is a feeling that there is some shortfall, how do you see that being addressed practically, given that we are talking about 1,200 schools? What are the practical implications of additional levels of training?

Mr Northcott: That is a really important point. In 2009, when the Department consulted on its initial proposals, I think that there was almost unanimity among all respondents that governors would really struggle to have the capacity to undertake the responsibilities envisaged for them. There is a wide sense, across the system, that governor capacity is a critical issue. There are two ways of addressing

it, frankly. You can decide to give boards of governors those responsibilities. That is a legitimate option, and there are good reasons for doing so, including local knowledge, local understanding and so on and so forth. The issues around capacity relate to time. What time do governors, as volunteers, have to discharge those important responsibilities?

The second way is training. How well supported and informed do governors feel to undertake important responsibilities? The idea of having a specialist governor looking solely at special educational needs and mandating that was floated. That idea has been tried in other jurisdictions with some success. Assessing the capacity of governors to do this work is critical, because if we reach the conclusion that we do not think that, in the foreseeable future, governors will have the ability or capacity to discharge the responsibilities, perhaps we need to look at locating those responsibilities somewhere else.

The Chairperson (Mr Weir): The next issue, which you touched on and on which INTO has made submissions, is around clauses 11 and 12. Obviously, you have expressed concerns on the basis of the fact that there could be an undermining of the appeal mechanism. There is also scepticism as regards the pilot scheme. Possibly both unions have suggested that the clauses are removed or at least that the pilot scheme should be removed. Will you explain where you see the concerns on those clauses?

Mr Northcott: Both submissions made similar points on this. Essentially, our concern goes back to a point that I made at the outset. Clauses 11 and 12 are responding to an interpretation of article 12 of the UNCRC and are saying that if we do not pass their provisions we will not be compliant with article 12 of the UNCRC. That related to the assessment that was done of the UK's compliance — all four jurisdictions — with the UNCRC.

Our argument is that, first, it is not necessary. If you look at the wording of article 12, it does not require individual children, particularly very young children, to have a direct right to appeal and to represent their own interests in that particular way. We say that it requires that all those mechanisms — all those authorities — take children's views into account, bearing in mind their age and stage of development. So, it seems to be a bit of a leap to go from looking at article 12 to giving children and young people those direct rights.

There are a couple of other concerns that, although theoretical, are worth noting. If you give children the right to make representations and to conduct their own cases directly to tribunals or whatever, there is a risk that the children could be manipulated by adults. For example, an adult could decide that it would be more effective or they would have more chance of success if the child rather than the parent or carer took forward the case. Concerns about the potential manipulation of children were raised previously, and they have been raised in other jurisdictions.

The other interesting issue, and this reflects a comment made by the commissioner, is what happens if the parent who has legal responsibility for the child and the child disagree about the appropriate next step? How are such disagreements resolved? In the pilot, it is not clear, to me anyway, how that would happen. A pilot is a pilot, and exploring this through a trial is better than simply imposing it, but it is important not to forget that just because it is a pilot that does not mean that these things will not be happening to real people during the course of the pilot. So, on clauses 11 and 12, the case has not really been made, and there are potential consequences that have not been thought through.

The Chairperson (Mr Weir): Mary had raised the issue, quite specifically, of the inclusion of PLPs, particularly from the ages of one to three. If we were to reach a stage where PLPs were not included in the Bill, what protection should be put in place for those children?

Ms Dorman: A piece of paper will not ensure that a child gets services; a piece of paper just ensures that there is a piece of paper. That is all it guarantees. The actions and the outcomes will be much, much more important. Even as it sits, the individual education plans have become more important than your delivery to the child. So, you look at what your IEP will be, and then you decide what you are going to do with the child instead of looking at the child first and then generating the programme to follow the child. The emphasis on PLPs, at this stage in the statutory part of the legislation, will make the paper become more important than the child. We have all seen how the chase for evidence can totally distort what is happening.

One of my main beefs is that you can only include on an IEP something for which you can then produce paper evidence. Anyone involved in education will know that some of the most important

learning will not produce a piece of paper as a piece of evidence at the end of it. It is about attitude, trial and error, effort and a lot of verbal communication. That cannot be evidenced. It skews the pedagogy, but I would like teachers to look at the child, decide what needs to be done and teach the child. Instead, we are looking at the evidence. That is my concern. I am not saying that there would not be an IEP. However, putting it in legislation and making it an official document does not give you the same freedom to work with it as you would with your own piece of paper.

The Chairperson (Mr Weir): A number of members want in, but I have a final question on clause 1. The earlier evidence from the Northern Ireland Commissioner for Children and Young People was interesting. Looking at your submissions, a couple of conclusions can be drawn. NICCY feels that clause 1 is too qualified. Therefore, if I take the flavour of your submission, you feel it is not qualified enough and that the age-appropriateness of the situation, perhaps, needs to be made clear. You are also expressing the concern that, if clause 1 is got wrong, there is the danger of a potential undermining of the relationship between teachers and pupils. Will you expand on those issues? Where do you see the need for further qualification? Where do you see the dangers, if it is got wrong?

Mr Northcott: We do not necessarily oppose clause 1 on principle; it is right that the Education Authority have regard to the views of the child. That is right in and of itself, and it is right in the context of article 12. Our concern is that it is fairly open-ended in the Bill, as you say, Chair. So, we would like to see further guidance and parameters within which the Education Authority would operate in respect of the provisions of clause 1. Our submission talks about the fact that, as I think I said at the outset, article 12 sits alongside articles 28 and 29, which is effectively the right of children to receive an effective education. There are ways in which article 12 might be advanced in respect of what is known as the students' voice agenda, for example. Some of that can be very positive, but some of it can be unhelpful if it undermines the legitimate authority of teachers. So, the point that we were making is that it is very important that clause 1 is advanced in a way that does not undermine the ability of teachers to do their jobs.

The Chairperson (Mr Weir): Sorry to interrupt you, Darren, but you talked about the need for further guidance on the interpretation. Is that an issue of, "Here are the regulations or code of practice guidance" as opposed to, "Would you like to see changes on the face of the Bill?"?

Mr Northcott: We would like to see the subordinate regulations and the code of practice published at the same time, which are the right places for these issues to be addressed. In the sense of the rationality of the construction of the legislation, it makes sense to have clause 1 as it is. What is not acceptable is not having the subordinate legislation and the code of practice to place clause 1 in context.

The Chairperson (Mr Weir): I think that all of us are returning to a fairly familiar theme.

Ms Dorman: We are very aware that the voice of the child has to be appropriate to their level of cognitive ability and maturity. A blanket engagement is not necessarily helpful. With such engagement, we find that there is a danger of mere lip-service being paid. It is a case of asking the child, and the child says, "That's fine". We want the meaningful voice of the child, not lip-service.

Mr Craig: I want to return to the issue of responsibility being loaded on to the board of governors — maybe one governor in particular. That seems to be a theme that comes through. I declare an interest as a member of two boards of governors. I am thinking of my situation and who you are surrounded with. I have seen numerous boards of governors go through schools, and I have yet to see a governor with the appropriate expertise to have oversight of SEN in particular. Maybe I am being more critical than most because I have been heavily involved with special educational needs in other ways. What do you think would be the appropriate expertise that would be required? One thing that strikes me about SEN is that it is subjective, and each child's special education needs are completely different. How do you get someone with the expertise to oversee that the school is doing that appropriately?

Ms Dorman: It is even more complex than that because not only is each child different, but each teacher in each school will take a different approach to how to tackle it. It is about what your vision is for the school and how you feel you can best meet the overarching needs that will determine how you do it. Boards of governors do great work, but they are volunteers, and they do a lot of other jobs as part of their work as governors. It is not possible for a board of governor to have the level of

understanding and expertise that it requires to effectively ensure that every child has a meaningful PLP and all the rest of it.

They will receive a report from somebody else who will have done all the work, and that will be one of our members: a principal, a SENCO, a classroom teacher or a learning support centre teacher. It all trickles down, but the liability in this Bill will rest with the governors. They will have some anxieties, quite rightly, about that, but we have anxieties about the whole thing. They will decide how things are delivered without the bank of knowledge to understand that small class size alone will not make the difference or just a reading resource teacher will not make the impact. It is quite technical exactly how you decide to divide the very limited resources that most schools have to make the provision for children.

The Chairperson (Mr Weir): Arising out of that, I suspect that, to a certain extent, a lot of boards of governors already do this, but are we going to have, in one sense, legislation that is reinforcing a slight level of fiction? The official liability lies with the governors, but, given the very technical nature of this, governors will show up, listen to whoever the principal is, and the principal will say, "Here is the course of action that needs to be taken". Whatever training is put in place for governors, given the gap that will be there, in a practical sense, will they just follow what the principal is saying?

Ms Dorman: They are unlikely to have the expertise or the detail — you are going right down into detail — to see the type of intervention that is most effective at early years. If you have a lot of newcomer children, what kind of intervention would impact there? How do you balance resources? How do you do the early identification later in the school as well as early in the school? It is quite complex. I have a master's in special needs, and I would struggle to do it, so I do not know how a member of a board of governors who comes to a meeting once a month and does not have expertise in education would be able to do it. It is unreasonable and unfair.

I know that many boards of governors rely very heavily on employer support and on a CCMS officer who would do some support to boards of governors. Again, however, you would be relying on them having the expertise in that area, and most of them struggle with acquiring the right expertise in employment law and that kind of area rather than working on special needs, which is a bit of a Cinderella area in most schools.

Mr Craig: Just to come back on that, Mary, I do not disagree with anything that you said. I know that, in post-primary schools, most boards of governors rely very heavily on the SENCO doing their job properly and understanding the educational, physical and mental needs of the child.

The other thing is that, when you go into the primary sector, everybody ends up relying extremely heavily on the principal because most of them cannot afford SENCOs or anyone to specifically look after a lot of this stuff. That said, if the buck stops with that governor or governors, where on earth does this go? At present, that responsibility is heavily on the SENCOs and the principals, who, in some ways, are protected by people like you. No one is protecting the governors, and there is no legal protection for them, either. Will that not have a negative impact on the ability to recruit them?

Ms Dorman: It would certainly make them unwilling to volunteer to be the SEN governor because they would have particular issues. Do you know what I mean? I know that a governor with child protection responsibility was already appointed. While that is a very challenging and difficult area, it is a smaller area to deal with than SEN, which is very complex.

Mr Craig: The one thing that I understand about SEN is that it is challenged constantly. At present, it is challenged constantly by parents, but we are introducing a third element, where even the children could challenge it. I do not know where that would lead.

Ms Dorman: Believe you me, it is being challenged internally in the school by teachers as well; teachers in the classroom are just as frustrated as parents. It is not necessarily the fault of the board of governors or principals; the reality is that resources do not match demands. We have to juggle that as best we can, but we do not succeed.

Mr Lunn: Thanks for your input. I am going to have a "clause 1 day" today. *[Laughter.]* Something that looks so simple is clearly going to exercise us quite a bit. The INTO submission states:

"this requirement should include the recognition that the level of participation in decision making must be appropriate to the child's level of cognitive ability and maturity."

To what extent is that already catered for by the "so far as reasonably practicable" wording?

Ms Dorman: That language is slightly clearer. I know that there is an issue of legalese and that you must write it in a certain legal way, but the form of words that we have used is more accessible and understandable. It more about clarity, but I bow to the greater knowledge of the legalese experts.

Mr Lunn: So do I.

The NASUWT submission mentions the UN Convention on the Rights of the Child (UNCRC) and states that it:

"makes clear that the application of Article 12 is contingent on the age and maturity of the child concerned."

I presume that that means cognitive ability. When the commissioner was here, she seemed to think that it was not qualified to that extent. Are you reading the same UNCRC?

Mr Northcott: The issue with the UNCRC, as the exchange with the commissioner showed, is that a variety of interpretations can be placed on it. One interpretation appears to be in clauses 11 and 12. We have to at least look at clauses 11 and 12 and the provisions in them to comply with the requirements of the UNCRC. However, there are alternative interpretations the UNCRC. The issue with clause 1 is that if you say, "We're just going to introduce this duty, and it implements article 12", without further definition of what "reasonably practicable" means in practice, you could get a wide variety of interpretations of clause 1, which would be very unhelpful. That is the concern about clause 1 being published without the subordinate regulations and the code of practice, which is a theme that you have explored extensively.

Mr Lunn: You seem to indicate in your submission that you think that the duty under clause 1 on the authority might undermine the teacher-pupil relationship. Will you expand on that for me? In what way?

Mr Northcott: You have clause 1, which is the duty on the Education Authority to have regard to the views of the child. In a sense, that, as it stands, leaves an open-ended obligation on the Education Authority, and, therefore, schools, through the Education Authority, to implement practice that has regard to the views of the child. Having regard to the views of the child is extremely important; schools and other educational institutions need to do that. The concern that we have, based on our experience, is that, sometimes, the legitimate rights and entitlements of children are interpreted in ways that perhaps undermine the relationship between students and teachers. In our experience, one way that the views and rights of children are given expression in some contexts is to have children sitting on interview panels for teachers, for example. That is seen as being a way in which children can be involved in the recruitment of staff through a particular school. That is justified, interestingly, on the basis of article 12 because since it is the children's school, children should have a say in who works in it. However, as you can see from our point of view, that has all sorts of implications for fair recruitment and so on that means that article 12, in that context, is applied inappropriately.

Similarly, in the dynamic of a classroom, our submission says that teachers have, and must be able to exercise, legitimate authority to do their work appropriately. That is not meant in a repressive or anachronistic sense; it is just meant in the sense that there is a clear distinction between the role and function of a teacher and that of a pupil. We see practices that perhaps undermine that distinction through, for example, children observing the lessons of other teachers and then providing feedback and that feedback being used to make judgements about teachers' performance. That is justified, interestingly, on the basis of article 12; however, that is a misinterpretation of article 12. That was a very long response. In summary, article 12 is open to all kinds of interpretation. It is important that we nail that down in this context so that we do not have unintended consequences.

Mr Lunn: I am looking at this in very simple terms, because it is the only way that I can look at it, to be honest:

"the Authority shall— seek and have regard to the views of that child;"

Presumably, that is meant to mean its own educational needs. *[Interruption.]*

The Chairperson (Mr Weir): Members, we have asked for that noise to be halted for the rest of the Committee meeting, but there may be collaborative issues of communication.

Mr Lunn: How would the authority seek to ascertain the views of the child without involving teachers?

Mr Northcott: That would be up to the authority to determine. It could, for example, seek the views of children without going through teachers.

Mr Lunn: Why would they?

Mr Northcott: It might not be inappropriate either. If you introduce a blank duty, as clause 1 does, and because article 12, which underpins this, is open to so many interpretations, you could run the risk — that is all that we are saying — of policies being implemented under the authority of clause 1 that we do not necessarily need to introduce to be compliant with article 12 or which may have unintended consequences for ensuring that children get the education that they deserve. We are seeking greater clarity about how that will be inserted in practice.

Mr Lunn: Fair enough. I am not trying to divide and conquer here.

Turning to you, ladies, you do not seem to have the same concern.

Ms Dorman: Not particularly. We have some concerns, and it comes back to regulation and the code and how that materialises. That is one of our main concerns. We welcome the inclusion of the voice of the child, but we have a concern that it should be appropriate — do you know what I mean? — and we are not quite sure that the Bill is clear enough on that. We so not have the same concerns about it having issues for teachers and their views being overlooked by children's views. That is not a particular concern for us.

Ms C McCarthy: With regard to what you said about the teacher being involved in supporting, from the children whom I work with and have experience of, the teacher supports and helps the pupil to communicate their view and gives them the confidence to develop that and get it across, and that gives them the skills to get that across in a clear way that provides clarity for those who then provide the resources that they need.

Mr Lunn: So there has to be some sort of collaboration.

Mr Northcott: It is capturing the good practice that the code of practice needs to —

Mr Lunn: Maybe that is the word that we are looking for.

The Chairperson (Mr Weir): Given the earlier discussion with NICCY, I have an overarching question and, rather than get an instant reaction, you may want to come back to us on it. It has been mentioned that one of the central issues of this is the linkage between the legislation, the regulations and the code of practice. I suppose that, in an ideal world, we would have all of those in front of us. We are not at that position, and obviously we are trying to work with the Department to ensure that that is there as quickly as possible. There are other ways in which we can also look at this as part of that overall process. One that has been suggested to us is that there is the opportunity for the Committee to amend to put some level of constraints on the primary legislation. Those constraints would be on what would be in the secondary legislation, what can be put in regulations and what would need to be there. Do you want to give a bit of thought to that? I appreciate that it is maybe an unfair question to throw at you. Are there particular parts of the legislation that you feel should have some level of constraint on them in terms of the enabling and regulatory powers, be it issues around annual statements, mediation or whatever it happens to be? Maybe you want to give a bit of thought to that and get back to us. I think that that will be important as well, because we are looking at probably a range of measures to which we can ensure that this is held in an accountable fashion.

Mr Northcott: Very briefly, Chair, I heard you mention that possibility to the commissioner earlier. I think that we would want to see what was possible and what steps you might be able to take to address some of the issues that have been raised. What would concern us goes to the heart of the

issue that we have all raised: if you pass the Bill as it stands and there is no subordinate regulation that is published or, at least, open for consultation and, critically, there is no code of practice, you give an open-ended power to Ministers to make laws as they see fit, if you like, which would not have been known at the time that the Bill was passed. If you think that there is a mechanism that might address that, we will be interested.

The Chairperson (Mr Weir): I think that, from that point of view, by looking at that as one possibility, we are not saying that that is a substitute for having the regulations and having sight of what is going to be in the code of practice, but I suppose that it is about looking at the cocktail of measures that could be taken that could provide that combination of that proper accountability and ensuring that — I appreciate that the tone of much of what you said was like the report card of "must do better", if I can summarise it in those terms. Even leaving that aside, I think that there is the issue of what is on the face of the Bill in terms of the practical implementation issue side of it and how that works out in regulations and the code of practice. It is vital that that is got right, and I suppose that it is about trying to ensure that all mechanisms that can be used to deliver on that are taken and that all options are considered. That is not necessarily suggesting that we will come to the conclusion that the right way, or, indeed, even part of the way is necessarily to put those amendments, but we want to give that consideration.

I have a second point on this, and again I suspect that I probably know the answer to this. Obviously, the code of practice is at a level below the regulations. At the moment, that is on a basis that does not require Assembly approval of any description or any form of procedure. At this stage, all that the Department would have to do would be to publish and consult, and, if it so desired, implement. I presume that you accept that there may be value in having some level of direct Assembly input through some formal procedure on a revised code and that that at least would provide some level of belt and braces on that side of it as well.

Mr Northcott: Absolutely, yes.

Ms Dorman: That is where we see the role of the regulations. That should put a limit and a framework into what the code of practice should look like.

The Chairperson (Mr Weir): Yes, the only complication that we have got with that and where there is a limitation is, again, from a procedural point of view. With the legislation at primary level, we can take decisions from the Committee's point of view and following through into the Assembly on what constraints we will put and what amendments we will make. Obviously, the problem, even at the regulation stage, is that, while it will require the approval of the Assembly, regulations in themselves are not amendable. Consequently, we need to ensure that what is in the regulations is got right from the start, because you are then left quite often with a situation that I have seen previously. I am relatively new to the Education Committee, so I will not draw reference, but I have seen it happen in other Departments. Part of the problem with regulations will often be that you have a regulation that maybe contains four or five elements, and there are three or four of those elements that everybody objectively will say are very good things that people want. You are then left with one thing that you do not like and which you would ideally want to amend. The problem then is that you are left with a situation where either we pass through the regulation and accept one element that is poor, or alternatively we go for the nuclear option, which is to stop the regulation and get the Department to redraft. At the minimum, you then have a problem in that you have a time delay and a certain range of problems on that side of it. From that point of view, whatever direct constraints or amendments you want have really got to be done directly on the face of the legislation. There might be certain constraints on regulations. There is then the separate issue of the code of practice.

Thank you very much for your evidence; it has been very useful. This is an ongoing process but it is important, obviously, that this is got right for everybody concerned, not least the teachers. I appreciate that you are coming from a teachers' angle and not least the point of view of the children who will be affected by this.

Ms Dorman: Absolutely.

The Chairperson (Mr Weir): Thank you.