Committee for Education

OFFICIAL REPORT
(Hansard)

Anti-bullying Bill: Department of Education

4 November 2015

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Members present for all or part of the proceedings:
Mr Peter Weir (Chairperson)
Mrs Sandra Overend (Deputy Chairperson)
Mr Chris Hazzard
Mr Nelson McCausland
Mr Seán Rogers
Mr Pat Sheehan

Witnesses:
Mr Alan Boyd   Department of Education
Mrs Caroline Gillan   Department of Education

The Chairperson (Mr Weir): I welcome back Caroline Gillan, a familiar face, and Alan Boyd. Caroline is the director of access, inclusion and well-being, and Alan is the head of the pupil behaviour management team. Caroline, I invite you and Alan to make a short presentation, and then we will open the meeting up for questions.

Mrs Caroline Gillan (Department of Education): Thank you very much for inviting us here to provide a briefing on the Department's proposed anti-bullying Bill. I do not want to labour matters that we have covered previously and which are included in the written submission, but I will begin by providing a brief overview of the work that has brought us to this point before Alan addresses the key features in the Bill.

As members are aware, bullying is a complex problem, and it can be found, to some degree, in almost every school in the world. It changes and evolves over time and finds new means to manifest itself, particularly now with mobile phone technology and the social media sites that have sprung up over recent years. While modern technology has added to the problem and to the complex nature of the problem, the Minister is very clear in believing that all forms of bullying are equally unacceptable and must be challenged when they arise and that bullying must never be considered as an inevitable or acceptable part of school life for any pupil.

In 2013, 10 years after the last legislative change, the Minister asked the anti-bullying forum to undertake a review of anti-bullying legislation support services and practices in Northern Ireland. While that found that many schools were following best practice and actively working to tackle the problem, there remained variations in understanding and practice among schools and, in particular, significant variations in the quality of anti-bullying policies. The forum recommended that the Minister consider further legislation to tackle those inconsistencies. In response, in June 2014, the Minister announced his decision to introduce legislation to do just that. Officials developed policy proposals that were subject to public consultation during January and February this year. The consultation had

three proposals: first, to provide a common definition of bullying; secondly, to introduce a requirement for all grant-aided schools to record centrally complaints of bullying, the motivating factors behind bullying behaviour and the actions taken by the school to address each complaint; and, thirdly, to introduce a requirement for each board of governors to identify and designate one or more members with responsibility for the development of anti-bullying policies and their implementation in the school.

The consultation attracted nearly 5,000 responses — a very high response rate — 85% of which came from pupils and young people. While differing views were expressed on the detail, there was broad consensus that the three proposals would strengthen schools' ability to tackle the problem of bullying more effectively and that we should pursue all three areas. We provided a briefing to the Committee in March, along with an interim summary of the consultation responses. Subsequently, officials provided an informal oral briefing later in March at a planned session in Limavady. A full analysis of the consultation responses was published on the Department's website in the summer.

That is how we got to the point of developing and starting the work on the Bill. I will hand over to Alan, who will talk through the provisions, which we have shared with you.

Mr Alan Boyd (Department of Education): The Executive agreed a final policy position and approved the drafting of a Bill at their meeting on 28 May. That policy retained the three common objectives set out in the earlier consultation: the definition; the requirement to record incidents; and the requirement to designate a governor with specific anti-bullying responsibilities. The Executive also considered and agreed an outline definition that recognised the core characteristics of bullying as being its repetitive nature; that it can take the form of physical, verbal, electronic, written or psychological acts or omissions; and that bullying causes hurt, fear or distress or adversely impacts the needs or rights of victims. It also explicitly recognised that isolated or one-off incidents between pupils should not be recognised as bullying but should still be handled in accordance with a school's normal discipline processes.

That position provided the basis of our drafting instructions to the Office of the Legislative Counsel (OLC). In seeking to translate those into a suitable Bill, however, a number of difficulties were identified, particularly with our proposed designation of a school governor. It became apparent that requiring designation would mean a departure from an established practice, which has, until now, been that members of the board of governors carry out all of their duties and responsibilities as a single corporate body. Additionally, in assigning other responsibilities to the board, we have always, historically, granted them significant discretion in how precisely they meet those duties. That is necessary to allow them to put in place measures that are appropriate to the size and composition of the board and to the needs and circumstances of their school.

We were advised that requiring the designation of one or more governors would potentially create legal issues with the boundaries between individual governors' responsibilities and that corporate responsibility. It would also require the Bill to include provision to set out default arrangements where, for whatever reason, a school found itself unable to designate a governor. We were very mindful of the significant requirements and responsibilities already placed on school governors and did not wish to do anything that might discourage people from volunteering to serve in that important role.

We agreed that we would revisit the proposal on designation, seeking to retain the desired policy outcome, which is to make sure that governors are more directly involved in all of the anti-bullying policies and practices in their school. The Bill, therefore, now places a statutory duty on the governors to determine the detailed measures to be taken at a school and to ensure that they are properly implemented, that recording takes place, that the operation of the procedures is monitored and that the policies and procedures are kept under periodic review.

A draft Bill reflecting all those changes was cleared by the Minister on 29 September, and both the Departmental Solicitor's Office (DSO) and the Attorney General subsequently confirmed legislative competence in this area. A paper seeking Executive consent for the introduction of the draft Bill was issued on 2 October. We had anticipated that this would potentially permit the introduction of the Bill on 9 November. We still await Executive approval and are ready to contact the Speaker requesting its introduction.

The Chairperson (Mr Weir): Do you hope to have it introduced before the end of November?

Mr Boyd: Yes.

That is all that I have to say at this stage.

The Chairperson (Mr Weir): Thanks for that. I want to lead with two or three questions. First, a number of recommendations in the 2011 survey by RSM McClure Watters have found their way into the Bill, but other recommendations, such as changes to initial teacher education, training needs analysis etc did not. Why did others not make it into the Bill?

Mrs Gillan: The Bill is what we felt was appropriate to pin down in legislation, particularly the duties on boards of governors, and to clarify roles and responsibilities. We are aware that there need to be other elements of work, such as guidance and training, alongside it. The Bill is not the end of the story for the Department's anti-bullying work.

The Chairperson (Mr Weir): Other aspects will be taken forward in a non-legislative fashion.

Mrs Gillan: Yes, absolutely.

The Chairperson (Mr Weir): The second issue that I want to touch on is the recording of bullying incidents on a central IT system. In certain respects, that is a difficult issue. Is there a danger that this would allow the disclosure of information and almost create an unofficial league table of schools in which there is bullying? I have seen the double-edged sword of things such as ASBOs, where people have a fairly malicious intent. In this case, people might aspire to push their school up the table. There would be a concern among schools that, if they were seen to be at the top of any league table on bullying, it would be very counterproductive to their reputation. Linked to that, if that is a danger, the issue is that it might create an atmosphere in which there is some discouragement of full disclosure and an attempt to under-report or cover up problems. Will you address those issues?

Mrs Gillan: We are very alive to that. That was an issue that we discussed at our previous Committee appearance. It is about finding the balance between the publication of unofficial league tables — that is obviously an issue because a school protects its reputation as an institution — and wanting to ensure that the individual needs of pupils are properly met in schools. We felt that the reporting of incidents was a really important tool for schools. They will know how they respond to incidents, and it will enable them to look at trends and at any particular issues. Also, boards of governors will have a good data set telling them to what extent the policies and measures that we are asking them to develop and put in place are being followed.

Although there is potential for unofficial league tables, the reality is that, if we were to find that there were schools that had almost no incidents of bullying, that, in itself, would raise some questions. Is that an absolutely genuine position in any school? More realistic reporting would probably show some incidents, but, along with that, schools would have a good story to tell and say, "We have reported incidents, but, alongside that, we have very proactive steps that we take to address them and produce successful outcomes".

The Chairperson (Mr Weir): One of the final issues that I want to touch on relates to outcomes. You mentioned statistics. Other than simply having overall graphs of the numbers of reported cases, which can, as I said, be a double-edged sword, how will we measure the success or otherwise of the legislation? The other issue is about what lessons have been learned. Sadly, bullying is not unique to Northern Ireland, in the sense that, as you said, it is universal in schools throughout the world. Have any lessons been learned from legislation in other jurisdictions that could be applied here?

Mr Boyd: We are, largely, still among the front-runners of legislatures looking to address bullying. There is no clear, international, recognised definition of bullying. There is a variety of widely accepted academic definitions, but not much legislatively. The Office of Legislative Counsel, in part of its drafting work, picked up on the Education (Welfare) (Amendment) Bill 2015 that was taken forward in the Oireachtas but did not proceed, and it also identified a Republic Act in the Philippines. Subsequently, we also identified a US state law in New Jersey that was adopted to tackle bullying. However, there is very little legislative consensus. What little there is seems to pick up on a lot of the same areas that we did: defining where a school's responsibilities would lie for actions in school under the lawful control of teachers or while travelling to and from school. The details of the definition generally focus on physical/mental harm or distress to pupils. There is no clear consensus on other factors that should be included.

Mrs Gillan: I will say something about the information that we will capture on motivating factors. In the past, the Department periodically commissioned research on bullying and the incidence of bullying, as you mentioned. We envisage using the C2k school management information system (SIMS) system for this. Although the information is primarily to be used at school level, the Department and the Education Authority will be able to ask for analysis to be done at a much higher level: trends, types of bullying and issues like that. That will help us as we develop policy and decide what other responses we need to put in place, just to see how effective our policies are and whether the advice that we give to schools is effective. It will be much more efficient because, instead of commissioning research for x number of years, we will be able to have ongoing oversight.

The Chairperson (Mr Weir): There is also the area of interaction, and I appreciate that this is one of the constraints. You are looking specifically at bullying in schools, which is within your remit, but bullying seems to be growing outside of schools through social media and so on, which did not exist 20 years ago. It is now a major problem for a lot of children and, sometimes, adults.

Mrs Gillan: We had to draw a line around what we can expect schools to be responsible for. The wider e-safety issues are in the remit of the other side of our directorate, under child protection and safeguarding. We have issued guidance and are taking forward work that is more to do with advising how to keep kids safe on the Internet. That bleeds into home life and general knowledge about how to stay safe online.

Mr Rogers: You are very welcome. I am thinking particularly about the advice to schools about the recording of incidents. You mentioned data capture and so on. My knowledge of C2k is now 10 years old. When an incident happens, is that put on to the system or is it that the result of the investigation of the incident goes on to the system?

Mr Boyd: It is envisaged that a specific module series of screens will be developed to record incidents or reported incidents. It will allow the school very quickly to select and identify the pupils involved and the key motivating factors, as they are aware of them, and to record what steps the school has taken to intervene. Using C2k will ensure that exactly the same data is captured and appended to the record of each pupil involved, irrespective of whether they have been engaging in a bullying behaviour or been the victim of a bullying behaviour. There will be absolute consistency in that data.

In making sense of what motivating factors schools may record, the Bill identifies a series of possible motivating factors. We have deliberately made that non-exhaustive. We appreciate that there is a large subjective element because we ask any teacher recording an incident to assess a situation and make some decisions. We are attempting to make the process of capturing and recording data as quick and straightforward as possible. We are acutely aware of the potential for this to be viewed as a very large administrative burden. However, by using an IT system with which all teachers are familiar, we hope to minimise that burden.

Mr Rogers: My point is that you could have pupils who were there when an incident was reported and, therefore, associated with the bullying. However, once you record that on C2k, it does not remain only on a local computer that night; it is recorded centrally on your back-up system or whatever. It may transpire later in an investigation that certain pupils just happened to be there and had nothing to do with the bullying. How will you ensure that they will have nothing on their record in the system?

Mr Boyd: There will be enough sophistication within the screens to identify directly children who had suffered in the incident, those who were believed — even at an early stage — to have perpetrated the incident and those who merely witnessed it. We would not look simply to tag a list of 10 or 15 children and have them all loosely associated; it would be much more tightly defined than that.

Mrs Gillan: The key thing here is that we have had early discussions with C2k, but we have not developed the module or the system. We are conscious that we will want to put out guidance for boards of governors. We envisage having a working group involving schools, IT folks and stakeholders to explore some of those issues. We will want to deal with those issues when developing the system and deciding what is appropriate and how it should be captured.

Mr Rogers: When it is appropriate to capture —

Mrs Gillan: Absolutely, yes.

Mr Rogers: Thanks for that clarification, Caroline. I am glad to hear that there has been a change to corporate responsibility for a board of governors rather than a designated governor. May I assume that training associated with that will be built into the programme as well?

Mrs Gillan: Yes, that is what we hope. Obviously, this is a more particular duty on boards of governors in general, so we want to develop guidance on what is expected of them. It remains to be seen whether we ask to have a particular module or training devoted to this area, when the time comes, as part of the boards of governors' training that is already being rolled out.

Mr Rogers: Although there is a lot of responsibility on the governors, please remember that the principal or senior management ends up with all these jobs. Do not forget that.

Mr Hazzard: I have a couple of points to raise. First, a lot of bullying relates to pupils, but what about instances in which a principal is alleged to be bullying staff or there are problems in staff relationships? Will that also be a part of this?

Mr Boyd: Those interactions were considered early on. In fact, they were flagged by some respondents to the consultation. We concluded, however, that there are mechanisms to address that under conditions of employment and normal staff disciplinary procedures and that trying to wrap those in with what, essentially, tries to target pupil-on-pupil bullying would unnecessarily complicate the Bill.

Mr Hazzard: OK. Secondly, I have dealt with two schools that have been entirely incapable of dealing with homophobia issues. In one, a teacher who was teaching about homophobia in a week that including the International Day against Homophobia was told that the school did not deal with it. Another school taught that heterosexuality was the ideal. I have no faith in those two schools that they will deal adequately with such issues. If we look at the example of the need for a policy on relationship and sexuality education (RSE), we see that many of our schools do not even have such a policy. Is it not appropriate that we ensure in this legislation that it is obligatory for schools to have a policy on RSE? Could that be looked at?

Mrs Gillan: This legislation, which is particular to bullying, is probably not the right place for it. You will know that the Council for the Curriculum, Examinations and Assessment (CCEA) recently published its updated guidance on RSE. It focused on the need to ensure that pupils are completely embraced regardless of their identity. We respect the ethos of schools. I am not aware of the details of the particular position. The teaching of RSE is a slightly different issue, but there is an obvious overlap if a school has incidents of homophobic bullying.

Mr Hazzard: We know for a fact that racism, sectarianism and homophobia are three big reasons for bullying in schools. I find it odd, then, that we cannot say that every school must have a policy. That should nearly be the first step in preventing the bullying that takes place.

Mrs Gillan: We are saying that every school must have a policy on bullying. However, our advice was and the consultation showed that you want that bullying policy to be applied regardless of the motivating factor. We were conscious of saying that we wanted information on the motivating factor because that, in itself, will require schools to acknowledge that the motivating factor has been sexual orientation, racism or whatever. The school has to acknowledge that and then say what steps it has taken to address it. It will have to —

Mr Hazzard: It sends a worrying signal to pupils if a school does not take sexuality seriously enough to have a policy on it. It sends the wrong message. If there were a way to make it obligatory for a school to have a policy on this, that would make it easier for teachers to deal with some of the bullying.

Mrs Gillan: A policy on sexual orientation.

Mr Hazzard: Well, on RSE certainly.

Mrs Gillan: I will certainly feed that back to colleagues in the Department. I am just not sure that an anti-bullying Bill would be the right vehicle for us to open that up.

Mrs Overend: Thanks very much for the presentation. I very much welcome your comments on developing the guidance in connection with many other bodies. I presume that the Safeguarding Board will be one of those, specifically in relation to Internet safety.

Mrs Gillan: Absolutely. The anti-bullying forum that we fund is already involved in the e-safety forum. It is linked to the Safeguarding Board through the development of the e-safety strategy that it has been commissioned to develop. We have asked the anti-bullying forum to produce cyberbullying guidance. Alan, is that within this financial year?

Mr Boyd: We have asked the forum, as part of its work, to update a leaflet that it already had on cyberbullying and to develop a specific resource for schools. The forum has published an 'Effective Responses to Bullying Behaviour' resource pack, and we asked it to develop a cyberbullying addendum to that. That will also be completed in the current year. I recently had an update from the forum that stated that it had gone further and would, in the very near future, publish a leaflet for parents and carers to guide them on how they should interact and engage with their child's school should cyberbullying become an issue. We are aware of those concerns and the need to ensure that anything that we do remains aligned with the work of the Safeguarding Board.

Mrs Overend: Very good. I am concerned that any guidance that comes out of the Department should cover not just dealing with the after-effects but how to prevent such bullying. I have given my stance on Internet safety before. It is so complicated. I have been chatting to other people about means and ways of preventing problems. Is having specific courses that children can take at school and aligning that with working with parents the sort of thing that you are looking at?

Mrs Gillan: Are you thinking of courses on respecting others and their rights in order to prevent bullying behaviour or cyberbullying in the first instance?

Mrs Overend: Recently, I was chatting to someone from a school in which a teacher sits down and goes through a course with the child. Then, once the child has completed a certificate on Internet safety, the school brings in the parents in and goes through the issues with them. Might you look at that?

Mrs Gillan: The Department recently issued its guidance on Internet safety. Coupled with that, new resources on the C2k system allow schools and pupils to go into e-safety rooms and go through almost real-life scenarios. A lot more put has been put on to the C2k system precisely for schools to teach about staying safe online. In light of incidents in the summer, we also wrote to schools to draw attention to e-safety resources that are available nationally, what pupils can do if they do find that their personal information is on the Internet and places that can help. The preventative side has been pursued through the Internet side of the curriculum and the e-safety rooms. There are rooms on Fronter precisely for that purpose, for teachers to go online and do that.

Mrs Overend: I am glad to hear that. I am just concerned that some schools will do it and others will not. How do you help with that?

Mrs Gillan: That will always be the challenge in everything that we try to roll out. We always point to the Education and Training Inspectorate (ETI) for best practice. ETI goes into schools and carries out its inspections, and it will look right across the scope of pastoral care and delivery of the curriculum. All that we can do is make the resources available and make sure that they are high up the agenda. We are also working with the Regional Training Unit on the optimising achievement tool that we funded, which focuses on mutual respect and self-respect issues. We are trying to roll that into a lot of the leadership training in schools so that a positive ethos in schools is rolled out through pupils and teachers. It is about trying to approach these things from lots of angles.

Mrs Overend: A lot of schools have a concern about what their responsibilities are and where their responsibilities stop. You lay that out in the legislation, which is welcome, but it also identifies that there may be a gap. Schools may say, "Well, our responsibility stops here". We need to make sure that there is help available elsewhere to pick up where those gaps are.

Mrs Gillan: That is where the leaflets and guidance on awareness-raising for parents come in. There is an obvious parental responsibility outside the school system for keeping children safe online.

The Chairperson (Mr Weir): It is a very important subject. We, as a Committee, will ensure that we give the Bill adequate time so that we can get it through as soon as possible. Caroline and Alan, thank you for your presentation.