



Northern Ireland
Assembly

Committee for Education

OFFICIAL REPORT (Hansard)

Addressing Bullying in Schools Bill:
Departmental Response

27 January 2016

NORTHERN IRELAND ASSEMBLY

Committee for Education

Addressing Bullying in Schools Bill: Departmental Response

27 January 2016

Members present for all or part of the proceedings:

Mr Peter Weir (Chairperson)
Mrs Sandra Overend (Deputy Chairperson)
Mr Chris Hazzard
Mr Danny Kennedy
Mr Trevor Lunn
Mr Robin Newton
Mr Seán Rogers
Mr Pat Sheehan

Witnesses:

Mr Alan Boyd	Department of Education
Mrs Caroline Gillan	Department of Education
Mr John Anderson	Education and Training Inspectorate

The Chairperson (Mr Weir): We welcome the officials — some familiar faces — from the Department: Caroline Gillan, director of access, inclusion and well-being; Alan Boyd, the head of the pupil behaviour management team, and John Anderson from the Education and Training Inspectorate (ETI). This will be a public session. The Committee will review the clause-by-clause table and seek clarification from the officials.

I also ask members to give an informal indication of their views on all the proposed amendments. They should indicate informally whether they wish to pursue each amendment. This will guide the Committee's formal deliberations. It will not preclude any individual or party from pursuing their own position as regards any amendment or, indeed, from tabling amendments.

I welcome the officials. Maybe you want to make an opening statement. I ask you to respond particularly to recent queries from the Committee on pastoral support and cyberbullying.

Mrs Caroline Gillan (Department of Education): Thank you, Chair. Alan Boyd will open with some general observations on the evidence, the themes that are coming through and the context for the legislation. We also have John Anderson with us. He is a managing inspector in the ETI and is responsible for pastoral care and safeguarding. He will comment on how the ETI inspects those arrangements in schools.

Mr Alan Boyd (Department of Education): As the Committee is aware, the origins of the Addressing Bullying in Schools Bill lie in 2013, when the Minister asked the Northern Ireland Anti-Bullying Forum to undertake a review of current legislation, policies and practice in schools. It is worth reflecting that the findings of that review did not highlight any major deficiencies in the current arrangements and

nothing that required immediate or substantive change; rather, it concluded that the general standards of pastoral care and anti-bullying practice in schools were good. Most schools fully understand the potential impact of bullying on their pupils' lives and already undertake stringent efforts to respond to that problem. I believe, as you will hear from Mr Anderson, that that view is reflected in the evidence from school inspections.

The chief failing that the review identified was the lack of consistency in practice across all our schools and a lack, in some instances, of hard data to allow schools to monitor their performance, to monitor how effectively they address bullying and to respond to any emerging trends in the schools. The lack of robust data on the overall volume and nature of bullying at the regional level was also judged to be a weakness in the Department's ability to meet its policy development needs. Accordingly, the Bill aims to address those issues and provide the consistency that is necessary to ensure that all pupils are protected to common best-practice standards.

The submissions and the oral evidence that the Committee has received over the past few weeks have reflected a diverse range of opinions. Some have argued that the Bill goes too far, while others believe that it does not yet go far enough. Some have made the case that we should have followed existing definitions of bullying more closely, while others have suggested that it is the perception of the victim, even in a one-off case, that should determine whether an incident is classed as bullying. We have given careful consideration to all these views, but we remain convinced that, at its heart, the Bill provides a workable framework to address the core problem identified, namely the need for greater consistency.

The definition in the Bill, we believe, provides a common baseline for what all schools must recognise as bullying, but, because the definition is open-ended and inclusive, that already allows schools freedom, where they deem it appropriate, to classify other incidents as bullying. Recording bullying incidents is already recognised as best practice and is undertaken in most schools. Formalising that duty will provide for greater consistency, but it is only where the duty is not being met that the Bill will create a new administrative burden for any school.

Requiring the board of governors to take on a more direct role in anti-bullying policies and procedures is intended to provide additional focus on this important problem. Governors already carry overall responsibility for ensuring that discipline and good behaviour are promoted in the school and that the pastoral care needs of pupils are met. While the Bill asks them to take a more hands-on approach to bullying, the recording of incidents will ensure that the management information they need to fulfil these new duties should be readily available.

Much has been said about the need to do more to tackle cyberbullying. By specifying electronic communications in the definition, the Bill will require all schools to recognise this important and growing problem, but the problem is more complex and has significant criminal justice implications that cannot be ignored. We believe that schools lack the legal authority, time and skills to investigate many such complex cases; nor can DE or schools unilaterally absolve pupils from the potential criminal offences that cyberbullying may involve them in. We consider it essential that schools have clear boundaries separating those situations in which we will expect them to act and those where it will fall to parents, perhaps in conjunction with the PSNI, to take action. We believe that the Bill defines these boundaries in a way that is both measured, easy to understand and fair for all concerned.

The Department fully recognises the distress and serious damage that bullying can cause to any young person who experiences it. That is why the Department's position has always been that all forms of bullying are unacceptable and must be challenged wherever found. We would not pretend that the Bill will solve the problem of bullying in our schools, but we believe that it can result in a tangible improvement and provides an opportunity to take a further step along the road to addressing bullying in our schools.

The Chairperson (Mr Weir): I appreciate that we will get into the clause-by-clause stuff shortly. Have members queries specifically about the opening remarks?

Mr Lunn: You touched on cyberbullying. From the start of our deliberations, that has grown and grown. In particular, clause 2 limits the duty on the board of governors to what happens:

"(i) on the premises of the school during the school day;

(ii) while travelling to or from the school during the school term; or

(iii) while the pupil is in the lawful control or charge of a member of the staff of the school".

That does not really cater for cyberbullying at all, and yet we hear anecdotally from school principals that it is seriously underestimated and probably the biggest and most damaging form of bullying. Do you see any merit in the Bill being adapted to include incidents that, although they happen outside school hours, impinge on pupils during school hours? I am sure that you know exactly what I am talking about.

Mrs Gillan: I know that it was debated on the Floor of the Assembly. In practical terms, schools cannot be responsible for pupils 24/7, so it is difficult for them to feel that they can take action on something that happens at the weekend or at midnight. That said, incidents of cyberbullying will bleed into the behaviour of pupils and the relationship that exists between pupils during the school day. It would be good practice for schools to be made aware of incidents that occur outside school time that then affect their pupils and relationships during the day.

We have confirmed with the Anti-Bullying Forum that it will do a piece of work for us this financial year on guidance for schools on cyberbullying. We envisage that the guidance we will issue alongside the Bill will elaborate a bit more on handling, but, realistically, there will be a bleed into potential behaviour during the school day. However, there is a risk of inserting something in the Bill that places a duty on boards of governors to act on what would be, effectively, 24-hour behaviour. That is the difficulty.

Mr Lunn: If a pupil is suffering in school and perhaps reports to the teacher and through to the principal what has been happening, the pupil can, in modern terms, show them their phone to show what they have been receiving and where it is coming from. If it is coming from another pupil, it seems to me that, on the basis of what is before us and if the sending of that text happens within school hours, the school can do something about it. If it happens outside school hours, the school cannot do something about it, but it is exactly the same offence. I could take you to a school principal who told me, off the record, that she has a drawer with pupils' phones in it waiting for the parents to come and be shown what is on them. The sending of the offensive material clearly took place in the evenings.

Mrs Gillan: That school is dealing with it appropriately. This is the problem. If something happens in the evenings, that is for the parent to address. Obviously, the school has become aware of it and is doing the right thing by making the parent aware of it.

The Chairperson (Mr Weir): At some stage, we may get into the specifics, because some of the stuff will relate to potential amendments. I ask members to be brief because we have a lot of legislation to get through.

Mr Rogers: You are very welcome. I know that the Bill has to be very short on the definition of bullying, and you made a reference to pastoral care. There has to be a strong emphasis on pastoral care. In the guidance, will there be a strong emphasis on the pastoral care aspect?

Mrs Gillan: Absolutely. We discussed that before we came here today. John can talk about how the ETI approaches inspection in relation to pastoral care and safeguarding. At the moment, anti-bullying is dealt with in pastoral care and, to some degree, safeguarding arrangements. We envisage the guidance almost cross-referencing with the discipline policy in school and pastoral care as well and even the whole emotional health and well-being and respect for others aspects. It is all interlinked, and the guidance will pick that up. We envisage that we will work with colleagues who are leading on safeguarding issues and wider pastoral care issues to ensure that it all makes sense and is not just seen in silos.

Mr Rogers: Following on from that, will it also pick up on the particular concern of the teachers of children with special educational needs and teachers at special schools? Will it help to allow some discretion for them?

Mrs Gillan: I noticed that in the evidence, and we can go through it clause by clause. As Alan emphasised, because of the way the Bill has been drafted, the definition at the moment is not exclusive; it is inclusive.

Mr Hazzard: We are going to get into a lot more of the detail of the clauses, so I will just pick up on something that Trevor raised around electronic devices. Are schools entitled to take a phone off a

pupil? Can they take screenshots from that phone or go into the phone and take whatever information they want out of it?

Mrs Gillan: Therein lies the legal challenge. Some schools may own iPads and things like that, and that is a different situation. I do not know what each school does, but I know that some have a policy that you are not allowed to bring phones into the school, and they may have set out clearly what will happen in circumstances where a child is found to have breached that policy by bringing a phone into school. However, this is a tricky area. We totally understand the desire to tackle cyberbullying, but, equally, we cannot impose duties and arrangements on schools that mean that they become responsible and, effectively, the parent 24 hours a day. This is why we would prefer to tease out the cyberbullying element through guidance with the Anti-Bullying Forum and the Safeguarding Board's e-safety strategy. If you look across England and Wales, you will see that, although some guidance exists, it keeps acknowledging that this is a very difficult area. I would be loath to rush to put duties in legislation that we then find create more of a problem than a solution.

The Chairperson (Mr Weir): On the rights of schools, another issue goes into slightly more difficult territory. If a pupil at the back of a class is constantly distracted because they are busy texting, they might be told that the phone is being confiscated until the end of the lesson or the end of the day and that they can pick it up then. Chris's point goes a step further to where an incident has happened or an allegation has been made and to what extent the school can use a screenshot or look at the information that is in the phone, iPad or whatever.

Mrs Gillan: You are talking then about criminal law issues, the PSNI being informed etc.

Mr Lunn: In the circumstances I described, where something emanates from outside school hours but affects a pupil during school hours, the principal may hear about it and confiscate the phone. This may or may not be legal, but I am sure that they will give the phone back. However, the action they have taken is to report the incident to the parent. With a more straightforward, traditional form of bullying, the action that the school takes may or may not involve that aspect. It could also be a detention or whatever form of retribution the schools think is appropriate. Surely, there is scope to, at least, allow the principal to do that. If this type of thing happens, the school can notify the parents and let them know what is happening. It is then up to the parents, really, because it happened outside school hours. Is there any mileage in this action?

Mrs Gillan: Think of things like texting, screenshots, Snapchat and Facebook: the pupil might say, "It was not me. It was on my phone. Somebody took it. Somebody has broken into my account". There are a lot of ins and outs that we need to tease out. You might have a principal saying, "Right, this happened at 9.00 pm" or "This happened during the school holidays". You are then so far divorced from the operation of the school and what the principal has visibility of that it can be quite challenging. Would something that happens in the middle of school holidays —

The Chairperson (Mr Weir): We will come back to the issue of scope.

Mr Newton: My point is on the duties and responsibilities of boards of governors. If I read the legislation right —

The Chairperson (Mr Weir): Sorry to interrupt, Robin. We will be going through all of this on a clause-by-clause basis. It might be appropriate to deal with it then.

Mr Newton: It is a general question, Chair.

The Chairperson (Mr Weir): If it is a general question, fire away. I do not want to be accused of bullying. *[Laughter.]*

Mr Newton: I am not a member of a board of governors, but, as I understand it, we are asking for greater commitment from them and for them to move away from a nearly passive role — without being disrespectful to them — and take a more hands-on role that requires a higher degree of knowledge and additional skills. Indeed, in that role, boards of governors could be liable to legal action against them. Am I right in that?

Mrs Gillan: Boards of governors, as I understand it, would already be liable potentially.

Mr Newton: Are we increasing the potential?

Mrs Gillan: I guess that, if there is a court case and the school's actions are being considered, schools sometimes fall down, for example, where there has been a lack of attention or lack of recording. If anything, some of the things that we are asking schools to do should increase their focus on bullying and protect them should they be challenged about failing to deal with a case of bullying. John will be able to talk about how the ETI goes in and looks at particular cases and give examples of good practice. As Alan emphasised, some schools do this really well already. What we are doing is capturing good practice to ensure that it is rolled out consistently, because not everybody applies it consistently.

I take your point about whether this will afford extra opportunities for legal challenges. I would say that boards of governors are already vulnerable to legal challenges, but, if they can show that they are fulfilling their statutory duties and are following departmental guidance, that, if anything, will provide them with a much more robust defence.

Mr Newton: If the Bill is enacted, what support, training or measurement of skills will be offered?

Mr Boyd: What we have discussed is that in developing the guidance we intend to engage with all stakeholder groups — governors, principals, staff and other bodies such as the ETI — to build a good, collective picture of exactly what support and guidance is needed, so that the guidance clarifies as much as possible. Furthermore, determining the detail to be contained in the guidance will help make it very plain as to the additional training needs that will need to be met for governors, staff and principals potentially. We cannot say at present that that is work to be undertaken, but we are very clear that there will be training needs and that, as they are identified, we are happy to commit to saying that they will be met.

The Chairperson (Mr Weir): We will get down to the specifics of this. For the guidance of the Committee, as we did in the informal session earlier, we will take it area by area.

Mrs Gillan: Would you like to deal with the ETI's role during the clause-by-clause discussion?

The Chairperson (Mr Weir): Probably, yes; that might be best. John, if you are dealing with any specifics that might come up in relation to that it might be useful, unless there is anything in particular that you want to say at this point.

Mr John Anderson (Education and Training Inspectorate): I am happy to do that, Chairperson, but you asked two specific questions of the inspectorate that I can address, if that helps. If you do not mind, I will precede that by briefly summarising how we go about inspecting pastoral care and safeguarding.

First, pastoral care and safeguarding are a consistent part of inspectorate training. In fact, at the start of this school year we had a particular focus on anti-bullying as part of our training, for a reason that I will explain in a moment. Before we conduct an inspection in a school, we send out questionnaires to parents and staff. Of 19 questions, about five deal with aspects of pastoral care, bullying behaviour, the care and well-being of young people, the parents' knowledge of safeguarding procedures and their knowledge of their ability to complain if they have any concerns, and the staff training for safeguarding and child protection issues. We also give schools a detailed and comprehensive safeguarding self-evaluation tool in a pro forma that has about 30 questions in very great detail, so that they can audit all aspects of their policies, procedures and practices with regard to safeguarding and child protection. We encourage schools to do that, not just because they are to be inspected but because it is good practice each year. We have that available publicly to them at any time.

Informed by the feedback from those questionnaires and from the safeguarding pro forma, we conduct interviews with the pupils in the school during the inspection. We have discussions in post-primary schools usually with every year group and, in primary schools, with the children in P6. We also have discussions and interviews with staff about their roles and responsibilities with respect to pastoral care, bullying behaviour, safeguarding and child protection issues. We conduct two discussions of case studies with schools. That is how we test the validity of what schools say they are doing. Traditionally, we always talk through a child protection case study where a child may be subject to abuse and a school is dealing with the context of the abuse, often outside the school. From the start of September in this school year, we added a second discussion of a case study on anti-bullying to test the effectiveness of schools' procedures and practices in dealing with bullying issues in schools.

On the basis of the collection of all that evidence, we come to two evaluations. One is the overall evaluation of pastoral care as a whole: the care and support that a school gives to young people, addressing the issues that may be barriers to their learning and understanding how to create a conducive learning environment. It includes everything that adds up to what we might call the ethos of a school that is conducive to learning. We have an evaluation for that, which I will report to you. Separately, we evaluate safeguarding in one of three ways. We look at all the evidence that we have and maybe concur that it is "comprehensive". If there is any shortcoming, we will say that it is "satisfactory". The issues that make it satisfactory are never regarded as minor, but they may be relatively straightforward to address and resolve in the short term. If there are significant flaws in the safeguarding policy and practice, we evaluate that as "unsatisfactory". Those two evaluations will be in every school inspection report.

The other model of inspection that we keep available to us is an unannounced inspection. It is very rarely used, but, if there are concerns, particularly triggered by child protection, safeguarding or bullying issues, we can conduct an unannounced inspection of a school. That, briefly, is the method.

This is what we have found. Of all the things that we evaluate in schools, pastoral care is the one aspect of school provision that is strongest. In the inspectorate's evaluations, it consistently comes out as the most effective aspect of provision. In the 'Chief Inspector's Report 2012-2014' and in inspection evidence from 2014-15, pastoral care was described as "very good" or "outstanding" in around 85% of schools and "good" or "outstanding" in about 96% of schools. Our schools are very effective at being caring. I report this because that is what we find, but I am not doing that with any complacency, because, when you encounter issues related to child abuse or bullying, they are very serious and significant. I simply put them in that perspective.

I turn to our findings on safeguarding. Broadly, we find that safeguarding in most of our schools is comprehensive, but we found a significant difference, particularly in the 2014-15 school year, when we were only able to evaluate the safeguarding of nearly a quarter of primary schools as "satisfactory". That was significantly different from the proportion in post-primary schools. The weaknesses tended to be that either the governors' training or staff training was not completely up to date or that school documentation may not have been recently reviewed, so it was not in line with current best guidance and practice. We use the Northern Ireland Anti-Bullying Forum as a benchmark of best practice for documentation and policies on anti-bullying. Perhaps aspects of staff vetting were not complete. There may simply have been difficulties in record-keeping not being complete or not being kept sufficiently confidential. Those are some of the reasons why we might evaluate safeguarding as being less than comprehensive. If we find that it is unsatisfactory, we follow it up within six weeks by another visit to make sure that the issues have either been addressed or that an action plan is in place that will clearly resolve the issues. We find that difference in primary schools rather than post-primary schools. One may speculate on the reasons for that. It could be that there are fewer staff, with more responsibilities being distributed across fewer leaders in a school, or it may simply be that there is a smaller board of governors and the designated governor or chairman may not have had up-to-date training.

I am happy to answer questions, but, in a nutshell —

The Chairperson (Mr Weir): I am keen for questions to be asked as we come to the sections.

Mr J Anderson: That sets the context.

The Chairperson (Mr Weir): From members' point of view of, there are two things. We have a reasonable amount of material to get through. After this session, we have about five minutes to deal with the remainder of business. We will need a cut-off point at about 1.20 pm. In an ideal world, our aim would be to get through all this, but we will try to get through as much as we can. Perhaps we can meet again on Tuesday lunchtime from about 1.15 pm onwards to deal with anything outstanding.

Mrs Gillan: Do you want us back next Tuesday?

The Chairperson (Mr Weir): Yes. Maybe I am judging this wrongly, but there is a lot of meat in this. Maybe everybody will say that everything is fine and members will not want to ask any questions, but I suspect that that will not be the case. We will get through as much as we can in the next hour, and then we can have our informal deliberations next Tuesday.

We will start with clause 1. I remind members of the clause-by-clause table, where the comments have been broken down. We will take it in sections. The first area will be comments 1.1 to 1.5. Members may want to ask a specific question. At comment 1.5, the Department has suggested a technical amendment. Caroline, will you talk us through that briefly?

Mrs Gillan: It is presentational more than anything else. We felt that it was much better to break the definition down to make it clearer and look less like hurdles. We revisited the drafting and decided that it looked better in the revised version. With all the comments from stakeholders, it is important to emphasise that the definition states that bullying "includes" the following. We say that, as far as we are concerned, this is bullying and, therefore, must be recorded, but there will be other circumstances and schools will make other judgements on what can be bullying behaviour.

The Chairperson (Mr Weir): In comments 1.1 to 1.5, the main issue that was raised with us — members may want to come in on this — is the position of special schools and whether it is appropriate that a definition for bullying be applied to special schools and, if it is applied, whether, given the circumstances, it should be the same. Do you want to comment on that?

Mr Boyd: As drafted, the Bill does not permit any school discretion on the duty to record an incident of bullying if it meets the definition set out in clause 1. However, as was said, by using the word "includes", the definition has been created to be non-exhaustive and to allow schools flexibility. Schools will not, by virtue of any of the Bill's provisions, lose any aspect of their current freedom to set their own discipline and anti-bullying policies. We believe that this will give schools sufficient flexibility to consider and take account of special educational needs or any other factors that they determine to be relevant in applying what action they take in response to an incident. While the current draft would require all schools to record each incident, we believe that this could still be advantageous, even in settings such as special schools, because it will still allow information to be captured that will inform boards of governors in their future deliberations. Even in a special school, if for any reason a large number of incidents were occurring, it would be appropriate that the governors become aware of that and consider why that had arisen and whether there are any steps that they could take to address it. We do not, therefore, consider that we need to exclude special schools specifically or make special provision for them.

The Chairperson (Mr Weir): I will bring Trevor in in a wee second. First, however, I welcome our friends and visitors. Which primary school are you from?

Mrs Gillian McDowell: We are from Currie Primary School. This is the school council.

The Chairperson (Mr Weir): I inform the school council that we are considering a Bill that looks at what we can do about bullying in schools. We have the officials up from the Department of Education, and we are quizzing them on various aspects. You are very welcome to join us.

OK, Trevor.

Mr Lunn: Are we still on special schools?

The Chairperson (Mr Weir): Yes.

Mr Lunn: There is a school of thought out there, so to speak, that this legislation is not suitable for special schools. Never mind adapting it or allowing discretion in the wording that lets special schools deal with their circumstances, the feeling is that it should not be applied to some categories of special school at all. The definition clearly implies that an act, if it is to be interpreted as bullying, has to be deliberate. It has been put to us that that just does not apply — I am trying to choose my words carefully — in the situation of a special school, where something that would be regarded as deliberate in another setting is not deliberate at all but is the type of behaviour that special schools have to deal with. They have special expertise to deal with it. If you are asking us, Chair, to state our reservations, that is one of mine; I query whether it should apply to special schools at all.

Mrs Gillan: Absolutely. As Alan explained, we feel that there is flexibility. As I said, this is one definition that we are using that is not exclusive. It says that there should be the intention of causing harm. In some circumstances and for some children, there may be an altercation or repeated behaviour with no intent. In that case, that would not fall under the definition, but a school might deal with it in a different way. It could be a challenging behaviour issue. The flip side is that, by excluding

special schools, are we really saying that no bullying goes on? Is it all schools? Is it moderate learning difficulties (MLD) schools? What about learning support centres? What about children in mainstream schools who have statements? I worry that we are maybe saying that we are not going to give those children the protection and the focus on bullying if we say, "No, special schools are out". Alan is right: the schools still have flexibility with policies and measures and the actions that they take. As I said, a school will interpret whether a particular circumstance meets that definition. We worry about removing them completely and what that may say to the school population in special schools.

Mr J Anderson: In a special school, the teachers know each child very well. They know their special needs, and, if something appeared to be a violent or aggressive incident of some sort, they would know immediately whether there was intent or whether it arose from that child's particular circumstances and needs. I agree: it is quite acceptable that a special-school teacher would be able to make that evaluation.

The Chairperson (Mr Weir): There is a difficult balancing act between the fact that certain things are automatic — boxes are ticked, it will be recorded and that will be the case — and what the level of flexibility is.

Mrs Gillan: Schools still have to decide whether the box is ticked; they will decide whether there is a repeated verbal, written or physical act and whether it is with the intention of causing physical or emotional harm. As John said, in the particular circumstance of a special school, it will be able to make that judgement and take all the factors into account.

The Chairperson (Mr Weir): I am going to ask two questions of the Committee. There is a departmental amendment in this section. I presume that there is no problem with that. This is not binding as to whether we even agree anything on any section, but are there any amendments that anybody wishes to see drafted or brought on this, at least so that they can be considered?

Mr Hazzard: Are you referring to the definition?

The Chairperson (Mr Weir): It is very specifically on comments 1.1 to 1.5. I will take each part separately because there will be different issues in the next group. The issue of repeated or not repeated acts of bullying will come up. We will get a Committee view on each section.

Mr Lunn: Issues about the words "repeated", "omission" and so on are coming up in the next section.

The Chairperson (Mr Weir): Are members looking for any amendments on special schools, or are they content with what they have heard?

Mr Newton: On the basis of what Caroline said, it may have implications for clause 3 and recording.

The Chairperson (Mr Weir): Do you feel that that could be dealt with when we get to clause 3?

Mr Newton: I hope that we can seek some assurance from that if special schools are to remain in.

Mr Hazzard: I suggest an amendment to clause 1:

"In this Act 'bullying' includes but is not limited to —".

Mrs Gillan: I noted that comment; I think that it was from the Children's Law Centre. Such an amendment changes nothing. We feel that it is not necessary because, in the legal definition, it is well understood that "includes" means that it is not exhaustive.

Mr Hazzard: I am happy with that.

The Chairperson (Mr Weir): At this point, there are no requests for a Committee amendment.

Comments 1.6 to 1.8 deal specifically with the definition and whether bullying is repeated or singularly repeated. I appreciate that some of this may happen through guidance. Members are trying to understand what the reporting mechanism is. When there is an incident, what is the process? How is

it recorded? If the Bill defines bullying as being "repeated", what happens in the first incident? Will you talk the Committee through that?

Mrs Gillan: The word "repeated" is there because it is the characteristic of all academic and legal definitions of bullying. Generally, a one-off incident would fall under a school's discipline policy. We want to emphasise that we are not saying that one-off altercations should not be recorded or dealt with by a school; that is already proactively dealt with, and good schools deal with and record it under their discipline policy. The nature of bullying is that it is repeated. That said, we go back to the fact that the definition of bullying uses the word "includes", so there is some flexibility. If something happens that is not necessarily of a repeated nature or there is a question mark over it, a school could still say that the circumstances are more than simply a one-off fight or altercation.

The Chairperson (Mr Weir): This is a bit of a catch-22 situation. A school may have a certain feeling about the nature of an incident, but, for something to be repeated, it has to happen for a first time. If it is not recorded that first time as part of an overall bullying process, how do you then get the repeated

Mrs Gillan: It then goes into the mechanism of how you record an incident and prove that it is repeated. Under clause 3, there is a duty to keep a record of all incidents or alleged incidents, and, while we still need to work up the detail of how we want that element recorded, it would have to capture a pupil saying that he or she was being bullied and stating where it started. There would have to be a record of the first or second incident or the pattern of behaviour.

Mr J Anderson: Schools record breaches of what is commonly called positive behaviour policy; it used to be called a discipline policy. The idea is to promote positive behaviour as much as sanctioning poor behaviour. It is recorded. There is often a points system: negative points for breaches and positive points to reward positive behaviour. There are sanctions such as detention or suspension. When a sanction is used, it is recorded in the school information management system (SIMS) for that pupil. There is routine record-keeping for breaches of positive behaviour policy. When it becomes the start of a series of persistent intentional events that turn into a bullying incident, we check that schools are keeping a record over time. That often becomes a case, and, if that case is persistent, it ends up in a tribunal or court. It is important, therefore, that schools have long-term record-keeping.

Mr Rogers: Bullying incidents often start outside school and are then taken into a school so, for that school, it is a first offence, even though the act has been repeated. There is a suggestion about amending the clause to "singular or repeated use": would that give more flexibility?

Mrs Gillan: As I said, if we use the word "singular", schools, effectively, would be required to record absolutely every event. That would be a huge burden. That said, there is flexibility, and, in the circumstances of a particular case, a school may feel that there is bullying. Maybe there is some history and an incremental effect. I worry about saying that bullying is any act against another pupil: that would immediately open every discipline incident, and every action would become bullying. I do not know whether that is where we want to go.

Mr Rogers: How do we create that flexibility? Consider, for example, the scenario where two boys have a tiff at a youth club and the parent calls the school the next morning to ask it to keep an eye out because there has been an incident. The school will say that it can be recorded only if it is a repeated incident.

Mrs Gillan: When we are drafting the guidance, we envisage talking to schools and parents because we would probably want to include some specific case studies. Although we are majoring on the word "repeated", because that is what the understood definition is, we have acknowledged that there may be incidents in which schools judge that something, which technically and within their remit has only happened once, can, due to the nature of the incident, be understood as bullying. I think that we would want to work with some real examples in order to provide schools with a decent case study and advice on that.

The bullying policy and that element is only one part of the story. As John says, all schools will have a discipline policy and can take action under that. It may be that bullying sanctions are things like detention, suspension and expulsion, but those are sanctions under the discipline policy, so it is not that any child will fall through the cracks as such. The discipline policy is there and in place.

Mr J Anderson: Schools are expected to — in some cases are required to — have a range of policies and procedures. They are expected to have a promoting positive behaviour policy, a code of conduct for staff, an anti-bullying policy, an online safety policy and so on. There is a list of those. We are looking at whether those are up to date, conform to best practice, and whether they integrate well with each other to form a coherent picture of overall child protection and pastoral care arrangements. These already exist. So, in terms of what you are saying, it will require changes to existing behaviour policies and anti-bullying policies, but the important thing is that these already exist and they deal with the different aspects that are being discussed, as I read them in Hansard.

The Chairperson (Mr Weir): Like a lot of members, I am trying to square the circle in relation to this. I appreciate what has been said so far, and I am not even sure where the drafting would be in this, but is there some flexibility in terms of the wording of the legislation that could allow schools to at least interpret bullying as a single incident if it was of a particularly severe nature? The problem at the moment seems to be that the word "repeated" is key. I can understand the argument that, in a lot of singular cases, it would not be within the scope, but I wonder to what extent it ties the hands of schools in that they are excluded from deciding that a single incident is —

Mrs Gillan: We would like to emphasise that in the guidance, because if we put —

The Chairperson (Mr Weir): The only problem with that, Caroline, is that guidance is all very well and can be very useful. If, however, there is a legal definition that seems — the way I have been reading it and the way any interpretation would be — on the face of the legislation to be restricting it to "repeated", how do you then enable the guidance to provide the flexibility that allows for, in extreme cases, a singular incident to count as bullying?

Mr Boyd: I think that would be covered by the current definition by virtue of it being inclusive. Effectively, the definition in the Bill will specify situations where schools must classify an incident as bullying if it is repeated and if there is intent. But it is inclusive and schools could still, in response to a particularly serious incident, decide that the one-off incident warranted being recorded as bullying. An example was cited where a school had been informed by parents that there was a history of altercations or fights going on outside the school. Although they may not sanction the pupil for the first incident beyond the school, they could, having understood the context, record that one-off fight within the playground as bullying even though it was the first incident in the school. The flexibility is already there for schools to respond to one-off incidents.

Mr Hazzard: We will get on to recording, I suppose, in more detail, but a lot of this is to do with the Department being able to furnish the disaggregated data going forward to guide policies etc. Is there a danger that, if we allow a lot of these disciplinary actions to be designated as a one-off and not bullying, statistics may be altered because we are leaving room for something that is not bullying but just a one-off? A school may be wary of the fact that its numbers for bullying may be higher. Will the one-offs tally also go with the data back to the Department?

Mrs Gillan: I do not want to overemphasise it, but the reason for recording is that it is a good way for schools to focus on their incidents and to be able to use that information for themselves. However, we will investigate. The bonus for us is that there will be consistent recording. If we decide to go out on a regular basis or every so often to review the effectiveness of the legislation and policy, we have consistent information. However, we have work to do on how we would do that. We can talk about it. The counter side of saying, "Let's include one-off incidents" is that all recognised research, understanding and definitions of bullying talk about repeated behaviour. If our definition of bullying is one-off and repeated incidents, we will not have any comparators.

The Chairperson (Mr Weir): I appreciate what you say, but I just want to come back to a point that, I think, Chris made. The Children's Law Centre talked about the phrase "Bullying includes but is not limited to". You may argue that those additional words are superfluous but —

Mrs Gillan: You would like it to be more blatant, maybe.

The Chairperson (Mr Weir): That might make it a little more blatant and give a bit of scope to schools so that, if they felt of a particular incident, "We need to record this as bullying because of the severity of it", and not simply the fact that it is not a repeated thing, which excludes it. To my mind, it would simply state, "Here is a list that includes this". Because there are then specific unrepeated incidents, it might mean that there are other grounds. That might be one possible way round that.

Mr Lunn: I think, Caroline, you have said that the wording states:

"In this Act 'bullying' includes—

(a) the repeated use"

It is not exclusive of a single act. If you turned it on its head and said, "Bullying means an act of verbal, written" or whatever, that would not exclude repeated acts. I wonder how the Bill would look or how effective it would be if it just did not say "repeated" at all. Never mind about "singular" or "repeated"; if it just said, "Bullying includes the use of a verbal" etc and leave out —

Mrs Gillan: That would bring in absolutely every altercation, whether verbal, an act of omission etc. That would make it impossible for schools to not record absolutely everything. Every incident or physical act by one pupil against another would become bullying. If anything, it would almost lose the focus that we are trying to put on what we feel bullying is.

Mr Lunn: It would place too much emphasis on single acts.

Mrs Gillan: It would be the discipline policy, effectively. We would be back to where we are with just discipline policy.

The Chairperson (Mr Weir): Let me wrap up this element. I suggest to the Committee, again without prejudice to any final decision that we take, that a way round it, at least by way of us considering an amendment, might be the amendment suggested by the Children's Law Centre of, "but is not limited to". That gives a wee bit more emphasis to that element of things.

The third section under clause 1 — points 1.9 to 1.11 in the table — makes reference to the more explicit linkage with section 75 on race and disabilities. Are there any comments on that? Obviously, this would be an issue raised with stakeholders. There do not appear to be any members pressing this. Does the Department want to comment on its position on 1.9 to 1.11, just for our records?

Mr Boyd: The Department would argue that, in identifying the section 75 groups, there is a logic to identifying the groups for which we have clear statutory duties. To go beyond that and single out particular incidents or motivations and give them still further weight seems to us to be unnecessary and possibly even actively unhelpful. One of the comments was around the need for schools to adopt preventative strategies. Schools are already encouraged to adopt preventative strategies to address all forms of discipline, not simply bullying. We consider that these are not helpful and are not required.

The Chairperson (Mr Weir): I move now to paragraphs 1.12 to 1.17. There are a couple of issues. One area in which there seems to have been mixed opinion in the responses relates to what should be included. At the moment, it is restricted to pupil-on-pupil issues, but what about pupil-staff issues? At present, what procedures are there to protect any potential abuse of power, particularly between staff and pupils?

Mrs Gillan: We have corresponded with the Committee, precisely referencing the procedures. Essentially, it is already dealt with under the disciplinary procedures for teachers. That includes teachers' misconduct in relation to staff, pupils, parents or visitors. So, it is very clearly dealt with under particular guidance, which is, as I said, referenced in the correspondence that we sent you. In addition, the General Teaching Council has the power to consider cases of serious teacher misconduct and, where appropriate, remove a teacher from its register. So, it is very much dealt with under teachers' employment. As I said, all the references have been provided separately.

Mrs Overend: There is the thought that, if the definition does not include the specific wording of "imbalance of power", every fight in the playground will have to be recorded. It might not necessarily be bullying. If two people fall out, there is not necessarily an act of bullying. One of them is not making the other feel bad; they are making each other feel bad. That sort of incident would need to be recorded as an act of bullying rather than be dealt with through the discipline procedure.

The Chairperson (Mr Weir): Allied to that, Caroline, the lack of a subsection on the definition and "imbalance of power" came up consistently from the likes of Stranmillis, the Anti-Bullying forum, Tor Bank School and the head teachers. You have mentioned it in a different context. One of the reasons why we have gone for a definition of this nature is that it is fairly compatible with what is there

internationally and what is recognised internationally. To be fair, most of those making the argument have agreed with you on the other points, which is to say that the definition is repeated use of the various actions and that it involves pupils and the intention of harm, but they have also said that the other aspect, which is the international definition, is the concept that it is an imbalance of power issue as well and that that has tended to be another definition. I suppose the issue is why this is not included.

Mrs Gillan: I could be accused of picking and choosing my accepted definitions of bullying. We are aware that the academic definitions of bullying include "imbalance of power"; interestingly, we could not find legal definitions where "imbalance of power" had been listed in law. There is one, apparently.

In considering how we would capture that and whether to put it in the legislation, we felt that it could be difficult to define and very difficult for schools to make the judgement in some circumstances. It was interesting. A lot of the stakeholders said, "You're creating a lot of hurdles for schools to judge whether that criterion has been met". To us, putting in "imbalance of power", if anything, would allow a lot of incidents not to be classed. I think of two children of the same age, same build, same stature and same background, for example. One child could be bullying the other on a repeated basis, but there might not be an obvious imbalance of power that the teacher in the school could pick up. I feel that this is creating another hurdle and, potentially, a justification for not recording incidents and making it difficult for schools to make a judgement. The legal advice was that it could be difficult for schools in every instance to judge and carefully judge whether there was an imbalance of power. It tends, with the one exception, to not make it into legislation, although it is in academic research.

Mr Hazzard: On that example, is it not the case that, if you have those two individuals, it is the imbalance of power that makes it bullying? It is not just an altercation between two alpha males who regularly challenge each other: if there is an imbalance in power, it becomes bullying.

The Chairperson (Mr Weir): We do not want to be sexist: it could be two alpha females.

Mr Hazzard: It could, yes.

Mrs Gillan: This is where you get into the interesting debate on what teachers would have to do. For example, you could have two such boys, one of whom continues to punch the other. Over time, is an imbalance of power eventually created because one is doing it? It could be difficult for schools to make that judgement. When does an imbalance of power arise? Does it become bullying only when it arises? There might not have been an imbalance of power in the first place.

The Chairperson (Mr Weir): To play devil's advocate, could the current definition, taking the example of two alpha males who, for whatever reason, do not like each other and do not have any particular motivation for fighting other than that, lead to a situation where, on the basis of the recorded incidents, both are deemed to be bullying each other and be victims of each other? Bullying includes the repeated use of a physical act, although it is not exclusive to that. There may be two pupils who fight each other once a week in the playground with the intention of causing physical harm. If pupil A is hitting pupil B, pupil B is hitting pupil A and that is happening on a number of occasions, does that mean that they are both bullies and are both victims?

Mrs Gillan: Gosh. Under the technical definition, I am trying to think whether that is likely to arise. Would they be a series of one-off incidents or would they become repeated behaviours?

The Chairperson (Mr Weir): If they are meeting every Monday lunchtime to fight the bit out, for instance, I suspect that that probably constitutes repeated incidence.

Mrs Gillan: Should the school not be dealing with it? Is it bullying? If so, it should be dealt with.

Mr Kennedy: That goes back to John's evidence, namely that there are other measures for dealing with it. If it is a persistent issue between the two guys and becomes a regular event, it is almost recreational bullying.

Mr J Anderson: From a practical point of view, where two friends fall out for whatever reason, the school will want to deal with that; it will not want to see that behaviour becoming persistent. If it persists, the school's positive behaviour policy is failing to work. The point is that it should be dealt with so that it does not turn into something longer-term and more invidious. I look at it practically.

Mr Hazzard: To use a working example, it may occur quite regularly in PE. If you take football for example, you may have two fellas who are very competitive and, every week, challenge each other aggressively and everything else. That is not necessarily bullying. However, if there is a power imbalance where a strong player is targeting the weaker player every week, surely that is bullying. It is because of the power imbalance that that is bullying. That is a working example of where a power imbalance is key.

Mrs Gillan: The issue is whether we need every incident to have a power imbalance. The risk is that a lot of things do not get recorded or dealt with as bullying because it is not easy for the school to say that there necessarily is a power imbalance. That does not mean to say that your example would constitute bullying because of the imbalance and, because it is not exclusive, the school could act. We are not saying that there cannot be a power imbalance; all that we are saying is that we do not require the school always to have to identify a power imbalance in order for it to be classed as bullying.

Mr Newton: I think I know the answer to this question, at least I hope I do. I just want reassurance. When you answered Trevor on the imbalance of power issue, you referred to the teachers alone and the guidance and legislation that covers the teachers. The issue of other staff in the school was raised in the Committee.

Mrs Gillan: The references that we have absolutely are in relation to teachers. I think that behaviour and disciplinary matters related to other staff would be dealt with under employment conditions.

Mr J Anderson: I am not disagreeing, but I understand that the code of conduct for staff applies to all staff.

Mr Newton: All staff.

Mr J Anderson: That is my understanding.

Mr Newton: Whether you are a teacher or whether you are a caretaker, it applies.

Mr J Anderson: It is about adults and young people. I need to confirm that.

Mr Lunn: On the imbalance of power issue, I wonder how you would ever frame this. I am agreeing with you for once. I am thinking of a small, aggressive pupil with a strong personality who is bullying a larger, non-aggressive pupil with an easy-going personality. That happens. There is no imbalance of power there except perhaps force of will or force of personality. How on earth would you legislate for that? I see in our notes, which you probably have, that there is a reference to an Ontario Bill that lists any amount of circumstances, but I cannot see one that would cover that.

Mr Boyd: We also consider that, where a school is ever having to face a challenge over its actions, it would be better that a school had recorded as a bullying incident that form of repeated behaviour and repeated fighting where there is not an obvious imbalance of power and demonstrated the actions that it had taken, rather than saying that, on the balance of no obvious imbalance of power, "We did not classify it so we have not recorded it".

Mr Lunn: Yes, I think that is pretty much what I am saying. It is still bullying but there is no imbalance.

Mr Kennedy: Surely that means that you have to write everything down if you are the school.

Mrs Gillan: Record-keeping is key, and, very often, John would say in reference to ETI that it is your procedures and recording and acting on them that is important. Most schools will record significant discipline issues anyway, but we are asking them at the very least to record the sorts of incidents that are defined in clause 1.

Mr Kennedy: Rather than being grey about it, do you need it to be black and white so that it says that everything should be recorded?

Mrs Gillan: We feel that that is what says and that what we have captured in clause 1 is as certain as possible for schools, whereas introducing things like imbalance of power may make it greyer.

The Chairperson (Mr Weir): Are members seeking amendments related to paragraphs 1.12 to 1.17 in the table? I am not sensing any great desire, so I think that we have got that area sorted out.

Paragraphs 1.18 to 1.24 cover the issue about various stakeholders on the issue of intention of harm. The issue that has been raised relates to whether intention is the key thing or whether the effect or perceived effect on the victim is more important from a definitional point of view. Do you want to comment on that?

Mrs Gillan: Again, that is where we go back to the notion of "Bullying includes but is not exclusive to". We are requiring a record to be made where there is clear intention. However, there may be circumstances where there is not a clear intention but schools may still choose to class it as bullying. Saying that intent is not required would potentially open it up very widely to whether you can say that a P1 child who constantly hits out and does not understand the impact of what they are doing has intent and can be classed as a bully. There is also the scenario of some children with special educational needs who do not have a clear understanding of the impact of their actions on another child. Therefore, we feel that intention is a key characteristic. That is the characteristic of academic and legal definitions. Again we emphasise that, if there are situations where a school decides that there was actually no intent but that, because of all the circumstances, there has been an impact on the child and they feel they are being bullied, there may be flexibility.

Mr Rogers: Do you think that there is enough flexibility in the phrase "causing physical or emotional harm" to cover distress, fear, exclusion and that type of thing? Is there enough flexibility within the phrase "physical or emotional harm" to cover the fear element, say, if somebody keeps winding somebody else up to annoy them?

Mrs Gillan: This is where we have to be realistic and to think of where the responsibility lies with schools. Where the fear of emotional and physical harm is concerned, if we extend it to the wider, less precise impact, that potentially opens up a school's responsibility to something that would be hard to put your finger on. We are in the midst of taking legal advice on whether there could be a further extension to that, but there are negatives with the fear of harm. It is about how you prove those other impacts. Our worry is that it opens it up a lot for schools in what they can be responsible for and the actions they have taken. This definition appeared to be the most concrete and clear way of capturing it. We took into account some of the comments that were made, and we are certainly looking at that. Certainly, our advice to date is that there would be drawbacks with trying to open it up further. We will continue to absolutely exhaust that before we come to a conclusion.

Mr Hazzard: What about material harm, such as the taking of money or goods, which is very common? It does not seem to be covered.

Mrs Gillan: To me, that would just be theft and a criminal matter. Would it not be?

Mr Hazzard: Would regularly taking someone's dinner money not be one of the —

The Chairperson (Mr Weir): I suppose there are two issues with that. Theft is clearly a criminal offence. I could see a situation — say, the taking of dinner money — where schools would be reluctant to go down the route of having it as a criminal offence. Presumably, there could also be situations that would fall short of theft —

Mr Hazzard: Damaging a school bag.

The Chairperson (Mr Weir): Yes, either by way of some level of damage or even just saying, "We are taking it off you. We are going to hide it on you. We are going to make sure that you do not get it back for a while". They might eventually give the item back to the person who is being bullied, but they may use it almost as a —

Mrs Gillan: You could say that is with the intention of causing emotional harm.

The Chairperson (Mr Weir): OK; it might be.

Mrs Gillan: It is like you are picking on the person continually. To me, it would be.

The Chairperson (Mr Weir): Maybe, therefore, it could be ensured that, when guidance is issued, it covers something of that nature.

Mrs Gillan: Yes.

The Chairperson (Mr Weir): OK. Are members seeking or detecting any amendments in paragraphs 1.18 to 1.24?

The next bit is paragraphs 1.25 and 1.26 on the definition of bullying and acts and omissions. Again, I can see some sort of rationale for wanting to cover all situations, but, if we are talking about omissions counting as bullying, do you have any worked example of what would count as an omission leading to bullying to help us to get our heads round that?

Mrs Gillan: Freezing somebody out of a social group, not talking to them and not including them.

The Chairperson (Mr Weir): Is that an omission or an act of excluding someone? What constitutes an omission?

Mrs Overend: Is it when the person who is left out feels left out? If they do not care, it does not matter, does it?

Mrs Gillan: When is an omission not an act? Say, for example, you were supposed to catch somebody in PE — I am sure they do not do that any more — omitting to do it is an omission, but, actually, not putting your arms up is an act. I think it is legalese.

Mr Kennedy: What school did you go to? *[Laughter.]*

The Chairperson (Mr Weir): Clearly, on one level, guidance will have to be given.

Mrs Gillan: I am sure PE has changed since I was at school.

Mr McCausland: It is a bit more subtle.

The Chairperson (Mr Weir): Unless there is clear guidance, I can see a situation in a school where, when it comes to the recording, the schoolteacher or principal is scratching their head and asking, "What do you mean by 'omission'?". It might be helpful to get that clarified. I am not necessarily objecting to it being there, but there does seem to be a lack of clarity on what it specifically means.

Mrs Gillan: That is a good point. We will do that. I think that in general, legally you will very often say —

The Chairperson (Mr Weir): I understand that. It is probably there as a catch-all.

Mrs Gillan: We are being a little bit belt and braces about that. In my head, I thought it would probably be where the child is omitting to be included in particular activities on a repeated basis. That could equally be an omission.

The Chairperson (Mr Weir): It could be, although it could also be classified as a deliberate act to try to do that type of thing, but yes, I understand.

From that point of view, I am not sure that anybody is looking at a particular amendment to that. Again, if a wee bit more clarity could be brought back to us on that, it would be helpful. Again, I will just check this with the Committee: is anybody looking at an amendment on that element?

Do you want to comment on paragraph 1.27? I know that you touched on the definition of cyberbullying before, but do you want to comment on paragraph 1.27?

Mrs Gillan: Alan can talk a bit about what the Anti-Bullying Forum is doing, and I can update you on the e-safety strategy from the SBNI.

Mr Boyd: We would say, as we already have, that through the reference to electronic communications, the Bill clearly recognises cyberbullying and its impact and requires schools to take action on that. We are actively working with the Northern Ireland Anti-Bullying Forum and the Safeguarding Board. As Caroline mentioned, the Anti-Bullying Forum has been asked within the current financial year to develop a specific additional section for its school resource pack, 'Effective Responses to Bullying Behaviour', which will focus on the issue and try to provide greater clarity and guidance to schools on what is recognised best practice in tackling cyberbullying issues.

From a departmental perspective, we are clearly not ignoring this problem; we are seeking to address it. However, we are acutely conscious of the complexities of the area, involving at least four pieces of criminal justice legislation. We propose to address that in a lot more detail in the guidance, preferably by way of worked examples in other circumstances, as Caroline alluded to, so that we can help schools to understand the boundaries and what they can do when it falls to them to take action.

That is a brief summary. We consider that the Bill adequately addresses cyberbullying and that a rush to more detailed provision could actually backfire. We would not want to rush to introduce provisions that actually made life more difficult for schools.

Mrs Gillan: The Committee asked us for some detail. We referenced the e-safety strategy, and the Executive approved funding for the Safeguarding Board to commission an e-safety strategy. Part of that will include elements of educating and supporting children and young people and those responsible for their care and safety to develop skills and knowledge to stay safe online. We and the Anti-Bullying Forum are on project teams for that. The SBNI has given us an update to say that it is currently consulting and doing interviews with stakeholders. It hopes to submit a strategy to its project board in the springtime, and the likelihood is that there will be a public consultation in late summer. It is aiming towards launching the strategy and action plan on e-safety day in February 2017. That is the end date, but, obviously, that has to go through the Executive and, with the end of this mandate, there will be a bit of a time lag. As Alan said and as the Minister said in the Assembly, we have to carve out some reasonable space where schools are responsible, but at the same time we have to recognise that there are wider agencies and, indeed, parents, etc, who also have responsibilities outside the school responsibility. The guidance will need to talk about the two working in tandem, and that has obviously been taken into account.

Mr Kennedy: I suspect that it is a wee bit grey for some of us. "Acts" or "omissions" — omissions have come back in — have to be defined. I suppose there is the issue of where cyberbullying begins, whether it begins at home or outside the school environment and how and at what point it becomes applicable to the school setting.

Is there any other legislation in place or that has been proposed in any other legislature that we could get guidance from? Is there anything in Scotland or Wales or anything local? I know Ontario seems to be the one that is put forward.

Mrs Gillan: When we were researching the basis for the legislation, we found that the guidance in England and Wales and a lot of the legal advice acknowledges that where school responsibility ends is an extremely difficult and grey area to capture. Therefore, we felt that we did not have the knowledge at that point, with all the other issues that we wanted to achieve, to really batten it down and resolve it. We feel that it is a bigger issue and that, if we were to try to put legislation in place, we would need a lot more time and a lot more engagement with the Department of Justice, etc, and to look at best practice elsewhere, particularly on that issue. We did not feel that we wanted to tackle that within the Bill.

Mr Kennedy: The other thing is that, with the speed of the digital age, who knows what will be available in five or 10 years' time. We are creating legislation that is talking about cyberbullying, and we are listing, or at least referring to, some devices that will probably be obsolete by then.

Mrs Gillan: That is why we referred to "electronic communication" in general. The other thing that I point to is the important work that we do on emotional health and well-being and respect for others. Tackling cyberbullying is not just about coming in at the end of it almost as a discipline issue; it is about educating children at the beginning about not only staying safe online themselves but respecting each other, whether on a face-to-face basis or through the Internet. I think that is probably important work that we do not want to forget about, and that is where the e-safety strategy and a lot of actions within it will also be important.

The Chairperson (Mr Weir): A couple of members want in. I am maybe slightly jumping ahead, but the issue impacts on the scope of a couple of the other clauses. I appreciate the argument that has been used about cyberbullying in particular and about something happening at home, etc. It will obviously be defined in the scope, but is there not an argument about it being "lawful control" when it happens on the premises or travelling to and from school? That appears in clauses 2 and 3 and, to some extent, has implications for clause 1. Clause 2(1)(b) is obviously the specific bit about the duty of boards of governors, but that is replicated to some extent in clause 3(1).

I would not say that we should take a halfway house, but is there not an argument to perhaps include the words:

"where it is demonstrated that there is an impact during school hours"?

I appreciate that it is very difficult to police something that goes over the Internet late at night, but an issue has been raised with us about situations in which the text message, email or whatever postings have been made are then shown around school or forwarded or whatever. That might be during the time frame of school, but it may or may not be on the premises. Is there not some catch-all to cover that that means that it can be demonstrated as being one limb that impacts on the school day?

Mr J Anderson: That is the point where a school will become concerned — where it has a negative impact on the opportunity to learn at school. The school, of course, has the broader responsibility to educate to protect and enable young people to protect themselves, and the perpetuation of bullying by electronic means is only a small part of the broader range of online risks. Schools address that through education programmes, not least because it is a requirement of the Northern Ireland curriculum to have online safety as part of Using ICT.

The Chairperson (Mr Weir): I understand that. I suggest there is perhaps a need for some sort of catch-all in the three limbs in clauses 2(1)(b) and 3(1) where it can be demonstrated that it has an impact during the school day.

Mrs Gillan: What we are doing is saying that we very much accept that a lot more can go on, but for the purpose of the duty on the boards of governors under the policy, measures and recording, it absolutely must cover those incidents. That is not to say that the board of governors and the school could not decide that its policies, and probably its existing policies, could be wider and could record those other ones. It is whether we want to be so specific here.

The Chairperson (Mr Weir): Without prejudging the view of the Committee, would the Department have a major problem if some sort of additional phraseology were added to cover behaviour shown to have an impact during school hours or something of that nature?

Mrs Gillan: I think it is just that. We would really need to think carefully about how the school would feel about that. It is whether it would make the school responsible for behaviour that it had literally no ability to control. I think we need to look at how we capture it.

The Chairperson (Mr Weir): The only thing to consider is the ability to control, I think, for quite reasonable reasons. A school could very easily make the argument that somebody walking to or from school, which is covered, is not something under its control. By the same token, there is obviously a logical reason for that. You do not want a situation where people will say, "This will not count as school bullying if we wait outside the school gates to attack the pupil". That is also something that, to be fair, is outside the school's control, but it might be something that can be demonstrated to be impacting clearly during school hours.

Mrs Gillan: We can have a look at the language.

The Chairperson (Mr Weir): I think at least three members want in, so maybe we can take those comments and then close the meeting.

Mr Lunn: On the same track, I appreciate how difficult this is, because the more it is explained to us the more difficult it gets. Take an example. If a pupil reported an offensive email from another pupil to a teacher, that would be a singular event. I am thinking about repetition and so on. The teacher would have to say, "Let us see how it develops", but, if the pupil then said, "They sent me five last

night on the same topic. This is actually the sixth", could the school take those into account under the Bill?

Mrs Gillan: That is what we were saying. We would want to get those worked examples. There will be examples where the school will want to look at the wider context and where a singular event is bullying because of the history and the wider history. The duty on boards of governors is to determine measures to be taken with a view to preventing bullying on the premises, travelling to and from school and while you are under lawful control. What measures would a school be able take to prevent bullying at 10.00 pm or on a Saturday night? I am just wondering what that would look like in a policy and in what the school would do.

Mr Lunn: I have no suggestion to make here. I think there must be some scope for account to be taken of those circumstances. In practical terms, I know for sure what a principal — I nearly said "headmistress" — would do. As things stand, if the principal found that situation, I am pretty certain what they would do. They would confront the pupil causing the aggravation, presumably and hopefully take their phone off them, if that was the source of the aggravation, and call their parents in to have a chat with them. That is what would happen. However, that would be outside the scope of the Bill.

Mrs Gillan: It may be a wider pastoral care issue.

The Chairperson (Mr Weir): Time issues mean that we will have to wind up the meeting. We will resume later on the other aspects. Robin, you indicated that you wanted to speak.

Mr Newton: I wanted to ask about what happens outside school hours.

Mrs Gillan: We have the policy on travelling to and from school during the school term that covers some elements of what happens just outside the school gates.

The Chairperson (Mr Weir): I appreciate that you will be coming back to us, but it is fair to comment that, from the Committee's point of view, the elements where we would at least look at having an amendment drafted to consider something along the lines of, "where it is demonstrated to have an impact during the school day". I cannot come up with the exact wording, but you know the gist of what I am getting at.

We will leave it there. Caroline, we will see you again. I appreciate that this is like a forced march, but we want to ensure that we get this through. We will have another session on Tuesday. Thank you very much. It has been very helpful.