



**STANDING COMMITTEE
OF
TYNWALD COURT
OFFICIAL REPORT**

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**SOCIAL AFFAIRS POLICY REVIEW
COMMITTEE**

Draft Education Bill

HANSARD

Douglas, Friday, 14th June 2019

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Members Present:

Chairman: Mr D C Cretney MLC
Ms J M Edge MHK
Mr M J Perkins MHK

Clerk:
Mr J D C King

Assistant Clerk:
Mr B Awkal

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Standing Committee of Tynwald on Social Affairs Policy Review

Draft Education Bill

*The Committee sat in public at 1.33 p.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[Mr CRETNEY *in the Chair*]

Procedural

The Chairman (Mr Cretney): Good afternoon and welcome to this public meeting of the Social Affairs Policy Review Committee, a Standing Committee of Tynwald. I am David Cretney MLC and I chair the Committee. With me are Mr Martyn Perkins MHK and Ms Julie Edge MHK. If we can all ensure our mobile phones are off, or on silent, so that we do not have any interruptions. For the purposes of *Hansard*, I will be ensuring that we do not have two people speaking at once.

The remit of the Social Affairs Policy Review Committee is to scrutinise the established but not emergent policies as deemed necessary by the Committee, of the Department of Health and Social Care, the Department of Education, Sport and Culture and the Department of Home Affairs.

Today's exercise is to examine the draft legislation presently being considered by the Department.

Today, we welcome Darren Northcott and Geraldine O'Neill, who are representatives of the National Association of Schoolmasters Union of Women Teachers (NASUWT); and David Trace, Richard Tanton and Sue Moore who are representatives of the Association of School and College Leaders (ASCL).

EVIDENCE OF

**Mr Darren Northcott and Ms Geraldine O'Neill, NASUWT; and
Mr David Trace, Mr Richard Tanton and Ms Sue Moore, ASCL**

Q249. The Chairman: The formalities are that you have the opportunity to introduce yourselves formally and to make any opening statement. So if we do it in groups – if you would like to start?

Mr Northcott: Do you want to start, Geraldine?

Ms O'Neill: Good afternoon. I am Geraldine O'Neil and I am the local branch secretary of the NASUWT. This is my colleague from our headquarters, Darren Northcott; and he is our National Official for Education.

Along with Darren and our members here and with our union organisation, we are responsible for the consultation submission that you have seen.

30 Our opening statements really would be first of all to say we are very pleased to be here and we welcome the opportunity to meet with you, and also the opportunity for a Committee such as this to oversee or to look at any prospective legislation. We hope that this Committee and this type of work will continue with other legislation as well. We think that is extremely important.

35 So we would like to give an overview; and my colleague can give you an overview of where we stand with the Education Act.

The Chairman: That is fine. I perhaps should have thanked everybody for their written submissions. They have been very helpful and I think they are both online for the general public to examine as well. But yes, please do. Thank you.

40 **Mr Northcott:** I was just going to add to what Geraldine said, Chair, that obviously you will have seen in our submission there are obviously some positive elements of the Bill in our view but there are also some elements that we think need further thought and need to be addressed further, and perhaps we can touch on those this afternoon.

45 I think the one overarching point we would make, and I think we picked this up in our response, is that legislation is important but it is not sufficient in terms of addressing some of the issues that we have, that we have identified in respect to the education system in the Isle of Man. So the role of Ministers in the development of policy is important and, once you have got the legislation, what are you going to do with the powers that you have? That is really important.

50 Members of Tynwald obviously have a critical role to play in that but also in our experience good policy is developed through wide stakeholder engagement with parents, with learners and certainly with representatives of the workforce. That is why for us one of the key issues that we want to see taken forward is making sure we have better arrangements for workforce engagement in the development of policy around consultation. That certainly involves for us a long-standing issue around union recognition – you would expect us to make that point, it is very important to us. But not just in the pay and conditions sphere, also broadly in terms of educational policy, because we want the best for the Isle of Man's children and young people and we think if you engage the workforce, have their ownership and have their participation you have got a better chance of getting good policy in place.

Q250. The Chairman: Thank you.

Just on that point, are you saying that the union is not presently recognised by the Department?

65 **Mr Northcott:** We currently do not have what we would describe as a formal recognition machinery or agreement with the Department. They certainly consult us and they engage with us, but the 'rules of the game' are not as clear as they might be. So if you put that engagement on a firmer, clearer, more substantive footing I think you develop confidence on behalf of the trade unions and the people they represent, and I think you benefit from a more consistent, clearer set of opportunities for the workforce to share its view in the development of policy.

70 We understand Ministers have the responsibility ultimately, it is a democracy and we understand how policy is made; but if you can get good workforce engagement we would say through a recognition agreement we think, and our experience – long experience, I think – shows you actually end up with better policy to which everyone is committed.

80 **Ms O'Neill:** It also works in with working with the approach that the Department has highlighted there, interested in developing in the draft Education Bill. We feel that is an integral part of that multi-agency approach, that all stakeholders are involved, and we see that really as a fundamental to future engagement we would have with the Department. It is one of the major issues we have at the moment in this lack of consultative mechanism being there.

Q251. The Chairman: Thank you.
Now, on the other side?

85 **Ms Edge:** Chairman, can I just declare that I am still an associate member of ASCL. I just want to put that on record. *(Laughter)*

The Chairman: Right, yes. I always feel that I should declare in such meetings that I have two daughters who work within the education system.

90

Mr Tanton: I will be brief and some of it will repeat and reinforce some of the messaging of my colleagues to my right.

I think there were four major themes that we have been exploring through our official response to the Education Bill. One is about the opportunity you have at this point in time to shape the educational landscape for a generation or more of children, but also of the profession on the Isle of Man for the lead professionals. We are an association that represents over
95 nineteen and a half thousand school leaders and all our members on the Isle of Man are school leaders in the secondary phase. So you are talking about a Bill that should shape the life chances of young people and that, I would think, should be at the forefront of the way the Bill is worded.

100 I do not actually see that and it disappoints me that that is the case: that children do not seem to be right in the middle of it.

We would also as an association look for coherence in that vision for the next generation of school leaders or the school teachers as well as the vision for the children, and a sense of creating the infrastructures and capacity for the profession going forward. So we see it as an opportunity. That links to my second point, which is the disappointment and frustration that the process by which we have been involved, or not involved, in the consultation seems to be
105 stuttering and quite Byzantine. I am a historian, or I was ...

I would suggest from our point of view you have to involve the major stakeholders: identify the major stakeholders, bring them on board and involve them in the process of creating an Education Bill that the profession itself, at any level within the profession, can speak for with integrity and authority.
110

I responded on behalf of the Association and I am sure you have read the paper, and that was back in early March. We are now in mid-June and I have not had the opportunity and not been invited as ASCL to speak with anybody around my response – or *our* response; I will keep saying
115 *our* response. Sue and David will speak more about what is happening in terms of head teacher meetings but that to me is an extraordinary situation, where we were against a very tight timeframe to respond and we did our level best to respond in a coherent manner. We spoke with our members, so we believe that is what our membership is saying to us. We have a huge amount of experience in responding to government legislation wherever that may be and yet I have had nothing but an acknowledgement – which to me is extraordinary.
120

So I think it is almost a missed opportunity and we are now in a situation – just to labour the point, apologies – where we have been invited to a meeting on 1st July, we *believe*, but I have not been told officially, to see the second drafting of the Bill. So one would hope we would see that draft before we meet. We have yet to see a draft. We have requested a draft – I believe, David? – and we have been told we may get it within five days of the meeting itself.
125

Again, if you look at the timeframes we have got to then respond to something with a very swift turnaround. The schools then go on holiday and our colleagues will be on holiday. We are then, I believe – if I am wrong, please tell me – back into the cycle of it goes to Tynwald in October. So those constraints almost amplify the frustrations that we have expressed to date.

130 The other two points I would make just to finish off, is around the tone and language of some of the first drafting of the Bill, particularly around clause 22, which I am sure NAS colleagues will support. It does not seem to inspire or motivate. It seems almost to be a sort of top-down, 'This

will happen to you if you do not'. I am not sure that is how legislation should be formulated to bring all the stakeholders along!

135 The fourth concern we have is around the lack of detail around some of the key areas that are mentioned within the Bill, whether that be curriculum – and you cannot get more vital than curriculum, that is what you are teaching the students on a daily basis, you know; around the definition of what 11-16 education is; around social media; around exclusion; additional needs; and physical restraint. They are all mentioned.

140 The first and only time we have met with the Minister and the CEO we were promised secondary legislation which would maybe help us to understand the detail behind some of those headlines. We have yet to see that; and nor have we had the chance to discuss what that detail might be.

145 We pride ourselves on being a very positive, professional association trade union. We pride ourselves on being seen by most employers as people who bring solutions and a dynamic to the conversation. I think we are frustrated at this point in time that we have not had the opportunity to do so, or to discuss in detail our concerns around the first drafting of the Bill.

Thank you.

150 **Ms Edge:** Is it okay to just ask?

The Chairman: Please do, yes, of course.

155 **Q252. Ms Edge:** With regard to anywhere else, either the UK or any other jurisdiction that you work in, at what point would you see some draft legislation? You were saying you might get it five days before, but at what point would that ... What is the practice elsewhere?

160 **Mr Northcott:** That is a very good question. Just to give you an example, the Bill contains some quite important provisions around children with additional educational needs. I think we have made the point in the past that the lack of a clear legislative framework is not as an omission. I think in the provision that is made for children with additional needs – and it is helpful that some legislative architecture has been put in place, but to make sense of that in practice you need a code of practice. How will this legislation be delivered on the ground day in, day out by practitioners? To do that, you need the code of practice.

165 So you can have an example of the position in England where legislative change was put forward through the Children and Families Act, that made changes to the statutory underpinning for special and additional needs; but in order for parliamentarians and the wider public to try and understand more what difference this will make in practice, a draft code of practice was published alongside the Bill, so you could see how the Bill was supposed to be implemented in practice. I think that is an example of what I think Richard was talking about wherein, yes, you see the broad high-level legislative structures, which we have commented on positively and negatively where appropriate, but it is difficult for parents, for pupils and for teachers to see what this will mean to our lives in practice without that draft code of practice.

175 So that, I think, is an example of how you might consult in a way that is more meaningful than perhaps has been the case in this instance.

180 **Mr Tanton:** Sorry, just to come in from ACSL's point of view. We would certainly expect in most instances there to be a very clear timetable and a very tight, very clear expectation on all parties when you submit papers and when you receive drafts so you can properly interrogate what is coming back at you; and as a stakeholder ourselves that would be our perception of our role in that process.

Ms Moore: I think even on the Isle of Man – and David and I have been here long enough that we have experienced the 2001 Education Act and the 2009 Education (Miscellaneous

185 Provisions) Act. For both of those there was far more prior involvement with *sections* of the Bill, not the whole thing, but ‘We are looking at this bit, so here is a draft of that section’, and we were able to have a look at it and give our information before it then went to public consultation.

Part of my dilemma now is that I was not able to do that. We asked, as secondary heads, to see and we were told no. We were given timescales that moved each time but we were never given anything in writing, and so when the actual draft Bill arrived a couple of days before the public consultation I was not able to give it public support. That put me in a really difficult position because obviously I want to be loyal to the Department, but equally I have a moral duty (The Chairman: Yes, yes.) to do what is right for the education of children and young people on the Isle of Man, and I have really serious concerns about the Bill in its current form.

Ms O'Neill: Can I reiterate as well the same from the Teaching Union’s point of view, not the head teachers. We were also told on many occasions prior to the draft appearing that we would have the chance at our Teaching Union meetings with the heads that we would have an opportunity to look at anything, any documentation that went before the draft Bill. That never materialised at all and again we have had all of the delays that have been indicated here.

Q253. The Chairman: Right, I think that is enough!

We had the Minister and the Chief Executive in on 8th March. I do not know whether you have had the opportunity to look at what they said?

Have you any comments you would like to make about what they said? Again if we do it –

Mr Northcott: They said a lot, so it is difficult to know to some extent where to start, really. But I think some of our concerns echo what has just been said in terms of certainly the process around which the Bill has been taken forward, and we do not think that has been everything it could be in respect of consultation engagement. I think the points have been well made.

My overriding impression from the evidence that was shared with you is that there are quite a lot of gaps, I think, in what you are being told. So in a sense you do not necessarily, as legislators, have all the information that *you* need to make informed decisions about whether this Bill should progress in its current form or whether it needs amendments. I think that is part of the issue that we face here. Certainly you do as legislators, but we do as stakeholders as well, in that I think we need more information, more discussion and – dare one say? – more *time* to get this right.

I mean, as was mentioned, it has been said to us this is a once-in-a-generation opportunity to get legislation around education in the Isle of Man right, and we can only do that if we have the information that we need in order to make good decisions. And from the evidence that was shared with you there are still some questions I would have, and I dare say that *you* have, about what will this mean in practice? What impact will it have on children and young people? What impact will it have on our schools? What impact will it have on those we task with educating our children and young people?

There is more information and there is more analysis required before I think anyone can make really informed choices about whether what we have in front of us is right, or whether we need to think about a different approach.

Ms O'Neill: We still have major concerns, though, on the management of student behaviour outside of school and we are currently still in dispute with the Department over this. We recognise that the Department is showing a more willing approach to looking at what we have proposed than they have in the past. However, we feel that what is being proposed, and even in relation to the Home Affairs Department, is not specific enough and it will not really deal with the issues and problems we have here, if we are going down harassment routes, etc.

I mean, again, they have spoken about it in this really nice terminology, ‘the multi-disciplinary approach’; however, we need to see a backbone to that. We need to see, as my colleague has said, a code of practice structure that will show exactly each stakeholder – whether it is Youth Service, whether it is Social Affairs, or the Police, or whatever it is – that we all have a part there. All we are trying to actually do there, and we have pointed it out on quite a number of occasions, is follow best practice – the best practice that exists in *all* the surrounding jurisdictions, and we do not see any reason why the Isle of Man should not follow that best practice.

What we also notice, which I find slightly contradictory, is that the Department now seems to be very keen to pursue protection in relation to social media abuse – however, they have not put a protocol in place for how that would happen – and then not see that that correlates to protecting teachers in the physical world as well. Social media abuse is, we know, a very serious matter at the moment but so is physical abuse in the street in a small community that we live in here in the Isle of Man. So if you are going to be very diligent about that, we need equal diligence in the physical presence of teachers in school.

We really feel that is a major part of this Bill and we are not confident that the checks and balances that are being considered are really going to take place. We are a bit worried about the fact of enabling legislation, ‘Oh, well, we’ll put it into enabling legislation’. But, again, how do we know that is going to take place?

So that is one of our major issues.

Q254. Ms Edge: So there are elements within the Bill as it is put forward where you feel there are major gaps that would be preferable in the primary legislation, and you have been promised secondary legislation but you have not seen it? But there are elements that might be in the secondary that you would prefer in primary?

Mr Northcott: It is an important point. I mean, in all jurisdictions – and you asked earlier about our evidence from other jurisdictions – having a combination of primary and secondary legislation and codes of practice is perfectly normal and in a way there are good arguments for organising things on that basis. I think our issue is we talk about behaviour and we talk about multi-agency working, and in our evidence we have said these things are incredibly important. What we lack is the detail of what that secondary legislation will look like, as Richard said, and what the codes of practice will look like so we can make a judgement as to whether it is going to make a difference on the ground.

It is that lack of wider information in respect of secondary legislation and codes of practice that makes it difficult for us to judge – to give the example that Geraldine has just raised: are the provisions in respect of behaviour really going to work? Are the provisions in respect of additional educational needs going to work?

That does not mean you shoehorn things into primary legislation that should not necessarily be there, but you certainly make sure that people deciding whether the primary legislation is fit for purpose or not have all the information they need to make the right decision.

Ms Moore: Can I pick up on that?

Q255. The Chairman: Yes, please do.

Ms Moore: One of my concerns is that there seems to be a lack of consistency and a lack of clarity and coherence about what in the Bill is intended to be primary legislation and what is intended to be left to secondary.

We were told it was an enabling Bill – and I wholeheartedly agree with the concept of an enabling Bill – but when you look at this draft Bill there are some aspects of secondary legislation which would come to Tynwald for approval; others that would come towards

Tynwald to be laid before Tynwald; and others where there is no mention of Tynwald. For me, there is a really fundamental question about who is responsible for education on the Isle of Man? Where is that delegated, with what autonomy and to whom? And who checks that what is happening is right? I have huge concerns.

I mean, I had huge concerns when we removed the Board of Education and replaced it with an education council. This goes a step further: it removes an education council. It leaves unclear where the Department could have complete powers without any check from Tynwald, without any check from an education council. It has the power to dismiss governors, having appointed them in the first place.

So who is going to ask the difficult questions? Who is actually deciding what the curriculum is? And that is just an example, because throughout the Bill there is a lack of clarity about where the responsibility lies and where the checks and balances are. And in the hands of the wrong person I think it gives rather frightening powers to a Minister of Education in the future who might not do things the way the rest of us would appreciate.

Mr Tanton: You asked the question as to our thoughts on the Minister's and the CEO's responses. I thought their responses raised more questions than answers actually, and gave the impression there was more consensus than there was agreement about things. And I think the response you have had from my colleagues probably amplifies that as well.

If you look at clause 22, which is I think at the heart of major concerns about the Bill in terms of how that may be interpreted and how that may run out in practice, it seems to suggest that if a head teacher is, or appears to be, unable or unwilling to do as they are told – and I do not know how anyone would ... I mean, my children, when they were young, appeared to be unwilling or unable to do a lot of things! But where would that leave you in terms of employment law and employment practice? The codes of conduct, the disciplinary policies and the capability policies you have? All those things should underpin any appraisal of a head teacher's performance. But it seems to suggest that if a head teacher *appears* – and I am sure you may have cross-checked that with legal friends? I have, and they are all saying to me, 'That's a minefield! How can someone *appear* to be unwilling or unable to do something?

So that was one of our major things when we did meet with the Minister and the CEO, and I did not see any sort of sense in the responses to this Committee that that clause, or that part of the clause, was going to be taken out or amended in any shape or form.

I think that is reinforced by the points that Sue is making because it seems to apply to governance of schools as well. Now, head teachers and school teachers, we are all governed by policy and practice and you have contracts of employment. Governors do not do that and that same phrase that if a governor appears to be 'unwilling or unable' to do something, they could be asked to step down. I always thought the best practice model, which you should be refining and developing across the education landscape was where you want governors to be not only a critical friend to the head teacher and the school leaders – so they are questioning, they are forensically going through the data, they are legitimately the mirror by which you judge yourself. But they are also there, aren't they, to interrogate and to make sense of government legislation wherever that government may be – or local authority legislation, or whatever?

If you almost disenfranchise both governors and possibly head teachers at the outset through this clause, it does not seem to me to be a particularly – I will be careful of the words I use because I guess people are writing it down – it does not seem to empower the profession or those who volunteer to be governors, and who take that role very seriously, to manage and lead the schools forward. I hope that makes sense.

Ms O'Neill: We have equal concerns about the proposals in relation to governors. And again we go back to what we have said before, we believe that we need an overseeing body that is the Education Council; or if it is made up of multi-disciplinary stakeholders, or whatever it is going to be, that no Department or Minister should be able to act without any overall scrutiny and we

would consider it to be extremely dangerous. But we believe a code of practice needs to be there, with due respect to my head teacher colleagues, for both head teachers and governors to be ... You asked in the Scrutiny Committee session, I was here for it, when were the articles of governance updated, and to my recollection – and I could be incorrect in this, and you can correct me if I am – you did not get a straight answer on that.

Our view would be that articles of governance and the whole structure of governors and how they are appointed, etc. and who oversees what, should all be part of that structure Island-wide. Individual schools may have individual aspects of the articles of governance, but there should be an overarching system and protocol that is there for everybody that they have to follow. Otherwise we are in the situation where it could be down to whatever a particular Minister or the Department decide to do, without consultation with any outside body.

Q256. Ms Edge: There are two questions now from what Geraldine has just said.

Do you feel that the new proposals coming forward are actually giving you less autonomy and responsibility, as the professionals?

The other question is: you have made your submission and you have had no response. You were expecting to be able to challenge some of the clauses if you were afforded the opportunity to actually meet face to face following your submission, but you have not been given that opportunity. So you are making representation against clause 22 and what you really feel, as professionals, should be in there?

Mr Trace: When you spoke to the Minister about that on 15th April I think his, or Lawrie Hooper's, response was 'Well, it is in the current legislation'.

The current legislation is being replaced because it is not fit for purpose. So if it is there it probably should not be in this legislation.

Secondly, it made its way into the current legislation following the consultation in 2008 that became the 2009 Miscellaneous Provisions Act. It made its way in without any consultation with anybody. It sneaked into the final Bill and we knew nothing about it at all. So we do not think it is suitable.

And in answer to the first part of your question, I think there is a complete ... This Bill proposes a huge shift of power away from head teachers and governors into the hands of the Department and the Minister.

Mr Northcott: Just to add to that. I mean, every jurisdiction has to strike a balance between system-level responsibility and local-level autonomy. I think one way you could characterise what is proposed here is that it is not entirely clear even sometimes where that line is being drawn. So there seems to be, for example, if you go back to clause 22, a misunderstanding of the distinctive role of a governor of a school and a school leader. The governors are responsible for governance and the leaders are responsible for leadership and management. The school leaders are employees, they are not office holders in the same way that governors are.

So I think we do not answer those questions as well as we could until we are very clear that we understand what good governance looks like, and what good leadership and management looks like. And, in a jurisdiction like the Isle of Man, where do we draw the line between central control and local school autonomy that meets the particular circumstances of this jurisdiction?

So there seems to be, in the development of this policy, still some lack of clarity about where that line should be drawn and perhaps to some extent taking powers in centrally that may be better determined at school level, but perhaps also conversely having powers at school level that might better be exercised centrally. What is the distribution of the different functions between the centre and the local setting? Where do we draw that line? I am not sure we have the best answers to those questions yet.

390 **Mr Tanton:** And I am not sure we have had the opportunity to discuss those in the way that we would normally perhaps expect to do so.

Ms Moore: We did have one meeting, didn't we? ASCL had one meeting with the political Members in the offices of the Department as part of the consultation. And then there has been one subsequent joint union meeting. So that is the opportunity we have had. But we have not had what we would regard as sufficient opportunity to talk through some of the more serious issues.

We went through it clause by clause and sometimes the response was, 'Well, it is in existing legislation', as if that meant it was okay. But actually, even though the idea of it was in existing legislation, certain words had been altered, and we all know that when you are talking about the law each word matters. So that actually changing one word changes the whole way of working. So even though it might have been in existing legislation it was not in the same format and that is quite significant.

We were also told we did not understand! I may not be an expert in the law but I do know quite a lot about secondary education and we have people we can call upon who know a lot about how things work with legislation and policy, which is why we bring our people from our organisations. And that is why we *want* to be able to have the opportunity to have proper and full consultation. We all want to have a good Education Act because we are going to be working with it every day and that is where we are coming from here. We want it to work for young people, for children and for the community of the Isle of Man; as well as the profession, because that is why we are in the profession.

The Chairman: Just to make it clear, in relation to your proposed meeting and your five-day advance viewing of a second draft, whatever that may be. The Committee has not seen anything different since we met with the Department representatives.

Q257. Mr Perkins: Have you approached the Department for further meetings?

Mr Trace: There was a further meeting proposed on 24th May and a few days before that took place they cancelled it.

Q258. Mr Perkins: Right, and the reason? No?

Mr Trace: They were not ready.

Ms O'Neill: So the next further meeting is 1st July –

Mr Trace: But we cannot see the papers. We asked for them at least two weeks in advance but they will not be ready.

Mr Perkins: Right.

Mr Tanton: I am just a bit – to put that into context and I mean it goes back to what we have all been saying that a date suddenly appears out of nowhere and we are all suddenly looking in our diaries – can we make that date? Often that date appears without any clarity as to what the function of the meeting will be or who should attend.

Ms O'Neill: Yes, it was quite confusing.

Mr Tanton: And to go back to what Sue was saying, at that meeting we had – the only meeting we have had – there were ASCL employees both of which, with myself, have between

us over 25 years of headship; and Sue, who has got ... ? (**Ms Moore:** Twenty-one years.) Twenty-one years of headship. So that is quite a lot of headship in the room and we are told we did not understand elements of the Bill, which was difficult to accept!

445 **Q259. The Clerk:** Could you let us know the date of the meeting, either now or later, please?

Mr Tanton: Say that again, sorry?

450 **The Clerk:** When was the meeting?

Ms Moore: There is one planned for 1st July.

The Clerk: The one you have just described.

455 **Mr Tanton:** That was – late February? Early March?

Ms Moore: No, it was March.

460 **Mr Tanton:** March 6th, I think it was?

Ms O'Neill: We have also had one preliminary meeting which we sought and had an hour's meeting with our UK reps and one of our national executive members, and that was in February, wasn't it?

465 **Mr Northcott:** Yes, it was in February.

Ms O'Neill: So we have had one meeting. But it was really only a preliminary meeting.

I think what you are really hearing here is we are all singing from the same hymn sheet insofar as consultation has not been the depth of consultation that we feel would be most beneficial to this Bill and the future of education on the Island. And as much as we are all representing different parts of education we are all staff employees of the Department, whether we are heads or senior leadership, or whether we are frontline teachers. We are all employees, but we all want to see a positive Bill going forward.

475 **Q260. The Chairman:** Sue, you mentioned how things have changed from what used to be the Board of Education and that used to be elected in a certain way, and then we came on to the current Education Council. Would you like to say what the benefits of the current Education Council are as you see them? As opposed to what may come in a proposed – ?

480 **Ms Moore:** I think it falls into two parts really. One part is a very pragmatic part. At the moment for a secondary school we have two appointed governors who are appointed from the Education Council. And then the governors can co-opt. In addition, we have an elected parent governor and an elected teacher governor, and elected support staff governor.

485 Now, if it comes to a disciplinary hearing, for example, of a member of staff – we hope they do not happen very often, but they do happen – that is a panel of three governors. You cannot have your parent governor or your staff governors on that panel. So you have got two left. If you co-opt, you are okay, assuming that they are all available.

490 With the Education Council, we can call upon other members of the Education Council to take that role; if we have got directly appointed governors just to the schools that is their very specific role, so you have lost that flexibility. So that is a very pragmatic reason.

On a more political reason, it comes back to what I said earlier about a critical friend to the Department. (**The Chairman:** Yes.) The way our political system works, and you know this better

than I do, people do not vote for a Minister, they vote for their local MHK. So one would hope that the Minister is going to do a good job. But if they do not, there is nobody to hold them to account particularly in the way this legislation is structured.

With the Education Council – and a cynic might say that is why the Department of Education does not want an Education Council, because the Education Council can do that – they can ask the difficult questions. They are not employed and they can say, as a body, ‘We have concerns about the direction that Education is going on the Island’. And they can be the critical friend – just as governors are to the leadership within a school, a council can oversee the Department of Education. And I think we would lose that.

Q261. The Chairman: Okay. Is there any evidence that the limited employment of unqualified teachers has a detrimental effect on provision of high quality education? From either side?

Mr Northcott: I think our evidence makes clear we think that in all circumstances what should happen is that qualified teachers are employed. There can be circumstances where you need to employ an unqualified teacher, but in a jurisdiction like the Isle of Man that is pretty much only where you cannot find a qualified teacher.

You will see from our evidence one of the points we have made in our submission is that teachers in the Isle of Man should have some form of accreditation of what in England is called their ‘qualified teacher status’. We know in the Isle of Man that teachers do not just come from England but there are equivalent statuses in most of the jurisdictions from where the Isle of Man draws teachers externally.

So we think one of the missed opportunities in the Bill is to underpin that and have some provisions in place that give children, young people and their parents the certainty that they will be taught by a suitably qualified teacher and practitioner. I think that is a very important provision in any education system and we would certainly advocate amending the Bill to that effect.

Ms Moore: I might beg to differ slightly. I absolutely agree that you would go for the qualified teacher and if you can get a good qualified teacher that is what you should be doing. However, recruitment is *extremely* difficult and I know that we have employed people who are unqualified, but are really good, and we have trained them up and then we have got them teacher accredited status.

I think some of the confusion perhaps for parents has been that we have had trainee teachers who have been regarded as unqualified – because they *are* – but they are going to be qualified. No head teacher in their right mind would employ somebody who is not qualified if they have got a good qualified alternative. But we have employed good, unqualified people because actually we need – particularly in the areas of maths and science – good people in the classroom. Sometimes we have got people coming from industry who actually are *brilliant* and they need to be given that opportunity and be trained up and then accredited. I would be *very* worried if that flexibility were taken away because you would have non-specialists teaching areas like maths and science.

Mr Northcott: I think actually we are probably in the same place. I think the position should be that you employ qualified teachers but that absolutely is not to say there is a recruitment crisis. So in a sense in those circumstances if a school makes every effort to employ someone who is suitably qualified and cannot, then often they do not have an option. Sue’s point also about people who have good skills in a particular area, working as unqualified teachers *en route* to let’s call ‘qualified teacher status’, that can be incredibly powerful. If routes to that end can be established in the Isle of Man there are some, but if they can be expanded there is nothing wrong with that at all.

545 So someone who is working as an unqualified teacher but as part of a coherent structured
programme to qualified teacher status, that is not an issue. But I think the current legislative
provisions are too vague and too open around when teachers can and cannot be deployed and
what qualified status they should have. I think our proposals are clear that there are ways in
550 which you could strengthen that so that the use of unqualified teachers is permitted in the
circumstances that Sue describes. But it is also about making sure you have got the best person,
the best *qualified* person teaching children in that classroom.

Q262. The Chairman: Why is it important that a system-wide curricular framework be
introduced?

555 **Mr Northcott:** That is something we called for in our evidence. I think we set out a pretty
clear rationale in writing, but just to summarise it. We think one of the shortcomings in the Isle
of Man education system is that while you have a Curriculum Order from 2011 that sets out
heads of different areas of study, it does not set out detailed programmes of study and give
560 more detail about what should be taught. From our point of view, one of the ways in which you
see that as being problematic is on the transition from primary to secondary education. So our
colleagues in the secondary sector tell us that children's education experiences, when they come
to secondary school, are so varied that it is sometimes difficult to move on and to support that
transition.

565 We think a curricular framework would have a number of advantages. A curriculum should
represent the common minimum entitlement that all children have regardless of where they live
in the Island and what school they attend. That is an important function a curriculum fulfils. It
also makes sure that there are certain standards that are applied across the piece so that in
transition, for example, you know that there is going to be some degree of continuity there.

570 That absolutely is not to say that there should not be local flexibility in the implementation of
that curriculum. Most other jurisdictions that have a more detailed curricular framework
absolutely allow for that. The curriculum you might specify is not the entirety of the curriculum,
it is a proportion of that curriculum, but it does provide some continuity and some certainty and
some commonality of entitlement across the Island which we think is a core responsibility of the
575 Government.

Q263. Mr Perkins: With the return of power to the Department, where do you feel that this
should come from?

580 **Mr Northcott:** One of things we suggest in our evidence is that a curriculum, for it to be
effective, has to I suppose reflect the reality of circumstances in the jurisdiction where it applies
but it should also reflect the views of different legitimate stakeholders in that curriculum. So one
way in which we felt that the Isle of Man could develop a curricular framework is through the
establishment of some form of curricular council. So one of the provisions in the Bill is around
585 removing the special status, if you like, of religious education and moving it to within the body of
the broader curriculum. That is a matter for the people of the Isle of Man and for Members of
Tynwald to determine. But one thing you have with RE at the moment is you have an advisory
committee around religious education that draws in different stakeholders and means that
curriculum reflects the different views, the different perspectives, the needs of the Island, the
590 culture and the social context of the Island in a way that makes it meaningful.

So a curriculum should be established. The Department ultimately, the Minister ultimately,
has responsibility for that curriculum. But you can develop it through some form of curriculum
council that would bring in a range of different stakeholders including, dare I say,
representatives of the workforce, the teachers and school leaders who have to make that
595 curriculum happen in schools. At the moment I think the problem that our members report is
that there is not enough certainty about that curriculum so that transfers between schools are

not as straightforward as they should be and that there is not a common expectation that no matter where I go to school in the Isle of Man there are certain rights and entitlements in respect of what I will learn that are guaranteed regardless of my location or the school I happen to attend.

Q264. The Chairman: Anything you wanted to add to that? No?

Do you have any comments on the proposed legislative changes relating to home education?

Mr Northcott: Again, I think we set out our views pretty clearly in our response, but just to set out where we would come from in brief terms. Whether or not you allow home education is a policy choice that the Government can make. The Government here has made the choice that it wants to permit home education. We respect that choice. It does not have to make that choice but it has chosen to do that and they are democratically accountable for the choice that they make. In our view, in respect of home education, it is perfectly reasonable for the Government to seek to put in place provisions to ensure that every child has his or her entitlement to a good quality education and is kept safe. In our view, the provisions that are set out in the Bill are reasonable and they are proportionate and they make sure that we can be absolutely certain that if children are home educated they are safe, and they are getting their entitlement to educational provision. So if the Government wishes to retain the right to home educate that is its choice, but we think if it does so it has to have provisions and safeguards in place. In our judgement the proposals in the Bill in that respect are proportionate and appropriate.

Mr Tanton: We would echo that.

Q265. Mr Perkins: How do you feel that it should be monitored, that the children are getting good education?

Mr Northcott: I think if you look at some of the provisions that are set out in the Bill there are again some high-level proposals in that respect. I think we have set out some provisions in our submission that could perhaps be incorporated through secondary legislation or a code of practice around how the Department might monitor that education. So, for example, one thing you can do, and that has been proposed elsewhere, is set out 'a statement of intent'. So if a parent home educates they set out a statement of intent that says, 'This is what we are going to provide for our child in terms of their educational experience'. Then that statement of intent can become a way in which the Department can monitor whether that child is getting that educational entitlement.

So there are ways in which you can establish agreements when people are committed to acting reasonably. You can establish agreements to say this is what this child will receive through their educational provision. The Department says, 'That's absolutely fine, you can do that, that's perfectly lawful. We just want to make sure that provision is actually in place'. And I think that strikes a reasonable balance between the rights of parents to home educate, which will be provided, and the responsibility of the Isle of Man Government to make sure that every child is getting their fundamental entitlement to a high quality education.

Q266. The Chairman: Okay, thank you.

We have had the benefit of comprehensive written presentations from you both. Are there any other issues that, prior to your further dialogue hopefully with the Department which will take place in early July, you would like to raise at this stage?

Mr Trace: One of the things that comes through the whole of this Bill is sort of a punitive nature. It is very negative in almost everything. Section 22, to go back to it, is entitled 'Failures by governors and head teachers'. Is that the right sort of expression to use in primary

650 legislation? I do not believe it is, but that sort of feeling of a punitive nature runs through very many of the sections.

I know when you spoke with the Minister you picked up on the fact that quite a lot of it seems to be drawn possibly from UK legislation rather than part of Manx legislation. I think that is because they have used an English draftsman to draft the Bill who knows nothing about Manx law at all, and has built into it. But that is totally inappropriate and does not fit with the Isle of Man.

The Chairman: Yes, there were certain terms of legal expression which were wrong ...

660 **Q267. Ms Edge:** With regard to, if you are prepared to comment on this – what would you like to see happen? Obviously you have only got six weeks left of school term, you are coming into the school holidays and it is going to be very difficult for you to get meetings etc. before you return to school on 4th September. What would you like to see happen? Is there anything you would like to see happen?

665 **Mr Trace:** We have asked that the Department withdraw this Bill and go through a proper consultation with the members of the profession and the unions. The Minister's response was that it cannot be withdrawn when it has not been laid in the first place.

670 **Mr Northcott:** Just to be clear we did not ask for the Bill to be withdrawn. We think there are positive elements in the Bill and we have set those out in our evidence. But there are profound issues that need to be addressed. I think what we need is, as we have heard, a meaningful process of consultation. We need everyone involved in the process to have the information they need to engage in that consultation. And in your case to make decisions about whether the Bill progresses or not, or whether it needs to be amended. That may require consideration of a longer proposed timescale for implementation.

675 As we have said, it is a once-in-a-generation opportunity. We need to make sure there is enough time made available for proper engagement and to get this right, so that everyone feels they have had their say in its development and everyone feels they have got a sense of ownership of it and commitment to it. In that way, the objectives of the Bill which in many respects are laudable have a better chance of becoming a practical reality in schools across the Island.

685 **Ms Moore:** Can I just put a point of clarification: you asked the date of the meeting that we had – ASCL members with the Department. It was the end of February. I am trying to read my own writing here, I think it was 27th or 29th February.

And there was one other thing that we did not put in our original response which was about the dispute resolution. We are not clear where that sits with the existing dispute resolution with other legislation and the scope of it as it sits in the Education Bill at the moment. This is a just a question we are not clear about.

690 **Ms O'Neill:** Can I just say in relation to the consultation, even in this consultation process meeting we did as representatives from different organisations, we had a lot of difficulty with clarity from the Department in dealing with us as a body. This goes back to our original statement to you about recognition, that this is not simply recognition of us as a teaching union, we have tacit recognition by the fact that we meet with them, it is about the mechanism for consultation and negotiation. And in the light of this Education Bill, and in fact other matters – of which you may or may not be aware, with which we are in dispute with the Department at the moment – we need consultation and negotiation mechanisms and processes whereby we can be involved in local negotiations and in collective negotiations.

I think that is what is missing from the way they have interacted with us, in that we do not have that there as a process and that is *really* important because if you have consultation and negotiation mechanism you have a timescale. When you receive documents you have a timescale to read the documents and to respond appropriately. I mean, we have had issues where we have been presented with documents with three and a half working days to proposed new documentation. This is the kind of thing that we would like to see really clarified and put in a systematic approach.

Q268. Ms Edge: Do you feel that the consultation for this particular Bill/Act has been totally different from your previous experiences?

Mr Trace: Yes. For the 2001 Act we started discussing it two years before it became a Bill and long before it went out to public consultation. The same happened for the 2009 Miscellaneous Provisions Act, there were lots and lots of opportunities to discuss it, to discuss different parts of it and to put our changes forward. None of that has taken place this time.

Ms Moore: It did start about four or five years ago.

Mr Trace: In 2013 it started.

Ms Moore: We did have some discussions then, we had little working groups that met once and then I think there was a change of personnel in the Department and it all went quiet, and that was the end of it. That was the end of our opportunity to have a *genuine* input into anything.

Mr Tanton: Just thinking, in terms of you asked about going forward. The lack of detail or the lack of sophisticated discussion around some of the issues within the Bill to date would suggest that it is going to be a stuttering process to ... We cannot approve stuff, but to get us buying into it. And let's just take one example: social media.

Now, most employers, whether you are in education or not, they are spending an awful lot of time getting their social media policies spot on. They are trying to look into crystal balls to see where social media may take them. They are looking at it from all sorts of accountabilities – and for dinosaurs like myself it is a brand new game as to what social media means. But to me the way to approach that would be to sit the professionals in a room to look at what that means, to look at the challenges and be very clear as to what the heads can agree to do.

You have a duty of care as an employer as well to all employees to ensure that. So there are layers within – it is like peeling an onion. Without that sort of groundwork you are going to come up with phrases that do not necessarily mean anything, perhaps. I think you are also going to put school leaders in a situation where they are held to be reasonably accountable. A phrase that comes through this Bill, 'You are reasonably accountable'. What does that mean?

Are you reasonably accountable for social media on a Saturday or Sunday that your students or teachers are using? These are far-reaching things and I am not being as eloquent as I would like to be. But do you know what I mean? It is not a one-hit – bang, there is the answer. You have to really talk that through and try and understand the protocols, the codes of conduct – as you have said – how you protect the profession, but how you also protect the school community as you move that forward.

I think there needs to be a more sophisticated approach and thinking behind this, as you take this forward.

There is no suggestion that we are not trying to buy into this and want to be part of that process, but I think there is an awful lot of expertise not just around this side of the desk, myself excluded, out there in the profession and in the schools that could offer a huge amount to that dialogue and getting this Bill absolutely spot on.

Q269. The Clerk: I do not want to open a can of worms at this late stage but maybe everyone else ... It may be that there is a straightforward answer to this, in which case, great; if not, we can leave it for another day. But you said when you were talking about collective arrangements, collective recognition and I think you used the word 'negotiation': do such arrangements exist for the purposes of pay in relation to teachers in the Isle of Man? Or is that done at a UK-wide level?

Ms O'Neill: Well, that is a current issue – which we are trying to discuss.

Mr Trace: It is a current issue.

The Department encouraged all of the unions to work together to discuss the pension situation on the Isle of Man. We did that and reached agreement with PSPA. We then decided as a group of unions that we should want to negotiate pay in much the same sort of way with the Department. The Department is not prepared to do that.

The Clerk: Okay. Sounds like it is –

Q270. The Chairman: So it is a hot potato. (*Interjections*)

Ms O'Neill: Can we, from our point of view just say, and I am sure my colleagues here would also agree, if there are any further questions or matters that arise for you following this, we are aware that MHKs are going to be discussing the draft next Wednesday, I believe. We are very willing to provide any further information in written form to you to clarify any points we have made today because we feel this is really important.

MHKs are the law-makers and so therefore you need as much detail as possible from all of the professional stakeholders and we very much want to ensure that you understand where we are coming from.

We all want to see a professional education system here. We want to welcome fully qualified teachers to the Isle of Man to live and work here but we want to have what is fit for purpose. We believe as an association, as well as a union, that highlighting issues and concerns is not a *personal* criticism, it is a policy criticism in the sense of let's make this better for all concerned. We would like to get away from personality and criticisms, and feelings that we are attacking various people or whatever. That is not what we are about and it is what none of us have been about in this whole process.

We would like that to be very much noted by the Committee and by Tynwald Members.

The Chairman: Anything else? Then I think we have probably gone as far as we can today. Good luck with the next stage. I was not aware we were getting a presentation on Wednesday – obviously I have not picked that up in my diary. So I will look forward to that as well.

I think the general points you make about consultation and inclusivity, those are the key things that have come over to me today.

So good luck in your ongoing dialogue, or your *prospective* ongoing dialogue; and thank you very much for coming along today and being so constructive and helpful.

We will now have a break.

*The Committee adjourned at 2.33 p.m.
and resumed its sitting at 2.36 p.m.*

Procedural

The Chairman (Mr Cretney): Welcome to this public meeting of the Social Affairs Policy Review Committee, a Standing Committee of Tynwald. I am David Cretney MLC and I chair the Committee. With me are Mr Martyn Perkins MHK and Ms Julie Edge MHK. If we can all ensure our mobile phones are off, or on silent, so that we do not have any interruptions. For the purposes of *Hansard*, I will be ensuring that we do not have two people speaking at once.

The remit of the Social Affairs Policy Review Committee is to scrutinise the established but not emergent policies, as deemed necessary by the Committee, of the Department of Health and Social Care, the Department of Education, Sport and Culture and the Department of Home Affairs.

In this particular aspect we are looking at the Education Bill which has been around and about for a little while and it was considered necessary to have further discussion about.

Today, we welcome Mr Damon Warr, Mrs Dianne Warr, Mr Derek Sewell and Mrs Dawn Sewell, who are representatives of the Manx Home Education Association.

EVIDENCE OF

**Mr Damon Warr and Mrs Dianne Warr, and
Mr Derek Sewell and Mrs Dawn Sewell,
Manx Home Education Association representatives**

Q271. The Chairman: Welcome, everybody; I think we are just about on the time we were planning to be. I was conscious I did not want to keep you waiting too long.

Would you like to make any opening statements? And thank you very much for your written submissions.

Mrs Warr: We started MHEA when the Bill came out which was reporting assessments, etc., because home education on the Isle of Man is made up of autonomous home educators who have only ever done it from the ground up; and then there are people that have come out of school because the system has not worked for one reason or another, and those people tend to not be sure of how to represent themselves legally. We have a better understanding of those things so we decided to set up MHEA to help those people.

Mr Warr: Yes, and it is better for us to write one letter (**Mrs Warr:** Yes.) on behalf of 50 people than for 50 people to write single letters themselves.

Mrs Warr: Yes, that is kind of helpful.

The Chairman: Yes.

Mr Warr: And following on from the previous people giving evidence, we are the amateur stakeholders here. When I say 'amateur' I mean because we do this for love and not for money, or for glory, or for anything else.

Mrs Warr: No.

Mr Sewell: It is also worth just adding that the association was set up in part so we could deal with the Department of Education, which we successfully achieved after the first consultation – and, as you will have seen from our submission, we had similar problems to the unions that we did not seem to be able to get any traction with the Department of Education.

Some of the information going to Tynwald was, in my view, inaccurate – and deliberately inaccurate – and again that is in my statement. On top of that we thought it would be useful to draw a line under that and see how we could build going forward co-operatively, because that is what our MHKs were advising us to do. Unfortunately that did not work out as planned, but that will be part of our evidence today as well.

Thank you.

Q272. The Chairman: Thank you. Would you like to give a brief overview of the organisation? I think you have covered this, but do you think the Manx Home Education Association represents all home educators?

Mrs Warr: No, we do not; we only represent our members. I mean, the association is open to home educators who no longer home educate, but they have got experience in it or they have gone back into the system or gone into private education. So you do have fluctuation and movement in how members are established within it. But its mainframe is basically to support the entity of the small microcosm of home educators that are there, and who want help with representation. That is basically our soul aim.

But we do not represent the entire community; we only represent our members.

Q273. The Clerk: Can you say how many members you have?

Mrs Warr: We have 62 members, 18 families in home education now. There have been about five or six who have dropped off and gone back into home education. The numbers have been skewed, I believe – the total number of home educators we had from a Freedom of Information (FOI) said there were 152 people home educating, 98 families. I am not convinced, but anyway that is another argument. In August 2017 the Department released a statement to say there were 57 of us and in that time there has been a massive growth which we know nothing of.

I have a page called Isle of Man Home Education where people tend to come and reach out or connect if they are struggling, or if they have any problems in school – specifically people who are at school and who do not know what to do but want to access education. Their child wants to access education and they are struggling, and they just need some guidance on how that works, whether that be curriculum or whether that be liaising with the Department, etc.

Mr Sewell: If I can just add to the numbers, please, in respect of the information we have got. You will have seen from the evidence we provided that the numbers of home educators were fairly consistent through information supplied by the Department of Education and through Freedom of Information, and there were around about 40 to 50. I think in the previous evidence that has probably been given to this Committee and other committees that seemed to be the number.

Q274. The Clerk: The number of children, or the number of families?

Mr Sewell: The number of children who are educated. Then around about 2019 they suddenly jumped up 150-odd.

The difficulty with that is obviously GDPR came in on the Island in May last year. I know from my personal experience with my family. I happened to go into the Department of Education and there had been some reference to giving out medals for the First World War coins and I was given three originally, and I have only got two children currently being home educated, because my other one is over 16. So even that data was wrong; and they knew the age of my children. So under GDPR – I work under GDPR in the job that I do – you have actually got to keep your records up to date and there is an onus on you to make sure your data is accurate. I do not think that has gone on over the last 12 months.

I think the Department needs to have a look at that in relation to this figure of 150-odd, just to make sure it is accurate, because that is not the information we have got on the ground. And from our personal experience in dealing with the Department there seems to be a bit of inaccuracy there.

Thank you.

Q275. The Chairman: Okay. Mr Sewell has already made some comment on this but I will invite Mr and Mrs Warr. Do you have any comments on the consultation process? And to what extent did the Department consult with your organisation on its legislative proposals?

Mr Sewell: Yes, I will deal with that if I may? Thank you.

It has been a very long road. The first time we had dealings with the Minister in particular for Education, Mr Cregeen – who I know on a personal level and I used to be a civil servant, I should say – was when he did a response to a Tynwald Question and there was something in the written response that concerned me. It seemed to imply – well, it stated – that the Department had a responsibility to ensure a child received an education and the parent had a duty to ensure it as well. It was in August 2017 that was done.

I was that concerned about it I formally wrote to him to highlight this before the first consultation went out, and I said, ‘Look, this is misinformation; you do have enforcement powers’ – which was another thing they were saying they did not have – and that, ‘We only have a duty to *cause* our children to get to get an education’, because it is about provision of the education, it is not about outcomes. So, on that basis, I wrote a very long letter to him explaining all this to him. I even highlighted where the Department’s current guidance for truancy, which is covered in the same bit of legislation, and their own legal interpretation of that was actually firmly and squarely in line with our interpretation of it, and the interpretation that my wife and I had received when the Miscellaneous Provisions went through in 2008, because there were changes to the Department’s approach to home education within that.

So it had been fairly consistent how all this was interpreted and then suddenly the Department was saying that they could not do that. It then came as a real shock when the consultation document came out and they were repeating exactly what I had pointed out was inaccurate.

So my consultation response generally dealt with that and it said, firstly, that you were misinforming the public, you were not actually truly representing what was in the Education Act; and, on top of that, you were not actually saying there were not any duties to enforce. There is a whole section called ‘Enforcement of parents’ duty’ within the document and none of that was referenced within the consultation document at all.

There was also a spurious paragraph in relation to safeguarding that had been put in which concerned a lot of home educators, and me in particular, in that I thought it was irrelevant to what they are trying to achieve. It said although ... I am trying to think of the wording actually, can I just borrow that? Where are we?

Home education is not, in itself, a risk factor for abuse or neglect. However, there is potential that these children can become ‘invisible’ and in these cases there is a safeguarding risk of isolation from professionals. The aim is to establish an appropriate scope of duties for the Department to ensure that children do not go unseen.

So although they were saying there was not any evidence of any of this happening they obviously had highlighted it within the consultation document just before the ‘Do you think we need more powers? Yes or No’ response. We believe that to be leading and we also believe that to potentially prejudice the consultation.

Also at that time, you will probably be aware that the consultation document, the Code of Practice the Isle of Man Government signed up for primary legislation, was the June 2008 consultation document, and it was just about to be revised actually because the Council of Ministers revised it in October 2017. That code of practice requires you do all sorts of things if

you are a Government Department, as you are aware, including early stakeholder identification and early stakeholder analysis. In the 2009 (Miscellaneous Provisions) Bill the one thing that did get brought forward was that the home educators have to notify on the Island, so the Department has a full list of home educators including who is doing it and the addresses, so they could actually get in touch with stakeholders at a very early stage and say, 'Look, we have got these problems. What do you think about this, that and the other?' None of that took place at all and it should have done in this particular instance, I believe.

The other thing is the consultation document should be open and clear on what you are actually trying to achieve, so it should give both sides and it should give the people responding the opportunity to provide alternatives. None of that was provided within the document, which was unfortunate.

So we raised all these in our consultation responses and we said to the Department, 'Look, we would like to meet you' – and that is partly why the association was set up, so we could meet with the Minister. The Minister I think had had conversations with Gill Gillings who was an old home educator whose kids have all grown up now, but nonetheless a meeting was set up and we met with them and the Department expressed an eagerness to work with us. The notes from that meeting clearly showed that not only we thought the consultation could be read in a particular way, they accepted that and that was noted at the time, and the Minister made a commitment to the people at the meeting that he was happy – I will just get the piece of documentation – that he wanted to work with home educators to find an alternative to legislation, and if we could set up procedures or guidance or something like that, then that would relieve the need to bring in further legislation.

We met with the Department again on 8th January and we formalised that and the Minister eventually sent me a letter, and this letter is dated 15th January 2018 and it says: 'Thank you for meeting up with myself and Mr Shipley last Monday evening. The Minister has agreed, subject to developing a workable policy which will resolve the difficulties experienced by the Department to remove any proposals for changes to sections 24 through to 30 in relation to home education, the policy will be developed by the Department of Education, Sport and Culture and home educators working together to achieve this objective'.

So I thought we are now back into stakeholder engagement and trying to formulate an alternative to legislative provision. And that was circulated around all our members.

We then met with him on a number of other occasions and the Department was then happy enough with a procedure that had been built up based on the Manx legislation and best practice from the UK, to do a public consultation with those – sorry, to do a legislation with stakeholders on the notification list – and that was all sent out. Home educators responded, but we have never actually heard what the outcome of that consultation was.

There were then no further communications with the Department, other than we met up with some of their safeguarding representatives who, after we had met them, said they were also happy with the procedures, so safeguarding did not seem to be an issue either.

I then received a phone call on 25th January to tell me there was a consultation document coming out on the Monday and the Minister who contacted me then started to read out the section that related to the home education section – and you can understand my concern that we had gone from basically that we were going to publicise a consultation document, to a situation where there had been no communications and then suddenly (*Mrs Warr*: We were building –) we were bringing in a massive amount of legislation.

Mrs Warr: We were building as well, weren't we? We were building a relationship that has been so long overdue it is unreal and the fact that we had it – and for whatever reason, we have no idea why, we do not have it at all now. It has gone actually from the elective home education procedures to just complete and utter madness, in my opinion.

Mr Sewell: In fact the Department of Education had expressed an interest in home educators assisting them at the presentation to Tynwald Members of the procedures. We had got that far; so we were very far down the line.

Anyway, the procedures were read out to me and it was not until I saw the consultation document that I realised the actual question on home education in the second consultation document was even more leading than last time and repeated a lot of the information, including the 'ensure' duty of parents in this second consultation. It was a tick box and you could either say basically the legislation was sufficient or you required more legislation, and any comments you wanted to put in was reserved to the end of the section of the consultation document where you could actually say, 'Well, I don't agree with this and the alternatives are this, that and the other'.

So I personally decided not to fill in the consultation document. I decided to write to the Department. I thought that was the best way of dealing with it because the consultation document did not afford me the opportunity to express the view that I wished to express.

Mr Warr: One of the issues with the previous consultation as well was that they took no notice whatsoever of any comments that were made to them, and the outcome was basically how many people were in favour and how many people were against. Home educators being a small community, a minority in the Isle of Man, we are never going to win a popularity contest – we are going to get bulldozed by the majority every single time; and not to take into account the people directly affected by something, versus somebody who has no effect on them whatsoever, is perverse in some sense.

Mr Sewell: It is also worth saying in the code of practice that existed at the time that you are meant to do a qualitative analysis not a quantitative analysis, but the consultation response was actually a quantitative analysis only that had been done. In addition it said it gave evidence to promote enabling clauses – but you can see from the legislation they were doing the second consultation on that it was not enabling clauses, it was a whole raft of new legislation *including* provisions that were actually related to the fundamental part of the parents' duties for education. So they had been saying all along that the parents had a duty to 'ensure' and we were saying, 'No, it is to "cause"'; and then suddenly within the final document that came out that had been changed to the parents had a duty to *ensure* – which all seemed a little underhand and it all seemed to have been predisposed a long, long time ago. So it was a bit *déjà vu*-ish.

So if they were going to do all that and they were going to change the parents' provisions and the parents' duties, and also change the requirements for appearance to 'suspect' and also changed 'being educated in accordance to your parents' wishes', they were all fundamental education issues that changed the 2001 Act. They should have been in the preliminary consultation on the principles, I believe; and they were not.

Mr Warr: And those affect all parents on the Isle of Man, not just home educators.

Mrs Warr: Not just us, yes, everyone.

Q276. The Chairman: The previous group consisting of two staff organisations said that they had been contacted recently by the Department in relation to consultation on a second draft.

Have you been contacted further?

Mr Sewell: No, the last communications I had over the procedures was in May 2018. We were invited to a meeting with the Minister and three of us turned up to that –

Mrs Warr: That was in February.

1040 **Mr Sewell:** – in February, but we have heard nothing since. We were promised feedback from that meeting, which we have never had.

Q277. The Clerk: Sorry, can we just go through that again?
You had a communication in May 2018 about procedures – ?

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Mr Sewell: Yes, the last discussion I had with a member of the Department was in May 2018 saying they were going to release the consultation document where they did a stakeholder consultation with all home educators who had notified them that they were home educating.

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Q278. The Clerk: And did they do what they said they would do?

Mr Sewell: No, they did not.

Q279. The Clerk: And what happened in February?

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Mr Sewell: In February the second consultation document was released.

Q280. The Clerk: The one we are looking at now?

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Mr Sewell: The one you are looking at now, yes.
We were invited into a meeting to meet with the Minister and representatives of the Department.

Mrs Warr: That was on the back of this.

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Mr Sewell: We were expressing our concerns on how we had got from where we were in May, to February 2019. We did not really get a response but he said we would get further information and some of it related to safeguarding, but we have heard nothing since.

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Q281. The Clerk: We have got a document here and it says, ‘New Education Bill consultation open 29th January 2019’. So that is the second consultation and they got in touch with you at that time and invited you in, and you did not go in?

Mr Sewell: I did go in, yes.

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Q282. The Clerk: You did go in?

Mr Sewell: We did go in, but there were outstanding issues from that meeting that we have never heard anything from, so there has been no communication since then. *[Technical interference]*

1080

The Clerk: Thank you.

Q283. The Chairman: Given what you have just said, what legal provisions relating to home education do you think would be acceptable?

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Mr Warr: Well, firstly the provisions that they have put in section 78 have been copied from Lord Soley’s Bill for elective home educators in England, and that Bill was withdrawn because it had no realistic chances of passing. It was not being supported by the UK government.

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So, first of all, we wanted that whole section 78 taken out completely because England is not going to have it, Scotland is not going to have it, Northern Ireland is not going to have it and

Wales is not going to have it, so we should not have it either because it is not our legislation – it is not ours.

1095 We want the ‘suspicion’ to go back to ‘if it appears’; and we want education to be done ‘in accordance with the parents’ wishes’. So we want to return back to how the 2001 Act, as amended by the 2009 Act, currently works, which is almost exactly the same as the legislation in England, Wales, Scotland and Northern Ireland.

1100 **Q284. The Clerk:** Can we follow up on that just for a moment, because you mentioned before about this section of the 2001 Act – section 25, ‘Enforcement of parents’ duty’:

If it appears to the Department that a child of compulsory school age in the Island is not receiving suitable education ...

– the Department will serve a notice and ask the parent what is going on, I suppose is what it means. (*Mr Warr:* Yes.) How in practice is that supposed to work?

1105 *Mr Sewell:* That is all within the procedures, you have not had a copy of it. It is all explained within there. That legislation is identical to other jurisdictions and the procedures exist all round the United Kingdom and British Isles in relation to that. So if you have got a copy of the procedures that the Department developed that is all explained within there. Yes, absolutely.

1110 **Q285. The Clerk:** But I mean, it is intelligence-based, presumably. (*Mr Sewell:* It is –) ‘If it appears to the Department ...’. On what basis could it appear to the Department?

Mr Sewell: It is the same as any other legislation, isn’t it? You are presumed innocent until you are found guilty! There are all sorts of appearances that could occur.

1115 The Department knows quite a lot of the kids who are coming into home education because a lot of them have come out of the school system anyway. So the Department actually already holds quite a lot of information. So the appearances –

1120 **Q286. The Clerk:** Do you recognise the concern the Department could have that a child could be unseen?

Mr Sewell: No, I do not recognise that. The reason I do not recognise that is because you have got to register first, or notify, so we are not unseen; we are actually known to the – (*Mr Warr:* Invisible.)

1125 On top of that, our kids do not just live in isolation. The Island is a very small community and on that basis they have got to mix with all sorts of other people. My kids do loads of sport and loads of other stuff – they go swimming, they swim for the Island; so they are met by loads of other people like club leaders and the likes, who are trained in safeguarding as well.

1130 *Mrs Sewell:* A lot of them are actually teachers as well. A lot of the sports coaches are teachers.

Mr Sewell: Indeed. And on top of that they obviously regularly see medical professionals. So they are not unseen, they are *seen*.

1135 *Mrs Warr:* You go to a doctor, you use a dentist, you walk down the street, you have the local Constabulary and people pass you. I mean, it is everywhere; you cannot go far on the Isle of Man without being seen – and I am Manx!

Mr Sewell: That is the good thing about the Isle of Man. It is a very small community and everybody ... Well, let's put it this way: I am the Clerk for Peel Town Commissioners and on a regular basis people come into my office and know that I home educate my children. I have not told them, they just *know* that I do. It is because my kids are visible and if people want to get some information on home education I am somebody they might ask. So they ask me and that happens on a fairly regular basis. And our kids are asked questions on a fairly regular basis as you can imagine, when they are out at clubs – the kids asking about home education and all that sort of stuff.

So it is not a clandestine or closed society. We are well known in the community and our kids are well known in the community and they do their best to answer people's questions as and when they are asked, by adults or by other children.

Mrs Warr: There is also a list on the open page for Isle of Man Home Education of all of the activities available to children who home educate. It is a designated list, whether you do forest school, whether you do sports, whether you do music – those things are there for children to access. It does not give dates and times because we are entitled to anonymity, but if you want to contact the page and you want to join those activities all of those activities are available to people or children who home educate. And not only that, like Dawn and Derek have said, those clubs are run by people who are safeguarding – they have all got it. But that is all in the public domain – you can go to the open page and it is there.

Mr Warr: But there was one recent incident where home-educated children were about to participate in a public event and an employee of the Department of Education refused to name them as home educators, even though this was an event for children in schools. They refused to call them out as home educators –

Mrs Warr: Even though there were over 30 children there.

Mr Warr: And that is an example of where the Department has made us invisible; and we are not sure why.

Q287. The Chairman: This is one of the things that I put to the Chief Executive and you would pick up on a concern where he said words to the effect that, 'people may be invisible'. But from what you are saying, that clearly is not the – ?

Mrs Sewell: It is highly unlikely.

Mr Sewell: It would be very difficult to be invisible in the Isle of Man.

The other thing that the Department does have the power to do in case law, and they can use this as and how they like, is they can make informal inquiries and the procedures did include that – so they do not have to necessarily use the legislation, they can write to home educators on their notification list and say, 'You are home educating, can we have a little bit of information on this, that and the other?'

As I say, you do not *have* to respond, but if you do not respond then the Department may legitimately ask for further information. However, it does not allow routine monitoring. It does not allow people to harass you and it does not allow people to come and try and seek information off you on a periodic basis. It has got to be evidence-led, as you would expect. You are just fulfilling a statutory duty and as a member of the public you have got a statutory duty to educate your children and on that basis you are just fulfilling it. So why should you be thought to be guilty of an offence just because of the provision that you are providing?

Q288. Mr Perkins: Do any of you home educators bring in tutors from outside?

1190 **Mrs Sewell:** Some people do, I do not personally, but yes.

Q289. Mr Perkins: So how do you feel about the part of the Bill that says all tutors should be approved by the Department?

1195 **Mrs Warr:** I do not have a problem with that, *per se*, I do not.
I think that is speaking for me personally.

Mr Warr: I would not rely on the Department to do any checking for anybody else because some people come up all the time as problematic after they have gone through and been employed by all sorts of different people, so we would do our own checks.

Mrs Sewell: There can be a problem and it was raised in my local area, where they wanted to do a register of tutors. In some cases, tutoring can be provided by sixth-form students, for example. Very useful tutoring can be provided by them – they hold no qualifications, they are just friends of the family. On that basis, you would vet the person yourself and make a judgement as a parent whether that person was suitable to educate your child or not. And I would expect, whether the kids are in school or out of school, getting educated or otherwise, to carry out that duty of care as a parent.

1210 **Q290. Ms Edge:** Can I ask, when it comes to actually taking examinations what relationship do you have and what examination centre do you utilise? Do you automatically go to the University College or do you utilise our schools? What do you do in that situation?

Mrs Sewell: You could ask the schools but I think most home educators would use the College because there are certain advantages of using the College over schools. The College has a much wider range of students and, also, on the days that you actually go and take the exams if you can imagine a home-educated child going into a school where all the school pupils will know each other and they are all in uniform and so on, that would be a very intimidating situation. Whereas in the College, you do not have to wear the uniform and there is a much broader range of people there.

1220 So I would imagine if you are a child that has come out of school and you have got a relationship with that school and you have kept the relationship, you might go back and sit your GCSEs there. But on the whole I would expect that the College would be where you would go. It is certainly where we are making our arrangements.

1225 **Mrs Sewell:** And it is worth saying, as well, that the College has been very helpful. But they do not *have* to help us – it is down to the individual examination centre whether they help us or not.

1230 **Mrs Sewell:** I mean, that is one of the points: as home educators you do not actually have a right to take your examinations, you have actually got to ask permission and you have got to ask if they will take you on as an independent candidate and of course they can refuse to do that. You do not automatically have that right to go and do it; and of course all the examinations you take you have to pay for.

1235 The College has given me a ballpark figure of about £200 for a GCSE. So if you can imagine the number you might take – we have got three children and you are talking about rather a lot of money. And if you want to look at breaking down barriers for home-educated children taking GCSEs then there are quite a lot of barriers in place – money and the cost of it being one of them, and that is just the cost of actually taking the exams.

1240 So if you do it, the cheapest way you can take GCSEs is just by using the textbooks and working through the textbooks. One of my daughter's history text books, just for history,

was £60. Quite a lot of home educators will use tutors or online providers if they feel that they have not got that expertise. You are talking about £350, that kind of price range. So you can see that all adds up. Most home educators will take them over a period and they will not take them like schoolchildren take them as a huge number in one go, they tend to take them over a period of years, a few at a time, for one of those reasons.

Q291. The Clerk: What was the £350 figure?

Mrs Sewell: Oh that, for example, would be an online course provider or a distance-learning provider if you wanted that kind of support.

Q292. The Clerk: Over the course of a year? (**Mrs Sewell:** Yes, that is kind of –) Or £350 a week; or what?

Mrs Sewell: No, the total cost for the course is about £350.

Q293. The Clerk: Which would typically be a year's course?

Mrs Sewell: Yes.

Q294. Ms Edge: With regard to subjects like science, what access do you have? Do you have the opportunity to use Department of Education facilities, or is that again on request and whether it is agreed?

Mrs Sewell: Yes, we do not have any right to use the Department facilities; you would have to request that.

Q295. Ms Edge: And have you found any barriers there with regard to access?

Mr Sewell: I will answer that one!

My youngest child is particularly keen on sports and he plays for most of the Ramsey teams, mostly with Ramsey coaches, school teachers from Ramsey Grammar. So, yes ... *[Technical interference]*

We approached the Department about the possibility of ... sport, because he might want to do a GCSE in physical education or something like that, which is hard to do if you have got to do the practical side of it. The Department was very supportive of it. We have been in touch with the Department about it and have heard nothing since, so there obviously is a barrier locally to that and I do not know why.

Mrs Sewell: We provided information to the Department and the Department asked if they could forward it to the school with a request, and we have not heard anything back. As far as we are concerned we did not want to push for that because we do not really want to be forcing the school into taking our son into that situation where they really do not want him. It is not fair to put him in that situation so we have just left that as it is.

Q296. The Chairman: Twice now, I think, during our discussion today you have mentioned that you have not had responses from the Department. I mean, there are – and Mr Sewell will be aware from his role in DOI – requirements for a Department to respond within a reasonable time. I am very disappointed that appears not to be the case here.

Mr Sewell: Yes, if I could probably just clarify that, they were not written communications, the response we are waiting for was from a meeting and we expected to get the response to

1295 facilitate our response to the consultation. So I have not written to them, so there was no
requirement on them to respond within 10 days. But they did not respond before the
consultation finished, so the door is closed and there is no point pushing at it from that
perspective.

1300 The other one is, we saw the Department has no statutory duty or no requirement. We
realise when we are home educating we are opting out and therefore we are not expecting the
state to pay for anything. We will pay for everything ourselves and provide it as best we can for
ourselves. However, it was offered to us by the Department at one of our meetings and we said,
‘Oh well, okay, we will have a look at that and see if that is feasible’. But you can understand
from what my wife has just said that you would not want to be pushing your children into that
situation if there is a bit of resistance to it, and we do not know what the background is and we
1305 did not think it was appropriate to ask, so we just left it to run.

Q297. Ms Edge: There is a bit of a contradiction there though that they are worried about the
visibility of the child but then when you say can they come and join activities in a school you do
not get a response.

1310 **Mrs Warr:** It does say in the Bill though, that it is offered, like a carrot and stick, where we
can have access but it is discretionary.

Mrs Sewell: I think it is unlikely to happen.

1315 **Mrs Warr:** So when you want it you might actually have that cake and eat it, but maybe not
now. And so you are up against it when your child may need access to something specific, if you
are in the middle of doing physics curriculum, for example, and you might need access to
somebody who is a physics teacher, or a lab or something like that, and you were to request it,
1320 there is no guarantee you can get it.

And obviously that is also taking into consideration how schools operate, you cannot just
allow somebody to wander in off the street; and I am a rational human being with reference to
that, but it is one of those things that are offered but then in essence you have it removed.

1325 **Q298. Ms Edge:** Are you aware of anybody that has accessed any facilities?

Mrs Sewell: We have heard of children doing art lessons. But again I think they are probably
likely to be people who have come out of that school and already got a relationship with the
school, rather than just a home educator asking for that.

1330 **Q299. The Chairman:** Is there any form of assessment of home-educated children that you
would find acceptable?

1335 **Mrs Warr:** Benchmarking – how? Are you going to benchmark it against a school? If you are
home educated, the essence of home education is you educate at home. If you go to school
everything is benchmarked on the curriculum, so unless you are going to enforce a curriculum in
school, how do benchmark it? What use is an assessment to the Department when you educate
your child at home?

1340 **Mr Warr:** There is another issue there, that the assessment of children in school is currently
done for the benefit of the child – it is done so that teachers can see where a child is doing well,
and where not so well, and where they can target resources to help that child achieve his
potential. The proposals that the Department wants to put through are not for that purpose at
all, they are there to allow parents to continue to home educate and not to help the child

1345 develop. For example, the assessments in school are carried out by the child's teachers which would mean that in the case of our children it would be Diane doing the assessment.

I am sure the Department would not take that on board at all and they would bring in a stranger who does not know any of the children, or how well they do, or what they like or do not like, to make an assessment in the space of – what? Hours? Minutes, even? And then sort of stand on the back of that and that is unrealistic.

Mr Sewell: I think also if you are going to apply that sort of assessment to home-educated children you would have to do the same to school-educated children as well, so they would have to be tested externally. And that would not be reasonable for them either, I would suggest.

Mrs Sewell: No. I used to be a teacher in the UK and I have been through an OFSTED inspection as a head of department, and even in that situation where you have got someone coming from outside the school they do not assess individual children's education, they are assessing the school as a whole. They do interview some children but they do it in a group and they are not looking at that individual child's work and development and so on. They actually just take the responses of the children.

So you are talking about applying something to home-educated children that just does not happen; and you are talking about a very high-stakes assessment. What would be the result of maybe getting the person thinking that they have performed poorly? You are talking about the child perhaps getting a school attendance order; a huge change in their lifestyle – maybe they have come at school through bullying or anxiety problems, and then having to be put back into school. You are talking about a very high stakes, very stressful situation.

And the Department often says, 'Well, what's wrong with an assessment, because kids in school get assessed all the time?' But you are just not talking about the same thing.

Q300. The Chairman: We as a Committee met, as I said to the previous group, with representatives from the Department of Education, Sport and Culture on 8th March. I do not know whether you have had an opportunity to either listen to or read any of those? (**Mrs Warr:** Yes.)

Are there any comments you would like to make about what was said on that day?

Mr Warr: Yes.

The Chairman: From Mr and Mrs Warr, I think we have received further written representation.

Mr Warr: Yes, most of it is in written form.

Mrs Warr: I do not know if you need – ?

Mr Warr: No, I do not think I have got it with me.

The Chairman: That is all right, if there is nothing you need to add to what you have –

Mr Sewell: There is something from a consultation perspective that I would like to add which is obviously the Department, from questioning, was saying that the procedures had been written by home educators. I can advise you that was *not* the case; it absolutely was not the case!

Mrs Sewell: The procedures were written by Andrew Shipley in the Department.

1395 **Mr Sewell:** By Andrew Shipley, and that is why it has got a Government logo on as you would expect. We would not be able to write something with a Government logo on it.

So yes, it was done willingly and with the knowledge of the Department and they compiled the documentation. They even did the consultation. We, obviously, would not have a list of all home educators on the Island – they would, through the notification procedure and they did the consultation ... we do not know the outcome from it, other than they have consulted, but that was it.

1405 **Mrs Warr:** Yes, and we did not hear anything back then until the February, and that is when we heard that the elective home education procedures that we put had together had just been thrown out of the window; and any kind of stepping stones we had towards building a relationship between us and the Department seemed to just be thrown out of the window. It would be really nice to know what happened in between that – and we have tried to find out, with no event whatsoever.

1410 **Mr Warr:** No-one has been able to give us a clear answer of what exactly happened, which is very frustrating.

Mrs Warr: Because we *would* like to work with the Department, it is not that we do not want to.

1415 **Q301. The Chairman:** Again, I think that is what the previous representatives who were in front of us said as well, which is unfortunately worrying.

1420 **Mrs Sewell:** I think we have been home educating here for 12 or 13 years and during that time – now we are coming towards the end of it, so in a lot of cases what we are discussing now will not affect us a great deal. But one of my overriding things is that ever since we have been home educating – especially in 2008 with the Miscellaneous Provisions Bill which we campaigned against – we have always felt that the Department is hostile to home education. And although we have not had conflict with them personally, home educating is a very difficult thing to do, it is a huge responsibility – very enjoyable; but home educating in the context of feeling that the Department is actually hostile towards you is very stressful. That is kind of the context of your everyday life.

1430 What I really wanted to do was to build a better relationship with the Department so that home educators do not feel that, but that if they need support or help or anything they can contact the Department and it is not going to be a conflict situation. I think that is really important because one of the changes I have seen during that time is that actually more and more home educators now are people where children have had difficulties in school and have *had* to leave, and they are home educating not through choice, really, because it is like they feel they have got to for the sake of the children. So I think it is really important that those home educators who really would like a better relationship with the Department, and maybe some support, can actually have that choice; and those home educators who do not want that, do not have to have it. But I think at the moment there is such a feeling between home educators and the Department that they would not ever go and approach them.

1440 I think actually Prof. Barr said, in answer to a question if he had ever been asked ... [*Technical interference*] and I did think that that is not the relationship that is good for the children, and we would like a much more conducive, (**The Chairman:** Inclusive.) helpful relationship than that. That is really what we are trying to achieve.

1445 **Mrs Warr:** You suggested we put the elective home educator procedures in place, and it was suggested that maybe a hub could be created – and that it would be non-statutory, it would not be legal – so that people could go once a year and they could actually touch base with the

Department. That was actually thrown out there and it could have been sent out with the elective home education procedures to all of the home educators when that email went out for feedback on it. I know some people are open to it; some people are not – which is absolutely fine. But with it not being statutory if you do not want to do it, you do not have to do it; but the ones who do, can.

Mrs Sewell: I think as time went on you could build that relationship and then more and more people would want to get involved.

Mrs Warr: Yes, and it needs to be built –

Mrs Sewell: But at the moment the Department just seems to want to deal with us through punitive legislation, and of course that is not really helpful in building a positive relationship.

Mr Sewell: Yes, that is similar to what the group before us said when they came in.

I think if I may, just one other thing that is probably worth saying, because it is unique here compared to the other jurisdictions people were talking about. The Department of Education is the lawmaker, it is the enforcer, it is the local authority making a provision. It is also the appeals body as well. It does not leave you a lot – (*Interjection*) and there is nothing in the legislation to safeguard any of that; and once you get yourself in a dispute with the Department – and fortunately we never have done so far – but if you were to, there is really no way of getting yourself out of the procedures or out of the legislation once it has started.

So that is why we wanted to develop a more friendly conducive relationship with them.

Mr Warr: I think the lady earlier mentioned something similar, that there is no kind of separation between the Department and everything; and I think similarly in the recent report on the Hospital they also found that the closeness of the policy and the delivery was harmful to its efficiency, and potentially it is the same situation we have got with Education.

Mrs Warr: Also, if you have got children who are coming out of school and choose home education, it keeps the door of communication open. If you have got that structure there it means that they are not completely alienated and they are not hidden; they have that dialogue there and it is not hostile. It is not, 'We're going to fine you; we're going to force you to do this and force you to do that; we are going to assess you, assess you, assess you'. All of that is removed and you get clear dialogue to build on, which is positive for a child – not an *adult*, a child.

Mr Warr: But for that you need trust, (**Mrs Warr and Mrs Sewell:** Yes.) and as we saw last year, all the trust that we built up suddenly vanished and we do not know why.

Q302. Mr Perkins: Have you any evidence of the school pushing children out to home education that they are finding difficult? (*Interjections*)

Mr Warr: It happens in England. I am not aware of any formal investigation by the Department to find out whether it happens over here, but I know it happened in England and there have reports on that. But Diane is approached regularly by people –

Mrs Warr: Yes, I am aware of situations where that has happened.

Mr Warr: – whose children in school are suffering with anxiety or depression, or whatever it is, and they are desperate for a solution and they cannot seem to sort of –

Mrs Warr: They are desperate for education and they are desperate for stability and those two things are not compatible in one system if it is not diverse enough to accommodate it.

1500 So essentially they have to either pick psychological stability or education, and one will fail. You cannot have psychological stability and education unless the two things work holistically together. You have to be psychologically stable to access the education because if that is not there, the education part of it is a waste of time.

1505 **Mr Warr:** And hence you get behaviour problems and so forth, and then they wonder why.

Mrs Warr: Yes, it just escalates.

The Clerk: Excuse me, Mr Cretney, I am sorry. I have just had a note: is somebody sitting very
1510 close to a microphone? If so, can you sit back please because it is interfering with the sound.

Mrs Sewell: Is that me?

The Chairman: It could well be me!
1515 Anything else?

Q303. The Assistant Clerk: Our previous witnesses who were in the chairs before you, suggested the idea of a statement of intent where home-educating families would set out their intentions for how they were going to educate their child in the coming year and what attainment they might expect of them, might be a quite a reasonable way of measuring the
1520 educational attainment of a child.

Would that not be a reasonable way of doing that?

Mrs Warr: You are back into curriculum and benchmarking again. You are back into that
1525 process where if you use autonomous learning and you follow the child, and as they get older you can then put in a more rigid structure like a curriculum and you can do more specific tailored subjects like geography – or if you really love history, if you love art, if you love music you can really hone those skills.

Benchmarking over a period of time when they are so young just seems kind of pointless as a
1530 home educator. Not in a school, I can see the point of it. But as we are, it is like getting up in the morning and setting out the structure of our entire day and then handing it over and having people determine whether I structured my day appropriately, and my child's day appropriately. I do not think most people really understand the holistic approach to home education, because it is about education but it is about how children access education autonomously and with the use
1535 of the curriculum. So to actually benchmark it with only the use of the curriculum kind of narrows that playing field with which a child can actually access education as a whole – because at school you have only got the curriculum.

Mr Warr: One thing as well is that you would not necessarily know what you were going to
1540 do right over the year for everybody, because during the course of a year you might decide to do one thing ... committing yourself ... Not being able to change that would be constrictive.

Mrs Warr: I think it would depend on how flexible that was because again ... *[Technical interference]*

1545 But before this, I would have described how we did things was mainly curricular. So at the beginning of the year I would start with some ... *[Technical interference]*

For example, a few years ago I wanted to focus on writing – one of the first things I did – and I had this idea of doing a notebooking project ... notebooks and diaries ... and it was not really sparking the children's interest. So we looked at Scott of the Antarctic's diary and they found

1550 that really interesting, and then we went to Shackleton from there, which we did not plan; and then we started looking at Antarctica.

Then at the same time the school's Royal Shakespeare broadcast did *Henry V* and, again, at the beginning of the year I did not know what their programme was going to be so I did not know we were going to end up doing that. So then we ended up comparing the leadership
1555 qualities of Henry V and Shackleton – and it worked out and it was brilliant.

Then we did really good projects on Brexit, examining all the different papers and how they covered it. But you do not know at the beginning of the year that these sorts of things are going to happen.

So in terms of a teacher it is like your dream and you can go off on these rabbit trails of whatever sparks your interest, with still having that overview that you want to improve skills in
1560 this area. But I could not have written down at the beginning of the year that was what I was going to do. And if I had committed myself to the plans that I had at the beginning of the year that I then ended up abandoning because something better came along ... Sorry! Would I have had the flexibility to go with all those different projects that we actually ended up doing?

1565 So it is things like, you will go to the library and they will have a really great book in and you go, 'Oh that's brilliant, we can do a lot with that'. But you do not know what sorts of things are going to come up. So at the beginning of the year I had a kind of plan of things I wanted to do, or skills I wanted to improve on, but how that actually ended up happening would probably be something quite different. So you have got a huge amount of flexibility that schools just do not
1570 have and people just tend to look at it through a school lens.

Mr Sewell: I think that is the key, what you have just said at the end. When you asked the unions before, they are looking at it from a school or home perspective – that is what they think it is.

1575 My wife will tell you when she started that is probably what she envisaged to start with, but there are so many different ways of teaching and engaging your kids and you have got to go with what they are interested in as well as teaching them the basics.

Mrs Warr: And the strength of the child – you have got to go with the strength of the child, not necessarily just scripted stuff.
1580

Mr Sewell: Yes, absolutely.

I regularly tell people about how I went to an all-boys public school and they forced me to do French right up to O-level in those days. I was the biggest nuisance in that class because I knew I was not going to do it but they forced me to do it, and I had to do it because that was part of the
1585 curriculum. It probably wasted everybody else's time in the class, trying to keep me under control, where they would probably have been better letting me go and do something more like maths, for example, which was something that I really loved doing.

So home education does allow you that flexibility that school education does not.

1590

Q304. The Chairman: So did they find a solution for Brexit and have they passed it on? (Laughter)

Mrs Warr: Well, we are still following it obviously, but yes we did a really good thing. I bought every newspaper I could find and we laid it out in what we thought the political
1595 spectrum was and they each made notes on who they thought that newspaper was aimed at.

There is a company called Future Learn – I do not know if you have heard of it? They provide free-to-do courses from universities – and there was a University of Leeds course they were doing that we followed.

1600 There is just so much out there, so many different options that, yes, I can see where they are coming from in saying at the beginning of the year what are you planning to do? But it just kind of – (*Interjections*)

1605 **Mr Sewell:** But you have got to remember you are put in a workplace in there and, for example, teachers are being paid to do a job, so ultimately they are going to get an appraisal at the end of the year like I am, and like probably most people in this room are who hold a job. You get measured against your targets that your manager has set you ... Obviously in the Department of Education there is a curriculum sat on top of it –

1610 **Mrs Sewell:** The other thing as well is if you get your targets set, that you just focus on the targets and then lots of other things go by the wayside while you focus on the targets.

Q305. Ms Edge: Do you find – both of you – that you are not restricted by your child's age?

1615 **Mrs Warr:** You are actually developing them by their developmental ability separately. That is preferential, but that is how I choose to do it and that is how they choose to have it, so that is only how I do it.

1620 **Mr Warr:** But yes, they do it at their own pace –

Mrs Warr: They do work to their own ability and aptitude – they do work out where they are at and where they are meant to be at that time and you do know. Obviously, I do look at the curriculum and to a certain extent I do use it as a benchmark, but it is having the flexibility to move in and out of it which for me has been invaluable.

1625 My son was at school – our second one, not so much – but he came out of the system because the system did not work for him. So obviously we took on full responsibility for his education which I really do not regret. But it is actually being able to see the difference between prescriptive and non-prescriptive, and the difference in a child between prescriptive and non-prescriptive which has been *massive* for me. I had no intentions of home educating, unlike
1630 Dawn, and once it picks *you* and you do not have a choice because your child is entitled to an education, but it is also entitled to be psychologically stable at the same time, and you have to make a choice. They are entitled to both; they are not entitled to one! So you have to make a choice and you make the choice, and then once you get them to where they need to be then you start hammering all the academic stuff home and you start working on it bit by bit, and you do
1635 not give up.

Mr Warr: And even worse than the fines, or even the threat of imprisonment, the thought of forcing our children back into school is the worst thing you could do to them – if they were not happy there to start with.

1640 **Mrs Sewell:** I think as well you find that communities will police themselves. So the kind of suggestions that have been in the Bill – those assessments – you are then going to have home educators thinking, 'Right, I have got to pass this assessment; how am I going to pass this assessment?' And then they will perceive what the Department wants and what is going to please them. Then you will end up with a community that will home educate that way, because
1645 they need to pass their assessment so that they do not end up with the horrible consequences of not passing this assessment. You will just end up in a situation where people home educate according to how they think that the Department is going to approve; and that is obviously going to be detrimental to the children in a lot of cases and cause a lot of stress then, that there just
1650 does not need to be.

The Chairman: I think we are probably getting towards the end. We have gone into much more depth than perhaps strictly only applies to the Bill but I think it has been a very interesting session, and we would like to thank you, not only for your written submissions but also for your contribution today. *(Interjection)* That's fine!

1655 Thank you very much indeed. We will now break until the next session.

*The Committee adjourned at 3.35 p.m.
and resumed its sitting at 3.39 p.m.*

Procedural

The Chairman (Mr Cretney): Welcome to this public meeting of the Social Affairs Policy Review Committee, a Standing Committee of Tynwald. I am David Cretney MLC and I chair the Committee. With me are Mr Martyn Perkins MHK and Ms Julie Edge MHK. If we can all ensure our mobile phones are off, or on silent, so that we do not have any interruptions and, for the purposes of *Hansard*, I will be ensuring that we do not have two people speaking at once.

1660

The remit of the Social Affairs Policy Review Committee is principally to scrutinise the established but not emergent policies, as deemed necessary by the Committee, of the Department of Health and Social Care, the Department of Education, Sport and Culture and the Department of Home Affairs.

1665

Today, we are looking at the Education Bill, which has been much discussed.
Our final speaker today is Mr Tristram Llewellyn Jones.

EVIDENCE OF Mr Tristram Llewellyn Jones

Q306. The Chairman: Good afternoon. Would you like to make an opening statement?

1670

Mr Llewellyn Jones: Good afternoon, Chairman, lady and gentleman of the Committee, and the Clerks. Thank you very much for having me here. I am aware that I rather invited myself at the last minute and you squeezed me in, and I am very grateful.

1675

My submission and my evidence today are really about the legal technicalities of the legislation, how it is supposed to work and the human rights opinion from Quinn Legal Advocates. So what I would like to do is briefly introduce myself and then – I have given you a copy of the submission I sent through yesterday – I would like to walk you through the various legal references and make the coherent argument, if that is acceptable?

Q307. The Chairman: That is fine, thank you.

1680

Mr Llewellyn Jones: I was a home-educated child in the 1970s and went straight from home education into the Royal Air Force, trained as a pilot and fetched up as an airline captain. I have been home educating our two children for the past eight years. So that is my experience.

1685

The new Education Bill is a straight breach of the Isle of Man Human Rights Act and that needed to be articulated by a local Manx advocate. So after a crowdfunding appeal successfully raising £3,000, Quinn Legal were paid and instructed by myself and another home-educating parent to produce a human rights opinion on the new Education Bill.

Now, to go back to the original legislation that we currently operate under – this is the Education Act 2001 – and in that the home education provisions were introduced by the then

1690 Minister into the House of Keys, stating quite clearly it is the parent's job to educate children,
not the Department's. The Department's job is to provide the schools. The Minister said clause
17 provides for education 'otherwise than at school' by the Department. Again it is the duty of
parents to educate children, not the Department. The Department has a statutory duty to
provide schools or other places of education for children. That was reiterated by Dr Mann in the
Legislative Council: again, it is not the Department's job to educate; it is the parent's job to
1695 educate the children.

The responsibility, Dr Mann said, for the child to be educated rests *wholly* with the parents,
not with the Department. Now, that legislation is extant and effective. It also complies with
Article 26 of the United Nations Convention on the Rights of the Child which says that:

Parents have a prior right to choose the kind of education that shall be given to their children

So it is quite clear that education is a parental duty and that is as simple as that.

1700 Now, the way the 2001 Act works is very similar to the 1944 Education Act in England.
Section 24 says:

It is duty of the parent of every child of compulsory school age to cause him to receive suitable education, either
by regular attendance at school or otherwise.

'Otherwise' being what it says: anything otherwise than at school.

The next section says:

The Department shall enforce the duty imposed by subsection (1).

And the next clause, 25, describes how this is done and it says, as you previously discussed:

If it appears to the Department that a child of compulsory school age in the Island is not receiving suitable
education, either by regular attendance at school or otherwise, it shall serve a notice ... etc.

1705 Now, this is based on, as the previous witnesses said, the fundamental principle of innocent
until proven guilty. If it appears, it is a standard enforcement clause in law requiring evidence of
something to present in the normal way, as it would with anything else that there is a
programme before the legal powers kick in. It does not require pre-monitoring. You cannot
regulate a home. Home education is just that, the clue is in the name: 'home'. It is a private
1710 activity under the autonomy of the parents. That is what the law is written to do.

There is another human rights report which you have, written by Mr Allan Norman, a social
worker and human rights lawyer in England, and he described how 'if it appears' works in
practice. It is a compromise between the rights of the parents on the one hand and the wishes
of the state, that is the Department, on the other hand. For parents it is uncomfortable, because
1715 it embodies the principle that their right to home educate is not unfettered and there may come
a point at which the state steps in. For the state, that is the Department here, it is
uncomfortable because it embodies the principle that the right of the state to step in is not
unfettered and there may be a point at which it has no right to step in. So there is a line in the
sand. Okay?

1720 The Human Rights Act requires a threshold, so that is a trigger before something happens.
You do not automatically suspect every car is speeding, the car presents with the information,
appears to be going too fast and then the law intervenes. But you do not automatically issue
every car with a speed monitor and have it monitored live. So that is your freedom.

1725 The Human Rights Act says that interference in the family life must not be arbitrary or
unnecessary or disproportionate, because the right to direct and choose a child's education is a
parental right, because the primary role of the state is to support parents rather than impose
upon them. For all of these reasons the right of the state to interfere has to be limited.

Now, that is the condition that home education operates under. It creates a certain amount of tension because you know that if your child does not present as educated, the law might kick in, so you could argue that is useful. It gives the Department the power to step in if a problem presents, but it does not allow policing or monitoring or regulating what goes on in the home. It cannot. That is what the Human Rights Act is there to protect.

The Human Rights Act was written at the end of World War II according to the social teaching, the Catholic Church in the first part of the last century. It was introduced by the Tory government and it was designed to protect the family as a unit from public authorities – fundamentally from bullying by public authorities. And it is necessary in this world for that right to be upheld.

Now, here I come to the bit about the law. We have got the Education Act 2001 and nothing has happened since that legislation came on the statute books to trigger any change in the law whatsoever. Freedom of Information requests found that since then the Department has written four letters to home educators asking about what is going on with their children. Satisfactorily answered. Not one school attendance order. Zero. In a typical English local authority with *circa* 300 children being home educated, they might have a school attendance order once every year, or even less. This is a very, very small problem when the state has to kick in; it is minuscule. But the suspicion has been created.

Now, you could say the British attitude is that home education is legal but you are treated with suspicion. In America it is mainstream. It is as simple as that. But again, the statistics show there is not a problem.

There is a research paper which I have highlighted to you, by Wendy Charles-Warner – quite recent, 2019 – and it quite clearly explains that home-educated children are statistically over-referred to Social Services. Over-referred, okay? But there is no higher rate of incidence of child protection plans. So they are no more at risk than children in school. There is just more suspicion.

So we already live under this more suspicious atmosphere. But when you drill down to statistics the courts are not finding a problem. So it raises the first question: is monitoring justified? And quite simply it is not, because there is no evidence.

The Department has not produced any evidence of a change in the law. It has not produced any study. It has not produced any research. So, on that basis, I am struggling to ask the question: why are we sitting here? Because it is such an obvious point and it is the point that Quinn Legal have drilled down to.

Now, coming on to what ‘if it appears’ means, the baseline is that the Magistrates’ Court will assess if they have a child before it, or a parent before it, with a school attendance order. Home education law works on the balance of probabilities and the evidence the court requires to satisfy itself that an adequate education is taking place, is such as would convince a reasonable person on the balance of probabilities. So if you can convince your neighbour or your cousin that you are providing an education, then – never mind what is in guidance, guidance is non-statutory and is an opinion – that is what the courts will assess.

So my advice to a parent who is worried about interference from the Department or a local authority in England would be to ignore the interference and, if you are comfortable, just present the information to the Magistrates’ Court and get it discharged, because they will be three ordinary people asking an ordinary question: are the parents educating? It does not matter what form, just is an education of some sort being provided?

Now, that is the baseline. In the Quinn Legal opinion they picked up very quickly that the Department said home education is not in itself a risk factor for abuse or neglect. So they have cleared the decks, but they created this argument that children can become invisible. Well, since parents are responsible for their children, they are not invisible because they are with their parents. So where does the argument come in that we necessarily have to be checked out by somebody who works for a public authority for the children to be safe? It is a *non sequitur*. It does not follow because, as I have indicated, the statistics show there is no greater risk rate of

1780 child-protection plans for home-educated children in the UK. And the Isle of Man statistically mirrors the UK in these matters. But the Department has sought to fundamentally change the relationship. They want to remove 'otherwise' and we are now to have 'a reasonable degree of influence' over the education. They said it is, 'whether or not by regular attendance at a school'. So it is school, or not. What is not?

1785 Then, under clause 78 of the Bill we 'must comply with any request for information' – a provision that I think was attempted about 10 years ago in the Education (Miscellaneous Provisions) Bill, which again was negated by a Quinn Legal human rights opinion. But the Department goes further and they want 'regulations about the methodology of assessments'. So that is the trigger for them providing a curriculum; so they are then in the position of control; so it changes.

1790 The question is: why? And how does the Human Rights Act protect us? The Human Rights Act says 'an interference' will be considered 'necessary' in a democratic society if it answers a 'pressing social need'. Clue: pressing social need. Case law: where is the 'pressing social need'? They have not answered it. They have a point of view, fine; but that does not mean to say that that overrules or trumps the Convention on Human Rights.

1795 They already have a wide range of statutory powers – wider, I think, than in the jurisdictions in the UK – but they have never used them. Again, they have not commissioned a study and Quinn Legal have said:

... the Bill primarily appears to seek to impose, via primary legislation, a particular philosophy or approach towards the provision of home education on the Isle of Man (i.e. that *[it]* is only, and exceptionally, to be permitted if subject to prescriptive, and potentially open-ended, regulation and enforcement). Such approach fails to recognise the significant level of legal protection afforded ...

1800 under the Isle of Man Human Rights Act – Article 8, the Right to Respect for Private and Family Life; Article 9, Freedom of Thought, Conscience and Religion; Article 14, Discrimination. Linked together, they protect home education.

Now, to come back to one final point, we to an extent I think in the Isle of Man are under the gaze of the United Kingdom on human rights. It is an international treaty. I think it was the Kilbrandon Report that said if there is a fundamental difference in policy between the United Kingdom and the Isle of Man, then the UK authorities will seek to resolve that. The United Kingdom is looking at home education legislation, but it is *extremely* limited. It is a register contained by a local authority with no extra powers and it is already proving contentious. So I think we are going to attract attention in the Isle of Man with this controlling regime and it is going to come to people's attention.

1810 Lady Hale gave a talk to the Advocate's Association last year and she spoke of:

The spectre of the totalitarian state *[trying]* to separate children from the subversive influence of their families

And she said this is absolutely key.

There is an inextricable link between the protection of the family and the protection of fundamental freedoms in liberal democracies. The ... concept in Article 1 of the Universal Declaration *[of Human Rights]*. . . is premised on difference. If we were all the same, we would not need to guarantee that individual differences should be respected. Individual differences are the product of the interplay between the individual person and his upbringing and environment. Different upbringings produce different people. The first thing that a totalitarian regime tries to do is to get at the children, to distance them from the subversive, varied influences of their families, and indoctrinate them in their rulers' view of the world. Within limits, families must be left to bring up their children in their own way.

1815 So to wrap up, we are moving from a world where 'it is education or otherwise' has never been a problem, to a world where the Department has got enough cleverly devised, linked, legal triggers that they will be able to direct and control the education of the children. And that, simply, is a clear breach of the Human Rights Act. And that, essentially, is my argument.

The Chairman: Okay, thank you very much for putting it so cogently.

Q308. The Assistant Clerk: May I ask a question?

1820 Is there any precedent you are aware of holding that the freedom to home educate actually forms a protected element of family life under the Human Rights Act?

Mr Llewellyn Jones: Precedent? Well, yes, because it has been in primary legislation in Britain since 1944 as education 'otherwise'.

1825 **Q309. The Assistant Clerk:** But no decision of the court? So this is a novel area of law?

Mr Llewellyn Jones: It is primary legislation. It has not been countermanded by case law. Now, the Department for Education in Whitehall issued a very contentious public consultation on non-statutory guidance and to have these legislative proposals to register. They are designed to trigger and test case law. But I do not think they are going to get very far with it because, as I have said, when these matters go before the courts it is usually clear-cut – either the parent is providing an education or not. If not: a school attendance order.

1830 The legislation works, so there is no precedent, no. This is primary legislation. But it has always been the case in Britain that education is a parental responsibility.

1835 School is not compulsory; education *is* compulsory – parental responsibility. The law has always been that way and even in the current times, the UK government is not planning to change that. They are not changing 'if it appears' and education 'otherwise'.

So, no, there is no precedent. I mean, it is primary legislation, nothing has occurred in case law to stop it.

1840

Q310. The Chairman: Do you have any comments on the consultation process for the draft Education Bill?

1845 **Mr Llewellyn Jones:** My only comment is that I totally agree with the previous witnesses. It was leading questions. It was basically a referendum and there will be lots of uninformed opinions on that. There was not a proper consultation with families. I do not think there was ever any intention to listen. So, no, it was not done in the spirit of the Council of Ministers' Code of Practice on Public Consultations – as simple as that.

1850 **Q311. The Chairman:** If Tynwald in its wisdom were to enact the draft Education Bill in its current form, what would you do next?

1855 **Mr Llewellyn Jones:** Tynwald, like the United Kingdom Parliament, is at liberty to pass a law which breaches the Human Rights Act. The UK Parliament regularly does that and then it is subject to challenge. Somebody gets compromised by it and it goes back before the courts and gets corrected. It regularly happens in the United Kingdom, it is called a common law jurisdiction where we get the law changed according to what is actually going on in society, not what government perceives.

1860 If you look at the last page that the Quinn Legal opinion, what he has said is that this opinion could be used, basically, by someone who is a victim of the legislation as evidence in court that the legislation is excessive. So my prediction is that if they enact the legislation, a family will get compromised and it will end up in court.

1865 The point about Tynwald is that you passed the Human Rights Act; we did not. So surely the best thing is to make sure the legislation complies with the spirit of it and protects the family. You have not got evidence that there is a problem. So the current law is extant, it works. My pitch is: leave it as it is.

Q312. The Chairman: Following on the same kind of line, really.

Obviously the Attorney General will advise the Council of Ministers or the Department of Education, or whoever, whether or not a piece of legislation is human rights compliant and obviously each piece of legislation has a note on it that it is determined that it is human rights compliant. If the Bill was to be enacted as drafted and then, following a legal challenge, it was determined by a court to be human rights compliant, would you no longer be opposed to it?

Mr Llewellyn Jones: Would I no longer be opposed to it? Well, one has to respect the opinion of the courts. But I cannot see that the court would find it human rights compliant.

If I could draw your attention to the 'Named Person' case in Scotland? Scotland decided to allocate a named person or state guardian to every single child with responsibility for the child's wellbeing. They came up with another pointless argument that a risk to the child's wellbeing could be a risk to the child's safety. So they needed to get lots of information on children with low-level problems – really low-level problems. That obviously affected home educators who got quite heavily involved. That went all the way to the Supreme Court, who are the same bench who chair the Judicial Committee, the Privy Council, who are the final arbiters for the Isle of Man, and they threw it out. The Scottish Government had to pay quarter of a million costs to the Christian Institute who brought the case because quite simply it was excessive. They had not made the case that it was proportionate or necessary.

Now, the problem in having done it is that public authorities in Scotland have just been ignoring it. So it is going back before committees in the Scottish Parliament as well, and it is rumbling on. So there you go. I am quite convinced that if it came to that challenge the courts would uphold the rights of the parent. As I say, the trick is to avoid that.

Fundamentally, we are talking about quite abstract things but you are talking about giving arbitrary powers, very controlling powers, to a Department which has nailed its colours to the mast – it quite clearly does not like home education. It does not like it; it does not approve of it. The establishment does not like it – generally, civil servants do not. They are seeking to put in a regime and that means that some poor families are going to get interfered with. It is very, very easy to go into a family for half an hour and assess the children, get them on a bad day and *completely* get it wrong and set the hares running, and drag a law-abiding family doing their level best for their children, through the mill. That can cause huge distress.

Now, it is your job to stop that in the first place. It is as simple as that.

Q313. The Chairman: I have asked this question of the others who have been here this afternoon. I do not know if you managed to either catch up or hear real time, the Minister and Chief Executive when they were in speaking to us on 8th March, and was there anything you wanted to pick up on from the conversation that day?

Mr Llewellyn Jones: I just found it hard to listen to, to be perfectly honest, sitting in my home listening to somebody who just does not know what they are talking about.

No. I mean, I followed the comments of the Chief Executive all the way through from, I think it was three years ago, when they referred to home education with the pronoun 'that' in a dismissive way. And, okay, here we go again. Here it is cyclically, every ten years, the civil servants dust off home education; 'Oh, how are these people getting away with it? That must be wrong.' And we go all the way round through the cycle. It seems to come round every 10 years, but it gets a bit more feisty and harder each time, and every time it gets knocked back.

I fundamentally think the Department is overstepping their remit. And again, if you want to make a case for changing the law, not on the political opinion of a minority of civil servants, please produce some evidence. Where is the evidence? No school attendance orders; no research report; nothing. Nothing has changed.

Maybe there are more people home educating now but then that is the direction of travel. It is going mainstream. It is mainstream in America. It will go mainstream here. And Governments,

Departments and local authorities have just got to accept that. They may not like it, but that is what is going to happen and they are not going to improve things by creating interfering powers.

Q314. The Clerk: May I pick up on the point about no school attendance orders? How could there have been any school attendance orders when the current system is triggered by whatever we talked about before – if the Department suspects – (**Mr Llewellyn Jones:** Appears.) if it ‘appears’ to the Department, and the Department has no proactive methods for finding out? So I do not –

Mr Llewellyn Jones: But it does not need a proactive method because the primary responsibility lies with the parents. As we have indicated Departments, local authorities and civil servants do not like that, but that is the protected position in law. Nobody has explained why public authorities and Departments here have cause to be suspicious of home educators.

Why? Because the parents are educating their children at home. Why is that a cause for suspicion? We choose the form of education; we choose to send our child to a state school, a public school, a boarding school. The Department is not engaged in that. You cannot have a situation where, because you do not know, you suspect. Absence of information is not evidence of a problem in itself.

Now, as the previous witnesses very lucidly explained, we exist in the community. So the baseline test the Magistrates’ Courts will assess is: on the balance of probabilities, is this child being educated? Children mix around the community and that is fine; and if somebody thought something was not right or not going on, then there would be a comment or a complaint – and that is what triggers school attendance orders in the UK. But they are very, very rare.

We are looking at a tiny problem evidenced in the normal course of events just like any other legal matter. We do not go around policing every single issue. There are other issues we could police – we could police fire safety. Why do we not have checks in every single house? One crime that is intensely damaging to families is incest – it hugely disrupts families through generations. If it is that serious – and it is – why do we not police it? There has to be a line in the sand.

Now, we are talking about risk. My background is airline safety management so risk is of interest to me. You cannot eliminate risk. Okay? We could get road accidents down to zero by keeping the speed set at 1920 level; we could all creep round at 10 miles an hour and nobody would crash. We accept a certain level of risk in order to conduct our lives.

When we look at home education what the courts find is a *minuscule* problem. As I said, there are *circa* 300 local home-educated children in your typical local authority – Shropshire, Worcester, what have you – and one or two school attendance orders a year. Because the legislation currently works.

As I have indicated, there is a tension that, if it appears ... There is a tension and you know as a parent that your child is going to be looked at, noticed, and you do not want to engage the authorities. You live a normal life, you educate; and in a common-law jurisdiction that is a reasonable balance. Now, if you can produce evidence that there is a systemic change and that home education needs monitoring, there is really a big problem ...

A research report would be a different matter, but there is nothing. We are just dealing with an opinion and I think the opinion is based on prejudice and suspicion. What they do not know, they do not like.

But you cannot go in and pre-police. You just cannot do it. That is where the Human Rights Act will kick in. The clue is in ‘home’ – education is carried out in the home. You are allowed to draw your curtains and shut your front door and watch the telly.

The Chairman: Is there anything else you would like to add?

Mr Llewellyn Jones: Yes, the guidance.

I did not agree with the Department's guidance. I did not see that it was necessary and I did not think that all the indicators they came up with – 'if it appears' – were justiciable. Because as I have indicated, what the Magistrates' Court will look at – you are talking about three ordinary people standing up and saying, 'Well, is it likely, on the balance of probabilities, that this child is being educated? Yes or no?'

1975

I did not think the indicators were really reflective of that.

Home Education is used as a 'threat';

Well, what does that mean? I do not know. Too subjective; and actually they do not really apply to the law. So I do not think it is the right approach.

The best approach is in Ulster. They have recently launched a public consultation on home education after extensive interaction with their local community. And it says:

1980

In aiming to foster good relationships with home educating parents, the EHE [*Elective Home Education*] Team will ... offer advice and support to parents on any relevant matter if requested ...

Okay? But they are not going to intrude or require information. Now, that makes the relationship work.

If we need to take a child to a GP, we trust the GP; we go to the GP and the GP solves the problem. The GP does not do a medical check every year but we trust the GP to do the right thing. They are educated, articulate people; they solve all our problems – up to a point, says he! I am approaching the big 6-0, so I am starting to think about these things a bit more. They do not solve everything.

1985

The Chairman: Wait until you get to my age! (*Laughter*)

1990

Mr Llewellyn Jones: Well, exactly! Not much older than me, Mr Chairman, I am sure.

So that is an example of a relationship with a public servant that works. Now, if the Department really wants to do something useful they have got to drop this policing attitude because all they have got to offer is surveillance – which is unpleasant; checking; and legal threats. Who wants to get involved with that?

1995

I mean, they have got a register of home educators. Not every parent registers, so they do not really know. People do not want the attention of the Department, because we know what they are like. It is as simple as that: they have already got a view formed of home education. But if they change it round the other way and offer a service ...

2000

So if a parent is home educating and finds they are struggling, and I am sure everybody will go through ups and downs – it is a hard task. If there is somebody there who understands home education and is a sympathetic ear and can point somebody in the direction of resources, or whatever; if there is a relationship of trust that will be used and that will help nip problems in the bud – if indeed any exist. So the way to tackle this type of sensitive issue is to be trusting and supportive. As I say, it is like the GP relationship. They are there to help. They are there to help to nip a problem in the bud before it becomes a problem that might require the attention of other people.

2005

Home-educating parents these days can get advice and support from all over the place, so there probably would not be much need to call on the Department. But the Department is welcome to pitch in and be there as a support and that would work fine. Some local authorities in England work that way: they are non-invasive, 'We are here to help you'. Fine. But the local authorities that act as policemen end up burying the problem that they might one day want to find. It is the wrong thing to do. You have got to get trust and support back in the system and get rid of this suspicion.

2010

I mean, look at the amount of activity there has been on home education, and these are generated by parents who are doing their level best, their damndest for their children often in

2015

the absence of, frankly, an adequate education in the schools. They are fixing problems. They are providing the suitable education in the absence of the state.

I want to say one more thing about education, which is that you cannot have a child and not educate them, because education, learning, is instinctive. You try and stop a child learning – it is impossible. It will happen all by itself even if nothing happens. It is instinctive. So they are coming at it from the wrong tack. They really, really are. They need to relax and be more human about it and provide that supportive service. And there is work to be done there, but it has not happened.

Q315. The Clerk: May I just pick up on something Mr Llewellyn Jones said, Mr Chairman?

You said, I think, I do not agree with the Department's guidance; and you quoted some words. Are you talking about the document dated 5th March 2018, (**Mr Llewellyn Jones:** Yes.) entitled Isle of Man Elective Home Education Procedures?

So could you explain why ... I know it has got the Department's name on it but the Committee was told in the last hearing, which you listened to, that the Department had not signed this document off. (**Mr Llewellyn Jones:** No.) Can you tell us anything about the gestation or history of this document?

Mr Llewellyn Jones: Well, it appeared on the Department's website, as I recall. So as I understand it is based on the elective home education procedures of Lancashire Council. I had submitted a Freedom of Information to Lancashire Council and found actually they act quite intrusively; there is a lot of activity there – more than other local authorities. So I wonder if that is why they were interested in doing it.

It is essentially that, but then they have added an Appendix 1 the 'If it appears' indicators and then there is a flowchart at Appendix 2, and basically once you come to the Department's attention you are then under their gaze until the child is 16, and that is quite simply an unfettered power. That is a very good reason for not wanting to engage with the Department, because you will never get shot of them.

The Assistant Clerk: I believe, to my knowledge, that flowchart was actually removed from a subsequent iteration of the draft.

The Clerk: Right.

Ms Edge: That is what is available today –

The Assistant Clerk: From April 2018, I think at that stage it had been removed.

Q316. The Clerk: But anyway, the Committee was told that the Department did not endorse the document at all.

Mr Llewellyn Jones: Okay, so they published it, they did not endorse it; I did not agree with it. I do not think the 'if it appears' indicators are justiciable because that is not what the court would look for.

So that is my point of view. Not everyone would agree with me; I respect that and that is fine. But as I said, if they want to get this right it is Ulster, with the co-operation of the home education community and essentially, basically, the home education community working with the Department and saying, 'Look, you really do not understand this; do it this way'.

Q317. Ms Edge: Can I just ask: did I hear you right?

You think this is a copy of the Lancashire – ?

Mr Llewellyn Jones: As far as I am aware, yes. *(Interjection)* But the local authority Elective Home Education Procedures have actually just changed from the Department for Education, but they have not been changed by all the local authorities – they have still got quite old guidance going in. Whether they will change with the Department, I do not know, but these procedures are pretty generic to local authorities in the UK.

The modern procedures are the same but simply more litigious. The UK government is seeking for local authorities to act more litigiously without giving them the money to hire the lawyers in the first place.

The Chairman: Thank you very much for your written evidence which has been very useful in terms of the Committee looking at this matter, and for your substantial and cogent representation today which will obviously be taken into account in our future consideration.

Thank you very much, Mr Llewellyn Jones.

Mr Llewellyn Jones: Thank you, Mr Chairman and Committee, it has been a pleasure.

The Chairman: That brings today's proceedings to a close.

The Committee adjourned at 4.22 p.m.