

DEPARTMENT OF EDUCATION (NI) CONSULTATION 'ADDRESSING BULLYING IN SCHOOLS'

Introduction

The Office of the Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2)(3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. The remit of the Office is children and young people from birth up to 18 years, or 21 years, if the young person is disabled or in the care of social services. In determining how to carry out her functions, the Commissioner's paramount consideration is the rights of the child and NICCY is required to base all its work on the United Nations Convention on the Rights of the Child (UNCRC).

NICCY welcomes the Minister's commitment to address the issue of bullying in schools and to bring forward legislation which aims to tackle bullying by providing a clear legislative definition of bullying, places a legislative duty on schools to develop appropriate anti-bullying policies and ensure their proper implementation.

NICCY has been aware of the efforts of schools and non-governmental organisations, in particular the Northern Ireland Anti-bullying Forum (NIABF), to tackle bullying, support teachers in developing appropriate policies and procedures and promote good practice. However, as the consultation document highlights, there remain significant variations in the quality of school policies and practice, inconsistencies in their implementation, the expediency of their application and the extent to which systems and procedures are monitored, reviewed and updated.

NICCY agrees with the Department of Education's (DE) statement that bullying behaviour is unacceptable and should be challenged, and in response, that schools should have effective procedures and processes in place, which will effectively tackle bullying allegations and incidents and adequately protect children and young people. Whilst welcoming the proposals outlined in the consultation document, the Office has identified a range of issues and challenges arising. These are detailed below.

Bullying in Schools

NICCY is acutely aware of the prevalence and persistence of bullying in schools, the complexity of bullying and difficulties associated with identifying, monitoring and tackling incidents. NICCY is also extremely concerned about the pervasive and damaging nature of bullying and the potential long-term impact it can have on the lives of children and young people. It is widely acknowledged that bullying can have a serious detrimental impact on their physical, mental and emotional health and indeed, in some tragic cases has led to a young person's death.

NICCY's Legal and Investigations team deals with queries and complaints from children and their parents or guardians relating to a wide range of issues, including education-related matters. In the Annual Casework Report (2013-14), bullying accounted for 12% of the education-related enquiries received. These were made by pupils and in some cases, teachers¹. The persistently high levels of reported bullying are deeply concerning. The Department's consultation document cites statistics from research completed in 2011 on the nature and extent of pupil bullying, indicating that 39% of Year 6 pupils and 29% of Year 9 pupils stated that they had been the victim of bullying. It is noted by DE that the levels of bullying remain at similar levels reported by pupils in 2002 and 2007. Given that the research focused on just two year groups and that pupils were only asked about bullying incidents which had occurred two months prior to completing the survey, it is reasonable to assume that actual levels of bullying across the school population may be even higher.

P7 pupils who completed the 2012 'Kids Life and Times' survey shared their insights into incidents of bullying at their primary schools. Forty-six percent of respondents stated that pupils were bullied in their schools and 16% of pupils (18% of boys and 15% of girls) claimed they had been 'physically bullied' in the two months prior to completing the survey. Thirty-two percent of pupils (comprising 27% of boys and 33% of girls) indicated they had been bullied in 'other ways'. Asked if they had been bullied through texts they may have received or on the internet, 11% of pupils gave an affirmative response.

In 2006, NICCY published a report which examined the views and experiences of children and young people in relation to the development and review of bullying policies and

¹ http://www.niccy.org/downloads/2014/Publications/NICCY_Annual_Casework_Report_2014_-_final.pdf

procedures in schools². The Report revealed inconsistencies in the definition of bullying employed by schools and how bullying incidents were recorded. Similarly, some schools had stand-alone policies whilst others had incorporated their anti-bullying policy into their pastoral care policy. Few schools reviewed these policies on a regular basis and pupils had limited involvement in contributing to their development. These findings closely mirror those emerging from the NIABF Review (2013), indicating that schools' procedures have not changed significantly over this period.

The current consultation is focused on legislative proposals to introduce specific requirements for schools, however NICCY believes it is important that the wider issues associated with bullying are not ignored. The value of preventative work dedicated to raising awareness of bullying or tackling prejudices and discriminatory attitudes which may give rise to bullying, should be emphasised and encouraged while advice and support should be available to schools through guidance materials. There is also a need to ensure that pupils who display bullying behaviour are dealt with appropriately to ensure that they both recognise the impact of their behaviour and are effectively reintegrated into the class and school following a resolution of the situation. This type of behaviour can be symptomatic of complex and challenging events or situations in a child's life, at home, in their community or wider society. It may be necessary therefore for schools to liaise and be supported by other individuals and agencies in order that issues can be fully and effectively addressed.

International Human Rights Instruments

The United Nations Convention on the Rights of the Child (UNCRC)

NICCY is pleased that the consultation document references the United Nations Convention on the Rights of the Child (UNCRC) and specifically Articles 19 and 28. It notes that states are required to take all possible measures to protect children from all forms of violence and harm and that children have a right to an education, emphasising that this requirement extends to schools. The UNCRC does not refer specifically to bullying, however a number of articles are relevant, including those cited in the consultation document. These are referenced below.

Article 2 describes the child's right to protection from discrimination. This applies to all children regardless of their age, race, gender, language, political opinions, religion, social

²http://www.niccy.org/uploaded_docs/Bullying%20Report/Bullying%20Final%20Report%202023%20maydoc.pdf

status or disabilities. A failure to take all appropriate measures to ensure a child is protected from bullying due to difference or perceived difference, may be in breach of this article.

Article 16 describes the child's right to privacy. Where there is a failure to prevent forms of bullying which involve children and young people being targeted in their home or an invasion of their privacy through gossip and spreading of rumours, this may constitute a breach of Article 16.

Article 19 refers to the child's right to protection from all forms of violence, including "physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child". Given that bullying can result in harm and cause distress to those who are bullied and have significant short-term and long-term effects on the young person's physical and mental well-being, bullying can violate the protections provided through this article. This places a responsibility on organisations to devise and implement effective anti-bullying policies and strategies which will effectively prevent bullying from occurring and support children and young people where it does.

As outlined in the consultation document, **Article 28** outlines the child's right to an education. It also states that measures should be taken to encourage regular attendance at schools and to reduce 'drop-out' rates. Where bullying policies do not exist or are not implemented effectively, children and young people are less likely to feel safe, leading to their absence from school. Indeed, bullying is cited by children and young people as one of the main reasons they absent, 'drop out' or are excluded from school

Article 29 states that a child's education should contribute to developing their personality, talents and mental and physical abilities to their "fullest potential". It also asserts that it should prepare them for an active and responsible adult life, fostering respect for basic human rights and developing respect for the child's own cultural and national values and those of others. If a child is educated in an environment where they experience bullying, it is unlikely this will be conducive to them reaching their full potential. All educational institutions should therefore aim to create an environment where children's rights are understood and a zero-approach to bullying is practiced.

The European Convention on Human Rights (ECHR).

Article 3 of the ECHR, states that "No one shall be subjected to torture or inhuman or degrading treatment or punishment." Bullying is a type of torture for those who experience

it and the failure of a school to intervene where they are aware of incident may constitute a breach of this article.

Article 14 refers to discrimination and the individual's right to "The enjoyment of the rights and freedom of any ground such as colour, race, sex, language, religion, political or other opinion, national or social origin, association with a national minority birth or other status." As bullying may be based on some form of discrimination, a failure to prevent or effectively address bullying arising from discrimination may be in breach of this article.

Department of Education Proposals

A Definition of Bullying

The introduction of a legal definition of bullying is an important development which should provide clarification for all education stakeholders including teachers, support staff, parents, pupils as well as other professionals and practitioners, regarding how bullying can manifest itself. A clear definition is an essential element of any anti-bullying policy and should be useful in enabling an accurate recording of bullying incidents, also supporting schools to adopt a consistent approach in their efforts to prevent and tackle bullying. The emergence of different, more insidious forms of bullying, makes it increasingly difficult for schools to identify and address bullying effectively. NICCY believes that a comprehensive, legal definition should be issued to all schools alongside appropriate accompanying guidance.

The definition provided in the consultation document is an extremely helpful first draft, as it provides a description of different types of bullying, defines who may be involved and outlines the possible intent of the bullying actions or behaviour. In terms of strengthening this definition, NICCY would suggest also including a reference to 'social' bullying behaviour which includes actions such as ignoring, ostracising, excluding and alienating. These behaviours are quite different from those which may be described as 'psychological', such as spreading rumours or malicious gossip, hiding personal possessions, or giving 'dirty looks'. It is vital that the definition issued to schools, is as comprehensive and accurate as possible to ensure that serious bullying acts are not dismissed as harmless teasing or 'banter'.

The definition describes bullying as the "repeated... use of [particular] acts or omissions or any combination thereof..." Bullying definitions provided in other jurisdictions and by other agencies generally concur with the assertion that bullying occurs, if an action has been

taken on more than one occasion. While this is generally acceptable, NICCY would have a concern that schools do not immediately dismiss a 'one-off' occurrence of bullying behaviour but rather that they consider the potential for a reoccurrence, taking appropriate preventative steps and effectively monitoring the situation. The Office would therefore suggest that DE considers how the potential repetition of bullying may be accommodated in the draft definition.

The challenges of addressing cyber-bullying are widely recognised and documented. Although the definition of bullying provided in the consultation document references 'electronic...acts...', NICCY would suggest that schools should be provided with clear and appropriate guidance and support to help them identify, tackle and resolve cyber-bullying incidents. This issue is only briefly referenced in the consultation documentation however NICCY believes that this is an issue which warrants much greater attention, given the widespread use of texting, social networks and the internet by children and young people.

The proposed definition refers to "... the intention of causing..." NICCY considers that a definition of bullying should include a reference to the victim's 'perception'. NICCY's Legal and Investigations team are aware of cases which are not viewed as bullying by schools as they did not consider the behaviour had the required intention. NICCY believes that the victim's perception of the behaviour and their resulting feelings are relevant in determining whether bullying has taken place.

NICCY agrees that a reference to Section 75 groups should be included in a schedule to the legislation, as it is generally acknowledged that particular groups of children and young people may be especially vulnerable to bullying and consideration should be given to these in order to determine whether additional protections are required. NICCY also agrees that schools should be supplied with further guidance regarding the core content of an anti-bullying policy. Many schools may already have this content in place, however in terms of minimum requirements, NICCY would strongly recommend that this includes the legal definition of bullying, aims and objectives of the policy, clear explanations of how bullying can occur, details of monitoring procedures employed in the school and information about the processes for dealing with alleged bullying incidents. The policy should also reference how consultation on the policy will be undertaken with pupils and parents.

Given the very serious of bullying and the importance of tackling this issue, NICCY would have hoped that legislation seeking to address bullying in schools would have placed a mandatory obligation on schools to have a separate and discreet anti-bullying policy and

set out the required content of same. The absence of such a legislative requirement could lead to inconsistencies in addressing bullying and potentially frustrate efforts to monitor incidents, complaints, motivating factors and actions taken.

Including a series of best practice principles should be considered, taking into account the importance of a positive school culture, effective leadership, the implementation of appropriate preventative and awareness raising measures, additional support for staff, a robust complaints mechanism and access to additional information and supports. Case studies are an effective mechanism to illustrate how policies can be translated into practice. While many schools will have positive and effective policies in place, disseminating additional guidance to all schools, should ensure greater consistency and clarity across the school system.

Recording incidents

NICCY welcomes DE's proposal that schools be required to record the motivation, response and outcomes of all bullying incidents. As the documents indicates, this proposal reflects existing international best practice which mandates schools to detail all bullying occurrences and to keep appropriate records concerning the origin of incidents, how they are addressed and are subsequently resolved. Guidance provided by DE should clearly describe how such information will be recorded and the degree of detail required so that potential for ambiguity is minimised.

The proposal to report through the C2K IT system, which has already supported a pilot project using the SIMS Behaviour Management Module, is positive, as this will provide a central repository for data, which should ensure the consistency, comparability and accessibility of information. However, the consultation document notes that only 16 schools participated in the pilot. Given the small sample, It is difficult to make generalisations or guarantee the reliability of the responses generated through the pilot. NICCY would advocate, therefore, that a much more extensive pilot be undertaken, involving a representative sample of schools in NI. This would identify any problems arising and highlight particular needs or circumstances of individual schools. DE also refers to the potentially sensitive nature of the recorded information, the importance of protecting the confidentiality of pupils, and the need to adhere to the requirements of the Data Protection Act 1998. In this respect, it will be essential that the C2K IT system has all the necessary security protocols in place and that all personal and sensitive data will be held securely. NICCY would also be interested to learn whether any alternative mechanisms for recording this information have been considered, in the event that the C2K system proved unsuitable.

While the requirement for schools to report and provide details of bullying incidents is a positive step, NICCY does have a number of reservations. Key to achieving effective, accurate reporting is a school's readiness to recognise bullying incidents, acknowledge the serious nature of bullying and to record appropriate and accurate data. Furthermore, the additional administrative workload presented and an initial unfamiliarity with the software system may create an additional barrier. The consultation document points to the increasing litigation arising from bullying incidents as a potential incentive for schools to comply with the requirements, however some schools may remain unconvinced. It is important that they are both supported and incentivised to fulfil the reporting requirements. NICCY would therefore suggest that further information should be provided, indicating how DE and the Education Authority will ensure schools report appropriately, including recognising bullying as it is defined in the legal definition and fully recording the details of incidents. It would also be helpful to know how the information recorded in the C2K system will be used to influence and inform the ongoing development of DE bullying strategies or policies. The role of the Education and Training Inspectorate (ETI) in monitoring schools' compliance with these requirements should also be explained, along with details of proposed monitoring procedures and sanctions for suspected or proven non-compliance.

The proposals concerning the recording of bullying incidents, clearly relate to reported incidents. NICCY is aware, however, that many incidents of bullying go unreported. NICCY's 2006 report on bullying (referenced on pages 2-3), indicated that although a majority of schools had a dedicated member of staff to deal with bullying incidents, only 16% of post-primary pupils indicated, that, if they were bullied, they would speak to this individual. Sixty percent of pupils indicated that it would depend on the circumstances³. In terms of seeking help in relation to bullying, most respondents believed that "telling a teacher" was not a helpful or effective option. Guidance provided to schools regarding appropriate content of bullying policies (and indeed, other relevant school policies, such as pastoral care), should therefore emphasise the importance of raising pupils' awareness of the support and help available, in order to encourage higher levels of reporting. Promoting an affirming, open school culture and positive, respectful teacher-pupil relationships could also help to achieve this goal.

The consultation document indicates that the scope of the proposed legislation will include bullying which takes place on school premises or whilst travelling to and from school.

³http://www.niccy.org/uploaded_docs/bullying%20report/bullying%20final%20report%2023%20maydoc.pdf, p.11

It would be helpful, however, if the Department could provide confirmation that the scope of the legislation will encompass bullying that takes place during extra-curricular events or activities such as sports matches or educational visits at weekends or in the evening. NICCY recognises potential 'grey areas' in terms of where and when a school is responsible for dealing with bullying incidents. It is therefore essential that the legislation and accompanying guidance provide clarity on this matter and reduce the potential for ambiguities to arise. NICCY is aware, for example, through enquiries received by its Legal and Investigations Team, of schools holding pupils to account for misconduct occurring outside school hours, 'off-site' and / or online but being reluctant to intervene in cases of bullying which have occurred in similar circumstances. Parents will need to be advised as to the reasons for the apparent differences in the response to these situations. It is important therefore, that the Department clearly defines the parameters of schools' responsibilities and that there is consistency in how these responsibilities are fulfilled. In order to avoid any 'grey areas' the Department may wish to consult with the PSNI to establish their respective remits with a view to producing a working protocol.

In addition, where a school feels that a bullying incident falls outside their remit, they should advise parents of alternative avenues for redress such as a complaint to the PSNI. NICCY's Legal and Investigations team are aware of cases where bullying (which may have constituted criminal acts) took place. The schools considered these incidents to be outside their remit but failed to advise the parents of alternative courses of action available. In one case, the victim of the bullying behaviour was so overwhelmed by the lack of support for their situation they took their own life.

Designation of Governors to be responsible for anti-bullying policies

NICCY welcomes DE's proposal to introduce a legal requirement for Boards of Governors to be responsible for schools' anti-bullying policies and procedures. Imposing such a duty should, in theory, enhance the quality of schools' policies and procedures and ensure their effective application. This requirement should also formalise existing good practice in schools. There are, however, a number of potential challenges arising from these proposals.

Governors are appointed in a voluntary, unpaid capacity and already have a range of roles and responsibilities in supporting the principal and staff to deliver a high quality of education in their school. NICCY is aware, for example, that the draft SEN and Inclusion proposals include a new statutory duty on Governors to ensure the effective implementation, monitoring and review of Personal Learning Plans. Therefore, given

existing and anticipated additional demands on Governors and the nature of their appointment, individuals may be reluctant to assume this additional responsibility.

Furthermore, bullying is regarded as a challenging and controversial issue, and given the potential for parents or guardians to register complaints with regard to a school's management of a bullying incident, it may prove difficult to appoint Governors to this role. Again, NICCY's Legal and Investigations team has encountered circumstances where parents have been unhappy with a school's response and, following a complaint to the Board of Governors, have concluded that the Board simply endorsed the Principal's decision. If individual Governors are given responsibility for a school's anti-bullying policy and procedures, it will be important they have the independence and confidence to scrutinise and challenge a Principal's decision or actions concerning bullying incidents, where they believe there are justifiable grounds to do so. NICCY would strongly suggest that guidance and mandatory training should be made available to Governors tasked with developing and reviewing a school's discipline and anti-bullying policies to ensure they are appropriately prepared and equipped to deal not only with policy management, but also the effective resolution of complaints. It will also be important to clarify what role, if any, ETI and the Education Authority will have in monitoring Boards of Governor's execution of their duties and responsibilities in this regard.

Consultation with pupils

NICCY welcomes the publication of a children and young people's version of the consultation document. The Office believes it is essential that children and young people are provided with positive opportunities to contribute their views and experiences and to participate in decision-making with regard to issues which affect them. We would be interested to learn whether schools or youth organisations were encouraged or supported to create opportunities for pupils to engage with the consultation and if so, how this was approached. We would also note that the language employed in the pupil consultation document was challenging for primary age pupils and not accessible to pupils at Key Stage One.

NICCY welcomes the opportunity to provide advice in response to this extremely important consultation. Should any further information or clarification be required regarding the content of this submission, please contact Alison@niccy.org.