



Addressing Bullying in Schools Bill

Submission to Education Committee

Children's Law Centre
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Introduction

The Children's Law Centre (CLC) is an independent charitable organisation which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a legal advice, information and representation service. We have a dedicated free phone legal advice line for children and young people and their parents and carers called CHALKY and a youth advisory group called Youth@clc. Within our policy, legal, advice and representation services we deal with a range of issues in relation to children and the law, including the law with regard to some of our most vulnerable children and young people, such as looked after children, children who come into conflict with the law, children with special educational needs, children living in poverty, children with disabilities, children with mental health problems and children and young people from ethnic minority backgrounds.

Our organisation is founded on the principles enshrined in the United Nations Convention on the Rights of the Child (UNCRC), in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

From its perspective as a children's rights organisation working with and on behalf of children, both directly and indirectly, CLC is grateful for the opportunity to respond to the Education Committee's call for evidence in relation to the Committee Stage of the Addressing Bullying in Schools Bill.

CLC welcomes the Addressing Bullying in Schools Bill and is very supportive of the purposes for which the Bill has been introduced. In providing this submission we seek to work with the Education Committee and the Department of Education to ensure this Bill provides maximum protection against bullying in schools in Northern Ireland.

Clause 1: Definition of Bullying

CLC continues to have concerns in relation to the definition of bullying as set out in Clause 1 of the Addressing Bullying in Schools Bill.

In general terms, Clause 1 requires some further consideration. The layout and language of the clause reads as a set of relatively high barriers that one must traverse in order to conclude that there has been “bullying”. CLC believes that it would be beneficial to broaden the scope of the clause by using more inclusive terminology which will enable schools to act, will make it more difficult to stand over inaction and which will not be unduly restrictive.

It is notable that Ryan Collins’ case against Abbey Grammar School in Newry [2014 NICty 4] resulted in a settlement with £10,000 compensation for psychological damage caused by bullying. It is in the interests of both schools and pupils that the law is clear and comprehensive, to enable proper record-keeping and tracking of actions so that there is no doubt about when action is required and so that all opportunities to intervene and prevent harm are fully exhausted at the earliest possible opportunity.

Clause 1(1)(a): “Repeated”

The definition of bullying may be improved if further consideration is given to whether requiring repetitive behaviour is helpful or unhelpful. The word “repeated” in the definition is potentially unhelpful and unclear. It may detract from the core purpose of the Bill. The purpose of the Bill is to prevent bullying, which should involve stepping in at the first instance rather than allowing repeated incidents to occur. The main issue that we see in our casework is a lack of decisive early action which can enable a culture of bullying to develop and thrive.

Requiring “repetition” is likely to introduce a lack of clarity about when school staff should step in to prevent bullying, when in fact staff would benefit from knowing that they should prevent bullying immediately that it appears. For example – how close together do incidents have to be to amount to “repetition”? What if there is a time lapse between a number of incidents? Are these fresh “first” incidents or a “repeat” activity? What if one child causes distress to another and then a different child carries this forward a week later – is this repetitive or is it two single incidents? What is “repetition” in terms of cyber-bullying? Removal of the word “repeated” may serve to protect schools from incurring legal liabilities as they will be guided to act immediately, from the first instance.

Clause 1(1)(a) Communications, Acts, Omissions or a combination of those

CLC would suggest further consideration is given as to how best to describe bullying behaviours in a way that is clear and yet broad in scope. It may be clearer to describe these as behaviours intended to have a negative impact upon others and to then define “behaviours” either within the clause (as is presently the case) or separately in an interpretation clause.

Clause 1(1)(d): “Intention” and “Harm”

CLC believes it would be beneficial to consider further whether “intention” is strictly necessary as it is conceivable that children may engage or “join in” with bullying without considering the negative consequences for another child. Looking from the perspective of the child who has suffered adverse effects, it is no less distressing by virtue of having been unintentional.

The question may also arise as to how should intention be established and what proofs would be required. For example, would carelessness as to the consequences of an action amount to “intention”? Intention presupposes foresight of consequences. Will a 5 year old or an 8 year old be capable of forming the requisite intention? How will a teacher or staff member determine if a 5 year old child foresaw and understood the consequences of his actions? This difficult determination will become even more challenging if the child has a learning disability or other additional needs. Determining what is effectively the capacity of a potentially very young child is onerous and challenging, and is not in CLC’s view required to give effect to the purpose of the Bill. Some further consideration of this point would therefore be welcome.

It may be more useful to use a term around the “adverse/detrimental effects” of the bullying behaviour rather than around the intent or motivation of the child who bullies another.

CLC is concerned about the restrictive quality of the term “harm” given that the intention of the Bill is to prevent bullying so that the point of being “harmed” is not reached. Proving that one child “intended to cause physical harm” or “intended to cause emotional harm” to another child is setting the bar much too high, is too restrictive and is reminiscent of thresholds for criminal matters.

CLC takes the view that a broader terminology would better achieve the purpose of the intended legislation. We believe there should be broader reference to adverse consequences (including but not limited to) distress, alarm, hurt, fear, exclusion, harassment and/or physical or emotional harm.

Imbalance of Power/Inclusion of Adults in the Definition

CLC would like to see reference within the definition to the imbalance of power which appears to be inherent in all bullying cases. In our view, it is not necessarily about “intent” to cause “harm” which may or may not in fact be present. Bullying is about one party abusing their power over another (for a wide array of potential reasons) and the detrimental effects following on from that abuse.

Linked to that point, is CLC's view that all forms of bullying in schools should be addressed by this legislation, including those cases where it is an adult who is involved in bullying behaviour, given that there is an imbalance of power between adults and children in school. To protect children from bullying in school and to promote mutual respect throughout the school community, all potential sources of an abuse of power which may lead to bullying should be covered.

Clause 2: Duty upon Boards of Governors – Prevention

CLC would suggest that the duty upon Boards of Governors is intended to be a mandatory statutory duty and such a duty would more effectively be expressed as "*The Board of Governors of a grant-aided school shall...*" (rather than "must").

Determining and Implementing a Policy

The meaning of Clause 2(1)(a) requires some further clarification i.e. is the duty to pursue policies that have been designed or is the duty to design policies and then pursue them? The clause as currently worded is open to both interpretations. It is important to ensure that there is a clear duty to have an anti-bullying policy and a clear duty to act upon it. Importantly Clause 3(3), a crucial provision, which sets out some of the potential motivations for bullying, is linked back to clause 2(1)(a). A lack of clarity in clause 2(1)(a) will therefore likely be damaging in terms of recording disaggregated data about bullying under Clause 3.

It may therefore be advisable to create firstly, a duty to determine an anti-bullying policy which will apply to registered pupils and secondly, a duty to implement that policy at the school. The policy should be produced in a child-accessible format appropriate to the age and profile of the pupils registered at the school.

Clause 2(1)(b) might then be used to expand, that in making a policy the Board of Governors shall "*determine the measures to be taken at the school.*"

Clause 2(1)(f) also refers to a duty to "*prepare a written statement of such measures*". This appears to be an obligation to have a written anti-bullying policy. It may be clearer if it were directly stated in plain language that there is a duty to have a written anti-bullying policy rather than referring to "measures" so that school clearly understand what is being asked of them. It may also be beneficial for clarity to put this provision at the beginning of Clause 2.

Clause 2(1)(g) may be a very useful and important provision but needs to be clarified. It is a duty to "secure that such measures are taken". There are a number of references to "measures" throughout which appear to be references to the anti-bullying policy and it is important to be clear about the duty that is being imposed. We suggest that it is clarified that the Board of Governors has a duty to secure "that the measures set out in the anti-bullying policy are taken".

Boundaries of School Responsibility

CLC believes the scope of Clause 2 and Clause 3 (where they define the boundaries of the Board of Governor's responsibilities as being in relation to bullying on school premises, while travelling to or from school or while under the care of school staff) may be too narrow. For example, it does not cover cyber-bullying sufficiently. We acknowledge that cyber-bullying crosses boundaries between home, school and the community and that this is a complex matter but nonetheless, it seems to us to be artificial to treat as "separate" those incidents which cross boundaries where they form part of a continuous "campaign" of bullying. CLC would like to see that the protections for school children are maximised through the Bill and would welcome further consideration of the issue of cyber-bullying and other forms of bullying which may be linked between home, school and the community.

In clause 2(b)(iii) (and clause 3(c)) it may be worthwhile to consider whether the phrase "...lawful control or charge of a member of the staff of the school" should be changed to include when the child is in the "care" of the staff or alternatively simply to state "while the pupil is engaged in education and/or associated services". This phrase is used in anti-discrimination legislation to define when discrimination protections apply (SENDO 2005) and it covers activities in and out of school which are managed or supervised by school staff, including school trips.

Clause 2(1)(c): Review of Policies/Measures

CLC takes the view that the timescale for review of policies should be set out to ensure that the policies are effective. For example instead of providing for review "from time to time" the clause could provide for annual review or bi-annual review. It is unclear what the rationale is for excluding a timescale. There are many good arguments for setting an appropriate timescale. The review process, taking into account the obligation to consult pupils, is an excellent opportunity to open up discussion in school regularly about bullying, giving pupils a chance to let staff know about any concerns and to reinforce positive messaging throughout the school community.

Clause 2(2): Directions

CLC would welcome clarification about the power granted to the Department to give directions, including what its purpose is, what form such directions may take and whether they would be enforceable.

Clause 2(3): Removal of the existing Duty on Boards of Governors

It is proposed that the existing duty upon Boards of Governors to prevent all forms of bullying among pupils is removed from the Education (NI) Order 1998. CLC would welcome further consideration about the necessity of this deletion from the 1998 Order (under the part of that Order dealing with school discipline). It may be artificial to assume that we can separate bullying from school discipline and treat these entirely separately. There will be overlap between all policies dealing with unwanted behaviours and the school discipline policy which will provide for sanctions in certain cases.

Clause 3: Duty to Record Incidents

Under clause 3(1) and (2) the statutory duties would be best stated as “The Board of Governors...**shall**” (rather than “must”) to signal the mandatory nature of the duties.

CLC takes the view that there should be a **duty upon all staff** within school to report any incidents of bullying that they witness so that these may be recorded.

Clause 3(3): Motivation

CLC welcomes Clause 3(3) as it appears to cover all protected 9 groups within Section 75 of the Northern Ireland Act 1998 and it will therefore be possible when designing a new IT system, to ensure that disaggregated data is collected.

We would like to see explicit reference in Clause 3 to the fact that the grounds listed in Clause 3(3) are not exhaustive.

CLC is concerned that there is no reference to **socio-economic status** as a motivation for bullying and would suggest that this is added, since it appears to us to be a significant factor related to power imbalances between pupils. It would then be possible to use FSME data alongside bullying data to analyse whether there is a disproportionate impact from bullying upon pupils from a poorer socio-economic background.

CLC is also concerned that there while the category of “pregnancy” is included, there is no reference to the Section 75 category of “those with dependants”. In our view this category should be added to Clause 3(3) to ensure school age parents are protected and appropriate data is recorded.

Under Clause 3(2)(a) the school has a duty to record bullying incidents. CLC believes, drawing on our case work experience, that schools should be asked to record the facts, circumstances and nature of the incident; to investigate and to draw conclusions; followed by taking the necessary actions as set out in the school policy. The current draft seeks only to establish a record of the “motivation” and we strongly feel that this is too limited. There are inherent difficulties in trying to look solely from the point of view of intent or motivation, as described previously above (re the definition of bullying in Clause 1). CLC would therefore raise a concern about use of the word “motivation” on clause 3(a) and (b). We do not believe that “motivation” is the correct terminology to use in this clause. We understand and agree with the aim of the clause, which is to establish linkage between protected characteristics and the incidence of bullying and we would very much welcome further discussion and consideration about alternative forms of wording to ensure good recording and investigation of incidents, as well as the gathering of disaggregated data.

Enforcement and Redress in Disputed Cases – Independent Mechanisms

CLC has concerns around the lack of independence within schools’ processes for reviewing and making decisions about bullying incidents in those cases where perhaps the most effective courses of action have not been taken or where disputes have been allowed to escalate. In our experience within case work, parents and

children often struggle for extended periods of time to seek redress in such matters and find that schools have very considerable autonomy so that challenge is difficult, time consuming and often results in a poor outcome (merely aggravating an already difficult situation).

The only redress currently available is via an Article 101 complaint to the Department once all school processes have been exhausted or via judicial review of the school or by way of a negligence action if there is provable damage. None of these mechanisms are speedy or effective enough to remedy the problems at source. The Bill could be used as a vehicle to introduce greater independence into resolution of these cases perhaps drawing upon the Department, the EA or upon an independent body to aid decision making in specified circumstances. CLC would recommend some further consideration as to how greater independence might be introduced into schools processes to ensure full and fair resolution of disputed matters.

Monitoring and Review

CLC believes that monitoring of the recording of incidents of bullying in schools by a body other than the school is critical to ensure that the purposes of the intended legislation are met. We suggest that the ETI might have a role to play in this monitoring as part of the schools inspection process and/or that the EA is directly involved in monitoring and review.

Conclusion

CLC is grateful to have this opportunity to make this submission to the Education Committee in relation to the Addressing Bullying in Schools Bill. We look forward to engaging further with the Committee and the Department as the Bill progresses to ensure the Bill delivers the important policy aims set out by the Department of Education. We would like to give oral evidence to the Committee in relation to the Bill.