

# Written Evidence to the Committee for Education on the Addressing Bullying in Schools Bill

**5th January 2016**

## Executive Summary

Through ratification of the UNCRC, the Government is under an obligation to ensure that all legislative and policy developments are in compliance with the Convention. The UNCRC principles require the Government to ensure that children are not discriminated against - Article 2, their best interests are upheld - Article 3, they develop to their maximum potential - Article 6 and they are able to meaningfully participate in all aspects of their lives - Article 12. Articles 28 and 29 are the two main articles of the UNCRC which address children's rights in education. In addition, Article 19 places an obligation on the Government to take all measures to protect the child from all forms violence, injury or abuse; Article 36 protects the child against exploitation prejudicial; Article 37 provides for protection for the child from torture or cruel, inhuman or degrading treatment and Article 39 obliges the Government to take measures to promote the recovery and reintegration of a child victim of any form of cruel, inhuman or degrading treatment or punishment. NICCY therefore wishes to see the Addressing Bullying in Schools Bill explicitly underpinned and informed by the relevant articles of the UNCRC to ensure that all children have access to an education which develops their personalities, talents and abilities to enable them to live a full and satisfying life within society in line with the UNCRC.

The introduction of a statutory definition of bullying at clause 1 is welcome in that it should provide clarity and allow for accurate recording of bullying incidents while supporting schools to adopt a consistent approach in their efforts to prevent and tackle bullying. The definition describes bullying as a repeated act, which is generally accepted, however NICCY urges that schools do not dismiss 'one-off' incidents of bullying behaviour, but rather consider the potential for reoccurrence, taking appropriate preventative steps and effectively monitoring the situation. NICCY suggests that the Department considers how the potential for the repetition of bullying incidents may be accommodated in the statutory definition of bullying.

The proposed definition of bullying also refers to the intention of causing harm (clause 1(d)). There is no reference in the statutory definition to the perception of the victim. NICCY wishes to see the inclusion of the perception of the victim in the statutory definition of bullying.

NICCY is concerned that the proposed scope of bullying in the Bill at clause 1 will not offer protection for all children who are victims of bullying as it relates only to acts or omissions carried out by one pupil or a group of pupils on another pupil or group of pupils. It does not reflect the experience of children in schools who may experience bullying by adults and/or teachers. NICCY recommends that the proposed statutory definition being widened to include all forms of bullying suffered by all children in schools. All children who are being bullied in school should have the right to have their experience recognised as bullying and addressed in a proactive and comprehensive manner under the Addressing Bullying in Schools Bill.

NICCY welcomes the introduction of the legal requirement at clause 2 for Boards of Governors to be responsible for schools' anti-bullying policies and procedures. However, Governors are appointed in a voluntary capacity and they already have a range of roles and responsibilities. Furthermore, bullying is a challenging 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 recruit/appoint Governors. NICCY suggests that guidance and mandatory training for Governors tasked with developing and reviewing a school's discipline and anti-bullying policies are necessary to ensure they are appropriately prepared and equipped to deal not only with policy management, but also the effective resolution of complaints. Clarity about the role of the ETI and the Education Authority in monitoring Boards of Governor's execution of their duties and responsibilities is also necessary.

NICCY has concerns about the proposed scope of the Bill at clause 2(b) as we do not believe that the proposed scope is wide enough to address all incidents of bullying. This is particularly the case with regard to cyberbullying which will most commonly not take place on school premises. While we accept that this is a complex legal area, we wish to see the Addressing Bullying in Schools Bill affording maximum protections to children and young people who are victims of bullying, whether physical, mental or through the use of technology.

NICCY welcomes the obligation on Boards of Governors at clause 3 to ensure that a record is kept of all incidents or alleged incidents of bullying, the motivation behind bullying incidents and information on how incidents were addressed. A fundamental concern with the effective operation of the Bill is that schools will continue to have 'operational freedom' in school discipline matters. NICCY suggests that further consideration is given to mandatory reporting of all incidents of bullying by schools. We also wish to see the extension of this duty to include an obligation on all school staff to report any incidents of bullying they witness to ensure that incidents of bullying are dealt with promptly and without a requirement on a child - who may be concerned about being victimised - if they report incidents of bullying to the school.

NICCY has concerns about certain groups of children and young people who are more likely to experience bullying including children and young people of different races, including newcomer children, black and minority ethnic children and Gypsy, Traveller and Roma children, children of religions other than Catholic or Protestant, children with a disability, children who are lesbian, gay, bisexual and/or transgender (LGBT), children who are looked after and children with caring responsibilities. NICCY wishes to see the Department of Education taking proactive measures with regard to these groups of children who disproportionately experience bullying. Section 75 of the Northern Ireland Act 1998 places a proactive duty on designated public authorities to have due regard to the need to promote equality of opportunity between members of the nine section 75 categories. This will require the Department putting in place proactive measures for these groups of children to ensure that they are able to fully participate in their education in recognition of the high levels of bullying these groups of young people experience.

In compliance with Article 12 of the UNCRC decisions on the development of the Bill should be informed by the views and experiences of those who will be most directly impacted i.e. children and young people. NICCY strongly advocates that the Department of Education carries out ongoing, widespread direct consultation with pupils of all ages, from every type of school in Northern Ireland in a meaningful way on the issue of bullying in schools and that their views contribute to the further development of this Bill and associated Guidance.

## 1.0 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) and (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 Commissioner's remit includes children and young people from birth up to 18 years, or 21 years, if the young person has a disability or is / has been in the care of social services. In carrying out her functions, the Commissioner's paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

## 2.0 Background and Context

NICCY welcomes the clear commitment to addressing bullying in schools through the development and introduction of the Addressing Bullying in Schools Bill. Bullying in schools is a complex children's rights issue which NICCY has been working on for a number of years. We have provided detailed advice to the Department of Education in developing the Addressing Bullying in Schools Bill<sup>1</sup> and met with the Minister for Education and his officials in taking this legislation forward. We also recently responded to a request for information from the Special Representative of the UN Secretary General on measures being taken by States to address violence against children and specifically on bullying and included reference to this pending legislation.

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 2013-2014 bullying accounted for 12 per cent of the education-related enquiries received. These were made by both pupils and teachers.<sup>2</sup>

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

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<sup>1</sup> February 2015, <http://www.niccy.org/media/1379/niccy-response-to-addressing-bullying-in-schools-consultation-february-2015.pdf>.

<sup>2</sup> [http://www.niccy.org/downloads/2014/Publications/NICCY\\_Annual\\_Casework\\_Report\\_2014\\_-\\_final.pdf](http://www.niccy.org/downloads/2014/Publications/NICCY_Annual_Casework_Report_2014_-_final.pdf)

procedures in schools. The Report revealed inconsistencies in the definition of bullying employed by schools and how bullying incidents were recorded. 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.

A recent review of anti-bullying legislation, guidance to schools, effectiveness of anti-bullying policies in schools and the support available through the five Education and Library Boards carried out by the Northern Ireland Anti-Bullying Forum (NIABF) at the request of the Minister for Education found very similar issues.<sup>3</sup> There remain significant variations in the quality of schools anti-bullying policies and procedures, inconsistencies in their application across schools and issues with regard to the expediency with which they were applied and the degree to which their systems were regularly reviewed and updated. It also found that the legislation and guidance currently aiming to address bullying in schools do not go far enough in many respects. Consequently, practice across schools is often inconsistent both in terms of the content of the anti-bullying policies and the measures taken to respond to bullying behaviour.

NICCY is acutely aware of the prevalence of bullying in schools as well as 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. Recent research by the Anti-Bullying Alliance<sup>4</sup> found that out of almost 1,500 young people, around two thirds had been bullied. Of those who had been bullied, 44 per cent said the experience impacted on their mental health and that they experienced issues such as anxiety, depression, self-harm and suicidal thoughts. Nearly half (46 per cent) said that being bullied has had a long-lasting effect on their self-esteem and confidence since leaving school and almost 37 per cent of those bullied said it had a negative effect on their ability to form personal relationships. However, 70 per cent of teachers who were questioned said they feel ill-equipped to support children with mental health issues related to bullying. 92 per cent of family doctors surveyed said they had received no formal training, resources or information to help them support children and young people with symptoms relating to bullying. The Anti-Bullying Alliance has commented that bullying is a public health issue. We are therefore extremely supportive of the introduction of the

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<sup>3</sup> September 2013.

<sup>4</sup> Children and Young People Now, 16<sup>th</sup> November 2015.

Addressing Bullying in Schools Bill and the intention by both the Minister of Education and the Department to address bullying. NICCY believes that the issue of bullying is one which requires cross-departmental and multi-agency co-operation and we would urge the Northern Ireland Executive to view this Bill as the first step of a co-ordinated strategy which should be employed across Government to fully and comprehensively address this very serious issue.

NICCY is aware that the Department of Education carried out substantial direct consultation with children and young people as part of its consultation exercise which informed the development of the Addressing Bullying in Schools Bill. Such consultation is central to compliance with both Article 12 of the UNCRC and section 75 of the Northern Ireland Act 1998. Decisions regarding the development of the Addressing Bullying in Schools Bill should be informed by the views and experiences of those who will be most directly impacted i.e. children and young people. NICCY strongly advocates that the Department of Education carries out ongoing, widespread direct consultation with pupils of all ages, from every type of school in Northern Ireland in a meaningful way on the issue of bullying in schools and that their views contribute to the further development of this Bill and associated Guidance.

### **3.0 International Children's and Human Rights Standards**

#### **3.1 The United Nations Convention on the Rights of the Child**

Through ratification of the UNCRC, the Government is under an obligation to ensure that all legislative and policy developments are in compliance with the Convention. The Government also has an obligation to comply with the recommendations made by the UN Committee on the Rights of the Child following its examinations of the UK Government and its devolved administrations' compliance with the UNCRC. The 4 principles of the UNCRC are all relevant to the Addressing Bullying in Schools Bill. The UNCRC principles require the Government to ensure that children are not discriminated against - Article 2, their best interests are upheld - Article 3, they develop to their maximum potential - Article 6 and they are able to meaningfully participate in all aspects of their lives - Article 12.

Articles 28 and 29 are the two main articles of the UNCRC which address children's rights in education. NICCY believes that it is vital that the Addressing Bullying in Schools Bill reflects the obligations on the Department of Education under the UNCRC with regard to

the type of education that children and young people should be able to access. According to the UNCRC Committee's General Comment on Article 29 of the Convention – a statement of its meaning and objectives - education must be child-centred, child-friendly and empowering.<sup>5</sup> The goal is to strengthen the child's capacity to enjoy the full range of human rights, to promote a culture which is infused by appropriate human rights values and to empower the child through developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. In this context, 'education' goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, whether individually or collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society. Educational programmes should be conducted in ways which promote mutual understanding, peace and tolerance, and which help prevent violence and conflict.

General Comment No. 1 on the Aims of Education is clear that a school environment must reflect tolerance, equality and promote peace and understanding. The General Comment is clear that there is an obligation on Government to ensure that schools which allow bullying, intolerance and inequality to thrive is in breach of Article 29 (1) of the UNCRC. It states that,

*“...the school environment itself must thus reflect the freedom and the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin called for in article 29 (1) (b) and (d). A school which allows bullying or other violent and exclusionary practices to occur is not one which meets the requirements of article 29 (1).”<sup>6</sup>*

We would also highlight Articles 19, 36, 37 and 39 as being of particular relevance to the Addressing Bullying in Schools Bill. Article 19 places an obligation on the Government to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Article 36 places an obligation on the Government to protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare. Article 37 provides for protection for the child from all forms of torture or other cruel, inhuman or degrading treatment or punishment and Article 39 obliges the Government to take all appropriate measures to promote physical and psychological

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<sup>5</sup> General Comment No.1: Aims of Education, UN Doc CRC/GC/2001.

<sup>6</sup> Para 19, *Ibid.*



recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment.

In addition, Article 4 of the UNCRC provides that the Government should undertake all appropriate legislative, administrative, and other measures for the implementation of the rights contained in the Convention. The Government is also obliged to undertake such measures to the maximum extent of their available resources. NICCY therefore wishes to see the Addressing Bullying in Schools Bill explicitly underpinned and informed by the relevant articles of the UNCRC to ensure that all children have access to an education which develops their personalities, talents and abilities to enable them to live a full and satisfying life within society.

### **3.2 Recommendations of the UN Committee on the Rights of the Child**

In its examination of the UK Government and its devolved administrations' compliance with the UNCRC in 2002, the UN Committee on the Rights of the Child expressed serious concern at the level of widespread bullying in schools. The Committee recommended that the UK Government take measures and adequate mechanisms and structures to prevent bullying and other forms of violence in schools and include children in the development and implementation of these strategies.<sup>7</sup> In its most recent examination in 2008, the Committee reiterated its alarm with regard to bullying, which they stated, is a serious and widespread problem, which may hinder children's attendance at school and successful learning.<sup>8</sup> The Committee recommended that the Government intensify its efforts to tackle bullying and violence in schools, including through teaching human rights, peace and tolerance.<sup>9</sup>

### **3.3 The European Convention on Human Rights**

Article 2 of the First Protocol to the European Convention on Human Rights (ECHR) as incorporated by the Human Rights Act 1998, also provides that no one shall be denied the right to education. Taken together with Article 14 of the ECHR, the non-discrimination principle, the right to access available educational facilities must be secured to all children without discrimination. Article 3 of the ECHR protects against torture or inhuman or

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<sup>7</sup> Para 46e), CRC/C/15/Add.188

<sup>8</sup> Para 66c), CRC/C/GBR/CO/4, 3 October 2008.

<sup>9</sup> Para 67f), *Ibid.*



degrading treatment or punishment. It can be argued that in certain cases bullying can amount to torture for those experiencing it. It is NICCY's view that a failure by a school to intervene when they are aware of bullying, may constitute a breach of this article.

## 4.0 Addressing Bullying in Schools Bill – Clauses

### 4.1 Clause 1 – Definition of “bullying”

Clause 1 of the Addressing Bullying in Schools Bill provides a statutory definition of bullying. The introduction of a statutory definition of bullying is very welcome in that it should provide clarity and allow for accurate recording of bullying incidents while supporting schools to adopt a consistent approach in their efforts to prevent and tackle bullying. The definition describes bullying as, “*the repeated use of a verbal, written or electronic communication or a physical act*”. While it is generally accepted that bullying is an act or omission that has been repeated there is no consensus on this and NICCY has concerns that schools do not dismiss ‘one-off’ incidents of bullying behaviour, but rather that they consider the potential for reoccurrence, taking appropriate preventative steps and effectively monitoring the situation. We would therefore suggest that the Department considers how the potential for the repetition of bullying incidents may be accommodated in the draft statutory definition.

The proposed definition of bullying under clause 1(d) of the Bill refers to “... *the intention of causing physical or emotional harm.*” There is however no reference in the draft statutory definition to the perception of the victim. NICCY wishes to see this being addressed and the inclusion in the statutory definition of bullying of the perception of the victim. NICCY believes that the victim's perception of the behaviour and their resultant feelings are relevant in determining whether bullying has taken place.

NICCY has some concerns that the proposed scope as outlined in clause 1 of the Addressing Bullying in Schools Bill will not offer sufficient protection for all children who are victims of bullying. It is disappointing that the scope of bullying relates only to acts or omissions carried out by one pupil or a group of pupils on another pupil or group of pupils. This definition therefore does not reflect the experience of children in schools who may experience bullying by adults and/or teachers. Research carried out by the Rainbow Project and Cara Friend when asked how staff responded to homophobic language, found;

*“69% of respondents reported that staff ignored the homophobic language and 8% reported that staff laughed along or joined in with the homophobic language.”<sup>10</sup>*

NICCY recommends that the proposed statutory definition being widened to include all forms of bullying suffered by all children in schools. Bullying perpetrated by adults is equally if not more, damaging to children who suffer it. There is also an additional consideration relating to the power imbalance in such circumstances. All children who are being bullied in school should have the right to have their experience recognised as bullying and addressed in a proactive and comprehensive manner under the Addressing Bullying in Schools Bill. The failure to include bullying of children by adults in education in the statutory definition of bullying at clause 1 of the Bill serves to further disempower already extremely vulnerable young people and negate the trauma experienced by children who are bullied by adults. Furthermore Clause 1(2) states that for the purposes of the definition of bullying, physical ‘act’ also includes ‘omission’. While NICCY welcomes this, greater clarity on what is meant by ‘omission’ is necessary.

#### **4.2 Clause 2 – Duty on Board of Governors to secure measures to prevent bullying**

Clause 2 of the Bill places duties on Boards of Governors. NICCY welcomes the proposed introduction of a legal requirement for Boards of Governors to be responsible for schools’ anti-bullying policies and procedures. There are, however, a number of potential challenges in that Governors are appointed in a voluntary capacity and they already have a range of roles and responsibilities in their school. For example, NICCY is also aware that the draft SEND Bill includes a new statutory duty on Governors to ensure the effective implementation, monitoring and review of Personal Learning Plans. Given the 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 recruit/appoint Governors.

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

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<sup>10</sup> Left Out of the Equation: A Report on the Experiences of Lesbian, Gay and Bisexual Young People at School 2011, The Education Equality Project, The Rainbow Project and Cara Friend.

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 are 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.

Clause 2(b) of the Bill details where bullying incidents may occur in order to come within the scope of the Bill. This includes on the premises of the school during the school day, while travelling to or from the school during the school term and while the pupil is in the lawful control or charge of a member of the staff of the school. We note that the Addressing Bullying in Schools policy had also included, 'whilst using school equipment'. This has not been translated into the Bill. In its advice to Government on the Addressing Bullying in Schools policy,<sup>11</sup> NICCY raised a number of concerns about the proposed scope of the Bill as we do not believe that the proposed scope is wide enough to address all incidents of bullying. This is particularly the case with regard to cyberbullying which will most commonly not take place on school premises. Cyberbullying is increasing as usage of electronic equipment increases and the Committee on the Rights of the Child has highlighted the obligations which the Government is under by virtue of ratification of the UNCRC to address cyberbullying. The Committee on the Rights of the Child's General Comment No. 13 specifically recognises that mental violence under Article 19 of the UNCRC can include psychological bullying including via information and communication technologies (ICTs) such as mobile phones and the Internet, known as cyberbullying.<sup>12</sup>

The Committee recommends that the Government takes educational measures to reduce risk and prevent violence against children through cyberbullying including providing accurate, accessible and age-appropriate information and empowerment on life skills, self-

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<sup>11</sup> *Op cit.* 1.

<sup>12</sup> Para. 21(g), United Nations Committee on the Rights of the Child, General Comment No. 13 (2011) 'The right of the child to freedom from all forms of violence', CRC/C/GC/13.

protection and specific risks, including those relating to ICTs and education and advice on protection in the context of ICTs.<sup>13</sup>

The Committee also addresses the increased use of technologies in General Comment No. 17.<sup>14</sup> While the Committee is supportive of the benefits of such technology it also expresses concern at evidence which indicates the extent to which these environments can contribute to significant potential risk and harm to children, such as cyberbullying, pornography and cybergrooming.<sup>15</sup> The Committee states that,

*“Bullying by other children can also be a major impediment to the enjoyment of the rights under article 31 (the right to play and leisure). Those rights can only be realized if States parties take all necessary measures to protect children from such acts.”<sup>16</sup>*

The Committee states that the Government is required to introduce measures to promote online access and accessibility, as well as safety for children. These should include actions to empower and inform children to enable them to act safely online, to become confident and responsible citizens of digital environments and to report abuse or inappropriate activity when it is encountered. Measures are also needed to reduce impunity of abusive adults through legislation and international collaboration; limit access to harmful or adult-rated material and gaming networks; improve information for parents, teachers and policymakers to raise awareness of the potential harm associated with violent games and develop strategies for promoting safer and attractive options for children.<sup>17</sup>

It is extremely disappointing that the Department has not proposed to create a wider legal basis for schools to intervene in instances of cyberbullying. While we accept that this is a complex legal area, we wish to see the Addressing Bullying in Schools Bill affording maximum protections to children and young people who are victims of bullying, whether physical, mental or through the use of technology.

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<sup>13</sup> Para. 44(a), (b), *Ibid.*

<sup>14</sup> Para. 45, United Nations Committee on the Rights of the Child, General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31) CRC/C/GC/17, 17<sup>th</sup> April 2013.

<sup>15</sup> Para. 46, *Ibid.*

<sup>16</sup> Para. 30, *Ibid.*

<sup>17</sup> Para. 57(d), *Ibid.*

Clause 2(c)(i) places an obligation on Boards of Governors to review the measures taken by the school with a view to preventing bullying from, ‘time to time’. NICCY does not believe that this is specific enough, nor does it place clear enough legal obligations on Boards of Governors of all schools to review the measures consistently or regularly. NICCY would advise that this duty be amended so that it is much more specific and timebound to ensure that all schools are obliged to review their measures to address bullying on a consistent and regular basis. This is also the case with regard to the obligation on the Department of Education under clause 3(4) of the Bill to publish Guidance from ‘time to time’ as to how a Board of Governors is to comply with the duty to keep a record of bullying or alleged bullying incidents.

#### **4.3 Clause 3 - Duty to keep a record of incidents of bullying**

Clause 3 of the Bill places an obligation on Boards of Governors to ensure that a record is kept of all incidents or alleged incidents of bullying, the motivation behind bullying incidents and information on how incidents were addressed. While NICCY welcomes this, we believe that the Department of Education should issue clear Guidance on how incidents should be recorded so that potential for ambiguity is minimised. A fundamental concern with the effective operation of the Addressing Bullying in Schools Bill is the fact that schools will continue to have ‘operational freedom’ in school discipline matters. It is clear that if schools choose not to recognise and classify incidents as falling within the statutory definition of bullying in order either to avoid additional administrative burden or a perceived negative reflection on the school, the value of the Bill and the ability to address the issue of bullying will be significantly undermined. While NICCY understands that schools must have operational independence for school discipline, it will be vital to the success of the implementation of the Bill that the Department takes all possible steps to ensure that schools comply fully with the Addressing Bullying in Schools Bill, associated policy and Guidance. NICCY would suggest that further consideration is given to mandatory reporting of all incidents of bullying by schools. An additional necessary component of this will be to ensure that compliance with the Bill, associated policy and Guidance forms a central part of future school inspections. The views of children and young people must be sought as a central element of these processes so Inspectors are confident that the experience of pupils fully informs the development and implementation of policy and legislation on this issue. NICCY also suggests that the Department recognises those schools which can evidence best practice in addressing bullying.

NICCY also wishes to see the extension of this duty to include an obligation on all school staff to report any incidents of bullying they witness. NICCY is aware that many incidents of bullying go unreported. NICCY's 2006 report on bullying indicated that although a majority of schools had a dedicated member of staff to deal with bullying incidents, only 16 per cent of post-primary pupils indicated, that if they were bullied, they would speak to this individual. Sixty per cent of pupils indicated that it would depend on the circumstances. In seeking help in relation to bullying, most respondents believed that telling a teacher was not a helpful or effective option. We believe that this proactive measure has significant advantages over waiting for a child or parent to report an incident of bullying and ensure that incidents of bullying are dealt with promptly and without a requirement on a child - who may be concerned about being victimised - if they report incidents of bullying to the school.

NICCY welcomes the obligation on Boards of Governors to record the motivation behind incidents or alleged incidents of bullying. Research clearly shows that children and young people from certain groups are much more likely to experience bullying in schools. This has an extremely detrimental impact on the ability of children from these groups to enjoy equality of opportunity in education and on their educational attainment.

#### **4.4 The level and extent of bullying experienced by certain groups of children and young people**

The 2014 Young Life and Times Survey found that 39 per cent of the 16 year olds taking part in the survey had witnessed racist bullying or harassment in school.<sup>18</sup> Difficulties have also been reported in placing newcomer children in Belfast based schools due to a fear of racist attacks when travelling to school.<sup>19</sup> Research carried out by the Department of Education<sup>20</sup> found that more Year 6 pupils and Year 9 pupils from 'Neither' Protestant or Catholic communities and 'Other' religious communities reported that they had 'been bullied at school in the past couple of months' compared with pupils from the Catholic and Protestant communities. The research also reported that 6.9 per cent of Year 6 pupils and 4.1 per cent of Year 9 pupils admitted bullying other pupils 'with mean names or comments about his or her race or colour', with 14 per cent of Year 6 and 7.6 per cent of Year 9 pupils indicating that they had been bullied with such comments.

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<sup>18</sup> 'Young Life and Times Survey 2014' ARK.

<sup>19</sup> 'The integration of newcomer children with interrupted education into Northern Ireland schools – A Belfast based case study,' Northern Ireland Strategic Migration Partnership, September 2014.

<sup>20</sup> The Nature and Extent of Pupil Bullying in the North of Ireland, Department of Education, October 2011.



Racist bullying is also a major issue for Gypsy, Roma and Traveller pupils and is often cited as the reason for self exclusion and/or being excluded. Both Traveller and Roma children experience extremely low educational attainment levels and very poor attendance rates.<sup>21 22</sup> A recent report found that nearly 9 out of every 10 children and young people from a Gypsy, Roma or Traveller background have suffered racial abuse and nearly two thirds have also been bullied or physically attacked.<sup>23</sup>

NICCY also has serious concerns about the experience of many transgender young people in education. Research by the Institute for Conflict Research<sup>24</sup> found that transphobic bullying is a significant problem in schools. Experiences of transphobic bullying were commonly found to involve sustained verbal abuse, which was perpetrated by pupils of all ages frequently in public spaces with many witnesses. On occasions, young people reported that staff who were aware that bullying was occurring did not offer support or attempt to end the harassment. The research found that typically staff lacked the appropriate awareness and knowledge to respond to incidences of transphobic bullying and that often a school's reaction is to view the young person as the problem rather than the bully and so are prepared to allow the young person being bullied to drop out of school rather than address the bullying behaviours. The report found that many young transgender people in Northern Ireland are dropping out of education permanently because of the negative impact transphobic bullying has on their lives and the inability of schools to adequately support them.<sup>25</sup>

Lesbian, gay and bisexual (LGB) young people experience significant challenges in accessing education. The Schools Omnibus Survey of 2014 highlighted that, of those surveyed, 39.3 per cent had seen or heard derogatory references to same sex relationships in the classroom or school grounds once or twice per year, 17.3 per cent had seen or heard derogatory references to same sex relationships in the classroom or school grounds once or twice per term, 5.1 per cent had seen or heard derogatory references to same sex relationships in the classroom or school grounds once or twice per week and 1.4 per cent had seen or heard derogatory references to same sex relationships in the

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<sup>21</sup> Northern Ireland Peace Monitoring Report Number 3, P. Nolan, March 2014.

<sup>22</sup> *Ibid.*

<sup>23</sup> National Federation of Gypsy Liaison Groups, 2014, Gypsy, Traveller, Roma: Experts by Experience

<sup>24</sup> Grasping the Nettle: The Experiences of Gender Variant Children and Transgender Youth Living in Northern Ireland, Ruari-Santiago McBride, Institute for Conflict Research, 2013.

<sup>25</sup> *Ibid.*



classroom or school grounds nearly every day. In the 2014 Young Life and Times survey, 50 per cent of 16 year olds surveyed stated that they had homophobic terms directed at them, regardless of their own sexuality, by another pupil and 78 per cent reported that this had happened to their classmates.<sup>26</sup> Research has also found that 75 per cent of LGB young people did not report incidents of bullying and harassment to school authorities. The most frequently cited reason for not reporting incidents was that young people thought that the school would not take it seriously (43 per cent). Of those who reported incidents to school authorities, 22 per cent believed that the school did not take their claim seriously and 40 per cent believed that the school took no action. When asked if, to their knowledge, their school made any efforts to tackle homophobic bullying 87 per cent of LGB young people said that their school made no efforts.<sup>27</sup>

Research carried out by the Department of Education also highlights issues of bullying and barriers to the enjoyment of education among children and young people with a disability. Year 6 and Year 9 pupils with a disability were more likely to report that they have been bullied at least 'once or twice'; had some experience of being bullied verbally regarding their disability - 34.0 per cent of Year 6 and over 40 per cent of Year 9 at least 'once or twice'.<sup>28</sup>

Concerns also exist around the educational experience of young people with caring responsibilities. Research has found that children as young as six who look after their sick or disabled parents are routinely bullied at school. The study found more than two-thirds of young carers face taunts from fellow pupils, who often mock their parents' appearance or disabilities. Many said they felt unsupported or misunderstood by teachers when they became tired, missed homework deadlines or could not get to school because of their responsibilities. 39 per cent of the 700 six to 18-year-olds questioned for the research said there was not a single teacher at their school who knew they were a young carer. Of those whose teachers did know, more than half did not feel supported.<sup>29</sup> The NIHRC has recommended that the Department of Education creates a statutory duty on educational bodies to support young and student carers.<sup>30</sup>

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<sup>26</sup> *Op cit.* 18.

<sup>27</sup> *Op cit.* 24.

<sup>28</sup> *Op cit.* 21.

<sup>29</sup> The Princess Royal Trust for Carers and The Children's Society, May 2010, <https://www.carers.org/news/over-two-thirds-young-carers-bullied-school>

<sup>30</sup> The Human Rights of Carers in Northern Ireland, Northern Ireland Human Rights Commission, November 2014.

A UK wide report by Barnardo's found much higher rates of bullying in the looked after children population than children who are not looked after, with those who had been bullied attributing this to being in care. Barnardo's has recommended that school bullying policies should have special regard to those children who may experience bullying because they are in care.<sup>31</sup>

#### **4.5 Section 75 of the Northern Ireland Act 1998**

It is NICCY's view that the Department of Education should take proactive measures with regard to certain groups of children who disproportionately experience bullying. Section 75 of the Northern Ireland Act 1998 places a proactive duty on designated public authorities to have due regard to the need to promote equality of opportunity between members of the nine section 75 categories. Equal application of a policy where there is evidence to suggest unequal enjoyment of equality of opportunity fails to recognise the societal inequalities which exist with regard to children and young people from various section 75 categories and their experience of education and bullying in schools in particular. It is unacceptable where inequalities have been identified, for a public body to take no additional proactive measures other than the adoption of a blanket policy which will impact on all young people equally. In order to comply with section 75 the Department is under a statutory obligation to address the inequalities which are identified through mitigation or the adoption of alternative policies. This will require the Department putting in place, proactive measures to ensure for example that newcomer young people, young people with disabilities, LGB or T young people, young people of religions other than Catholic and Protestant, are able to fully participate in their education by taking proactive measures to address the high levels of bullying these groups of young people experience in education. We also wish to see the inclusion of young carers and looked after children in the list of potential motivations under clause 3(3). This is particularly the case given the withdrawal of all earmarked funding for the Department of Education's Community Relations, Equality and Diversity (CRED) policy.

#### **4.6 The Department of Education's CRED policy**

The aim of the CRED policy was to contribute to improving relations between communities by educating children and young people to develop self-respect and respect for others, by providing children and young people, in formal and non-formal education settings, with

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<sup>31</sup> Failed by the System, Barnardos, [http://www.barnardos.org.uk/failed\\_by\\_the\\_system\\_report.pdf](http://www.barnardos.org.uk/failed_by_the_system_report.pdf).

opportunities to build relationships with those of different backgrounds and traditions.<sup>32</sup> Funding for this policy was withdrawn after an equality impact assessment (EQIA) was carried out and consulted on for just over four weeks in February 2015.<sup>33</sup> The 2012 Young Life and Times Survey examined CRED and found high levels of young people reporting more positive attitudes towards those of different religious belief and political opinion, persons from different ethnic groups, those of a different age, different sexual orientation, different gender, or those persons with disabilities. In 2014, the same survey reported similarly high results in relation to young people's experience of CRED.<sup>34</sup> Just as the CRED policy contributed to young people displaying greater tolerance and understanding to certain groups of young people through participating in programmes which dealt with issues relating to their lives, we can assume that the impact of the withdrawal of all earmarked funding for CRED is likely to result in an increase in intolerance and negative attitudes towards certain groups of young people including young people with different religious beliefs, political opinions, race, sexual orientation, young males, females and transgender young people, young people with disabilities and LGB young people. While NICCY understands that it is the intention of the Department of Education to mainstream its CRED policy, we are concerned that the withdrawal of earmarked funding for the operation of discrete programmes under CRED could have an extremely detrimental impact on tolerance and understanding in schools and could also lead to an increase in bullying. NICCY believes that there is a pressing need for young people to be educated about difference, tolerance, self-respect and respect for others in school. Such education should be part of a whole school approach to addressing the issue of bullying. It will also be vital that teachers are equipped with the confidence, knowledge and skills to support all children and young people with whom they come into contact and to deal effectively with bullying in a proactive manner through education and the promotion of tolerance in the classroom, but also reactively where bullying has been identified through supporting all of the children involved. This will be a vital part of ensuring that all children are facilitated to fully participate in their education in line with the Department's obligations to protect and realise the right of all children to an effective education under the UNCRC.

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<sup>32</sup> Para 6.1, *Community Relations, Equality and Diversity in Education*. Department of Education, 2011.

<sup>33</sup> Department of Education's Consultation Equality Impact Assessment Proposal to End the Community Relations, Equality and Diversity (CRED) Earmarked Funding, February 2015.

<sup>34</sup> *Op cit.* 18.

## 5.0 Conclusion

NICCY is keen to give oral evidence to the Committee on the Addressing Bullying in Schools Bill and we would be happy to discuss anything in this submission or provide clarification or further information to Committee members if required. It would be preferable to give oral evidence to the Committee on 20<sup>th</sup> January 2015 if possible.