

Bullying in Schools in England:

A Review of the Current Complaints System and a Discussion of Options for Change

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The Children's Commissioner was established under The Children Act 2004 to be the independent voice of children and young people and to champion their interests and bring their concerns and views to the national arena.

Professor Sir Albert Aynsley-Green became the Children's Commissioner on 1 July 2005. He was previously National Clinical Director for Children at the Department of Health and Nuffield Professor of Child Health at the Institute of Child Health and Great Ormond Street Hospital for Children.



The Children's Legal Centre is an independent charity committed to promoting the rights of children in the UK and worldwide. As part of its work, it provides free legal information, advice and representation to young people, parents, carers and professionals. The Centre provides legal help to children, young people, parents and carers who have education law issues, including bullying, exclusion, admissions and special educational needs. The phone number of the Children's Legal Centre's education law advice service is open 9.30am – 5.00pm weekdays and can be reached on 0808 222 0017. We also have a website: www.childrenslegalcentre.com.

1. Introduction

The Office of the Children's Commissioner (OCC) was requested by the Secretary of State for Education to review the current procedure relating to complaints of bullying at school in England. This discussion paper addresses the law on bullying, examines the current areas of difficulty and then explores different schemes that seek to address such difficulties. Finally, the paper makes some recommendations for a more effective complaints system. Over the next few weeks, the OCC will hold discussions on these recommendations, seeking out the views of as wide a range of stakeholders as possible. A final set of proposals will be submitted to the Secretary of State early in 2007.

The OCC is aware of the debate relating to the forms of conduct that should be included within the definition of bullying. For the purposes of complaints, bullying is taken to mean behaviour which, in the view of the victim, has caused him or her to feel fear or intimidation, or is regarded as degrading or humiliating treatment or punishment. In using such a definition, it is inevitable that what is regarded as bullying in the eyes of one child or parent may not be so regarded by another.

2. The Present Law Relating to Bullying

At present, the options for a child or parent who wish to complain about bullying, or the failure of the school to address the bullying, are limited. Where a child alleges that he or she has been bullied, either the child or a parent may raise this matter with a teacher. If the complaint is not satisfactorily resolved, a complaint may be made successively to the Headteacher, and then to the governors of the school. S. 29 Education Act 2002 provides that governors of a maintained school shall establish a complaints procedure to deal with complaints not covered by existing statutory requirements.¹ In producing their complaints procedures, governing bodies are required to have regard to any guidance given out by the Secretary of State. This section replicates the earlier legislation contained in s.39 School Standards and Framework Act 1998. The Secretary of State for Education has never exercised his functions in this regard, and has not, up to the present time, issued any regulations relating to complaints. A draft of the Education (School Government) (General Complaints Procedures) Regulations was issued for consultation in February 1999, but no further steps were taken and no Regulations were ever published. Governors are, however, given advice on how to deal with complaints in *A Guide to the Law for School Governors*² and in a toolkit available on the government website.

If the complainant remains dissatisfied after a hearing before the governors of the school, it is possible to take the complaint further, and complain to the local authority. However, the normal response of the local authority is that the complaint relates to a matter of internal discipline within the school and the local authority has no basis on which to intervene. A final complaint may be made to the Secretary of State for Education under ss 496 and 497 Education Act 1996 if the complainant believes that the governing body or local authority has acted unreasonably or is failing to carry out its duties properly. However, to the best of the authors' knowledge, and having asked the DfES, no such

¹ In relation to delivery of the National Curriculum, provision of collective worship and religious education, SEN assessments, admissions and exclusions.

² Chapter 3 para 11.

complaint has ever been upheld by the Secretary of State, making this a rather unsatisfactory remedy.

Apart from the making of complaints, the only other options open to a child or parent who feel aggrieved at the bullying, are a negligence claim against the school (although few such claims have been successful) or an application for judicial review where the disciplinary action taken is, in the view of the complainant, insufficient.

3. The role of OFSTED

At present school inspections are undertaken by OFSTED. Whilst schools will be required to show that they have complied with the law and have an anti-bullying policy in place, as required by s.61 School Standards and Framework Act 1998, OFSTED does not currently monitor the nature and extent to which the policy is implemented, levels of satisfaction or the effectiveness of implementation. Again, while parents are provided with an opportunity to express their views about the school, and many do indeed raise issues of bullying, it is not part of OFSTED's role to take up individual complaints relating to bullying.

Part 8 of the Education and Inspections Act 2006 provides for the establishment of the Office for Standards in Education, Children's Services and Skills and a new office of Chief Inspector of Education, Children Services and Skills. These new arrangements will bring together the existing remit of HM Chief Inspector of Schools in England, and the children's social care remit of the Commission for Social Care Inspection. However the remit of the new office does not include the extent to which policies, including an anti-bullying policy, are implemented.

4. Problems in devising an effective complaints process

(a) *Reluctance of pupils to report bullying:*

- This is a widely recognised problem. Many efforts have been made by individual schools to combat reluctance to report bullying, including for instance, buddy schemes, bullying boxes for anonymous complaints, peer counselling and awarding bully free status to classes or tutor groups.
- In spite of such schemes there will always be a percentage of victims who are afraid to come forward. They may fear not being believed or reprisals from the bullies.
- Some victims do not tell their parents about the bullying until it has reached a very serious level that cannot be hidden e.g. physical assault.
- The known incidents of bullying in any school are likely to be the “tip of the iceberg”.

(b) *Attitude and actions of Heads and senior staff:*

- In spite of the strong emphasis placed on the need to address bullying in schools, some Heads still respond to parents by rejecting the suggestion that there is any bullying in the school.
- It may be alleged that the parent is over-protective, or even a troublemaker. There may be hurtful suggestions that the bullied child is over-sensitive or anti-social.
- If the school takes action in response to the parent’s concerns, the action taken may amount to a penalty for the victim. It is quite common, for example, for the child being bullied to be moved into a different class or even be taught in isolation from their peers. The school may see this as an “easier” option than confronting the bullies.
- Even serious incidents of violent bullying are sometimes dealt with inadequately in parents’ and children’s eyes, for example, by short fixed-term exclusions.

CASE STUDY: A boy aged 11 was subjected to bullying by two older boys. The attack took place on school premises. He suffered concussion due to his head being banged on the ground. The school excluded the offenders for a fixed term of one half day. No steps were taken to protect the victim on subsequent days.

- It is not uncommon for a bullied child to be permanently excluded if he or she retaliates against the bullying. Schools often fail to treat the previous bullying as provocation when deciding to exclude. The Independent Appeal Panel rarely challenges schools on this issue.

CASE STUDY: A year 11 pupil was assaulted by a group of 5 other boys when leaving school. He required hospital treatment for his injuries. The bullies each received a three- day fixed term exclusion. After a two week absence to recover, the pupil returned to school. On the first day back, he was approached by one of the bullies who abused him. He struck the bully and broke his jaw. The school permanently excluded him. His appeal against the exclusion to the independent appeal panel was unsuccessful. The panel took the view that the school was allowed to consider the response incident in isolation from the previous bullying when making the decision to permanently exclude.

(c) *Teacher Bullying*

- School anti-bullying policies generally concentrate on bullying between pupils. Only rarely do they refer to bullying by a teacher of a pupil. The school's disciplinary policy generally covers the action to be taken, and the sanctions to be applied, if a child bullies a teacher, but not vice versa. Children and parents can nevertheless make complaints about bullying by a teacher, but these are often dealt with in an employment context, leading to possible disciplinary proceedings against the teacher if proven.

When the allegation concerns bullying of a child by a member of staff, the Headteacher's reaction to the parent may be extremely negative. It is understandable that a Head will want to support staff, but in some cases the parent is not given a proper hearing and no investigation is conducted at all. If the Head does investigate and finds substance in the complaint, disciplinary action may follow against the member of staff, but the conduct of that action and its outcome are unlikely to be reported to the parent. In addition, the original complaint is frequently subsumed into the disciplinary action, and no separate complaint hearing is set up and heard by the governors.

CASE STUDY: a 7 year old boy, T, was taught in a special educational needs class. The teacher was upset with the child and went over to his desk and punched him in the chest. X, the child sitting next to T told his parent that night and the parents of both boys made a complaint. Disciplinary action was taken against the teacher and she was suspended from teaching for a year and then allowed back to the school, provided she did not teach the class X and T were in. The parents were extremely unhappy about this decision and their children continued to be upset when they saw her in the school. They were not given the chance of having their complaint heard before the governors as the view was taken that their complaint had been resolved by the disciplinary hearing, in which of course they played no part, and their views were not considered.

(d) *Withdrawing Children and Young People*

- Some parents despair of action by the school and remove their children to home education or to another school. This causes further disruption to a child already traumatised by the bullying. Sadly, many children are then bullied in a second school.

CASE STUDY: C suffers from Aspergers Syndrome (a form of autism) and has a Statement of Special Educational Needs. Whilst attending his first primary school he was regularly bullied because of his disability. His mother spoke to the Head on a regular basis but no action was taken to protect him. The Head told the parent that her son was too sensitive. He did not take account of the effect of C's disability on personal relationships. Because of the bullying, C developed nervous tics and began refusing to attend. The local education authority agreed that C could transfer to another primary school for Year 6. The second primary school was successful in supporting his needs. He appeared to settle well. When he transferred to a mainstream secondary school, the bullying began again. He is exhibiting increasingly bizarre behaviour and physical illnesses which keep him out of school for long periods.

5. Current Complaints Process

(a) *The role of Governors*

Many schools work very hard to resolve parental complaints relating to bullying. However, there are serious difficulties with the current complaints process. Parents frequently regard the process as ineffective in addressing the bullying, feel that they are unable to obtain a satisfactory hearing of their complaint and do not regard the process as independent. In addition, from the parents' perspective, the outcomes are often unsatisfactory.³

The first formal level of complaint is to the school governors. In some cases, the Governing Body have been known not to respond to the complaint at all. In such situations, there is little a parent can do. A complaint could be made to the local authority in such a case, or technically, there would be an option to seek leave to bring an action for judicial review. However, the latter course of action could be expensive. In addition, where a parent qualifies for legal aid, it is likely to be difficult to persuade the Legal Services Commission to fund such an application. If the parent pursues the issue, complains about the governors' conduct and forces a hearing of the complaint before the Governor's Committee, it may be difficult to find governors who are neutral and whose views have not already been affected by the parents' complaint against them.

In other cases, the governors may simply respond by making a formal assertion that the school has taken all possible action, or a denial that any bullying has taken place. There is no 'hearing' at which parents or child may express their views and put forward their evidence for consideration. In such instances, the parents rarely feel that an independent view has been taken of the situation.

³ The Children's Legal Centre hold contracts from Community Legal Services Direct to provide the National Education Law Line. Complaints of this nature form about 30% of all calls.

Where parents are given an opportunity to put their case to a Committee of the Governing Body, there may not be an 'investigation' of the complaint beyond the hearing of oral evidence. This makes it difficult for the Governors Committee to decide whether the school has taken all reasonable action to address the bullying. The remedies available to the Governors Committee are also limited. The Governors may request the school to take some further action to address the bullying, but it does not have a wide range of powers. For instance, the Governors do not have the power themselves to exclude a pupil who has undertaken the bullying, though it may make such a recommendation to the Headteacher. The Governors do have power to provide some redress: for instance, where the bullying has been by a staff member it can recommend that the staff member apologise, it can recommend disciplinary proceedings or make a small award of compensation.

If a parent is dissatisfied with the response from the governors, they can complain to the local authority. The most common response to such complaints is that no action can be taken as the complaint relates to an internal school management issue. The local authority has little power to force a school to change its policies and practice.

A further complaint to the Secretary of State usually meets with the same response. Only in extreme cases is there any action by the Secretary of State against the school.

CASE STUDY: A pupil with a physical disability was subjected to verbal bullying by her peer group. The parent's complaint to the Head and governors was dismissed as having no substance. The local authority and Secretary of State refused to interfere with the school's "internal management". The parent issued proceedings in the local county court alleging educational negligence. The Head reacted by isolating the pupil within school and teaching her in isolation from her peers. The Head also refused to allow the parent onto school premises, even to attend parents' evenings. The parent was forced to remove the pupil from the school.

When a school is inspected by OFSTED, parents are asked to express any concerns to the inspectors. It seems to be rare for the parents' concerns about inadequate response to bullying to be reflected in the OFSTED report. There have been recent changes to the inspection process that enable parents to raise concerns with OFSTED and trigger an inspection (either of the whole school or of one area within a school).⁴ This option may prove helpful to parents of bullied children. However, few parents seem to be aware of this possibility. It would be helpful if schools were obliged to refer to this option in their published complaints policies.

(b) Local Government Ombudsman

The LGO in England has no jurisdiction in relation to schools even when the school is exercising a public function delegated by the local authority. If a school fails to follow its published anti-bullying policy, or comply with statutory duties, there is no recourse to the LGO.

The Local Government Ombudsman currently deals with public sector complaints. For many years, it has been a major concern that while the LGO has jurisdiction in relation to maladministration in education, it does not have any jurisdiction over what are termed 'internal' disciplinary matters. There would be a number of advantages to giving a wider jurisdiction to the LGO to cover the way schools address parental complaints. These include:

- The LGO system is well known and established, and has a high level of credibility and trust
- It is an independent, impartial and free service
- The LGO is completely independent of the Government and local authorities
- The LGO has extensive powers to obtain the information it needs to make decisions

⁴ The decision to hold an inspection is at the discretion of OFSTED. However, with the exception of child care providers, OFSTED is not the appropriate authority to pursue grievances against an institution (see www.ofsted.gov.uk).

- The LGO is able to recommend the payment of compensation
- The LGO uses the complaints received to promote change and good practice to ensure similar problems of maladministration do not happen again

There are also, however, a number of obstacles which would impact on the effectiveness of the LGO as an appeal body where parents feel dissatisfied with the way that schools handle complaints. These include:

- Applications can only be made to the LGO when other complaints procedures have been exhausted
- There is currently an issue of delay in dealing with complaints. The LGO office is overstretched and would require additional staff to take on any extra work.
- The remit of the LGO is confined to the investigation of complaints of maladministration. It could, if given power over matters of internal discipline in schools, address the issue of whether the school had followed its own policies and any requirements set down in legislation, but could go no further than that.

(c) *Limited redress through the court system*

In theory, a pupil or parent can seek judicial review of a school that fails to protect the pupil from bullying. However, it is difficult to obtain funding from the Legal Services Commission for such an application. Even where funding is obtained, few applicants succeed in obtaining permission, as there is often insufficient objective evidence of the school's failure for a judge to grant permission. The only exception may be cases where the pupil has suffered serious physical harm on more than one occasion.

Where there has been persistent bullying, a pupil who suffers loss may have a claim in educational negligence. This, of course, does not provide a remedy at the time of the bullying and, once again, it is difficult to obtain funding from the Legal Services Commission for such proceedings. In addition, of those claims that have reached court, few have been successful. The pupil must satisfy the

court that there was persistent bullying, that loss resulted from the bullying, that the school owed a duty of care and that the loss was reasonably foreseeable by the school. This is a high standard to satisfy. Even if the claim is successful, the level of damages would generally be low.

Bullying may amount to a criminal offence where it involves assault or harassment. The recently arrived technological forms of bullying, eg by e-mail and text, may also amount to criminal offences under the Telecommunications Act 1984. However, schools are reluctant to involve the police, and there appears to be equal reluctance on the part of the police and the Crown Prosecution Service to prosecute for bullying incidents in school. Any private prosecution is generally impractical due to cost. A further difficulty is that bullied pupils are often emotionally fragile and parents, in an attempt to shield the child from further stress, are unwilling to pursue or be involved in criminal proceedings.

When the Human Rights Act 1998 passed into UK law, it was hoped that the prohibition on degrading and inhumane treatment in Article 3 of the European Convention on Human Rights would provide some recourse for bullied pupils. The right to privacy and family life contained within Article 8 could also have been helpful. However, the courts have chosen to interpret most of the rights narrowly in the current decided case law. There is little prospect that a freestanding claim under the HRA for a declaration of breach of human rights and damages as a result of bullying would succeed.

(d) *School refusing and school phobia*

Many bullied pupils go on to refuse school, and may develop “school phobia”. The parents may be unable, or unwilling, to force them to continue attending school. The phobia may extend beyond the original school, and make it impossible for the pupil to be re-integrated into any school environment.

CASE STUDY: The parent of girl A sought advice when his daughter was in Year 11. She had been the victim of bullying from the age of 11 and had begun to refuse to go to school when she was 13. She was still on a school roll but had not attended any sessions at the school for over a year. Her father believed she suffered from school phobia, but there was no official diagnosis. The school was not providing or marking work. The local authority had not provided alternative education. The father was being threatened with prosecution for her non-attendance. Following intervention from Connexions and the Children's Legal Centre, the school agreed to arrange an alternative education package for her. She began to attend a hairdressing academy for three days per week, while the school provided work for her to complete at home on the remaining days.

Schools often do not accept the validity of a pupil's absence on the basis that he or she is suffering from school phobia brought on by bullying, and as a result, work is not provided or marked. The condition of school phobia is rarely acknowledged by local authority medical examiners. Pupils absent from school for this reason may not, therefore, receive the alternative education that an authority should provide for sick children.

Local authority education welfare officers often pressurise the parents to force their children to return to school. Parents may be prosecuted or face an application by the authority for an education supervision order.

School phobia is rarely the basis for a Statement of Special Educational Needs, even when the pupil has missed long periods of education, and is, therefore, far behind his or her peers academically.

CASE STUDY: Girl B refused to attend school having been bullied at the age of 7. Her parent made two requests for a statutory assessment of her special educational needs, while she was attending primary school. The requests were both refused by the local authority. The primary school rejected any suggestion of school phobia due to bullying. A Statement of Special Educational Needs was finalised when she transferred to secondary provision at the age of 11. However, the Statement was based on emotional and behavioural problems and her poor academic attainment rather than school phobia. The Statement contained no strategies to deal with the phobia. She continued to refuse to attend school. The educational psychologist recommended a small residential school to re-integrate her into education, but the authority refused to name a residential school. Now aged 14, she has been without full-time education for two years.

6. Initiatives for Change

Having undertaken research in this area, it is clear that there has been little innovation to address the current shortcomings and dissatisfaction with the present complaints system. There is no national independent mediation service to which parents can refer a dispute with a school. Some parents take the view that the system prevents their child obtaining redress for a school's failure to protect from bullying. York City Council has a bullying mediation service and Islington Council have introduced a Complaints Officer who advises and helps parents to follow the established school complaints procedure. Whilst these Councils deserve recognition for adopting new approaches to bullying, neither is likely to meet fully the concerns expressed by parents with respect to bullying complaints. Perhaps the most innovative model to consider is that of mediation.

(a) York Council - mediation "Face to Face"

This programme was established four years ago, and offers face to face mediation. The service is provided by volunteers. It provides mediation not only for school bullying but also for neighbourhood disputes, and can deal with bullying in its wider aspect, especially when bullying takes place both in and outside the school. The mediation can involve the pupils, the parents or anyone else who may be involved in the dispute.

One of the advantages of the programme is that the staff are independent and are not connected to the school. The parents view this as a positive factor, and one which impacts on the credibility of the scheme. Heads are also reported as being pleased with the service which, they feel, has been effective in resolving problems.

Face to Face believe that encouraging the bully to face their victim has positive implications. They are able to witness the effects of their actions and are able to agree to the solutions rather than being forced to behave in a dictated fashion. They can assume responsibility for what they done and take positive steps to rectify the situation.

Face to Face is only used as a final resort, the scheme expecting the school to have exhausted all other possibilities before referring pupils.

Understandably, a school is required to make the referral, presumably having ensured that both the victim and the bully have agreed to attend mediation.

Pupils and parents may not self-refer, and thus the decision to use this service lies solely with the school. The scheme is not well-known and is not advertised or published on the York Council website. Like all forms of mediation schemes, this one depends on the parties being willing to engage in mediation, and it may be that the most intractable cases do not reach it. No figures were available for the number of bullying mediation cases undertaken or the numbers of children who had refused to enter such mediation. The concept has however, been of interest to schools and Face to Face are now running workshops on bullying in schools.

(b) Islington Council – Complaints Officer

Islington Council established the post of Complaints Officer over five years ago. Parents are able to speak with the complaints officer about bullying and receive free advice and support on how to follow the school complaints procedure. The Complaints Officer will follow the progress of the complaint and contact the school if they fail to respond.

Advantages:

- Provides support for all parents for the duration of the complaint process, and reassures parents that they are not expected to face the situation alone
- The officer can make referrals to ACE (Advisory Centre for Education), Parentline or the EWO (Education Welfare Officer), which in some instances can prevent the problem from escalating
- The scheme has helped to encourage the right mindset amongst the Governors
- The Complaints Officer and his team are independent of the schools and are able to maintain a neutral stance
- The scheme recognises that the procedures set up by schools can sometimes go wrong and that parents may require support

- The scheme has encouraged the development of an “Anti-Bullying Strategy” and the creation of a “Bullying Co-ordinator” who will investigate and provide responses to bullying.

Disadvantages:

- The Complaints Officer becomes involved at a late stage, and is therefore presented with more intractable disputes;
- The officer cannot proceed with a complaint independent of the parent,
- The system relies on the parents following the complaints procedures already in place and has not introduced any fresh ideas
- The system does not provide the Complaints Officer with any real power to address failures on the part of the school to implement its own policies. Nor can the Complaints Officer impose any penalties. If the school fails to implement its complaints policy, the officer has no real power to do anything

(c) *Edinburgh*

Edinburgh has an Advice and Conciliation Service which aims to inform the public about the complaints procedure. The Education Service is under a duty to respond to complaints within a reasonable time in an efficient manner. The service provides a telephone helpline advising on how to proceed. The aggrieved party must put the complaint in writing including what he or she would like to be done, once they have exhausted all other local procedures. The service encourages an open discussion of the complaint, either in person or by telephone, to bring out the full nature and all details of the complaint. If the Education Service feels that the complaint was justified, it can take the following action:

- Put right what went wrong
- Adjust service delivery to try and prevent a similar problem arising in the future
- Offer an apology where appropriate

In addition to the mediation schemes that run in many Scottish authorities, the Scottish Executive has funded “The Anti-Bullying Network” based at the University of Edinburgh. The Network set up in 1999 with the aim of providing a forum for teachers, parents and young people to share ideas about how bullying should be tackled.

In 2002, the Anti-Bullying Network produced a single document that describes the minimum standards which Scottish schools should adopt if bullying is to be tackled effectively. In order to produce this document, the Anti-Bullying Network invited each of the 32 Scottish local authorities to attend a seminar at which the duty to protect children in their care from harm was discussed – specifically in relation to bullying. Following the seminar, a “Reasonable Expectation” document was produced, which has influenced bodies such as Her Majesty’s Inspectorate of Education. In undertaking a school report or investigation, HMIE consider the “Reasonable Expectation” guidelines when compiling their report.

7. Conclusion & Recommendations

There would be little dissent from a conclusion that schools should continue to work actively on the prevention of bullying, and have mechanisms in place to tackle any bullying as soon as it arises. However, even with the most imaginative policies, together with full implementation of those policies, there are still likely to be children and parents who wish to complain about bullying. The current system of complaints is generally regarded as unsatisfactory and realistically ends with a complaint to the school governors. Although a further appeal may be made to the local authority and to the Secretary of State for Education, neither body will intervene in matters of internal discipline within a school. Many children and parents regard the current complaints system as unable or unwilling to address issues of bullying in a fair, just and effective manner.

The OCC is of the view that the current complaints system would benefit from greater use of independent mediation, a right to a hearing before a Governors Committee, supported by a Presenting Officer, and the introduction of elements of 'independence' where the parents or a child are dissatisfied with the resolution of their complaint. These additions to the complaints process would not negate the need for further development of anti-bullying policies, as well as work on prevention, but should be seen as an integral part of a holistic approach to bullying. Our specific recommendations are set out below. We are inviting views on their appropriateness and potential effectiveness.

- 1. The right of parents to appeal from the decision of the governors to the local authority should be removed, so also should the right of appeal to the Secretary of State under ss 496 and 497 of the Education Act 1996 in so far as it relates to complaints of bullying or action taken by the school in a particular case of bullying.** To replace these existing avenues of complaint, we have made a number of recommendations set out below.

2. **All local authorities should be required to establish independent mediation services for bullying disputes.** These should provide mediation where parents and schools are in dispute, as well as child-to-child mediation. As these are two very different forms of mediation, two different services may be required. Schools should be able to make referrals for child-to-child mediation in accordance with the model currently used in York. We would recommend that mediation should not be compulsory, as experience of mediation in other fields tends to confirm that such a model has limited benefit. Staff engaging in mediation between children need to be highly skilled and should first assess whether such mediation is appropriate as a way of dealing with the bullying. We recognise that it will not always be appropriate, particularly where it might place the child at risk of further bullying or harm, or where the power imbalance is simply too great. It is unclear at present, without further research, whether successful mediation between children would result in a drop or withdrawal of complaints from parents.

An independent mediation service is likely to be particularly useful in enabling the resolution of issues between parents and schools. However, any service would need to ensure that the two parties entered into mediation on an equal footing. This might require support for the parents, some of whom will be distressed by what they see as the failure of the school to protect their child, or will feel intimidated in addressing those whom they regard as having a position of authority and with power over their child. Some parents may, in addition, have a learning disability themselves. Further, any representative from the school would need to have the authority to make concessions and agreements on the part of the school in the mediation process.

We would recommend that such mediation be made available at all stages of the formal complaints process, even when an appeal is pending before the independent body. Schools should be placed under a statutory duty to consider mediation where parents are dissatisfied with the resolution of their complaint to the Headteacher. In addition, schools should provide

parents with information about the availability of mediation services when answering complaints.

- 3. There should be a right to a hearing before a Governors Committee** where the parents or child are of the view that the Headteacher has not resolved their complaint satisfactorily and cannot be encouraged to engage in mediation, or mediation is not appropriate. This should be contained in legislation and the process and powers of the Governors clearly set out. In order to make any such complaint effective, we would recommend that an independent presenting officer be appointed. The purpose of such an officer would be to ensure that the Governors are presented with all the necessary evidence on which to base their decision. We recommend that the local authority should accredit or appoint such independent presenting officers, who should be persons with experience of education and of working with children and young people. Schools should be responsible for any necessary payments to such an officer.

The role of the presenting officer should include seeing the child and parents, and any other persons with relevant information, as well as provision of any documents or statements to the Governors' Committee. The presenting officer should also file a statement of his or her findings and be available at the Governors Committee to give oral evidence. The Governors Committee should be required to hear the parents and any child who wishes to give evidence before them. Relevant members of the teaching staff should also be required to attend and give evidence as required.

We recognise that introducing an independent person at this stage may seem unpalatable to some schools. However, it is our view that such a person would be of real value to parents, schools and governors. The use of a presenting officer would reduce the possibly adversarial nature of proceedings and ensure that all evidence is considered. It would also promote resolution. Parents, especially those with learning difficulties may

have great difficulty in presenting their complaint to 'authority': in this case the Governors Committee. The use of an independent person to present evidence means parents are more likely to feel that they have had a fair hearing and to accept the decision of the Governors. In addition, it is likely to assist governors and schools in reducing the time spent in the hearing and in reaching a decision. Further, the Headteacher may, having seen the independent presenting officer's report, wish to revisit the decision on the complaint or access mediation.

- 4. An external independent complaints panel should be established in each local authority area.** This body (which would be a replacement for complaint to the local authority or the Secretary of State) would act as a final 'appeal' body from the Governors. Parents would be able to seek a hearing before the Independent Complaints Panel when they remain dissatisfied with the outcome of the Governors hearing, or where they believe that the Governors have failed to exercise their function in accordance with their statutory duties. We would recommend that there be a legally qualified chair of the panel, and two wing members, one of whom should be experienced in working with children and parents (ie representative of the parental side) and one experienced at working in schools (representative of the school). The remit of the Panel would be to determine complaints in relation to bullying, both by pupils and by members of school staff. The Secretary of State would need to issue secondary legislation in the form of regulations covering the work of this Panel, and be clear as to the action that any such panel might take. There would also need to be an amendment to primary legislation to allow for the establishment of this body and its functions. Consideration would need to be given as to whether the Panel would have the power to compel people to appear before it or give evidence, and the sanctions that it could apply. Obviously, it would be extremely difficult, if not impossible, to give the Panel the power to exclude a pupil, but it might be given the power to order the Headteacher to reconsider the disciplinary sanctions imposed.

It is recognised that there will be some instances where the parents' or child's complaint may be trivial and not well-founded. We would recommend that there should be a filtering system prior to obtaining a hearing before the Independent Complaints Panel. Thus, complainants could be required to submit an application to appeal to the Independent Complaints Panel, setting out the grounds for the appeal and submitting the decision of the Governors Committee. The applications would be filtered by a Chair of the Independent Complaints Panel. The Chair would consider whether there was a prima facie case for appeal. In the event that the Chair decided that there was no merit in the case, there would be no further right of appeal.

5. The role of the Local Government Ombudsman should be extended.

We have considered whether the Ombudsman in England should also be able to consider issues relating to internal discipline within the school. We would recommend an extension of the LGO's powers to encompass this role. However, as the role of the Ombudsman is restricted to issues of maladministration, we are of the view that an Independent Complaints Panel would still need to be established. This would leave the question of whether there should be a right to refer a case to the Ombudsman following a hearing before the Panel. Our view is that there should be such a right.

The Children's Commissioner is inviting discussion on these proposals. A response form is available on his office's website www.childrencommissioner.org.

Responses must be received by 31st January 2007.

RESPONSE FORM

The Office of the Children's Commissioner is inviting discussion on the proposals set out in its paper –

Bullying in Schools: A Review of the Current Complaints System and a Discussion of Options for Change

Responses must be received by 31st January 2007

Reply to info.request@childrenscommissioner.org
Hard copies to: Bullying Complaints
Office of the Children's Commissioner
1 London Bridge
London SE1 9BG

Tick your answer as appropriate

Who you are:

Child / young person

Parent

Teacher or other Education Professional

School Governor

If you are responding on behalf of a professional association or voluntary organisation, please provide its name and contact details:

1. In principle, do you agree that mediation should be available to children, parents (guardians or carers) and schools where there is a bullying dispute that cannot be resolved by schools?

Yes

No

If not, why not?

2. With respect to disputes between parents etc and a school, are there any forms of dispute that you would exclude from mediation?

Yes

No

If so, which?

Additional comments

3. With respect to disputes between children, do you agree with the use of independent mediation?

Yes,

No

If so, in what circumstances?

Additional comments

4. If mediation is to be used, **at what stage** should it be offered?

(a) When the parent is dissatisfied with the Headteacher's response to a complaint?

Yes

No

If no, why not?

Additional comments

(b) When a hearing before the Governors Committee is pending?

Yes

No

If not, why not?

Additional comments

(c) After the Governors Committee decision?

Yes

No

If not, why not?

Additional comments?

(d) While an appeal before the Independent Appeal Body is pending?

Yes

No

If not, why not?

Additional comments

5. Do you agree, in principle, that there should be legislation giving parents and/or children a right to a hearing before a Governors Committee where a complainant is not satisfied with the decision of the Head Teacher?

Yes

No

If not, why not?

Additional comments

6. Do you agree, in principle, with the appointment of an independent presenting officer to collate and present evidence to the Governors Committee?

Yes

No

If not, why not?

Additional comments

7. Do you agree that teachers against whom bullying complaints are made should be required to attend and give evidence at a Governors Committee?

Yes

No

If not, why not?

Additional comments

8. Do you agree that teachers who are witnesses to bullying between children should be required to give evidence at a Governors Committee hearing following a complaint by a parent?

Yes

No

If not, why not?

Additional comments

9. Do you agree, in principle, that there should be an Independent Complaints Panel where the child, parent or carer remains dissatisfied with the result of the Governors Committee hearing?

Yes

No

If not, why not?

Additional comments

10. Should there be a right of appeal to the Independent Complaints Panel as a matter of right, or should complaints be screened to determine whether there is any merit in the application?

Appeal as a matter of right?

Screened for merit?

Additional comments

11. Do you agree in principle, that children should have the right to make complaints on their own behalf at each of the stages (ie to the Headteacher, the Governors Committee and the Independent Complaints Body)

Yes

No

If not, why not?

Additional comments

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