

Cyber bullying and the Law in Northern Ireland

*** The Education and Libraries (NI) Order 2003**

Statutory duties upon school principals and Boards of Governors of grant-aided schools

Welfare and Protection of Pupils

Article 17 places a statutory duty upon Boards of Governors to safeguard and promote the welfare of registered pupils at the school at all times when the pupils are on the premises of the school; or in the lawful control or charge of a member of the staff of the school.

This article extends to all grant-aided schools the existing duty on Boards of Governors of schools with boarding departments, contained within the Children (NI) Order 1995, to safeguard and promote the welfare of pupils.

Accompanying guidance issued by the Department of Education ¹ states that pupil welfare embraces all aspects of pastoral care, child protection, pupil behaviour, health and well being, safety and security. Guidance reflects that this new duty makes explicit an implied duty of care which is already exercised by school managers and provides Boards of Governors with the legal basis for taking an active interest in all aspects of a school's activities that promote pupil welfare².

Child Protection Measures

Article 18 of the Education and Libraries (NI) Order 2003 requires the Board of Governors of all grant-aided schools to ensure that they have a written child protection policy. This policy must reflect any guidance issued by the Department of Education, the education and library board where the school is located and where appropriate, CCMS. The Board of Governors is required to determine the measures to be taken by all persons associated with the school to protect pupils from abuse and to review these measures from time to time. 'Abuse' as defined in the legislation includes sexual abuse and abuse causing physical or mental harm to a child.

¹ Circular Number 2003/13 'Welfare and Protection of Pupils Education and Libraries (Northern Ireland) Order 2003', paragraph 4

² Ibid. Paragraph 3

In 1999, the Department of Education published a booklet entitled 'Pastoral Care in Schools: Child Protection'. This is the principle guidance issued by the Department in this area and contains advice and procedures for handling child protection issues in grant-aided schools. The booklet may be accessed on line at www.deni.gov.uk.

School discipline – Measures to Prevent Bullying

Article 19 of the Education and Libraries (NI) Order 2003 amends Article 3 of the Education (NI) Order 1998, which is the primary legislation dealing with school discipline/ promoting positive behaviour. Article 19 places new duties upon the school, as follows:

- The Board of Governors shall consult with registered pupils and their parents before making or revising the school's disciplinary policy;
- The principal shall determine measures to be taken to prevent all forms of bullying among pupils; and
- The Principal shall consult with registered pupils and their parents before deciding upon measures to encourage good behaviour and to prevent bullying.

Accompanying guidance issued by the Department of Education recommends that all schools will need to be satisfied that their current discipline/promoting positive behaviour policy deals with the prevention of bullying in a sufficiently clear and robust way to satisfy this legal requirement. Any revision of existing school disciplinary/promoting positive behaviour policies must be preceded by a consultation exercise with registered pupils and their parents³.

Department of Education Guidance for Schools

Acceptable Use of the Internet and Digital Technologies in Schools⁴

This circular was issued by the Department of Education on 18th June 2007 and contains a section on child protection, bullying and harassment. The section provides specific advice on dealing with cyber bullying incidents.

The guidance also has sections relating to management responsibilities in school, best practice codes for safe internet use, internet safety education for people using school ICT resources and information on social software, including Internet chat rooms, instant messaging technology and social networks.

³ Ibid. Paragraphs 14 & 15

⁴ Circular 2007/1 (Issued on 18th June 2007)

With particular reference to the statutory duty under Article 18 of the Education and Libraries (NI) Order 2003 as set out above, school Boards of Governors will be required to revise their child protection policies to ensure that they reflect recent Department of Education guidance on this issue.

Pastoral Care in Schools: Promoting Positive Behaviour⁵

This guidance contains a section devoted to developing an anti-bullying culture in school.

It contains detailed guidance, practical initiatives and case studies, and includes specific initiatives for encouraging pupils to report incidents where they have been bullied or have witnessed bullying taking place in school.

Pastoral Care in Schools: Child Protection⁶

There is a section within this document that addresses bullying and offers advice to schools in relation to the content of school anti-bullying policies. This guidance is currently being updated by the Department of Education.

The full text of all of the above-mentioned Departmental guidance may be accessed on the Department of Education website at the following address:

www.deni.gov.uk

Criminal Law relating to Cyber bullying

There are three pieces of legislation which may provide protection from cyber bullying under the criminal law:

*** Protection from Harassment (NI) Order 1997**

This Act was passed following concern that stalking was not well dealt with under existing legislation, however it does not refer solely to stalking and covers harassment in a wider sense.

Article 3 of the Order states that it is unlawful to cause harassment, alarm or distress by a course of conduct and states that'

⁵ Issued by the Department of Education in June 2001

⁶ Circular No 1999/10 (Date of issue: 8th March 1999)

***'A person must not pursue a course of conduct
(a) which amounts to harassment of another, and
(b) which he knows or ought to know amounts to harassment of the other.'***

Article 4 provides that a person guilty of an offence of harassment under Article 3 shall be liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding £5000, or both.

The legislation provides that a civil claim may also be brought by a victim of harassment in the High Court or County Court and that damages may be awarded for any anxiety caused by harassment and any financial loss resulting from harassment.

The court may also grant a restraining order which shall prohibit the defendant from pursuing any further conduct which amounts to harassment or will cause a fear of violence. If without reasonable excuse the defendant does anything which breaches the court order this will amount to a criminal offence and the defendant shall be liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding £5000, or both.

Malicious Communications (Northern Ireland) Order 1988

A particularly unpleasant form of harassment is that involving malicious communications either through the post, the telephone, fax, by cyber stalking through the internet or, an increasing problem, by the use of Text or SMS messages sent to mobile phones.

Under this legislation it is an offence to send an indecent, offensive or threatening letter, electronic communication or other article to another person with intent to cause distress or anxiety.

Under section 43 Telecommunications Act 1984 it is a similar offence to send a telephone message which is indecent offensive or threatening.

Both offences are punishable with up to six months imprisonment and/or a fine not exceeding £5000.

Because the malicious communications offence is wider ranging than the telecommunications offence it is more likely to be charged by the Police than is the Telecommunications Act offence.

The Communications Act 2003

This is the most recent piece of legislation relevant to the issue of cyber bullying and deals specifically with the improper use of a public electronic communications network.

Section 127 of the Act provides as follows:

1. A person is guilty of an offence if he –
 - (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character;
 - (b) causes any such message or matter to be so sent.

2. A person is guilty of an offence if, for the purpose of causing annoyance, inconvenience or needless anxiety to another, he -
 - (a) sends by means of a public electronic communications network, a message that he knows to be false;
 - (b) causes such a message to be sent; or
 - (c) persistently makes use of a public electronic communications network.

A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £5000, or to both.

Reporting the incident to the Police

The Police Service of Northern Ireland (PSNI) aims to provide children, young people, parents and carers with appropriate support where any form of bullying occurs. It is important to report incidents where children are victims of cyber bullying to ensure the matter is addressed appropriately and the behaviour ceases.

When such incidents occur, parents/carers are encouraged to make contact with their local police. When discussing the matter with the Police Officer you speak to, it is important to highlight any evidence which exists. This may be downloaded website pages, text messages or other notes. Where there are any specific references to Religious, Sectarian, Racist, Disablist or Homophobic comments it is important to highlight this as the incident may be considered a HATE Incident/Crime. You should also advise of any impact the incident has had

on the daily life of the child or young person who is the victim in order that the Police Officer can gain a full picture.

The Police Officer will make enquiries and will need to speak to your child in your presence. They will try to establish any offending or 'at risk' behaviour by the person involved. The PSNI have a framework called the Youth Diversion Scheme, which allows for both types of behaviour to be addressed.

If you wish to discuss the matter initially, advice can be taken from the Community and School Officer or the Crime Prevention Officer who is placed in each Policing District.

The PSNI deliver an educational programme entitled Citizenship and Safety Education, which incorporates lessons on Internet Safety and Bullying and can support schools/parents groups in delivering information on both subjects.