

TACKLING CYBER-BULLYING - SETTING THE LEGAL SCENE

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Sources of Legal Obligations in respect of Cyber-Bullying

- A school is under the same duty of care to tackle this particular form of bullying as with any other form.
- Statutory Duties
- Guidance and other initiatives
- Criminal law
- Common law duty of care

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Statutory Duties

- Head teachers in state schools have a duty to encourage good behaviour and respect for others on the part of pupils and, in particular, prevent all forms of bullying among pupils.

Section 61(4) SSFA

- Independent schools have a duty to draw up and implement effectively a written policy to prevent bullying.

Section 3(2)(a) Education (Independent Schools Standards) (England) Regulations 2003

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Statutory Duties

- LEAs, governing bodies and proprietors of independent schools must ensure that their functions are carried out with a view to safeguarding and promoting the welfare of children.

Sections 157 and 175, Education Act 2002

- Safeguarding Children in Education (September 2004)

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Children Act 2004

Guidance on Section 11 defines “safeguarding and promoting the welfare of children” as

- Protecting children from maltreatment
- Preventing impairment of children’s health or development
- Ensuring that children are growing up in circumstances consistent with the provision of safe and effective care
- and undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully.

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Children Act 2004

Section 10 - The Five Outcomes

- Physical and mental health and well-being
- Protection from harm and neglect (specifically includes bullying)
- Education, training and recreation
- Making a positive contribution to society
- Social and economic well-being

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Education and Inspections Act 2006

Section 89(1) of the new Education and Inspections Act 2006 provides that:-

“The head teacher of a relevant school must determine measures to be taken with a view to:-

- a) Promoting, among pupils, self-discipline and proper regard for authority;*
- b) Encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils;*

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- c) Securing that the standard of behaviour of pupils is acceptable;*
- d) Securing that pupils complete any tasks reasonably assigned to them in connection with their education; and*
- e) Otherwise regulating the conduct of pupils”.*

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Guidance and Other Initiatives

- “Bullying - Don’t Suffer in Silence” (updated 2002)
- “Making the Difference” programme and “Charter for Action” (2003)
- Anti-bullying Alliance (July 2004)
- “Safeguarding Children in Education” (September 2004)
- “National Anti-Bullying Week (November each year)
- Healthy Minds: Promoting Emotional Health and Well-being in Schools (2005)

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“Safe to Learn: Embedding Anti-Bullying Work in Schools” (2007)

- In recognition of its own particular difficulties the government has also published specific guidelines, “Tackling Cyber-bullying” (July 2006) and “Safe to Learn” (September 2007).
- Provides practical tips on preventing cyber-bullying.
- Recommends a “Prevention Framework” made up of five essential action areas that together offer a comprehensive and effective approach to prevention.

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Criminal Law

- Cyber-bullying is not a specific criminal offence, but there are criminal laws that can apply in terms of harassment and threatening and menacing communications.
 - Protection from Harassment Act 1997
 - Malicious Communications 1988
 - Telecommunications Act 1984May be used to combat cyber-bullying, but no prosecutions to date.
- Guidance recommends that schools should contact the police if they feel the law has been broken.

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Criminal Law

Section 4 Public Order Act 1986:-

“A person will be guilty of threatening behaviour if he or she uses threatening, abusive or insulting words or behaviour or distributes or displays to another person any threatening, abusive or insulting written material, sign or any other “visual representation” to:

- i) Cause another person to fear immediate violence; or
- ii) Provoke the immediate use of unlawful violence by another person”.

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Common Law Duty of Care

- Individuals from all walks of life have a duty to take reasonable care to avoid causing foreseeable harm. A person who breaches their duty of care may have to pay damages to anyone who suffers harm as a result.
- The Bolam Test - a duty to exercise the skill and care of a reasonable teacher on the basis of what would have been acceptable to reasonable members of the teaching profession at that time.

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Common Law Duty of Care

- A person who is found to have breached their duty of care may have to pay damages to anyone who suffers physical or psychological harm or financial loss as a result.

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Cotton v Trafford Borough Council (2000)

- “.....in a number of respects, the school fell down on its own procedures: there was, until right at the end, a failure to investigate, a failure to keep colleagues informed, a failure to try and collect evidence and a failure to monitor effectively the strategy which had been agreed”.

Judge Holman

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“Cyber-bullying is an aggressive, intentional act carried out by a group or individual using electronic forms of contact repeatedly over time against a victim who cannot easily defend him or herself”.

Report to the Anti-Bullying Alliance by Goldsmiths College, University of London

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Hansen v Isle of Wight Council (2001)

“The criterion of what does or does not amount to bullying in any given circumstance is not to be judged solely by the subjective perception of the victim herself....but involves an objective assessment of the observed behaviour, taken in conjunction with any apparent vulnerabilities in the target of the behaviour complained of.”

Mr Justice Wright

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Bradford Smart v West Sussex County Council (2002)

“We accept that a school may, on occasion, be in breach of duty for failure to take such steps as are within its power to combat harmful behaviour of one pupil towards another, even when they are outside school.....”

“.....where an incident between pupils outside school carries over into a school, a reasonable head teacher should investigate if it had a deleterious effect upon the victim”.

Lord Justice Judge

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New Powers

Section 89(5), EIA 2006

Head teachers are specifically granted powers that enable them to police cyber-bullying carried out by pupils even at home:-

“The measures which the head teacher determines under subsection (1) may, to such extent as is reasonable, include measures to be taken with a view to regulating the conduct of pupils at a time when they are not on the premises of the school and are not under the lawful control or charge of a member of the staff of the school”.

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- This is only where it is reasonable for the school to regulate the pupils' conduct at the time.
- Reasonableness itself is defined in the Act in terms of proportionality and therefore becomes a question for the Courts.
- Important to make clear in school policy documentation the disciplinary sanctions that will be enforced in cases of cyber-bullying.
- No reported cases at this time.

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