

Ombudsman for Children

Submission to the Task Force on
Student Behaviour

March 2005

1. Context

The Ombudsman for Children Act (2002) set the ground to establish the first Ombudsman for Children's Office. The Act confers two broad functions to the Ombudsman; investigation of complaints made by young people or adults towards services provided by public bodies, schools and voluntary hospitals and advocacy of children's rights and welfare.

The Ombudsman for Children, Emily Logan, was appointed in December 2003 and took up her position in March 2004.

1.1 Children's Rights

Formal and informal education is a central part of the lives of Children.

Art 42 of the Irish Constitution recognises that right to education. Some articles in the UN Convention on the Rights of the Child (UNCRC) refer directly to young people's right to education i.e.:

Article 28 – "All children and young people have a right to primary education, which should be free. Discipline in schools should respect children's human dignity. Young people should be encouraged to reach the highest level of education they are capable of..."

Article 29 – Education should develop each child's personality and talents to the full. It should encourage children to respect their parents, and their own and other cultures"

Other articles that have a direct impact on educational policy and provision include:

Article 12 – "Children have a right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.

Article 23 - Children who have any kind of disability should have special care and support so that they can lead full and independent lives"

1.2- Complaints re. student behaviour issues

While it is acknowledged that the data thus far is anecdotal and not representative, there are some interesting themes emerging.

From April 2004 to date, the Ombudsman for Children's Office received 230 complaints. A majority of these related to educational issues. This included the condition of schools particularly toilets, the need for special needs resources, bullying, school transport, etc. A high proportion of the complaints in 2005 are also directed towards educational institutions. 8.9% of the complaints received to date related to student behaviours either towards each other or towards the educational provider.

2 Key Points

2.1 Involving young people all the way: the importance of encouraging genuine youth participation

From the analysis of the complaints to-date and the encounters we had with various groups and educational providers, we feel that behavioural deviancy is less likely to occur when students feel ownership of their environment and take an active role in the monitoring/management of their school and where there is a peer environment which does not favour bad behaviour. We feel that the 3 key essential factors for this to happen are:

- the involvement of students in the development and monitoring of the codes of behaviour
- the development of a fair and transparent complaint procedures
- supporting genuine participation channels for students within the school.

2.1.1 Developing code of behaviour/discipline: getting the buy-in from all stakeholders.

Codes of behaviour/discipline: consulting students.

This is an area of concern for the Ombudsman for Children's Office and the one we feel most strongly about in the context of this submission. While developing their code of behaviour teachers and parents have to be consulted (Education Welfare Act, section 23). However there is no obligation to consult with the main target group i.e. the students themselves. This is a contradiction to the spirit of Article 12 of the UNCRC. It seems inappropriate that the very people we wish to influence in terms of behaviour do not have adequate understanding and "buy-in" in the codes applying to them.

Lack of information

In the complaints received to date in the office, there seems to be a lack of awareness of the code of behaviour and discipline procedures.

While a lot of schools seem to make their disciplinary/behaviour codes known to parents, there seems to be a lack of awareness of local complaint procedures amongst parents and students. Complaints are still arriving in the Ombudsman for

Children's Office before local procedures have been exhausted. This is something that the Ombudsman for Children's Office will try to tackle by including, in its information pack, advice on what local procedures are and what steps to follow before contacting the Ombudsman for Children's Office.

This lack of awareness of local complaints procedures may demonstrate the need to encourage schools/educational services to take a more proactive and innovative approach to promote their codes of practice and complaints procedures.

As emphasised above, most of the complaints to-date came from adults on behalf of young people. This emphasises the need to target and support young people to become active participants in services provided to them. It would be very beneficial to provide, at local and national level, easily-accessible information on their rights and local procedures on how they can be enforced. This is an objective of the Ombudsman for Children's Office. The network of youth information centre could play a valuable role in achieving this objective.

2.1.2 Developing fair and transparent complaint procedures when a problem occurs.

In a recent meeting with Minister Mary Hanafin, we raised a number of issues relating to complaints procedures within the educational system. We feel that these points are important for the work of the task force as well. We believe that fair, credible and transparent complaints procedures would curtail bad behaviour by making all parties responsible for their actions.

Complaint procedures - Section 28

We had a number of interesting queries about appeal procedures especially the implementation of section 28 of the Education Act. This most specifically occurred when the Board of Management were un-cooperative or took a long time to respond to complainant's grievances. In the Act, it states that

"the Minister (...) may from time to time prescribe procedures in accordance with which" parents of students or students over 18 can make an appeal to the board against a decision made by a teacher or member of staff, be heard and remedial action have to be taken."

To date, these procedures have not been prescribed which led some schools to believe that section 28 was still not in place. This relieved some of those schools of

their responsibility for dealing with local complaints. This is an area of concern for the Ombudsman for Children's Office as we cannot intervene until the local procedures have been exhausted. If a Board of Management is uncooperative because they feel they have no legal obligation to deal with the complaint, it leaves the complainant in a limbo situation as they cannot appeal the decision. We feel that the prompt implementation of section 28 would set a standard of best practice for the entire system.

Another area of concern for the OCO regarding section 28 is the fact that the Act seems to suggest that only the parent of a student or student over 18 may appeal to the board. This would be a worrying situation especially for vulnerable children. We also feel that it would be beneficial if the children themselves or their advocates could appeal.

Boards of Management

This is an issue that was encountered in a number of cases and although not representative it cannot be ignored. It also reflects the scepticism shared by some complainants with regard to the level of independence the educational services have when monitoring themselves. This is a common fear expressed towards internal complaints procedures. A high level of transparency and impartiality needs to be shown by the decision makers to restore this trust.

The inaccessibility of the Board of Management was reported a number of times. This is mainly due to the lack of information about who sits on the Board of Management, what they do, and when they meet. Complainants are often dependent on the Principal to obtain this information which in some cases might prove difficult. Fear of the authority held by the educational professionals was also named as one of the barriers to making a complaint.

Timescales

Timescales appear to be another big issue for complainants. It can take quite a long time for local procedures to be exhausted, especially when Boards of Management only meet a few times a year.

The complaint might not be examined immediately by the Board of Management. When it is examined, the decision about the complaint might be deferred, when the

decision is made, it might take a while for that decision to be communicated to the parents. This situation can create frustration amongst parents and young people who feel that the urgency of their need is not taken into account.

Third party representation and mediation: supporting vulnerable people

This is an issue related to the inaccessibility of the local complaint procedures experienced by some vulnerable parents and young people. When a complainant is having difficulty articulating a complaint (for any reason: confidence, literacy, etc), there is no apparent support available to them. Adequate support such as a mediation service or local advocate would help the most vulnerable to get their voice heard.

Adequate training for BOM to assist them to develop strategies on how to engage the most vulnerable people would also be very beneficial.

2.1.3 Developing a favourable peer environment by involving young people: “make it un-cool to misbehave.”

Finally, it is important not only to involve students when a problem occurs, but, to give them responsibility in managing and preventing problems within their schools. Democratic and genuine participation channels (e.g. student councils through re-enforcement of art.27 of the Education Act, etc.) should be facilitated in each school and suggestions and recommendations from those channels should be seriously considered by the management of the school. This will create a favourable peer environment where students feel respected, have ownership of their learning environment and are less likely to tolerate bad behaviour from their peers.

2.2 Striking the balance : the right to education for all

2.2.1 Identifying and supporting Students with behaviour problems

The right to education is a constitutional right which was further defined in the Education Welfare Act. Even students with bad behaviour have a right to adequate education. Discipline through suspension has an immediate short-term effect but can prove to be ineffective in the long run resulting in escalation of tension in the class, worsening of the educational attainment of the child, early-school leaving, etc. Identifying the causes of bad behaviour and supporting a more tailored approach to

those students is a more long-term developmental approach but one we believe, is more effective.

Attitude: a “conformity expectation” – a “one size fits all” attitude.

The “one size fits all” attitude adopted by some educational providers has been a negative factor. In some cases, there seems to be a more system-orientated attitude where the needs of the system supersede the needs of the customers. It is necessary to tackle this expectation of conformity and move towards a more flexible education system which harnesses talents of all children.

Supporting the children in a holistic manner.

In that context, it is important to identify the students with behaviour problems and determine the cause of such behaviour. There is strong evidence to suggest that bad behaviour is often linked to external factors over which the child does not have any (or a limited amount of) control, such as a learning disability (e.g. ADD, ODD, Dyslexia) or socio-economic factors (family situation, substance abuse, etc.). It is important to tackle those negative external factors through additional support and by adopting an integrated approach. Early assessment of learning disabilities and devising additional and appropriate supports (SNA, resource teachers or tailored programmes such as SCP, home-school liaison etc) in consultation with the child and the key stakeholders in his/her environment (parents, teachers, etc) would be key to success. It is about giving responsibility to the child for his/her education and putting all the support in place for that child to achieve his/her goal.

In this context, it is important that the school does not operate in isolation but adopt an holistic approach working in partnership with all the relevant agencies and groups locally (such as the educational welfare officer, community organisations in which the child may be involved –sports ,etc. – the gardai, relevant support group, etc)

2.2.2 Respecting the right to education of willing non-disruptive students

The Right to Education is a right for all, including the right of the willing non-disruptive students. This is probably the most delicate part of the equation. How to support and maintain in a school setting a disruptive child without endangering the educational

attainment of others? We still believe that discipline through suspension has only a short-term benefit. Involving all students in the developing and monitoring of the code of behaviour is, in our mind, a better way forward as it creates a positive peer environment where bad behaviour is not tolerated.

2.2.3 Supporting educational providers to tackle new challenges

Because of the increasing complexity of society, the educational providers are now faced in their classroom with a wide variety of students whose external difficulties are increasingly expressed within the classroom. Authority as a concept is being challenged by our modern society and as a practise in our schools often leads to escalation and tension on all parts. Therefore, an increasing set of new skills and supports for teachers are necessary in terms of negotiation skills, crisis management techniques (TCI, etc.), and classroom management skills. Teacher training needs to reflect this situation and on-going professional support and mentoring is necessary. We need to remember that our education system is not only about academic achievement but is also about preparation for life.

Conclusion the importance of good practises here and abroad

There are a large number of good practices at home and abroad around curtailing bad behaviour and creating a favourable learning environment for all. It is important to review and appropriately mainstream these models. This is likely to require additional resources to target and support students with behavioural problems, support the learning providers to tackle the challenges of a modern society and create an environment where the right to education is a reality for all. Resources are not the only issue. The task force has a key role in promoting a value-led change. Attitude and mindsets are key areas to tackle. It is important to move away from the “one-size fits all attitude” and look at developing an education-system which is based on the value of respect, gives responsibility to children for their education and build on the strength of each student.