



Review of the Action Plan on Bullying 2013

**Submission by the Ombudsman for Children's Office
to the Steering Committee established to review
the Action Plan on Bullying 2013**

June 2022

Contents

1. Introduction	1
2. Bullying: a children's rights issue	2
3. The views of children and young people	4
4. General measures to prevent and address bullying in schools	6
• Policy and Coordination	6
• Data collection	8
• Resource allocation	9
• Monitoring and Oversight	10
• Access to an effective remedy	11

1. Introduction

The Ombudsman for Children's Office (OCO) welcomes the opportunity to engage with the Steering Committee established by the Minister for Education in February 2022 to review the Department of Education's 2013 *Action Plan on Bullying* and to develop a new action plan. The OCO also welcomes the establishment of a Working Group to review and update the 2013 *Anti-Bullying Procedures for Primary and Post-Primary Schools*.

The OCO is an independent statutory body which was established in 2004 under the Ombudsman for Children Act 2002 (2002 Act). Under the 2002 Act, as amended, the OCO has two core statutory functions:

- to promote the rights and welfare of children up to 18 years of age, and
- to examine and investigate complaints made by or on behalf of children about the administrative actions of public bodies, schools and voluntary hospitals that have, or may have, adversely affected a child.

The OCO has prepared this submission to the Steering Committee pursuant to our statutory duties under sections 7(1)(b), 7(1)(c) and 7(1)(e) of the 2002 Act.

The issue of bullying in schools has come to the OCO's attention, and continues to do so, in the context of implementing our core statutory functions. As highlighted in section 3 of this submission, the OCO published a report in 2012 arising from a consultation that we undertook with over 300 children and young people about dealing with bullying in schools.¹ The views shared by children and young people who took part in this consultation are echoed by the perspectives, which children and young people have shared with us more recently.

Complaints relating to bullying in schools make up an average of 10% of complaints received by the OCO every year. Complaints about bullying relate to schools' handling of bullying; bullying not being identified and acted upon appropriately; sanctions used; and the lack of supports for students (victims and perpetrators) in the aftermath of bullying.²

The purpose of this submission is to outline the status of school bullying and its impacts on children as a children's rights issue. Our submission also highlights a range of issues relating to bullying among children in schools that have come to our attention during the course of our work and makes corresponding recommendations. We hope that the Steering Committee will give due consideration to these matters in the context of its current review and its work to develop a new action plan on bullying.

¹ OCO, *Dealing with Bullying in Schools: A Consultation with Children and Young People*, 2012. See <https://www.oco.ie/app/uploads/2012/05/OCO-Bullying-Report-20121.pdf>

² OCO, *Annual Report 2021, Resilience Tested*, May 2022. See <https://www.oco.ie/library/annual-report-2021-resilience-tested/>

2. Bullying: a children's rights issue

The UN Committee on the Rights of the Child (UN Committee) has advised that the development of a children's rights perspective is required for effective implementation of the UN Convention on the Rights of the Child (UNCRC).³ As the Steering Committee is aware, having ratified the UNCRC in 1992, Ireland is obliged under international law to respect, protect and fulfil the rights of all children living in Ireland. These rights include four general principles, which are integral to the realisation of all children's rights under the UNCRC:

- Article 2 provides that all children must be able to enjoy their rights without discrimination of any kind, irrespective of their circumstances or those of their parents/guardians.
- Article 3 requires children's best interests be treated as a primary consideration in all actions concerning them.
- Article 6 recognises children's right to life, survival and development. In this regard, States are expected to interpret 'development' as a holistic concept encompassing all aspects of children's development and are obliged to provide optimal conditions for childhood.⁴
- Article 12 provides for children's right to express their views freely in all matters affecting them and for due weight to be given to children's views, in accordance with their age and maturity.

Article 19 of the UNCRC requires State Parties 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"*. In this regard, bullying involving children needs to be recognised as an infringement of children's right to freedom from all forms of violence. Furthermore, having regard to the indivisibility of children's rights under the UNCRC, such an infringement needs to be recognised as having the potential to adversely affect children's enjoyment of their other rights under the UNCRC. In addition to the four general principles listed above, these rights include children's rights to:

- freedom of expression (Article 13)
- freedom of thought, conscience and religion (Article 14)
- freedom of association and freedom of peaceful assembly (Article 15)
- privacy (Article 16)
- the highest attainable standard of health, including mental health (Article 24)
- education (Article 28)
- enjoy their own culture, religion or language (Article 30).

³ Committee on the Rights of the Child, General Comment No. 5 (2003), General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), 27 November 2003. See https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en

⁴ Ibid.

Furthermore, it is important to note that Article 39 of the UNCRC requires State Parties to take all appropriate measures to promote physical and psychological recovery of a victim of any form of neglect, exploitation or abuse and such recovery and reintegration must take place in an environment, which fosters the health, self-respect and dignity of the child.

The status of bullying involving children as a children's rights issue of international importance and concern is indicated by the attention it is given by international human rights bodies – for example:

- The UN General Assembly has adopted a number of resolutions on protecting children from bullying.⁵
- The issue is given considerable attention by the UN Special Representative of the Secretary General on Violence Against Children.⁶
- The UN Committee's *General Comment on the right of the child to freedom from all forms of violence*⁷ makes reference to bullying in schools. Furthermore, its *List of Issues Prior to Reporting* (LOIPR) for Ireland, which was published in November 2020, includes a specific request for information from the State about measures taken to tackle bullying, with particular reference made to cyberbullying and bullying in schools.⁸
- The establishment in 2020 of the International Day against Violence and Bullying at School, including Cyberbullying⁹ highlights both the extent to which schools can be a site of bullying and the important role that schools can play, and must be supported to play, in combating bullying involving children.
- More recently, the Council of Europe's *Strategy for the Rights of the Child 2022-2027* includes references to bullying in school under the strategic objective of 'Freedom from violence for all children'.¹⁰

The OCO recommends that the new action plan on bullying, as well as the updated anti-bullying procedures for schools, should:

- **raise awareness of bullying among children, including in schools, as a children's rights issue and of the range of children's rights that can be engaged in this regard;**
- **support understanding of how children's enjoyment of their rights can be adversely affected by bullying; and**

⁵ The most recent resolution on protecting children from bullying was adopted by the UN General Assembly in December 2020. See <https://digitallibrary.un.org/record/3896024?ln=en>

⁶ For more information, go to <https://violenceagainstchildren.un.org/content/bullying-and-cyberbullying-0>

⁷ Committee on the Rights of the Child, General comment No. 13 (2011), The right of the child to freedom from all forms of violence, 18 April 2011. See

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en

⁸ UN Committee on the Rights of the Child (2020), List of Issues prior to submission of the combined fifth and sixth reports of Ireland, para. 19(h). See

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fIRL%2fQPR%2f5-6&Lang=en

⁹ For more information, go to <https://en.unesco.org/commemorations/dayagainschoolviolenceandbullying>

¹⁰ Council of Europe Strategy for the Rights of the Child (2022-2027). See <https://rm.coe.int/council-of-europe-strategy-for-the-rights-of-the-child-2022-2027-child/1680a5ef27>

- **promote a child rights-based approach to preventing and addressing bullying among children that, among other things, upholds the child’s right to non-discrimination, treats the child’s best interests as a primary consideration, and fulfils the child’s right to be heard.**

3. The views of children and young people

As noted in section 2 above, Article 12 of the UNCRC provides that every child who has the capacity to form a view on any matter that affects them should be afforded the opportunity to express their views freely, and due consideration should be given to the child’s views in line with their age and maturity. It is the responsibility of adults to ensure that children are provided with opportunities and supports to give effect to this right. Providing such opportunities and supports is a key part of the OCO’s statutory role to promote children’s rights and welfare and, therefore, of our work.

Of direct relevance to the Steering Committee’s deliberations is a consultation that the OCO undertook with over 300 children in 2012 about bullying in schools.¹¹ The purpose of this consultation was to hear children and young people’s views and ideas about actions that they felt could contribute to dealing effectively with bullying among children in school.

It is notable that the children and young people’s views suggest that both prevention and intervention measures are required. Key among the messages from children in this regard are:

- the strong emphasis they placed on preventive measures and, in particular, the importance of:
 - supporting children to actively participate in the development, implementation and review of anti-bullying measures, including relevant school policies and procedures and whole school actions and initiatives
 - the role played by schools and professionals working in schools as regards supporting children to understand bullying and its underlying causes
 - initiatives dedicated to raising awareness and understanding of bullying among children and young people
 - programmes focused on tackling discriminatory attitudes that can give rise to bullying and on developing children’s appreciation of and respect for diversity
- their broadly shared view with regard to intervention strategies that:
 - children need to be actively supported to speak up about bullying
 - incidents of bullying should be dealt with through restorative measures rather through practices such as suspension and expulsion.

As the Steering Committee will be aware, the OCO’s report on this consultation informed the development of, and is explicitly referenced in, the 2013 *Action Plan on Bullying*.¹² Although this

¹¹ Supra note 1.

¹² Report of the Anti-Bullying Working Group to the Minister for Education and Skills (2013), *Action Plan on Bullying*, pp.46-47. See <https://assets.gov.ie/24758/0966ef74d92c4af3b50d64d286ce67d0.pdf>

consultation was undertaken in 2012, we believe that the views, ideas and corresponding recommendations contained in this report remain equally relevant today.

The OCO recommends that the Steering Committee should revisit our 2012 report on *Dealing with Bullying in Schools* and should give due regard to the recommendations made by the children we consulted.

Children continue to raise bullying with the OCO and their concerns and suggestions reflect many of the views children expressed in 2012. In 2021, 5,515 children aged two to 17 years took part in an online OCO survey of what is good, what is bad and what children would change about being a child in Ireland. Under the heading of what is bad about being a child in Ireland, the issue of bullying, predominantly in schools, arose 108 times. It was further raised 70 times in respect of what children would like to see changed. The changes suggested by children centred on:

- greater awareness among children and adults, particularly teachers, of what bullying is and the impact it has on children
- more discipline and less tolerance of bullying
- better school policies and programmes to deal with bullying
- the need for schools to address cyberbullying.

Bullying and discrimination are frequently closely linked, with children experiencing bullying being perceived as ‘different’ or ‘other’ in some way. Therefore, specific cohorts of children may have greater and more severe experiences of bullying. During our consultation with children living in direct provision accommodation, bullying in school and online were closely related to race and religion.¹³ Children who took part in this consultation often reported that teachers did not stand up for them when their peers were expressly or covertly racist or sectarian. Children also reported that some teachers expressed racist or discriminatory sentiments themselves, or were covertly racist. The children believed that this then granted their peers tacit permission to engage in bullying on this basis. For many of the children, this behaviour by both teachers and peers arose from a lack of understanding of different cultures and religion, racism, international protection processes and direct provision.

In addressing the needs of this cohort of children, we recommended the provision of additional supports to schools and Boards of Management through training, information and resources on inter-cultural awareness, the asylum process and the direct provision system, the impact of trauma, and the promotion of multi-racial, religious and ethnic integration amongst pupils. We would encourage the Steering Committee to give due consideration to a corresponding recommendation that we made in our report on this consultation, *Direct Division*¹⁴ namely:

The OCO would welcome the development of specific resources for all education professionals and Boards of Management to guide and support them in addressing racial and sectarian

¹³ Ombudsman for Children’s Office, 2020. *Direct Division: Children’s Views and Experiences of Living in Direct provision*. See <https://www.oco.ie/directdivision/direct-division-report/>

¹⁴ Ibid.

discrimination and bullying in particular. Given the increasing diversity in Irish schools, such training and resources have the potential to benefit many pupils and teachers.

The OCO also encourages the Steering Committee to consider and recommend appropriate measures that could strengthen diversity among school-based professionals, including teachers.

4. General measures to prevent and address bullying in schools

In 2003, the UN Committee published a General Comment that advises on general measures that should be used by States to implement children's rights under the UNCRC.¹⁵ These general measures include legislation; policy and coordination; data collection; resource allocation; monitoring; the availability of effective remedies; and awareness raising and training. Having regard to these general measures for implementing children's rights, and allowing that sections 2 and 3 of this submission make observations and recommendations in relation to awareness raising and training, this section identifies a number of additional issues and corresponding measures relating to preventing and dealing with bullying in schools.

Policy and Coordination

The UN Committee has advised that national policy as well as cross-sectoral coordination across government, between different levels of government and between government and civil society is necessary to ensure the effective implementation of the UNCRC.¹⁶

The *Action Plan on Bullying*¹⁷ and the *Anti-Bullying Procedures for Primary and Post-Primary Schools*¹⁸ provide national level guidance on addressing bullying among children in the context of education and schools. Outside the area of education, a number of national policies are also relevant to and reference bullying among children and young people. Aim 3.3 of *Better Outcomes, Brighter Futures: the national policy framework for children and young people* (BOBF) is for children and young people to be protected from bullying and discrimination.¹⁹ In this regard, reference is made to groups of children and young people with specific vulnerabilities, which may cause them to be targeted for bullying, including LGBTI+ young people, children in detention, children in alternative care, and children belonging to minorities. Objective 5 of the *National Youth Strategy* is for young people, and in particular vulnerable and marginalised young people, to be supported to feel safe at home, in school, in their communities and online, and to be empowered to speak out when feeling unsafe or vulnerable.²⁰ The *LGBTI+ Youth Strategy* includes a number of references to bullying in schools and Goal 1 of this strategy is to create a safe, supportive and inclusive environment for

¹⁵ Supra note 3.

¹⁶ Ibid.

¹⁷ Supra note 12.

¹⁸ Department of Education, Anti-bullying procedures for primary and post primary schools. See <https://www.gov.ie/en/publication/cb6966-anti-bullying-procedures-for-primary-and-post-primary-schools/>

¹⁹ DCYA, Better Outcomes Brighter Futures, the national policy framework for children and young people (2014-2020). See <https://assets.gov.ie/23796/961bbf5d975f4c88adc01a6fc5b4a7c4.pdf>

²⁰ Department of Children and Youth Affairs, National Youth Strategy 2015 – 2020 at p. 28. See <https://www.gov.ie/pdf/?file=https://assets.gov.ie/26564/61720f5432c0481db178cfa1540844b0.pdf#page=1>

LGBTI+ young people.²¹ *Children First, National Guidance for the Protection and Welfare of Children* identifies bullying as an issue which may make children more vulnerable to harm.²² Certain minority groups are identified as being particularly vulnerable in this regard.

From the OCO's perspective, while it is welcome that bullying is recognised as an issue that needs to be addressed in a range of national policies and guidance concerning children, it is disappointing that the development of a national anti-bullying framework committed to in BOBF has not progressed.²³ In this regard, the absence of an overarching framework presents challenges in terms of ensuring that bullying is identified and managed with appropriate consistency in different contexts and by different sectors. While we appreciate that the matter of a national anti-bullying framework is necessarily outside the scope of the Steering Committee's work:

The OCO encourages the Steering Committee to give consideration to whether a national anti-bullying framework would support implementation of a new action plan on bullying and to making a corresponding recommendation in this regard in the new action plan.

The OCO is cognisant that the existing *Action Plan on Bullying* as well as the anti-bullying procedures for schools recognise the roles that other bodies can and need to play in supporting schools to prevent and deal with bullying among children. In this regard, we note that one of the recommendations for further consideration included in the 2013 action plan was that the then Department of Children and Youth Affairs should provide more detailed guidance for schools and others about *"what constitutes 'serious bullying' under Children First and when referrals to the HSE should be made"*.²⁴

Published in 2017, the current *Children First* guidance states the following in relation to bullying in schools:

"In the first instance, the school authorities are responsible for dealing with such bullying. School management boards must have a code of behaviour and an anti-bullying policy in place. If you are a staff member of a school, you should also be aware of your school's anti-bullying policy and of the relevant guidelines on how it is handled.

*In cases of serious instances of bullying where the behaviour is regarded as possibly abusive, you may need to make a referral to Tusla and/or An Garda Síochána."*²⁵

Therefore, while *Children First* recognises that certain instances of bullying may be *"abusive"*, the guidance does not define or otherwise clarify what *"serious instances of bullying"* are.

²¹ Department of Children and Youth Affairs, LGBTI+ National Youth Strategy 2018 – 2020 at p.16. See <https://assets.gov.ie/24459/9355b474de34447cb9a55261542a39cf.pdf>

²² Department of Children and Youth Affairs, *Children First, National Guidance for the Protection and Welfare of Children* pp.12-13. See https://www.tusla.ie/uploads/content/Children_First_National_Guidance_2017.pdf

²³ Supra note 19 at p.82.

²⁴ Supra note 12 at p.114.

²⁵ Supra note 22 at p.13.

The OCO has concerns about whether sufficient guidance is available to support all schools to recognise when serious incidents of bullying may have a child protection and/or a criminal dimension and, with that, when to follow up with Tusla and/or An Garda Síochána. In this regard, not all complaints about a school's response to bullying concerns may be appropriately addressed through a school's existing anti-bullying or complaints procedures. Serious complaints may require engagement with Tusla or An Garda Síochána so that a school may determine an appropriate mechanism and space to address concerns. In the OCO's view, the best interests of the children involved must be the guiding principle and the primary consideration if circumstances arise where schools need to pivot or amend their approach based on a changing appreciation of what may be actually occurring or advice received. Furthermore, schools need to develop their ability to communicate with parents/ guardians when they are taking steps in the best interests of children, which are in good faith and beyond the scope or outside the four corners of complaints procedures.

The OCO encourages the Steering Committee to consider what measures might be integrated appropriately into the new action plan on bullying to further support all schools to recognise when incidents of bullying may be a child protection and/or criminal matter and to manage such incidents accordingly, in the best interests of the children concerned and in coordination with the relevant statutory authorities.

Data collection

According to the UN Committee, the "*collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realisation of rights*" is essential in order to fully realise children's rights under the UNCRC.²⁶ The UN General Assembly has called on States to gather statistical information and data disaggregated by sex, age and other relevant variables, and to provide information on disability, with regard to the problem of bullying, as a basis on which to develop effective public policies.²⁷ Furthermore, the UN Committee's 2020 LOIPR for Ireland²⁸ includes a request for disaggregated data from the State about cases of bullying and harassment in schools.

The OCO is concerned that the Department of Education does not routinely collect and collate data about bullying in schools. While data on bullying should be gathered at school level and reported to the Board of Management, there is no requirement for schools to provide this data to the Department of Education.²⁹ The Department of Education Inspectorate (Inspectorate) is currently monitoring the extent to which schools are implementing five particular aspects of the *Anti-Bullying Procedures*.³⁰ Although the OCO welcomes that the Inspectorate is collecting data and information

²⁶ Supra note 3.

²⁷ UN General Assembly, Resolution adopted by the General Assembly on 16 December 2020 [on the report of the Third Committee (A/75/474, para. 33)] 75/166. Protecting children from bullying. See <https://digitallibrary.un.org/record/3896024?ln=en>

²⁸ Supra note 8.

²⁹ Joint Committee on Education, Further and Higher Education, Research, Innovation and Science, Report on School Bullying and the Impact of Mental Health, 23 August 2021 p. 8. See https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_education_further_and_higher_education_research_innovation_and_science/submissions/2021/2021-08-23_report-on-school-bullying-and-the-impact-on-mental-health_en.pdf

³⁰ The five areas being reviewed by the inspectorate are:

relating to anti-bullying procedures in schools,³¹ we are concerned that the data being collected may not be sufficient. In our view, an important opportunity is being missed to generate data at national level that could usefully inform the development of measures to strengthen how bullying is addressed in and by schools.

The OCO recommends that schools should submit anonymised disaggregated data to the Department of Education on an annual basis, including about the number of bullying incidents that have occurred in the school, the types of bullying involved, and the actions taken to resolve the bullying incidents and to mitigate against their reoccurrence.

Resource allocation

Concerns have been raised about the capacity of schools to deal effectively with incidents of school bullying.³² Among other things, the reduction in middle management posts has been identified as presenting difficulties to fully implementing anti-bullying policies in schools.³³ A recent report by the Inspectorate on the implementation of anti-bullying measures in primary and post-primary schools noted that a significant proportion of schools carried out extensive work to raise awareness of and prevent school bullying.³⁴ However, the same report noted that *“the requirement to report termly to the board of management and ... the requirement to carry out an annual review of the school Anti-bullying Policy were not met in a significant proportion of the schools visited during the evaluation.”*³⁵ It is concerning that some schools are not fulfilling their responsibilities in this regard.

The OCO recommends that the Steering Committee consider what additional resources, including human resources, and supports schools may need to facilitate them to implement anti-bullying

-
- The extent to which schools have anti-bullying policies in place in line with the Anti-Bullying Procedures for Primary and Post-Primary Schools (2013)
 - The termly reporting by principals to the board of management on anti-bullying matters as detailed in the Anti-Bullying Procedures for Primary and Post-Primary Schools (2013)
 - The recording of incidents of bullying behaviour in accordance with the Anti-Bullying Procedures for Primary and Post-Primary Schools (2013)
 - The communication of the schools’ anti-bullying policies to all members of the school community (BOM, teachers, learners and parents) either through publication on the school website or by making the policies accessible by other means
 - Annual reviews by boards of management of anti-bullying policies and their implementation

See Department Of Education, Circular: 0030/2022 [Arrangements For Inspectorate Engagement With Post Primary Schools](#), April To June 2022, 26 April 2022 and Department Of Education, Circular: 0029/2022 [Arrangements For Inspectorate Engagement With Primary Schools And Special Schools](#), April To June 2022, 26 April 2022

³¹ Department of Education (2022), Report on the implementation of aspects of anti-bullying measures in schools, 9 May 2022. See <https://www.gov.ie/en/publication/93c45-report-on-the-implementation-of-aspects-of-anti-bullying-measures-in-schools/>

³² National Anti-Bullying Research and Resource Centre, School Bullying with specific reference to cyberbullying and internet security during Covid-19, 5 November 2020. See https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_education_further_and_higher_education_research_innovation_and_science/submissions/2020/2020-11-05_opening-statement-and-submission-dr-angela-mazzone-postdoctoral-researcher-national-anti-bullying-research-and-resource-centre-dublin-city-university_en.pdf

³³ Supra note 29.

³⁴ Supra note 31 at p.31.

³⁵ Ibid.

procedures effectively, including as regards fulfilling their duties to report on and review implementation of their anti-bullying procedures.

Under the heading 'An Inclusive Vision for Education', the *Programme for Government* states: *"Inclusion in and access to education is the foundation for a more just and equal society. In welcoming everyone to participate in education, they deserve to be treated fairly."* Among the corresponding commitments made to support an inclusive and equal education system is a commitment to *"improve access to supports for positive mental health in schools."*³⁶

The OCO is of the view that prevention and early intervention measures are a key component of an effective response to school bullying involving children. Access to a system of support at school and in the wider community, including counsellors and school psychologists, has been identified as a factor that promotes teachers' capacity to help children who are the target of bullying and cyberbullying.³⁷ In this regard, we note that the Joint Committee on Education, Higher and Further Education, Research, Innovation and Science has called for a reconstitution, expansion and adequate resourcing of the National Educational Psychological Service (NEPS) to provide specialist emotional counselling and therapeutic supports, on site, in all primary and secondary schools.³⁸ As the Ombudsman for Children has highlighted on several occasions, we believe that therapeutic supports should be available to children in schools.

The OCO recommends that the Steering Committee should give careful attention to the matter of therapeutic supports being provided to children in schools, including for the purposes of ensuring that children who experience bullying as well as children who are engaging in bullying behaviours are appropriately supported.

Monitoring and Oversight

According to the UN Committee, rigorous monitoring of the implementation of the UNCRC is required and should be built into the process of government at all levels.³⁹ As noted above, the OCO welcomes that school inspections now include a specific focus on bullying. However, we are concerned that the findings of the Inspectorate's report on the implementation of aspects of anti-bullying measures in schools indicate that a significant proportion of schools do not comply with the requirement to carry out an annual review of their school's anti-bullying policy. It is also concerning that they do not meet the requirements for reporting to the Board of Management on bullying incidents in the school.⁴⁰ In this regard, the Inspectorate notes that some schools require *"guidance"* and *"support"* in relation to certain aspects of their anti-bullying procedures, and that a *"short written note will be provided to the school on the Inspectorate findings [which] can be used by schools to inform their anti-bullying measures and to take any necessary actions to strengthen*

³⁶ Government of Ireland, *Programme for Government: Our shared future* at p. 111. See <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>

³⁷ *Supra* note 32.

³⁸ *Supra* note 29 at p.13.

³⁹ *Supra* note 3.

⁴⁰ *Supra* note 31 at pp. 11-12.

these”.⁴¹ However, no information is available to indicate when or how schools will be reviewed in order to ensure that they have taken the Inspectorate’s concerns on board.

The OCO recommends that the Steering Committee consider what measures need to be taken to strengthen monitoring and oversight of schools’ implementation of their anti-bullying procedures.

Access to an effective Remedy

In its General Comment on *General measures of implementation of the Convention on the Rights of the Child*, the UN Committee makes the point that “for rights to have meaning, effective remedies must be available to redress violations”.⁴² Due to the difficulties that children can face in pursuing remedies for breaches of their rights, States should ensure that there are effective, child-sensitive procedures available to children and their representatives.

OCO complaints and investigations

As noted in the introduction to this submission, the OCO has statutory authority to examine and investigate complaints made by or on behalf of children about the administrative actions of public bodies, schools and voluntary hospitals that have, or may have, adversely affected a child.

Concerns about bullying in primary and post-primary schools make up approximately 10% of all complaints the OCO has received from January 2019 to May 2022. The table below contains overlap as issues complained of usually, if not always, have more than one element to the complaint – for example, a complaint about how bullying was handled may also contain elements relating to professional conduct.

How bullying was handled	Complaint-handling	Child removed from school	Professional conduct	Child Protection & Welfare concerns/ serious bullying (assault)	Racism
100%	47%	9%	36%	35%	0.2%

How we dealt with complaints brought to the OCO

Referred to local complaint procedures	Examined by OCO	Investigated by OCO
63%	32%	5%

OCO Remit

There are a number of key points that the OCO explains to complainants and schools when we engage on complaints or concerns about bullying in schools:

⁴¹ Supra note 30 at p.3.

⁴² Supra note 3.

- We explain that we do not have the authority to determine if alleged behaviour is bullying. We do look to the actions of the school in responding to and engaging with the relevant parties to understand how the school considered its role and obligations.
- We explain that we cannot investigate the actions of children, or intervene in or adjudicate upon any disciplinary actions taken with respect to a child exhibiting bullying behaviour.

This can raise challenges for complainants, particularly if their complaint journey to date has also not addressed these issues or has failed to communicate and explain determinations and/or actions taken by the school and the reasons for same.

The OCO places itself, through the 2002 Act and our approach, at the final stage in a complaint-handling journey. In most cases, this provides the optimal opportunity at a local level for all relevant parties to resolve complaints and address concerns effectively. Not all our observations offered have formed the basis of statutory findings or adverse criticism of administrative actions taken. The scope of our complaints work in looking at how bullying concerns are dealt with in schools has afforded the OCO insight into the range of remedies and approaches taken.

OCO Approach

Schools are obliged to devise and implement an anti-bullying policy. Often a school's approach in dealing with how students interact with each other is expressly set out in its ethos, mission or value statement.

Most anti-bullying policies that we review as part of our complaints and investigative work are based on the Department of Education's anti-bullying procedures. They invariably seek to strike the balance between the active tasks of identifying, reporting, recording, investigating, and escalation of bullying concerns as behavioural or conduct issues to be addressed alongside appropriate efforts to try to promote respectful and practicable relationships between students. An approach using the principles of resolution such as restorative justice or conflict resolution can often form part of a school's visible toolkit to try to address matters.

Our role is not limited to measuring or determining adherence to procedures. Not all actions by a school in seeking to resolve matters may be clearly contained in the four corners of a policy or procedures document. That does not automatically render those actions as being maladministration or adversely affecting a child. We look to see the intent behind the actions in response to the circumstances involved and the material and real time information provided.

This has proven a helpful approach as complaints raised at school level:

- may be complex and evolving
- may require actions at times without all the available information
- may be understood initially as a potential bullying issue and, as such, may relate to a school's daily role involving implementation of the school's code of behaviour or managing and supporting positive interaction between young people
- may involve a changing appreciation by the parties as to what may be occurring and so may require a school to pivot its approach

- may contain elements of concern that require the oversight and intervention of statutory agencies such as Tusla or An Garda Síochána – this requires further consideration by the school and may inhibit or exclude a school’s actions to try resolve matters
- may, after school investigation, be determined as not being bullying. The outcome of the school’s process needs to be planned for, and managed to include how the perception of unresolved complaints and concerns will be addressed. We have identified occasions where schools have tried to address bullying and/or harmful behaviour in a number of ways. We have seen it addressed by schools as a collective issue for the class or group, through mediated or supported interaction between the parties, or separately with respect to individuals’ behaviour.

We receive complaints on how the above is managed and communicated to parents/guardians and children.

We look to recognise what works well. We see that helpful and effective interactions within a school are not limited to conduct of an internal investigation and/or cessation of bullying behaviour. Often our follow-up interventions with schools focus on identified deficits in communication or understanding.

These are opportunities for the school to account better for its efforts and to learn. From our complaint-handling perspective, our direct intervention is not required in a substantive way in circumstances where schools:

- explain the limitations of, and the balanced approach contained in, their anti-bullying procedures
- provide appropriate guidance on the types of outcomes achievable
- engage meaningfully and openly on known or identified points of contention with complainants.

OCO Observations on Complaints received

a. Access to local redress

The OCO places itself, through the 2002 Act and our approach, at the final stage in a complaint-handling journey. In most cases, this is to allow the optimal opportunity at a local level to resolve complaints and address concerns effectively.

Complaints that come to us by their very nature relate to a view that a response is unsatisfactory or that the substantive issue remains unresolved. While we may recognise helpful and effective interactions between a school, parents/guardians and children in efforts to address matters, concerns about bullying that are resolved fully and effectively may not always form the nature of a complaint brought to us.

Conversely, that parents/ guardians or children may not always raise complaints with us should not be considered as an endorsement or indicator of the effectiveness, accessibility or child-centred nature of schools’ anti-bullying policies and procedures.

We ask complainants about their experience in bringing the complaint. It may be a function of many factors including:

- capacity and ability of advocates to access and navigate policy and procedures
- the school's actions, openness and approach to supporting challenge or feedback
- the policies and procedures relied upon
- the wishes and views of the child affected
- awareness of and signposting towards the OCO's statutory role

Our commentary on the complaint work undertaken relates to the observable interactions between schools and parents/guardians and children and the reliance or otherwise on the available procedures and approaches.

b. Benefit of independent review

We appreciate that schools, in investigating or addressing bullying concerns, will be aware of and receive child specific information that cannot be shared appropriately with complainants. Schools are places of learning. Some schools are able to openly express their obligations to the rights and welfare of all children involved in bullying complaints. Some schools fall short in this task or are unable to communicate these overarching obligations or even openly explain alternative approaches being considered and acted upon. This is particularly the case when schools have committed to investigating a bullying complaint and it is expected by complainants that it will progress along a linear path of evidence gathering, weighing up, findings and outcome by way of intervention, and/or disciplinary action.

Similarly, at a point past informal resolution stage, parents and children may not submit all issues and concerns into a paper-based complaint-handling process either internally or externally, to the OCO. Examining complaints provides us with the opportunity to consider the viewpoint of children and their advocates and that of school staff and management in dealing with complaints and concerns. It allows us the benefit of hindsight in reviewing inflection points in a complaint journey where actions or gaps and the perception of same influenced the success of the redress offered or that which was provided.

c. OCO Actions

Contact with us in relation to bullying concerns come primarily from parents and guardians. The type of bullying or behaviour experienced by the young person provides context to the effect on the child and the response by the school. However, our investigative focus is on the school's response and how we may consider the best interests of child involved. This guides us on the reasonableness and appropriateness of any redress or solutions that are in place or are available. The details of bullying and the impact on a child are a very sensitive subject matter. We take great care when considering how we hear and consider the interests and wishes of children when conducting our complaints work. We are not adjudicating upon the veracity or behaviour of any child.

d. Signposting

There are a number of observable approaches taken by schools and Boards when dealing with the alleged failure of schools to respond to bullying concerns appropriately. There is also an increasing awareness amongst parents/guardians of Tusla's potential role in dealing with peer bullying as a child protection and welfare matter under *Children First*.

Concerns about how schools may have responded to behavioural or bullying concerns may be directed internally by the school towards the:

- employer/employee agreed professional conduct or grievance procedures
- Teaching Council.

Such internal signposting and redirection may be appropriate if that is the understood and accepted wish of parents/guardians acting on behalf of children. It is reflective of the role, responsibility and duties owed by schools towards their students that there is accountability and transparency within that system.

However, our observations when this has occurred are that the approach may result in situations where:

- there may be an unhelpful correlation or equivalence made between staff actions and the substantive issue of the alleged bullying actions of children.
- the opportunity for reflective practice, organisational learning and/or effective policy review may be lost, impracticable, or impeded from running concurrently or fairly.

The OCO is making the following recommendations with a view to promoting and supporting good complaint-handling in schools and as regards dealing with bullying concerns:

1. Reflective practice - Complaints are learning opportunities. The OCO recommends that schools prioritise the development of reflective practice in relation to their obligation to review the efficacy of their anti-bullying policy and procedures. Individuals who have raised concerns about how bullying concerns have been dealt with by schools should be invited to provide feedback into the learning cycles of schools. Schools also need to be open to receiving feedback on behalf of children who have left school in circumstances where bullying concerns formed part of the child's experience in school.

2. Complaints culture - If schools only ever progress complaints about bullying through the lens of professional conduct complaints, there is a risk that the opportunity for organisational learning is lost. The OCO recommends that schools develop the capacity and framework for hearing feedback and complaints about the operation of their policy and procedures outside of individual complaint procedures. Schools need to develop a willingness and culture to engage on those issues. This includes openly explaining the approach to parents/guardians and attaining their support and buy in. If done correctly, any points of learning and/or accountability required for actions taken and decisions made can form part of the understood approach and potential outcome.