

Bullying at School:
a brief guide to the law



Education Law Unit

Bullying and the law

What is bullying?

There is no legal definition of bullying; however, it may be verbal, emotional or physical in form. Bullying can also take place through text messages, over the phone and on the internet or social media like twitter, Instagram or facebook. This is known as 'cyber bullying'.

What to do if your child is being bullied

Start by talking to a teacher

- In primary school this could be your child's class teacher and in secondary school your child's guidance teacher.
- Ask for a copy of the school's and local authority's anti-bullying policy.
- Find out what action the teacher is proposing to take, making a note of any possible timescales for dealing with the matter. You should follow this up by checking that the incident(s) have been formally reported and investigated.
- If you are not happy with the proposed action or if the incidents have not been recorded or investigated sufficiently, you should make an appointment with the head teacher of the school.

Children and young people who are being bullied may be considered as having additional support needs in terms of the Education (Additional Support for Learning)(Scotland) Act 2004. If the bullying is having an impact on your child's learning, you may wish to ask the school to establish whether or not your child has

additional support needs. If they are not willing to do so or disagree that your child has such needs, you can take this matter to mediation and/or independent adjudication.

Mediation

Mediation can bring parties together to work with each other to resolve a disagreement. An impartial mediator helps the participants communicate their concerns to each other. This is a free service available to parents of children with additional support needs. For more info, see: <http://enquire.org.uk/publications/factsheets/mediation>

Independent Adjudication

Independent adjudication can be used if the local authority do not agree that your child has additional support needs. You can request that an adjudicator be appointed to consider the situation and make any recommendations in respect to your child including whether your child has such additional support needs and recommendations to help ensure these are met. For more information, see: <http://enquire.org.uk/publications/factsheets/resolving-disputes-using-independent-adjudication>

Complaints

If you feel that the school are not addressing the problem sufficiently, you may wish to make a complaint to the local authority. You should request a copy of the local authority's complaints procedure so that you are aware of the various stages of this process. Your complaint should refer to the local authority's and school's anti-bullying policy or policies.

If you are not happy with the response of the local authority you may wish to take the matter to the Scottish Public Services Ombudsman www.spsso.org.uk The Ombudsman is the last resort in respect to complaints, which means you can only complain to them once you have exhausted the local authority's complaints process.

The Ombudsman can check that the authority has proper procedures in place and that they are followed. They are not an appeal body for decisions of organisations. They can check that a decision is properly made, but cannot change or overturn it. They can

then make recommendations about how to put things right. This can include an apology and a review or creation of policies. Their service is impartial and free. If their findings are significant, a report will be placed before the Scottish Parliament.

Complaints to the Ombudsman must be made within one year from the date of the incident unless there are exceptional circumstances.

Bullying as a Criminal Offence

Where the bullying amounts to a criminal offence (for example, theft or physical assault) you can report the matter to the Police. Some types of cyber-bullying can be classed as a criminal offence. Children have criminal responsibility from the age of eight in Scotland. Where the pupil is under sixteen, any criminal proceedings are likely to be by way of the children's panel for the children's reporter to investigate or the matter may be referred to the procurator fiscal. If the Police do not wish to investigate you may wish to speak to their superior officer to ask them to take the matter forward. If they do not, a complaint can be made: <http://www.scotland.police.uk/about-us/police-scotland/complaints-about-the-police/how-to-make-a-complaint/> ___ It is not the school's job to investigate allegations of criminal behaviour.

If the bullying is persistent, you may wish to contact a solicitor in respect to an interdict against the bully/ies. There would have to be a course of conduct on at least two occasions to amount to harassment. This is a civil law remedy which would have the effect that the bully/ies would not be allowed to harass your child under the Protection from Harassment Act 1997. This order would have to be taken to court and granted by a Sheriff. It would need to be proven that such an order is necessary given the persistent nature of the bullying. If the interdict is breached, this would be contempt of court. There may also be powers of arrest attached. Where the breach amounts to a criminal offence, this could result in the bully/ies being referred to the children's panel or to the procurator fiscal.

Cyber-bullying

This can be by email, text message, in chat rooms and on websites or social media. As more and more people sign up to social media, the reports of bullying are increasing. There are several ways of dealing with this particular form of bullying, as follows:

- 1) Never reply to the messages but do not delete them.
- 2) Complain to the service provider.

Most websites will remove things that violate their terms, including bullying. If you come across something on a website, you should be able to use their report link to submit a report. Please see the Appendix at the end of this factsheet for the website addresses of various social media websites.

- 3) Stop the activity.

In respect to text messages, you may wish to either block the telephone number of the person who is contacting your child or, if they are persistent, you may wish to purchase a new sim card for the mobile telephone. For websites or emails, the account can be closed down.

- 4) Report the matter to the Police.

Cyber-bullying may be deemed to be a breach of the Telecommunications Act 1984 which is punishable by a fine. Alternatively, it could be deemed to be a breach of the Malicious Communications Act 1998. The punishment for such a crime is a fine and/or up to six months imprisonment.

- 5) Court order.

You may also be able to obtain a court order under the Data Protection Act 1998 to seek that a person ceases to process data that is likely to cause substantial damage or substantial distress to individuals.

What duties do local authorities have?

They have a duty to promote and ensure the care and welfare of children and young people in their schools. The local authority and school must have anti-bullying policies. The aim of the policy is to minimise the level of risk and take effective action to deal with incidents of bullying behaviour. Procedures should be set up to ensure that incidents of bullying behaviour are recorded and ensure that all allegations of bullying are fully investigated by the schools.

A professional person (such as a guidance teacher) should possess a certain minimum degree of competence in the performance of their role. In discharging their duties, they should exercise reasonable care. If they do not do so, there may be a question of whether or not they have been negligent. The standard of care required in Scotland is that of the standard expected of that particular profession.

The potentially liable party would be the local authority, rather than a teacher. This is because the education authority is responsible for the actions of their employees.

Such cases are extremely difficult to prove, indeed there has not been a successful case in Scotland. Providing the individual has not fallen below the professional standard or ordinary competence of a teacher, it is unlikely a court would hold a teacher responsible.

If this is a course you wish to consider, you should consult a solicitor specialising in professional negligence. Govan Law Centre is unable to take on professional negligence cases as this is a separate specialism.

The time limit for bringing such cases to court is three years if there is a personal injury aspect to it, for example, where there is evidence that your child's mental health has suffered as a result. Otherwise, for other types of action, the time limit is usually five years.

Appendix to cyber-bullying section

Please use the following website addresses if you wish to report matters to the service provider:

	https://www.facebook.com/help/181495968648557
	https://support.twitter.com/forms/abusiveuser
	https://kikinteractive.zendesk.com/entries/23518788-I-m-being-harassed-on-Kik-What-can-I-do-
	http://www.camfrog.com/en/help-security.phtml
 Instagram	https://help.instagram.com/165828726894770/
	https://support.snapchat.com/ca/abuse
 Broadcast Yourself	http://www.youtube.com/yt/policyandsafety/reporting.html

Where to get help

There are lots of websites where you can get useful information and advice about bullying at school.

Respectme, Scotland's Anti-Bullying Service

www.respectme.org.uk

YoungMinds, the Voice for children's mental health and well-being

www.youngminds.org.uk/for_children_young_people/whats_worrying_you/bullying/bullying_help

Child Line (0800 1111)

www.childline.org.uk/Explore/Bullying/Pages/Bullying.aspx

Enquire, the Scottish Advice Service for Additional Support for Learning (0345 123 2303)

<http://enquire.org.uk/what-is-additional-support-for-learning/questions/bullying>

Legal Action

If you are considering taking legal action against an education authority or another pupil, you should seek legal advice as soon as possible as court actions are subject to strict time limits.

Govan Law Centre is not able to provide you with representation or advice in relation to compensation claims against a school or education authority.

If you wish to arrange legal representation, you may wish to contact a law firm which offers Legal Aid. You should contact the Scottish Legal Aid Board on 0131 226 7061 or use their online "Find a Solicitor" tool at <http://www.slab.org.uk/public/solicitor-finder/>

Govan Law Centre can be found online at:

Web: www.govanlc.com or www.edlaw.org.uk

Twitter: [@GovanLawCentre](https://twitter.com/GovanLawCentre)

Facebook: facebook.com/educationlaw

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The inclusion of specific organisations and websites listed in this leaflet is intended for convenience and does not constitute an endorsement or recommendation by the Govan Law Centre or Dailly & Co., Solicitors.

