Response of the Equality and Human Rights Commission to the Consultation: Keeping Children Safe in Education (KCSE): Sexual Harassment and Sexual Violence in Schools

Consultation details

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<th>Title:</th>
<th>Keeping Children Safe in Education (KCSE): Sexual Harassment and Sexual Violence in Schools</th>
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<td>Source of consultation:</td>
<td>Department for Education</td>
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For more information please contact

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Question 6(a): Do you have any comments on the effectiveness of the sexual violence and sexual harassment advice?

The Commission is responding to the section of the consultation relating to DfE’s recent advice, *Sexual violence and sexual harassment between children in schools and colleges* (the Advice). A shorter part of this Advice is in the proposed statutory guidance, *Keeping children safe in education* (the Guidance) and we make reference to this accordingly.

The Commission has a particular interest in this area, having previously expressed concerns that guidance on sexual harassment and violence needed to be amended to provide more substantial guidance on peer to peer abuse.

We are also responding to paragraph 97 of the Guidance, which amends wording on restraint in relation to children with special education needs and / or disabilities.

We have decided to focus on these parts of the consultation because these issues are most aligned with our strategic priorities for the year. Our decision not to comment on other sections of the consultation should not be regarded as support or opposition to the Guidance.
We welcome the Advice and the inclusion of information for schools and colleges underlining their legal responsibilities and duties under the Equality Act and the Human Rights Act.

We note the advice contains references to ensuring that the best interests of the child are paramount in decisions affecting a child. We think it would be helpful to highlight that this reflects Article 3 of the UN Convention on the Rights of the Child which the UK is party to.

The Commission believes the following sections of the Advice should be amended (Ongoing Considerations: Victim and alleged perpetrator sharing classes p.33-34) and page 77 of the Guidance).

Where there is a criminal investigation into a rape, assault by penetration or sexual assault, the alleged perpetrator should be removed from any classes they share with the victim.

We believe that “should” ought to be replaced by “must, in all but the most exceptional circumstances.”

Where a criminal investigation into a rape or assault by penetration leads to a conviction or caution, the school or college should take suitable action, if they have not already done so. In all but the most exceptional of circumstances, the rape or assault is likely to constitute a serious breach of discipline and lead to the view that allowing the perpetrator to remain in the same school or college would seriously harm the education or welfare of the victim (and potentially other pupils).

We think the first sentence should be amended to better reflect the preceding paragraph which states that action should already have taken place:

We believe that rape or assault will always be a serious breach of discipline, but recognise that in exceptional circumstances, there may be mitigating circumstances for such a breach; for example, the perpetrator does not have the mental capacity to understand their actions. Regardless of the circumstances surrounding the perpetrator’s conduct, the impact on the victim is still likely to be substantial and seriously harm the education or welfare of the victim if the perpetrator remained in the school or college. The current wording gives the impression that if there are exceptional/mitigating circumstances for the perpetrator’s conduct, it may be appropriate for lesser sanctions to be imposed. We suggest amending the text to remove the following: ‘the school or college should take suitable action, if they have not already done so. In all but the most exceptional of circumstances,’ For additional clarity, the DfE could add the following sentence at the end of the paragraph:

‘This approach should be taken regardless of any exceptional circumstances in which the rape or assault may have occurred.’

Under the first aim of the public sector equality duty (PSED), public authorities must show due regard to eliminating unlawful discrimination, harassment and violence.
Public authorities must also annually publish information to demonstrate how they are meeting the aims of the PSED.

The Commission welcomes that the Advice makes clear that the PSED is one reason why schools and colleges must record and monitor sexual violence and sexual harassment (paragraph 18). We believe this point should also be made explicit in the Guidance.

The Commission believes that recording sex / gender-based bullying is an important part of preventing sexual violence and harassment. Recording bullying incidents can be an important way of identifying issues early, such as sexual “banter” and harassment, and putting a stop to them before they escalate. Monitoring and reporting different types of bullying can enable schools and colleges to identify patterns, adapt policies, update teacher training, take preventive action and evaluate how effectively their policies and practices are working.

It is therefore unfortunate that while schools are advised in the Advice to report incidents of sexual violence/harassment (paragraph 18), the recording of bullying is not a requirement in DfE’s Preventing and Tackling Bullying guidance. We recommend that the Preventing and Tackling Bullying guidance is strengthened to say that schools should gather, record and use information on bullying in order to develop and evaluate their anti-bullying strategies. We agree that schools are best placed to determine how to do this.

Furthermore, the Preventing and Tackling Bullying guidance appears to contradict Ofsted’s Common Inspection Handbook, 2015, which states:

‘Inspectors will request records & analysis of bullying, discriminatory & prejudicial behaviour including racist, sexist, disability & homophobic bullying, use of derogatory language and racist incidents’.

We welcome that the Advice explicitly calls on schools to implement a “whole-school” education programme to prevent sexual harassment and to encourage appropriate behaviour and healthy relationships (paragraphs 25-26). It also notes that this curriculum is often delivered this through Sex and Relationship Education (SRE) and Personal, Social, Health and Economic Education (PSHE) programmes.

We believe that it is essential for schools and colleges to ensure effective teaching on sex and relationship education in order to combat sexualised bullying, harassment and abuse and to encourage healthy and respectful relationships. Children with SEND are more likely to experience sexual abuse, bullying and harassment, so we recommend that the Guidance advocates compulsory SRE/PSHE teaching in all educational settings that meets the needs of all pupils. Teaching sex and relationship education will also help schools and colleges meet the third aim of the PSED; to foster good relations between people who share a protected characteristic and those who do not.
Moreover, as a signatory to the Convention on the Rights of the Child (CRC), the UK is legally obliged in international law to teach about the full range of children’s rights, yet the government is currently failing to comply with this requirement.\(^1\) Unicef has found that giving pupils information about their rights and the rights of others can make children feel safer at school and empower them to tell teachers when they do not feel safe. Schools should take a rights-based approach to the whole-school environment, and ensure respect for individuals’ human rights are embedded in school teaching and ethos in order to prevent discrimination, abuse and harassment and to foster healthy and respectful relationships.

The Commission has responded to the DfE’s consultation on *Changes to teaching of sex and relationships education, and PSHE* which sets out our views on this in more detail.

**Question 6(b):** Do you have any comments on the effectiveness of the sexual violence and sexual harassment advice at Annex A of KCSIE, including whether the summary is of an appropriate length?

The amendments we have set out above regarding the Advice should also be reflected in the Guidance.

We think that while the Guidance covers many key points, some important points and details are missing. In all likelihood, we believe teachers will only look at the Guidance, and may only look at the Advice when an incident has occurred. To avoid this, we think the Advice should be fully incorporated into the Guidance.

**Question 7:** Which of the following options would you support and why?

* The department publishes standalone advice and summarises it in Annex A of KCSIE; or
* Move the advice to a new ‘Part 5’ of KCSIE which addresses peer on peer abuse and withdraw the standalone advice

The Commission’s preference is that the Advice is included in full to a new ‘Part 5’ of the Guidance. This would:

- give the Advice additional weight and importance by placing it on a statutory footing;
- avoid the risk of a summary missing key information, for example the importance of recording incidents to inform and evaluate anti-bullying and harassment interventions; and that SRE and PSHE lessons are one important way to foster healthy relationships and tackle sexualised bullying early; and
- remove the need for schools and colleges to seek information in multiple places.

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Question 8: Is making the link between children with SEND and considerations regarding restraint helpful?

The Commission welcomes the inclusion of this paragraph which reflects the importance of schools and colleges considering the impact that restraint and isolation are likely to have on children with SEN and disabilities, and that the use of restraint or isolation should be avoided.

We believe the Guidance should make clear that all forms of restraint restrict personal autonomy, are likely to undermine a person’s dignity, and have the potential to cause mental or physical harm. Because of this, the use of restraint will almost always engage the European Convention on Human Rights, and particularly Article 3 (prohibition against torture, or inhuman or degrading treatment) and Article 8 (right to private and family life, including personal autonomy and respect for physical and mental integrity). Schools and colleges therefore need to be very clear on what steps must be taken in order to ensure that rights violations do not occur through the use of restraint.

The Commission has recently responded to DfE/DH’s consultation on Reducing the Need for Restraint and Restrictive Intervention: Children and young people with learning disabilities, autistic spectrum disorder and mental health difficulties. Our response welcomes the draft guidance’s aims to reduce the use of restraint. We recommend the Guidance is amended to reflect the point in the Reducing the Need for Restraint and Restrictive Intervention, that restraint is a form of harm and that alternatives to restraint (e.g. de-escalation), pre-planning and review are vital.

The Commission is currently consulting on a Human Rights Framework on Restraint. This sets out the current position in our domestic law in respect of restraint and provides a checklist of requirements and tests that apply to the use of restraint in domestic law.

We are pleased that DfE will be attending our roundtable consultation on this topic on 6th March. We would be happy to share this framework with those responsible for this consultation in due course.