



Children's
Rights Alliance
for England

FAQ - Full Answer



“My life is hell at school because some of the other pupils decided I’m gay and bully me about it all the time, physically and verbally and in texts and on Facebook. My parents complained to the head-teacher but the school hasn’t done anything about it. What can I do?”

Law and guidance on bullying

Section 89 of the Education and Inspections Act 2006 provides that every school must have measures to encourage ‘*good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils*’.

These measures must be published in a document (known as the school’s Behaviour Policy) and brought to the attention of parents, pupils and staff at least once a year. The school’s anti-bullying policies could be a part of this or set out in a separate document.

In addition, under section 175 of the Education Act 2002 school governors have a duty to ‘*exercise their functions with a view to safeguarding and promoting the welfare of children [at the school]*’.

The governors and the head teacher must follow guidance issued by the Government on their legal duties (unless there is good reason not to do so). In particular, the Department for Education has issued guidance on Preventing and Tackling Bullying. This outlines the legal obligations and the powers schools have to tackle bullying, and the principles the Government believes underpin the most effective anti-bullying strategies.

Your school has not upheld these principles if it has failed to respond to your parents’ complaint so they can feel confident you are safe, if it has failed to investigate the actions of the bullies and applied appropriate sanctions or if it has failed to raise the issue of homophobic bullying in the school generally.



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As regards measures the school can take against bullying, this is set out in the guidance on [Behaviour and Discipline in Schools](#) and the legal powers of teachers to discipline pupils are found in [sections 90-96 of the Education and Inspections Act 2006](#). The law explicitly includes a right to investigate and discipline pupils' behaviour outside the school if this is likely to affect the welfare of other pupils at the school – for example, if you are being assaulted on the way home from school or suffer “cyber-bullying” through mobiles and the internet when you are at home. Punishments for bullying must be fair, appropriate and proportionate.

[Section 2 of the Education Act 2011](#) gives teachers stronger powers to tackle cyber-bullying by providing them with a specific power to search for and, if necessary, delete inappropriate images (or files) on electronic devices like mobile phones, iPad etc. There is also guidance on this topic ([Screening, searching and confiscation](#)) which says: *'If inappropriate material is found on the device it is up to the teacher to decide whether they should delete that material, retain it as evidence (of a criminal offence or a breach of school discipline) or whether the material is of such seriousness that it requires the involvement of the police'*.

Bullying as a criminal offence

Any physical assault, or even threat of a physical assault, is a criminal offence. A “common assault” is one that doesn't cause injuries like heavy bruising or a broken nose. Police have discretion not to pursue common assaults if they think they are trivial and a waste of their time, but should always check out cases where a child is the victim.

In addition there are crimes of harassment, subjecting someone to imprisonment, fines and restraining orders:

The [Protection from Harassment Act 1997](#) includes two criminal offences of “harassment” and putting someone “in fear that violence will be used against him”. These are defined as what a reasonable person would think is harassment/fear of violence which has occurred on at least two occasions. The perpetrator can be prosecuted under criminal law, but the Act also allows for a civil claim for damages, including *'for anxiety caused by harassment'* and the granting of an injunction or an order restraining the person. If they breach it, they commit an offence.



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The Malicious Communications Act 1988 (as amended by the Criminal Justice and Police Act 2001) makes it a criminal offence for someone to send a letter or “electronic communication” to another person if the message or information is indecent or grossly offensive, a threat or known to be false by the sender.

The Communications Act 2003 makes it an offence to send, or cause to be sent, an electronic communication that is “grossly offensive or of an indecent, obscene or menacing character”.

The Criminal Justice and Public Order Act 1994 sets out the criminal offence of intentional harassment. A person is guilty of an offence if he or she causes someone harassment, alarm or distress, uses threatening, abusive or insulting words or behaviour or disorderly behaviour or displays any writing, sign or other visible representation which is threatening, abusive or insulting.

In addition there is “breach of the peace.” This is not a criminal offence, in that it does not result in a formal conviction or sentence. But the police or any member of the public is permitted to arrest someone for a breach of the peace in order to prevent another breach taking place. Magistrates can then “bind over” the perpetrator, which means that if he or she fails to keep the peace – for example by not bullying – they have to pay a fine.

Rights under the Equality Act 2010

As you will know anti-gay (“homophobic”) bullying is now very common in schools. Bullies have other targets: if you are black or foreign or fat or disabled or clever or slow or rich or poor or in any way different you can become a victim. Schools can be quick to stop certain sorts of bullying but may not even notice other sorts. As it happens homophobic bullying is now recognised in law and so has become significantly more important to schools.

Under the Equality Act 2010 schools have to do their best to stop discrimination on the grounds of race, disability, gender, age (meaning old age), gender reassignment, pregnancy and maternity, religion or belief and sexual orientation (being gay, straight or bisexual). These are called “protected characteristics.” They shouldn’t treat homophobic bullying any less seriously than they would treat other types of bullying – this would be discrimination.



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Schools must “have due regard to the need to”:

- ◆ eliminate unlawful discrimination, harassment and victimisation;
- ◆ advance equality of opportunity between people who share a protected characteristic and those who do not share it; and
- ◆ foster good relations between these two groups.

It seems you are being harassed on the grounds of sexual orientation and the school is permitting an atmosphere where there are not good relations between gay, lesbian and bisexual pupils and others in the school. The school thus appears to be failing in its duties under this Act.

Rights to protection from harm

Under section [175 of the Education Act 2002](#) governors have to safeguard the welfare of pupils.

If there was evidence that you were at risk of “significant harm” from the bullying (for example, seriously injuries or damage to mental health), social services would have to be called in. But if the bullying falls short of that level of harm, then the safeguarding responsibilities are the school’s.

Under the Human Rights Act and the Convention on the Rights of the Child, you have rights to be protected from all forms of violence and degrading treatment, including relatively minor humiliations. Given the number of laws that already exist on this subject these rights serve as a back-up protection.

What can be done?

First, if you and your parents haven’t done so already, check the school’s anti-bullying policy.

Does it explicitly say what the school is doing to combat homophobia? Does the school record, monitor and evaluate expressions of homophobia (whether because of bullying or otherwise)? What training has the staff received on tackling homophobia? Has the issue ever been discussed in your class? Is your school signed up to Stonewall’s School Champions programme?

Does the policy make clear what will happen if an allegation of bullying is made – not just how it will be investigated and what the sanctions are for bullying, but also what measures are being taken to stop it reoccurring. Is the subject regularly discussed by pupils and teachers? Is there a peer-support system?



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What are the measures to check cyber-bullying? Is there a system for identifying unsafe areas of the school that need better monitoring?

If none of this is happening, then the school can be asked to take action under its legal duties (see the above). You and your parents should remind the head and the governors of the educational cost of bullying, that victims tend to fall behind in their work or truant, and also of the fact that Ofsted take into account what schools are doing about bullying in their official inspections. Bullying is not just “a fact of life.” Some schools have a lot and some have very little, even though they have the same sort of pupil intake.

If the school fails to take action, your parents should consider making an official complaint. Under the Education Act 2002 ([section 29](#)), schools are required to establish and publicise procedures for dealing with complaints – ask to see this. If the complaint does not succeed, consider complaining further to the [Department for Education](#) (DfE).

If the school claims that it has investigated your complaint adequately but found no evidence to support what you say, then you may need to prove them wrong. Keep a record of what happens: save texts, Facebook entries, keep a diary, photograph any damage to yourself or to your property. Are there ever any witnesses? Talk to anyone you think might help with this.

Think about threatening the bullies with a criminal prosecution. As your parents have already made a complaint, you have little to lose in terms of risking recrimination for being “a grass.” A formal letter from a [solicitor](#) to the bullies’ parents might make them think twice.

Various [organisations](#) can offer advice on how to block cyber-bullying, and also lots of sensible tips on how to cope with the misery of being bullied and how to handle bullies.

All of this probably seems rather intimidating. However you may find that taking action not only helps protect you from the bullies but also helps others and you may discover unexpected allies.