



Teachers' Union of Ireland

**Submission to Joint Oireachtas Committee on Education and Skills regarding the Education  
(Amendment) Bill 2015 and the General Scheme of an Education (Parent and Student Charter) Bill  
2016  
(March 2017)**

**Opening Statement**

The TUI represents more than 16,000 practitioners including teachers who work in the Education and Training Board, Community and Comprehensive and Voluntary Secondary school sectors.

The TUI welcomes this opportunity to address the Committee in relation to the **Education (Amendment) Bill 2015 and the General Scheme of an Education (Parent and Student Charter) Bill**. In addition to this opening statement, we have also attached a more detailed submission to support the important work of the Committee in this matter.

**Education (Amendment) Act 2015**

The TUI is of the view that the two proposed pieces of legislation are contradictory and mutually exclusive. We would contend that the Education (Amendment) Bill 2015 is mistaken - if well-intentioned – in approach, that the establishment of an Ombudsman for Education is unnecessary and would duplicate existing offices and that any legislative change as may be required can be adequately accommodated in the proposed Education (Parent and Student Charter) Bill 2016, suitably revised.

**Education (Parent and Student Charter) Bill 2016: a Charter – principle and practice**

The TUI supports achievement in practice of the principle of appropriate involvement by students and parents in determining the culture and processes of a school. Our members – teachers, including principal teachers – have a professional commitment to the creation and maintenance of

welcoming, inclusive and democratic school communities that are an integral and dynamic part of the social infrastructure of the broader communities they serve. In this context, making legislative provision for a Charter is worthy of consideration. Such a Charter, however, would have to reflect a balance of the rights and responsibilities of all parties. Moreover, a Charter that imposed additional administrative and/or legalistic responsibilities on schools that lack the capacity to discharge them would be counter-productive. A number of our specific observations have their origins in this concern about unsustainable demands.

### **Ombudsman for Children**

The TUI is at something of a disadvantage as the Heads of the Education (Parent and Student Charter) Bill 2016, while proposing an expanded role for the Ombudsman for Children, do not provide the level of detail that would enable us definitively to assess at this stage either the desirability (or otherwise) or the likely impacts of such an expansion. However, by way of preliminary observation, we would advise that additional layering of complaints and appeals procedures would be burdensome and that excessively restrictive timelines will add to, rather than ameliorate, difficulties. Schools are poorly resourced in relation to administrative and middle management structures. Boards of Management rely on volunteers and there can be no realistic expectation that this will not continue to be the case. We would advise against additional legislative requirements that would increase the burden on Boards.

### **Complaints - recognising and using existing procedures**

We would ask the Committee to note that under the current Section 28 of the Education Act 1998 it is open to the Minister to prescribe procedures to allow grievances of “students, or their parents, relating to the students’ school” to be submitted and processed and to allow the “parent of a student or, in the case of a student who has reached the age of 18 years, the student, to appeal to the board against a decision of a teacher or other member of staff of a school”.

The TUI, has for several years urged successive Ministers for Education to prescribe procedures under this section of the Act, noting that procedures are available for him to prescribe, that these procedures have been agreed between national management bodies and the relevant Unions, have been in use for some time and have worked effectively in the various sectors. Were the Minister to confirm these procedures as the prescribed procedures under Section 28, the sensible and logical aspiration of “determining appeals and resolving grievances in the school concerned” could be realised without imposing further bureaucratic demands on already overburdened schools. It would

also ensure that grievances are dealt with at the local, and most productive, level where understanding of context and circumstances and the possibility of resolution would be greatest. The TUI would again ask the Minister, using the power vested in him by Section 28, to engage the relevant parties, including representatives of parents and students, in discussions aimed at suitably adjusting the existing sectoral procedures and to approve the procedures that emerge from those discussions.

By contrast with this streamlined approach, the General Scheme of an Education (Parent and Student Charter) Bill seems to envisage each school developing its own procedures, following the guidelines that the Minister will issue in this regard. This would be enormously wasteful of very scarce resources. Some 4000 separate attempts (in 4,000 schools) to re-invent the wheel are unnecessary. Four thousand variations on a theme will lead to inconsistency, contradiction and unfairness. Litigation will almost certainly follow. Our message is simple; there is no need to re-invent the wheel. Instead, let the existing, established sectoral procedures be used. By all means review them, to ensure that they are fit for purpose, but then use them. Our suggestion in this respect is sensible, workable and fully consistent with the proposal to provide for a Charter.

#### **Existing procedures – conduct and competence**

A further concern is that the General Scheme seems strangely oblivious of the existence of robust processes to deal with complaints in relation to the conduct or competence of teachers. Those procedures have legislative underpinning under Section 24 of the Education Act 1998 and Part Five of the Teaching Council Act 2001. Procedures that satisfy Section 24 and which can lead to the dismissal of a teacher are set out in Circular Letters issued by the Department of Education and Skills. Furthermore, through the investigative and disciplinary processes of Part 5 of the Teaching Council Act 2001 (commenced in July 2016), a registered teacher can be removed from the register and cannot, as a consequence, be paid as a teacher out of funds provided by the Oireachtas.

#### **Administrative over-load**

It is imperative that any legislative change or initiative must not create further administrative workload, particularly for principal teachers. The effective functioning of schools as communities of learning is already being suffocated by burgeoning administrative demands. An industrial relations agreement reached between the TUI and the Department of Education and Skills in May 2016 explicitly recognised the problem caused by bureaucratisation and committed the Department to reducing that bureaucracy. The proposed legislation has the potential to add new and unnecessary

layers of complexity and to give rise to a more legalistic culture that will inevitably lead to increased cost for the schools and for the exchequer. The TUI must ask if the Department of Education and Skills believes that the legal costs thus arising represent a productive use of exchequer funds.

### **Equity**

A recurrent feature of legislation in the education sphere is the emergence of unintended consequences when it comes to implementation. Legislation that seeks equity is often frustrated in its implementation by rooted societal inequalities and by the exclusionary practices of some schools. Hence, schools that are selective in relation to enrolment are least affected by equity-based legislation and those that are most inclusive are most affected. The greatest onus is placed on schools that are open, democratic, inclusive and most responsive to national policy. This recurring trend is evident in relation to the inclusion of students with Special Education Needs, for example. Some schools contrive not to enrol students with SENs and other, as a result, have a disproportionate number of such students enrolled. The TUI has a real concern that, once again, the greatest challenge will be faced by the schools that embrace the full, rich diversity in the student cohort – encompassing international students, students with SENs, students from the traveller community, students for whom English is not the mother-tongue, students from socio-economically disadvantage backgrounds – and that they will have to face the challenge without the necessary resources.

### **Training**

Furthermore, the introduction of new and expanded governance requirements under a Charter means that significant additional funding will be required to provide training to school staff and boards of management. The DES and TUSLA are already struggling to source funding to provide training in revised child protection guidelines that are due to be implemented by the end of 2017. If funding cannot be found for training in an area as important as child protection, what are the chances of yet more funding being made available?

### **A culture of culpability?**

The proposed legislation seems, on the face of it, to propose a culture of culpability, predicated on the misconception that schools are responsible for all of society's failings and that schools can somehow remediate familial dysfunctionality where it occurs. This is unfair to schools that are struggling to manage after a decade of cutbacks which have left the system threadbare. There is a fine balance that must be struck between, on the one hand, the appropriate remit of a school in

terms of supporting and empowering an individual student or parent and, on the other, the overarching requirement that a school provide a safe environment for the greater student body. It is regrettable but undeniable, for example, that some schools have to manage and deal with unacceptable and occasionally violent behaviour. This must be taken into account in a Charter which must balance the rights of students and parents with concomitant responsibilities. Otherwise a school will be rendered powerless in its efforts to protect the rights of the generality of students and parents.

### **A misconception**

The proposed legislation also seems to assume that a large volume of complaints/grievances are not being adequately addressed at present. The TUI disputes this assumption. The Ombudsman for Children reports that there have been 4,000 complaints about schools to his office in the last fourteen years. That constitutes fewer than 300 complaints per year. Moreover, those complaints may or may not have merit. However, 300 complaints should be seen in the context of 4,000 schools, serving 917,000 students and, viewed objectively, constitute a very low rate of complaint. It seems reasonable to infer that the existing complaints procedures are resolving problems at local level. They should now be harnessed for use as prescribed procedures under Section 28.

To summarise a complex picture, the TUI contends that any proposed legislation must not

- further bureaucratise the functioning of schools
- “legalise” the system and result, thereby, in scarce exchequer funding being used to defend legal challenges
- complicate the complaint/grievance system and/or open the door to appeals being made sequentially and serially to a range of different, even competing, agencies
- divert scarce resources from other priorities
- duplicate and undermine existing processes/procedures
- encourage or enable people to “forum shop” and serially appeal decisions they do not like. For example, the decision of a board of management in relation to exclusion can already be appealed to the Secretary General of the DES under Section 29 of the Education Act 1998. Is it now envisaged that a decision of the Secretary General could be investigated by the Ombudsman for Children?
- compel a school to deploy scarce teaching and other resources in a manner that is injurious to the interests of the wider student body

- exacerbate existing societal inequities. There is a risk that schools and families with access to additional resources will be able to work with the new obligations and that schools and families in more disadvantaged areas will not.
- be based on a deficit model that assumes that schools are trying to frustrate the appropriate involvement of parents and students in shaping the school environment and culture when the evidence is clearly to the contrary
- impinge on the work of the Inspectorate in its statutory duty under Section 13 of the Education Act 1998. The Inspectorate already holds schools and teachers, including principal teachers, accountable through a suite of inspection processes, including whole school evaluation, programme inspections, thematic inspections, incidental inspections, subject inspections, follow-through inspection and school self-evaluation
- introduce inappropriate formulations of accountability to an education system that already is heavily accountable through multiple processes
- purport to gauge “performance” by reference to unrealistic expectations. It is worth noting, for example, that Government in 2008 and the Department of Education and Skills in 2016 conceded that full implementation of the Education for Persons with Special Educational Needs Act 2004 (EPSEN Act) could not be funded and that, as a result, certain sections of the Act have not been commenced. Funding and other resource constraints must be taken fully into account in any fair assessment of school performance.

## **Introduction**

The TUI has significant concerns about the both pieces of proposed legislation. There already are procedures (to allow complaints to be submitted and processed) that, appropriately adjusted following discussion involving the relevant parties, would satisfy the requirements of Section 28 of the Education Act 1998. The clear preference of the teacher unions, including the TUI, as expressed repeatedly to the DES at the Teachers' Conciliation Council, is for the minister to approve national procedures under Section 28.

Matters to do with the conduct or competence of teachers already come within the terms of legislative provision under Section 24 of the Education Act 1998 and Part Five of the Teaching Council Act 2001.

Concerns raised about the 'baptism barrier' and the possible 'soft exclusion' of students with special needs are expected to be addressed by the Education (Admission to Schools) Bill 2016. The TUI suggests that there is a clear risk of duplication - and confusion - between the various proposed pieces of legislation. It is also noticeable that none of the proposed legislation appears to place any responsibility on the government of the day to provide additional resources to schools to meet the responsibilities proposed.

## **Education (Amendment) Bill 2015**

In relation to the Education (Amendment) Bill 2015, the view of the TUI is that it is unnecessary. If additional responsibilities/powers are to be provided for they should be given to the office of the Ombudsman for Children. We note that of the 9,000 complaints received by that office since its inception, 4,000 related to education. Of these 4,000 complaints, 75% were considered outside of the current remit of the OCO.

There is on occasion in public discourse the inaccurate and unfair suggestion that "autocratic" boards of management are independent of scrutiny, and unreceptive to concerns and complaints of parents and/or students. It has been suggested that the only option available to parents who disagree with decisions of a Board is to take potentially lengthy and costly court action. This is not the case and ignores the existence and availability of sectoral procedures.

It also ignores the current statutory function of the Ombudsman for Children to examine and investigate complaints made by or on behalf of children in relation to the administrative actions, or

inactions, of public bodies that have had, or may have had, an adverse effect on the child or children concerned.

Huge deficiencies currently exist in the capacity of support agencies on which schools rely for specialised support. The Education (Amendment) Bill 2015, if enacted, would create additional bureaucracy which would, in turn, consume the already limited resources. For example, schools and families rely on support from occupational therapists, speech and language therapists, Child and Adolescent Mental Health Services, TUSLA etc. Each of these agencies is hampered by inadequate resourcing. Various reports over recent years indicate the extent of the resourcing deficits in key services. By 2015, less than half of the recommended 127 specialist Child and Adolescent Mental Health Services (CAMHS) teams had been established, 472 children in care did not have a social worker, 673 children in care did not have a care plan whilst there were 8,161 child protection cases which had not been allocated a social worker, including 2,829 deemed 'high priority' (Children's Rights Alliance, 2015). Furthermore, in a comparative study of 33 countries, Ireland had the seventh highest ratio of students to school psychologists - 5,298:1 as opposed to 927:1 in Denmark for example (Jimerson et al., 2009). The average ratio in the study was 3,709:1. For Ireland to reach a reasonable ratio of 2,500:1, taking into account demographic growth, would require the employment of 267 more psychologists by 2021 (IMPACT, 2015). This is all within the context that, during 2014, Gordon Jeyes, the then TUSLA Chief Executive, publicly stated that the agency required additional funding of €45 million 'just to stand still' (Irish Times December 30<sup>th</sup> 2014). Adding an Ombudsman for Education to the mix does not make sense; neither does making schools responsible for circumstances that they cannot control or change.

This Bill is well-intended but misguided and would suffocate the functioning of schools and create culpability, not accountability. TUI has strongly advocated for a different approach - that which was set out in the Education Act 1998.

### **General Scheme of an Education (Parent and Student Charter) Bill 2016**

The TUI has concerns about the logistical viability of some of the proposals in the General Scheme. Those concerns - outlined below - are set against a back-drop of severe cuts over recent years to capitation, middle management, financial, curricular, administrative and pastoral supports to schools. The cuts have left schools threadbare in terms of administrative and pastoral structures.



The General Scheme seems not to acknowledge the extent to which schools rely on volunteerism both by staff in relation to daily operation and by boards of management in relation to governance. The TUI would also need to be assured that the General Scheme will not result in duplication of or a clash with existing roles of agencies such as the Teaching Council, the DES Inspectorate, the National Council for Special Education or TUSLA.

#### Head One

The TUI seeks clarification as to what is meant by enabling “the Minister to direct school boards to comply”. It should be noted that school boards are reliant on volunteers and are also subject, in the Education and Training Board sector, to oversight by Education and Training Boards. Indeed in the ETB sector, boards of management are constituted as sub-committees of the relevant ETB.

Head One also makes reference to “a requirement to promote the interests of the students of the school”. The TUI refutes any implied suggestion that its members do anything other than supporting and protecting students at every opportunity. This Head is suggestive of a “blame culture” and fails to recognise the democratic structures already in place.

#### Head Three

The proposed amendments to Section 28 of the Education Act 1998 risk undermining existing protections for parents and students and may have the unintended effect of escalating complaints and bypassing local processes, thereby creating a more oppositional and litigious culture which serves the interests of none of the parties. Schools are built on the basis of a community of relationships.

Part two of Head Three states that “the Parent and Student Charter will set out the service the school will provide”. The TUI finds the term ‘service’ limiting. It seems to rely excessively on the concept of the student or parent as a customer. Education in Ireland is a public good and part of the social contract. Schools, parents and communities have a key role in nurturing young people and supporting their holistic and academic development. Schools and students should not be regarded as production units.

Part two of Head Three also states that parents and students should be encouraged to engage and participate in “school policies and plans” and that they should be provided with “information, including accountability for provision and information on school performance”.

The TUI wishes to state clearly that any suggestion that schools do not currently work closely with parents and students is fundamentally misguided and uninformed.

The term “accountability for provision” is deeply problematic not least because it implies that schools are adequately resourced to meet the array of demands made of them, when this is manifestly not the case. It is also fraught with difficulty because of the evident and on-going imbalance in terms of how legislation impacts on schools – those that ignore or avoid the demands of public policy (in respect, for instance, of inclusion of students with SENs) avoid impact whereas those that most respect and adhere to public policy are disproportionately impacted.

There are multiple layers of accountability for schools. School performance has context and use of the term ‘accountability’ must take account of that context.

The TUI questions whether evidence exists that a listening culture does not exist at present in schools. However, it must be taken into account that, the parents with whom a school most needs to talk are often the parents who least engage with the school or indeed with their children. This is recognised in the Education (Welfare) Act 2001 and in the work of the Education Welfare Services, especially in the area of school attendance. The responsibility to support decision-making in a school is not a ‘one way street’ and the state must not indulge the pretence that all parents are equally or sufficiently interested or engaged in the education of their children.

Moreover, in relation to the ambition of “developing a listening culture in the school”, the personnel doing the listening are operating under severe resource and time constraints. This limitation can result in those shouting loudest being heard and those most in need of being heard not being audible. There must be a conscious effort to ensure that any legislation does not exacerbate existing deficits.

Part two of Head Three goes on to state the need for “courtesy, confidentiality and equality of esteem”, “parental consent where appropriate” and the provision of “a safe environment”. The TUI, on behalf of members, contends that schools are typically courteous to and considerate of students and parents.

Schools also seek to ensure a safe environment but the challenge this involves varies greatly, depending on circumstances in the broader community. Schools work hard to ensure that their

buildings and procedures are as safe as possible. However, there are times when the area in which a school functions is itself not safe. In some instances students and staff have been assaulted. The Union has also encountered – with increasing frequency – cases of staff and/or students being subjected to aggressive and intimidatory behaviour. It is worth remembering that a small number of students is engaged in criminal behaviour outside of school and that sometimes parents enter schools with aggressive intent. There is a limit to the extent to which a school can shape, influence and exercise control over its immediate environment. There are broader societal issues that require a governmental, multi-agency response and long-term investment. Such issues must not, by default, be passed to schools as a responsibility.

Part two refers to “operating quality assurance”. The TUI understands that the DES Inspectorate has a statutory responsibility in this regard. The Union would be wholly opposed to the imposition on schools of a layer of bureaucratic quality assurance mechanisms that would divert time and resources away from the core functions of teaching and learning. We require an assurance that this is not the Department’s intention.

Part two seeks “procedures that include accounting for the outcome of a complaint, the reasons for the outcome, and the basis on which the outcome was determined by the school”. The TUI has always argued that, insofar as possible, complaints should be dealt with informally, except where the complaint is of a level of seriousness that warrants a more formal response. Indeed, restorative practice suggests that more informal methods are more productive, both in the short and long-term. The proposal set out here seems to envisage a formalised and document-based response to every complaint. The TUI believes that such an approach will in fact make it more difficult to resolve issues successfully and will also involve both parties having to engage in significant ‘paper-chasing,’ to a point where proper school functioning will be impaired.

#### Heads Four and Five

Head Four makes reference to the preparation, publication and operation of a Parent and Student Charter by a board of management. The TUI would like to draw the attention of the Committee to the fact that boards operate voluntarily and that the levels of local expertise available to a Board are variable. It is likely that boards will require significant training in order to implement these plans.

The explanatory notes to Head Four and Five make reference to a timeline of 14 days. Given the voluntary nature of boards of management and the extensive administrative workload that already

requires the attention of school management, the TUI believes that a timeline of 28 school days would be more practical and realistic.

#### Head Six

Head Six refers to “suggestions, guidance and recommendations made by the Ombudsman for Children”. It is not clear what such suggestions, guidance and recommendations would require by way of response, how the processes that give rise to them are to be accommodated or how such processed will knit into existing procedures. The TUI believes that Head Eight would benefit from explicit reference being made to the responsibility of government to fund the system adequately as a public good and as part of the social contract. There is huge potential here for ambiguity and clashes between the roles of different agencies.

#### Head Seven

TUI strongly believes that Head Seven could be improved by expressly utilising the existing Section 28 of the Education Act 1998. The TUI cannot see any benefit in removing a clause that was intended to support schools and parents. TUI has long called for procedures to be agreed under Section 28. Head Seven also seems to take no account of the existing role of ETBs. It is a concern of the TUI that the proposed changes to Section 28 will lead to a more litigious system of dealing with complaints and that ‘forum shopping’ will ensue.

#### Conclusion

The TUI wants the school experience to be enhanced and for student and parent views to be taken into appropriate consideration. TUI also wants students to have a holistic education but notes the inhibiting effects of resourcing cuts in this regard.

As set out above, the TUI has a number of specific concerns about the proposed pieces of legislation and would observe that there appears to be scant recognition of the high level of trust the Irish public has consistently shown in the education system, despite the funding challenges the system encounters.

The Union looks forward to further engagement through the available processes as the proposed legislation takes final shape.

## References

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