



L&RS Note

School complaints: current procedures and proposed changes

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Abstract

This *L&RS Note* sets out current school complaints procedures in Ireland. It presents information on the role of individual schools, the Department of Education and Skills and the Office of the Ombudsman for Children. In doing so, the *Note* provides context to the anticipated *Education (Parent and Student Charter) Bill*, which is on the Government's legislative programme.



25 January 2019

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This L&RS Note may be cited as:

Oireachtas Library & Research Service, 2019, *L&RS Note: School complaints: current procedures and proposed changes*.

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Summary

- This *L&RS Note* gives an overview of school complaints procedures, in the context of the anticipated publication of an *Education (Parent and Student Charter) Bill*.
- There is no centralised collection of data on school complaints, so there is little known about the overall number and nature of complaints to/about schools.
- It is considered that most complaints about schools are dealt with at school level. In this regard, schools enjoy a great deal of autonomy. The typical procedure is hierarchical and would generally apply a system of escalation – i.e. a complaint not resolved satisfactorily by a class teacher could be escalated to the school principal and so on.
- The Department of Education and Skills (hereafter “the Department”) does not have legal powers to instruct a school to follow any particular course of action, or investigate complaints.
- The exception is where complaints concern enrolments, expulsions and suspensions. In these cases complainants may appeal a Board of Management decision to the Secretary General of the Department and a committee will be appointed to investigate.
- Other than this, the Department’s role in relation to complaints is limited to clarifying for parents how their grievances and complaints about schools can be progressed via other avenues. The Department does not record any data on the number or nature of complaints that are presented to it.
- There are unused powers in legislation – under [s.28 of the Education Act 1998](#) the Minister for Education and Skills, having consulted with stakeholders, could prescribe procedures for resolving grievances in schools. However, since this section of the Act was commenced in December 1999, no Minister has elected to prescribe procedures under that section.
- Other avenues for making complaints about schools include:
 - **Office of the Ombudsman for Children (OCO)** – The OCO has a role in examining and investigating complaints about schools. It can do so when a school’s complaints procedure has been exhausted and a child has, or may have been, negatively affected by the action of a school. While the OCO does not have legally binding powers to direct schools to implement recommendations arising from its investigations, it does engage with schools and complainants to work towards resolution of complaints. In 2017, **one in three of all complaints (585 of 1,755)** to the Office of the Ombudsman to Children related to schools.
 - **Office of the Ombudsman** – As the OCO deals only with complaints relating to children, complaints from school pupils aged 18 years and over can be made to / are referred to the Ombudsman.
 - **Teaching Council** – The Teaching Council has a role in investigating complaints relating to registered teachers. In 2016/2017, the Council received **26 Fitness to Practice complaints** about teachers.

- Issues identified by the Ombudsman for Children's Office (OCO) with the current system of handling school complaints include a lack of clarity about where / how to make complaints as well as inconsistencies in procedures between schools. The OCO has also highlighted that, in some cases, schools can be unresponsive.
- In the pre-legislative scrutiny process, one stakeholder highlighted that there are effective complaints measures in place in (their) schools. Another contended that levels of complaint are low and the issue should not be inflated out of proportion with this.
- The Government proposes to introduce an *Education (Parent and Student Charter) Bill*, the aims of which are to set out principles which will guide how schools engage with parents and students (including dealing with complaints), and to require each school to have a Parent and Student Charter under an amended Section 28 of the *Education Act 1998*.
- According to the Department, the rationale for the Parent and Student Charter is to ensure consistency throughout all schools in terms of open communication, so that matters can be resolved at an earlier stage.
- Although ultimately seeking to reduce the number of grievances, the legislation provides for clearer complaint systems and the provision of data by schools on numbers of complaints as well as outcomes and information about how decisions were reached.
- The proposed legislation would also give the Minister power to direct a school to comply with any recommendations made by the OCO.
- The Oireachtas Joint Committee on Education and Skills undertook pre-legislative scrutiny of the General Scheme of the Bill, publishing its [report](#) in November 2017.¹ The Committee recommended, amongst other things, that if Charters are introduced that they be subject to ongoing review to ensure they meet their objectives.

¹ The [General Scheme of the Education \(Parent and Student Charter\) Bill 2016](#) was examined together with the [Education \(Amendment\) Bill 2015](#) [PMB].

Introduction

There are 920,000 children enrolled in almost 4,000 recognised schools in Ireland.² There is no centralised data collection in relation to all school complaints. Therefore it is not known how many complaints are made to schools themselves or about schools to the Department of Education and Skills (which has a limited role regarding school complaints). Some complaints about schools are made to the Ombudsman for Children's Office (OCO), and these numbered 585 in 2017.³ The most common complaint categories in that year were⁴:

- Handling allegations of inappropriate professional conduct;
- Expulsion, suspension and enrolment policy, support and decisions;
- Handling of peer bullying concerns; and
- Complaint handling decisions and policy.

These categories demonstrate that though the level of complaints reaching the OCO is low relative to the number of children in school, some of those complaints touch on fundamental concerns such as access to school. 'Complaint handling' itself is a relatively common area of complaint and is perhaps an indicator that local level systems are at times unsatisfactory.⁵

This *L&RS Note* gives an overview of school complaint procedures. It looks at processes within schools (where most complaints are dealt with) and it describes the existing powers of the Minister for Education and Skills. The *Note* also describes the role of other bodies in dealing with complaints arising such as the OCO – which has a role in investigating school complaints and the *Note* looks at data on the complaints the OCO receives. It also looks at the role of the Ombudsman and the Teaching Council.

Following this, the *Note* continues by looking at proposed legislation - an *Education (Parent and Student Charter) Bill*, which is listed on the Government's [current \(Spring 2019\) legislative programme](#). Part of the proposed Parent and Student Charter, as set out in the General Scheme of the Bill, involves creating more transparent procedures for dealing with information provision and grievances within schools, so that there are ultimately fewer complaints.

The *Note* is structured as follows:

- The role of various bodies in handling complaints
- Proposals for the promised *Education (Parent and Student Charter) Bill*
- Pre-legislative scrutiny of the General Scheme of the Bill
- Conclusion

² Department of Education and Skills (2018) [Key Statistics 2017-2018](#). (records total number of primary and second level schools at 3960).

³ Ombudsman for Children (2018) [Annual report 2017](#).

⁴ Information provided by the Ombudsman for Children's Office to the Oireachtas Library & Research Service, January 2019.

⁵ Other data showed that 'complaint handling, decisions and policy' was in the top four of most common complaint categories in two of the last three years for which data was available.

The role of various bodies in handling complaints

This section looks in some detail at the roles of the following bodies in dealing with school complaints:

- Schools / boards of management
- Department of Education and Skills
- Office of the Ombudsman for Children
- Office of the Ombudsman
- Teaching Council

Schools / boards of management

Decision-making within Irish schools is largely undertaken at local level, as acknowledged by the Department of Education and Skills (2015) in their *Advancing School Autonomy in the Irish School System Research Paper*.⁶

“Overall, schools in Ireland have a considerable degree of autonomy regarding their governance, ownership, management and organisation. The *Education Act 1998* provides for a school management system and a patronage system that emphasises local control of schooling.”

This autonomy is reflected in how schools handle complaints and grievances.⁷ Most complaints about schools are handled internally, though other organisations (such as the OCO mentioned above) have roles to play. Local arrangements are influenced by procedures agreed nationally between school management and teachers’ unions.⁸ As noted above, there is no data collected from schools about the level or nature of complaints they receive.

Under the *Education Act 1998*, all schools are managed by a Board of Management, on behalf of the school’s patron(s) or trustees or an Education and Training Board (known as the management authority).⁹ Boards of Management operate on a voluntary basis and are supported with guidance documentation, advice and training provided by the relevant management bodies and the Department.¹⁰

Local level predominates

Most complaints about schools are handled internally, though other organisations (such as the OCO) have roles to play.

⁶ Department of Education and Skills. (2015). *Advancing School Autonomy in the Irish School System Research Paper*. Accessed on 30 November 2016 at <https://www.education.ie/en/Schools-Colleges/Information/Advancing-School-Autonomy-in-Ireland/School-Autonomy-Research-Paper.pdf>

⁷ Of course there is oversight of schools – they are subject to inspection and evaluation, and must comply with a wide range of Departmental circulars.

⁸ See related agreement documents different types of schools on the Department of Education and Skills [webpage on school complaints](#).

⁹ Department of Education and Skills, see <http://www.education.ie/en/Parents/Information/Complaints-Bullying-Child-Protection-Discrimination/Parental-Complaints.html>

¹⁰ Oireachtas Joint Committees on Education and Skills, 22 October 2014. See [here](#).

In the first instance, a complaint about a child's school / its staff should be made to the school directly. Figure 1 (below) sets out the process in relation to this - in general, complaints can be made informally to the teacher in the first instance, complaints about teachers or other staff may be brought to the attention of the school principal. Complaints about the school principal should be brought to the board of management and then to the management authority/patron. The pattern of escalation (i.e. if a satisfactory resolution is not reached and the complainant wishes to pursue the complaint further) follows the same steps. The decision of the management authority ends this process.

Figure 1: Making and escalating complaints within schools*



*This is generalised information, individual school procedures may vary.

Source: Prepared by the L&RS based on information provided on the Department of Education and Skills website.¹¹

Department of Education and Skills

The Department of Education and Skills does not have legal powers to instruct a school to follow any particular course of action, or investigate complaints.¹² The exception is where a complaint involves refused enrolment, expulsion or suspension, in accordance with [s.29 of the Education Act 1998](#).¹³ In such cases complainants may appeal a Board of Management decision to the Secretary General of the Department and a committee will be appointed to investigate.

Expulsions are rare, especially so in primary schools – with just 19 students expelled from primary schools in the school year 2015/16 (this amounts to 0.003% of primary students). In the same year, there were 195 post primary students expelled from school (0.057% of students).¹⁴

The number of **suspensions** is higher - in 2015/16 there were 13,383 post-primary students suspended (3.9%), while there were 1,438 primary students suspended (0.3%).¹⁵

¹¹ <https://www.education.ie/en/Parents/Information/Complaints-Bullying-Child-Protection-Discrimination/Parental-Complaints.html>.

¹² See [PQ Written Answer on 'School Grievance Procedures'](#). 16 May 2017, 22844/17.

¹³ See: Department of Education and Skills webpage on enrolment appeals etc. <https://www.education.ie/en/Parents/Services/Appeal-against-Permanent-Exclusion-Suspension-or-Refusal-to-Enrol/>

¹⁴ Millar, D (Undated) [School Attendance Data from Primary and Post-Primary Schools 2015/16 \[under Section 21\(6\) of the Education \(Welfare\) Act, 2000\], Analysis and Report to the Child and Family Agency](#). Tusla. This is the most recent data found to be available at time of writing.

¹⁵ Millar, D (Undated) as before.

However, there are unused powers in legislation - section 28 of the *Education Act 1998*, (see Appendix One), provides that the Minister for Education and Skills, having consulted with stakeholders, could prescribe procedures for resolving grievances in schools (in general, rather than in specific schools). However, since this section of the Act was commenced in December 1999, no Minister has elected to prescribe procedures under that section.

Apart from complaints regarding enrolments, expulsions and suspensions (as noted above), the Department's role is at present, limited to clarifying for parents how their grievances and complaints about schools can be progressed. It provides a detailed *Guidance Note* on the procedures in place for parents or students who wish to make a complaint about a teacher or other school staff member.¹⁶

The only data identified for this *Note* on the level of complaints to the Department was provided by a Departmental official, who told the Joint Committee on Education and Social Protection (22 October 2014¹⁷) that the Department receives between 25 and 35 complaints about schools a week (a multiple of the level received by the Office of the Ombudsman for Children - about 11 per week¹⁸). Most of these relate to bullying but some relate to school management or the boards of management of schools.¹⁹

However, there is no systematic log of or data collection in relation to these complaints to the Department - in 2015, the then Minister for Education and Skills, Jan O'Sullivan stated that:

"Complaints from parents are often received by phone, and across all sections of my Department. These are attended to contemporaneously in detail by telephone and are not logged. It is therefore not possible to provide data in any accurate format as to how many complaints from parents of children attending primary school have been received in the Department."²⁰

It could be assumed, therefore, that although the Department appears to receive many more complaints about schools than the OCO, it is not in a position to analyse these to identify any systematic issues within a school or schools, to track trends etc.

Regarding existing legislation, though Section 28 of the *Education Act 1998* makes some provisions in relation to grievances, according to the Department, these are "concerned with managing the process of responding to a complaint as distinct from contributing in any way to managing issues in a school differently and before they give rise to grievances", - hence the move to legislate (covered in more detail below).

¹⁶ The *Guidance Note* is available here: <https://www.education.ie/en/Parents/Information/Complaints-Bullying-Child-Protection-Discrimination/Complaints-Procedures.pdf>. It includes procedures for dealing with child protection concerns (which are dealt with by Tusla, the Child and Family Agency).

¹⁷ Oireachtas Joint Committees on Education and Skills, 22 October 2014. See [here](#).

¹⁸ The OCO's *Annual Report 2017* reports 585 school complaints that year. Calculated by week is $585/52=11.25$.

¹⁹ Oireachtas Joint Committees on Education and Skills, 22 October 2014, as before see [here](#).

²⁰ See reply to [PQ on 24 November 2015. Ref 41644/15](#).

Ombudsman for Children's Office (OCO)

The OCO deals with complaints relating to children. It can deal with complaints if the student in question was under 18 when the matters being complained about occurred, and where the complaint relates to something that happened within the past two years.²¹

Under Section 9 of the *Ombudsman for Children Act 2002*, the Office of the Ombudsman for Children may investigate complaints relating to the administrative actions of a school²², with the caveat that the parent must first follow the school's complaints procedures.

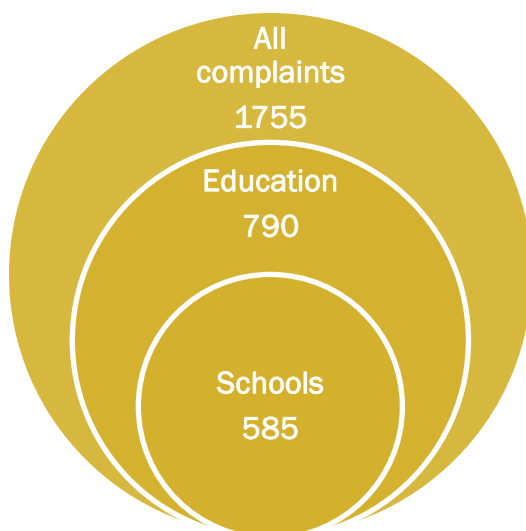
The key criterion for any intervention by the Ombudsman is that the school's action has or may have adversely affected a child.²³

The OCO does not have legally binding powers to direct schools to implement recommendations arising from its investigations. Nonetheless it does, where appropriate, engage with schools (Boards of Management) and complainants (parents) in order to resolve complaints.

Level of school complaints dealt with by the OCO

In 2017, education was the single most common area of complaint to the Ombudsman for Children's Office (OCO). Figure 2 below shows that the OCO received 1755 complaints in 2017. More than four out of ten (45%) of these complaints related to education. Of these, almost three out of four (74% or 585) were about schools.²⁴

Figure 2: Number of School-related complaints in context of all complaints to Ombudsman for Children, 2017²⁵



Source: Prepared by the L&RS using data from Office of the Ombudsman for Children, Annual Report, 2017.

²¹ The OCO in correspondence to the Oireachtas Library & Research Service, December 2018.

²² [Section 9 of the Ombudsman for Children Act 2002](#) states that the Ombudsman for Children may investigate any action taken by a school in connection with the performance of its functions under [section 9 of the Education Act of 1998](#).

²³ See [Section 9 of the Ombudsman for Children Act 2002](#) and [PQ Written Answer on 'School complaints', 10 March 2015](#).

²⁴ Office of the Ombudsman for Children (2018) *Annual Report 2017*.

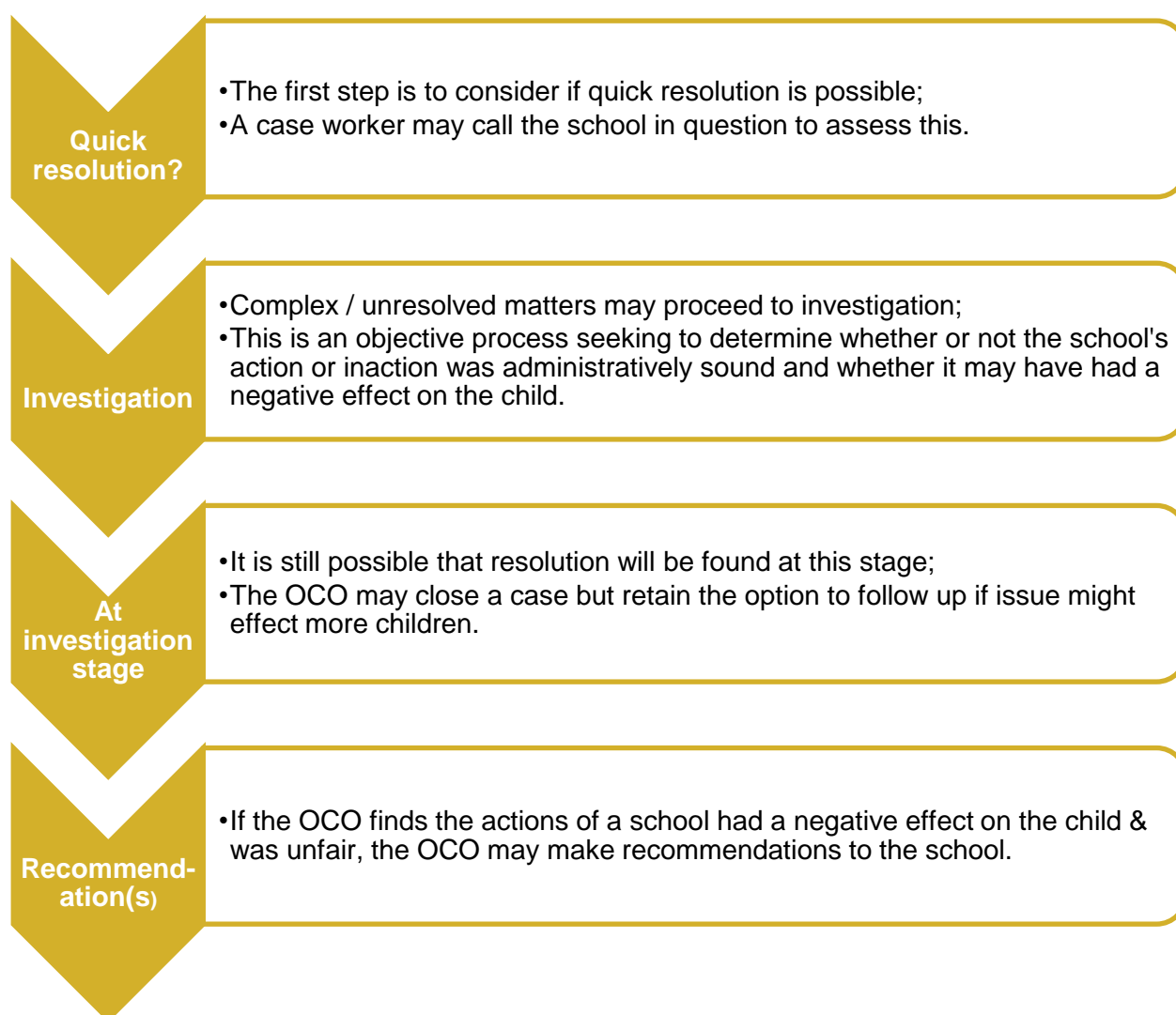
²⁵ Office of the Ombudsman for Children (2018) as before.

OCO handling of education complaints

The level of education complaints in 2017 was broadly in line with that received by the OCO in previous years. Consequently, the OCO describes education as the “key concern” for most parents. The most common category of complaints about schools in 2015, 2016 and 2017 was ‘Handling of allegations of inappropriate professional conduct’.

When it receives a complaint, the OCO judges whether the complaint falls within its remit (those that don’t are discussed below). For complaints considered within its remit the OCO follows a process, broadly set out in Figure 3 below.

Figure 3: Ombudsman for Children handling of complaints



Source: Prepared by L&RS (applied to schools) based on information provided in the [Office of the Ombudsman for Children, Annual Report 2015](#).

The OCO has published a number of case studies relating to its investigations, including those concerning the education sector. One example involving a complaint against a school is presented at Appendix Two to this *Note*. Further case studies can be found [here](#).

The OCO's 2016 annual report noted that while most of its education complaints received relate to schools, some of these are not investigated. The annual report states that there are a number of reasons for this, in some cases it is because the complaint was not brought to the school's Board of Management (i.e. the local school complaints procedures had not been exhausted). The OCO also states that it receives a number of complaints regarding alleged professional misconduct by teachers. This is outside the remit of the OCO and under the remit of the Teaching Council of Ireland. A further reason for complaints not being investigated is when the school in question is outside of Ireland.

Office of the Ombudsman

The Ombudsman's role is to examine complaints from members of the public who believe that they have been unfairly treated by certain public service providers. A number of students are still in secondary school when they turn 18 and when an 18 year old makes a complaint about a school to the OCO, they will be referred by the OCO to the Office of the Ombudsman (unless the complaint meets the criteria set out above).²⁶

The Ombudsman, Mr Peter Tyndall, has stated that his office receives a relatively small number of complaints from this group, explaining that:

“...any such complaints I do receive frequently concern the State Examinations Commission and, in particular, the application of the Reasonable Accommodation for Certificate Examinations or RACE Scheme in respect of the Leaving Certificate.”²⁷

He noted that his office received 57 such complaints in 2016 on this issue.

However, the Ombudsman **cannot** examine complaints about primary or second level schools, but it may be able to examine the actions of a board of management.²⁸

Acknowledging that “...many, if not most, pupils in their final year at school are now aged 18 or over”, the Ombudsman is seeking equivalent powers to those proposed for the Office of the Ombudsman for Children under the *Education (Parent and Student Charter) Bill* (discussed further below).²⁹

²⁶ However, if the incident/decision took place prior to the complainant turning 18, it does fall under the remit of the OCO.

²⁷ Ombudsman, Mr Peter Tyndall, Submission to the Joint Committee on Education and Skills, Tuesday 7 March 2017 (included at page 24 of the Joint Oireachtas Committee on Education & Skills (2017) [Report on scrutiny of the Education \(Amendment\) Bill 2015 \[PMB\] and the General Scheme of the Education \(Parent and Student Charter\) Bill 2016](#)).

²⁸ <https://www.ombudsman.ie/publications/information-leaflets/the-ombudsman-and-educati/index.xml>

²⁹ Ombudsman, Mr Peter Tyndall, Submission to the Joint Committee on Education and Skills, Tuesday 7 March 2017 (as before).

Teaching Council

Since July 2016, the Teaching Council has had a statutory role to investigate complaints relating to registered teachers. In 2016/2017 there were 94,928 teachers registered with the Council. In that year it received 26 Fitness to Practice complaints.³⁰

The Council stresses that pre-existing procedures for dealing with grievances and complaints about teachers are still in place. It is only complaints “which are of a serious nature” which will progress to an inquiry by the Teaching Council.³¹

³⁰ Teaching Council (2018) [Annual Report 2016/2017](#).

³¹ Teaching Council (2016) [Commencement of Part 5 of the Teaching Council Act](#).

Proposals for the promised *Education (Parent and Student Charter) Bill*

This section looks at issues with the current complaint system and the proposed legislation (an Education (Parent and Student Charter) Bill). The following section of this *Note* continues by presenting the issues arising and Committee recommendations at pre-legislative scrutiny of the related General Scheme. While providing a wider view at times (in line with the provisions indicated in the General Scheme), this section attempts to focus on issues relating to school complaints in particular. It is structured as follows:

- Views on the current school complaints system;
- Proposals for a parent and student charter;
- Developing guidelines for a parent and student charter;
- Proposed changes to student councils;
- New role for Ombudsman for Children's Office (OCO).

Issues with the current complaints process

In terms of problems with the current system, the OCO reports that parents frequently do not know how to complain about an issue with a school, stating that:

“A common issue we deal with is parents contacting us who simply do not know where to turn when they have a complaint about a school as there is no information available to them about the complaints process.”³²

As noted above, the OCO has highlighted that while many of education complaints it receives relate to schools, some of these do not progress to examination or investigation. Generally this is because such complaints have not first been referred to a Board of Management, or they relate to a teacher and should, therefore be referred to the Teaching Council. This suggests that there is confusion among parents about where to bring grievances.

A further issue, identified by the OCO is that some schools are not as responsive as they could be:

“...parents [contacting the OCO] may have made complaints [to the school] but receive no response or they experience long delays from schools in responding to their complaint.”³³

The OCO argues that confusion among parents about complaints and the unresponsiveness sometimes experienced do not “...indicate good administrative practices.”³⁴

Nonetheless, the OCO highlights that some schools actively engage with it, and in the majority of these cases, the OCO is able to influence a local resolution. Indeed, the OCO reports that, in many

³² Ombudsman for Children (2016) *Annual Report 2015*. Accessible at this link: https://www.oco.ie/app/uploads/2016/09/OCO_annual_report_2015_web.pdf.

³³ Ombudsman for Children (2016).

³⁴ Ombudsman for Children (2016).

cases³⁵ boards of management and school principals have accepted and implemented suggested areas for improvement as identified by the OCO.³⁶

Where the OCO does conduct an investigation it **can only recommend** a course of action and the school is not compelled to follow the recommendation.

Further, the OCO's Annual Report for 2017 remarks on inconsistencies, stating:

"It has been of concern to the OCO for several years that the complaint handling structures in the formal education system are incomplete and inconsistent. In this regard, our experience examining education-related complaints indicates that difficulties can arise with the handling of complaints in individual schools."³⁷

In addition, the Department has stated that the current system of complaints is adversarial.³⁸

Although, as noted above, s.28 of the *Education Act 1998* provides that the Minister for Education and Skills could prescribe procedures for resolving grievances in schools, to date no Minister has elected to prescribe procedures under that section.

Also noted above, a drawback in seeking to determine the level and nature of complaints about schools is that at present, schools are not required to provide any information on the number of complaints made to them, nor does the Department gather data on calls of complaint it receives.³⁹

Strengths of the current system

However, the submissions to the Joint Oireachtas Committee scrutinising the *General Scheme of the Education (Parent and Student Charter) Bill* demonstrate another viewpoint that sees the current system in a more positive light.

The Association of Community and Comprehensive Schools (ACCS) stated in its submission to the Joint Oireachtas Committee:

"We would remark that in our schools there are systems in place that work very effectively to ensure that students and parents have their grievances / complaints addressed promptly and fairly."⁴⁰

While the Catholic Primary Schools Management Authority (CPSMA) stated:

"It has been acknowledged...that the vast majority of issues that arise for parents are ultimately resolved to the satisfaction of all parties and that only a tiny percentage of issues are not resolved to the satisfaction of the parent(s). We must be careful in all discussions

³⁵ It does not provide figures.

³⁶ Ombudsman for Children (2016) as before.

³⁷ Office of the Ombudsman for Children (2018) *Annual Report 2017*. as before. p.72.

³⁸ Department of Education and Skills (2016a) as before.

³⁹ See reply to [PQ on 24 November 2015. Ref 41644/15](#) (though note reference on page 6 of this *Note* to level of complaints received – this information was provided to an Oireachtas Committee in 2014).

⁴⁰ Association of Community and Comprehensive Schools (2017) *Submission on the General Scheme of an Education (Parent and Student Charter) Bill 2016*.

and documentation to ensure that we do not create the impression of a huge problem that simply does not exist.”⁴¹

And in its submission, Irish National Teachers’ Organisation (INTO) remarked that:

“...there does not appear to be any “ground up” demand for this [the introduction of Parent and Student Charters], and many schools will see the proposals as seeking to address no known problem.”^{42,43}

Proposals for a Parent and Student Charter

As noted above, the Government’s Spring 2019 legislative programme includes an *Education (Parent and Student Charter) Bill*.⁴⁴ While the Bill has yet to be published, this *Note* presents analysis based on the [General Scheme](#) of the Bill (which was published on 5th December 2016).⁴⁵

The rest of this section outlines the Government’s intent for this legislation, based on the provisions in the General Scheme and related Departmental documents.

The stated **objectives** of the proposed *Education (Parent and Student Charter) Bill* are to⁴⁶:

- **set out the principles** which will guide how schools engage with parents and students; and
- **to require each school to have a Parent and Student Charter** under an amended Section 28 of the *Education Act 1998*.

While the Regulatory Impact Analysis of the General Scheme adds:

“The Charter will be based on principles set out in law. The Minister will publish guidelines on a Charter following consultation with the education partners.”⁴⁷

In October 2014, a Departmental official told the Joint Committee on Education and Social Protection that the rationale for the Parent and Student Charter was to ensure consistency throughout all schools in terms of open communication, so that matters can be resolved at an earlier stage.⁴⁸

The General Scheme indicates that the Bill will seek to replace the current provisions of [s.28 of the Education Act 1998](#) with new provisions aimed at creating a more cohesive approach to what

⁴¹ Catholic Primary Schools Management Authority (2017) *Submission to the Joint Oireachtas Committee in respect of the Education (Amendment) Bill 2015 and the General Scheme of the Education (Parent and Student Charter) Bill*.

⁴² Irish National Teachers’ Organisation (2017) *Submission to the Joint Oireachtas Committee in respect of the Education (Amendment) Bill 2015 and the General Scheme of the Education (Parent and Student Charter) Bill*.p.3.

⁴³ Nonetheless, the INTO has stated that it is “not opposed to formalising the terms of relations as currently exist at local level.” (INTO Submission to the Joint Committee, as before).

⁴⁴ Office of the Government Chief Whip (2019) [Legislative programme, Spring Session 2019](#).

⁴⁵ Available here: <https://www.education.ie/en/Parents/Information/Parent-and-Student-Charter/General-Scheme-of-an-Education-Parent-and-Student-Charter-Bill-2016.pdf>

⁴⁶ Department of Education and Skills (2016a) as before.

⁴⁷ Department of Education and Skills (2016a) as before.

⁴⁸ Oireachtas Joint Committees on Education and Skills, 22 October 2014. See [here](#).

students and parents can expect from schools, how schools will engage with students and their parents, and the standards that schools will apply in serving students and their parents.⁴⁹

Specifically, amongst other things, the General Scheme seeks to extend the scope of the OCO in conducting school investigations and to give the Minister powers to direct a school to comply with published guidelines and also to direct a board of management to comply with any suggestions, guidance or recommendations made by the OCO.

Developing guidelines for a Parent and Student Charter

The main provisions of this proposed legislation seek to give the Minister powers to direct school Boards of Management to draw up a Parent and Student Charter and to comply with published guidelines. Under the Bill, the Minister would publish **statutory guidelines** which schools would use as a template when drawing up their individual charters. While charters would be common in all schools, the Department has indicated that there would be some flexibility for aspects relating to schools' ethos.⁵⁰

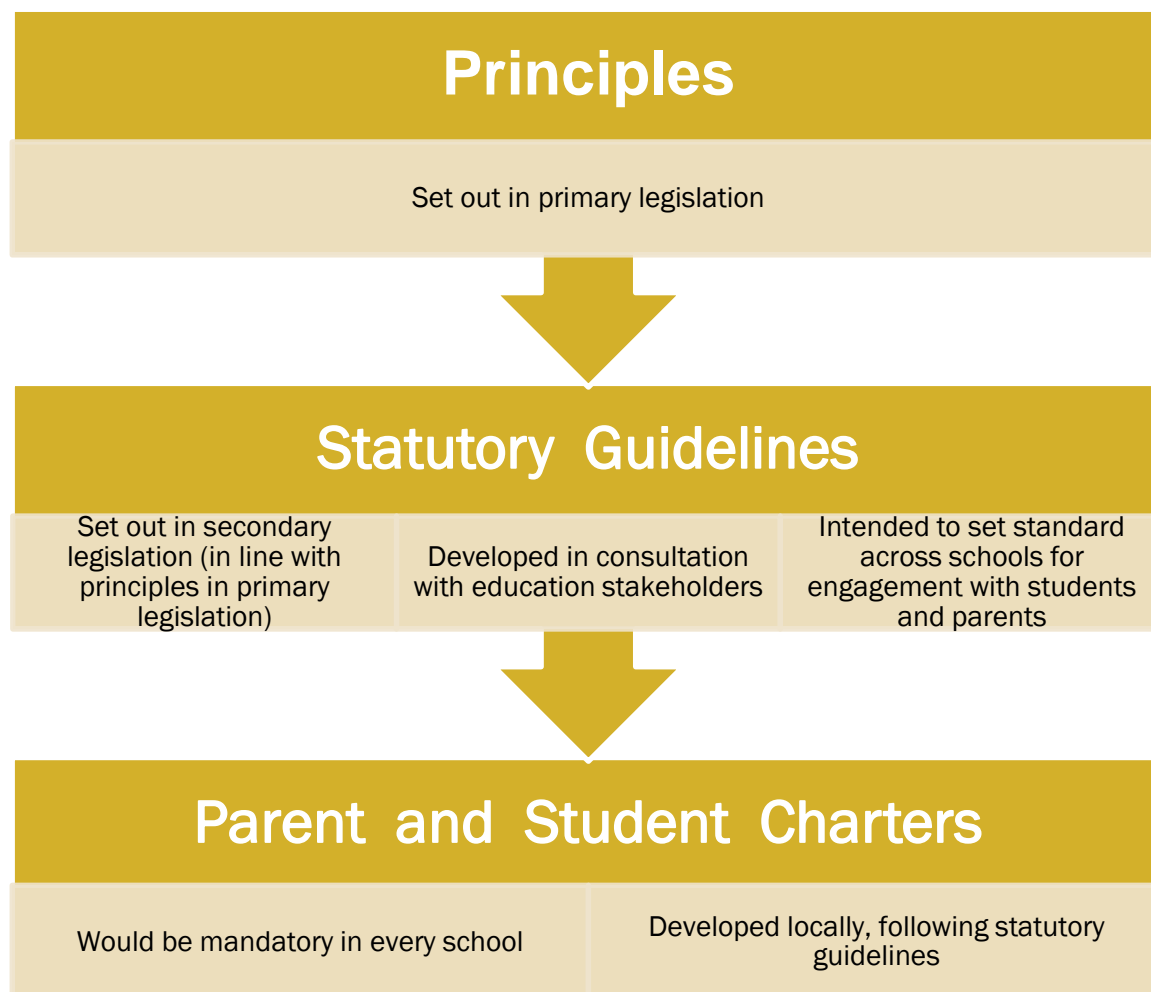
The relationship between the various elements of the proposals around Parent and Student Charters are set out in Figure 4 on the following page.

Each parent and student charter would set out, for parents and students, the information which would be made routinely available to them, as well as how to request information. The Department's explanatory document, issued to the Committee along with the General Scheme, states that the aim of this is to ensure that schools become more open, without the "burden that could arise if existing freedom of information legislation is applied to all schools."

⁴⁹ Department of Education and Skills (2016b) [*Students, Parents and Schools – Developing a Parent and Student Charter for Schools*](#). (explanatory document to the General Scheme of the Education (Parent and Student Charter) Bill).

⁵⁰ Department of Education and Skills (2016b) as before.

Figure 4: Proposed relationship and status of principles, guidelines and Parent and Student Charters



Source: Prepared by L&RS based on the Department's Regulatory Impact Analysis of the General Scheme and supporting documentation.⁵¹

The statutory guidelines would set out standards for specific aspects of school life. In relation to complaints, the charter would:

- provide a fair and accessible mechanism for resolving complaints, including through mediation.
- publish the number of complaints made, the reasons for the outcome in each case, and how the outcome was reached by the school.

The General Scheme proposes that the Parent and Student Charter will be based on **principles** set out in legislation (see Box 3 on the following page). These include three specific principles (in bold) in relation to addressing parent and student concerns, and the handling of complaints.

⁵¹ Department of Education (2016a) and (2016b), as before.

Box 3: Parent and Student Charters would be based on the following principles

- Placing the student at the centre of school life and securing optimum outcomes for each student in relation to the student's learning and holistic development, through the student's experiences in the school;
- Respecting and valuing the role of a parent and recognising that a parent's awareness of, and participation in the learning and progress of the student can contribute to enhanced outcomes for the student;
- Consulting students and parents and encouraging their engagement and full participation in relation to school policies and plans;
- Providing students and parents with information, including accountability for provision and information on school performance;
- Consulting students and parents regularly in relation to school costs and working to avoid costs acting as a barrier to participation;
- Inviting feedback, comment and observations from students and parents and developing a listening culture in the school;
- Ensuring courtesy, confidentiality and equality of esteem;
- Seeking parental consent where appropriate;
- Providing a safe environment;
- Operating quality assurance;
- Acknowledging gaps, deficiencies or room for improvement;
- **Positively seeking to address parent and student concerns and electively providing redress as appropriate in order to obviate as far as possible the need for a parent or student to rely on grievance and complaint processes;**
- **Providing processes for grievance and complaint resolution, including mediation and remediation where appropriate, and**
- **Having 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.**

Source: Extract from Head 3 of the *General Scheme of the Education (Parent and Student Charter) Bill 2016*. [emphasis added].

Changes to Student Councils

If enacted, the legislation would make a number of changes to the [Education Act 1998](#) so that:

- (i) a school must promote the involvement of parents and students; and
- (ii) the student council must promote the interests of students of the school (presently the law provides that they must promote the interests of the school).

New role for the Ombudsman for Children's Office (OCO)

The General Scheme proposes to replace s.28 of the *Education Act 1998* with a new s.28. This new section would:

- provide for the OCO to advise the Minister of any guidance, suggestions or recommendations made to a school board;
- allow the Minister to give direction to a school board in relation to any recommendations made by the OCO.

According to the General Scheme, where a Minister gives a direction to a school board, the board may make representations to the Minister within 14 days from when the direction was served. The Minister would consider these representations before giving a final direction.

The General Scheme also proposes to amend s.9 (2) of the [Ombudsman for Children Act 2002](#) so that the OCO no longer has to defer an investigation until procedures under s.28 have been resorted to or exhausted. The scope of the OCO's ability to investigate would also be broadened to include schools' new functions relating to the Parent and Student Charter.

Pre-legislative scrutiny of the General Scheme

Having looked, in the previous section, at the proposals contained in the General Scheme of the Education (Parent and Student Charter) Bill, this section presents a summary of the views and recommendations arising in the pre-legislative scrutiny of the General Scheme.

The Joint Oireachtas Committee on Education and Skills undertook Pre-Legislative Scrutiny - looking at this General Scheme in tandem with the *Education (Amendment) Bill 2015* [PMB], which also seeks to improve how school complaints are dealt with. The Committee published its [report](#) on this scrutiny in November 2017.⁵²

Stakeholder views

The following issues were among those identified by stakeholders during pre-legislative scrutiny (PLS):

- **Impact of a Parent and Student Charter on resources within schools:** A number of stakeholders expressed concern that the introduction of a Parent and Student Charter might place further work on what they described as an already overstretched school administration.
- **Capacity of the Ombudsman for Children's Office to investigate complaints:** Some stakeholders questioned whether or not the OCO would have the capacity to deal with the extra functions provided under the new legislation.
- **The responsibility of parents, as well as students, should be included in the Charter:** Some stakeholders argued that while the Parent and Student Charter sets out what is expected of schools in their engagement with parents and students, it does not set out the expectations of how students and parents should engage with schools. It was argued that this would be an important addition.
- **Recognition of the voluntary work done by Boards of Management:** Stakeholders highlighted the voluntary work done by school boards of management and the value that this offered to schools and the State. They were keen to see that the legislation would not hinder or jeopardise this work.
- **Financing mediation:** Some stakeholders asked how mediation (referred to under Head 3 of the General Scheme) would be financed and suggested that if it is through schools, then extra funding would be required.
- **Requests for further clarification:** Some stakeholders sought further clarification on the expanded role of the Ombudsman for Children's Office, stating that the General Scheme does not provide sufficient detail. Also, a number of stakeholders requested that the following be clarified:
 - What is the definition of a "quality school experience"?

⁵² The [General Scheme of the Education \(Parent and Student Charter\) Bill 2016](#) was examined together with the [Education \(Amendment\) Bill 2015](#) [PMB].

- Will “information on school performance” include the provisions that schools make for inclusion of pupils with special educational needs or will the focus be on academic performance?
- What is meant by ‘operating quality assurance’?
- What is meant by ‘securing optimum outcomes’?
- **Establishment of a working group/forum of education partners to look at a mechanism for handling grievances:** Some stakeholders recommended that a forum of educational partners should be established to examine the Parent and Student Charter, the current grievance procedures and other related issues.

Committee’s recommendations

The Joint Oireachtas Committee on Education and Skills supported introduction of parent and student charters. It recommended that there be scrutiny of the implementation of the legislation to ensure it is meeting its stated objectives. Box 4 below presents the Committee’s commentary and recommendations.

Box 4: Extract from the Joint Committee on Education and Skills – Report on scrutiny of the *Education (Amendment) Bill 2015 [PMB]* and the *General Scheme of the Education (Parent and Student Charter) Bill 2016*.⁵³

The Joint Committee recognises that the aim of both the *General Scheme of the Education (Parent and Student Charter) Bill 2016* and the *Education (Amendment) Bill 2015 (PMB)* is to address how school complaints and grievances will be dealt with.

Where one aims to achieve this by introducing a Parent and Student Charter, the other provides for the establishment of an Office of the Ombudsman for Education.

It is apparent that both pieces of legislation are mutually exclusive and...both have advantages and disadvantages. The Committee acknowledges that the *Education (Amendment) Bill 2015 (PMB)* contains very useful provisions and wishes to compliment Deputy Daly on his commitment to this matter and the work he has undertaken in the drafting of the Bill.

However, the Committee concludes that the provisions contained in the *General Scheme of an Education (Parent and Student Charter) Bill 2016* would be the preferred option.

The Committee recommends that the *Education (Parent and Student Charter) Bill 2016* should include provision requiring that the operation of the proposed Parent a Student Charter is subject to ongoing review to ensure that it has the desired effect.

It is also recommended that where possible, the Minister should consider whether any provision contained in the *Education (Amendment) Bill 2015 (PMB)* may be taken on board to enhance the aim of the *Education (Parent and Student Charter) Bill 2016*.

⁵³ Joint Oireachtas Committee on Education and Skills (2017) [Report on scrutiny of the Education \(Amendment\) Bill 2015 \[PMB\] and the General Scheme of the Education \(Parent and Student Charter\) Bill 2016](#).

Conclusion

As schools are largely autonomous in deciding how complaints are handled, some stakeholders such as the OCO have argued that complaint handling in schools is inconsistent. It has also been highlighted that the OCO has limited powers to investigate complaints and that there are no powers to direct a school to comply with OCO recommendations following an investigation.

Other stakeholders have defended the effectiveness of existing grievance procedures and cautioned at over-inflating the issue, stating that the level of complaints are low.

By implementing a Parent and Student Charter, the Government hopes that fewer grievances will arise, as there will be greater transparency in relation to school procedures. The principles proposed in the General Scheme suggest that schools would be required to have clear systems in place to deal with complaints, including mediation. Also, schools would be required to have procedures in place to account for the outcome of complaints, reasons for outcomes and how outcomes were reached.

At a higher level, the proposed legislation would (if the General Scheme is an accurate indicator of the Bill) strengthen the investigative powers of the OCO, so that it can initiate investigations at an earlier stage, and also give the Minister power to give direction to a school board in relation to any recommendations made by the OCO.

Appendices

Appendix 1: Section 28 of the *Education Act 1998*

28. (1) The Minister, following consultation with patrons of recognised schools, national associations of parents, recognised school management organisations and recognised trade unions and staff associations representing teachers, may, from time to time prescribe procedures in accordance with which —

(a) the parent of a student or, in the case of a student who has reached the age of 18 years, the student, may appeal to the board against a decision of a teacher or other member of staff of a school,

(b) grievances of students, or their parents, relating to the students' school (other than those which may be dealt with under *paragraph (a)* or *section 29*), shall be heard,

and

(c) appropriate remedial action shall, where necessary, be taken as a consequence of an appeal or in response to a grievance.

(2) In prescribing procedures for the purposes of this section the Minister shall have regard to the desirability of determining appeals and resolving grievances in the school concerned.

Source: Irishstatutebook.ie.

Appendix 2: Case Study – Complaint about a school to the Office of the Ombudsman for Children

Seán: Example of a complaint against a school

Seán was on a school trip when another child took a photo of him and shared it via a social media App accompanied with a derogatory comment. Although the school managed the incident at the time, Seán's parents complained to us [the Office of the Ombudsman for Children] that the school had not given them an adequate explanation about why they were not informed immediately about the incident.

OCO examination of the complaint

We examined the complaint by seeking a response from the principal of the school about the delay, from the board of management on the policies available at the time to guide practice in the use of mobile phones and whether there was any learning for the board of management to inform any future such events. We found that the school had provided a rationale and apology to Seán's parents about the delay. While we found no grounds of maladministration by the school we asked whether there was any learning from the incident to prevent a re-occurrence.

Outcome

- The board of management revised their mobile phone policy and agreed to review it annually.
- The school, with the cooperation of the Parents' Council, arranged an open lecture for parents on internet safety.
- All parents now sign agreement forms acknowledging that mobile phones and digital cameras are not permitted on school tours.
- The board of management introduced new procedures for teachers in charge of school trips on managing such incidents.

Source: Office of the Ombudsman for Children webpage. <http://www.oco.ie/complaints/case-studies/>



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