

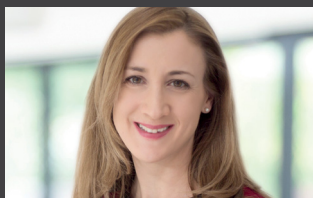
SAFEGUARDING IN SCHOOLS: WHAT STEPS SHOULD SCHOOLS BE TAKING TO ADDRESS THE RECENT ALLEGATIONS RAISED BY EVERYONE'S INVITED?

Everyone's Invited, the website on which victims of sexual harassment, abuse and misogynistic behaviour perpetrated by their peers from schools and universities can anonymously submit their experiences, has now received and shared over 14,000 testimonies. The movement has since sparked a significant debate about a culture of sexual abuse within schools.

While several high-profile independent schools have been named in the testimonies and exposed in the press, the testimonies come from both state and independent school pupils, ex-pupils and university students. This is clearly a complex and pervasive problem facing educational establishments across society.

Following Everyone's Invited going viral, Robert Halfon, chairman of the House of Commons Education Select Committee, called for an independent inquiry. The government has asked the regulator, Ofsted, to undertake an immediate review of safeguarding policies in state and independent schools. Ofsted will work to ensure there are appropriate systems in place for reporting concerns and will look at whether the guidance for schools on dealing with these types of allegation are sufficient and whether the current inspection regimes are strong enough to address concerns and promote the welfare of children. The review will conclude by end of May 2021. Ofsted has also announced that it will visit "a sample of schools and colleges where cases have been highlighted" and will assess how well schools respond to concerns and support their pupils. The NSPCC has also launched a helpline, the Report Abuse in Education helpline, to offer support and advice to the victims of sexual abuse in schools, including how to contact the police and report crimes, if they wish.

This article will consider the responsibilities of schools to tackle a culture of sexual harassment and abuse and wider misogyny by peers, as raised in the recent Everyone's Invited movement, as well as the additional responsibilities that independent schools have as charities to protect students, and outline how schools can protect their reputation whilst responding to serious allegations.



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WHAT CAN AND SHOULD SCHOOLS BE DOING TO ADDRESS THE ISSUES RAISED?

INVESTIGATING COMPLAINTS

The difficulty for schools in investigating these allegations is that all have been raised on an anonymous basis. Some of the individuals who have submitted testimonies on Everyone's Invited allege that they did report incidents to their school but that their complaints were not adequately addressed due to fears of reputation damage, or were passed off as 'banter' or as 'part of growing up'. Other individuals did not raise concerns with their school at the time due to a fear of not being believed and/or being stigmatised by their peers for raising a complaint.

However, given the movement's impact and the widespread call for things to change as a priority, victims may be feeling more empowered to speak up. Schools should now be actively encouraging victims to come forward with specific allegations. Schools should communicate a zero-tolerance approach to peer-on-peer abuse by committing to formally investigate all reports and refer cases to external authorities, where appropriate. Victims should be reassured that they will be taken seriously and supported by their school. By talking about these issues more openly, students will hopefully feel more able to disclose their experiences.

Clearly, however, schools cannot promise confidentiality in dealing with such reports. If a child is at risk of harm, is in immediate danger,

or has been harmed, a referral should be made to children's social care. Allegations of rape, assault by penetration and sexual assault constitute criminal offences which must be referred to the police. Parents or carers should also normally be informed unless there are compelling reasons not to.

Many of the testimonies from victims refer to behaviour perpetrated outside of school premises, such as in social settings like at house parties. Furthermore, multiple testimonies raise allegations against pupils from different schools to those of the victims, such as neighbouring single-sex schools. The Department for Education's advice on sexual violence and sexual harassment between children in schools and colleges makes it clear that in these circumstances the safeguarding principles and individual schools' duties to safeguard and promote the welfare of their pupils remain the same and that appropriate information sharing and effective multi-agency working will be especially important in dealing with such allegations.

PEER-ON-PEER ABUSE POLICY

Whilst Keeping Children Safe in Education (KCSIE) requires schools to refer to peer-on-peer abuse in their safeguarding policy, schools should consider whether now would be an appropriate time to implement a separate peer-on-peer abuse policy

given the prevalence of this issue. It would be advisable for schools to consult the student body, staff, the governing body or proprietor, as well as parents and carers when drawing up a peer-on-peer abuse policy. Policies should be transparent, clear and easy to understand by all. Clearly all staff need to be trained on the school's policy and procedures with regard to peer-on-peer abuse (this is required by KCSIE) but students and parents should also receive training on the policy in order to understand what constitutes peer-on-peer abuse and to be able to detect when a child might be the victim of peer-on-peer abuse or, conversely, might be displaying inappropriate behaviours. Pupils should be made aware of the process to follow to raise a concern and how any reports will be handled by the school.

BEHAVIOUR POLICY

Schools should also review their behaviour policy and ensure that it clearly states the values and standards of conduct expected from its students. This should be re-communicated to students and they should receive training on acceptable and unacceptable conduct and behaviour. Safeguarding and child protection should be a recurrent theme running through schools' policies and procedures and schools should ensure that the behaviour policy, safeguarding policy and peer-on-peer abuse policy all appropriately cross-refer to each other.

KEYSTONE LAW

LEGAL DUTIES

In addition to having regard to the statutory guidance in KCSIE and Working Together to Safeguard Children, schools should also be mindful of their wider legal responsibilities, including their obligations under the Human Rights Act 1998 ("HRA") and the Equality Act 2010. Being subjected to sexual violence or sexual harassment may breach Article 3 HRA (the right to freedom from inhuman and degrading treatment), Article 8 HRA (the right to respect for private and family life, which includes a duty to protect individuals' physical and psychological integrity) and Protocol 1, Article 2 HRA (the right to an effective education). Schools should also have regard to their obligations under the Equality Act to ensure that pupils are not discriminated against because of their sex or sexual orientation.

SEX EDUCATION AND PSHE

Schools should also review their provision of Relationship and Sex Education (RSE) and Personal Social Health and Economic education (PSHE) to ensure that it sufficiently covers and deals with all of the issues raised by this debate. RSE and PSHE programmes should encourage healthy and respectful relationships and challenge attitudes that can grow into disrespect and sexual violence in open discussion forums. They should cover issues of consent, coercion, pornography and stereotyping, as well as misogynistic behaviour.

ACTIVE BYSTANDER TRAINING

Schools could also provide active bystander training for pupils to give them the confidence to call out inappropriate behaviour that they witness from their peers. The Active Bystander Training Company (<https://www.activebystander.co.uk/>) runs training programmes for 11- to 18-year-olds at independent and

state schools. The training is highly user-friendly and covers techniques on how to keep a cool head in a challenging situation and assertive language to use to challenge or respond to poor behaviours when they occur. Each student who attends the training receives an Active Bystander toolkit which sits on their mobile phone as a quick and easy reference if they need an on-the-spot reminder of the techniques they learned in the session.

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WHAT ADDITIONAL RESPONSIBILITIES DO INDEPENDENT SCHOOLS HAVE AS CHARITIES?

SELF-REGULATION

In the event of allegations of wrongdoing or a serious incident, it is possible that the Charity Commission could open a class inquiry under the Charities Act 2011, so it is important that schools take this issue extremely seriously. There are some steps that schools can take to, in effect, self-regulate from a charity law and regulation perspective and thereby prevent the Charity Commission opening a potentially very damaging class inquiry. These self-regulation measures include reporting issues to the Charity Commission with a view to receiving their advice.

Self-reporting is a development in charity regulation by the Charity Commission in recent years which transfers regulation and reporting onto charity trustees. This has, not surprisingly, coincided with cutbacks at the Charity Commission, at a time when the role of charities has been expanding.

SECTION 60 OF THE CHARITIES ACT

The key to imposing these extra burdens on charity trustees is the Charity Commission's use of section 60 of the Charities Act 2011 to ask questions. This statutory provision makes it a criminal offence for a person to knowingly or recklessly provide the Charity Commission with information which is false or misleading. The offence is wide enough to cover withholding information. The offence could potentially lead to a maximum fine

or two years' imprisonment. It is a sobering thought.

When the charity trustees complete their annual return, they will see that section 60 is cited and they are warned that a failure to properly answer the questions set could lead to a prosecution under that section. At the same time, the annual return has been expanded to ask more questions, such as whether there have been any serious incidents and questions about overseas funding, staff salaries, safeguarding of children and vulnerable adults, grant funding from government, whether trustees have resigned and then been appointed as staff, and whether any charity trustees are directors of a trading subsidiary. All these questions have potential regulatory consequences depending on how they are answered.

Although serious incident reporting is not a legal requirement, it becomes one when charity trustees complete the annual return and have to answer the question about whether there have been any serious incidents during the year which have not been reported under the obligation imposed by section 60.

WHAT IS CLASSIFIED AS A SERIOUS INCIDENT?

According to the Commission, a serious incident is an adverse event, whether actual or alleged, which results in, or risks, one or more of the following:

- significant harm to a charity's beneficiaries, staff, volunteers or

others who come into contact with the charity through its work;

- loss of a charity's money or assets;
- damage to a charity's property; or
- harm to a charity's work or reputation.

Prompt, full and frank disclosure of an alleged serious incident and how the charity's trustees are dealing with it must be reported. Harm to a charity's work or reputation is extremely wide and captures most situations, including the issues discussed in this article. It is better to err on the side of reporting to be on the safe side and avoid the risk of failing to report. Also, the Charity Commission has told practitioners that when considering potential liability, it will consider whether trustees have filed a serious incident report.

Reports that indicate individuals are at risk or there is risk of serious harm to a charity's work will be prioritised by the Commission, as well as situations where trustees require advice and guidance on how to deal with the incident.

THE DUTY FOR AUDITORS AND INDEPENDENT EXAMINERS TO REPORT INCIDENTS TO THE CHARITY COMMISSION

Auditors and independent examiners acting for charities are also under a duty to report such incidents to the Charity Commission under section 156 of the Charities Act 2011, where they become aware of a matter of material significance to

the Commission or have reasonable cause to believe an incident is likely to be relevant to the Commission. In a review of audit reporting under the section 156 duty in February 2018, it was found that only 28 reports were submitted out of 114 audit opinions containing information that should have been reported. In April 2020, the Charity Commission released updated guidance to independent examiners and auditors on this reporting requirement and announced that it will be carrying out an ongoing review of all independent examination reports or audit opinions signed after May 2020 which contain a qualification, modified opinion or other reporting paragraph to confirm that a report of a matter of material significance has been promptly filed at the Charity Commission.

There is obviously an overlap between serious incidents and matters of material significance and both reporting obligations should be considered together. The Charity Commission's increased focus on this area and published statistics suggests there has been under-reporting which will no longer be tolerated by the Charity Commission.

THE NEED FOR A CHARITY GOVERNANCE CODE FOR SCHOOLS

In addition to self-reporting, Everyone's Invited highlights the need for there to be a Charity Governance Code for sub-sectors of the charity sector, such as schools. At the moment, the guidance within the Code is too generic and the only allowance that is made for different charities is for larger and smaller charities. Given that the Code's purpose is to improve governance and prevent problems from happening, this is an important area where the Charity Commission could help to support this part of the charity sector. Although the

Code is not mandatory, there is an expectation that reference should be made to it in the charity's annual report. If a code could be agreed by the education sector, then this could lead to members of various umbrella groups such as the Independent Bursars Association providing a kitemark for adopting such a code and encouraging a prevention culture amongst schools.

FOR FURTHER INFORMATION



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HOW CAN SCHOOLS PROTECT THEIR REPUTATION WHILST RESPONDING TO SERIOUS ALLEGATIONS?

RESPONDING TO MEDIA ENQUIRIES

Several high-profile independent schools were named in the testimonies submitted to the Everyone's Invited website, attracting significant media attention for those institutions.

However serious allegations concerning a school may be, it is vital for the school to be prepared to respond to media enquiries, whether local or national. A failure to respond or a response of "no comment" in the present circumstances is likely to be extremely harmful to a school's reputation. A non-response may suggest that the allegations are true, alternatively, that the school has a problem which it is unable to deal with.

Schools recently in the public spotlight have generally responded in a suitable manner by issuing a statement recognising the seriousness of the allegations being made, committing to investigating them and taking all necessary actions to deal with the allegations and achieve the necessary culture change. A pre-prepared statement of this kind is probably the best that can be given in the circumstances, but it does give the school the opportunity to be seen to be taking the matter with sufficient seriousness and being committed to taking the necessary steps. The media will likely publish the allegations that it intends to publish but a short, well-constructed response is also likely to be published in the same article or broadcast and may redress the balance to some extent.

All media enquiries should, as far as possible, be referred to a nominated spokesperson. That person should be prepared to issue the agreed-upon statement on behalf of the school and deal with non-controversial questions.

Approaches from the media can come either over the telephone or in writing. If a media approach is made by phone, it is recommended that the journalist is told that questions will not be responded to over the telephone but he or she should put their enquiries in writing so that they can be considered in good time and properly responded to. It is possible that this may then lead to non-follow-up. If not, a deadline to respond will inevitably be given but there is no absolute necessity for that deadline to be adhered to. All media, whether broadcast or published, act in accordance with a code of conduct which requires that where serious allegations are made, the party against whom the allegations are made must be given a fair opportunity to respond and that response should be published.

DEFAMATION AND INACCURATE STATEMENTS

Dependent on the circumstances, and perhaps unlikely at present, named individuals, governors, teachers and other such persons within the education system can threaten to sue and, if necessary, can sue for defamation in respect of any allegations which may be or are published or broadcast which are false and cause serious harm to that individual's reputation. In the case of

most independent schools, a claim in defamation may be brought in respect of false and seriously harmful allegations which cause or are likely to cause financial loss to the school. Even if allegations published do not meet the necessary "serious harm to reputation test" for defamation, any untrue or misleading allegation or statement published or broadcast can form part of the school's permanent record, in particular on the internet, and so should be corrected as far as possible through approaching the media concerned. The relevant code of conduct for broadcast and published media again requires that care is taken not to publish inaccurate or misleading information and a significant inaccuracy or misleading statement should be corrected promptly.

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