



CHRISTIAN INFLUENCE IN A SECULAR WORLD

**Christian Institute Briefing**

## **Clause 5 of the General Teaching Council's Draft Professional code**

*Including the full text of a legal opinion from John Bowers QC,  
author of Blackstone's Employment Law*

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## Contents

|  |    |
|--|----|
| Part 1.....  | 3  |
| 1. Why does Clause 5 cause concern? .....                | 3  |
| What the code means in practice .....                    | 3  |
| The wider impact .....                                   | 4  |
| 2. Is Clause 5 needed? .....                             | 5  |
| The existing law and official guidance on bullying ..... | 6  |
| The case for Clause 5 has not been proven .....          | 7  |
| Part 2.....  | 8  |
| 3. Summary of the legal opinion .....                    | 8  |
| Use of the code by other bodies .....                    | 8  |
| Fear, confusion and expense .....                        | 8  |
| 4. The legal opinion .....                               | 8  |
| 5. Homophobic bullying .....                             | 15 |
| Name-calling.....  | 15 |
| Gay rights groups argue both ways .....                  | 16 |
| Bullying in schools .....                                | 16 |
| The evidence on ‘homophobic bullying’ .....              | 17 |
| How many are gay?.....                                   | 21 |
| Other sexual insults .....                               | 21 |
| Summary .....  | 22 |
| 6. ‘Playing it safe’ and Section 28.....                 | 23 |

## Part 1

### 1. Why does Clause 5 cause concern?

Clause 5 of the Draft Professional Code published by the General Teaching Council for England in May 2001 states:

"Teachers recognise diversity and work to ensure the rights of individuals to develop. They fully respect differences of gender, marital status, religion, colour, race, ethnicity, sexual orientation and disability. Teacher professionalism involves challenging prejudice and stereotypes to ensure equality of opportunity."

Under the new professional code, teachers who believe that homosexuality is wrong are now required to fully respect homosexual behaviour.

Rather than respect people as people – as all teachers should – the code talks of fully respecting “differences” of sexual orientation and challenging prejudice.

Many who support policies like this believe that “prejudice” includes the belief that homosexuality is wrong. In other words the code requires teachers who believe that homosexual practice is wrong to act against their own conscience.

According to the largest national study on sexual attitudes in Britain, 70% of men believe that sex between men is wrong.<sup>1</sup> This group certainly includes Christians and those of other faiths. It also includes people who do not have any religious faith, but who nonetheless have a moral disapproval of homosexual practice.

#### What the code means in practice

- A Christian teacher is required to respect a behaviour which his faith teaches him is morally wrong. He is also required to challenge others who share the same belief. (The same would be true of a teacher who was a Muslim or an Orthodox Jew).
- A person who opposes religious beliefs or traditional moral values could use the code to attack teachers who hold such views.

At school level, a teacher who is a gay rights activist could use the code to argue that the sex education curriculum should be changed. He could use the threat that the school and its teachers would be being ‘unprofessional’ if they failed to give homosexuality equal coverage and status within sex education. Such scenarios cannot be ruled out given what has happened in other countries with anti-discrimination clauses such as Clause 5, particularly the USA.

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<sup>1</sup> Wellings K et al *Sexual Attitudes and Lifestyles*, Blackwell, 1994, page 241

## **The wider impact**

Clause 5 is much more powerful than many may have realised. The professional code has legal status. The GTC are given legal power to enforce it. They claim they will only do so in limited circumstances.

But as the following legal opinion shows, bodies *other than* the GTC (including schools and LEAs) will *also* apply the code. Employment Tribunals will also take the code into account when hearing cases of unfair dismissal.

The GTC does not control schools. Neither do they control LEAs or Employment Tribunals. Yet the GTC's professional code will be used by all three types of body.

As the legal opinion shows, this could well result in legal problems for Christian teachers. If this happens, costly legal actions in the higher courts may be their only remedy to protect their conscience.

## **2. Is Clause 5 needed?**

The General Teaching Council itself says that “the issues at the heart of paragraph 5 relate to the need for tolerance and understanding as a response to the diversity and difference to be found both in society and today’s classrooms.”<sup>2</sup>

Stephen Timms, the Minister of State at the Department for Education and Skills, argues that Clause 5 is necessary to create “an environment of tolerance and respect... Children come from diverse backgrounds and it is important that teachers protect them from anti-social behaviour such as name calling or bullying”.<sup>3</sup>

The most commonly used example is so-called ‘homophobic’ bullying. Some have argued that this needs to be specially targeted. Some schools in Manchester have instituted whole school programmes where pupils are given red cards for using the word ‘gay’ against another pupil. Repeat offenders may be temporarily excluded from the school.<sup>4</sup>

The legal duties on schools and teachers to prevent bullying are already extensive (see following page). This is before there is any influence from the new professional code for teachers.

Section 5 of this briefing deals with the evidence from those who say that Clause 5 is needed because of homophobic bullying.

Whilst there are many properly conducted studies on bullying involving representative samples and follow-up over a period of time there are none which show that pupils are bullied because they are homosexual. Indeed this very absence of this type of bullying is relied upon by gay rights groups when they argue for the right of adult homosexuals to adopt children. Gay rights group argue that the research shows that children adopted by homosexual couples would not face stigmatisation at school.

What studies that there are consist of anecdotal accounts, small samples (usually self selected), or low response rates. Almost invariably ‘homophobic bullying’ is defined so widely as to include *any* incident where one pupil calls another a name such as ‘gay’ or ‘lezzie’. Using this definition ‘homophobic bullying’ can take place without the victim actually being a homosexual or even being believed to be a homosexual by the name caller.

One of the main studies claiming that ‘homophobic bullying’ is rife admits there were no homosexual pupils in the study. Another fails to demonstrate that any of the pupils in the study were in fact homosexual. (See Section 5 below).

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<sup>2</sup> Letter from the GTC, 7 August 2001

<sup>3</sup> Letter to MPs from Stephen Timms MP, Minister of State for School Standards, 20 August 2001

<sup>4</sup> Times Educational Supplement, 14 September 2001

## The existing law and official guidance on bullying

1. Teachers who do not deal with cases of bullying face disciplinary action on the grounds of unprofessional conduct. In serious cases they could even risk a legal action being brought for negligence if they failed to take reasonable steps to prevent bullying.
2. Section 61(4) of the **School Standards and Framework Act 1998** places a statutory duty on headteachers to prevent bullying:

“61 (4) The head teacher shall determine measures (which may include the making of rules and provision for enforcing them) to be taken with a view to-

  - (a) promoting, among pupils, self-discipline and proper regard for authority;
  - (b) encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils”
3. **Section 28** of the 1988 Local Government Act prevents local authorities from promoting homosexuality in schools. It does not prevent the objective discussion of homosexuality in the classroom nor the counselling of pupils. Section 28 has now been further amended to make clear that it in no way prevents headteachers and governing bodies dealing with any form of bullying.
4. Government guidance in the form of **DFEE Circular 10/99 (Social Inclusion : Pupil Support)** included a reference to bullying on the grounds of sexual orientation.

Official government guidance does not have force of law, but a court would be entitled to take it into account if there was a case before it.

The reference to sexual orientation comes in Chapter 4:

### "Dealing with bullying

4.29 The emotional distress caused by bullying in whatever form - be it racial, or as a result of a child's appearance, behaviour or special educational needs, or related to **sexual orientation** - can prejudice school achievement, lead to lateness or truancy and, in extreme cases, end with suicide. A third of girls and a quarter of boys are at some time afraid of going to school because of bullying. Bullying is usually part of a pattern of behaviour rather than an isolated incident. Pupils should be encouraged to report any bullying to staff or to older pupils they can trust. Low report rates should not of themselves be taken as proof that bullying is not occurring." [*Emphasis added.*]

## **The case for Clause 5 has not been proven**

If the purpose of Clause 5 is to help prevent bullying, then Clause 5 would only deal with a narrow range of bullying, that is bullying on the grounds of gender, marital status, religion, colour, race, ethnicity, sexual orientation and disability.

This does not cover bullying on some very common grounds. Those with special educational needs are only protected if they are disabled. Other children in this category are not. For example those who are slow learners are not protected at all, yet it is well established that children in this group can be subject to humiliating name-calling from other pupils. Children are often picked on by other children because of physical characteristics such as being fat, short or having blemishes on their face.

In reality Clause 5 does not add to the existing legal duties already placed on schools to prevent bullying. In addition there is also departmental guidance which covers bullying on the grounds of sexual orientation. Taken together this is sufficient, but if the GTC believes Clause 5 is essential they must considerably extend the list of grounds covered.

Keeping Clause 5 as it is presents considerable difficulties for Christian teachers and those of other faiths who are perfectly prepared to respect people as people, but who will be forced to go against their conscience to respect behaviour their faith regards as immoral.

'Homophobic bullying' is not the number one form of bullying in schools. In fact there is no evidence that 'homophobic bullying' is a particular problem in schools. That is not to say it never occurs, merely that there is no evidence from research where the usual requirements for academic rigour have been applied.

Just because pupils use 'gay' in name-calling does not constitute evidence that 'homophobic bullying is rife'. If it did the common use of the word 'slag' would constitute evidence that the bullying of sexually promiscuous girls was also rife.

Of one thing there can be absolutely no doubt, there is a serious problem with bullying in our schools. Whilst bullying will never be eliminated there are undoubtedly serious problems of indiscipline in schools that can be tackled.

A lack of order and boundaries for pupil's behaviour is not only disruptive of children's education it also creates an environment in which bullying can flourish.

It is in the leadership and management of schools where the solutions must be found.

## **Part 2**

### **3. Summary of the legal opinion**

#### **Use of the code by other bodies**

- The General Teaching Council for England (GTCE) may believe that only they will enforce the new draft code. However, the legal opinion from John Bowers QC makes clear that schools, governing bodies and local education authorities will be able to apply the code. Employment tribunals will also be able to have regard to it when considering cases of unfair dismissal.
- Teacher training institutions may adopt the code when screening applicants. This would mean Christians and other teachers who were not willing to promote gay rights could be prevented from training as teachers at those institutions.
- The opinion says that these types of situations might constitute breaches of the European Convention on Human Rights.
- The GTCE may only apply the code in a limited way but there is nothing to stop others applying it widely. It will, after all, be the professional code for all state school teachers produced by a statutory agency under statutory powers.
- John Bowers QC concludes that the code could create confusion which “may lead to teachers or applicants for teaching posts being forced to take lengthy and costly legal proceedings to pursue their legal rights”.

#### **Fear, confusion and expense**

- There is considerable scope for confusion and for breaches of the religious liberties of teachers by those seeking to apply the code.
- The higher courts may interpret the code in a way which protects religious freedoms in line with other statutory provisions (such as the School Standards and Framework Act 1998 which forbids schools from dismissing teachers because of their religious beliefs). However, for ordinary teachers, the expense of taking a case all the way to the higher courts would be well beyond their means. Furthermore, the time, effort and distress involved in such a legal challenge would be too much for many to cope with.

Simon Calvert, Solicitor



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OPINION IN THE MATTER OF CLAUSE 5 OF THE  
GENERAL TEACHING COUNCIL'S PROPOSED  
PROFESSIONAL CODE FOR TEACHERS

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1. The General Teaching Council for England (hereinafter "GTC") has recently published a draft professional code for teachers prior to introducing the code on 1<sup>st</sup> October 2001. Many Christians (along with members of other religions) believe that homosexual practice is morally wrong because of their faith<sup>1</sup>, and are concerned about the consequences of clause 5 of the Draft Code. Where any disciplinary proceedings are taken against a teacher registered with the GTC a Committee of the GTC may, when the Code is properly enacted, take into account any failure by that teacher to comply with the Code. We here address in particular the following questions:
  - i. What is the meaning of Clause 5?
  - ii. What are the consequences of breaching Clause 5?
  - iii. What impact will Clause 5 have on claims for unfair dismissal before Employment Tribunals?

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<sup>1</sup> According to the largest survey of its type *Sexual Attitudes and Lifestyles*, published in 1994, 70% of men believe that homosexual intercourse is always or mostly wrong.

- iv. Will Local Education Authorities (“LEA”s) and Governing Bodies be able to take Clause 5 into account when deciding whether to engage or dismiss teachers?
- v. Could University Departments of Education take Clause 5 into account when selecting applicants for Post Graduate Certificate of Education courses?
- vi. Is Clause 5 in breach of Articles 9 and 10 of the ECHR?

### **General Application of the Code**

- 3. At present it is the Government’s intention that the GTC will be able to take the Code into account when it is enacted in considering disciplinary proceedings against a teacher who has been dismissed from his post. Paragraph 29 of the General Teaching Council for England (Disciplinary Functions) Regulation 2001 imposes a requirement on a school to inform the GTC if it dismisses any teacher on the grounds of incompetence. The GTC can then consider whether that teacher should be removed from its register and consequently no longer be allowed to teach in a state school. However, as will be seen below, we believe that the Code will have a much wider application.
- 4. Unfair Dismissal in Employment Tribunals. The grounds for potentially fair dismissals from employment set out in the Employment Rights Act 1996 include a reason related to the conduct of the employee. Since the Code provides a definition of professional conduct issued under statutory powers it is very likely that the Tribunal will take any breaches of the Code into account when assessing the fairness of the dismissal.

5. LEAs and Governing Bodies. It seems to us inevitable that LEAs and Governing Bodies will have to take this Code into account when deciding on whether to engage or dismiss teachers, and may ask questions at interview designed to test whether the applicant “fully respects differences of gender, marital status, religion, colour, race, ethnicity, sexual orientation and disability”.
6. University Departments of Education. University Departments of Education have a duty to instruct teachers how to be professional. In our view they would inevitably have to take account of this Code when ascertaining a student’s suitability for teaching and in setting the curriculum for the teacher-training course.

### **The Meaning of Clause 5**

7. The draft Professional Code issued for consultation in May 2001 sets out what the General Teaching Council considers to be “the high standards of the teaching profession”. Clause 5 of that Code states the following:

“Teachers recognise diversity and work to ensure the rights of individuals to develop. They fully respect differences of gender, marital status, religion, colour, race, ethnicity, sexual orientation and disability. Teacher professionalism involves challenging prejudice and stereotypes to ensure equality of opportunity.”

8. The clause is divided into three parts. On its own the first sentence appears anodyne. Everybody recognises that there is diversity in life. The second part of the sentence appears to require teachers to work to ensure the right of individuals to develop as they wish. However it is the second sentence that provides the reference point to the first sentence so that teachers are required to recognise

diversity (“differences”) in the context of gender, marital status, religion, colour, race, ethnicity, sexual orientation and disability.

9. The second sentence goes rather further than merely saying that a teacher fully respects an individual regardless, inter alia, of his or her marital status or sexual orientation because it requires a teacher to fully respect the differences of marital status or sexual orientation themselves. The OED defines the verb “to respect” in one respect as “to treat or regard with deference, esteem or honour”. It could be argued that the wording therefore requires teachers to draw no distinction between persons who have made choices of, inter alia, marital status or sexual orientation because equal regard must be had for all.
10. This is likely to cause confusion at the level of school governors and LEAs in the appointment and dismissal of teachers and could well lead to some groups using this code against teachers who express what may be seen as mainstream religious and moral opinions. We think, however, that the higher courts would read it in a different sense of “to have due regard for the feelings, wishes, rights or traditions of”. This means that it is a requirement for tolerance which is also at the heart of the Human Rights Act 1998.
11. However this interpretation still creates potential problems for a teacher who wishes to state that homosexuality and extra-marital sexual activity are always wrong. In those cases it would appear to us that teachers could be found to be in breach of the code.
12. The third sentence requires teachers to challenge prejudice and stereotypes to ensure equality of opportunity. When taken together with the previous sentence it could be argued that it might prevent a

teacher from suggesting that one choice in the area of marital status and sexual orientation may be better than another. Furthermore it could be taken to imply a positive requirement to actively refute any moral distinction between those choices.

13. As in the paragraph above we can see how this could lead to confusion amongst those responsible for appointing and dismissing teachers and in the Employment Tribunals. However in the higher courts we do not think that it would be so read, having regard to the other duties upon teachers such as (a) those contained in Section 403(1) of the Education Act 1996, (b) Section 59(2) of the School Standards and Framework Act 1998 and (c) the requirements of the Human Rights Act 1998.

### **The European Convention on Human Rights**

14. We do not think it likely that clause 5 on its own would constitute a breach of the European Convention on Human Rights although its application in particular factual situations as outlined above might result in a breach of rights of freedom of thought, conscience and religion (Article 9) and freedom of expression (Article 10) when read together with the anti-discrimination provision of Article 14.

### **Conclusion**

15. Clause 5 might be more clearly worded so that it could not be contended that “respect” in the sense of “esteeming” means that teachers must promote a particular and benign view of homosexuality which many people in faith communities would find unacceptable. Governors and LEAs may, on the present wording, be inclined to take a cautious approach towards ensuring that

teachers do not teach anything that might offend groups referred to in the Clause.

16. This could result in disciplinary measures being taken against teachers who are genuinely seeking to follow their own conscience and beliefs in a way that is contemplated, for example in the Guidance issued under Section 403(1A) of the Education Act 1996. Furthermore it may cut across Section 59(2) of the School Standards and Framework Act 1998 to the effect that “no person shall be disqualified by reason of his religious opinions ... from being a teacher at a school” as defined in subsection 1. It may lead to teachers or applicants for teaching posts being forced to take lengthy and costly legal proceedings to pursue their legal rights.
17. If we can assist further please do not hesitate to contact us.

1<sup>st</sup> August 2001

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## **5. Homophobic bullying**

It is clear that the Government - as well as gay rights groups - believe that the professional code will be useful in countering 'homophobic bullying'.

The Education Minister, Stephen Timms, states that,

“Paragraph 5 of the code relates to the way teachers support children in their care, by providing an environment of tolerance and respect that allows all children to flourish irrespective of their home circumstances. Children come from diverse backgrounds and it is important that teachers protect them from anti-social behaviour such as name calling or bullying”.<sup>5</sup>

All bullying is wrong. Children are taunted by other children because of their physical appearance, a disability, their height, their home background. Some are picked on for being intelligent.

There is never any justification for bullying. It must be dealt with firmly by schools no matter what type of bullying it is. There is a serious problem of bullying in many schools, primarily related to a lack of consistent discipline and order.

Christians believe in the inherent worth and dignity of every person. Christ taught that hatred is always wrong and must be restrained and replaced with love, even for those with whom we disagree or who are our enemies.<sup>6</sup>

Bullying is evil and any approach to dealing with it needs to confront and condemn the spiteful motivation behind it.

### **Name-calling**

Children have always found ways of isolating and ridiculing one another. Those who are strong, either physically or socially, have always picked on the weak. Name-calling has always been a main technique of bullying. Different epithets have waxed and waned in popularity. If one insult becomes outdated, another soon takes its place.

In the context of schools, it is of course very common indeed for children to mock slow learners. Yet Clause 5 contains nothing about slow learners.

Words which mock the victim's appearance have always been popular 'put-downs'. Children may be fat or thin, poor at sport, have unusual hobbies, support football teams or pop groups that are out of fashion. All of these can provide a basis for name calling. Sometimes certain Christian names or surnames become known as insults – often the names of odd or unlikeable characters in soaps or sit-coms. Children who actually *have* names that gain currency as insults often face a miserable time at school merely due to an accident of birth.

If Clause 5 is about bullying, then comparatively few forms of bullying are covered.

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<sup>5</sup> Letter to MPs from Stephen Timms MP, Minister of State for School Standards, 20 August 2001

<sup>6</sup> See for example Luke 6:27-36; Matthew 5:43-48

## Gay rights groups argue both ways

Stonewall, the largest gay rights group in the UK, claim “There is considerable evidence that homophobic bullying is widespread in schools.”<sup>7</sup>

But in a different context - arguing for the right of lesbians and gays to adopt children - Stonewall say that concern that children of lesbian and gay parents will be subject to increased incidence of bullying at school is misplaced because “a study by Green (‘Lesbian Mothers and their children’, Archives of Sexual Behaviour, 1986) indicated that no group differences were found for children’s perception of their popularity with peers.”<sup>8</sup>

Similarly in dealing with adoption the American Civil Liberties Union argue that the bullying of children with homosexual parents is a myth. They state in their factsheet:

**“Myth:** Children who are raised by lesbian or gay parents will be subjected to harassment and will be rejected by their peers.

**Fact:** Children make fun of other children for all kinds of reasons: for being too short or too tall, for being too thin or too fat, for being of a different race or religion or speaking a different language. Children show remarkable resiliency, especially if they are provided with a stable and loving home environment.”<sup>9</sup>

How can ‘homophobic bullying’ be ‘widespread in schools’ and yet it be a myth that children who have homosexual parents are bullied? How can there be rampant ‘homophobia’ and yet such children be just as popular as other children?

Gay rights groups cannot have it both ways, either there is intolerable ‘homophobia’ in schools or there is not.

Leaving aside the contradictions in the claims of gay rights groups, it is worth considering the issues relating to the general prevalence of bullying and then the specific claims made by researchers into ‘homophobic bullying’.

## Bullying in schools

*Bullies and Victims in Schools* by Valerie Besag is generally considered to be a classic study of bullying in schools. Besag quotes one 1986 study of 4,000 children, which found that,

“38 per cent had been bullied by other children badly enough to describe the experience as terrifying. Of the sample, 8 per cent of the boys and 2 per cent of the girls had found the experience to have had a chronic and severe effect on their everyday lives.”<sup>10</sup>

Besag reports that some children even commit suicide because they feel unable to cope with being bullied.<sup>11</sup> Bullying can often be a cause of truancy. The government guidance on bullying states:

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<sup>7</sup> Stonewall Equal at school Factsheet ([www.stonewall.org.uk](http://www.stonewall.org.uk))

<sup>8</sup> Stonewall Equal in parenting Factsheet ([www.stonewall.org.uk](http://www.stonewall.org.uk))

<sup>9</sup> <http://www.aclu.org/issues/gay/parent.html>

<sup>10</sup> Besag *V Bullies and Victims in Schools*, Open University Press, 1995 edition, page 11

<sup>11</sup> *Ibid*, page 58



“A third of girls and a quarter of boys are at some time afraid of going to school because of bullying.”<sup>12</sup>

A February 1999 opinion poll survey by NOP Research Group found that: “more than four out of ten (43 per cent) children aged between 7 and 16 years in Britain say that they have been bullied at some time.”<sup>13</sup>

The problem of bullying is certainly very serious, yet the mainstream research does not throw up concerns about ‘homophobic bullying’. Besag, the seminal textbook on bullying, also gives no special treatment to the subject.<sup>14</sup>

The evidence that *has* been published will now be considered.

### **The evidence on ‘homophobic bullying’**

#### *Anecdotal studies*

No one can doubt that there will be cases of where young people claiming to be homosexual have been bullied. One case of bullying is one case too many, but public policy cannot be determined by anecdote. It is for this reason that attempts have been made by researchers sympathetic to gay rights to quantify the problem of homophobic bullying.

Researchers from the London Institute of Education were commissioned by Stonewall and the Terrence Higgins Trust to carry out a study into ‘homophobic bullying’. The report which emerged from the research ‘*Playing it Safe*’ was published in November 1997. It argued that there is a serious problem of ‘homophobic bullying’, but admitted that:

“To date there has been no systematic survey of the experiences of young lesbian, gay men and bisexuals in relation to homophobic bullying (or hate crimes).”<sup>15</sup>

This is still the case.

*Playing it safe* received 307 completed questionnaires from teachers after distribution to 1,000 secondary schools. This was a 31% response rate. The researchers admit this is low and whilst no claims are made that this was a representative sample it is said that “some extrapolation of findings is possible” since the schools profile of the respondents was “similar” to that in England and Wales.<sup>16</sup>

The claim to be “similar” appears to be based upon a comparison between the survey responses and national proportions for schools on “five key criteria” (funding source, religious affiliation, sex intake, sixth form attached, main catchment area type). In fact the researchers do not appear to know the proportion of schools in England and Wales which are urban, suburban or rural. This would have been necessary to check the sample on the fifth criteria. In any case no attempt appears to have been made to

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<sup>12</sup> DFEE Circular 10/99 (Social Inclusion : Pupil Support), Section 4.29

<sup>13</sup> The research was undertaken face-to-face and in-home amongst a representative sample of approximately 1,000 children aged 7 – 16 years in Great Britain on 6 February 1999. *Children speak out on bullying - survey findings*: 12 August 1999, NOP

<sup>14</sup> Besag *V Op cit*. See Chapter 3 on “The Victims”

<sup>15</sup> Douglas N et al *Playing it safe*, Health and Education Research Unit, Institute of Education, University of London, November 1997, page 13

<sup>16</sup> *Ibid*, pages 18 & 21

classify schools by catchment area on an objective basis. If the teacher responding to the questionnaire says the school is 'urban' then it is 'urban' for the purposes of the Stonewall study. This information does not appear to have been checked by the researchers.

The claim that "some extrapolation of findings is possible" is not supported by evidence from any statistical tests. Some of the claims made by this report will be considered in greater detail below, but before even the questions are looked at there are clearly problems with the sample of this study.

Studies which asked pupils their views of homophobic bullying invariably have small unrepresentative samples of pupils. Entire studies are based on a series of anecdotes.

By contrast the mainstream studies on bullying have involved hundreds or thousands of children. One study involved 10,000 pupils another used a survey sample drawn from 85% of all Norwegian primary and junior high schools.<sup>17</sup>

A recent report claiming to lend credence to a crisis of homophobic bullying<sup>18</sup> simply involved interviews with just 59 schoolchildren in two primary schools.<sup>19</sup>

One of the most prominent researchers into this area is Dr Ian Rivers. His 1995 study<sup>20</sup> relied on just 44 questionnaire responses, solicited through an advert in the *Pink Paper*. The average age of respondents (who were recalling incidents from their school days) was 31. Most of the examples which respondents gave were typical of the bullying that, sadly, takes place in many inner city schools for all kinds of reasons.

Dr Rivers provides his own reasons as to why anecdotal evidence can be so unreliable. His recent study looked at questionnaire responses from 60 homosexual or bi-sexual people who claimed to have experienced sustained bullying at school. It took three years to distribute the questionnaires. There was a 46.5% response rate. The 60 were a sub-sample of 216 who responded.

The 60 people were asked about their experiences on two occasions separated by 12-14 months. The study found an "unexpectedly high degree of variability in recall shown in participants' responses on the majority of items". He concedes that "the amount of detail recalled will decrease with the passage of time" and that such studies are not an alternative to proper longitudinal research.<sup>21</sup>

Another example of the sort of anecdotal evidence relied upon is found in the book *Sexual Bullying* by Neil Duncan. Duncan looked at pupils in a handful of urban schools. It was not a statistical sample. Duncan himself talks of working within "the logistical constraints of a very minor piece of research".<sup>22</sup>

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<sup>17</sup> See Besag V *Op cit*, Chapter 1, Table 6

<sup>18</sup> Times Educational Supplement, 12 October 2001

<sup>19</sup> Renold E 'Presumed Innocence: Sexualised bullying and harassment in the primary school', 5<sup>th</sup> Conference of the European Sociological Association, 28 August – 1 September 2001, pages 5-6

<sup>20</sup> Rivers I *The Victimization of Gay Teenagers in Schools: Homophobia in Education*, Pastoral Care, March 1995, pages 35-41

<sup>21</sup> Rivers I *Retrospective Reports of school bullying: Stability of recall and its implications for research*, British Journal of Developmental Psychology (2001), 19, pages 129-141

<sup>22</sup> Duncan N *Sexual Bullying* Routledge 1999, page 6

### ***The re-definition of ‘homophobic bullying’***

Leaving aside all the concerns about unrepresentative small samples, by far the most serious error is the complete redefinition of ‘homophobic bullying’ in several of the studies. Under this new definition the vast bulk of ‘homophobic bullying’ occurs in circumstances where both the victim and the bully are heterosexual.

Stonewall claimed that the *Playing it safe* research they commissioned showed that:

“82% [of teachers] were aware of verbal homophobic bullying and abuse, and 26% said they were aware of physical bullying which was motivated by homophobia”.<sup>23</sup>

The questionnaire used for the research asked about instances of “general verbal and physical bullying” in school.<sup>24</sup> What teachers describe as name-calling is redefined as “homophobic bullying” by the researchers. The report clearly states on the first page that:

“For the sake of brevity, throughout the remainder of this report, incidents of verbal and physical bullying where terms such as lesbian, gay, queer or lezzie have been used will be referred to as homophobic bullying. Where findings relate only to verbal incidents or only to physical incidents this will be stated.”<sup>25</sup>

So the 82% of teachers who were “aware of homophobic bullying” were actually those who had ever heard pupils abuse one another using the words “lesbian, gay, queer or lezzie”. Such words are used by children as terms of abuse along with other unpleasant words such words as “spastic”, “divvy”, “fatso”, “swot”, “moron” and sexually rude words. Children can be cruel and they use words that they think will hurt. That the researchers have discovered that “lesbian, gay, queer or lezzie” are particularly popular terms of abuse, sadly, should surprise no one. That these cruel children also hit other children whilst using these terms of abuse is also no surprise.

### ***Are any of the children homosexual?***

The *Playing it safe* researchers quote a definition of homophobia as being, “an irrational fear and dislike of individuals who identify as lesbian, gay or bisexual. This fear usually results in judgemental, discriminatory and aggressive acts of hatred.”<sup>26</sup>

But what the researchers completely failed to prove is that *any* of the children on the receiving end of the abuse were actually “individuals who identify as lesbian, gay or bisexual”. Some of them may have been. But that is not what the study shows. All the researchers uncovered is that teachers had heard children using slang words for “homosexual” as a term of abuse. It does not prove rampant “homophobic bullying”. In fact the comments from some of the respondents make this clear:

“More often than not, the word, say, queer or lez or whatever is used against a pupil, not because of their sexuality but because the other pupils perceive that as being a

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<sup>23</sup> Reported in *Stonewall* newsletter, Volume 8, 1 July 1999, page 8. See also Douglas N et al *Op cit*, page 61

<sup>24</sup> Douglas N et al *Op cit*, page 22

<sup>25</sup> *Ibid*, page 1

<sup>26</sup> *Loc cit*

form of verbal abuse, so it isn't necessarily related to the pupils' sexuality or perceived sexuality, it's more just a general term."<sup>27</sup>

It is therefore dishonest for gay rights campaigners to use this study to argue that homophobic bullying is rife. The authors of this briefing were themselves bullied at school in numerous ways, including by being called 'gay' or 'queer' on countless occasions. Yet they would not consider themselves victims of 'homophobic bullying'.

*Playing it safe* was produced to support the claim that Section 28 prevents teachers from tackling 'homophobic bullying'. Professor Kevin Glazebrook has pointed out that the report completely fails to demonstrate this. He has described the report as "statistically shoddy" [See section 6].

In *Sexual Bullying*, Neil Duncan dedicates a whole chapter to "homophobias"<sup>28</sup> and concludes that all bullying is based on misogyny or on homophobia.<sup>29</sup> However, in the interviews which he conducted to form the basis of the book he did not come across a single homosexual pupil – or even a pupil who had a one-off homosexual encounter – in any of the schools involved.<sup>30</sup> Indeed, none of the children interviewed even *knew of* any fellow pupils who were homosexual.<sup>31</sup> They were incredulous when Duncan suggested one in ten of their classmates might be homosexual.<sup>32</sup> Nor can this be put down to the 'homophobia' of the interviewees forcing their gay friends to keep silent since even the girls who said they would feel more positive towards a boy if he was homosexual did not know any homosexual pupils.<sup>33</sup>

Not surprisingly Duncan concludes that the use of words connected with homosexuality as insults has little to do with the sexual preferences of the victim.<sup>34</sup>

Calling another pupil 'gay' usually simply means they regard them as displaying weakness or some form of behaviour which is seen as caring or sympathetic.<sup>35</sup> So, for example, one of the ways in which Christian or Jewish children may be bullied, is by being called 'gay' simply for showing charity and concern for another pupil. The language chosen usually has nothing to do with homosexuality and everything to do with the meanness of children who have simply settled on the words as a mutually understood form of derision.

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<sup>27</sup> *Ibid*, page 24

<sup>28</sup> Duncan N *Op cit*, Chapter 6

<sup>29</sup> *Ibid*, pages 130 and 135-136

<sup>30</sup> *Ibid*, page 70. Footnote 5 says "Homosexual relationships were not apparent and were not acknowledged by any of the interviewees." Page 108 states "no pupils identified themselves as gay in these interviews". This is despite the fact the Duncan had been at pains to communicate to the pupils the confidentiality of the interviews – see pages 10-13.

<sup>31</sup> *Ibid*, pages 109-110. Only one girl reports knowing any homosexuals at all - two adult lesbians - p122

<sup>32</sup> *Ibid*, pages 109-110

<sup>33</sup> *Ibid*, pages 122-123

<sup>34</sup> *Ibid*, pages 18, 19, 32, 106

<sup>35</sup> *Ibid*, pages 117-118

## How many are gay?

The number of pupils who identify themselves as “gay” in the first place is actually minuscule. This must be so since even amongst the adult male population only 0.3% of men report having had exclusively male sexual partners<sup>36</sup> and not all of this 0.3% will call themselves “gay”. If this is true of adult men who have had years of adulthood through which to experiment and decide their sexual preferences, then an even smaller proportion would have been conscious of same-sex attraction whilst they were in school. This further illustrates why it is exceedingly difficult to study the bullying of openly homosexual schoolchildren.

One of the strongest claims behind the current calls for more pro-homosexual teaching in schools is that there are large numbers of pupils who are homosexual, many of whom are being bullied as a result. These claims may inject much energy into the campaign and attract much sympathy (or guilt) from policymakers. But these claims are false.

## Other sexual insults

Sometimes in playground insults, the detachment between the meaning of the words and their effect as insults is enormous. Words are used which in themselves have no value as an insult, but which gain a currency through usage.

It is noted above that ‘spastic’ or ‘spaz’ are also commonly used as insults. Able-bodied children have long been labelled with this word simply as a means of derision. The use of the word shows spite and a disregard for the difficulties faced by those with physical disabilities.

Bullies also commonly used the word ‘slag’ to insult girls. The Concise Oxford Dictionary defines the word as “a sexually promiscuous woman”. Again, the use of the word usually has little to do with the perceived sexual activities of the victim.

That the users of this particular insult are unconcerned as to how relevant the insult is to the victim’s behaviour, is illustrated by one of the conversations recorded by Neil Duncan. When asked what the word ‘slag’ meant, a boy replies:

“Well it means, like, slag means a girl who you don’t like, you know, someone who isn’t nice to you, you know who is tight, and acts like a bitch... they might just act bitchy like not give you something, and you call them slags to get your own back... it gets them mad, don’t it?”<sup>37</sup>

It is a nasty insult. There are probably a huge number of girls who have suffered the indignity of being labelled in this way. Not just 1%, not even 10% but 50% of all pupils are girls and therefore susceptible to this epithet. Yet no-one would suggest that the answer is to promote the acceptability of sexual promiscuity. It would be absurd for the professional code for teachers to require respect for ‘differences of sexual morality’ and for teachers to teach that everyone has a human right to express their sexuality in whatever way they please – including promiscuity.

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<sup>36</sup> Wellings K et al, *Op Cit*, page 209

<sup>37</sup> Duncan N *Sexual Bullying* Routledge 1999, page 14. Of course, children do also use the word as an unpleasant way of describing a sexually promiscuous girl. See Duncan, N *Op cit*, page 53

Any schoolgirl who chooses to have multiple sexual partners is doing something seriously wrong. There are moral (and health) considerations which need to be made clear to her. The parents and the school should discourage the behaviour. It should certainly not be held up to other pupils merely as an example of 'difference'.

But at the same time, she should be protected from the insults. Two wrongs do not make a right. Bullying and other forms of nasty behaviour between pupils must be dealt with in their own right, without having to defend - or even discuss - the behaviour of the victim.

### **Summary**

Even though the number of schoolchildren who are bullied for actually being homosexual must be very small indeed, the main point is this: all bullying is wrong and should be dealt with in the same way no matter who the victim is. It is grossly unprofessional for a teacher to ignore the bullying of any pupil. This is a straightforward matter of what constitutes professional conduct. Good teachers stop bullies.

It is also a straightforward matter of common sense that no-one will stop bullying by promoting homosexuality or by forcing teachers to respect what they believe to be morally wrong.

## 6. 'Playing it safe' and Section 28

Professor Kevin Glazebrook (Professor of Applied Probability at the Department of Statistics at Newcastle University) has commented in a private capacity on the claims made in *Playing it safe* about the effect of Section 28 on 'homophobic bullying':

“Stonewall has claimed that  
'Research evidence shows that Section 28 presents the biggest obstacle to teachers tackling homophobic bullying....' (*Section 28 : The case for repeal*, Stonewall, December 1999, page 1)

Insofar as this claim is based upon the report 'Playing It Safe' commissioned by Stonewall and the Terrence Higgins Trust, it simply cannot be sustained.

That report discusses its findings under seven heads, one of which is 'Bullying' (pp 22-28) and another of which is 'Section 28 of the Local Government Act 1988' (pp 31-36). In the section on bullying, Section 28 is simply not mentioned.

In what is manifestly the most critical question of the survey, respondents were asked to identify 'Factors Perceived as Hindering Targeting Homophobic Bullying' (reported in Chart 2.3, p.27). There is no record in the report that Section 28 figured in ANY of the 607 responses (multiple responses were possible) to this question. The most commonly cited factor was 'parental disapproval' (mentioned by 19.7% of respondents) followed by 'a lack of experienced staff' (17.4%). It is not obvious from the report whether there was clear opportunity to state that there were no factors hindering staff. It is extraordinary that the responses to this central question play almost no part in the subsequent analysis.

The section of the survey findings concerning 'Section 28' itself is statistically shoddy. Of 303 respondents, 25% (or 76) claim no awareness of Section 28. It is quite extraordinary that in the subsequent questions concerning the beliefs of respondents about the provisions of the Section, some of this 25% continue to give answers. In particular, I calculate that at least 26 (and perhaps many more) of the responses to the enquiry concerning 'Difficulty in Meeting the Needs of LGB Pupils Following Concerns About the Provisions of Section 28' were from people who were unaware of the Section's existence. More importantly, no question in the 'Section 28' part of the report even mentions bullying and can shed no direct light on the matter.

In short the survey upon which the report is based barely explores the relationship between Section 28 and homophobic bullying. When it does pose a question concerning obstacles to the tackling of such bullying, Section 28 is not cited by respondents.”<sup>38</sup>

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<sup>38</sup> Letter, 4<sup>th</sup> February 2000



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