

Written Evidence in Response to the Education Bill 2011

22 February 2011

The Association of School and College Leaders (ASCL) is the professional association for the leaders of secondary schools and colleges. ASCL represents over 15,000 members of the leadership teams of schools and colleges throughout the UK.

Overview

- 1 ASCL welcomes many of aspects of this bill. In particular we believe the clauses on behaviour give a strong and welcome message about schools' power to keep order. However it is important to remember that the majority of schools are orderly, calm places. Our education system is not 'broken' and discipline has not 'broken down'. Good behaviour is achieved through positive relationships between staff and students, an appropriate curriculum which motivates and inspires and a positive ethos which values and celebrates achievement. We are pleased that this was also the conclusion of the Education Select Committee in its recent inquiry into behavior in schools¹.
- 2 We believe it is right that many of the changes proposed in the White Paper *The Importance of Teaching* will be in regulations and guidance rather than on the face of this bill and we will assess the impact of the changes as more detail becomes available.
- 3 We note that a theme running through many parts of the bill is a strengthened role for the Secretary of State alongside a diminished role for local authorities. We are not opposed to a reduced role for local authorities in principle; ASCL has for a long time held the view that many local authorities lack the expertise and capacity to make a direct contribution to secondary schools and local authorities have had no locus with respect to colleges since the 1990s. However, we do have concerns about the extent of the powers given directly to the Secretary of State and about local authorities' ability to "champion educational excellence".
- 4 ASCL feels strongly that there is an omission in the Education Bill, where college teachers and staff and school support staff are not included in the powers to search and in teachers' anonymity protection from false accusation.

Part 2 – Discipline

- 5 ASCL strongly believes that this extension of search powers is necessary and proportionate. The current position on searches has led to confusion and in some cases this has seriously undermined discipline². In particular we are pleased to see the inclusion of electronic devices, including mobile phones, to be searched *if there is good reason to do so* and for data/files to be searched. Currently the only option open to a school when there is a suspicion of cyber bullying or other incident involving a mobile phone is to involve the police. Thus an incident which could have been dealt with at school level can unnecessarily become a criminal investigation. The choice is between

¹ <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmeduc/516/51602.htm>

² For example one of our members was suspended at the instigation of a Local Authority for authorising a search for an illegal substance even though what was found was an offensive weapon.

giving schools power to deal with it internally and involving the police, where it is likely to become part of a young person's record in some form.

- 6 We also welcome changes allowing searches to be carried out by a member of the opposite gender or without witness in specified urgent situations.
- 7 Good discipline and quality learning is predicated on relationships of trust between staff and students. For this reason, ASCL would expect (and advise) that members will only use search powers to deal with extreme situations. We believe these powers will help to give schools the confidence that, if they act, they will be protected and supported by the law.
- 8 These powers to search should be extended to colleges, which face the same issues as schools in maintaining behavior among 16-19 year olds.
- 9 These measures on their own will not, however, prevent staff from being investigated after they have needed to use lawful force. ASCL would like there to be a joint initiative by the Department of Education, the Home Office and Association of Chief Police Officers to produce clear, definitive guidance in this area.

Exclusions, Clauses 4 - 6

- 10 ASCL members use alternatives to permanent exclusion wherever possible and have cooperated with all initiatives to reduce permanent exclusions.
- 11 We welcome the new remit of Independent Review Panels. ASCL believes that where the relationship has so broken down that a child is excluded permanently it is in no one's best interest to compel the school to readmit the child, and so we support the power to order governors to review a case only where the principles of natural justice and reasonableness appear to have been breached.
- 12 The bill says that if an Independent Review Panel quashes a school decision "an adjustment to the school budget may be made". The full cost of the future education of an excluded child could be up to £17,000. The threat of a fine of this magnitude would be a major deterrent to exclusion and could seriously undermine school discipline. Schools should not have to choose between paying a teaching assistant who will contribute to the learning of a whole cohort and removing a pupil who is disrupting the learning of others. Therefore we seek reassurance that a monetary figure will be set in regulation which is much less than this amount.
- 13 We welcome the government intention to increase effective and worthwhile alternative provision but note the resource implications of this policy.

Detentions

- 14 We welcome removal of the requirement to give parents 24 hours notice of detentions. We note that at second reading there was concern that this power could be abused. School leaders are well aware of the position of child carers, as well as other concerns such as children walking home alone in the dark and in the vast majority of cases will continue to give 24 hours' notice. We are confident that schools can and should be trusted with this additional discretion.

Behaviour Partnerships

- 15 We welcome the removal of the statutory requirement to be in behaviour partnerships. We have consistently said that such partnerships will only work if they are entered into willingly. However many ASCL members have found these partnerships highly effective and we therefore strongly believe that those partnerships that do exist need to be

supported. The education system will only continue to improve if schools and colleges collaborate and support each other; therefore we believe that there should be an explicit expectation of partnership working on a wide range of issues and strong incentives to make this happen³.

Part 3 - School Workforce

Teacher misconduct, Clauses 7 - 12

16 With regard to the new disciplinary system for teachers ASCL is concerned about the large number of additional powers being granted to the Secretary of State. We are particularly concerned that a system which refers cases directly to the Secretary of State may create perverse incentives and inconsistency in referrals as some schools may be more reluctant to refer incompetent teachers via this route.

17 We also seek clarification as to how the Secretary of State will decide what will prohibit a teacher from teaching and will be seeking a duty to consult on the proposed professional standards to be inserted into the bill

Abolition of the GTC creates a need for a database of qualified teachers

18 We understand that the current proposals include a database of barred teachers but not one listing all teachers and their qualifications. We strongly believe that there is a need for an online database of all qualified teachers which is accessible by schools to replace the GTCE register. To remove the database will create additional red tape and threaten streamlined procedures for recruitment. We would like to see a clause inserted into the bill which puts a duty on the Department for Education or one of the proposed executive agencies to do so⁴.

Reporting Restrictions, Clause 13

19 We welcome the new provisions to protect teachers' anonymity. The growing culture of litigation and false allegations has worked to undermine the authority of school staff by presuming guilt and denying anonymity. This bill gives a clear and welcome message to parents and students that this will not be tolerated.

20 However we are very disappointed that the current restrictions will apply only to teachers in schools. We strongly believe that these provisions should be extended to teachers in colleges and support staff in both schools and colleges (who make up half the workforce), all of whom are equally vulnerable to having their careers ruined by false and/or malicious allegations⁵.

21 We remain extremely concerned about the length of time of investigations. This has a critical effect on those accused. We will be seeking strongly worded statutory guidance on speeding up the process or investigations.

22 We understand that much of the detail of changing the way allegations are dealt with will be in guidance following the bill (for example when to suspend an accused teacher, which is wrongly seen by some as the first rather than last resort). ASCL will continue to work closely with the government on this.

Abolition of the School Support Staff Negotiating Body (SSSNB), Clause 18

³ One of the very positive trends of recent years has been the move away from competition between schools and towards collaboration and partnership and this includes working in behaviour partnerships. See ASCL *Achieving More Together*, 2008 for more detail.

⁴ Please see Annex 1, the joint letter from ASCL and NAHT to Michael Gove dated 11 February 2011

⁵ Please see Annex 2, the note of case studies/comments from members in schools and colleges.

- 23 We strongly believe that the abolition of the SSSNB is a retrograde step. We feel strongly that the continued existence of a body responsible for the national pay and conditions framework of support staff who work in schools (separate from the National Joint Council for Local Government Services (NJC) which is responsible for the pay and conditions of support staff in local authorities) is essential.
- 24 School staff roles have changed enormously in recent years with a large number taking on wider and more complex roles. We are in no doubt that support staff play a crucial role in raising standards. In many schools support staff are members of the senior leadership team (and therefore also ASCL members). There is the need for statutory provision for a fair, consistent and transparent national pay and grading framework for all school support staff in England and we believe the SSSNB is the right vehicle to deliver it.
- 25 Moreover, a considerable amount of time and energy has been invested in the work of the SSSNB and its non-statutory predecessor, particularly in the development of role profiles and job evaluation, and it would seem wasteful not to capitalise on the significant progress made to date in the interests of the service.

Requirement for schools to participate in international surveys, Clause 20

- 26 If there is to be a statutory requirement on community, foundation or voluntary schools to participate in international surveys, we fail to see any justification for not making it a statutory requirement on all schools. In fact the inclusion of all schools in the sample is essential if the international comparative data is to have any validity. Academies should be included in this requirement by legislation and not via their funding agreements.

Part 4 - Qualifications and the Curriculum

Ofqual, Clauses 21 – 22

- 27 We have concerns about greatly increasing the Secretary of State's power over the running of Ofqual. In order for there to be robust, professional evaluation and oversight of the qualifications system, it is important that Ofqual retains its independence and reports to Parliament rather than the Department of Education. It is of particular concern that the Secretary of State will appoint the Ofqual chair. As Ofqual will be regulating the Department of Education in its administration of National Curriculum assessments, we are concerned about a conflict of interests while the Secretary of State has the power to remove the chair.

Careers Guidance in Schools in England, Clauses 26 – 27

- 28 We would like to see the parts of Clause 27 that relate to repealing the duty on schools in England to provide careers education removed from the bill. We strongly believe that the provision of careers education must remain a compulsory part of the curriculum. This will leave careers education in the position it currently occupies; schools are required to teach it but free to determine how to do so.
- 29 Removing the requirement to teach careers education is not cost effective because careers advisers will have to cover a good deal more ground in individual interviews and group sessions with pupils who not have been prepared through a programme of careers education.
- 30 We would prefer a single, simplified duty on schools to secure access to independent, impartial careers guidance for all pupils aged 13-18 through the new all-age careers service. We strongly believe that the duty should continue to age 18, particularly in light of the raised participation age, and that it should be secured through the all age service.

- 31 We do not understand the rationale in Clause 27 that careers guidance must be provided by someone not employed or engaged by the school. We do not see how this will ensure impartiality, independence or quality. This approach is inconsistent with current policies and practices in further and higher education.
- 32 We would also like to see the provision relating to guidance about apprenticeships for 16-18 year olds rewritten so that all options are given due consideration and young people helped to choose whichever is right for them.
- 33 ASCL supports the principle of an all-age careers service but is extremely worried about the lack of clarity regarding core funding, transition arrangements and new expectations placed on schools. The requirement that the bill places on schools is based on a service that does not yet exist and about which few details are available. There is huge uncertainty at a time when careers advice and guidance is of critical importance due to the cumulative effect of many changes to the system (particularly the loss of the Education Maintenance Allowance and increase in tuition fees).

Repeal diploma entitlement, Clauses 28 – 29

- 34 Removing the diploma entitlement is welcome, as it was not practical to offer all lines to all students. However this must not send the wrong message about the future of vocational education. We strongly believe that high quality vocational education is a key part of the education system and, as the government is (rightly) going ahead with the raised participation age, the demand for it is likely to increase. The government must commit to providing high quality options for all young people. We hope that this will be reflected in the Wolf Review of vocational education and the government's response.

Part 5 – Education Institutions Other Provisions

- 35 The removal of the following duties in the bill is welcome:
- cooperate with local authority to improve wellbeing, Clause 30
 - have regard to Children and Young Person Plans, Clause 31
 - prepare and publish a School Profile, Clause 32
 - local authority duty to appoint a school improvement partner (SIP), Clause 33
- 36 ASCL has long advocated a reduction in the number of statutory duties on schools and colleges as they undermine the capacity of leaders and governing bodies to make decisions appropriate to local circumstances.
- 37 However we are concerned that there may be now be too few points of contact between local authorities and schools (see below).

Role of the Local Authority

- 38 *The Importance of Teaching* says that local authorities have a role as “champions of educational excellence” in their area. We are concerned about the capacity of seriously slimmed down local authorities. Many do not have appropriately skilled or experienced staff and no longer have meaningful communication channels with their local secondary schools to carry out this role. We are concerned that the only information available to them, particularly once the role of the school improvement partner (SIP) is removed, will be school data and this is not sufficient for local authorities to be able either to champion excellence or to carry out an effective school support brokering role. These remarks apply with even greater force to colleges, which whom local authorities have had no direct relationship since incorporation in the 1990s.

Role of the Secretary of State

39 It could be argued that this bill is very centralising as it places many of the duties of the arms length bodies it abolishes on to the Secretary of State, as well as giving the Secretary of State a greater role in running Ofqual. It also increases powers of the Secretary of State over local authorities in respect of admissions and schools causing concern and makes changes to the financial relationship between schools and local authorities. It is of critical importance that the proposed four new in-house executive agencies have some element of independence from the Department for Education.

Admissions, Clauses 34 - 35

40 While we accept the limitations of the Local Authority and Admissions Forums we are concerned that there may now be a void in policing admissions. There is a need to ensure that the system is fair and robust in practice and perceptions. It is also essential that parents have a well defined route to deal with their grievances relating to admissions.

Governance, Clause 37 – 38

41 We would like to see this statutory requirement on the composition of school governing bodies extended to include at least one representative of the school staff. This includes teachers and support staff.

Standards, Clauses 39 – 44

42 A more proportionate approach to inspections is welcome. Overall we welcome the narrowing of Ofsted's focus when inspecting schools. However we note the use of word 'safety' in place of 'welfare' and seek clarification as to whether this has particular implications.

Complaints, Clause 44

43 We strongly welcome the removal of parental complaints against schools from the auspices of the Local Government Ombudsman (LGO). As we argued when these powers were introduced by the Apprenticeships Skills Children and Learning Act 2009, schools already take parental complaints very seriously and have robust procedures in place. For the overwhelming majority of parents, the arrangements in place before the LGO remit was introduced were fair, transparent and worked well. The use of the LGO represented a large sledgehammer to crack a small nut⁶.

Part 6 – Academies, Clauses 50 – 61

Academies: consultation on conversion, Clause 54

44 ASCL believes there needs to be a clear list of groups which should be consulted when a school considers a move to academy status. This should include parents, staff, the local authority and community groups which use the school facilities.

45 As it expands, the academy programme should be used as a lever to encourage greater school-to-school support and collaboration. We would like to see an explicit expectation and strong incentives built into the academy programme for schools to work in groups and for successful schools to partner with and support schools in more challenging circumstances.

⁶ For details of the experiences of the LGO in the pilot areas and the on schools please contact anna.cole@ascl.org.uk.

Part 7 – Education and Training

Raising Participation Age, Clause 69

- 46 We welcome the Secretary of State being granted more flexibility as to the timing of commencement of criminal proceedings against a young person.
- 47 It is essential that those teaching young people who are studying for vocational qualifications are well-trained and completely up to date in their knowledge of the subject and have opportunities for training within the relevant workplace.
- 48 At present, there is a disparity between school and college teachers' qualifications (QTS and QTLS) and payment and ASCL welcomes and supports the recommendations of the recent Skills Commission report *Teacher Training in Vocational Education* to bring professional convergence to teacher qualifications for all 14-19 institutions. An overarching teaching qualification would simplify the training system, and make it more effective and user friendly. Training teachers within a common core of knowledge and skills, guided by a notion of 'commonality within difference', would bring much needed professional parity of status to the profession.

Part 8 – Student Loans, Clause 70

Student loans: interest rates, Clause 70

- 49 We would like to see Clause 70 removed altogether. We strongly oppose this change and believe it could have serious implications for social mobility, regardless of assurances that the government intends to protect graduates earning less than £21,000 and maintain a sliding scale up to earnings of £41,000.

For more information on any of these points, please contact Anna Cole, ASCL Parliamentary Specialist on anna.cole@ascl.org.uk