

PE1548/R

Petitioner Letter of 15 September 2015

Dear Mr McMahon

Welcome to your new role and thank you for the opportunity to comment again on the Scottish Government's response to our petition, PE 01548. We know of a significant number of incidents where restraint and seclusion has been used inappropriately in schools across Scotland, leading to many severely disabled children being hurt, some of them seriously. We believe that in some local authorities, restraint and seclusion is often used as a matter of routine with no understanding of the harm this causes children. There are better, less harmful and more successful methods already in use elsewhere. The adoption of safer, more effective and more humane ways of dealing with disabled children will not happen without national guidance and effective oversight by an independent body. It is frustrating that despite several attempts to point out the evidence base for our assertions, the Scottish Government appears to lack any understanding that significantly different approaches are necessary when dealing with disabled children. We would like to ask the Scottish Government why the Care Inspectorate has jurisdiction to inspect private, residential and nursery schools, yet have no remit to oversee standards of care in local authority special schools? We see no reason why this duty of care can not be extended to include these local authority schools. We view this as a serious gap in the inspection process. If they don't have the resources, the resources must be provided. The Scottish Prison Service has national guidelines that cover the use of restraint and seclusion in all Scottish prisons, it is not left to local management to decide on their own policies. This protects both prison staff and prisoners alike. Why should disabled children not be given the same consideration as prisoners, including violent offenders?

We note the absence of any explicit reference in the response to 'positive behaviour support' an approach significantly distinct from those identified. This is of concern because this approach is consistently recommended as key to reducing the use of restraint and seclusion by the authoritative guidance. Its absence suggests a grave and continuing lack of awareness of the discreet needs of those children with severe learning disabilities and/or autism whose behaviour may appear challenging. Good practice for children with SEBD is not the same as good practice for children with complex global learning difficulties. Attempting to meet the needs of both groups in the same guidance risks doing neither adequate justice. In terms of treatment, children with SEBD are excluded from school far more often. In 2013, there were 949 exclusions of children with a disability in school (6.2%). For children with SEBD there were 6,568 exclusions (30.0%) – almost 5 times as much.

There are genuine concerns by teaching and support staff in schools about violent incidents and general disobedience. But there is a failure to understand that a "majority of children and young people with complex additional support needs" require principally communication support and that inappropriate use of restraint and seclusion can actually escalate situations and has no value in modifying behaviour within children of this group.

There needs to be a commitment from Education Scotland and the professional bodies that contribute to the education and development of teachers and the Scottish Government about ensuring that teachers are equipped with the knowledge, skills and values that support the use of positive behavioural support. We fully support the General Teaching Council for Scotland's view that they *"would always support the premise that teachers should have access to all the professional learning necessary to allow them to undertake their jobs to the very highest standards possible"*.

We also note no commitment to mandating any form of accreditation for training providers. This is of huge concern because it leaves extremely vulnerable children at significant risk as it allows by default physical interventions to be misused in the absence of proper risk assessments or training. This is a wholly unacceptable abnegation by government of *its statutory responsibilities* to safeguard the welfare of children with disabilities. Article 4 C of the UN convention on the rights of persons with disabilities requires states to *take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes*; Article 11 *requires states to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk*.

Since we last wrote to the Petitions Committee, support for our petition has increased even further. In particular, we wish to draw your attention to a major report titled ***UK Implementation of the Convention on the Rights of the Child - NGO alternative report to the Committee on the Rights of the Child – SCOTLAND***. This report, published by Together – Scotland's Alliance for Children rights is endorsed by 68 specialist children's organisations and 60 "expert reviewers". With respect, the people backing this report collectively have much more expertise in dealing with behavioural issues in disabled children than the stakeholders that the Scottish Government have so far consulted with.

The report makes the following recommendations:

Recommendation 35. Scottish Government should ensure that restraint against children is only used as a last resort and exclusively to prevent harm to the child or others.

Recommendation 36. Scottish Government should introduce a robust and comprehensive national recording system to provide consistency in monitoring the use of restraint across all settings.

As you will see, this report is written on behalf of 128 organisations with interest and expertise in the relevant field. One would hope in the circumstances that The Scottish Government would accede to the recommendations contained within this document. The Government has repeatedly stated "This Government's ambition is for Scotland to become **the best place in the world for a child to grow up**". A key point of GIRFEC is that every child is different however we feel that the response advocates a blanket approach to the treatment of children with complex additional needs. This has also been the problem that many disabled children face in less enlightened local authorities which implement a control and management approach, which inevitably leads to conflict, distress and harm. Such councils will continue to use inappropriate methods, harmful to the children under their care and often in

breach of their basic human rights. **It is not surprising that the stakeholders such as “senior officers from local authorities” who lead on the policy areas of relationships and behaviour should find their own current policy to be adequate, if they didn’t the petition would not be needed!** As parents we have experienced the best that Scotland offers in its treatment of disabled children and the worst that she offers. The difference is a simple border between local authorities. The Scottish Government has a duty to protect the most vulnerable children in Scottish society. The human rights of disabled children should not be determined by a postcode lottery. It is not enough to list a range of accredited training schemes. The problem is that staff are NOT adhering to their training and disabled children are being injured. We have evidence that councils are not adequately recording or monitoring the use of such methods and are not carrying out adequate risk assessments. As they are not subject to independent scrutiny there is no one to challenge such serious failings therefore there is a total lack of any accountability of staff when they don’t adhere to the training they have been given.

We are glad that the Scottish Government response now no longer mentions SAGRABIS as the working group that can resolve the problems we have identified. As a body we felt it was inadequate for this task. We do however welcome the commitment to develop specific guidance on the issues of restraint and seclusion. The commitment to consultation on the content of that guidance is also welcomed. Education Scotland’s commitment to discuss the issues in conversations with special schools is helpful. In an era of inclusion, where many children with complex needs attend mainstream schools, serious concerns have been raised regarding human rights violations. While we welcome the achievements to date, in the form of the refreshed Included, Engaged and Involved Part 2: A Positive Approach to Managing School Exclusions, we nevertheless feel that again this does not apply to the group of children we are referring to in our petition. We would again draw your attention to the fact that there is relevant expertise within the organisations who responded to the petition. For example organisations such as:

- Scotland’s Commissioner for Young People
- PAMIS,
- Children 1st
- Learning Disability Alliance Scotland
- Enable Scotland
- Downs Syndrome Scotland
- British Institute of Learning Disability
- Dr Brodie Paterson, CALM Training

We would be interested in knowing how many of these organisations or of the others that sponsored the Together Report that the Scottish Government has consulted in coming to a decision that new national guidance is not required. We would be grateful if you could ask them.

If the Scottish Government will not intervene effectively to remedy this solution then there may be an opportunity to seek the intervention of the UN Special Rapporteur on Human Rights. The current post holder has extensive experience on the rights of disabled children and may be able to suggest an effective way forward.

We and the numerous experts, professionals and charities with specific expertise in the relevant fields that support us, remain convinced that there **is a need for new National Guidance** that helps teaching and support staff work with children with a wide range of needs that respect their professionalism but also safeguards children with complex additional support needs from the mistaken and disastrous application of a policy designed for a separate group of children with a different set of needs. Overall the response is detailed and gives the impression that significant consultation has taken place over our petition. We are grateful to have had the support of the Petitions Committee and wonder if they could facilitate a meeting between ourselves and the Scottish Government or their officials, to engage directly for a frank and open discussion on the points raised in our petition.

Could we suggest that the Petitions Committee write to?

- 1 The Scottish Government seeking further clarification on who they consulted with to decide that National Guidance was not needed and urge them to meet with the petitioners to discuss the matters concerned face to face.
- 2 The UN Special Rapporteur to seek his opinion on whether the human rights and civil liberties of disabled children are being breached.

The children we are talking about are extremely complex and no one organisation has the answer. It is only when we all work together collectively and with the real experts – the family carers- that we will come up with a suitable approach to supporting these young people. It would be time and money saved if the right people are around the table from the outset in relation to developing a national approach where we support young people with complex and additional needs in a positive way which upholds their human rights, their civil liberties, their right to education, their right to participate fully in all aspects of community and society. The Scottish Government's own Keys to Life, implementation framework and priorities 2015-17 are designed to improve the quality of life for people with learning disabilities. The Keys to Life vision recognises that people and communities make change happen. Control, restraint and seclusion is not the answer.

Yours Sincerely

Beth Morrison