

**PE1548/L**

Dr Brodie Paterson Letter of 19 May 2015

Clerk to the Public Petitions Committee  
The Scottish Parliament  
EDINBURGH  
EH99 1SP

17 May 2015

Dear Sirs

PE01548: National Guidance on Restraint and Seclusion in Schools

Please see below my comments on the petition and the responses to it.

With reference to the petition I would note simply that I wholly support its proposals. We note this view is supported by the majority of respondents representing the learning disability sector in Scotland.

The current lack of national guidance and inadequate monitoring of practice contributes to a profoundly unsatisfactory situation whereby the most vulnerable in our society i.e. severely and profoundly disabled children with complex learning disabilities and or autism are not adequately protected from the misuse and over use of physical interventions i.e. restraint. These interventions are well known to be associated with serious risks including fatality and are notoriously prone to abuse.

Article 2 of the Convention of the Rights of Child creates an obligation on State parties to prevent discrimination of any kind against children within their jurisdiction. It makes explicit mention of disability as a prohibited ground for discrimination.

Article 3 of the United Nations Convention of the Rights of the Child UNCRC charges States Parties to “undertake to ensure the child such protection and care as is necessary for his or her well being”.

Article 19 obliges States to take all measures necessary to “protect the child from all forms of physical or mental violence, “States must take all appropriate legislative, administrative, social and educational measures to eliminate any cruel and degrading forms of punishment.”<sup>1</sup>

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<sup>1</sup> 69] UN Committee on the Rights of the Child, General Comment No. 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia) (Forty-second session, 2006), U.N. Doc. CRC/C/GC/8 (2006), para. 18.

“any restraint on people with mental disabilities for even a short period of time may constitute torture and ill-treatment”<sup>2</sup>

Children with disabilities may face an increased risk of being subject to restraint. Failing to ensure by developing detailed guidance and auditing compliance with the measures that must be taken to prevent and reduce the use of restrictive interventions with children with disabilities in educational settings means that the possibility of discriminatory use is not adequately addressed. In my opinion the Scottish Government are therefore presently not compliant with their obligations.

I note repeated reference by Scottish Government in their response to the petition to ‘Holding Safely’ and their view that it provides ‘adequate’ guidance with reference to the use of restraint in Scottish schools. I was one of the working group involved in the development of Holding Safely. In my opinion any suggestions that it represents adequate guidance reflects a lack of understanding of the specific needs of the education sector and schools but also of a group somewhat poorly served by Holding Safely that is children with severe and complex learning disabilities. I would suggest that any consideration of the appropriateness of Holding Safely as suitable guidance for the education sector, whilst acknowledging its many strengths must start by acknowledging it was written for a different sector i.e. residential child care. Consequently it focuses upon the needs of the bulk of the population of such services i.e. older children / adolescents with emotional and behavioural disorders. I note that it was updated comparatively recently but the update, comprising only the production of an appendix was largely to address issues arising from the use of restraint in the secure sector.

My view is that Holding Safely cannot be suggested to exemplify current best practice with reference to the specific needs of children with severe developmental delay and/or autism in either the education or residential child care sector. Evidence based practice and implementation science have developed substantially in the interim since its publication. An exhaustive review of Holding Safely is beyond the scope of this consultation but its core deficiencies for the education sector and learning disabilities include;

- a) no reference to Positive Behavioural Support (PBS) as a practice model or to the Public Health Model as the basis for restraint reduction. Such paradigm have emerged as central to efforts to proactively address the root causes of behaviours that challenge, at the level of the individual child and the organisation thereby reducing the need to use restrictive measures including restraint, in supporting children with learning disabilities. General references to ‘positive approaches’ in the absence of detailed guidance on how to carry out a functional assessment in order to identify setting conditions, triggers and critically the functions of behaviours that challenge in a format accessible and useable by non experts are inadequate. PBS as the key approach is advocated by BILD whose guidance for this sector must be regarded

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<sup>2</sup> See CAT/C/CAN/CO/6, para. 19 (d); ECHR, *Bures v. Czech Republic*, Application No. 37679/08 (2012), para. 132

as authoritative. It was also recommended by the recent DoH guidance Positive and Safe written in response to the serious case review of Winterbourne View. I note there are new National Occupational Standards for staff delivering Positive Behavioural Support, which could form the basis for a national training initiative in this area.

- b) no reference to the behavioural phenotypes that may play a significant part in the development of behaviours that may challenge services
- c) no reference to the role of hypo and hypersensitivity to stimuli that occur more frequently in children on the autistic spectrum or guidance around establishing individual sensory diets
- d) inadequate reference to the legislative framework around the use of restraint in schools with no reference to the issues around deprivation of liberty
- e) no reference to the challenges around dealing with resistance to the care that may be needed by children with severe developmental delay / autism e.g. refusal to take medication, resistance to attempts to change a child who has been incontinent
- f) limited reference to the use of mechanical restraint and no guidance on the use of, reins, lap belts and seatbelts for transfer purposes with children who actively resist their use
- g) no reference or explicit definition of 'seclusion' i.e. the isolation of a child by their confinement in a room or area without staff presence and no guidelines on best practice ( a complex and notably controversial practice which some have argued should be entirely banned)
- h) no reference or explicit definition of 'time out' and no guidelines for best practice. This is a procedure where now considerable confusion regarding its meaning exists within Scottish schools
- i) a dearth of readily measurable objectives for inspection purposes
- j) no reference to the emerging use of individual communication passports.
- k) inadequate reference to the potential for medication to vary significantly increase the risks associated with physical intervention in a population i.e. children with disabilities who often have multiple health conditions

I note that the Scottish Government have suggested that "Safe and Well", the previous government guidance for the education sector was withdrawn 'because it was out of date'. It is therefore surprising that given Holding safely was published at the same time i.e. 2005 that it continues to be identified as a source of best practice. I also note reference to the letter sent to local authorities by government upon the withdrawal of Safe and Well listing a number of areas where local authorities should review their existing guidance in order to identify and remedy any deficits. My understanding however is that to date Scottish Government have not actually audited what local authorities actually did in response to that letter.

I also note the views expressed regarding the British Institute of Learning Disabilities (BILD) accreditation scheme and welcome the positive views of the scheme expressed by ENABLE and others. I am however deeply

concerned about the viewpoints expressed suggesting that complying with BILD accreditation would somehow stifle the development of local initiatives. I would suggest that these reflect a lack of understanding of the current scheme. BILD provide the only LD / Autism childcare specific accreditation scheme for trainers in restrictive physical interventions in the UK. It was developed following concerns that inappropriate, abusive and dangerous restraint procedures were routinely being taught for use with children and adults with learning disabilities across the UK including Scotland. BILD have recently substantially increased the robustness of the scheme. See *British Institute of Learning Disabilities (2014) BILD Code of Practice for minimising the use of restrictive physical interventions: Planning developing and delivering training: A guide for purchasers of training, training organisations and trainers*. The revised code now specifies and details best practice for services that use physical interventions and not just training providers. The scheme costs are flexible allowing small training providers to seek accreditation at low cost and more than 40 training providers are presently accredited including a number based in Scotland. Put simply unless BILD accreditation is mandated there will remain no statutory barrier to schools commissioning or developing training, that does not meet best practice criteria and that contains procedures that may be unsafe. The practice of electrical contractors in schools is underpinned by a nationally regulated training scheme. The use of physical restraint an intervention associated with numerous injuries and fatalities is not. This is a manifestly unacceptable situation with huge implications for the safeguarding of some of Scotland's most vulnerable children. It needs resolved as a matter of urgency. The BILD scheme offers a readily available, credible, flexible and low cost means to do so. The only good reason for not mandating accreditation by BILD would be if the Scottish Government developed their own mandatory accreditation scheme.

Resolving the current deficiencies in guidance and inspection requires.

- A) **The development of new education sector specific guidance on the support of children with severe and profound learning disabilities that aims to minimise the use of all restrictive interventions including restraint.** This guidance should adopt a human rights based approach as advocated by the SCCYP.
- B) **The development of a new independent monitoring body.** Following the Carter report the state of Queensland in Australia passed legislation designed to safeguard adults with a learning disability in social care from the misuse of restrictive interventions. The legislation requires that any use of restrictive interventions including restraint be formally approved by a government body. See <https://www.communities.qld.gov.au/resources/disability/key-projects/positive-behaviour-support/five-steps-to-meet-the-requirements.pdf> This initiative has led to significant reductions in the use of restrictive interventions. Experience in other Australian states who have pursued the same broad strategy has recently led to the development of a "Proposed National Framework for Reducing the Use of Restrictive Practices in the Disability Service Sector by the

Australian Government. Scottish Government should therefore actively explore best practice in other settings / jurisdictions in order to inform the development of legislation and an overall strategy.

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