

## **PE1548/X**

Children and Young People's Commissioner Scotland Letter of 24 June 2016

Dear Convener

### **PE1548**

I thank the Committee for their invitation to comment on the draft guidance submitted by the Scottish Government.

The issues of restraint and seclusion were highlighted as being of concern by the UN Committee on the Rights of the Child, when they examined the UK Governments in May of this year.

### **UN Concluding Observations**

In their 2016 UK Concluding Observations<sup>1</sup>, the UN Committee said they were concerned about 'The use of restraint and seclusion on children with psycho-social disabilities, including children with autism, in schools' (Concluding Observation 38).

They recommended that the UK Governments should:

- **39 (b) Abolish all methods of restraint against children for disciplinary purposes in all institutional settings, both residential and non-residential, and ban the use of any technique designed to inflict pain on children;**
- **(c) Ensure that restraint is used against children exclusively to prevent harm to the child or others and only as a last resort;**
- **72 (d) Abolish the use of isolation rooms;**

### **Use of Restraint in Schools**

I have previously voiced my support for Petition 1548 and continue to do so. I remain concerned about the use of restraint on disabled children in special schools in Scotland.

As the Scottish Government have indicated in their draft guidance, most children will never experience restraint at school. However, if you are a child with a disability, and your disability presents as 'challenging behaviour', then the chances of you being restrained rise significantly. As a disabled child, you are also statistically much more likely to be vulnerable to abuse. Clearly, the two risks are not always interconnected, but there remains the potential for them to be so.

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<sup>1</sup> The Concluding Observations are a series of recommendations made by the UN Committee on the Rights of the Child, following the examination of a State Party (= a country that has ratified the UN Convention on the Rights of the Child). The Concluding Observations are designed to highlight where a country can make improvements in safeguarding children's rights.

I acknowledge that there is a very narrow set of circumstances in which restraint on a child may be appropriate. My view, and that of the UN Committee on the Rights of the Child, is that it should only ever be used as a 'last resort', to protect a child, other children and those working with them, and to remove them from immediate danger. Restraint should never be seen as an acceptable or normal part of the school day.

### Monitoring & Data Analysis

The UN Committee on the Rights of the Child said that the lack of consistent recording of incidents of restraint was also of concern. They recommended that the UK Governments should:

**(d) Systematically and regularly collect and publish disaggregated data on the use of restraint and other restrictive interventions on children in order to monitor the appropriateness of discipline and behaviour management for children in all settings, including in education, custody, mental health, welfare and immigration settings.**

Without a clear picture of the number of restraints taking place on disabled children, and without analysis to establish whether it is being used disproportionately on particular children or by particular staff, any over-use of restraint is likely to remain hidden. The children I am referring to here will often have limited communication, which can make raising complaints about restraint, or its use by particular members of staff, very difficult.

### Scottish Government Draft Guidance

I welcome the Scottish Government's engagement in this issue, and their commitment to revised guidance. I am pleased to see that changes are being implemented in relation to school inspections, as part of How Good Is Our School 4. I note, however, that in their letter the Scottish Government refers to the Holding Safely Guidance from 2005. This guidance was principally designed for children in residential care, was drafted 11 years ago, and was not written specifically with disabled children in mind.

In their letter, the Scottish Government also provides information about the stakeholders with whom they have consulted in order to form a view about whether stand-alone guidance for the use of restraint on disabled children in school is necessary. One notable exception to the list of consultees is disabled children and young people themselves. I would suggest that it is difficult to establish a true picture of an issue, and the potential rights implications, without first having ascertained the views of those directly affected.

It is important to highlight that restraint can take a number of forms and may not be restricted to the use of 'approved holds'. That is, holds that staff have been trained to use and which are designed not to injure the child whilst they are being restrained.

Restraint might also involve the use of inappropriate harnesses on wheelchairs, which seek to restrict a child's movements. Whilst these harnesses may sometimes be necessary for safety purposes (e.g. when a child is being transported to school), if they are used for the purposes of preventing a child moving around and disrupting a classroom, then that could also be classed as a restraint. This is a broad and complex area, which is worthy of further investigation.

I understand that the Scottish Government has taken the decision to include guidance on restraint as part of a document on positive behaviour management and preventing exclusions. I can understand why they have chosen to do so, given the petitioner's focus on positive behaviour support. I am concerned, however, such an approach does not allow for a full exploration of the children's rights implications of a child being restrained or secluded. In solely focusing on the child's behaviour, there is a risk that any opportunity to highlight indicators of abuse may be missed.

The Scottish Government have also suggested that local authorities should produce localised guidance on de-escalation, restraint and physical intervention. I do not agree. It is vital that a consistent approach is taken across Scotland. Otherwise, there is no way of ensuring the same protections are being afforded to all disabled children and young people. Any national guidance could be drafted to allow for some degree of local flexibility.

At the same time, there needs to be consistent data collection and analysis at both a local and national level. Stand-alone guidance on this topic is in my view therefore desirable.

My belief is that concerns about the use of restraint are likely to be under-reported. Parents and pupils may be reluctant to complain as the use of restraint may be portrayed as a necessary part of special school life.

Those being restrained may have learning or communication difficulties, that can make it difficult to complain. Parents may have fought to obtain a place at their chosen special school. As such, they may not want to jeopardise their child's space by being seen to be 'difficult'.

I believe that the use of restraint and seclusion of disabled children in special schools merits further examination, not least in light of the UN Committee on the Rights of the Child's 2016 Concluding Observations.

Anecdotal evidence I have received from the parents of disabled children contacting my office leads me to believe that there is sufficient subject matter to merit a Committee Inquiry, should the Committee feel that this is an appropriate way forward.

I hope this provides some helpful insight to the Committee. I and my staff would be happy to discuss this with you further, if you would find this useful.

Yours sincerely

**Tam Baillie, Children and Young People's Commissioner Scotland**