

PE1548/AA

Dr Brodie Paterson (CALM) Letter of 6 December 2016

Preface: CALM are the largest provider of specialist training and consultancy to services working with children whose distress manifests in behaviours that make them difficult to support based in Scotland. We work across the UK and internationally in education social care and health. The track record of our staff includes conducting the first UK research evaluating the impact of training in this area, organising the first international conference focusing on reducing the use of restrictive interventions (restraint and seclusion) and conducting the first UK research into restraint related injuries and deaths. As the clinical director of CALM my practice has focused on supporting people with severely challenging behaviour for some 40 years. I have to date prepared more than 90 expert witness reports in civil and criminal cases involving the use of force, training and restrictive interventions. I have degrees in Psychology, Education and Social Policy and I am presently chair of the European Network for Training in the Management of Aggression. I am therefore very much an expert on the matters raised in the petition.

On the basis of that expertise I note and welcome the committee confirming the view of Scottish Government that any use of physical intervention and physical restraint should be seen within the context of early intervention, positive relationships and behaviour and used only as a last resort, in line with the UNCRC's recommendations. I also very much welcome the suggestion that the forthcoming *'guidance will also be clear that any incident where a decision is made to physically restrain a child or young person must be recorded and monitored'*. However, the reference to the need for such guidance to be incorporated in *'a local authority's policy on de-escalation, physical intervention and restraint'* caused me concern as a significant number of authorities continue to have no such policies. I would be grateful for confirmation of how government intends to ensure that such policies and guidance are actually developed. It would also be helpful in reassuring parents if Scottish government could explain whether it will ensure that such policies comply with the suggested good practice guidelines on content produced by the British Institute of Learning Disabilities. This would reassure parents best practice in this area is being followed rather than merely talked about. Such concerns are warranted. Following the withdrawal of the previous key guidance in this area entitled Safe and Well in 2015 the Scottish Government wrote to every Scottish Local Authority Director of Education enclosing a checklist, which it was suggested Local Authorities should use to evaluate their local guidance and having identified any gaps resulting from the withdrawal of Safe and Well put in place plans to address them. CALM carried out an FOI requesting that local authorities share the results of that exercise. It appeared only one local authority had carried it out. Scottish government retain the responsibility of protecting and promoting the rights of children and children with disabilities and must be seen to ensure these rights are protected and not merely to suggest to others that they should but not check whether they have actually done so. That would be an abnegation of their responsibility.

I also note the reference to the additional guidance around child protection around disability and acknowledge that this applies to all settings. I welcome its statements that inappropriate restraint, sanctions, humiliation, intimidation, verbal abuse, and having needs ignored; depending on the circumstances, may also be criminal

offences, acts of gross misconduct and reportable to Police Scotland and relevant professional regulatory bodies. However, I would comment that in my experience including that of acting as an expert witness in matters where the use of restraint and seclusion were in use, that social workers and the police typically lack the expertise in behaviour management necessary to determine whether a given practice described as 'time out' is acceptable or represents a potentially significant violation of a child's human rights. I have as yet met neither a social worker or police officer who without my briefing could differentiate 'time out' and 'seclusion' or identify acceptable practice in either instance. As such they are presently not equipped to undertake the role anticipated when an alleged 'behaviour management' strategy becomes the focus of a safeguarding or criminal investigation. Additional more detailed guidance and training in this area will be necessary if they are to be able to fulfill their duties in this area.

I note the reference to Holding Safely and that it should continue to be used as a source of guidance. As a member of the original working party that developed it I would note three things. Firstly, its intended scope was never schools. Secondly, its approach though laudable in focusing on restraint reduction is now badly dated in failing to adequately emphasise human rights. It makes e.g. no reference to the UN convention on the rights of people with disabilities. This is unsurprising because Holding Safely was produced in 2003 some three years before that UN convention was published. Consequently, it really should not be recommended as a source of reference especially in a context in which the primary focus of the petition was on protecting the rights of vulnerable children with disabilities. Thirdly, even with its failings I am unaware of any school in Scotland who on anything but a cursory analysis could demonstrate that they are in compliance with some of its key recommendations around ensuring safety. For example, Holding Safely says that staff involved in restraint must have access to clinical supervision. Supervision in this context means they have access approximately every six weeks to a structured review of their practice, the issues arising from it including their thoughts and feelings about the children concerned and their behaviour. There is a universal consensus in the literature that exposing staff to challenging behaviour who are empowered to make decisions regarding restraint and seclusion without access to such supervision creates an unsafe dynamic in which it becomes likely restraint and seclusion will be misused. Schools struggle to provide supervision in large part because the staff often most likely to be involved in supporting children with severely challenging behaviour are classroom assistants. Their contracts and working practices means there is not time in their paid working day for supervision to be provided. I know of only one Scottish local authority where staff who are expected to use restraint or seclusion as a last resort have access to supervision. If the committee are endorsing recommending Holding Safely as guidance I would hope each member has actually read it and reflected on the implications of its recommendation for schools in conjunction with a teacher in a special school actively involved in supporting children with challenging behaviour. Given the committees continuing recommendation of the policy as a source of guidance this seems to me highly unlikely.

If the committee insist on recommending Holding Safely and there remains some useful guidance contained within it despite its flaws that to date is not reflected in the new guidance produced, can the committee confirm that government will mandate HMIE to develop an audit tool based on Holding safely that would inform the work of school inspectors who are typically almost wholly unfamiliar with the

complex technical, ethical and human rights issues involved in the appropriate use of restraint and seclusion in order that the Holding safely guidance is actually followed in any meaningful way?

That unfamiliarity with the literature and frankly the issues is unfortunately reflected in the statement that on the advice of Scottish Advisory Group on Relationships and Behaviour in Schools (SAGRABIS) that because Scottish schools do not use the term 'seclusion' and the 'emotive' connotations of the term they have decided to use the term separation instead. Put bluntly this position suggests the SAGRABIS are seeking to assuage wholly legitimate parental concern and public anxiety by changing the name rather than ensuring adequate safeguards are put in place to promote and protect the human rights of our most vulnerable children. This is unconscionable nonsense and the committee should frankly be ashamed of itself in having to report it. At a time when other governments including New Zealand are seeking to introduce a ban on seclusion in schools the Scottish government response is to worry about what we call the practice. The response of the international professional community and I suspect of the general public will be one of incredulity and suspicion. Transparency is at the heart of good practice in schools as it is elsewhere and the consistent use of language is central to the research process that serves to develop the evidence base that must underpin it. Both will be seriously damaged by the obfuscation suggested that will do nothing to improve the safety or welfare of vulnerable children.

If one was cynical one might wonder whether changing the terminology was more about enabling the Scottish government to respond to the UNCRC by saying seclusion was no longer being used in Scottish Schools. We would be grateful for reassurance that in the government's response that it is clear that whatever it chooses to call the practice it will be honest enough to tell the UNCRC place sufficient safeguards to ensure it is not misused with vulnerable children. If they do not, then government can be absolutely assured that parents will. My understanding of the duty of the committee is to robustly scrutinise governments response to the petition. I wholly appreciate they are not and should not be expected to be experts in the management of behaviours that challenge in schools and in the extremely sensitive issues regarding their management. One might however have thought that a response that includes an attempt to rename a practice universally understood internationally as seclusion would cause them to have at least some concerns regarding the motives behind such a move. The overall response suggested remains inadequate, ill thought through, ill planned and manifestly ill advised. If SAGRABIS are offering the Scottish Government advice of this nature than the government needs very seriously to consider who it is seeking advice from. We could suggest a variety of internationally acknowledged experts from within and outwith Scotland and the UK who could undertake such a review of practice and policy around the use of restraint and seclusion and bring forward robust and credible proposals based on the research evidence. We would also suggest that the work of SAGRABIS would be significantly enhanced by seeking parental representation on that body especially those of parents of children with severe learning disabilities with challenging behaviour whose needs the group presently continue to fail to appreciate.