

PE1548/GG

Dr Brodie Paterson submission of 24 May 2016

Petition PE1548/Z: Comments on draft guidance

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 presently 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 children and adults with severe learning disabilities and / or ASD whose distress may present as behavior that challenges for some 40 years. I have to date prepared more than 90 expert witness reports in civil and criminal cases involving the use of restraint and seclusion. I have degrees in Psychology, Education and Social Policy and 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 I welcome the view of Scottish Government that any use of any restrictive intervention 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.

However, the continuing 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. My understanding is that such direction already exists arising from the guidance issued in relation to the withdrawal of Safe and Well where authorities were asked to reviews their existing safeguarding arrangements and develop local guidance to replace that which it had contained. It has very largely not been complied with.

There are also existing statutory obligations arising from Health and Safety legislation to address the risks associated with the use of restraint which is often justified on the basis of a child's violence. Under the **The Management of Health and Safety at Work Regulations 1999** Employers must consider the risks to employees (including the risk of reasonably foreseeable violence); decide how significant these risks are; decide what to do to prevent or control the risks; and develop a clear management plan to achieve this. One would assume that such a plan would exist both at local authority and individual school level. Given that, these would be available for inspection by HMIE who could be asked to include a review of such plans and their specific reference to violence, restraint and seclusion in their routine inspections. This simple low cost strategy incorporated into existing inspection arrangements would provide a level of oversight previously lacking and is in the gift of Scottish Government.

Otherwise, given that local authorities appear to have been remiss both in relation to previous suggestions and to complying with their statutory obligations it seems highly

unlikely further suggestions from government will make much impact. This is unacceptable because continuing poor practice in this area will place children significant risk of serious harm from restraints and seclusion that may otherwise have been avoided.

I note the guidance makes no reference to the British Institute of Learning Disabilities (BILD) either in the text or as reference source. This is unfortunate as BILD have produced exemplary guidance on the content and focus of policy in this area and it seems perverse not to include reference to it BILD Code of Practice for minimising the use of restrictive physical interventions.

Equally perverse seems the decision not to explicitly define 'time out'. The term and the practice are the source of considerable confusion and associated with some poor and some frankly abusive practice in some Scottish Schools. It is wholly inappropriate in such a context for Government to leave local authorities who clearly lack expertise in such matters to come up with their own definitions.

From a technical perspective in which classification for recording and international comparative purposes is important I would also note that seclusion is never considered a form of 'physical restraint'. Some authors including myself have argued that it should be viewed as a form of mechanical restraint in which locks substitute for straps, etc. but no one to my knowledge has ever confused it with physical restraint which always means physical holding.

I note the reference to 'Holding Safely' has been dropped from the previous draft guidance but this means that I along with the whole education sector, are now unclear if this reflects a change of policy. As noted in previous correspondence whilst there are major flaws in suggesting Holding Safely for use in Schools it does mandate that staff who are likely to be involved in restraint have access approximately every six weeks to 'supervision'. This comprises a structured review of staff practice and the issues arising from it including their thoughts and feelings about the children concerned and their behaviour. It is different from and in addition to, post incident support and/or debriefing following an incident being continuous and proactive. 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 highly likely restraint and seclusion will be misused. Government must clarify whether they continue to endorse Holding Safely for Schools and if not what is their view as to how such supervision should be delivered.

Finally, I note the continuing emphasis that the key guidance on good practice should be developed by local authorities and incorporated in individual LA policies on de-escalation and physical intervention. Unfortunately, I note a significant proportion of Scottish LA Education Departments continue to have no such policies or have policies simply forbidding the use of physical interventions and no plans to develop or amend them. The technical and conceptual complexity and the reputational risks involved with developing such a policy means at least some appear to be actively avoiding doing so. The mechanism suggested by which the Scottish Governments laudable sentiments will actually be put into practice does not seem therefore in many areas to actually exist or be likely to exist in the near future. In the end policy statements to enjoy support have to be credible and this is not.