



Executive Summary



On 30 March 2018, the Children and Young People's Commissioner Scotland began a formal investigation into 'Restraint and Seclusion in Scotland's Schools'. This issue was identified as a priority for the office's first investigation based on careful consideration of the rights issues at stake, the implications of those rights being breached, the vulnerability of the children and young people involved, and the extent to which concerns have been raised through the office's advice function.

We chose to focus the investigation on two main elements;

- The existence and adequacy of policies and guidance which reflect the law and the obligations of the State under international human rights instruments. These are an essential pre-requisite to accountability and redress.
- The extent to which incidents are recorded and reported at local authority level. Recording of incidents of restraint and seclusion is recognised internationally as a critical means of ensuring that practice is appropriately monitored and scrutinised, as well as fully rights-compliant.

Context

International human rights law states that children are entitled to higher standards of protection to take account of their vulnerability and the inherent imbalance of power between them and adults.

Children's human rights are set out in a number of international instruments including the European Convention on Human Rights (ECHR), the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the United Nations Convention on the Rights of the Child (UNCRC).

They make clear that all children have the right to feel safe, just as they have rights to have decisions made in their best interests, to make their views known and have those views taken into account when decisions are made that affect them. Children should not be discriminated against. They have a right to education, to dignity, to bodily integrity, and to be protected from cruel, inhuman or degrading treatment. They have the right not to be deprived of their liberty.

The investigation

We required all 32 local authorities to provide us with copies of their policy documents and recording forms governing restraint and seclusion. They were also required to complete an online evidence gathering form.



Key Findings



Policies

Four out of thirty two local authorities had no policies or guidance in place to govern the safe and lawful use of restraint and seclusion.

Even where policies did exist, children and young people were rarely, if ever, directly involved in the development of these documents.

Children's rights are referenced in many policies but not given meaningful expression in terms of how they should impact on practice.

The Scottish Government has not produced a national policy to ensure consistent and lawful practice.

This means that in some local authorities, children may be subject to restraint and seclusion without any policy or guidance in place to support lawful and rights-compliant practice. Even where policies do exist, they create the potential for significant variations in practice across local authorities.

Recording

Only 18 local authorities record all incidents of restraint and seclusion within their area. Four local authorities do not record any incidents at all. Those that did record and report data, identified 2,674 incidents relating to 386 children across the school year 2017-18.

Children's views are not routinely recorded by most local authorities following an incident where restraint and/or seclusion is used.

Only 12 local authorities were able to provide full or partial data on the number of children with disabilities or other additional support needs who had been the subject of restraint or seclusion in the previous year.

Scottish Government does not record data on restraint and seclusion, despite calls from the United Nations for it to do so.

This means that we do not know with any degree of certainty how many incidents of restraint and seclusion take place in Scotland each year, which children are most affected, how frequently and how seriously. The Scottish Government has not provided clear direction to local authorities in order to ensure consistent policies and mechanisms for recording across the country.

Restraint

Restraint may be a violation of children's rights to respect for their bodily integrity under Article 8 of the ECHR.

Restraint is inconsistently defined across local authorities, with some referring to the *use of force*, while others define it more broadly.

Only 18 of the 32 local authorities state clearly that restraint should be used a last resort when the child or another person is at immediate risk of harm.

Some local authorities permit the use of restraint to prevent damage to property.

This means that practice is inconsistent and may risk breaching children's human rights.

Seclusion

Seclusion may constitute deprivation of liberty, which is a breach of children's rights under Article 5 of the ECHR.

Local authority guidance on seclusion generally does not reflect the legal tests to ensure compliance with the ECHR. This creates significant risks for local authorities and for children. For example, only one local authority recognised that deprivation of liberty is only lawful if authorised by a court or tribunal.

This means that staff are not provided with a clear explanation of when (if ever) seclusion might be lawful and when it might become deprivation of liberty. In the absence of clear policies and guidance that support lawful decision making, local authorities run the risk of significant breaches of the law and of children's rights.

List of Recommendations



1. Local authorities should, as a matter of urgency, ensure that no restraint or seclusion takes place in the absence of clear consistent policies and procedures at local authority level to govern its use.
2. The Scottish Government should publish a rights-based national policy and guidance on restraint and seclusion in schools. Children and young people should be involved at all stages of this process to inform its development. The policy and guidance should be accompanied by promotion and awareness raising.
3. Local authorities should record all incidents of restraint and seclusion in schools on a standardised national form. Anonymised statistical data should be reported to the Scottish Government's Children and Families Directorate.
4. The Scottish Government should analyse and publish this data as part of its official statistics.
5. Local authorities should ensure that all recording forms at school level include sections for de-escalation techniques considered and attempted, the child's and parents' and carers' views. They should be incorporated into the assessment and planning processes in place under Additional Support for Learning legislation and Staged Intervention processes, as well as the GIRFEC National Practice Model and SEEMiS data management system.
6. In the interim, all local authorities should ensure that they are recording all incidents of restraint and seclusion.
7. The Scottish Government should ensure that national policy and guidance is clearly set within a human rights framework, including specific reference to the relevant articles of the European Convention on Human Rights, the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities, and other relevant international human rights instruments.
8. The Scottish Government should ensure that the practical impact of respect for rights on practice is explained through the use of examples and case studies in national policy and guidance.
9. The Scottish Government should develop clear rights-based definitions of both restraint and seclusion as part of national policy and guidance.
10. The Scottish Government should ensure that the national policy and guidance sets out clear criteria on the use of restraint and seclusion, linked to the rights framework to ensure that children's rights are not breached, using examples to help staff understand appropriate and lawful use of these techniques.
11. The Scottish Government should ensure that the national policy and guidance on the use of seclusion in schools draws a clear, well understood and well-communicated distinction between the use of a supervised, separate space as a planned response to a child's individual needs and placing a child in a room on their own where they are unable to indicate and receive an immediate response to discomfort or distress.

12. Local authorities should amend their policies where necessary to make clear that damage to property should only be a justification for the use of restraint or seclusion when it presents an immediate risk of harm to the child or another individual. The same principle should be reflected in national policy and guidance.
13. Scottish Government and local authorities should ensure that all policies, whether at national or local level, make clear that restraint and seclusion are measures of last resort.
14. Local authorities should ensure that the child's plan includes de-escalation techniques and a risk assessment.
15. Local authorities should ensure that all children considered to potentially require physical intervention have a plan agreed in advance with the child and their parent(s) and/ or carer(s).
16. Local authorities should ensure that the child's plan is reviewed on a regular basis, as well as following any incident of restraint or seclusion.
17. Local authorities should ensure that parents and carers are informed as soon as reasonably practicable in every instance when restraint or seclusion is used on their child and offered the chance to take part in a post-incident review.
18. Local authorities should ensure that the views of the child are sought, recorded and reflected in all planning, risk assessment and post-incident reviews.
19. Education Scotland and the Care Inspectorate should further scrutinise the use of restraint and seclusion in schools as part of their inspection regimes. The organisations should involve children and young people in developing ways of doing this that enable the voices of children with disabilities or Additional Support Needs to be heard.
20. Local authorities should ensure that restraint and seclusion is only carried out by staff members who are trained to do so.
21. Local authorities should provide training to staff on a proportionate basis, with only those who have been assessed as needing training receiving it.
22. This training should be rights based and in line with the Council of Europe recommendations set out in Recommendation 2004(10) and with the principles in the Common Core.

All those who are subject to recommendations will be required to respond to the Commissioner in writing by 31 January 2019.

For further information contact :

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