No Safe Place:

Restraint and Seclusion in Scotland's Schools

CHILDREN & YOUNG PEOPLE'S Commissioner Scotland

Acknowledgments

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Foreword by the Commissioner

When I took office in May 2017, I asked children and young people what they want from their Commissioner. They told me, clearly and unequivocally, that they want me to stand up and speak out on their behalf. They want me to use my legal powers to actively protect children and young people's rights and make sure they are treated fairly, particularly in law. They want me to hold people accountable when the implementation of their rights falls short of what is required.

As Commissioner I have a range of tools and an expert multi-disciplinary team at my disposal to deliver on this commitment. In particular, I have formal powers of investigation which are set out in the Commissioner for Children and Young People (Scotland) Act 2003. My office can investigate:

"whether, by what means and to what extent, a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people."[1]

A fuller explanation of the statutory powers is set out in the Terms of Reference for this investigation which were published on 29 March 2018.[2]

Ensuring we make effective use of these powers requires us to balance and prioritise a wide range of competing issues, each of them important; each of them having a legitimate claim on my office's time and resources. These are often tough calls to make.

However, the decision to make Restraint and Seclusion in Scotland's Schools the first topic for investigation was relatively straightforward. It is based on careful consideration of the rights issues at stake and 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 with me and my staff through the office's advice function.

My office has received dozens of enquiries, calls and emails from parents and carers of children with disabilities and other Additional Support Needs, as well as professionals who work with them. They told us of their concerns about the treatment of children in schools across Scotland, and in particular about the use of restraint and seclusion techniques as a method of behaviour management. We heard that children can be restrained and/or secluded in response to challenging behaviour, without any consideration of what may lie behind that behaviour or the individual child's rights and needs.

We have been told of children being "regularly restrained in front of other children", and of the terrible loss of dignity for children restrained or placed in seclusion who become so distressed that they soil themselves. We have been sent photographs of disabled children with injuries alleged to have been sustained at school while in the care and under the supervision of adult professionals. Parents and carers have spoken to us of the frustration they feel in trying to

1 Commissioner for Children and Young People (Scotland) Act 2003, s 7(1).

2 Available at: https://www.cypcs.org.uk/advice/commissioner-launches-formal-investigation-into-restraint-and-seclusion .

challenge practice they consider has resulted in physical and emotional harm to their children. Some parents and carers have even resorted to reporting incidents to the police, seeking criminal prosecutions for assault.

There may be times when the use of restraint or seclusion is a necessary response as a measure of last resort to prevent harm to a child or to others. But under any circumstances, it has a profound impact on children: both those who experience it, and those who witness it.

We chose to focus the investigation on two main elements; firstly 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. Secondly, 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 rights-compliant and appropriately monitored and scrutinised.

This is the first occasion that the office has used the investigative powers granted to me by the Scottish Parliament. I have made a commitment to children and young people that it will not be the last.

Bruce Adamson
Children and Young People's Commissioner Scotland

My Philosopher Brother

(provided to us by M, a young person)

As I sat in the corner on the blue spiky carpet of the bright, colourful classroom, there was no room for embarrassment as there once was before, only anger. I must have been about ten or eleven and was desperately holding onto my younger brother's hand. He looked so innocent, so tiny, curled up into a position of safety - covering his head and protecting his vital organs. I looked up into the face of the 'leader' who caused him this trauma, time and time again. Her words were harsh, asking why he was this way, asking if I had made him like this simply because the only word he would dare to write down was my name.

Maybe I should have reminded her of a door ajar with two enormous figures looming over a cowering child. He was sobbing uncontrollably while they tried to control his tears. Statement necklace, white top, crossed arms, long flared skirt, something missing:

"WIPE YOUR TEARS AWAY AND GET ON WITH THE WORK."

Or maybe the time he was dragged from his safe position, curled up on the floor, through an open-plan school while everyone looked the other way.

He didn't, wouldn't speak to them anymore. His voice was gone, broken, shut down, quieted, still. He had other ways of communicating then; growling, screaming, crawling through the corridors to find me, spelling out words with his socks. Except he couldn't spell. The word was always 'mOLe' over and over again, sheets of discarded paper like a photocopier left on repeat. 'Selective mutism' the psychologist called it.

I remember the bunny hops. What was the reason again? He didn't run because the teachers would chase him. He didn't walk because the teachers would trap him. So he bunny hopped, low for safety, till he found a dark place to hide.

When he was tiny all his treasured soft toys were fierce, instinctive, intelligent animals; Wolfie, Dolphin, Tiger. How well he cared for them. They accompanied us everywhere, part of the family, loyal and magnificent, always there. How alone he was on that first day of school, without his pack. How I wished they could protect him now.

I don't know why it had not occurred to her that she was the one responsible. I didn't reply, but in this moment, as more teachers gathered around as they always did, staring at us, I felt the full force of the complete ignorance and misunderstanding we were faced with. I wanted to scream at them and ask them why they were doing this to us. I didn't. I was always very polite and made the mistake of trusting them. I never thought that people who I had been brought up to listen to and respect could cause this: The despair; the terror; the anguish; the silence; the sickly pallor; the retreat into his imaginary world where no one could reach him.

I looked around at the room I was in. I had been taught in there once. I looked at all the paintings on the walls, all the self-portraits of all the 'normal' children, looking down on us. Their poems and stories, mocking us. I thought about all the times I'd overheard these children gossiping about him and smirking. They always stopped when they saw me, trying to hide their giggling smiles with their hands. I struggle to describe how confused I was. I couldn't understand why they hated my brother; I felt I should hate him too. All I felt then was shame and embarrassment. Now I'm ashamed and embarrassed to have ever felt that way.

That sort of thing shouldn't happen nowadays. People with disabilities are meant to be treated equally. Teachers are meant to be able to recognise the signs of autism and find the best ways to support and help their pupils.

From that moment on I started to appreciate everything that is different about him, all his little quirks and obsessions with random things. He is beautiful in my eyes and I can't understand why society doesn't see this too.

That school is gone now, a distant nightmare. So is that scared, silent child. Now I see him in the corridors, tall, proud, popular and confident. He speaks now. He speaks with a voice full of clarity, passion and humour. He has an opinion about everything and everyone listens. He is the responsible citizen, the effective contributor, the confident individual, the successful learner. His Modern Studies teacher says he should become a politician. He wonders why people obsess with becoming. Why not just be?

My philosopher brother, the only thing I would ever change about you is other people's attitudes. I hear you and I will tell the world.

WHAT THEY NEED TO HEAR IS:

Behaviour is communication

Behaviour IS communication

BEHAVIOUR is communication

Behaviour is COMMUNICATION

Behaviour is Comm.....

(M, a young person)

Introduction

There is an inherent imbalance of power between adults and children. Children are entitled to higher standards of protection due to their age and vulnerability. This is a point well recognised in international human rights law. The Universal Declaration on Human Rights[3] states explicitly that children are entitled to special care and assistance. This concept also runs as a thread throughout the UN Convention on the Rights of the Child (UNCRC). [4].

The UNCRC provides that all children have the right to feel safe, just as they have rights to have decisions made in their best interests and 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 child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

*Preamble to the **United Nations Convention on the Rights of the Child** (1989), citing the **Declaration of the Rights of the Child** (1959)*

UNCRC

Article 2 - all children have the rights the Convention lays out, and no child should be discriminated against

Article 3 - the best interests of a child should be a primary consideration in any action that would have an impact on them

Article 12 - children have the right to express a view and have it taken into consideration when decisions are made about them

Article 16 - children's rights to privacy and family life should be respected, which includes the right to bodily integrity

Article 19 - children should be protected from all forms of violence and injury

Article 23 - children with disabilities should enjoy full lives in conditions that uphold their dignity

Article 24 - children should enjoy the highest attainable standard of health

Article 28 - schools should discipline children in a manner consistent with their dignity

Article 29 - children's education should allow them to develop their personality, talents and mental and physical abilities to their fullest potential.

Article 37 - children have a right to be protected from cruel, inhuman or degrading treatment or punishment, and a right not to be deprived of their liberty unlawfully or arbitrarily.

3 General Assembly of the United Nations (1948) Universal Declaration on Human Rights, art. 25.

4 General Assembly of the United Nations (1989) United Nations Convention on the Rights of the Child.

This power imbalance is exacerbated when adults are in positions of authority and trust, and when children are particularly vulnerable due to disability or other Additional Support Needs. Because of this, additional protections are enshrined in the UN Convention on the Rights of Persons with Disabilities (UNCRPD). [5] This includes the right not to be excluded from education as a result of disability and to receive additional support to facilitate an effective education.

UNCRPD

Article 5 - the right to equality and non-discrimination

Article 7 - the right of disabled children to enjoy all of their rights and freedoms

Article 14 - prohibits unlawful or arbitrary deprivation of liberty

Article 15 - prohibits torture or cruel, inhuman or degrading treatment or punishment

Article 17 - the protection of physical and mental integrity

Article 24 - the right to education

In the Concluding Observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, the UN Committee on the Rights of the Child expressed its concern about "The use of restraint and seclusion on children with psycho-social disabilities, including children with autism, in schools". [6]

Furthermore, in its 2017 Concluding Observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, the UN Committee on the Rights of Persons with Disabilities urged the UK to "Adopt appropriate measures to eradicate the use of restraint for reasons related to disability within all settings", and "Set up strategies, in collaboration with monitoring authorities and national human rights institutions, in order to identify and prevent the use of restraint for children and young persons with disabilities" [7]

ECHR

Article 3 - prohibits torture, inhuman or degrading treatment or punishment

Article 5 - the right to liberty and security

Article 8 - the right to respect for private life, which includes respect for physical integrity

5 General Assembly of the United Nations (2006) United Nations Convention on the Rights of Persons with Disabilities.

6 UN Committee on the Rights of the Child (2016) Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland.

7 UN Committee on the Rights of the Child (2017) Concluding Observations on the initial report of the United Kingdom of Great Britain and Northern Ireland.

Children are also protected by the European Convention on Human Rights (ECHR) [8], which is directly incorporated into UK law through the Human Rights Act. [9]. It is unlawful for a public authority to act in way that is incompatible with a Convention right. The ECHR can be directly enforced through the domestic courts and ultimately the European Court of Human Rights in Strasbourg.

In terms of domestic legislation, Part 1 of the Children and Young People (Scotland) Act 2014 requires that Scottish Ministers must keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and take those steps if they consider it appropriate to do so. [10]

Despite the Scottish Government's commitment to embed these rights into policy and practice in schools, it is not evident that it has succeeded in fulfilling its responsibilities in relation to restraint and seclusion in schools under the UNCRC or UNCRPD, particularly in relation to the Concluding Observations from the UN Committee on the Rights of the Child.[11]

8 Council of Europe (1950) European Convention on Human Rights.

9 Human Rights Act (1998).

10 Children and Young People (Scotland) Act 2014, s 1(1) (a).

11 UN Committee on the Rights of the Child (2016) Concluding Observations on the initial report of the United Kingdom of Great Britain and Northern Ireland. CRC/C/GBR/CO/5 (Geneva: UN Committee on the Rights of the Child) p.8.

National Policy: Sufficient Progress?

Concerns about restraint and seclusion in schools have been raised with the Scottish Government by the UN, by civil society and by parents and carers of children with disabilities and/or Additional Support Needs. In response, a revised version of the Scottish Government's guidance: 'Included, Engaged and Involved Part Two' was issued in 2017, which sets out national policy on preventing and managing school exclusions. It states that: "Any incident where a decision is made to physically intervene must be recorded and monitored. Details on how this should be undertaken should be included in an education authority's policy on de-escalation, physical intervention". [12]

It goes on to say that: "The rights of all children and young people must be a key consideration where physical intervention is being considered".[13]

Our office retains a number of outstanding concerns about this guidance; in particular, the fact that it is focused and framed around behaviour management and exclusions risks giving the impression that the problem is necessarily a result of the child's behaviour rather than an unmet or unrecognised need. This has been identified as a potential issue for children with Autism Spectrum Disorder in particular.

> "The autism evidence... does highlight the pressure on the education system in relation to this condition and also the danger that children with Additional Support Needs like ASD can be perceived socially by children and parents as 'the problem'."
>
> *Education and Skills Committee: How is Additional Support for Learning Working in Practice?* [14]

However, the guidance does set a clear expectation by the Scottish Government that:

- Every education authority should have a policy on physical intervention
- Policies should include a mechanism/ process for decisions on physical intervention to be made and recorded
- All decisions to physically intervene should be recorded in line with the relevant policy
- In every case, the record should demonstrate how children's rights have been taken into account in reaching the decision to physically intervene.

This is welcome, as the existence of clear policies, procedures, guidance and training is essential. Parents and carers need to be confident that their children will be safe, supported and happy at school. They need to know what they can expect from those who make decisions about their children and how to challenge decisions when things go wrong. Teachers need to know what conduct is expected of them and feel that they are trained and supported to manage situations in a way that promotes and protects the

12 Scottish Government (2017) Included, Engaged and Involved Part Two (Edinburgh: Scottish Government) p.23.

13 Scottish Government, p.24.

14 Education and Skills Committee (2017) How is Additional Support for Learning Working in Practice 6th Report, 2017 (Session 5). (Edinburgh: The Scottish Parliament. SP Paper 140) p. 58.

rights of children. Most importantly, all children and young people must be able to feel that school is a safe place where rights are respected.

Full and accurate recording of incidents and decisions is also essential. Parent and carer groups have shared hundreds of case studies with each other in person and through online fora, but have struggled to achieve the justice they are seeking for their children. They tell us that their information is frequently regarded as anecdotal, while children and young people are often not interviewed by police or other authorities because of their age and/or disability. Without systematic recording and audit of all incidents of restraint and seclusion, schools and local authorities cannot be confident that they are fulfilling their duties to the children in their care, or that their staff are acting lawfully and in line with agreed policy.

However, as the Scottish Government is not currently undertaking the monitoring role called for by the UN Committee on the Rights of the Child it is not clear whether policies are in place; whether they reflect children's rights; and whether they provide clearly that restraint and seclusion should be a last resort as required by international human rights bodies. Furthermore, there is no way to know with any certainty how many children are being restrained or secluded in our schools, how frequently this is happening or whether children are being injured or distressed as a result.

The purpose of our investigation was to discover whether and to what extent Scotland is meeting its obligations towards children, and whether local authorities are complying with the Scottish Government's guidance. In simple terms: are the rights, views and interests of children and young people reflected in the policies and guidance that govern the use, recording and monitoring of restraint and seclusion in schools?

Our investigation: what we asked

In order to establish how the use of restraint and seclusion in schools is governed, we invoked the Commissioner's formal powers of investigation as set out in the Commissioner for Children and Young People (Scotland) Act 2003. We required all 32 local authorities in Scotland to provide us with a copy of their current policies on the use of restraint and seclusion in educational establishments, as well as their forms for recording the use of restraint and/or seclusion. We also required them to complete a short online evidence-gathering questionnaire on policies, recording and statistics (a copy of the questions can be found on our website). All 32 authorities submitted evidence as requested, although there were some issues with multiple and incomplete submissions of the online evidence form, and inconsistent information between the online form and the documents we were sent.

Children's views

To ensure that the voices of children are at the centre of this report we have included the anonymised experiences of children who have been restrained or secluded where we received consent to do so. These were provided and facilitated by the families who contacted us to express their concerns about these practices in schools. The testimony of these children and young people provides a powerful counterpoint to the analysis of law, policy and practice, and should remind us of the real and long-lasting impact restraint and seclusion can have. In parallel, we conducted three workshops with children and young people to discover their views about the use of restraint and seclusion in schools. The information from the workshops adds helpful context to the report and should remind us that children respond and react to these practices, even where they may not have directly experienced restraint or seclusion themselves.

Findings

Policies

From the evidence submitted, it appears that four local authorities (Aberdeen City, Renfrewshire, East Dunbartonshire and Midlothian) did not have currently have policies on restraint and seclusion; although the latter three are all in the process of developing them. However, this was difficult to ascertain.

Six local authorities indicated in the online evidence-gathering forms that they have no policies on restraint and/or seclusion, although three of these (Perth and Kinross, East Ayrshire and Falkirk) did actually submit documents to us for analysis. Renfrewshire, Aberdeen City and East Dunbartonshire did not. One local authority, which stated in the evidence-gathering form that it had policies (Midlothian), responded to our formal request for copies of documents by providing a draft document.

This confusion was concerning, as was the often conflicting information found when comparing the documents provided with the responses in the evidence-gathering forms.

One local authority (Edinburgh City Council) had no policy for mainstream schools but did have a policy for "special schools, special classes and additional support for learning services".

It is clear that lack of policy or guidance documents does not mean that restraint and seclusion is not taking place. For example, despite presenting no policy documents, Aberdeen City Council were able to report that 60 different techniques had been used to physically intervene with children.

Based on the evidence provided, we are deeply concerned that significant physical interventions may be taking place in some authorities without any kind of policy or procedure at local authority level to ensure the lawful and rights-compliant treatment of children. The risks of ungoverned practice are significant, for staff and local authorities as well as for children.

Where policies do exist, what was immediately evident from the information submitted is the variation between local authorities in the type of documents in use, their status and their context. We were sent documents with a wide variety of titles, including management circulars, guidance, policies and procedures. Many local authorities submitted more than one document, although some of those documents did not make any reference to the use of restraint or seclusion and it is unclear why they had been thought to be relevant. Many policies are located, inappropriately in our view, within a framework of violence at work or health and safety guidance; others are more specifically framed around behaviour management.

Examples of documents submitted include:

- Use of physical intervention in educational establishments
- Violence at work policy
- Violence management and control policy
- Aggressive and threatening situations
- Procedures for CALM-trained staff
- Guidance on managing challenging behaviour
- Guidance on the levels of intervention with children and young people expected from staff
- Use of safe spaces good practice document
- Improving behaviour policy
- De-escalation and physical intervention in educational establishments
- Corporate Health and Safety policy
- Exclusions policy and procedural guidance
- Pupil time out approaches

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.**

Recording

In order to ensure that children are safeguarded and protected, recording of incidents of restraint and seclusion is essential. We were concerned to find that the range and inconsistency in policies provided and the lack of guidance specific to restraint and/or seclusion is further complicated by the variety and purpose(s) of forms to be completed. This creates a confusing landscape, both for school staff trying to use these materials and particularly for parents and children who attempt to interpret the information provided.

We found the variety of forms submitted to us unacceptable. They ranged from violent incident and health and safety incident reports to a form for assessing and managing expected risks for children who present challenging behaviour, with an additional report for recording restraint incidents and a restraint log.

Some local authorities include safe space recording in violent incident reporting forms, as well as a form for recording violent incidents at work when a CALM[15] technique has been used. Others have a physical assault and accident form which includes a section on restraint.

Many local authorities use on-line health and safety management systems reporting software, including SHE (Safety, Health and Environment) and RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013), and so were unable to provide examples of template forms.

Even where there are specific forms relating to restraint and/or seclusion, there are often other reports to complete alongside them and it is not always clear which reports are required and when. Nor is it clearly stated that a separate report must be filled in for every incident.

We recognise that local authorities and schools have a duty towards their staff in terms of health and safety; incidents and injuries to staff must be recorded and monitored. This should however, be done separately to any recording of restraint and seclusion in order to allow a proper focus on the necessity and proportionality of the intervention and the rights, views and interests of the child.

We note that each child in Scotland has a SEEMiS record (a data management system) which contains pastoral notes and chronologies of significant events, as well as Staged Intervention paperwork for children with additional support for leaning needs/ Additional Support Needs. The SEEMiS data system also contains a 'Wellbeing' application which enables an assessment of needs under GIRFEC, recording the needs and risk assessment in the child's pastoral notes, to inform the Child's Plan. However, there was little evidence provided of any link between recording of restraint or seclusion and SEEMiS, despite this appearing to be the most obvious place for such issues to be recorded.

18 of the 32 local authorities reported that they record all incidents of physical intervention. Six recorded most incidents, three recorded some and four did not

15 CALM Training [online] Available at: https://calmtraining.co.uk/services/training/ [Accessed at 1 November 2018]

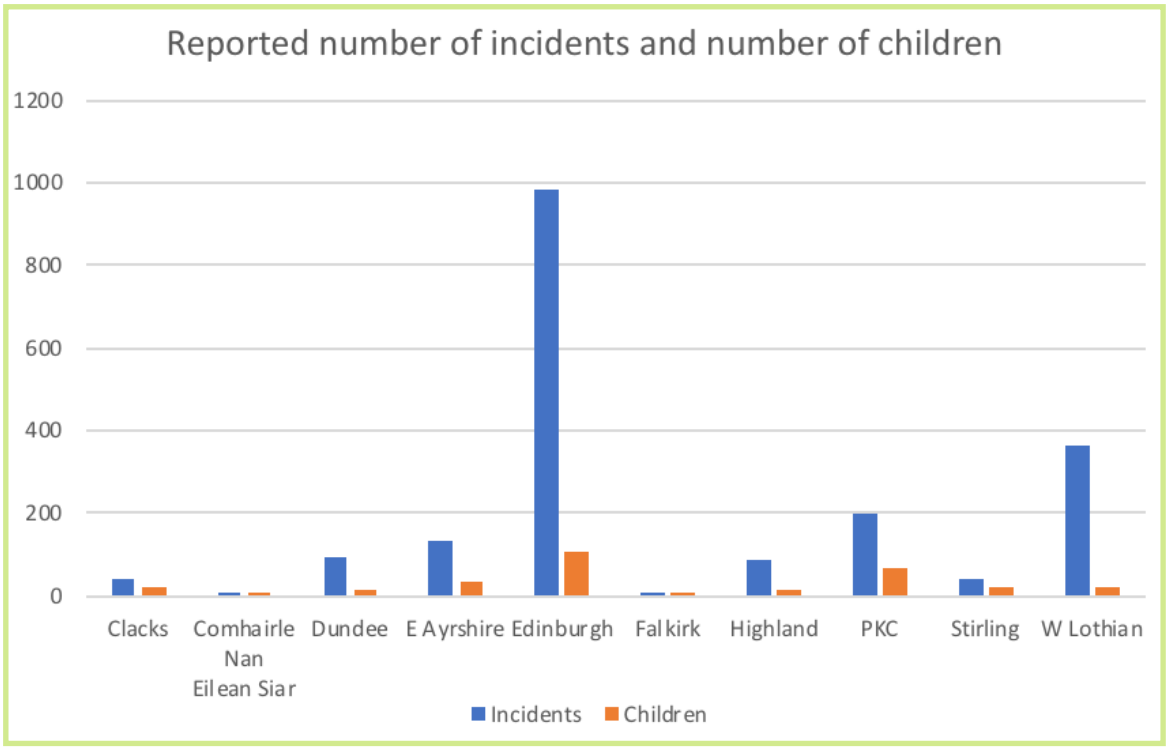
record at all. One authority (Fife) did not specify if it recorded incidents but did provide data. Those authorities that do not record incidents have a concerning information gap in relation to the safe and lawful treatment of children in their schools.

In total 18 authorities were able to provide data, however this was not the same 18 who reported they recorded all incidents. Notably, despite saying that they recorded all incidents on an electronic database, Midlothian, North Lanarkshire, South Lanarkshire, Aberdeen City and Inverclyde were unable to provide any data. Conversely, Angus, Argyll and Bute and Shetland provided data but indicated that they only record most/some incidents. Fife provided data but did not make clear whether it reflected all incidents, most, or just some.

The data provided was also highly variable. We asked how many incidents of physical intervention took place in the school year 2017-18: how many of restraint, and how many of seclusion. We also asked how many children had experienced at least one incident of physical intervention.

In total the 18 authorities reported 2,674 incidents between them. However, only 13 of those recorded the number of children who were the subject of those interventions – 386 in total. On average, for those authorities that reported both sets of data, 5.86 incidents per child were recorded.

The table below sets out the number of reported incidents and the number of children they related to. For ease of comparison the table only includes those authorities that recorded all incidents and were able to provide the data.



Due to the limitations of the data, it is impossible to say with any certainty whether this wide variation is evidence of a much higher prevalence of restraint and seclusion in some local authority areas, the result of different recording practices, or a greater concentration of special schools in particular areas.

The information provided to us by families suggests that restraint and seclusion are used disproportionately with children with disabilities or Additional Support Needs. We were concerned therefore that when we asked how many incidents related to these children, only twelve local authorities were able to provide statistics. We need to exercise a great deal of caution due to the limited data available, but it does seem to support the suggestion that disabled children or those with Additional Support Needs experience these techniques more than their peers. Only with consistent recording on a national basis can the facts be determined and scrutinised.

As a result of this inconsistency in recording practice and methods, collecting and comparing data on a national level, as recommended by the UN Committee on the Rights of the Child, is currently impractical, if not impossible. We still 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.

Given the level of concern expressed to us by parents, carers and young people, this information gap is troubling and precludes any reassurance being offered or accepted about the proportionate and appropriate use of restraint and seclusion in Scottish schools.

> "Is the restraint actually happening because of the child was a threat to someone else or, you know, it's in the child's interest or is that just something that's being filled in after the fact to justify whatever actions were taken. That's something that you have to think about, that it's not just, oh well, some teacher has written down whatever reason and leaving it at that."
>
> *(S. - a young person)*

Inconsistency, confusion and a critical lack of reliable data is the inevitable result of the Scottish Government not providing clear direction to local authorities in order to ensure consistent policies and mechanisms for recording across the country. Doing so would set congruous standards of practice, as well as enabling efficient and effective monitoring and analysis of incidents of restraint and seclusion in individual schools and local authorities, as well as across the country.

Recommendations

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.**

Children's rights, views and interests

Given the potential impact of the use of restraint and seclusion on children's rights, we expected policy documents to have been developed with the active involvement of children and young people, making clear how difficult situations can be managed while at the same time respecting children's rights.

In response to the question "Were children and young people's rights, views and interests taken into account when reviewing the policy?", a number of authorities expressed confidence about their rights compliance in relation to restraint and seclusion. Orkney Council writes that they are "compliant with United Nations Convention on the Rights of the Child..."., while Scottish Borders Council says that "children's rights as determined by UNCRC were used as a reference throughout".

However, the evidence for that confidence is not always apparent, and the process of developing, drafting and reviewing these documents rarely seems to have involved actively seeking the views of children and young people. When asked whether children and young people's rights, views and interests were taken into account when reviewing policies on physical intervention, only 12 local authorities answered 'yes'. Only two of those (Stirling and Inverclyde) were able to articulate clearly how children and young people had been directly involved.

Others expressed a range of good intentions but more often as an aspiration or an intention, rather than a reflection of previous good practice. For example, Dundee City Council explained that, "We did not have formal consultation with children and young people but plan to do this when reviewing the impact of our new policy...". South Ayrshire Council stated that: "Development of the current draft policy includes preparation of a Child's Rights and Wellbeing Impact Assessment (CRWIA)".

Possibly as a result of children and young people's absence from the drafting and decision-making process, the extent to which rights are given practical effect in the documents is not often apparent.

Specific reference to the UNCRC was made by a number of authorities within their documentation, with a wide range of Articles referred to, although no authority included a comprehensive list of relevant provisions and it was sometimes hard to see how they translated into practice.

For example, while some local authorities, including West Lothian Council and South Ayrshire Council, require the child's views to be recorded when an incident of restraint takes place, many others do not. North Lanarkshire Council makes reference to Article 12 in its documentation and sets an expectation that a 'debrief' will take place with the child if an incident of physical intervention has taken place but does not require that the child's views be recorded.

Although many policy and guidance documents refer specifically to children with Additional Support Needs or disabilities, and a few authorities (e.g. West Lothian Council) refer to the Equality Act 2010, none reference any of the rights or additional protections contained in the UN Convention on the Rights of Persons with Disabilities. We consider this to be a significant omission, particularly as it appears from the limited information provided by local authorities--in addition to that provided in cases referred to our Advice and Investigation team--

that restraint and seclusion are used more frequently with disabled children.

More commonly, documents refer to the European Convention on Human Rights, particularly Article 3 (on the prohibition of torture, inhuman or degrading treatment or punishment). Again, there is little attempt to explain what this means in practice or when the use of restraint or seclusion might be considered a breach of any of the Convention Articles. Some policies do touch on interpretative provisions such as necessity and proportionality, but it is rarely explained that these are concepts which are linked to the rights framework and little guidance is provided on the practical application of these tests.

As we note elsewhere, the use of restraint and seclusion risks breaching a number of children's rights. Practice must therefore be clearly linked to the rights framework so that policies and guidance set out the context, the risks and the tests that must be applied in order for practice to be lawful.

Authorities tend to be better at referencing domestic law. For example, in relation to the Standards in Scotland's Schools etc Act 2000, which prohibits the use of corporal punishment in schools, and to the Common Law offence of assault. Those documents that discussed these pieces of legislation were much clearer about how staff could avoid committing criminal offences. Similar levels of clarity around rights breaches are essential to ensure legal compliance.

GOOD PRACTICE

Dumfries and Galloway Council has a section on a form which must be completed asking "how your actions were in the best interests of the young person".
Article 3 UNCRC

Recommendations

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.**

Using the same dictionary

As noted in our introduction, "all behaviour is communication". This is a reminder that children and young people with particular Additional Support Needs or disabilities may display anxiety or distress through behaviour that presents to adults as challenging. However, too many local authorities explicitly frame this kind of behaviour in policies and guidance as 'aggressive' or 'violent'. We do not think this is appropriate and often runs counter to some of the more reasoned messages contained elsewhere in documentation.

Overall, the sheer range and variety of terminology used within the documents we were sent is surprising. Even where common terms are used, different definitions of these terms are applied across different local authorities. This makes analysis and comparison challenging and is revealing of a culture in which the meaning of words is often ill-defined or inconsistently understood.

The most commonly used term across all local authorities is 'physical intervention', a phrase roomy enough to accommodate a wide range of practices and interpretations. It may include restraint, or seclusion, or both...although not always. For some local authorities physical intervention is defined specifically in relation to the use of force; South Ayrshire Council describes it as "the positive application of force". However, for others (Shetland Council, for example) it includes actions that may not involve the use of force, such as blocking a child's route.

One local authority defines physical intervention as "physically managing distressing, challenging and violent behaviour", while another says that it "is a wide term which includes restraint but also includes methods where holding is not used'. It is phrased as simply as "placing limits on freedom"; defined as referring "to the actions by which one or more people restrict the actions of another...up to and including physical restraint"; and described as "whenever a member or members of staff intentionally, using force, physically restrict a pupil's movements against his/her will".

While we acknowledge the usefulness of having a general term covering a range of situations, 'physical intervention' should not be used as a substitute for restraint or seclusion. It is important to have a clear understanding and consistent usage of the terms for what are serious actions which can have a significant negative impact on children's rights and wellbeing.

Restraint

Restraint is an interference with the child's right to respect for their private life under Article 17 of the Convention on the Rights of Persons with Disabilities, Article 16 of the United Nations Convention on the Rights of the Child and Article 8 of the European Convention on Human Rights. In order to avoid a breach of the child's rights, the interference must be lawful, necessary and proportionate.

These rights also include the right to respect for bodily integrity, a principle which sums up the right of every human being to autonomy and self-determination in regard to their own body. Non-consensual physical intrusion is considered to be a human rights violation, which means that restraint could constitute a breach of the child's Article 8 rights.[16] Children with disabilities or Additional Support Needs are especially vulnerable to such rights breaches, as they are often unable to express their views, or give (or refuse) consent.

In more extreme cases restraint may result in a breach of the child's right to protection from injury, violence and abuse under Article 19 of the Convention on the Rights of the Child. It may even constitute cruel, inhuman or degrading treatment or punishment under Article 3 of the ECHR, Article 37 of the UN Convention on the Rights of the Child and Article 15 of the UN Convention on the Rights of Persons with Disabilities.

For these reasons, restraint must be clearly and consistently defined, and subject to the tests of lawfulness, necessity and proportionality which need to be applied by staff who are expected to use these techniques.

However, in the documents we reviewed, the term restraint suffers from inconsistent definitions. For example, Dumfries and Galloway Council describes it as "the positive application of force with the intent of overpowering the pupil to prevent harm".

Another authority defines it as the "proportionate application of force with the intention of holding a child or young person by completely restricting their mobility".

While use of the word "overpowering" in the first example is troubling, the addition to the definition of the purpose of restraint-- to prevent harm – adds a helpful focus. Use of the term proportionate in the second example is beneficial as a reminder of one of the tests that must be applied for restraint to be lawful.

However, two other local authorities describe restraint as 'the positive application of force with the intention of holding a pupil' missing both the purpose of restraint and the need for proportionality.

In fact, the term 'holding' appears frequently in local authority documents but can be problematic in that there may be no clear distinction between 'restraint' and 'holding', or the differences in meaning are not clear.

Unusually, Comhairle nan Eilean Siar differentiates between kinds of restraint: "restrictive restraint", "mechanical restraint" and "medicinal restraint".

16 Child Rights International Network *Bodily Integrity.* [online] Available at: https://www.crin.org/en/home/what-we-do/policy/bodily-integrity [Accessed 15 Oct. 2018].

Restraint is variously described as 'an act of care', or as 'supportive', 'reactive', 'predictable' or even in a somewhat Orwellian usage, a 'positive handling phase'. This is in stark contrast to the views of children and young people who took part in our workshops,

While we understand the intention that lies behind that positive language, and agree that it is important to emphasise the fact that restraint should not be used in anger, for discipline or for punishment, local authorities should be careful in their use of language not to inadvertently underplay the nature of the act, the impact it can have on the child and the potential for it to be a significant breach of their rights.

> "I don,t like going to X cos school is mince and I don,t want to see the bad teachers and the teachers can,t hold me down on the floor no I did,nt like it and they would,nt let me get up and it was very scary I did,nt like it at all because they hur my neck and they hurt my arm and I had to to to the tolet and they would,nt let me get to the tolet I was dizzy when the teachers hurt on the floor
>
> It,s not good to pee on the floor and it was wet on my trousers that's bad teachers saying no tolet and I did,nt mean to but I was dizzy and it was hurt me that bad"

(as written and provided to us by C. - a young person)

Seclusion

There is even less clarity around the definition of seclusion, as well as markedly less guidance. Only nine local authorities make specific reference to the term 'seclusion' in the documents submitted. Terms used--at times seemingly interchangeably with seclusion include:

- Exclusion
- Segregation
- Chill-out room
- De-escalation room
- Quiet room
- Calming room
- Garden time
- Solitary
- Inclusive exclusion
- Remove
- Time out
- Safe spaces

The first nine words in this list all appear in one local authority's documents.

Some local authorities make no distinction between the terms such as 'safe space' and 'seclusion', although others do distinguish between the two. For instance, Stirling Council stipulates that an area is a safe space, though "not seclusion by our definition as room is unlocked".

Other local authorities are more explicit in their definitions of seclusion, with one saying seclusion "involves separating someone against their will, restricting freedom of movement and forcing them to spend time alone. This would include locking or holding doors/windows closed to prevent an individual from leaving, including blocking an exit" (Dumfries and Galloway Council).

Another describes it as "the supervised confinement of a person in a room in isolation. Its sole aim is to contain severely disturbed behaviour which is likely to cause harm to others which cannot be managed in any other way" (Highland Council). As we have noted with restraint definitions, we find the inclusion of a legitimate purpose to be helpful.

As a result of varying definitions, as well as lack of guidance, there exists the potential for dangerously blurred lines between measures like 'time out' and 'seclusion'. We are concerned that so few of the policies and procedures we examined set out clearly the distinction in practice aside from their different names.

Deprivation of liberty

It is particularly important for local authorities to acknowledge these issues, because the seclusion of a child may constitute a deprivation of liberty in terms of Article 5 of the European Convention on Human Rights. Deprivation of liberty must be authorised by a court or a tribunal in order to be lawful.

There are three measures to the test of deprivation of liberty applied by the courts (described commonly as the Storck criteria).[17] Firstly, that the child is confined for a "not negligible period of time". This will vary according to factors including the intensity of the restrictions imposed. Secondly, that there is a lack of valid consent from the child or a parent exercising legitimate parental rights. Thirdly, that the confinement is attributable to the State.

Importantly, the United Kingdom Supreme Court has provided some assistance in interpreting these criteria. The Court determined that compliance is not consent, which means that authorities cannot rely on the child's failure to object to seclusion as a proxy for consent. It also made clear the fundamental principle that human rights are universal, which means that the child's disability or level of Additional Support Needs are not relevant to determining whether they have been deprived of their liberty – what constitutes deprivation of liberty for a non-disabled child will equally be so in the case of a disabled child. Finally, the Court stated clearly that the benign intent or level of comfort provided for the child is also irrelevant, meaning that however well-intentioned the intervention might be or how comfortable the arrangements, it makes no odds when considering whether a child has been deprived of their liberty. As Lady Hale remarked, "A gilded cage is still a cage" [18].

We expected those councils whose documentation provided for the use of seclusion, to identify those risks and provide clear guidance to staff about the risks of breaching children's ECHR Article 5 rights.

Edinburgh City Council's policy for "special schools, special classes and additional support for learning services", goes some way to identifying this risk saying that,

> *When considering use of safe spaces, care must be taken not to confuse 'time out' with the act of 'seclusion' which if used could be considered as a deprivation of liberty with implications for ensuring the human rights of the child are promoted.*

GOOD PRACTICE

Fife Council goes further and notes that "Any use of seclusion is likely to contravene Article 5 of the Human Rights Act. Article 5 speaks of the right to liberty and security and its use in any setting could be questionable". ECHR Article 5

17 Derived from the case of Storck v Germany (2005) 43 EHRR 96, at the European Court of Human Rights.

18 P v Cheshire West and Chester Council and P and Q v Surrey County Council (2014) UKSC 19.

Although Dumfries and Galloway Council's documentation acknowledges that inappropriate seclusion may be unlawful, it does not fully reflect the correct legal tests and states that seclusion should be used:

- If it can be shown to be in the best interests of the person being secluded – not for ease of management.
- In an emergency rather than a planned response.
- If it is the least restrictive response and its use is proportionate to the level of risk presented.
- For minimal period of time to restore safety – not order.
- When all other de-escalation strategies have been used or are considered inappropriate in the circumstances of safety.

Only one local authority recognises that deprivation of liberty is only lawful if properly authorised by a court or tribunal. Edinburgh City Council documentation specifies that, "It is an offence to lock a child in a room without a court order except in an emergency while seeking assistance", although it goes on to say:

> *However, in some specified settings, it is acceptable for double or high door handles or locking of outside doors to be used for safety and security reasons when children are supervised in the same room or area by staff.*

Those local authorities that do contain content on seclusion in their documents varied in their approach as to when it might be lawful. Some make reference to the need to ensure that seclusion is for the minimum time necessary, but they do not provide any suggestion as to when the time period might become 'not negligible' in terms of the Storck test (above [19]) leaving teachers without a crucial element of guidance.

The need for consent appears much less frequently in documentation and is rarely explained. Midlothian Council helpfully flags the need for parental consent before secluding a child but does not explain to staff the potentially serious consequences of secluding a child in the absence of valid consent, whether of a parent or a child.

None of the documents note that the risk of breaching a child's ECHR Article 5 rights will be particularly acute where the child lacks capacity to consent and where specific parental consent has not been granted in advance as part of an agreed plan. For example, a general statement about physical intervention that appears in some local authority documents – that where a teacher acts as a reasonable parent would, they will be acting lawfully – may lead staff to inadvertently breach the child's Article 5 rights by depriving a child of their liberty without lawful authority.

Where documents require that the child must be 'monitored at regular intervals', time limits are only described as of 'short duration' or 'short periods of time', and there is generally little or no detailed direction. Nor is it clearly stated that a child should never be left unsupervised for any period of time, although Dundee City Council does require that: "staff should be able to observe the pupils at all times".

19 Storck v Germany (2005) 43 EHRR 96.

Additionally, there are few instances in the documents provided where there is any evident requirement to establish and ensure that a child can indicate that they want or need to leave the room, although Dundee Council's 'Guidelines for Physical Intervention' include as part of the 'Individual Care Plan Safe Space Protocol' a requirement to establish "how pupil communicates to staff if he is calm...". Highland Council also identifies this as a planning consideration in their best practice for planning in the use of a room/space, but only to the extent of distinguishing between time out and seclusion; while Fife Council uses the question, "Is the person unable to leave the room independently or cannot understand how to leave the room when they choose to?" as a means to establish that a practice is seclusion.

It is of serious concern that none of the guidance we were sent recognises all of these factors. As a result, staff are not provided with a clear explanation of when (if ever) seclusion might be lawful. In the absence of clear policies and guidance that support lawful decision making, local authorities run the risk of significant rights breaches with all the attendant legal and financial consequences.

> "One time I was called and he was being kept in the cloakroom with the door shut on his own incredibly distressed and not allowed out until I arrived. He was 5 years old with the mental age of a three year old... X very traumatised re the holds and not sleeping well and screaming in his sleep, very reluctant to go into school...

> The staff had even put him in a room on his own in a totally unregulated state and held the door handle from the other side and wouldn't let him out. X. was Distraught."

(J. - a parent)

Where guidance on seclusion does exist, it is often located in a local authority school exclusion policy. This raises a concern that seclusion may be used as an informal method of school exclusion, circumventing the need to go through the proper processes. Informal exclusion is unlawful and breaches the child's right to education under Articles 28 and 29 of the UN Convention on the Rights of the Child.

For children who are regularly placed in seclusion, the impact on their education and consequently their future can be profound. There is a significant difference between using a quiet space away from other children when there is an agreed need recognised in the child's plan or in an emergency situation for the prevention of harm; and when a child is locked into a room by themselves, unable to leave.

The UN Committee on the Rights of the Child in General Comment No. 10 on children's rights in juvenile justice are clear that "measures in violation of article 37 of CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or wellbeing of the child concerned".[20]

20 UN Committee on the Rights of the Child (2007) General Comment No. 10 on children's rights in juvenile justice, CRC/C/GC/10 (Geneva: UN Committee on the Rights of the Child) p.24.

Although seclusion in schools must never be used for disciplinary purposes, the same breaches of rights can occur when children are placed in seclusion in schools as a method of behaviour management.

Recommendation

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.**

Discipline or damage?

To be kept apart from others can be a powerful sanction on a person's behaviour. Being locked in a room on one's own and denied freedom is suggestive, to most people, of punishment and solitary confinement.[21]

Mental Welfare Commission for Scotland

It is clear from enquiries we have received that some children and young people see being restrained or secluded as physically abusive and as a punishment – whatever the official justification or benign intent that lies behind it.

The UN committees are clear – physical intervention should never be used as a form of punishment—although the documents we reviewed were not always similarly so. North Lanarkshire Council's 'Management Circular- Behaviour Management and Physical Intervention' states that "physical intervention may be used when a child or young person is "compromising good order or discipline".

Even where documents on restraint and seclusion consistently say physical intervention should never be used as a method of enforcing discipline or a punishment, the landscape is once again confused by contradictory or contextually unclear information. As we have noted previously, much of the material we were sent is solely framed around procedures and reporting for protecting staff from violence or conflates incidents of violence or disciplinary matters with managing children who present with distressing or challenging behaviour.

Documents are also at times confused or contradictory about using restraint or seclusion to protect property from damage. Both West Dunbartonshire and Stirling Councils provide for the use of physical intervention to prevent "serious" or "significant" property damage. In fact, West Dunbartonshire Council goes so far as to state that the threat of damage is sufficient justification for the use of physical intervention, "...though not where property is of limited value". Most local authorities limit the use of physical intervention for these purposes to situations where there is also a risk of physical harm to the child or another person, although some are clearer than others in this regard. Provisions range from 'property should only be considered a relevant cause for physical intervention when such damage to property could cause significant harm to individuals', through to 'damage to property alone will not be sufficient'.

Others are less prescriptive. Perth and Kinross Council simply "recommends" that "damage to property should only be considered a relevant justification for the use of physical intervention or restraint when such damage to property could endanger people's lives or result in serious injury". while Comhairle nan Eilean Siar instructs simply

21 Mental Welfare Commission for Scotland (2007) The Use of Exclusion (Edinburgh: Mental Welfare Commission for Scotland) p. 1.

that "...interventions aimed at stopping damage to property should be carefully assessed...".

Some local authorities rely on an interpretation of Section 16(4) of the Standards in Scotland's Schools etc. Act 2000, which states that action taken to avert "an immediate danger of personal injury to, or an immediate danger to the property of, any person (including the pupil concerned)"[22], would not be taken as corporal punishment. While this is correct, it is not the only consideration.

Overall, few local authorities have criteria for restraining a child which does not include property damage, whether with or without the caveat of immediate risk of harm to the child or another individual.

Restraint should only be used to prevent harm to the child or to others. While this might sometimes involve damage to property (for example if a child was likely to injure themselves by breaking a window), property damage alone should never be used as a justification for restraint. Examples and training would assist staff in making these determinations.

Recommendation

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.

22 Standards in Scotland's Schools etc. Act 2000, s16(4).

The last resort?

18 local authorities state clearly that restraint should only be used as a last resort and when a child, or a person, is at risk of immediate and significant harm (although only nine make the same statement in regard to the use of seclusion).

For example, **Argyll and Bute Council** says that,

"Staff may only physically restrain a child when it is the only practicable means of securing the welfare of that child or another child and there are exceptional circumstances."

However, **East Lothian Council** only requires that:

"A clear verbal instruction or other signal to stop the dangerous or threatening behaviour should always precede any physical intervention"

while **Comhairle nan Eilean Siar** simply says that,

"any restraint measures should not cause greater distress than the original problem"

although it also requires that:

"ALL restrictive physical interventions should confirm to the Principle of Least Restriction. They should be the minimum required to deal with the specified risk, identified through the risk assessment and care planning procedures, applied for the shortest time period."

Describing a measure as a last resort however, is only meaningful if staff are trained and supported to know what should be considered first.

Recommendation

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."

Risk assessment

Risk assessment is not an exact science: assessments often require difficult determinations to be made as to what level of risk is acceptable. However, risk assessment is recognised as an important part of managing challenging behaviour: "pupils whose behaviour is volatile and those who have Additional Support Needs which makes their behaviour difficult to manage should have a Behavioural Risk Assessment agreed" (Aberdeenshire Council)**.**

Examples of risk assessment forms were submitted by some local authorities, although either a suggestion of or requirement for risk assessment is found only in documents provided by 22 out of 32 local authorities.

There are good examples of risk assessment forms requiring input from the child, though few indicate that any discussion has taken place with parents or carers thus missing the opportunity to obtain helpful information about triggers and strategies which could potentially mitigate the risk of a situation escalating significantly.

Risk assessment is integral to good planning and provides an opportunity to consider practice in terms of children's rights. In particular, prioritisation of the child's best interests (Article 3, UN Convention on the Rights of the Child) should inform any decision about proportionate responses to challenging behaviour. It should also involve taking account of the child's views wherever possible (Article 12, UNCRC).

We note that the GIRFEC National Practice Model is a means of undertaking these kinds of assessments. .

De-escalation

Along with risk assessments, most local authorities identify de-escalation as a valuable tool for stopping a situation progressing to the point that a child (or adult) is at risk of harm, although Argyll and Bute Council identifies the use of restraint as a de-escalation technique in itself: *"such physical intervention should serve to de-escalate or prevent a violent or potentially violent situation"*, while West Lothian Council only mentions de-escalation in relation to weapons.

But many local authorities offer or require training in de-escalation, recognising the value of this technique in situations where children may find some apparently benign actions to be threatening or distressing:

> "Techniques to de-escalate a situation should be used first wherever possible, particularly in circumstances where a child or young person may perceive physical presence as provocative"
>
> *(City of Edinburgh Council)*

Authorities including West Lothian, Inverclyde and North Ayrshire include a list of de-escalation techniques to assist staff in understanding how and when to intervene to prevent a difficult situation becoming a crisis.

Recommendation

14. Local authorities should ensure that the child's plan includes de-escalation techniques and a risk assessment.

Planning – first know the child

Getting It Right For Every Child GIRFEC) places the child's views at the centre of planning and decision-making and the UN Convention on the Rights of the Child requires national and local governments as duty bearers, to respect, protect and fulfil children's rights. It follows, therefore that plans should be informed and shaped by the experiences and views of children, young people and families.

Developing effective tools informed by the knowledge of what works for the individual child can stop situations escalating to the point that the child is at risk of harming themselves or someone else. "If there is a foreseeable risk in relation to a young person then the planning process should begin" (Dundee City Council).

Even authorities with unequivocal statements about aggression or threatening behaviour in their documents recognise the power of good planning. West Dunbartonshire Council "regards any incident of aggression or threatening behaviour to be unacceptable", going on to say that:

> *"However, it is recognised that certain additional support need profiles can mean that difficult to manage behaviours give rise to aggressive and threatening situations. These behaviours can be a recognised consequence of those Additional Support Needs. In these circumstances measures to minimise, support and safely manage the behaviours must be an integral part of the assessment and planning process.*
>
> *"Some children/young people may have an Additional Support Needs Profile which can mean that difficult to manage behaviours have a recognised relationship with those Additional Support Needs. In these cases it is important that explicit planning takes place to minimise the likelihood of such behaviours occurring and clear guidance given to staff on how to respond if this becomes necessary...These plans (the child's plan) must be reviewed as frequently as required, and every time there is a physical intervention with the child/young person."*

Some local authorities do include children in post-incident de-briefing, recording the child's views as part of the process. Stirling Council has a specific section on their recording form to capture discussion with the child on "strategies to avoid in future", while Orkney Council requires that, "The views of the child must be sought and included whenever possible; these should be solicited by a trusted adult who was not involved". Moray Council also helpfully notes that "Where a child or young person has been involved in an incident they too will need opportunity to talk about what happened".

What is certain is that good planning, based on better understanding of the child and their particular needs and with the involvement of both parents and carers and the child in planning, is one of the most effective tools available to schools.

However, while good planning can reinforce a children's rights-based approach, it is important to recognise the risk of restraint or seclusion being re-purposed through familiarity as 'holding' or 'time out' and being used as a first-stop, default response because it is part of the child's plan.

Above all, schools must be careful not to normalise the idea of restraint or seclusion. The UN Committee on the Rights of the Child states clearly and unequivocally that these are measures of last resort and should be used "exclusively to prevent harm to the child or others". [23]

One way to prevent this is through consistent follow-up and support after any incident, using de-escalation techniques and continuous updating risk assessments and by involving both children and parent and carers in all aspects of the planning and review process, including recording and monitoring.

Recommendations

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.**

23 UN Committee on the Rights of the Child (2016) Concluding Observations on the initial report of the United Kingdom of Great Britain and Northern Ireland. CRC/C/GBR/CO/5 (Geneva: UN Committee on the Rights of the Child) p.8.

Monitoring

Even where incidents are recorded in schools, the information provided to us makes it clear that there is no consistency from school to school, nor across local authorities, as to whether and who monitors the use of restraint and seclusion in schools.

Process and practice vary across local authorities with little overlap, except where local authorities send information to CALM for review. In some areas the responsibility lies primarily with the individual school, either with the head teacher or with other senior staff.

In Angus incidents must be "reported immediately to the head of the establishment (and advice sought from a senior colleague and/or a Trade Union representative"). The incident should be recorded but no specific form was provided.

In another local authority the response was: "Don't know" (West Dunbartonshire).

Members of staff responsible for monitoring include Head Teachers, Principal Officer Extended Support for Pupils, Education Officer, senior managers, Health and Safety Advisors, Quality Improvement Officers, Lead Officer (Inclusive Education Service), corporate Health and Safety Officers, CALM co-ordinators for authority, etc.

Actions arising from monitoring processes are equally varied, both in the designation of the reviewer and the rigour of the review. It is rarely clear who, if anyone, is ultimately responsible for ensuring information is provided, analysed and--most importantly--driving the process for action to be taken in relation to any concerns.

Examples include:

- *A debrief is conducted in the school. Documentation is sent to CALM.*
- *The education manager will read the report and discuss with the school involved.*
- *Coordinator reads all incisent (sic) forms and if necessary seeks additional information. They may then seek advice from one of the physical intervention trainers within the authority.*
- *The line manager would look at the incident and give feedback to the members of staff involved. If there are nay (sic) concerns the line manager can contact the CALM team and discuss. At time of reaccreditation for staff any incidents over the year can be discussed.*
- *Incident monitoring group for specialist provision. Link officers for cluster mainstream and health and safety team oversees the monitoring.*
- *Officers in the Schools, Learning and Education team and ASN and Wellbeing team review these for hotspots of activity or any concerns.*

GOOD PRACTICE

"Any incident where a decision is made to seclude must be recorded and monitored in line with the education department's guidance on de-escalation, physical intervention. The recording and monitoring of such incidents will help education authorities to monitor the effectiveness of their policy and practice. It will ensure transparency, enable them to review and improve their policy and help identify professional learning needs and further supports where appropriate."

East Renfrewshire Council

Without a process to monitor and analyse reported information about incidents of restraint and seclusion - locally, across education authorities and nationally -concerns about cultural practice, trends and the adverse experiences of individual children can and will go undetected and unaddressed.

At a national level, Scotland already has a mechanism for standards in schools to be investigated and assessed. Education Scotland monitors and inspects educational services throughout Scotland under the improvement framework, the most recent of which is, *How Good Is Our School?* [24] . This includes a number of quality indicators based around Safeguarding and Child Protection, and Ensuring Wellbeing, Equality and Inclusion. Senior management teams in schools are required to undertake a self-evaluation exercise and produce evidence including, for the purposes of this investigation:

- Compliance with statutory duties
- Equalities policy/framework: which takes account of key equalities and all protected characteristics
- Policies and practices related to physical intervention and restraint
- Recording of violent incidents

Recommendations

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.**

24 Education Scotland (2015) How Good Is Our School? 4th Edition (Livingston: Education Scotland).

Training

Most authorities require some kind of training for designated staff in order for them to use physical intervention techniques, although it is not always clear from the information provided whether training—particularly when it is described as 'behaviour management training'--is limited to 'softer' behaviour management techniques, such as de-escalation and risk assessment training, or includes training in restraint.

Training is frequently restricted to identified members of staff, 'where appropriate'. Dumfries and Galloway Council specify that: "Only staff working with young people with challenging behaviours should be offered a place on a Team Teach Training course", while Shetland Council says that:

> *All relevant staff will undertake an initial training programme with the emphasis on early intervention and non-physical methods for preventing or managing disruptive behaviour. These measures will be identified through the Risk Assessments process. Specifically identified staff will be required to undertake a second state of training which expands on crisis intervention methods including the study and practice of non-harmful methods of Physical Intervention, used as a last resort when an individual becomes an immediate danger to self or others.*

A range of training is provided, with CALM (crisis, aggression, limitation and management) and more specifically, BILD (British Institute for Learning Disability) training widely used. One local authority offers Team-Teach training only in physical restraint; others offer training through the MAPA (management of actual or potential aggression) programme.

All but two local authorities (who indicated they did not know in the online evidence-gathering questionnaire) offering training require it to be regularly reviewed.

In 2004 the Council of Europe Committee of Ministers adopted a recommendation mandating that mental health staff should receive appropriate training not just in physical restraint but in:

i. *protecting the dignity, human rights and fundamental freedoms of persons with mental disorder;*
ii. *understanding, prevention and control of violence;*
iii. *measures to avoid the use of restraint or seclusion;*
iv. *the limited circumstances in which different methods of restraint or seclusion may be justified, taking into account the benefits and risks entailed, and the correct application of such measures.*[25]

We consider these principles equally valid in relation to school staff who may need to be trained in restraint or seclusion.

'The Scottish Government's 'Common Core'' describes the skills, knowledge and understanding, and values that everyone should have if they work with children, young people and their families (The values

25 Committee of Ministers (2004) Recommendation Number Rec 2004(10) (Strasbourg: Council of Europe) p.5.

are taken from the Scottish Government's 'Getting It Right For Every Child' policy approach). These are described as "essential characteristics" and are set out in two contexts: relationships with children, young people and families, and relationships between workers. They are also explicitly cross-referenced to the guiding principles of the UN Convention on the Rights of the Child.

'The Common Core' advocates that a rights-based approach requires those working with children to recognise the following values:

- Working with people, rather than seeing them as passive recipients of services – "doing with", rather than "doing to".
- Helping people to identify and focus on the innate strengths within themselves and communities and enhancing and supporting them
- Supporting people to make changes for the better through enhancing skills for resilience, relationships, knowledge and self-esteem.
- Building networks and friendships so people can support each other, make sense of their environments and take control of their lives'.[26]

Recommendations

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.

26 Scottish Government (2012) *Common Core of Skills, Knowledge & Understanding and Values for the "Children's Workforce" In Scotland* (Edinburgh: Scottish Government) p.25.

Conclusion

Feeling safe, being safe, is important: important to adults and important to children. Yet for all the good intentions and instances of good practice evidenced in many local authority policies, what is seldom acknowledged is the harm that can be caused to children not just by the use of restraint, but even the threat of it.

> *It is clear from talking with looked after children that physical restraint provokes strong feelings. Children may be left physically or emotionally hurt. Even if a child has not directly experienced restraint, he or she may be scared that it will happen in future or have been upset by seeing others restrained...* **Holding Safely Guidance**[27]

We have been told by families about the physical and mental trauma caused by children's experiences of restraint and seclusion; about the impact on children who find themselves unable to communicate their distress to the well-meaning adults who do not speak their language so use restraint and seclusion to protect these or other children, or themselves, from harm. It is not difficult to imagine the frustration of adults who are unable to interpret and respond constructively to a child signalling their needs through non-verbal communication.

Children, families and professionals are all affected by the consequences of confused or conflicting policies (or no policies at all); complicated and often inadequate reporting; and an absence of monitoring, either locally, regionally or nationally--all of which means that professionals responsible for children do not have consistent, unambiguous guidance or feedback mechanisms to ensure they are equipped to appropriately support vulnerable children at moments of crisis.

These shortcomings and inconsistencies are compounded where there is a lack of planning and continuous assessment of individual children's needs, exacerbated all too often by the failure to consult with the experts in these children's lives: their families and the children themselves.

Equally worrying is the lack of reliable information about how many and how often children are being restrained and secluded across the country, and in what circumstances.

We know the consequences of restraint and seclusion on any child's ability to learn and thrive. There can be no doubt that, except in emergency situations where an individual is at risk of immediate harm and only for the minimum time necessary, any unplanned, undocumented use of restraint or seclusion that restricts a child's physical liberty and compromises their dignity, their physical health and their mental wellbeing, is a breach of that child's rights.

27 Davidson, Jennifer, McCullough, Dennis and Steckly, Laura and Warren, T (2005) Holding safely: guidance for residential child care practitioners and managers about physically restraining children and young people (Glasgow: Strathprints) p. 3.

> “...anytime you restrain or seclude a child, there is a significant, you know, emotional impact on that child. And I think that's what we need to balance out. We need to balance out a potential threat that the child poses to others and the damage that would be caused to the child. You know, so if there are none of those factors present, if they're just being disruptive, and if they're just no doing what they're told, then it's, that damage which was caused to the child is in no way, yeah, it's not justifiable.”
>
> *(B. - a young person)*

This investigation should be seen as the start of a discussion about the treatment of vulnerable children in Scotland's schools. Establishing clear and consistent policies and guidance, along with national recording and inspection mechanisms is simply a first step. Implementation, practice and culture are just as significant, if not more so. Our recommendations recognise this and seek to put in place mechanisms to allow scrutiny, challenge and most importantly the voices of children and young people to be heard more clearly and at an earlier stage.

Recommendations

Under Section 11 of the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner requires those organisations who are the subject of recommendations to respond in writing setting out:

(a)what they have done or propose to do in response to the recommendation; or

(b)if they do not intend to do anything in response to the recommendation, the reasons for that

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.

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CHILDREN & YOUNG PEOPLE'S Commissioner Scotland

Telephone: 0131 346 5350
Young peoples's freephone: 0800 019 1179
Email: info@cypcs.org.uk
Text: 07702 335 720
facebook.com/cypcs
@cypcs
@cypcs
@cypcs
Write: Bridgeside House
97-99 McDonald Road
Edinburgh
EH7 4NS
www.cypcs.org.uk

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