



ENABLE Scotland

Leading the way in learning disability

Scottish Parliament Public Petition PE01548 – National Guidance on Restraint and Seclusion in Schools

Following a consideration of the petition on 17th March 2015, ENABLE Scotland has been asked by the Petitions Committee to comment on the following question:

What are your views on what the petition seeks and the discussion that took place at the meeting of 17 March 2015?

ENABLE Scotland welcomes the opportunity to comment on this petition and the important issues it raises. We fully support the aims of the petition to:

1. Introduce national guidance on the use of restrictive interventions in schools.
2. Appoint an independent regulatory agency to monitor the support and care given in non-educational areas and to evaluate the use of restrictive interventions for children with complex additional support needs in any school setting.

About ENABLE Scotland: ENABLE Scotland was founded in 1954 by 5 families who came together to campaign for a better quality of life and equal opportunities for their children, who had learning disabilities. We are now Scotland's largest charity of and for children, young people and adults with learning disabilities, and their family carers. Our mission is to enable people with learning disabilities of all ages to live full and active lives in their communities.

We provide innovative community based services that help people with learning disabilities live, work and enjoy meaningful participation in their local community. We also campaign on issues important to people with learning disabilities and their families such as inclusive education, tackling bullying and prejudice and training education staff about additional support needs and equality issues.

ENABLE Scotland's view: We believe that restrictive interventions such as seclusion and restraint may, in some instances, be included as appropriate elements of a school's behavioural management strategy as part of a Positive Behaviour Support framework. However appropriate safeguards are required to ensure that the use of these techniques does not interfere with the basic rights of children and young people. ENABLE Scotland notes that at the time of writing, no national guidance on

the appropriate use of seclusion and restraint specifically in non-residential education settings exists; therefore we would support the development of such guidance.

ENABLE Scotland also believes that the appropriate use of restrictive interventions for managing behaviour in schools should form a key element of inspections by an external agency (likely either Education Scotland or the Care Inspectorate.) This would serve to safeguard and promote the wellbeing of children and young people with complex additional support needs while they are at school and should apply across mainstream and special educational provision.

ENABLE Scotland believes that children and young people with learning disabilities and/or other additional support needs, have the right to be treated with respect and dignity and not be subjected to treatment that has the potential to cause damage to their emotional, mental or physical wellbeing. The UNCRC's concluding observations in 2008¹ urged the UK State Party to "*ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished.*" ENABLE Scotland strongly agrees with this recommendation but notes that unfortunately some schools still appear to be using restrictive interventions as a form of discipline and control.

Adopting a Positive Behaviour Support approach helps to ensure that each child's individual needs are taken into account, including their communication and support needs. Staff should be trained in this approach; this will enable them to better understand the function of the child's behaviour and what they are trying to communicate by it. A Positive Behaviour Support Plan will suggest strategies that can be put in place to support the child's learning and behaviour – these strategies may or may not include appropriate restrictive interventions.

We recognise that on occasion, it may be necessary for education staff to use restrictive interventions as a legitimate means of managing behaviour that challenges and/or safeguarding the wellbeing of the child, other children in the class, or staff member(s). However, restrictive interventions should **never** be used as a form of punishment, or to maintain order and discipline.

Physical restraint techniques of any kind should only be performed **as a last resort** by trained staff, in line with an approved method such as CALM or MAPA (Management of Potential or Actual Aggression, formerly known as NVC1). The only exception to this would be in an emergency situation where failure to intervene by an

¹ UNCRC Concluding observations (2008), paras 38, 39;
<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

untrained person could result in serious injury or death e.g. if a child is about to run into a busy road. In this instance the Duty of Care would override all other concerns.

It is important to note that some forms of restraint, when used inappropriately or by untrained individuals, have the potential to cause serious physical or psychological harm to children and young people; this could be classed as assault which is a criminal offense. Mental Welfare Commission guidance (2014)² states that *“the use of seclusion can cause distress, psychological harm and increase the likelihood of self-harm and can only be justified on the basis of a clearly identified and significant risk to others that cannot be managed with greater safety by any other means.”*

The Keys to Life (2013)³ is the Scottish Government’s key policy guidance on supporting people with learning disabilities and improving the quality of their lives. It states that *“for some people with learning disabilities and challenging behaviour, restrictive interventions may be necessary. Restrictive interventions, such as physical restraint and other types of restriction e.g. seclusion are still a significant element of support for people with challenging behaviour and complex needs; however there is still a lack of clear guidance or standards for use.”*

The Mental Welfare Commission (2013)⁴ and CELCIS (2005)⁵ have both produced guidance on the appropriate use of seclusion and restraint, for use primarily in residential care settings. MWC guidance includes a short section (Appendix 1, p47) on the legal principles surrounding the use of restraint with children and young people. These policy documents also contain general principles about the use of restraint that can apply in any setting and could provide a basis for developing national guidance specifically for schools.

Currently Education Scotland has responsibility for inspecting and reporting on the quality of education across all types of provision, but does not have a specific role to ensure appropriate care and dignified treatment. This lies within the remit of the Care Inspectorate but only in the setting of registered care providers. This means that there is a gap in protection for some extremely vulnerable children who attend special schools or units which are not registered care providers. ENABLE Scotland believes that this gap should be closed as a matter of priority by appointing national agency (potentially either the Care Inspectorate or Education Scotland) to ensure that all children receive the same protection in terms of the care and support they receive at school, even if that school is not a registered care provider.

² Mental Welfare Commission (2014), Good practice guide: The Use of Seclusion;
http://www.mwscot.org.uk/media/191573/final_use_of_seclusion.pdf

³ Scottish Government (2013), The Keys to Life; <http://www.gov.scot/Publications/2013/06/1123>

⁴ Mental Welfare Commission (2013), Rights, Risks and Limits to Freedom;
http://www.mwscot.org.uk/media/125247/rights_risks_2013_edition_web_version.pdf

⁵ CELCIS (2005), Holding Safely; <http://www.celcis.org/media/resources/publications/holding-safely-2005.pdf>

Below is a link to our position statement on Restrictive Interventions, which is of direct relevance to the issues raised in this petition:

<http://togetherscotland.org.uk/pdfs/RestrictiveInterventions%20pos%20statement%20pdf%20FINAL.pdf>