



Physical Intervention in Schools Guidance

Consultation Response

October 2022

We are a Scottish youth support charity that works with children, young people, and families to help them transform their lives. We see a world where every child and young person is respected, valued, and has the opportunity to actively participate in all aspects of society.

Introduction and approach to responding to the consultation

Includem welcomes the Scottish Government's draft guidance on physical intervention in schools. In responding to the consultation, we have set out our analysis of the draft guidance, focussing on key areas that are important to the children and young people we support who have experienced restraint and seclusion. For these children and young people their experience of restraint and seclusion has not been exclusively in school and rightly, they do not differentiate between where they experienced it. All of them expressed the view that it was traumatic and detrimental to their wellbeing.

"It doesn't make you feel better, doesn't achieve anything. It makes you feel worse and isn't going to change your actions having so many people touching you. I don't want anyone wrapped around me like a cat."

"It's traumatic, they should find something different instead of restraint. I think it should be banned."

Includem are of the view that there is an urgent need for a single coherent legal framework to cover every circumstance in which children in the care of the State may be subject to restraint, seclusion, or other restrictive practices.

Need for a single legal framework

We support the Children and Young People's Commissioner Scotland's call for a single coherent legal framework to cover every circumstance in which children in the care of the State may be subject to restraint, seclusion, or restrictive practices: education, the care system, places of detention and mental health.

The Scottish Government should urgently consider the most suitable options for achieving a rights-respecting framework, whether through amendments to existing legislation, or

through a stand-alone piece of legislation. Failure to grasp this opportunity would represent a generational failure to protect children's rights.

To realise the ambitions of The Promise and to deliver the incorporation of the United Nations Convention on the Rights of the Child (UNCRC) into Scots law the guidance should be placed on a statutory footing and linked to existing legislation through amendments or through a stand-alone piece of legislation. To ensure that children's rights are protected and promoted, it is critical that the requirement to record, report, and monitor incidents of restraint and seclusion are given the force of law and are translated into legal duties, given the severity of the rights infringements involved.

The role of this guidance should therefore be to support decision making and promote understanding of the legal duties as it applies to restraint and seclusion. Even in terms of the current legal context, includem are of the view that this aspect of the guidance remains lacking, for the reasons we set out below.

Human Rights Framework

The Children and Young People's Commissioner Scotland has very ably articulated in their consultation response the ways in which restraint, seclusion and other restrictive practices are a breach of children's rights under the UNCRC, the European Convention on Human Rights (ECHR) and the Convention of the Rights of Persons with Disabilities (UNCRPD). We fully support this analysis and base our responses on this.

Voice of the Child

Includem are committed to ensure that children's right to have a say in the matters that affect them and for this view to be given due weight. As such we consulted children and young people who had experience of restraint, seclusion, and exclusion to form this response.

The children and young people told us the following:

"Don't threaten me with violence"

"If I am not performing, there is a consequence for me. If a teacher is not performing, there is no consequence for them."

"Don't treat me in a way that causes shame."

"I need you to make adjustments for my learning style because it is not something I can change."

"Work out what works for each young person – we are not all the same!"

One young person astutely noted that, if the root cause of why they don't like school – and thus are behaving the way they are – is not addressed, then they will *"just do whatever [they] can to get out of school"*. They said this would mainly be through fights, and noted they had been excluded or restrained as a result. They felt that teachers could have taken more time

to understand them, and to talk openly with them, instead of simply taking them out of school – empowering and enabling them to get their views across. Includem therefore welcome the focus in the guidance around prevention and de-escalation.

But what does truly understanding a pupil’s behaviour look like in practice? One young person shared their perspective, outlining the need for teachers to get to know them well enough to spot physical cues of potential escalation, and to know their triggers based on events in their past: *“They need to know the way your mind and body reacts to certain things – fight or flight. They need to know if someone screams at you [you] are going to hit them or run away, need to know what’s going to happen. And need to know how you’re going to react, or if some things have happened in your past that might trigger you. Have a conversation with them each day or every second day – more pally, then they can understand you more and manage a situation because they know how you would act in that situation.”*

Includem acknowledge that the draft guidance makes some references to the gathering and responding to the views of children in the context of post-incident learning reviews (at page 26) and in the data set included at Annex G. The draft guidance should be clear that the views of children must be included at all stages in the design and delivery of school policies on the use of restraint and seclusion, including for example in agreeing the preventative strategies and their plan. Most of the children and young people includem supports have additional support needs as defined in the Additional Support for Learning (ASL) legislation, yet very few are subject to a Co-ordinated Support Plan, others tell us that they are not meaningfully involved in developing their Child’s Plan. Children and young people’s involvement in the assessment and development of their support plan, whether it is through Getting it Right for Every Child (GIRFEC), ASL or non-statutory, is essential to ensure it meets their needs.

“Ken my triggers. I ken me & I ken what works for me. Ask me!”

Consideration needs to be given however to how children and young people are encouraged to speak up and to be heard and responded to. One of the young people we consulted commented that *“I’m not involved in the decision. I don’t get a choice. There’s no review and no talking about it afterwards but I don’t mind this, I don’t want to talk about it.”*

Overall, the children and young people we spoke to did not feel like their care plan was reviewed following a restraint or seclusion and no measures were put in place to reduce the likelihood of its use in future.

Restorative Practices

For children and young people who have experienced restraint, seclusion, and other restrictive practices, they told us that it is difficult to trust in the process enough to express their views. Includem welcomes the inclusion of restorative practices in the draft guidance, however we do not think that its reference is sufficient to promote the knowledge and

understanding of its practice to ensure better outcomes for children and young people. In includem's School's Experience report, children and young people were clear that they wanted an opportunity to restore relationships with school staff in a way that supported true voice and understanding.

The guidance lacks the detail on when, how and why these practices should be used and therefore will not fulfil the intention of the guidance to inform and promote good practice. Where restorative practices will be most effective in relation to restraint and seclusion is in the post-incident support as a preventative measure for further restrictive practices, however the only reference is that it is the beginning a restorative approach. It is not clear who should facilitate this, and includem are concerned that the same person who has witnessed the restraint/seclusion is the same person who is reviewing it and the same person who is facilitating restorative conversations. This could constitute a significant conflict of interest, and with the obvious power imbalance it would undermine the efficacy of restorative practices.

When asked the question, how were your relationships affected by restraint and was there anything in place to restore relationships? One young person told us *"I dislike the staff afterwards; I can hold a grudge, but this eventually goes away. Nothing is in place afterwards, but I wouldn't want to talk about it anyway."*

Another young person told us *"They should listen to kids when they tell them that it hurts, I get left with bruises and "Chinese" burns... It makes me even more angry and worse, then I get ignored when I'm in the hold when I tell them it hurts and to stop. Staff don't repair the relationship; I need to repair the relationship with staff myself."*

Restorative practices are part of includem's day to day practice. In a review of the use of restorative practices one staff member told us that *"We use restorative justice in every single one conversation we have with young people on a daily basis. We go through different things like the ABC what happened before the actual situation and the consequences to the end of it and then we have reflective discussions as well to say, alright 'where do you think you should have stopped, where do you think at this point, I shouldn't have done that'. We look at the triggers from behind what they have actually done. We look at the trauma they had in their life as well, the gang culture as well and their peers, their education as well. So, we're looking at everything, it's not just 'ok so you did this tell me all about it', it is looking back, scraping back and say why do you think this happened."*

Dr Claire Lightowler's seminal work, titled 'Right's Respecting? Scotland's approach to children in conflict with the law' concludes that: 'There is no justice in taking traumatised children; holding them solely responsible for their actions; blaming and stigmatising them whilst failing to give them what they need; putting barriers in the way of loving and caring relationships; and taking existing supports and opportunities away from them'. The report ultimately calls for 'a shift from focusing on children as troubled, challenged, vulnerable and challenging, which while often well-meaning and containing partial truth, can

encourage negative unintended consequences which disproportionately affect and stigmatise the most disadvantaged children.’

Includem consider that it is imperative that this guidance is redrafted to ensure that this shift is evident and that all actions are considered in relation to the child’s additional support needs, strengths, and resilience rather than their vulnerabilities and challenges. It needs to come from a place of meeting needs rather than managing behaviour.

Is the guidance easy to understand?

Includem welcome the introduction of definitions within the guidance however overall, it is too long to offer staff the clarity needed on how to respond and for children, young people, and their parents to know and understand their rights and expectations around best practice. We support the Children and Young People’s Commissioner Scotland’s call that these definitions are put on a statutory footing to ensure a clear and consistent approach across all local authorities, and to allow for the accurate monitoring of data by the Scottish Government.

Includem note that we do not think that there is a clear distinction between Staff Led Withdrawal and Seclusion, and we are concerned that the use of both terms may lead to seclusion being wrongly defined as Staff Led Withdrawal and for the extent of the breach of their rights to be underplayed. We consider that any action taken without the consent of the child or young person needs to be clearly labelled as seclusion and as such think that Staff Led Withdrawal should be removed from the guidance.

We agree with the Children and Young People’s Commissioner Scotland’s call for teachers and staff working in schools to have a practical understanding of the UNCRC and how it applies in relation to the use of restraint and seclusion, and we do not think that this guidance draws sufficient links within the main text for this to be achieved.

Includem are concerned that the guidance as a single agency guidance does not support best practice under GIRFEC. For the children and young people, we support, their experience of restraint, seclusion, and other restrictive practices are across settings and are experienced as a looked after child. We are concerned that the only mention of other agencies and in particular Social Work states that Social Workers should be informed “where appropriate”. The guidance lacks specifics on when it would or would not be appropriate and fails to recognise the duty of Social Workers, as lead professionals to prepare, review and amend the Child’s Plan to ensure that the support provided aligns to the best outcomes for the child. Notwithstanding our overall call for a single legal framework, the guidance should include clearer instruction on multiagency working and the role of other agencies in the post restraint review and amendment of the child’s plan where the child is subject to a statutory or non-statutory plan. Included in this guidance should be the effective use of chronologies to ensure that all experiences of restraint,

seclusion and other restrictive measures are considered as part of the wider indication of the child's needs.

Recording, monitoring, inspection, and enforcement

Includem fully support the Children and Young People's Commissioner Scotland's recommendation that mandatory recording and reporting is included as part of a legal framework regulating the use of restraint and seclusion. Children and young people regularly tell us that they are subject to informal exclusions, restraints and seclusions that are not formally recorded, subject to any external scrutiny and which they feel unable to challenge at the time or afterwards. They do not have confidence in the current inspection and enforcement process. Children and young people's rights need to be protected in law through the consistent recording of actions in line with agreed definitions. We support the Children and Young People's Commissioner Scotland's call for a template form to be used across all schools to ensure consistent recording of incidents and more importantly to support the external review, inspection, and enforcement of their use. As part of the current review of the role of Education Scotland and HMIE, consideration needs to be given to strengthening the inspection duties in relation to restraint, seclusion, and other restrictive practices.

Children and young people we support also tell us that they lack confidence in the investigation of complaints. We would welcome inclusion in the guidance clear detail in how schools should approach complaints about incidents of restraint or seclusion, the role in the education authority in quality assuring the complaints procedures and their role when complaints are escalated to local authority level. Further it should outline what procedure should apply if a child and/or parent is unsatisfied with the outcome of any investigation by the education authority, for example referral to the First-tier Tribunal of Scotland's Health and Education Chamber.

Conclusion

The children and young people includem support have consistently told us that the use of physical restraint, seclusion or restrictive practice is traumatic and does not achieve the desired outcome. It is recognised as creating a risk of harm for both the child and the staff member involved. Includem are therefore clear that Children and staff need the protection and clarity that statutory guidance brings.

We add our voice to the Children and Young People's Commissioner Scotland call for the draft guidance to be put on a statutory footing as a matter of urgency. Children and young people do not only experience restraint and exclusion in a school setting and therefore it's use, and regulation must be based on a consistent legal framework that applies to all situations where children are in the care of the State, including schools, residential and secure care, and mental health provision. We agree with the Children and Young People's Commissioner Scotland that we have moved well beyond a position where this can be just

an option for future consideration. Hearing from the children and young people we support, they are clear that they want to protection that comes with statutory guidance, which clearly outlines the framework for protecting and promoting their rights.

For further information, please contact Meg Thomas, Head of Research, Policy & Participation at meg.thomas@includem.co.uk or 07870223567.