

Thank you for the opportunity to respond to the Department of Education (The Department) consultation on the Statutory Guidance on the Reduction and Management of Restrictive Practices in Education Settings in Northern Ireland.

The British Association of Social Workers Northern Ireland (BASW NI) is part of the British Association of Social Workers (BASW), the largest professional body for social workers in the UK. BASW has 22,000 members employed in frontline, management, academic and research positions in all care settings. The Association has members in Northern Ireland working in education, justice, children's, CAMHS, and learning disability services who have a particular interest in this guidance.

Social workers in these areas of practice have significant concerns about the decisions senior civil servants in the Department of Education have had to make to comply with the 2023/2024 budget. Our members are clear in their view that those cuts will increase poverty, extend existing educational achievement gaps, contribute further to the mental health crisis, and undermine Special Education Needs provision. It is in this context that the Association is replying to the consultation as the lack of accountability by local politicians continues and children and young people suffer.

BASW NI has longstanding concerns at the lack of standardised policies and guidance from the Department of Education regarding use of restrictive practices and seclusion with children and young people with additional needs, including those with physical or learning disabilities.

The Association recognises the damaging physical, psychological and emotional effects that restraint and seclusion can have on children and young people and notes that the emotional impacts of these practices are often felt by the families of the children and young people involved. The impact of this is felt in frontline social work practice. There is a crisis in social work, as illustrated starkly by the Independent

Review of Children's Social Care Services¹. The Review highlights that in February 2023 the five Trusts had vacancy and absence levels in Family Intervention teams of between 26%, and 41% and vacancy rates in Gateway teams of up to 86%. The largest number of unallocated cases, that is cases which meet the threshold for assessment from social services but with no social worker assigned, is in a children with disability team with 739 cases unallocated². It is in this context of challenging social work practice where children with disabilities and their families have seen cuts to supports and services in their communities.

Engagement

BASW NI issued a policy statement in 2019³ expressing its concerns regarding the damaging impacts of restraint and seclusion. The statement was issued at a time when there were reports exposing the prevalent and largely unmonitored use of both restrictive practices and seclusion in schools across the UK. Regrettably, these practices four years later continue to be reported by civil society, particularly by parents and carers of children and young people with additional support needs or disabilities across the UK, including Northern Ireland.⁴

BASW NI is cognisant of the ongoing concerns and has been represented on the *Restraint and Seclusion Reference Group* supporting the Department's Working Group since its inception. The Association is also part of the *All-Island Restraint Reduction Network* which is a group of committed individuals and organisations working together to ensure that the use of coercive and restrictive practice is minimised, and the misuse and abuse of restraint is prevented. The network is working towards creating a culture of respect for human rights across education, health and social care services so that services are safe, dignified and respect people's autonomy and well-being.⁵ BASW NI is also part of the four nation *Protecting Rights Eliminating*

¹ The Northern Ireland Review of Children's Social Care Services Report, Professor Ray Jones, June 2023

² Ibid.

³ www.basw.co.uk/resources/basw-ni-policy-statement-concerning-restraint-and-seclusion-children-and-young-people

⁴ Special needs: Mum wants answers over daughter's school injuries - BBC News
<https://www.bbc.co.uk/news/uk-northern-ireland-66935244>

⁵ All Island Restraint Reduction Network Conference Report 2022

Restraint group made up of carers, campaigners and organisations who work together on this shared goal.

A Children and Young People Rights issue

As a starting point it is important to remember that there is a fundamental inequality of power between adults and children. This is recognised in international human rights law, and consequently children are entitled to higher standards of protection due to their age and vulnerability. The Universal Declaration on Human Rights⁶ states that children are entitled to special care and assistance. This position also flows throughout the UN Convention on the Rights of the Child (UNCRC)⁷.

The power imbalance is further intensified when adults and professionals are in positions of trust and authority, and children are particularly vulnerable if they have additional support needs or a disability. The UN Convention on the Rights of Persons with Disabilities (UNCRPD) provides for the additional protections of those children⁸

Children are protected by the European Convention on Human Rights (ECHR), which is directly incorporated into UK law through the Human Rights Act.⁹ Making it unlawful for a public authority to act in way that is incompatible with a Convention right. Articles 2,3,5, 8,14 and Article 2 of Protocol No.1 are all referenced in the statutory guidance, and this is to be welcomed. The fundamental rights of all children to education, to dignity, to bodily integrity, and to be protected from cruel, inhuman, or degrading treatment and the right not to be deprived of their liberty must be at the heart of the implementation of the guidance.

The Committee on the Rights of the Child in its observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland on the 26 May 2023 adopted the recommendations in relation to education—*47(j) Explicitly prohibit the use of restraint and seclusion in educational settings and adopt a child rights-based approach to addressing violence or other disturbances in schools, including by prohibiting the presence of police in schools and providing*

⁶ General Assembly of the United Nations (1948) Universal Declaration on Human Rights, art. 25. 4

⁷ General Assembly of the United Nations (1989) United Nations Convention on the Rights of the Child.

⁸ General Assembly of the United Nations (2006) United Nations Convention on the Rights of Persons with Disabilities.

⁹ Human Rights Act (1998).

*regular training for teachers on relevant guidance for addressing such disturbances in a child-sensitive manner.*¹⁰ The Draft guidance produced by the Department was not as child-rights based in its approach as we would have hoped and does not go as far as the recommendation of the Committee on the Rights of the Child. This view has also been shared with BASW NI by the carers and partners the Association works alongside on the issue of restraint and seclusion. They have expressed the view that the guidance does not go far enough to eliminate restrictive practices and requires more clarity for staff and parents/carers.

Decision Making

The framing of the guidance in the Association's views does not consistently reflect the aims of the international laws referenced in the consultation. The link from policy formation to practice therefore feels disjointed in this regard. The decision-making process and the risks and tests that must be applied for practice to be lawful in education settings could be clearer. When the Department of Health produced the regional policy on the use of restrictive practices in health and social care settings¹¹ a multidisciplinary group based in Northern Ireland, involving the Royal College of Nursing, the Royal College of Occupational Therapists, the Royal College of Psychiatrists and BASW NI produced the *Three steps to positive practice*¹².

This is a framework designed to help staff to think about culture and practices and guide professional, ethical and legal decision making when considering the use of potentially restrictive practices framework that all health and social care staff are required to follow if using any form of restrictive practice as set out in the guidance. There is much in the framework that empowers staff to ask questions if they are not satisfied that a proposed intervention will be in the person's best interests and to ensure that adjustments are made. It provides staff with the support and reassurance

¹⁰ UNCRC-Concluding-Observations.pdf (niccy.org)

¹¹ DoH Regional policy on the use of Restrictive Practices in Health and Social Care Settings.

¹²Three steps to positive practice | Publications | Royal College of Nursing (rcn.org.uk)

that any intervention used has been considered, planned, and implemented legally and ethically. This framework in many ways could be applied to educational settings and would have helped provide a framework for the decision-making that is required of staff in educational settings.

Communication

Recognition in the draft guidance that all behaviour is communication and should be at the heart of every educational setting's policy and procedures is to be welcomed.

Our members know that children and young people with additional support needs or disabilities may display their anxiety or distress through behaviour that presents to adults as challenging. The family led charity *Challenging Behaviour Foundation* (CBF) which is focussed on improving the quality of life of children and young people with learning disabilities who display behaviours described as challenging, carried out a UK wide survey to provide an insight into the use of restraint and other restrictive practices in schools for children with additional educational needs. They reported that 88% of families had a child experiencing physical restraint, 35% of those said it happened regularly. Of the 204 respondents to the survey 71% had experienced seclusion, 21% said it happened every day and 50% of children had been prescribed medication to manage challenging behaviour. Most of the restrictive interventions reported in the CBF survey were taking place in schools, amounting to 68% of the physical interventions.¹³

In Northern Ireland, figures obtained by BBC News NI show that there have been more than 22,000 accidents and unsafe acts recorded in schools across Northern Ireland during the last four years. 30% of incidents took place in our 39 special schools.¹⁴ These statistics suggest that a restrictive response to challenging behaviour is failing to address the underlying cause of behaviour. In addition, a restrictive intervention is likely to increase that behaviour as well as increasing the anxiety and risks to wellbeing of both the children and staff involved in the incident.

¹³ <https://www.challengingbehaviour.org.uk/wp-content/uploads/2021/03/briefingforbackbenchdebate>

¹⁴ Special needs: Mum wants answers over daughter's school injuries - BBC News
<https://www.bbc.co.uk/news/uk-northern-ireland-66935244>

Research carried out by the Richmond Fellowship and the Tizard Centre¹⁵ found that people who had experienced restrictive physical interventions found them painful, emotionally distressing and could not distinguish them from abuse and violence. From a social work point of view, such experiences could be described as adverse childhood experiences. Evidence-based early intervention to support children with learning disabilities or autism whose behaviours challenge, and their families, is much needed in our communities and schools to prevent such elevated levels of incidences.

Evidence-based research shows us that children with learning disabilities are much more likely to display behaviours that challenge than their peers. This is mainly due to their social and communication skills not developing like other children who are more able to communicate how to have their needs met. This difference in risk for the development of behaviours that challenge begins to emerge in early childhood and can continue during those school years and for a prolonged period of time¹⁶

Support for families

The Association holds the view that support for families is key to effectively supporting children. In the case of families with children with learning disabilities they often have particularly distressing challenges. Emotional difficulties amongst parents and siblings of children who display behavioural difficulties are high. Children's behaviour has an impact on the emotional behaviour of parents and carers and family functioning likewise has an impact on the behaviour of the child.¹⁷

Parents and carers want evidence-based intervention to begin early. There is strong evidence that some of the key factors causing challenging behaviour can be changed and lead to marked reductions in challenging behaviour. Early intervention from social services and other health and social care disciplines is urgently needed. The Committee on the Rights of the Child in its concluding observations on the combined

¹⁵ Macdonald et al (2011) "You squeal and squeal, but they just hold you down" Restrictive Physical Interventions and people with intellectual disabilities: service user views. BILD, International Journal of Positive Behavioural Support.

¹⁶ Emerson, E., Blacher, J., Einfeld, S., Hatton, C., Robertson, J., & Stancliffe, R.J. (2014). Environmental risk factors associated with the persistence of conduct difficulties in children with intellectual disabilities and autistic spectrum disorders. *Research in Developmental Disabilities*, 35, 3508–3517.

¹⁷ Hastings, R. P. (2002). Parental stress and behaviour problems of children with developmental disability. *Journal of Intellectual and Developmental Disability*, 27(3), 149-160

sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland recommended, (42)*Reduce waiting times and strengthen the system for early detection and intervention, including for children with autism and developmental disorders, in order to facilitate access for children with all types of disabilities to education, health care, social protection and support services.*¹⁸

Our children and young people are waiting too long for support and services. BASW NI members want to do hands on preventative work to help children and families. They see this work as improving outcomes not only for children and families at home but in educational settings too. To support the future wellbeing of children, professionals involved in the care of children and young people have a duty to consider how to stop situations reaching a crisis point. This should include reflections on any potential failures in care, learning, understanding and ways to improve joined up working in what should be a proactive system.

Reporting and Recording

For those who have already been impacted by harmful application of restrictive practices many have been traumatised by what has happened. They are calling for a stronger accountability system to include reporting and recording of restrictive interventions and action when children are harmed. BASW NI supports this call—it is internationally recognised that the recording of incidents of restrictive practices is a critical means of ensuring that it is appropriately monitored, analysed and is human rights compliant.

Teaching staff raised concerns at a recent roundtable discussion with the Department that guidance would be required in relation to what is recorded in the pro forma to ensure consistent quality of reporting. Concerns were also raised in relation to staff time and capacity in completing the pro forma, this is particularly relevant as teaching staff are currently on action short of strike.

BASW NI believes insufficient focus is placed on the Department in terms of monitoring incidents of restraint and seclusion. The responsibility appears to be primarily placed on Boards of Governors which the guidance would make responsible

¹⁸ UNCR-Conclusion-Observations.pdf (niccy.org)

for “active monitoring, scrutiny and challenge of restrictive practice data and practice to minimise the use of restrictive practices”. In terms of strategic oversight, the guidance requires only that “records should be made available on request to ETI, the EA, and the Department in line with all relevant data protection legislation.”

BASW NI asserts that records of cases of restriction and seclusion must be shared with the parents / guardians of the children or young people involved, as well as the Board of Governors, Education Authority the Department of Education, and the Northern Ireland Commissioner for Children and Young People. The proposal that compliance with the guidance will be assessed by ETI when carrying out inspections on educational settings is insufficient. Unless a procedure is introduced requiring the mandatory reporting of each incident to a central authority, which BASW NI contends should be the Department of Education, opportunities to identify failings will likely be missed, increasing the possibility that the mistreatment of children and young people will continue unaddressed.

Debriefing and language

When restrictive practices have been used, debriefings are essential for post incident analysis and support for children, families and staff involved. Debriefs should put in plans to prevent further incidences. This is not happening, a CBF study found that just 17% of parents had been offered post incident support following the use of restrictive practices on their children.¹⁹

BASW NI notes the Post Incident Checklist on page 43 of the consultation document outlines the requirement to “Conduct a follow-up meeting with parents/carers and the child to review the Incident. This meeting should be minuted and any changes to the Support Plan agreed, recorded.” BASW NI supports the introduction of these meetings with parents but notes they are not included in the guidance, the only specific reference to them is on the aforementioned checklist.

¹⁹ The Challenging Behaviour Foundation (2019) Reducing Restrictive Intervention of Children and Young People Case study and survey results January 2019
<https://www.challengingbehaviour.org.uk/cbfarticles/restraintseclusionnews.html>

Carers often talk about the use of professional language being a barrier to understanding the nature of restrictive practices with it sometimes being framed as therapeutic support when in their parental and carer view it is not. A wider concern from carers that has been shared with the Association is around language in the draft guidance and the framing of restrictive practice as supportive practices. Carers are concerned that this is reframing restrictive practice and disempowering them and the children and young people from challenging what in their view could be restrictive practice under another guise.

Training

Most people understand and acknowledge that restraint and seclusion are restrictive practices. However, there are other more subtle forms of restrictive practice that can become daily or normal responses to what is perceived as a presenting risk to someone or to others, or due to a lack of time it becomes a way of doing things. Without a framework of reflection as previously mentioned *vis a vis Three steps to positive practice* to consider the ethical and legal implications of actions taken there is a risk that restrictive practice could be used more often than in a last resort scenario. There is the risk that without regular review, the use of restrictive practice increased gradually over time without being noticed and reflected upon. This can become part of a culture of practice as seen in Muckamore Abbey Hospital for example.

The former commissioner for Children and Young People said in the *Neither Seen nor Heard* report 2021 said “I am genuinely lost for words that the guidance, training, reporting, recording and communication with parents and carers is not clearly laid out in a mandatory framework”²⁰. This point still stands; the draft guidance needs to clearly stipulate region-wide mandatory training agreed by the Department and the Education Authority.

Furthermore, the statutory guidance should proscribe staff who have not received mandatory training from intervening physically to restrain a child or young person. It

²⁰ NI Pupils Trauma of Restraint and Seclusion Revealed - Niccy

should also make clear that any use of restraint or seclusion with children aged 16 years or older must be legally authorised in accordance with the requirements of the Mental Capacity Act (Northern Ireland) 2016.

Clear definitions of restrictive practices and support practices, with restraint solely used to prevent serious harm to the child or others and only as a last resort needs to be widely understood. Section 7 places the responsibility on individual schools to develop their own policies and procedures concerning the use of restrictive and supportive practices—"Educational settings should ensure that they have policy and procedures in place in relation to the use of restrictive and supportive practices". It requires that these policies / procedures should include "an understanding of when restrictive practices can be used as a last resort in crisis situations." However, insufficient information is provided on what constitutes a last resort scenario, leaving undue room for interpretation and potential for misunderstanding. It is essential that the guidance includes an illustrative, non-exhaustive list of examples of what constitutes a last resort scenario. With the exception of Case Study 7, which deals with a specific case of enforced seclusion in a crisis situation, no examples of when physical restraint would be the appropriate intervention are provided.

The above point notwithstanding, the case studies included in the draft guidance are helpful, but staff need to see more examples of positive, preventative, and early intervention practices informed by best practice. Supervision for staff in educational settings and those supporting children in the communities is important for their learning also.

Page 11 of the consultation document states that "Restrictive practices must not intentionally involve any techniques that inflict pain." BASW NI believes this point must be developed further to prevent the use of any restrictive practices which could unintentionally inflict pain, for example as a result of a child or young person resisting against the technique applied, and for any practice which is known to have the potential to unintentionally inflict pain to be proscribed.

BASW NI believes the use of seclusion must be prohibited in all circumstances. The Association welcomed the statement in the Department's document *Review of the Use*

of Restraint and Seclusion in Educational Settings in Northern Ireland, published in March 2022, that “Enforced seclusion, specifically to control behaviour, must **never** be used in educational settings in Northern Ireland”. However, it is unclear whether the Department, in the proposed statutory guidance has rolled back on this position. Page 6 of the consultation document states “Enforced seclusion should never be used in educational settings, unless in a crisis situation where it is necessary for the prevention of serious physical harm to individuals”, whereas page 10 of the document states “Enforced seclusion must never be used in educational settings ...” It is clear that the use of “should” rather than “must” would represent a clear weakening of the requirement of teachers and support staff to comply with the guidance. BASW NI strongly encourages the Department to stipulate that enforced seclusion **must** never be used in educational settings.

The Association is of the view that mandatory training that supports good practice is required to have a full understanding of restrictive practices and how it impacts on practice. Mandatory training is needed to realise the kind of cultural change which promotes a restorative and child-focused relational approach.

It is also vital that the Department ensures all teaching and support staff are provided with additional training days to enable them to provide appropriate support to children and young people.

A clear outline of the roles, responsibilities and accountabilities of school staff, health professionals, Principals, Boards of Governors, Education Training Inspectorate, social services, parents/carers, children and young people, and the Department of Education is needed to provide clarity for all involved in supporting children and young people. Staff in educational settings feel like they are being asked to do some things in the guidance which require dedicated space for example de-escalation, sensory spaces that do not exist in their buildings. Lack of adequate infrastructure and environmental challenges including an increase in the numbers of children in special schools need to be acknowledged in the implementation of the guidance.

Conclusion

From a social services point of view, investigating safeguarding concerns resulting from restraint and seclusion is a role for social workers and it is essential that the Education Authority and the Department engage fully in social work investigations of any such concerns. The Association believes there is scope for further collaboration between social workers in the EA and the Health and Social Care Trusts in conducting these investigations. A thorough, open and timebound investigation of complaints raised by parents/carers prior to social services involvement is recommended. Access to a complaints process with links to statutory safeguarding and child protection services should be made available to parents/carers.

The Department need to be clear in stating what they can and cannot do in the absence of a Minister for Education when guidance is being issued although BASW NI does welcome the intention to repeal Article 4 the Education (Northern Ireland) Order 1998 at the earliest opportunity.²¹

The Association believes that provision for review and published reporting of the guidance when in operation will be required.

BASW NI looks forward to continued engagement with the Department on these issues and if you would like any further information or to arrange a meeting to discuss this response, please contact Noeleen Higgins, BASW NI Professional Officer and Registered Social Worker, noeleen.higgins@basw.co.uk / 07435289912.

²¹ Article 4 of the Education (Northern Ireland) Order 1998 [online]
<https://www.legislation.gov.uk/nisi/1998/1759/article/4/made>