



# in safe hands?



## A campaign to regulate the use of seclusion and restraint in Scotland's schools



An equal society  
for every person  
who has a  
learning disability

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## Imagine...

Imagine what it is like to be 6 years old.

You have a learning disability, and part of that means it is hard for you to communicate how you feel or what you are worried about.

You don't understand this yet, because you are only 6.

The colour red makes you feel upset and anxious.

Your teacher asks you to sit on a red cushion.

You try to protest but it is hard for you to explain what is wrong.

No one is listening, and so you get angry and shout and teacher is getting angry with you because you are not doing what you are told.

You start crying and shouting.

You throw the cushion across the room and spit at your teacher with frustration.

Teacher tries to get you to move but you won't and then you are forcibly removed from the classroom and locked in a room 'to calm down'.

When you go home, you don't say anything to mum because you don't know how.

Mum notices that you are very upset about going to school, and notices some marks on your arm.

She speaks to the school and finds out that you had been restrained and secluded 'for your own safety'.

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**All children in Scotland have the right to be safe, healthy, achieving, nurtured, active, respected, responsible and to be included. All children have the right to expect that when they go to school for the day, that they are in safe hands.**

For many children who have additional support for learning needs, including children who have a learning disability and autism, it can be really difficult to communicate how they are feeling verbally. This sometimes means that they communicate through behaviours and actions. If this is not understood, it can present a really challenging, and distressing, situation for the child, their peers, and their teachers and support staff. Worse, it creates a situation where the rights of a vulnerable child are breached.

**It does not need to be this way.**

It is really important that all schools – in both mainstream and specialist settings - are clear about how to support children and young people to communicate how they are feeling, to support them to avoid feeling distressed, and on the occasions where this is not possible, have clear guidance and protocols in place that keep children safe and respected.

But we know in Scotland that right now, children's rights to be free from harm are too often at risk due to unregulated, unsupported, and ultimately, unacceptable practice in schools – with limited routes of redress for parents or young people to challenge where their rights are not upheld.

**Are all our children in safe hands?**

**To our collective shame - not always.**





## What is seclusion and restraint?

**Restraint** means holding a child or young person to stop them from moving.

**Seclusion** means shutting a child somewhere alone and not allowing them to leave.

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*My son is a kind wee soul. Since the age of 5 he was restrained regularly at school – we found out because he was screaming in his sleep. We learned of one instance where he had been held in the cloakroom by a teacher who would not let him out and was holding the door because he would not put his shoes on. He was so distraught.*

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## The case for change

There is limited statistical information available about the number of instances of seclusion and restraint in Scotland's schools.

Following a series of complaints from parents across Scotland, in 2018, the Children's Commissioner used his powers of investigation for the first time and conducted a Scotland-wide investigation into the use of seclusion and restraint in our schools, published in *No Safe Place (2018)*.

## This process identified:

- ✎ **2,674 incidents** of restraint and seclusion
- ✎ relating to **386 children** in the school year 2017/18,
- ✎ but also found that **10 local authorities failed to record** all incidents,
- ✎ and a **further 4 recorded none**.<sup>1</sup>

The United Nations Committee on the Rights of the Child is clear that restraint and seclusion may violate children's rights, including their right to be free from cruel, inhuman or degrading treatment or punishment, their right to respect for bodily integrity, and their right not to be deprived of their liberty. A joint report by PABBS and CBF in 2019 found that 58% of restraints on children resulted in injuries.<sup>2</sup>

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## Local Guidance

The Commissioner also identified significant variance in the availability and content of local education authority guidance on seclusion and restraint, with similar concerns around access to training standards in positively supporting children who have verbal communication challenges to a) avoid escalations and b) to support them well, with dignity and all due regard to their rights, when communication through behaviours presents a challenge in the classroom setting.

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## National Guidance:

In 2017, the Scottish Government addressed the need to strengthen national guidance on the use of seclusion and restraint in Scotland's schools within an updated version of *Included, Engaged and Involved Part Two*<sup>3</sup>, a guidance document which sets out national policy and guidance on reducing school exclusions.

Whilst it sets out clear expectations across two pages around the existence of local policies, decision making processes around the use of exclusion, recording of instances, and demonstrating regard to children's rights in the decision to intervene - it is not widely leading to consistent local policy or practice.

Further, it is framed in the context of a non-statutory guidance document which focuses on managing behaviour and reducing exclusions, rather than guidance on how to design and deliver proactive and planned support for pupils at risk, and who require planned support and proactive strategies to help them to achieve as a result of identified additional support for learning needs.

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*My daughter was regularly subject to seclusion and restraint at school. Her behaviour escalates when pushed to do things she doesn't want to do – once you know her, you know the triggers and how to support her not to get to this stage. At one time, she was placed in a 'safe space' for 45 minutes where she soiled herself whilst already suffering from a urine infection. The door was locked, and she couldn't get out. She has perfunctory language and cannot communicate or acknowledge trauma verbally. We found out about it because another pupil wrote it all down. We are moving forward with the help of anxiety medication and in a different school setting where we are all building trust – as it should be. But she is now 17.*

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Since the publication of IEI2 in 2017, the UK Government published draft guidance 'Reducing the need for restraint and restrictive intervention' in June 2019 – a 73 page document to guide education, health and social care staff in England who provide support to children who have learning disabilities, autism and mental health issues.

More recently, the Mental Welfare Commission in Scotland has published a 25 page practice guidance document on seclusion in health and social care settings. Whilst focused on adult health and social care settings, it clarifies that seclusion is both defined as a locked room, or a situation where staff are preventing a person from leaving where the door is not necessarily locked. It recommends that organisations should have standalone policies on seclusion.

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## Accountability:

Recording does not regularly happen. Member-led research suggests that of 430 incidents reported by parents since June 2017, 83% were not recorded by the local authority. Whilst there are clear protocols, training and guidance in health and social care settings, for children who attend mainstream and non-residential specialist settings, there are no statutory requirements around decision making and training, and there is a lack of clarity on the regulatory framework.

- ✎ **Education Scotland** monitor the quality of education delivered to children in all settings. Whilst it can take an interest, does not currently routinely request information about instances of seclusion and restraint in schools as part of the inspection regime, and would refer to *Included Engaged and Involved Part Two* as a benchmark.
- ✎ **Care Inspectorate** is responsible for regulating the delivery of high quality social care under the terms of the Social Work (Scotland) Act. Whilst the act applies to children too, the remit of the Care Inspectorate in relation to children in education only applies to registered wraparound services e.g. after school clubs, or children in residential school settings.
- ✎ **Mental Welfare Commission** is responsible for upholding the rights of all people, including children, under the terms of the Mental Health (Care and Treatment) (Scotland) Act 2003. This act is not applied in education settings.
- ✎ **Children and Young People's Commissioner Scotland (CYPCS)** and the **Equality and Human Rights Commission (EHRC)** ultimately exist to support and promote the rights of all children and young people in all settings – but cannot investigate individual cases.

This has led to parents, and in some cases, schools, calling in the police to investigate criminal assault of pupils.



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## Training:

**Workforce capacity is a concern.** Education staff, particularly those in mainstream settings, are faced with a difficult task in relation to supporting children to achieve in their classroom. We believe that they too are unsupported by lack of guidance, lack of access to specialist practice support and guidance, and access to training in positive support strategies. IEI2 provides guidance on the principles around the use of seclusion and restraint– but it does not provide practice guidance to support education staff to get it right for every child at risk of presenting challenging behaviour.

**ENABLE Scotland’s 2016 Included In the Main?** research revealed that fewer than 12% of the education workforce felt satisfied that they can meet the educational and developmental needs of a child or young person who has a learning disability. *When asked: what is the personal impact on you if you feel that you do not get enough support to meet the needs of children and young people who have learning disabilities?*, 62% of class/subject teachers said that they have experienced stress and professional anxiety.

**In health and social care settings, training in MAPA, CALMS and PBS** are mandatory requirements defined by an assessment of an individual’s support needs to enable independent living and risk enablement. Indeed, in health and social care settings, maintenance of appropriate training is a critical element of fitness to practice and is regulated by either the Scottish Social Services Council (SSSC) and the Nursing and Midwifery Council (NMC)

At present, the **General Teaching Council** is not required to assess the capacity of registered teachers to demonstrate specialist skill set or training in any element of positive support, and there is no regulatory body for training standards for classroom assistant and additional support for learning assistants in school.



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## Change is in our hands:

- 👉 The evidence collected via the Children's Commissioner is compelling – young children in Scotland are **subject to abuses of the human rights in our classrooms** – right now, across Scotland.
- 👉 As a country, our Government has taken action to embed the UNCRC in domestic legislation, and has recently legislated to ban assault of children through smacking - we believe that the use of physical restraint of children at school requires similar protection and regulation.
- 👉 As a nation, we are rightly focused on taking action to avoid adverse childhood experiences (ACEs), recognising the impact of these formative experiences on mental health and wellbeing in adulthood.

Our members tell us that the experience of being restrained and secluded at school has had an impact on how they view themselves as adults, and how their peers view them.

- 👉 The Scottish Government has announced £15m investment in ASL Assistants – this presents a welcome opportunity to invest in their training and skill set to ensure that all children who have identified additional support for learning needs as a result of learning disabilities, autism and/or mental health issues, are supported in class by staff who are trained in supporting positive behaviours, and other positive support techniques, including CALM, and PBS.



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## In Safe Hands? calls on the Scottish Government to:

- Issue stronger, dedicated guidance on the use of restraint and seclusion in schools;**

We acknowledge the current guidance contained within Included, Engaged and Involved Part 2 (p22-24). We are calling on the Scottish Government to produce strengthened dedicated guidance, developed in partnership with agencies such as the Mental Welfare Commission and the Care Inspectorate. Our preference is that this guidance should be statutory. Given the fact that the majority of children who will be affected by this guidance are children who have additional support for learning needs, either due to learning disability, autism and mental health issues, and/or who are looked after, we believe that the statutory Code of Practice for the Education (Additional Support for Learning) Act 2004 & 2009 could usefully be amended to include this.
- Roll out Positive Support strategies in all schools through skilled staff, with a minimum standard that every school has at least two trained staff on site at all times;**

There are a variety of established techniques which support adults and children who have additional support for learning needs to be included safely alongside their peers. In this context, we use the term Positive Support to include all varieties and techniques available, which include CALM, Positive Behaviour Support and other approaches such as the Communication Passport. The new investment in ASL Assistants creates a systematic workforce development opportunity.
- Introduce a duty of candour around restraint and seclusion for all schools;**

This is a well established principle in health and social care which became law in 2016<sup>3</sup> - placing an expectation on organisations to be open, honest and supportive when there is an unexpected or unintended incident resulting in harm. Given that parents often report not finding out about incidents until their child tells them or they observe changes in their physical appearance or behaviours, a duty of candour in education settings around the use of seclusion and restraint would provide an important tool in upholding rights.
- Strengthen transparency and accountability, with powers of oversight resting with the appropriate body.**

At present, accountability around the use of seclusion and restraint in all school settings is unclear. The Mental Welfare Commission, Care Inspectorate, and Education Scotland all potentially have a role to play, but this is not currently well defined. We believe that the Scottish Government should convene a working group involving representatives of these bodies tasked with clarifying and identifying the appropriate body to uphold the rights of children who have learning disabilities, autism and/or mental health issues in all school settings in relation to the use of seclusion and restraint.

We believe that these four steps will ensure that the rights of all children to be safe, healthy, achieving, nurtured, active, respected, responsible and to be included are upheld and promoted. Together, we can ensure that, whilst they are at school, all pupils in Scotland are **in safe hands**.

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<sup>1</sup>Children and Young People's Commissioner Scotland, No Safe Place: Restraint and Seclusion in Scotland's Schools, 2018: <https://www.cypcs.org.uk/ufiles/No-Safe-Place.pdf>

<sup>2</sup> Positive and Active Behaviour Support Scotland and Challenging Behaviour Foundation, Reducing Restrictive Intervention of Children and Young People, 2019: <https://www.challengingbehaviour.org.uk/learning-disability-assetsreducingrestrictiveinterventionofchildrenandyoungpeoplereport.pdf>

<sup>3</sup> Scottish Government, Included, engaged and involved part 2: preventing and managing school exclusions, 2017: <https://www.gov.scot/publications/included-engaged-involved-part-2-positive-approach-preventing-managing-school/>

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