

Who Cares? Scotland

Equalities and Human Rights Committee

Children (Equal Protection from Assault) (Scotland) Bill

26th February 2019



Who Cares? Scotland [WC?S] is an independent advocacy and influencing organisation working with people who have experience of the care system. We provide direct advocacy to children and young people with care experience, as well as opportunities for local and national participation. WC?S aims to provide care experienced people in Scotland with knowledge of their rights. We strive to empower them to positively participate in the formal structures and processes they are often subject to solely because of their care experience. At WC?S we ensure the voice of the care experienced population of Scotland informs everything we do as an organisation.

Focus: Restraint in Care

We urge the committee to consider the concerns of our Care Experienced members regarding the practice of restraint in care settings. The purpose of restraint is set out in the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002.¹ Regulation 4(1)(c) states: “the person for the time being providing the care service must ... ensure that no service user is subject to restraint unless it is the only practicable means of securing the welfare of that or any other service user, and there are exceptional circumstances.” However, we know that restraint is used as a form of behavioural management.

Over the past 40 years, we have consistently heard about the negative effects of restraint from our Care Experienced members and those accessing our advocacy service. This is an area in vital need of meaningful scrutiny, as reports over the last 30 years have consistently highlighted the many concerns with restraint practice, especially within residential care in comparison to other care placements.² If this Bill is to protect *all* children in Scotland from physical punishment, we want to see children and young people in care afforded the same level of protection as children living at home with their parents.

The current legislation and guidance on restraint is not explicit enough on how restraint can be used and creates ambiguity. Although guidance on restraint such as ‘Holding Safely’ was commissioned for professionals in residential care settings³, we know that the practical application of this varies widely and care experienced people have raised concerns about inappropriate use of restraint over a number of years. In 2016, the UN Committee on the Rights of the Child’s Concluding Observations called on the UK to “abolish all methods of restraint against children for disciplinary purposes in all institutional settings, both residential and non-residential.” Furthermore, it called for a ban on any technique designed to cause pain to children and that restraint is used as a last resort, used solely to “prevent harm to the child or others.”⁴

‘Holding Safely’ sees restraint as a last resort and states that “children should only be restrained when restraining them cannot be avoided and restraining them is necessary because of your duty to care to the child or others”. However, restraint as a last resort is far too open to interpretation and can conflict with the 2002 regulations quoted above, which state restraint is to be used only as a means of securing the welfare of that or any other service user, and if there are exceptional circumstances. Our evidence from advocacy practice highlights that the practical application of

¹ [The Regulation of Care \(Requirements as to Care Services\)\(Scotland\) Regulations 2002](#)

² [The Pindown Report \(1991\)](#); [Lost In Care \(the Waterhouse Report\) \(2000\)](#); [The Kerelaw Inquiry \(2009\)](#).

³ [Davidson J., McCullough D., Steckley L., Warren T. \(2005, 2013\) Holding Safely: A Guide for Residential Child Care Practitioners and Managers about Physically Restraining Children and Young People.](#)

⁴ Hill, L (2018) Legislative and Policy Framework around Restraint in Residential Care Homes in Scotland.

restraint varies widely and can be used too often to manage behaviour and is used more frequently than required.

“I think the staff take it a bit far. I saw a restraint last night that went too far. It’s ‘cos they used to work in the jail – some still work there. There was a thumb bent back and knees on the young person’s back, four or five staff lying on top of you, all lying over you, holding your arms, your head and your legs... It’s not done properly... People get hurt in them.”

- 17 year-old boy, Secure unit, 2008⁵

A young person has received advocacy support when they were injured during a restraint, which resulted in a carpet burn to the face. They saw restraint being used to prevent or in anticipation of possible violent behaviour. The young person felt that alternative ways of deescalating their behaviour should have been attempted and that the staff were too quick to use physical restraint as a way of managing behaviour. The advocacy worker challenged the frequency of the use of physical restraint as it was felt by the young person that it was not being used as a last resort.

- Advocacy Case Study, 2018

It has been recognised in academic research that there is a need to “develop policies and practices to reduce or eliminate restraint where possible, while still meeting needs for safety and care”, acknowledging restraint as “one of the most complex and contentious areas of practice in residential child care, in the UK and internationally”.⁶ There must be trauma-informed management of children and young people’s behaviours, informed by understanding of how it feels to be restrained and the risks involved of triggering previous trauma and re-living earlier life experiences.

A 14 year-old young woman raised concerns regarding being restrained, she stated that staff didn’t take her past abuse and the way this impacts on her into consideration and that she has flashbacks when being held.

- Advocacy Case Study, 2018

We also urge the committee to consider when restraint should be classed as assault against a young person in care and how this then potentially becomes a child protection issue. We have many examples of the physical and emotional harm which results in cases of restraint being used inappropriately or excessively. Furthermore, the current independent review process of restraint cases can be unclear in both process and outcomes. It is also extremely difficult for young people to make complaints to staff about bad practice, many do not know they have the option to do so.

“I was sitting eating... in a room. I wasn’t aware I wasn’t meant to be eating there and 3 staff came in and picked me up and carried me out of the room and then I got restrained for about 10 minutes or something. One staff member was holding me on my left arm, another was on my right arm, a third was on my legs and a fourth was on my feet. I was in a restraint on the ground. I got restrained for nothing. I’ve got a few carpet burns on my knee and they’ve ripped a hole in my trousers. When they finally let go of me a member of staff called me a ‘pleb’.”

- Account from a Care Experienced young person receiving advocacy, 2018

We want to highlight the many experiences of our Care Experienced members which speak to the immediate and lasting impact restraint practice can have, these include: triggering previous traumatic experiences of abuse; creating an emotional impact of seeing those around you being restrained and also physical injuries. Ultimately, we believe the use of restraint for behavioural management negatively impacts how children and young people in care can experience love and kindness from those who care for them.

⁵ [Barry, M., Moodie, K., Morrison, E. and Cruickshank, CA. \(2008\) “This isn’t the road I want to go down” Young people’s perceptions and experiences of secure care.](#)

⁶ [Steckley, L. \(2017\), Catharsis, Containment and Physical Restraint in Residential Child care.](#)