

SUBMITTING EVIDENCE TO A SCOTTISH PARLIAMENT COMMITTEE

DATA PROTECTION FORM

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Date:	25-01-2019
Organisation: (if required)	Who Cares? Scotland
Topic of submission:	Equalities and Human Rights Committee - Children (Equal Protection from Assault) (Scotland) Bill.

I have read and understood the privacy notice about submitting evidence to a Committee.

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EQUALITIES AND HUMAN RIGHTS COMMITTEE**CHILDREN (EQUAL PROTECTION FROM ASSAULT) (SCOTLAND) BILL****SUBMISSION FROM [INSERT NAME]**

Do you support the Bill's aim to end the physical punishment of children by parents or carers? It will do this by abolishing the defence of reasonable chastisement. Please provide an explanation for your response. What groups would be impacted by the change (for example, parents, children, public services, the legal profession, etc)?

Who Cares? Scotland (WC?S) is fully supportive of the Bill's aims to end the physical punishment of children by parents and carers, by abolishing the defence of reasonable chastisement. We must protect children and young people from all forms of violence, to keep them safe. Therefore, it is unacceptable that Scotland gives the least legal protection to the most vulnerable members of our society and allows adults the defence of claiming they were using 'reasonable chastisement' if charged with assaulting their child.¹ Attitudes towards the physical punishment of children are changing and its prevalence declining, which could be the result of the growing body of evidence that shows physical punishment to be a damaging form of discipline.² Research suggests physical punishment should not even be cited as a form of parental discipline due to its proven ineffectiveness. Over recent decades a vast body of research has revealed negative links between physical punishment and child development, relationships and health and wellbeing.³ Physical punishment and physical abuse are part of a continuum of violence and abuse, it is impossible to separate the two, other than by degree.⁴

This has significance for our care experienced members, as the Bill will have the potential to create cultural change against using physical punishment in the family home, including the many different care settings that care experienced people can grow up in. Care experienced people can often have experienced different forms of abusive behaviour, before entering care and this creates a lasting impact on their lives. They have told us about both the physical effect of abusive behaviour, and also the emotional impact of being in an environment of violence, illness and potentially death. There can also be a severe lack of information about what constitutes abusive behaviour, all of which makes it difficult for care experienced people to speak up about these issues. We think that this Bill will help to raise awareness that no form of physical punishment is acceptable in a family or care setting. If a young person knows that any form of physical punishment is illegal and counts as assault, the understanding of abusive behaviour could help them to speak up about it and access support services sooner.

Whilst we recognise that this Bill has a specific focus on abolishing the defence of reasonable chastisement, we also want to utilise this opportunity to draw attention to the experience of restraint as used in formal care settings. We urge the committee to consider the Bill's aims and how they link with the power dynamics which exist in the care system, which can lead to restraint being used as a form of punishment or to the detriment of the

¹ See Section 12 of the Children and Young Person's (Scotland) Act 1937 and Scottish Law Commission (1992).

² Heilmann A., Kelly Y. and Watt R. G. (2015), Equally Protected? A review of the evidence on the physical punishment of children.

³ See review of evidence in Heilmann A., Kelly Y. and Watt R. G. (2015), Equally Protected? A review of the evidence on the physical punishment of children.

⁴ Bunting L., Webb M.A., Healy J. (2008), The 'smacking debate' in Northern Ireland – messages from research. Northern Ireland Commissioner for Children and Young People.

child or young person involved. We want to share experiences of our care experienced members which speak to the immediate and lasting impact restraint practice can have if not implemented correctly, these include: triggering previous traumatic experiences of abuse; creating an emotional impact of seeing those around you being restrained and also physical injuries.

Our care experienced members tell us that they often have witnessed violence in their family home. This includes experiencing violence through witnessing parental domestic abuse or through abuse directed at them personally.⁵ Statistics reveal that 90% of children enter the care and protection system due to experiencing abuse and neglect.⁶ In Scotland, there were 2,723 children on the child protection register on 31st July 2016 and physical abuse was recorded as a concern at 20% of case conferences.⁷ While we cannot know the numbers of parents who moved from physical punishment to physical abuse, we can know that it is among a range of important risk factors for childhood abuse. Research shows that physical punishment carries a 'serious risk of escalation into injurious abuse and maltreatment.'⁸ The use of physical punishment deemed legal has been linked to increased risks of severe physical abuse including injury requiring medical attention during an infant's first year of life and referral to Child Protection Services.⁹

It is important to understand the reasons that families might use physical punishment and to recognise that while the reasons are likely to have changed over generations due to shifting cultural values, the imbalance of power in a parent-child relationship persists. WC?S believes that removing the defence of 'reasonable chastisement' will prompt the rethinking of the nature of caring relationships. Research shows that physical punishment is used by parents as a result of their own feelings not just their child's behaviour.¹⁰ Most parents who smack do not do so out of a positive conviction that the practice is beneficial and useful but out of frustration and a sense that they have no other methods for 'regaining control.'¹¹ For Scotland to be a caring nation, parent-child relationships must be supported to thrive. We know that care experienced children and young people often feel regret and sometimes anger that not enough was done to improve and preserve their ability to remain living at home or to maintain positive relationships with family members.¹²

We know from care experienced people's stories that the impact of abusive behaviour they experience before care is lifelong and can lead to a multitude of issues to cope with the trauma, such as substance misuse and self-harm. Care experienced people have recounted feelings of isolation, guilt and have told us that to recover from abusive behaviour, they need to feel safe, loved and cared for – yet, this also affects their ability to build trusting, safe and caring relationships.

⁵ WC?S (2017), Consultation Response to Children (Equal Protection from Assault) (Scotland) Bill. Available online: <https://www.whocaresscotland.org/wp-content/uploads/2019/01/Consultation-Response-to-Children-Equal-Protection-from-Assault-Scotland-Bill-July-2017.pdf> Last accessed: 21-01-2019.

⁶ SCRA (2016), Online Statistics.

⁷ Scottish Government (2017), Children's Social Work Statistics Scotland 2015/16. Available online: <http://www.gov.scot/Publications/2017/03/6791/0> Last accessed: 21-01-2019.

⁸ Heilmann, Kelly and Watt (2015), Equally Protected?

⁹ *Ibid.*

¹⁰ Brownlie J. and Anderson S. (2006), Beyond Anti-Smacking, rethinking child-parent relations.

¹¹ *Ibid.*

¹² WC?S (2017), Response to Consultation on the New National Health and Social Care Standards. Available online: <https://www.whocaresscotland.org/wp-content/uploads/2018/05/WCS-response-to-consultation-on-National-Health-and-Social-Care-Standards-Jan-17.pdf> Last accessed: 21-01-2019.

Consequently, we feel it is important to widen the conversation to understand the potential effects of restraint on a young person with these kinds of experiences. In a manifesto written in 2006, the Scottish Institute for Residential Childcare recognised that they had heard young people in care say that they were ‘concerned about the way physical restraint is sometimes used by staff in residential units and say that being able to trust staff to keep them safe is extremely important.’¹³ Today, we are still hearing about the negative effects of restraint from our care experienced members and those accessing our advocacy service. It has also 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’.¹⁴

In the policy memorandum for the Bill, it is acknowledged that the use of restraint needs to be reviewed: *‘The member considers it is important that full consideration is taken of the effect of the prohibition of the use of physical punishment on adults and children with a disability and that this is reflected in the education and support provided to parents, and in the updating of guidance and training of the various professionals involved. Issues such as the difference between restraint and punishment will be important to consider and for all involved to understand.’*¹⁵ Concern on this area led to the creation of an investigation by the Children’s Commissioner in Scotland, with a study published in March 2018.¹⁶

However, restraint is also used legally in care settings – not just when working with children with a disability. Physical restraint is defined as ‘an intervention in which staff hold a child to restrict his or her movement and [which] should only be used to prevent harm.’¹⁷ This should involve staff being trained in techniques of physical intervention and there is a large school of thought around this practice, such as the Therapeutic Crisis Intervention method. In Scotland, the use of restraint by care providers is legislated for in paragraph 4 (1) (c) of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002. It states 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.’¹⁸ ‘Holding Safely’ was also commissioned by the Scottish Executive of the time, as official guidance on restraint for professionals in residential care settings.¹⁹

However, our concern with restraint practices are that within care settings we know there often exists a power dynamic between the adult professional that is in a position of caring for the young people within their care setting and the young people themselves. As an advocacy provider we have had cases in which we have supported young people in care to challenge the use of restraint and communicate the negative effects it had on them. Advocacy workers have also witnessed a wide range of behaviours and cultural attitudes around restraint practice.

¹³ Scottish Institute for Residential Childcare (2006), No Time to Lose: A Manifesto for Children and Young People Looked After Away from Home. Available online: <https://www.celcis.org/files/8314/6721/3355/No-time-to-lose-a-manifesto.pdf> Last accessed: 21-01-2019.

¹⁴ Steckley, L. (2017), Catharsis, Containment and Physical Restraint in Residential Child care. Available online: <https://academic.oup.com/bjsw/article/48/6/1645/4657142> Last accessed: 21-01-2019.

¹⁵ Children (Equal Protection from Assault) (Scotland) Bill Policy Memorandum, point 92, page 18.

¹⁶ Children and Young People’s Commissioner (2018), No Safe Place. Available online: <https://www.cypcs.org.uk/ufiles/No-Safe-Place.pdf> Last accessed: 24-01-2019.

¹⁷ Steckley (2017), Catharsis, Containment and Physical Restraint.

¹⁸ The Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002, SSI 2002/114

¹⁹ 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.

We know from our advocacy experience:

- There are still varying levels of training for restraint in the current care workforce and when staff are trained, incidents can occur where young people are hurt and sometimes severely.
- Restraint can become normalised within care settings. One young person living in a residential unit who reacted physically to another young person told an advocacy worker that he saw the behaviour as over stepping the mark. When quizzed about his unacceptable behaviour he replied that he was 'only trying to restrain him'.
- It has been suggested that restraint is used too early in many situations and not as a last resort.
- Many young people do not understand their rights around restraint and there is a specific leaflet created by Scottish Government, which is not routinely given to young people after they have been restrained.²⁰
- Many young people do not raise advocacy issues about restraint because they are afraid of the consequences of doing so.

To detail this, we have outlined two brief case studies from our advocacy workforce on their experience of helping young people with challenging the use of restraint:

Case Study 1

An advocacy worker received a referral from a social worker about a young person in care who had been injured badly due the practice of a restraint by a staff member at the care placement they stayed in. The social worker confirmed the young person had been treated in hospital and the staff member had been removed from the care setting. An inquiry into the incident had also been initiated and as the young person wanted to receive advocacy support, a visit was arranged.

During the visit, the young person described the incident to the advocacy worker. They stated there was little warning before the restraint happened, that the adult involved was much bigger and stronger than them and that during the restraint the adult fell on top of the young person, resulting in them receiving a carpet burn on their face. The advocacy worker noted that the young person was visibly distressed by the incident and had difficulty in talking about it. The care placement staff apologised to the young person directly and confirmed that the staff member involved had been removed from the residential house, however, was still working in another care setting.

The young person communicated their concerns to the advocacy worker, which were that as they were placed out with their local authority, they were far away from family members, making them feel unsafe with no one nearby to help. They were also anxious that they might see the staff member involved as they were still working nearby. They were also unsure about when restraint could be used and if it could happen again, as well as now lacking trust in the care staff. The young person had not been given information about restraint and it was not included in the care setting's handbook. Finally, they communicated that they were worried there could be consequences if they made a complaint about the restraint.

The advocacy worker informed the young person of their rights following a restraint, as well as their right to feel safe and well cared for. With the young person's permission, the advocacy worker spoke to management about the incident. The advocacy worker learned

²⁰ Scottish Government, (2013) Physical restraint: What you can expect. Available online: <http://hub.careinspectorate.com/media/106667/sg-physical-restraint-leaflet.pdf> Last accessed: 21-01-2019

that the staff member involved had received appropriate training for restraint and confirmed that it should have been used as a last resort. They agreed to provide support to the young person and after the inquiry into the restraint had been completed.

Case Study 2

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.

We are aware as an organisation that restraint is intended to be used after all other avenues have been explored and that it should not be used as a punitive method of punishment, but to keep the young person safe. However, the two cases outlined are examples in which the practice of restraint can stray into unsafe and upsetting incidents for young people in care. The physical harm described in both cases is extremely concerning but combined with the information we have outlined about the traumatic and often abusive environments that care experienced people potentially have experience of, the harm of restraint has potential to go far beyond physical injury. In this context, it is also extremely difficult for young people in care to challenge the practices of staff and communicate the distress they feel after restraint has occurred.