

Monitoring Update

NICCY's Assessment of Government Response to Recommendations made in NICCY's report 'Neither Seen Nor Heard': Rights Based Review on the Use of Restraint and Seclusion in Educational Settings

8 December 2022

1. Introduction

The Northern Ireland Commissioner for Children and Young People (NICCY) was established under the Commissioner for Children and Young People (NI) Order 2003 with a principal aim to safeguard and promote the rights and best interests of children and young people in Northern Ireland (NI). In exercising her functions, the Commissioner must have regard to all provisions of the United Nations Convention on the Rights of the Child (UNCRC).

In December 2021, NICCY published a Rights-Based Review on the Use of Restraint and Seclusion in Educational Settings – 'Neither Seen Nor Heard' (NSNH). The report was produced in accordance with the statutory powers and functions set out in the NICCY Order 2003. This includes duties to keep under review the adequacy and effectiveness of law, practice and services provided for children and young people by relevant authorities; to advise Government and relevant authorities, and to encourage children and young people and their parents/carers to communicate with the Commissioner.

At the time of undertaking our Review, there was no statutory obligation on schools in Northern Ireland to record incidents involving restraint or seclusion,¹ despite this being recognised internationally as critical to ensuring that practice is rights compliant and appropriately monitored and scrutinised.² Neither was there a statutory requirement to inform parents when restraint or seclusion was used on their child, although Department of Education (DE) guidance specified that informing parents of incidents involving their children is always advisable.³ Without a regional policy including guidelines and a rights-based training framework, NICCY was

¹ Restraint and seclusion are collectively known as 'restrictive practices'.

² See NICCY's 'Neither Seen Nor Heard' Report (p.12) for definitions of 'restraint' and 'seclusion' used in the Review.

³ DE (2021) Circ/2021/13 Interim Guidance on the Use of Restraint and Seclusion in Educational Settings.

seriously concerned about the risk of restrictive practices being misapplied and related to this, the risk of traumatic impacts on children and indeed families.

Critically, our Review identified a clear need for urgent changes in policy, guidance, and legislation on the use of restraint and seclusion within educational settings. Findings showed that a majority of schools surveyed had never received guidance on creating a policy on physical interventions; a small minority had a seclusion policy in place. Alarmingly, it was found that the use of restrictive practices often results in extremely negative, long-lasting traumatic experiences for all involved but especially for the child who is directly subject to it.

NICCY made 15 recommendations to improve policy, legislation, training, communication, reporting and monitoring of restrictive practices.⁴ In particular, NICCY strongly recommended that restraint should be used only as a measure of last resort, after all alternative therapeutic interventions have been exhausted and only when there is a direct risk to the child or another individual. Furthermore, NICCY strongly recommended that the use of seclusion in educational settings is banned.

2. DE's response to NSNH's Recommendations

In March 2022, DE published its review of the use of restraint and seclusion in educational settings, which included a direct response to each of NICCY's 15 recommendations.⁵ Drawing on *'Neither Seen Nor Heard'* (NSNH), their Review made six recommendations for change, aimed at ensuring legislation and guidance on the use of restrictive practices in educational settings protects children and young people from harm and complies with the UNCRC.⁶ A key recommendation was that DE should issue statutory guidance, in the 2022/23 school year, on the use of restrictive and support practices for educational settings under Article 18 1(c) of the Education and Libraries (Northern Ireland) Order 2003. In terms of recommended legislative change, DE must repeal Article 4 (1)(c) of The Education (NI) Order 1998 – which enables the use of reasonable force to "prevent a pupil engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils" - at the earliest legislative opportunity.

⁴ Appendix 1

⁵ Report on the Review of Restraint and Seclusion in Educational Settings.pdf (education-ni.gov.uk)

⁶ Ibid., p.3-5.

As reflected in DE's update on actions planned or taken, NSNH's recommendations will primarily be addressed through the statutory guidance, which DE have committed to issuing during the 2022/23 school year. NICCY welcomes that the statutory guidance will have a rights-based, child centred focus and that a number of recommendations from NSNH will be considered in the drafting of the guidance, which is currently underway. We note that the statutory guidance will provide:

- clarity on the definition of seclusion and its use in educational settings;
- a definition of restraint stating that this should only be used as a last resort and not as a means of maintaining good order and discipline; and
- further clarity that the use of any restraint techniques must not inflict pain on children and young people.

3. NICCY's Assessment of Progress

Overall, NICCY welcomes DE's plans to implement the policy and legislative change needed to ensure that restraint is used appropriately and only as a measure of last resort. Notwithstanding the absence of an NI Executive and Assembly, we believe that greater progress could have been made in terms of producing an associated action plan detailing specific timeframes for implementation of the recommendations. NICCY considers it imperative that the statutory guidance, which is fundamental to ensuring children's safety and wellbeing in educational settings, is issued as a matter of urgency.

In advance of the statutory guidance being made available, we note that amendments have been made to DE's Safeguarding and Child Protection guidance, including amendment of wording relating to safe handling/reasonable force guidance and insertion of a link to DE's Review.8 The Safeguarding guidance states that the underpinning principles of safe handling and the use of reasonable force should be in line with the rights of the child under the United Nations Convention on the Rights of the Child (UNCRC) and should never be used as a punitive measure.

Below, we highlight outstanding concerns, relating to DE's Review findings and the proposed statutory guidance:

⁷ See Appendix 1

⁸ Safeguarding & Child Protection in Schools JUNE 2022.pdf (education-ni.gov.uk)

• **Terminology/language**: Our Review highlighted the importance of using consistent and appropriate language/terminology to describe restrictive practices. This is crucial to ensure clarity and understanding among all parties, to avoid any emphasis of blame or responsibility being placed on the child, and to facilitate the collection and analysis of reliable data for monitoring purposes. Appropriate terminology is also integral to the broader cultural change, related to attitudes and treatment of children with emotionally complex needs, that is urgently needed within our education system.

A case in point is the term 'behaviours of concern', which DE have advised clarifies 'when it may be appropriate to use reasonable force as a matter of last resort'. NICCY considers that use of 'behaviours of concern' is unacceptable and strongly recommends that this term is replaced with terminology that is reflective of a therapeutic approach. NICCY will continue to engage with DE on this and other language related issues as work on the statutory guidance is progressed.

- Definition of 'seclusion': In setting out the definitions for restrictive practices, DE's Review draws a distinction between 'enforced seclusion' and 'seclusion for health reasons'. The distinction between these forms of seclusion in DE's Review is unacceptably vague and 'seclusion for health reasons', in particular, is poorly defined. Without clarity and clear guidance, there is a significant risk that seclusion will continue to be used inappropriately in educational settings. Seclusion as a punishment or a consequence for poor behaviour must be understood as deprivation of liberty and accompanied with the appropriate legal proceedings, apart from when a child or young person voluntarily goes into a separate room as a therapeutic intervention. NICCY understands that the statutory guidance will provide further clarity on the definition of seclusion and its use in educational settings. We will seek further opportunities to discuss this with DE as the guidance is developed.
- Training: Our Review emphasised the importance of training on the appropriate
 use of restrictive practices and alternative therapeutic approaches, to ensure
 seclusion is never used and that any form of restraint is used only as a measure
 of last resort. We note DE's intention to provide details of available training and
 resources within the statutory guidance, and that officials are currently working
 with the EA to identify training requirements and subsequent provision. DE have

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further highlighted plans to:

- commission the Education Authority to undertake a training needs analysis to ensure that teaching and non-teaching staff in educational settings are able to comply with the statutory guidance. This will involve meetings between EA and Health colleagues to determine current training provision across education and health;
- undertake continued engagement with teacher training institutions on how/if training on restrictive practices might be embedded within initial teacher education courses; and
- consider how/if training on restrictive practices could be embedded into early professional development (EPD) and continual professional development (CPD) within its strategy for teacher professional learning.

Although welcome, NICCY considers that a stronger commitment to training is needed, including specific details and timeframes for actions that will be taken. Additional resources must be provided to facilitate the provision of mandatory training - for all education settings - on positive, preventative and early intervention practices aimed at minimising the use of any form of restraint. The training should go beyond best practice examples outlined by the Education and Training Inspectorate and draw on a wide range of evidence-based practice and practice-based guidance. For example, mandatory guidance should explicitly reference that inappropriate use of restraint and seclusion is a child protection / safeguarding issue, and that it should be recognised in every school's child protection policy and procedure.

Going forward, it is critical that work undertaken to inform the drafting of the guidance, and implementation of the Review's wider recommendations, involves a joint commitment from all relevant departments and agencies, the meaningful involvement of parents and guardians and other key stakeholders, and an evidence-based approach.

4. Conclusion

Our Review, 'Neither Seen Nor Heard' (2021), identified the need for urgent changes in policy, legislation, training and other areas, to ensure minimal use of restrictive practices and seclusion in educational settings and children's protection from harm. NICCY is encouraged by DE's commitment to address the range of issues identified, through the issue of statutory guidance, legislative change and other measures

outlined in their Review. We also note the collaborative approach on this important area of work so far. Nevertheless, as outlined above, NICCY is aware that considerable work is still required on language, definitions and training, and for this reason is concerned at the slow pace of progress in addressing these outstanding issues. While we recognise that a NI Executive and Assembly is required to make legislative changes needed, some progress could have been made in sharing or consulting on draft guidance and a detailed action plan with timeframes for implementation of the recommendations.

NICCY urges DE to prioritise and take tangible actions to secure the systemic changes required to keep children and young people safe in schools. NICCY hopes to continue to monitor the implementation of the Neither Seen Nor Heard recommendations in a timely manner.

NICCY 'Neither Seen Nor Heard' Progress Against Recommendations Table

NICCY Recommendations from 'Neither Seen Nor Heard' Report	DE Response	DE's input: Action taken or planned
Policy, Guidance and Legislation		
1.The Department of Education must create legislation which should include:A provision to ban the use of seclusion	Statutory guidance issued by the Department will provide clarity on the definition of seclusion and its use in educational settings.	Draft statutory guidance is being developed for issue in the 2022-23 school year.
in educational settings; • A provision to ban the use of any techniques which inflict pain on children;	The Education (Corporal Punishment) (Northern Ireland) Order 1987 and Article 36 paragraph 4 of the Education and Libraries (Northern Ireland) Order 2003 abolished the use of corporal punishment in educational settings. Statutory guidance issued by the Department will provide further clarity that the use of any restraint techniques must not inflict pain on children and young people.	
A definition of restraint and clarity that this should only be used as a last resort	Statutory guidance issued by the Department will provide a definition of restraint and clarify that this should only be used as a last resort and not as a means of maintaining good order and discipline.	

The Education Authority undertakes an annual review on the use of restrictive practices across all settings which should include: the number of children who experienced restrictive interventions; the number of times each pupil experienced a restrictive practice; the type of deescalation techniques and restrictive interventions used; how children and parents were involved and what support/training may be required.	The Department will commission a periodic review and publish a report on the use of restrictive practices in educational settings. The Department will secure agreement that the Education and Training Inspectorate will examine if the use of supportive and restrictive practices, by educational settings, follows any related statutory guidance issued by the Department.	The Department will commission a periodic review and publish a report at an appropriate time after the statutory guidance is issued. This will be progressed when the statutory guidance is issued.
2. The Department of Education must ensure that the legislative framework explicitly limits the use of restraint or force on a child so that it is only permitted to protect that child or others from immediate and serious harm.	The Department of Education will ensure that, at the next earliest legislative opportunity, the legislative framework will explicitly limit the use of restraint or force on a child so that it is only permitted to protect that child or others from immediate and serious harm. The legislative framework will be reflected in statutory guidance issued by the Department.	
The Department must review The Education (NI) Order, 1998 repealing Article 4 (1)(c) 'To prevent a pupil engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils'.	The Department will, at the next earliest legislative opportunity, repeal Article 4 (1)(c) of The Education (NI) Order 1998, which enables the use of reasonable force to "prevent a pupil engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils."	This legislative change will be progressed when a new NI Executive is in place.

NICCY Recommendations from 'Neither Seen Nor Heard' Report

3. The Department of Education should issue mandatory guidance on the use of restrictive practices in educational settings detailing the legislative and policy context, and outlining the roles, responsibilities and accountabilities of school staff, external professionals, Principals, Board of Governors, the Education Authority, (or other Governing Bodies) and the Department itself. This Guidance should be developed in consultation with schools, professional bodies, parents/carers, and children. They should:

Provide further clarity on the legal definitions of 'restrictive practices' which should

- align to those of the Departments of Health and Justice;
- Change the use of terminology from 'challenging behaviours' to 'distressed behaviours';
- Ensure the provision of training; and Outline the requirement to immediately inform parents/carers of the incident following up with a formal report which should include measures to support the child and staff and prevent further incidents.

DE Response

The Department will issue statutory guidance on the use of restraint and seclusion in educational settings under Article 18 of the Education and Libraries (Northern Ireland) Order 2003 which places a duty on the Board of Governors of a grant-aided school to determine the measures to be taken at the school (by the Board of Governors, the staff of the school or other persons) to protect pupils from abuse (whether at school or elsewhere).

The statutory guidance will:-

- be based on the underlying principles outlined Department's report.
- Provide further clarity on the legal definitions of 'restrictive practices' which should align to those of the Departments of Health and Justice;
- Change the use of terminology from 'challenging behaviours' to 'distressed behaviours';
- Ensure the provision of training; and
- Outline the requirement to immediately inform parents/carers of the incident following up with a formal report which should include measures to support the child and staff and prevent further incidents.
- detail the legislative and policy context, provide clear definitions of restrictive practices aligned as far as possible with those of the Departments of Health and Justice;
- outline the roles, responsibilities and accountabilities of school staff, health professionals, Principals, Board of

DE's input: Action taken or planned

Draft statutory guidance is being developed for issue in the 2022-23 school year.

DE's Safeguarding guidance has been updated to remove previous safe handling/reasonable force guidance and confirm new guidance is being drafted. It refers to the report on the review of restraint and seclusion and reiterates the underpinning principles of safe handling and the use of reasonable force should be in line with the rights of the child under the United Nations Convention on the Rights of the Child (UNCRC) and should never be used as a punitive measure, i.e. as a form of punishment

	Governors, the Education Authority, parents/carers, children and young people and the Department itself; • will provide for the mandatory recording and reporting of all incidents of restrictive practices by educational settings;	
	 include exemplars of positive, preventative and early intervention practices identified by the Education and Training Inspectorate; include details of training and resources available for educational settings, from the Education Authority, in relation to handling behaviours of concern; 	
	 outline the requirement for educational settings to immediately inform parents/carers of any incident followed up with a formal report which should include measures to support the child and staff and prevent further incidents; outline whistleblowing procedures; and 	
	be developed in consultation with schools, professional bodies, children and young people and parents/carers.	
4. The Department of Education must establish regional standards on restrictive practices in schools including how to minimise their use and eliminate the use of seclusion. The policy must incorporate a rights-based, child-centred focus, ensuring that all children are protected, regardless of their background, status, additional needs, or disability.	The statutory guidance issued by the Department will have a rights-based, child-centred focus, with an overarching aim that all children and young people in educational settings are protected from harm.	Draft statutory guidance is being developed for issue in the 2022-23 school year.

NICCY Recommendations from 'Neither Seen Nor Heard' Report	DE Response	DE's input: Action taken or planned
Complaints		
5. Within the revised guidance document for schools, the Department of Education should outline standards for responding to complaints, in line with Complaints Standards set out by Northern Ireland Public Service Ombudsmen (NIPSO). The guidance should also provide direction on	The statutory guidance issued by the Department will outline the complaints process and link to the Department's Safeguarding and Child Protection Guidance which includes advice on the escalation of safeguarding and child protection concerns. The Department's Guide for Governors is currently	Draft statutory guidance is being developed for issue in the 2022-23 school year.
providing pathways for staff (including health staff visiting the school) to raise concerns.	subject to a separate review including on how a schools complaint process should be operated.	The Department's Guide for Governors is being updated presently.
6. Parents should be informed of independent advocacy and support services, including peer advocacy, to assist in their complaint.	The statutory guidance issued by the Department will outline the complaints process and link to the Department's Safeguarding and Child Protection Guidance including support available from the Education Authority. Signposting parents to independent advocacy and support services, including peer advocacy, is outside the scope of the Department's review of the use of restraint and seclusion in educational settings. However, the Department will consider this issue further as work to develop guidance is progressed.	Draft statutory guidance is being developed for issue in the 2022-23 school year.

NICCY Recommendations from 'Neither Seen Nor Heard' Report	DE Response	DE's input: Action taken or planned	
Understanding and Knowledge of Res	Understanding and Knowledge of Restrictive Practices in Educational Settings		
7. Information regarding any policy, guidance and legislation on restrictive practices should be made publicly available and easy to understand, with alternative accessible formats available on request.	The statutory guidance issued by the Department will be published and made available in alternative accessible formats available on request.	Draft statutory guidance is being developed for issue in the 2022-23 school year.	
Training			
8. Teacher training institutions and the Education Authority (EA) should provide mandatory training on restrictive practices to be used as a last resort by all educational staff, including classroom assistants and non-teaching staff (where relevant).	The statutory guidance issued by the Department will include details of training and resources available for educational settings, from the Education Authority, in relation to handling behaviours of concern. The statutory guidance issued by the Department will include exemplars of positive, preventative and early intervention practices, identified by the Education and Training Inspectorate.	Draft statutory guidance is being developed for issue in the 2022-23 school year.	
This should be accredited and/or subject to external independent training standards and should begin at Initial Teacher Education (ITE), at Post-Graduate Certificate Education (PGCE) levels and continue into Early Professional Development (EPD) and Continuous Professional Development (CPD).	The Department will commission the Education Authority to undertake a training needs analysis to ensure that teaching and non-teaching staff in educational settings are able to comply with the statutory guidance. The Department will continue to engage with teacher training institutions on how/if training on restrictive practices might be embedded within initial teacher education courses. The Department will consider how/if training on restrictive practices could be embedded into Early Professional Development (EPD) and Continual Professional Development (CPD) within its strategy for teacher professional learning - Learning Leaders	Meetings are being planned between EA and Health colleagues to undertake an audit of current training provision across education and health.	

NICCY Recommendations from 'Neither Seen Nor Heard' Report	DE Response		DE's input: Action taken or planned
9. Any new policy should be accompanied by an accredited training framework and supportive infrastructure to ensure schools have appropriate resources in place to support their pupils and staff in minimising the use of restrictive practices in educational settings.	The statutory guidance issued by the Department will include details of training and resources available for educational settings, from the Education Authority, in relation to handling behaviours of concern. The Department will continue to engage with teacher training institutions on how/if training on restrictive practices might be embedded within initial teacher education courses. The Department will consider how training on restrictive practices could be embedded into Early Professional Development (EPD) and Continual Professional Development (CPD) within its strategy for teacher professional learning - Learning Leader	The De with ini provide them, v	tatutory guidance is being developed for n the 2022-23 school year. epartment continues to meet regularly itial teacher education providers and will a copy of the statutory guidance to when this is published, to allow them to er within their initial teacher education mmes.
 10. Additional training should be made available on areas complementary to reducing restrictive practices including on: Effective communication; Mental health; Trauma; Disability awareness training (particularly focusing on Autism Spectrum Disorder (ASD) and learning disability); Managing distressed behaviours; Supporting children with additional 	The statutory guidance issued by the Department will include exemplars of positive, preventative and early intervention practices, identified by the Education and Training Inspectorate. The Department will commission the Education Authority to undertake a training needs analysis to ensure that teaching and non-teaching staff in educational settings are able to comply with the statutory guidance. Child protection training and resources, which are updated annually are available to all schools, and Boards of Governors. Specific training is provided to members of the School Safeguarding Team. In	respon meet th	iginal response, shown in the DE use column, details what is available to this recommendation. The training toble from the EA will be signposted in the use.

needs with or without a Statement; and on Children's rights

addition, Trauma-Informed Practice training is available to all schools and Attachment training provided to primary schools by the EA's Children Looked After Service

The joint Department of Education and Health 'Children & Young People's Emotional Health and Wellbeing in Education Framework' recognises our collective responsibility in supporting the emotional health and wellbeing of our children and young people as well as those who work with them. Implementation of this Framework covers a number of these complementary areas including resilience; creation of a positive school culture; coaching for school leaders; wellbeing resources; school nurses placed in pilot post primary schools; expansion of existing RISE NI provision to Key Stage 2; trauma and attachment informed practice; mental health awareness support and a whole school approach to wellbeing. The Education Authority and the Middletown Centre for Autism have developed an enhanced framework for Tier 1 and Tier 2 autism training for teaching and non-teaching staff (including specific courses for classroom assistants); parents/carers and children and young people. The training is accessible online; a hybrid model including face-to-face training, will be in place when public health guidelines permit.

NICCY Recommendations from 'Neither Seen Nor Heard' Report	DE Response	DE's input: Action taken or planned			
Experience and Perspectives of Rest	Experience and Perspectives of Restrictive Practices				
11. Parents and carers should have an opportunity to receive support and training, to understand the use of deescalation and therapeutic interventions, as well as restrictive practices. They should have the opportunity to develop capacity to ensure they and their children can contribute to the development of personalised learning plans and be provided with information on the complaints process.	The statutory guidance issued by the Department will include details of training and resources available for educational settings, from the Education Authority, in relation to handling behaviours of concern. The guidance will include the need for schools to work with parents to understand how the school will be promoting positive behaviour. Support and training for parents to understand the use of deescalation and therapeutic interventions, as well as restrictive practices is outside the scope of the Department's review. However, the Department will consider how this might be addressed during development of its guidance on the use of restraint and seclusion in educational settings including through the Middletown Centre for Autism which provides parental training in relation to techniques to support children with autism.	The guidance is being drafted according to DE's original response. Further parental training and wider responsibility for this remain as per the original response			
12. Learning support plans or 'communication passports' should be in place for all children with additional needs, with a particular focus on children who are at risk of exhibiting behaviours that are distressing.	The statutory guidance issued by the Department will include appropriate links to healthcare which is also currently being reviewed. It is envisaged this will include documentation, training and support to schools including the use of equipment and any required therapies recommended by health and social care staff in the school setting to meet and manage children's needs.	Draft statutory guidance is being developed for issue in the 2022-23 school year. It will include links to			

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NICCY Recommendations from 'Neither Seen Nor Heard' Report	DE Response	DE's input: Action taken or planned			
13. Social, emotional and practical support should be provided for all individuals who experience, witness or apply restrictive practices in educational settings, especially children, siblings, parents/carers, and classmates, as well as the staff member involved.	The statutory guidance issued by the Department will outline the requirements for schools in relation to follow up actions after an incident to both pupils and staff.	Draft statutory guidance is being developed for issue in the 2022-23 school year.			
Educational Culture and Accountabili	Educational Culture and Accountability				
14. All educational settings should be informed by a UNCRC child's rights framework and embed a culture of school values underpinned by the principles of inclusion, the best interests of children and respect for their human rights.	The statutory guidance will be based on the underlying principles detailed in Section 5 of this report.	Draft statutory guidance is being developed for issue in the 2022-23 school year.			
15. The Department Education and Education Authority should provide support to school leaders in school-based transformation work, as required, including changing culture and attitudes towards pupils with additional needs. Resources, training and sharing of good practice should be provided to ensure this happens.	The statutory guidance issued by the Department will include exemplars of positive, preventative and early intervention practices, identified by the Education and Training Inspectorate. The Department will commission the Education Authority to undertake a training needs analysis to ensure that teaching and non-teaching staff in educational settings are able to comply with the statutory guidance.	Draft statutory guidance is being developed for issue in the 2022-23 school year. Meetings are being planned between EA and Health to establish current training provision across education and health.			