



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Submission to the Northern Ireland  
Committee for Education on the Human  
Rights Implications of Current Guidance  
Relating to the Use of Restrictive Practices  
in Schools**

**February 2021**

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## Summary of Recommendations

- 2.15** The NIHRC advises that restraint and restrictive practices should be used as a matter of last resort, in circumstances where a child is at risk of harming themselves or someone else.
- 2.16** The NIHRC recommends that comprehensive guidance is produced on the application of restrictive practices in an education setting. This guidance should include a definition of “restraint”, in line with international human rights standards.
- 3.6** The NIHRC recommends that the DoE produce guidance on the use of seclusion in school settings. This guidance should include a definition of “seclusion” and give clear direction on when and how it can be applied in line with international human rights standards.
- 4.7** The NIHRC advises that the use of restrictive intervention to maintain good order and discipline risks non-compliance with Article 3 ECHR. The NIHRC recommends that the Education (Northern Ireland) Order 1998 be amended to remove Section 4(1)(c) to ensure that restrictive interventions are not used to maintain good order and discipline. Guidance from the Department of Education should be updated to reflect this.
- 5.13** The NIHRC advises that, restrictive interventions and seclusion should not be used to restrain or control children with special educational needs and disabilities. Guidance on how this operates in practice should be produced in consultation with children with special educational needs and disabilities, their parents and guardians, educators and any other relevant stakeholders.
- 5.14** The NIHRC recommends that the Department of Education produce specialised guidance on alternative approaches and interventions for children and young people with special educational needs and disabilities in school settings. This should be developed in consultation with children with special educational needs, parents and carers, educators and other relevant stakeholders, to ensure the specific needs of children are met.

- 5.15 The NIHRC recommends that the Department of Education allocate appropriate resources and funding to schools to ensure that reasonable accommodations are made for those children and young people with special educational needs and disabilities in school settings.**
- 6.9 The NIHRC recommends that all staff working within grant aided schools, who are authorised to use restrictive interventions, receive standardised training on when it is appropriate to use these measures and how to do so safely. This training should include reference to human rights and be sensitive to the additional needs of children and young people with specialised educational needs and disabilities.**
- 6.10 The NIHRC recommends that any training on restrictive practices and seclusion is clear that these measures are to be used as a last resort, to intervene where a child may cause harm to themselves or others and only when other preventative measures have been exhausted. Statutory training should also include alternative interventions to restraint and seclusion to better equip teaching staff, particularly pertaining to children and young people with special educational needs.**
- 7.6 The NIHRC recommends that a duty be placed on schools to record every incident of restraint and/or seclusion used on a child. These reports should make every effort to seek the views of the child on the incident that occurred in line with article 12 of the UNCRC.**
- 7.7 The NIHRC recommends that the Department of Education produce a standard recording template to collect and publish disaggregated data on the use of restraint and seclusion in grant-aided schools in NI so that its frequency and impact can be appropriately monitored, in line with the recommendations of the Committee on the Rights of the Child.**
- 7.8 The NIHRC recommends that guidance policy on the use of reasonable force for restraint and seclusion requires schools to inform a parent or guardian where these interventions have been used on their child, particularly where the child has special educational needs.**

## 1.0 Introduction

- 1.1. The Northern Ireland Human Rights Commission (the NIHRC), pursuant to Section 69(1) the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in Northern Ireland (NI). In accordance with this function, the NIHRC provides this submission to the Committee for Education on the human rights implications of the current guidance relating to restrictive practice, restraint and seclusion in education settings.
- 1.2. The NIHRC bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights, as incorporated by the Human Rights Act 1998, and the treaty obligations of the Council of Europe (CoE) and United Nations (UN). The relevant regional and international treaties in this context include:
  - European Convention on Human Rights 1950 (ECHR);<sup>1</sup>
  - UN International Covenant on Civil and Political Rights 1966 (UN ICCPR);<sup>2</sup>
  - UN International Covenant on Economic, Social and Cultural Rights 1966 (UN ICESCR);<sup>3</sup>
  - UN Convention Against Torture 1984 (UN CAT);<sup>4</sup>
  - UN Convention on the Rights of the Child 1989 (UN CRC);<sup>5</sup>
  - UN Convention on the Rights of Persons with Disabilities 2006 (UN CRPD);<sup>6</sup>
- 1.3. In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding, but provide further guidance in respect of specific areas.
- 1.4. The NIHRC welcomes this opportunity to provide evidence on the use of restrictive practices and seclusion in school settings to the Committee for Education. This submission highlights relevant

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<sup>1</sup> Ratified by the UK in 1951.

<sup>2</sup> Ratified by the UK in 1976.

<sup>3</sup> Ratified by the UK in 1976.

<sup>4</sup> Ratified by the UK in 1988.

<sup>5</sup> Ratified by the UK in 1991.

<sup>6</sup> Ratified by the UK in 2009.

human rights standards and principles where they may be of assistance to the Committee.

- 1.5. The NIHRC welcomes the work commenced by the Department of Education on a review of the use of restraint and seclusion in educational settings. The Department has formed a working group to review existing guidance here and in other relevant jurisdictions. To assist the working group with this task, the Department has also set up a reference group of key stakeholders on which the NIHRC have been asked to sit.

## **2.0 Restrictive Practices, Restraint and Reasonable Force in Education Settings**

- 2.1. The right to education is recognised in Article 2 of Protocol 1 of the ECHR, which identifies that “no person shall be denied the right to education”.<sup>7</sup> Education plays such an important role in the furtherance of human rights that the European Court of Human Rights has identified that a restrictive reading of Article 2 of Protocol 1 is inconsistent with the purpose of this provision.<sup>8</sup> Continuation
- 2.2. Article 28(2) of the UNCRC requires States Parties to “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention”. In its fifth periodic review of the UK, the Committee on the Rights of the Child urged the State to “ensure that restraint is used against children exclusively to prevent harm to the child or others and only as a last resort”.<sup>9</sup>
- 2.3. Section 3(3) of the Education (Northern Ireland) Order 1998 provides that the Board of Governors and the Principal within grant-aided schools are responsible for promoting pupil self-discipline, encouraging good behaviour and respect for others, securing an acceptable standard of pupil behaviour and regulating pupil conduct.<sup>10</sup>
- 2.4. Section 4(1) explains the powers for staff members from grant-aided schools to restrain pupils. It notes:

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<sup>7</sup> See also; Article 13(1) of the UN ICESCR, ‘education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms’; Article 28 of the UNCRC; and Article 24 of the UNCRPD.

<sup>8</sup> *Leyla Şahin v Turkey* (2004) ECHR 299, at para 137.

<sup>9</sup> CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at para 40.

<sup>10</sup> Education (Northern Ireland) Order 1998, at section 3(3).

A member of the staff of a grant-aided school may use, in relation to any pupil at the school, such force as is reasonable in the circumstances for the purpose of preventing the pupil from doing (or continuing to do) any of the following, namely—

- (a) *committing any offence;*
- (b) *causing personal injury to, or damage to the property of, any person (including the pupil himself); or*
- (c) *engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils, whether that behaviour occurs during a teaching session or otherwise.*<sup>11</sup>

2.5. In its 1999 Circular on Guidance on the Use of Reasonable Force to Restrain or Control Pupils, the Department of Education provides guidance on the use of reasonable force to restrain or control pupils. It identifies that the use of reasonable force to restrain pupils should be rare, emphasising that neither the circular nor section 4 of the Education (NI) Order 1998 should be used to authorise the use of physical contact that is “deliberately intended to cause pain or injury or humiliation”.<sup>12</sup> Instead, the circular notes, the purpose of section 4 is to “make it clear that teachers, and authorised staff, are also entitled to intervene in other, less extreme, situations”.<sup>13</sup>

2.6. The lack of statutory definition of “reasonable force” means that there can be no comprehensive policy on the appropriate use of physical force. The circular guidance has identified what it considers to be three relevant considerations; namely that the use of force is regarded as reasonable only if the circumstances warrant it, the degree of force must be proportionate to the circumstances and consideration is given to other relevant factors such as the age, gender and level of understanding of the pupil or any physical disability.<sup>14</sup>

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<sup>11</sup> Education (Northern Ireland) Order 1998, at section 4(1).

<sup>12</sup> Circular No. 1999/9, Department of Education NI, ‘Pastoral Care: Guidance on the Use of Reasonable Force to Restrain or Control Pupils’, 8 March 1999, at para 4.

<sup>13</sup> Ibid, at para 4.

<sup>14</sup> Ibid, at para 7

2.7. In its 1999 Circular Guidance, the Department of Education asked a Working Groups including representatives from (the then) Education and Library Boards, CCMS and schools to write a draft model policy for use of reasonable force and restrictive practices.<sup>15</sup> The model policy was published in 2004 and contains a working definition of “reasonable force”. The working definition states:

Based on this legal framework, the working definition of “reasonable force” is the minimum force necessary to prevent a pupil from physically harming him/herself or others or seriously damaging property, but used in a manner which attempts to preserve the dignity of all concerned.<sup>16</sup>

2.8. This working definition addresses the use of reasonable force where a pupil is in danger of harming themselves, someone else or damaging property, which is consistent with section 4(1)(a) and (b) of the Education (NI) Order 1998. However, the definition does not cover the use of reasonable force in circumstances to maintain order and discipline as identified by section 4(1)(c) of the Order.

2.9. Current departmental guidance on reasonable force to restrain or control pupils, including the Department of Education Circular and the subsequent Regional Policy Framework, does not provide a definition of what is meant by restraint. The NIHRC has expressed concern over the lack of definition of restraint in care home settings, noting that it leaves staff “uncertain about when a measure or action constitutes restraint”.<sup>17</sup> Defining what is meant by restraint is important if teachers and other staff are to make informed decisions about its use and address questions of proportionality.

2.10. Article 3 of the ECHR states that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”. Article 3 is an absolute right, and there can be no derogation from this right. The European Court of Human Rights (ECtHR) jurisprudence identifies a positive obligation on the state to take measures to prevent treatment contrary to article 3.<sup>18</sup> In *Z and others v. the United Kingdom*, the ECtHR noted these measures

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<sup>15</sup> Circular No. 1999/9, Department of Education NI, ‘Pastoral Care: Guidance on the Use of Reasonable Force to Restrain or Control Pupils’, 8 March 1999, at para 7.

<sup>16</sup> Department of Education NI, ‘Regional Policy Framework on the Use of Reasonable Force/Safe Handling’ (2004), at 4.

<sup>17</sup> NI Human Rights Commission, ‘In Defence of Dignity: The Human Rights of Older People in Nursing Homes’, (NIHRC, 2012), at 63.

<sup>18</sup> *Z and others v the United Kingdom* (2001) ECHR, at para 70.



should “provide effective protection, in particular, of children and other vulnerable persons”.<sup>19</sup>

2.11. Article 16 of the CAT provides that acts committed by public officials which do not amount to torture as defined by article 1, can amount to cruel, inhumane or degrading treatment. In a joint submission to the CAT, the Commissioners for Children and Young People from Scotland, Wales and Northern Ireland voiced their concern at the use of restrictive practices and seclusion within schools, noting it as a form of cruel, inhuman and degrading treatment, contravening article 16.<sup>20</sup>

2.12. Article 19 of the UNCRC identifies that “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation”. Additionally, article 37 states that “no child shall be subjected to torture or other cruel, inhumane or degrading treatment or punishment”. The Committee on the Rights of the Child noted in General Comment No. 8 that the reading of article 37 along with 19 “does not leave room for any level of legalized violence against children”.<sup>21</sup>

2.13. The Challenging Behaviour Foundation and Positive and Active Behaviour Scotland (PABSS) found that 86.5% of respondents to a survey on restraint and seclusion from across the UK, including NI, reported that their child had been physically injured as a result of restrictive practices. While 13.3% of respondents reported that their child had not been injured, with 0.2% unsure.<sup>22</sup> One respondent to the survey reported that their child’s thumb had been broken during a restrictive intervention<sup>23</sup>. This survey suggests that children are experiencing physical violence as a result of restraint, contravening articles 19 and 37 of the UNCRC. The report concludes that “considering the high incidence and the severity of injuries reported by families in the case studies, it is questionable if the guidance is

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<sup>19</sup> Ibid, at para 73.

<sup>20</sup> NICCY, CYPSC and the Children’s Commissioner for Wales, ‘Joint submission to the United Nations Committee Against Torture 66<sup>th</sup> session on the sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, at para 6.

<sup>21</sup> CRC/C/GC/8, UN Committee on the Rights of the Child, ‘General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)’ (UNCRC, 2007), at para 18.

<sup>22</sup> Challenging Behaviour Foundation and Positive and Active Behaviour Support Scotland, ‘Reducing Restrictive Intervention of Children and Young People: Update of Case Study Reports,’ 2020, at 16.

<sup>23</sup> Ibid, at 24.

being followed for children with special educational needs and disabilities".<sup>24</sup>

2.14. Due to the lack of available data at school level, it is not possible at present to assess the level of harm to children and young people in NI through the use of restrictive practices. However, families and carers from NI took part in the survey mentioned above. It is clear from this data, that across the UK, restrictive interventions are being applied without due regard for the principle of reasonable force.

**2.15. The NIHRC advises that restraint and restrictive practices should be used as a matter of last resort, in circumstances where a child is at risk of harming themselves or someone else.**

**2.16. The NIHRC recommends that comprehensive guidance is produced on the application of restrictive practices in an education setting. This guidance should include a definition of "restraint", in line with international human rights standards.**

### 3.0 Seclusion in Educational Settings

3.1. There is no mention in either of the departmental guidance documents of what is meant by seclusion. It is important to understand what is meant by this term to avoid confusion over interventions, which may be considered acceptable, such as a "time out", and more serious applications, which could amount to a human rights violation.<sup>25</sup> The Challenging Behaviours Foundation identified that there is a "significant difference between a calm space where a child voluntarily agrees to spend some time and a room in which they are held, alone, against their will, unable to get out".<sup>26</sup>

3.2. Article 5 of the ECHR states that "everyone has the right to liberty and security of person".<sup>27</sup> ECtHR jurisprudence has identified three components to test the deprivation of liberty for the purposes of article 5: confinement in a restricted place for a not negligible period of time; a lack of valid consent; and the confinement is

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<sup>24</sup> Ibid, at 24

<sup>25</sup> Ibid, at 25

<sup>26</sup> Challenging Behaviour Foundation and Positive and Active Behaviour Support Scotland, 'Reducing Restrictive Intervention of Children and Young People,' 2019, at 19.

<sup>27</sup> See also article 9 of the ICCPR, 'Everyone has the right to liberty and security of person'; article 37(b) of the UN CRC, 'No child shall be deprived of his or her liberty unlawfully or arbitrarily'; and article 14 of the UN CRPD, 'States Parties shall ensure that persons with disabilities... enjoy the right to liberty and security of person'.

attributable to the state.<sup>28</sup> Valid consent extends to a person with parental responsibility's consent where a child is under the age of 16 or lacks capacity to consent. The UK Supreme Court has indicated that compliance should not be assumed to be consent.<sup>29</sup>

- 3.3. A UK wide study into children with special educational need's experience of seclusion found that, of the 720 families surveyed, 60.7% reported that their children had been secluded in school, with most reporting that their child had been secluded between 1 and 30 times.<sup>30</sup> The same study found that, of the 60.7% of families who identified that their children had been secluded, 16.4% reported that their children had been secluded "multiple times", meaning several times a day or every day of the school week.<sup>31</sup>
- 3.4. The survey suggests that this practice is used frequently within school settings. A previous study on restraint and seclusion by the same organisations identified that "seclusions and blanket restrictions were reported to happen overwhelmingly in school settings compared to non-school settings such as nursery, respite care and holiday clubs".<sup>32</sup>
- 3.5. A lack of data on the use of seclusion in schools in NI means that we cannot say definitively how frequently this form of intervention is used, and in what circumstances.
- 3.6. The NIHRC recommends that the DoE produce guidance on the use of seclusion in school settings. This guidance should include a definition of "seclusion" and give clear direction on when and how it can be applied in line with international human rights standards.**

## 4.0 Behaviour that is prejudicial to good order and behaviour in schools

- 4.1. Section 4(1)(c) of the Education (Northern Ireland) Order 1998 notes that restraint by reasonable force is permissible to intervene in behaviour that is prejudicial to good order and behaviour. This contravenes the Committee on the Rights of the Child's assertion, in

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<sup>28</sup> *Storck v Germany* (2005) 43 EHRR 6, at paras 74-89.

<sup>29</sup> *P v Cheshire West and Chester Council* [2014] UKSC 19, at para 35.

<sup>30</sup> Challenging Behaviour Foundation and Positive and Active Behaviour Support Scotland, 'Reducing Restrictive Intervention of Children and Young People: Update of Case Study Reports,' 2020, at 12.

<sup>31</sup> *Ibid.*

<sup>32</sup> Challenging Behaviour Foundation and Positive and Active Behaviour Support Scotland, 'Reducing Restrictive Intervention of Children and Young People,' 2019, at 18.

its assessment of the UK, that restraint should only be used to prevent the child from harming themselves or someone else.<sup>33</sup>

- 4.2. The Challenging Behaviours Foundation and PABSS report found that, of 720 families of children and young people with special education needs who had experienced restrictive practices and seclusion across the UK, 72.1% of respondents said that the circumstances for the use of restraint or seclusion on their children had been unclear.<sup>34</sup> Of this 72.1%, respondents reported the broad and vague reasons they had been given included, behaviour, aggression, meltdowns, non-compliance, sensory, outbursts, disruption and "various".<sup>35</sup> Most of these reasons relate to the maintenance of good order and behaviour as opposed to emergency intervention to prevent harm to the pupil or other pupils.
- 4.3. In its assessment of UK compliance to the CRC, the Westminster Joint Committee on Human Rights acknowledged that the use of restrictive interventions in secure colleges are also permissible to maintain good order and discipline. The Committee noted their concerns that "ensuring "good order and discipline" was far too broad and vague a justification and that force should only be used to prevent harm to the child or to others and only the minimum force necessary should be used".<sup>36</sup>
- 4.4. In *C v Secretary of State for Justice*, the Court of Appeal in England and Wales considered the compliance of restrictive interventions to maintain good order and discipline in secure training colleges with international human rights standards. The Court heard that Code of Practice on the use of restrictive interventions in secure colleges had been amended to allow for the use of these interventions to maintain order and discipline through the "Amendment Rules".<sup>37</sup> The Court considered the Amendment Rules in relation to article 3 of the ECHR, noting that ECtHR jurisprudence makes clear that article 3 may be engaged in circumstances that fall below a high level of extreme violence, deprivation or humiliation.<sup>38</sup>
- 4.5. The Judge noted "the very open-ended terms of GOAD (good order and discipline) leave a great deal of discretion in the hands of

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<sup>33</sup> CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 40.

<sup>34</sup> Challenging Behaviour Foundation and Positive and Active Behaviour Support Scotland, 'Reducing Restrictive Intervention of Children and Young People: Update of Case Study Reports,' 2020, at 13.

<sup>35</sup> *Ibid*, at 13.

<sup>36</sup> Human Rights Joint Committee [The UK's compliance with the UN Convention on the Rights of the Child - Human Rights Joint Committee \(parliament.uk\)](https://www.parliament.uk), at para 121.

<sup>37</sup> *C v Secretary of State for Justice* (2008) EWCA Civ. 882, at para 3.

<sup>38</sup> *Ibid*, at para 58,

officers on the ground”<sup>39</sup>, he also identified that decisions on the appropriateness of restrictive techniques seemed to be made on an “ad hoc” basis.<sup>40</sup> The Court held, “the Amendment Rules are accordingly in breach of article 3, and must be quashed on that ground.”<sup>41</sup>

- 4.6. While this case concerns restrictive practices within secure training colleges, it could also be applied to the legal and policy framework of restrictive interventions in schools. Guidance on reasonable force does not identify how this should be applied in situations to maintain good order and discipline. Guidance on the application of this legislation identifies that the use of reasonable force should be limited to emergency situations but does not address circumstances where the maintenance of good order and discipline constitutes an emergency.<sup>42</sup>
- 4.7. The NIHRC advises that the use of restrictive intervention to maintain good order and discipline risks non-compliance with Article 3 ECHR. The NIHRC recommends that the Education (Northern Ireland) Order 1998 be amended to remove Section 4(1)(c) to ensure that restrictive interventions are not used to maintain good order and discipline. Guidance from the Department of Education should be updated to reflect this.**

## 5.0 Children with Special Education Needs

- 5.1. The British Association for Social Work NI identified its concern on the Department of Education’s lack of standardised policies and guidance on the use of restrictive practices and seclusion on children and young people with additional needs, including physical or learning disabilities.<sup>43</sup>
- 5.2. The disproportionate use of restrictive interventions on persons with disabilities was noted by the CRPD in General Comment No. 4 on the right to inclusive education, where they stated “Persons with disabilities ... can be disproportionately affected by violence and abuse, including physical and humiliating punishments by

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<sup>39</sup> Ibid, at para 72.

<sup>40</sup> Ibid, at para 73.

<sup>41</sup> Ibid, at para 79.

<sup>42</sup> Education and Library Boards, ‘Towards a Model Policy in Schools on the Use of Reasonable Force’, at 4.

<sup>43</sup> British Association of Social Work NI ‘Restraint and seclusion of children and young people in schools and educational facilities: Policy Statement’.

educational personnel, for example through the use of restraints and seclusion".<sup>44</sup>

- 5.3. The ECHR recognises the right to non-discrimination in Article 14, which identifies:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.<sup>45</sup>

- 5.4. Article 14 is not a free standing right, meaning it can only be used in conjunction with another Convention right.<sup>46</sup> The ECtHR has held that decisions pertaining to resource allocation for education must be made carefully and have regard for children with disabilities. It consequently considered that "discrimination on grounds of disability also covers refusal to make reasonable accommodation".<sup>47</sup>
- 5.5. Article 5 of the CRPD recognises the right to equality and non-discrimination, asserting, "States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law".
- 5.6. Article 24(2)(c) of the CRPD obligates States Parties to make reasonable accommodations to the individual's requirements to ensure that persons with disabilities are not excluded from the general education system. General Comment No. 4 to the CRPD states:

The right to non-discrimination includes the right not to be segregated and to be provided with reasonable accommodation and must be understood in the context of the duty to provide accessible learning environments and reasonable accommodation.<sup>48</sup>

- 5.7. Guidance by Ofsted for schools in England addressed the need to make reasonable accommodations for children and young people with special needs. The guidance stated, "it would not be fair ... to isolate a child who has attention deficit hyperactive disorder (ADHD)

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<sup>44</sup> CRPD/C/GC/4, UN CRPD Committee, 'General Comment No. 4 on the Right to Inclusive Education', 25 November 2016, at para 51.

<sup>45</sup> See also; article 2(2) of the UNICESCR; and article 2 of the UNCRC.

<sup>46</sup> Belgian Linguistic Case (1968) 1 EHRR 252; A breach of article 14 may be found even if the Court decided there had been no breach of the conjunctive right.

<sup>47</sup> Çam v Turkey (2016) ECHR, at para 67.

<sup>48</sup> CRPD/C/GC/4, UN CRPD Committee, 'General Comment No. 4 on the Right to Inclusive Education', 25 November 2016, at para 13.

or other special needs because they were not able to sit still when required to do so".<sup>49</sup>

- 5.8. A study by the Challenging Behaviour Foundation and PABSS on restrictive interventions asked parents and carers of SEN children who had experienced restraint or seclusion at school about their experiences. Of the parents and carers who responded to the survey, 42% felt that "staff, by using restrictive interventions were trying to punish their child".<sup>50</sup> Using restrictive intervention as a punitive measure is clearly beyond the remit of what is allowed by law, and suggests that it is not being used as a last resort.
- 5.9. The Northern Ireland Commissioner for Children and Young People has commented on the over-representation of children and young people with special educational needs who have been suspended or excluded from school.<sup>51</sup> The Commissioner noted that, in speaking with schools, there is a suggestion that, rather than be used as a last resort, formal and informal exclusions of SEN children from school are a result of a lack of "resource and capacity to manage children's needs".<sup>52</sup>
- 5.10. The British Association of Social Work NI recognised the damaging physical, emotional and psychological effects that restraint and seclusion has on children and young people with additional needs and disabilities and the additional emotional impact of these interventions on their families.<sup>53</sup> In *No Safe Place: Restraint and Seclusion in Scotland's Schools*, a report by the Children and Young People's Commissioner for Scotland, there are noted reports of physical and mental trauma caused to children as a result of restrictive interventions and seclusion.<sup>54</sup> The report identifies that these negative impacts are magnified for children and young people with special educational needs and disabilities who often struggle to advocate for themselves in these situations.<sup>55</sup>
- 5.11. The Committee on the Rights of the Child expressed their concerns on the use of restraint and seclusion on children with special

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<sup>49</sup> Ofsted, 'Environments Where Children Can Flourish: A Guide for Inspectors about Physical Intervention and Restrictions of Liberty,' 2018, at para 40.

<sup>50</sup> Challenging Behaviour Foundation and Positive and Active Behaviour Support Scotland, 'Reducing Restrictive Intervention of Children and Young People,' 2019, at 22.

<sup>51</sup> NICCY, 'Too Little Too Late: A Rights Based Review of Special Educational Needs Provision in Mainstream Schools,' 2020, at 79.

<sup>52</sup> Ibid.

<sup>53</sup> British Association of Social Work NI 'Restraint and seclusion of children and young people in schools and educational facilities: Policy Statement'.

<sup>54</sup> CCYP/2018/3, Children and Young People's Commissioner Scotland, '*No Safe Place: Restraint and Seclusion in Scotland's Schools*', 2018, at 41.

<sup>55</sup> Ibid



educational needs and disabilities.<sup>56</sup> In its initial report on the UK, the Committee on the Rights of Persons with Disabilities called for the eradication of the use of restraint on persons with disabilities in all settings. It further recommended the state to “set up strategies, in collaboration with monitoring authorities and national human rights institutions, in order to identify and prevent the use of restraint for children and young persons with disabilities”.<sup>57</sup>

5.12. In a joint response to the Committee against Torture, the Commissioners for children and young people from Scotland, Wales and NI noted that, despite these calls by international human rights mechanisms, “the UK and devolved governments are still not fulfilling their responsibilities in relation to restraint and seclusion of children in all settings”.<sup>58</sup>

**5.13. The NIHRC advises that, restrictive interventions and seclusion should not be used to restrain or control children with special educational needs and disabilities. Guidance on how this operates in practice should be produced in consultation with children with special educational needs and disabilities, their parents and guardians, educators and any other relevant stakeholders.**

**5.14. The NIHRC recommends that the Department of Education produce specialised guidance on alternative approaches and interventions for children and young people with special educational needs and disabilities in school settings. This should be developed in consultation with children with special educational needs, parents and carers, educators and other relevant stakeholders, to ensure the specific needs of children are met.**

**5.15. The NIHRC recommends that the Department of Education allocate appropriate resources and funding to schools to ensure that reasonable accommodations are made for those children and young people with special educational needs and disabilities in school settings.**

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<sup>56</sup> CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at para 39.

<sup>57</sup> CRPD/C/GBR/CO/1, ‘UN CRPD Committee Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland’, 3 October 2017, at para 37.

<sup>58</sup> NICCY, CYPCS and the Children’s Commissioner for Wales, ‘Joint submission to the United Nations Committee Against Torture 66<sup>th</sup> session on the sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, at para 6.1.



## 6.0 Training

- 6.1. Current guidance documents on the use of restrictive practices and seclusion in schools in NI make reference to training for staff in relation to use of reasonable force. The guidance states:

Education and Library Boards' Behaviour Support Teams will offer professional guidance and support to schools on a range of behavioural support, including the use of reasonable force/safe handling – prevention and intervention strategies.<sup>59</sup>

- 6.2. The Circular on Guidance on the Use of Reasonable Force to Restrain or Control Pupils notes that training courses will be available for senior teachers who will then provide "cascade" training to other staff in the school.<sup>60</sup> From current guidance, it seems that not all teachers are being offered direct training courses with accredited trainers, but are having training relayed to them by senior staff.
- 6.3. There is no statutory requirement to train staff on the application of reasonable force in restrictive interventions. The Challenging Behaviour Association and PABSS identified that, of the parents and carers that responded to their survey on the use of restraint and seclusion, nearly 10% stated that their child's school had received no training on the application of restrictive interventions, while nearly 20% reported they did not know if their child's school had received training.<sup>61</sup>
- 6.4. The Committee on the Rights of Persons with Disabilities identify "supported teachers" as a key feature of inclusive education.<sup>62</sup> The Committee notes that this means "all teachers and other staff receive the education and training they need to give them the core values and competencies to accommodate inclusive learning environments".<sup>63</sup>
- 6.5. In its most recent submission, the NIHRC asked the UN CRC to consider what measures were being taken to ensure mandatory

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<sup>59</sup> Department of Education NI, 'Regional Policy Framework on the Use of Reasonable Force/Safe Handling' (2004), at 13.

<sup>60</sup> Circular No. 1999/9, Department of Education NI, 'Pastoral Care: Guidance on the Use of Reasonable Force to Restrain or Control Pupils', 8 March 1999, at para 9.

<sup>61</sup> Challenging Behaviour Foundation and Positive and Active Behaviour Support Scotland, 'Reducing Restrictive Intervention of Children and Young People: Update of Case Study Reports,' 2020, at 22.

<sup>62</sup> CRPD/C/GC/4, UN Committee on the Rights of Persons with Disabilities, 'General Comments No 4 on the Rights to Inclusive Education' (CRPD, 2016), at para 12(d).

<sup>63</sup> Ibid.

training was provided in NI on the use of restraint against children in educational settings.<sup>64</sup>

6.6. The NI Commissioner for Children and Young People identified issues with staff training in relation to children and young people with special educational needs more generally. The Commissioner noted that, due to a lack of capacity and resources in mainstream settings, many teaching staff “staff lack sufficient training, and subsequent knowledge and skill, to identify and respond to the varied support requirements of children with SEN in mainstream schools’ particularly children with social, emotional and behavioural difficulties”.<sup>65</sup> This lack of appropriate resources and training needed to meet the needs of children with SEN may evidence the over-reliance on placing these children in isolation or excluding them from school rather than utilising supportive behavioural interventions.<sup>66</sup>

6.7. The Council of Europe Committee Ministers adopted a recommendation that mental health staff should have mandated training not just on physical restraint, but on:

- protecting the dignity, human rights and fundamental freedoms of persons with mental disorder;
- understanding, prevention and control of violence;
- measures to avoid the use of restraint or seclusion;
- the limited circumstances in which different methods of restraint or seclusion may be justified, taking into account the benefits and risks entailed, and the correct application of such measures.<sup>67</sup>

6.8. The Children and Young People’s Commissioner for Scotland recommended that these principles also apply to training for staff on the use of restrictive interventions in school settings.<sup>68</sup>

**6.9. The NIHRC recommends that all staff working within grant aided schools, who are authorised to use restrictive interventions, receive standardised training on when it is appropriate to use these measures and how to do so safely. This training should include reference to human rights and**

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<sup>64</sup> NI Human Rights Commission, ‘Submission to the UN Committee on the Rights of the Child 88th Session on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland on compliance with the UN Convention on the Rights of the Child’ (NIHRC, 2020), at para 16.5.

<sup>65</sup> NICCY, ‘Too Little Too Late: A Rights Based Review of Special Educational Needs Provision in Mainstream Schools,’ 2020, at 9.

<sup>66</sup> *ibid*

<sup>67</sup> Committee of Ministers (2004) Recommendation Number Rec 2004(10) (Strasbourg: Council of Europe), at art 11(2).

<sup>68</sup> CCYP/2018/3, Children and Young People’s Commissioner Scotland, ‘*No Safe Place: Restraint and Seclusion in Scotland’s Schools*’, 2018, at 39.

**be sensitive to the additional needs of children and young people with specialised educational needs and disabilities.**

**6.10. The NIHRC recommends that any training on restrictive practices and seclusion is clear that these measures are to be used as a last resort, to intervene where a child may cause harm to themselves or others and only when other preventative measures have been exhausted. Statutory training should also include alternative interventions to restraint and seclusion to better equip teaching staff, particularly pertaining to children and young people with special educational needs.**

## **7.0 Monitoring and Recording**

7.1. Current guidance on the use of restriction and seclusion in NI identifies the importance of keeping written reports on any instance where reasonable force is used to restrain or seclude a pupil.<sup>69</sup> The guidance states that the report should include:

- the name(s) of the pupil(s) involved, and when and where the incident took place;
- the names of any other staff or pupils who witnessed the incident;
- the reason that force was necessary (eg to prevent injury to the pupil, another pupil or a member of staff);
- briefly, how the incident began and progressed, including details of the pupil's behaviour, what was said by each of the parties, the steps taken to defuse or calm the situation, the degree of force used, how that was applied, and for how long;
- the pupil's response, and the outcome of the incident;
- details of any obvious or apparent injury suffered by the pupil, or any other person, and of any damage to property.<sup>70</sup>

Guidance further recognises the need to seek the pupil's view of the incident as it occurred, recording these views "as appropriate to sector, age, etc".<sup>71</sup>

7.2. There is no statutory obligation on schools to record incidents involving restraint or seclusion. The Challenging Behaviour Foundation and PABSS study identified that, of the respondents to

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<sup>69</sup> Circular No. 1999/9, Department of Education NI, 'Pastoral Care: Guidance on the Use of Reasonable Force to Restrain or Control Pupils', 8 March 1999, at para 8.

<sup>70</sup> Ibid, at paras 8-9

<sup>71</sup> Department of Education NI, 'Regional Policy Framework on the Use of Reasonable Force/Safe Handling' (2004), at 10.

the survey, 76% stated that records of a restrictive interventions on their child were not kept.<sup>72</sup> The NI Commissioner for Children and Young People highlights that the lack of requirement on schools to record instances of restraint or seclusion means there is “little data to allow an analysis of the frequency and impact of these practices”.<sup>73</sup>

- 7.3. Similarly, there is no statutory requirement to inform parents when restraint or seclusion is used on their child. Guidance in NI notes that informing parents of incidents involving their children is “always advisable”.<sup>74</sup> Likewise, guidance from Ofsted for schools in England notes, “informing parents is good practice but not required”<sup>75</sup>. The Challenging Behaviour Foundation has stated that because of this lack of requirement to inform parents when restraint or seclusion has been used on their child, the scale of use of restrictive interventions in the UK is unknown.<sup>76</sup>
- 7.4. In its submission to the UN CRC’s sixth periodic report in the UK, the NIHRC asked the Committee to consider what effective measures are being taken to “ensure that there is a statutory obligation on schools in NI to systematically and regularly collect disaggregated data on the use of restraint against children in an educational setting” and to ensure that “this data is published and independently monitored”.<sup>77</sup>
- 7.5. The lack of disaggregated data on the use of restraint and seclusion in school settings was noted by the Committee on the Rights of the Child, who recommended that the state collate information on restrictive interventions in order to effectively monitor the appropriateness of behavioural management in UK schools.<sup>78</sup>
- 7.6. The NIHRC recommends that a duty be placed on schools to record every incident of restraint and/or seclusion used on a child. These reports should make every effort to seek the views of the child on the incident that occurred in line with article 12 of the UNCRC.**

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<sup>72</sup> Challenging Behaviour Foundation and Positive and Active Behaviour Support Scotland, ‘Reducing Restrictive Intervention of Children and Young People: Update of Case Study Reports,’ 2020, at 21.

<sup>73</sup> NICCY, CYPCS and the Children’s Commissioner for Wales, ‘Joint submission to the United Nations Committee Against Torture 66<sup>th</sup> session on the sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, at para 6.4

<sup>74</sup> Circular No. 1999/9, Department of Education NI, ‘Pastoral Care: Guidance on the Use of Reasonable Force to Restrain or Control Pupils’, 8 March 1999, at para 9.

<sup>75</sup> Ofsted, ‘Environments Where Children Can Flourish: A Guide for Inspectors about Physical Intervention and Restrictions of Liberty,’ 2018, at 8.

<sup>76</sup> Challenging Behaviour Foundation and Positive and Active Behaviour Support Scotland, ‘Reducing Restrictive Intervention of Children and Young People: Update of Case Study Reports,’ 2020, at 26.

<sup>77</sup> NI Human Rights Commission, ‘Submission to the UN Committee on the Rights of the Child 88th Session on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland on compliance with the UN Convention on the Rights of the Child’ (NIHRC, 2020), at para 16.6.

<sup>78</sup> CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at para 40.

- 7.7. The NIHRC recommends that the Department of Education produce a standard recording template to collect and publish disaggregated data on the use of restraint and seclusion in grant-aided schools in NI so that its frequency and impact can be appropriately monitored, in line with the recommendations of the Committee on the Rights of the Child.**
- 7.8. The NIHRC recommends that guidance policy on the use of reasonable force for restraint and seclusion requires schools to inform a parent or guardian where these interventions have been used on their child, particularly where the child has special educational needs.**

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