



# in safe hands yet?



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



An equal society  
for every person  
who has a  
learning disability

# Introduction

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I took my wee girl to the doctor. She had to have tests for a suspected blood clotting disorder. The tests were clear. It actually turned out her bruises were caused by the staff in school dragging her to the calm down room. She is 6 years old and cannot speak. She had no way of telling us what was happening to her in school. I'm devastated.

(Parent, 2021)



In 2018, following a series of complaints from parents across Scotland, the Children's Commissioner used his powers of investigation for the first time and conducted a Scotland-wide investigation into the use of seclusion and restraint in our schools.

The process identified:



2,674 incidents of restraint and seclusion relating to 386 children in the school year 2017/18.



10 local authorities fail to record all incidents, and a further 4 record none.

## What is restraint and seclusion?

Restraint means holding a child or young person to stop them from moving, seclusion means shutting a child somewhere alone and not allowing them to leave – essentially deprivation of liberty and using physical force.

# Introduction

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In 2019, ENABLE Scotland members launched In Safe Hands? Building on the findings of the Children's Commissioner's investigation, we called for **urgent** action so children with learning disabilities no longer have to face these traumatic experiences, and teachers no longer have to support children in the classroom ill equipped to do so.

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



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



**Roll out Positive Support strategies in all schools through skilled staff.**



**Introduce a duty of candour around restraint and seclusion for all schools**



**Strengthen transparency and accountability, with powers of oversight resting with the appropriate body.**

**Three years on, we ask the question ...**



# in safe hands yet?

**To our collective shame it remains the case - no.**

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# So, what has happened in the last three years?

In response to No Safe Place and In Safe Hands, the Scottish Government agreed that the existing 2017 Guidance – contained within Included, Engaged and Involved Part 2 was insufficient and that new stronger guidance would be produced.

## Scottish Government action:

“First, I agree with the point on a right to education and a right to be protected from physical intervention or violence; that is an important point to make. It is not the case that no action has been taken. We published guidance on restraint and seclusion back in June 2017 and that is currently being revised to take into account recommendations made by the children’s commissioner and the Equality and Human Rights Commission. We want to work in partnership with education authorities, the Association of Directors of Education in Scotland and the Convention of Scottish Local Authorities to ensure that we get that right and that the correct approach is taken to recording and monitoring, as well as making sure that we have a situation in which physical intervention or restraint and seclusion is a last resort and is used only in the best interests of children.... putting that on a statutory footing ... is certainly something that we would be happy to consider as we undertake the review.” (5)

First Minister at FMQs, 7th November 2019

The Scottish Parliament debated this in February 2020, attended by members of ENABLE Scotland:



# So, what has happened in the last three years?

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In June 2022, the Scottish Government published a consultation (6) and new draft guidance on Restraint and Seclusion with the aim:



to minimise the use of restraint and seclusion in schools. It includes new definitions, human rights-based safeguards and recording, reporting and monitoring expectations. The draft guidance is focussed on protecting children and young people from In harm and promoting rights-based practice in Scottish schools.



Almost three years later, the consultation on the draft guidance has therefore only just completed.

We have no implementation date.

And crucially, we still have no training for teachers and education staff, nor have the Scottish Government confirmed which regulatory body has responsibility for monitoring the use of seclusion and restraint in schools, and ensuring that staff training is in place to reduce restrictive practice against Scotland's children.

If we wait 12 months post implementation of the guidance to review its impact; it will be 2024 until we have evidence of any change, and into 2025 before we have statutory guidance - 8 years since the Children's Commissioner's initial investigation.

## Report Card - 3 Years On

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**NO guidance completed**



**NO implementation date**



**NO teacher training**



**NO monitoring of  
recorded incidents**

Even more concerning, is what has continued to happen in our schools.

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# Monitoring & Reporting

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Today, three years after the publication of *In Safe Hands*, hundreds of children and young people with and additional support for learning needs, including children who have a learning disability and autism, are still being subjected to **Restraint and Seclusion**.

In the absence of any officially recorded data, Positive and Active Behaviour Support Scotland spoke to the families of **613** children affected by seclusion restraint between 2019 and 2021.

Issues relating to **331** children were recorded in 2019-2020, and **282** in 2020 – 2021.

The children came from **28** different local authorities in Scotland

**472** children had been secluded. Often the children were “removed” from class and there was no way of finding out “how” they were taken to the seclusion room. Many of those **472** children were also restrained.

Of the **472** children who had been secluded:



**56% were secluded more than 3 times a week**



**24% were secluded “daily”**



**15% were secluded for several periods in a day, often daily.**



**5% were secluded “too many times to count”**



**93% of the children had sustained injuries**

# Monitoring & Reporting

However, the Scottish Government are unable to quantify the scale of the issue.

In response to a recent Parliamentary Question from the Convenor of the CPG Learning Disability, the Scottish Government said that while incidents of seclusion and restraint were required to be recorded by health boards, the Care Inspectorate and local authorities in line with the 2017 guidance:

**Information on the number of incidents of restraint and seclusion in these services are not collected at a national level by the Scottish Government.**

This is in spite of a recommendation from the Children’s Commissioner in 2018 that:

**Local authorities should record all incidents of restraint and seclusion in schools on a standardised national form. Anonymised statistical data should be reported to the Scottish Government’s Children and Families Directorate.**





## Monitoring & Reporting

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This experience is reflected in enquires received by ENABLE Scotland's Family Connect helpline service in 2022



At the beginning of the 2022 we were contacted by a parent who was looking for help for his 9 year old child who had been moved many miles away from home to attend an out of area residential specialist education placement. The child has autism and learning disabilities.

The young child was moved here as previous school placements had broken down and it was felt that there were no facilities in the area the child lived that were suitable to meet the complex needs of this child. The family were told that there were no other options.

Within a month of moving to the new school the young child sustained a broken femur as a result of physical restraint from a staff member at the school. The young child had to undergo surgery to repair the broken bone and months of therapy. The parents raised concerns with social work, police, and the care inspectorate but no wrongdoing was found despite the serious injury caused to the child as well as trauma from the incident.

The school has included restraint in the child's planning documentation, and had arranged for staff to be trained in restraint tactics prior to their arrival at the school.

Both the child and the family have been left utterly traumatised by the incident, yet physical restraint continues to be used on this child on a weekly basis. The child returns home for holiday periods and no physical restraint takes place within his family environment, and nor did it take place in his previous education setting.



## Other developments since 2019

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A lot has happened in the Scottish policy, education and human rights context since 2019.

### Trauma Informed Practice:

The Scottish Government has made strong commitments to work to prevent and reduce the negative impact of childhood adversity and trauma.



People grow up thinking it is ok for you to be hurt or sent away if you are being bad. Its not right. Especially for the wee ones who don't know how to express what they are feeling yet. It is really embarrassing. Everyone looks at you. It makes you feel different. I remember it happening to me when I was at school. I didn't know that I could speak up or say what I was feeling. It was horrible. It needs to stop.



Recent welcome focus on the experiences of adults who have learning disability and/or autism as identified by the Scottish Government's Coming Home programme of work also confirms that the children and young people who are subjected to seclusion and restraint in schools are likely to become the adults who are labelled too 'complex' to be supported to live independently.

### Incorporation of the UNCRC:

The Scottish Government has made important commitments on safeguarding and promoting the rights of children and young people - it is time it makes good on this promise for young people affected by restraint and seclusion.

The Scottish Government is seeking to incorporate the United Nations Convention on the Rights of the Child into Scots Law.

## Other developments since 2019

**(protection from violence, abuse and neglect) Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and bad treatment by their parents or anyone else who looks after them. (3)**

### United Nations Convention on the Rights of the Child Article 19

Reflecting the experience of the child featured on page 5 in 2022, a joint report by PABBS and CBF in 2019 found that 58% of restraints on children resulted in injuries.

#### The Promise:

This is an issue for many children who have additional support for learning needs, not only children who have disabilities. For over three years, the Independent Care Review established by the Scottish Government listened to care experienced children, young people and families. It heard about how many of them did not feel loved. Were not kept safe. Were not respected. As a result of the review, The Promise was established in 2020 “so that children and young people in Scotland can grow up loved, safe, and respected.”

The Promise has said very clearly:

**Scotland must strive to become a nation that does not restrain its children....This cannot be simply a statement of intent. Scotland must support its workforce to manage very difficult situations... The workforce must be supported to ensure a caring, relational and trauma-informed response to challenging behaviour... Scotland must also pay attention to the use of seclusion, where children are contained and isolated often for long periods....Seclusion is not an acceptable part of trauma informed care.**

## Other developments since 2019

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### Restraint Reduction Scotland:

In 2021, SCLD took the initiative to set up the inaugural Restraint Reduction Scotland network, a place for practitioners across health, education, social care and criminal justice sectors to come together to share practice and make recommendations on the development of a human rights based approach to reducing restraint and seclusion in all settings.

Crucially, this network is working to map all the current training provision available to multi sector professionals in Scotland. Work is ongoing to establish this for education staff, but initial indicators are that it is expensive, difficult for schools to find, and includes practices which permit restraint.



# Criminal Charges

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Earlier this year, as extensively reported in the media, a teacher of children between the ages of 5 and 7 years old was convicted in court of assaulting them in the classroom. The Scottish Local Authority employer agreed to pay damages to the parents of autistic, non-verbal children who were aged between five and seven years old at the time when they were found to have been attacked –after the local authority initially cleared the teacher of wrongdoing.

Lack of guidance, effective training and clarity around the legal framework surrounding the use of restraint and seclusion in schools is continuing to put children - and their teachers – at significant risk.

**This is a risk we should not be willing to take.**

## In England and Wales:

In August 2022, the UK Government Department for Education announced in response to the inquiry of the Equalities and Human Rights Commission into Restraint and Seclusion that it would:



**Provide new guidance on restraint in schools to promote de-escalation practices to avoid the need for restraint**



**Bring into force primary legislation to make the recording of physical force mandatory in schools and make it a legal duty to inform parents when restraint has been used**



**Make it compulsory for all schools to have a restraint policy which includes data recording**

## Other developments since 2019

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Despite having been working on this issue for four years since the findings of the Children's Commissioner's investigation in 2018, the Scottish Government is lagging behind our UK counterparts in taking decisive action to uphold the rights of all children in education under article 19 of the UNCRC.



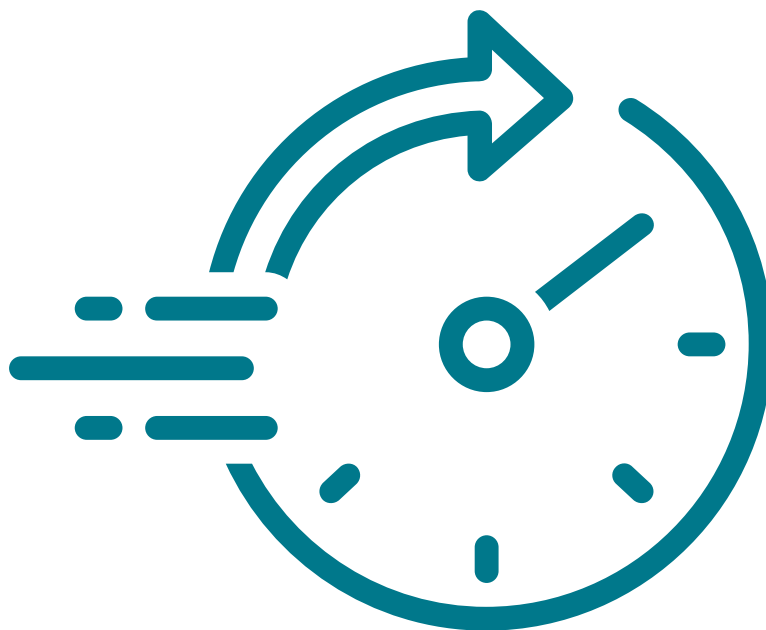
## We need to go further and faster

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We welcome the Scottish Government's draft new guidance as an improvement on the 2017 Guidance. However change is taking too long and the proposals do not go far enough.

We believe that the current approach to restraint and seclusion is not compatible with the European Convention on Human Rights, currently incorporated into domestic law via the Human Rights Act, which includes the universal human right to freedom from torture and from inhuman or degrading treatment or punishment

Evidence and experience as outlined elsewhere in this report shows non-binding guidance for local authorities will not be enough to bring practice in Scotland in line with the welcome commitments to human rights which have been made by the Scottish Government – including through the incorporation of the UNCRC into Scots Law, the proposal for a Scottish Human Rights Act and for a Learning Disability, Autism and Neurodiversity Bill.



## In Safe Hands Yet?

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Given the lack of progress in addressing this issue, ENABLE is now calling on the Scottish Government to take urgent action on the following key steps:



Introduce statutory guidance, which, clarifies accountability structure.



Confirm mandatory training requirements in alternatives to restrictive practice for all education staff supporting children who have additional support for learning needs arising from learning disability, autism and neurodiversity, or who are looked after



Invest in a nationally developed, locally available training programme for education staff and families to achieve this.



Collect data nationally from local education authorities, in line with the EHRC recommendations



Publish a national timebound strategy to eliminate restraint and seclusion in education

**This should address the legal framework, introduce training and quality assurance standards around positive support strategies, and declare that Scotland will eliminate the use of restraint in schools.**

**Only then can we say that our children are In Safe Hands**



## Change is still in our hands

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ENABLE Scotland pays tribute to the commitment and campaigning of our member Beth Morrison, her husband Pete and their son Calum. They have shown that the power to make the case for change is in our hands.



**We urge the Scottish Government to take action in Calum's name to recognise his experiences, and of all children, young people and adults who have been subject to restraint and seclusion at school.**

**We urge the Scottish Government to now take decisive action to end the use of restraint and seclusion in our schools.**

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