CELCIS's Response to the Scottish Government's Physical intervention in schools guidance consultation

October 2022

CELCIS, the Centre for Excellence for Children's Care and Protection, is based at the University of Strathclyde and is a leading improvement and innovation centre. We improve children's lives by supporting people and organisations to drive long-lasting change in the services they need, and the practices used by people responsible for their care. We welcome the opportunity to respond to the Scottish Government's consultation on proposed guidance regarding physical intervention in education settings.

Our response has been developed through focussed engagement with our long-standing cross-organisational networks, made up of people across the children's and social care workforce, including education professionals via our Education Forum, as well as with policy consultants with care experience.

All children have a right to an education and the right support at the right time, so that they can thrive and realise their potential. However, Scottish Government Educational Outcomes data from 2018/19 (the most recent pre-pandemic data available)[1] shows that, on average, 'looked after children' [2] have lower attendance rates, higher exclusion rates, leave school earlier, and attain fewer qualifications than their non care experienced peers.[3]

When a situation is challenging for any child, and they do not feel safe and supported by the adults around them, they may communicate their distress through their behaviour. Where this behaviour places the child or other children at risk, physical intervention by adults may be necessary. Often because of their early life experiences, such as experience of trauma, abuse, or neglect, care experienced children may experience feeling unsafe more frequently than their peers, and it is important to get this guidance right for all children, underpinned by an understanding that all behaviour is communication. As corporate parents, the state has additional responsibilities to safeguard, support and promote the wellbeing of care experienced children and young people. As such, schools, local education authorities, NHS Boards, Scottish Ministers, and a wide range of other public bodies have clear duties to assess and promote their wellbeing, and ensure all areas of policy and practice meet their needs.

[1] Due to the pandemic, the data from 18/19 is the most recently available data set that allows a robust comparison of outcomes with previous years.
[2] Looked after' and 'looked after child' are the terms used in current legislation to refer to a child or young person who is cared for under a formal arrangement with a local authority. It has a specific legal meaning, but wherever possible, the more inclusive term 'care experience' is preferred.
[3] Scottish Government (2019) Looked after children: educational outcomes 2018-19. Edinburgh; Scottish Government

Physical intervention by adults towards children is a challenging, complex, and emotive subject. Children's rights to safety and protection from violence must be upheld. In exceptional circumstances, physical intervention to keep a child safe may be necessary, but this should only happen when there is no other way to secure their welfare. Yet children (in both care and education settings) can experience physical intervention as embarrassing, painful, unfair, frightening, and punitive.[4] As evidenced by the office of the Children and Young People's Commissioner for Scotland (CYPCS), through their investigation, 'No Safe Place' report, and judicial review proceedings, there is a pressing need for human rights-based guidance on reducing restraint and seclusion, and to improve the recording of when these actions take place. As such, we welcome the progress towards these goals that this consultation opportunity presents.

Through our ongoing work, and membership of Scotland's Physical Restraint Action Group (SPRAG), CELCIS have extensive expertise in relation to the use of physical restraint in residential childcare settings in Scotland and the significant, ongoing efforts to reduce the instances of physical restraint. As outlined in our response earlier this year to the Scottish Government's consultation on policy proposals for a Care and Justice Bill, while the law in this area is robust, we consider there is also a need to update current guidance[5] on the use of physical restraint in care settings, and support its full and consistent implementation. Furthermore, there is a need to ensure consistency and alignment in guidance on physical intervention which applies to different settings. In Scotland, there are 1,286 children who are 'looked after' and living in a residential care setting.[6] 323 of these children live in a residential school, and 38 in a secure care setting, where they also go to school. It may not always be clear where a 'care' setting ends, and an 'education' setting begins. If different guidance applies, and different approaches to physical intervention are used, between care and education settings this does not provide consistency for children, and risks uncertainty for staff. Children do not experience their lives in silos of how services are currently offered or designed, or how policy and legislation are often currently developed, such as 'care' and 'education,' and there is a need to align the approach to physical intervention, and recording of any instances of its use, in all settings in which a child may experience this.

Key recommendations:

- Definitions of restraint and restrictive practices must be consistent and clear, so they can be understood by children and young people, their families, and professionals. These definitions should be aligned across all

[4] The Independent Care Review (2020) *Evidence Framework 2017-2020: Participation and Engagement Report*. Independent Care Review; CYPCS (2018) *No Safe Place: Restraint and Seclusion in Scotland's Schools.* Edinburgh: CYPCS

[5] J Davidson, D McCullough, L Steckley and T Warren (eds) (2005) *Holding safely. A guide for residential child care practitioners and managers about physical restraining children and young people.* Scottish Institute for Residential Child Care, Scottish Executive and Social Work Inspection Agency.

[6] Scottish Government (2022) *Children's Social Work Statistics 2020-21: Additional Tables, Table 1.4.* Edinburgh: Scottish Government.

sectors. Given their purpose and function, they need to be understood in the same way by those directly affected by them. Our significant concern is that the definitions used within the guidance for education settings do not align with those used in other settings, such as care settings. This is an opportunity to ensure definitions of restraint and restrictive practices, and guidance about their use, are aligned across the different settings in which children may experience them.

- The role of data collection and analysis through recording, monitoring, and reporting is key to the journey towards positive restraint reduction. This not only requires definitions which align across different settings, but also significant further work to clarify reporting, monitoring and accountability arrangements.
- The guidance provides a helpful overarching framework to understand types of restraint and restrictive practices in education settings, and preventative approaches to use in order to minimise their use. However, it does not provide detail about what practitioners should do 'in the moment' to respond to a child in distress. More detail in this regard, including scenario examples, would support practitioners to use the guidance effectively.

Response to consultation questions

Question 1: Do you think the guidance is easy to understand?

No

Please provide details:
While significant parts of the guidance are well-written in plain language, on balance we have selected 'no,' due to the use of some vague language (which is particularly problematic when concepts are very complex) and to the limits of the guidance in supporting an understanding of *how* education professionals should practice, in the wide range of situations they may face in the course of their day-to-day work.

Language and terminology within the guidance that is currently vague, and as such, could be open to interpretation and would particularly benefit from further clarification include:

- 'Last resort' (e.g. page 4) – one practitioner's understanding of 'last resort' may well be different to another's, as may the tolerance of risk and interpretations of likelihood of harm. These factors influence decision-making, and more nuanced detail is required to support practice.
- 'Regular review' (e.g. page 8, regarding support plans) – without further clarity on what is meant by 'regular', variations in practice are inevitable.
- 'Whole school approach' (e.g. page 8) – the meaning of this phrase is not immediately obvious, nor is it further defined.

- 'Restorative approaches' (e.g. page 10) – further detail is required to enable clear shared understanding of what this means in an education context.
- Paragraph 39 uses several technical terms which, without further explanation, will not be clear to most users of the guidance. These terms include 'sensory integration difficulties,' 'cognitive load' and 'functional analysis of distressed behaviour.'

Furthermore, the guidance relating to the use of seclusion is not easy to understand. Whilst the guidance is clear that the use of seclusion is not recommended, and use of seclusion risks depriving a child of their liberty, which is not legal within a school setting (paragraph 76), the proceeding paragraphs describe matters which should be considered if seclusion is to be used (albeit in emergency situations). The challenge of providing written guidance for practitioners in this scenario is acknowledged, but in its current form the guidance identifies a practice as illegal, yet proceeds to offer advice on how to undertake it. This is unlikely to provide reassurance or clarity for users of the guidance.

Crucially, because the guidance is written from a high-level perspective it does not go into detail or specifics about what practitioners should do 'in the moment' to respond to a child in distress. It is recognised that the guidance emphasises prevention, collaborative child-centred planning, and de-escalation to prevent physical intervention from being necessary, or forming part of an agreed plan with the child and their family if it does become necessary. We absolutely support this approach. However, there will be occasions whereby a child unexpectedly becomes distressed and physical intervention without prior planning is necessary, and practitioners must respond in the moment. Some scenario examples and specific guidance to support practitioners to understand what is expected of them in fast-developing crisis situations would be of significant benefit.

Question 2: The guidance includes definitions of practices in the 'physical intervention' section (pages 14-25). Please review these. Are these clear?

No

Please provide details:
We fully recognise the challenge of categorising and defining different types of physical intervention and restrictive practices, and agree this challenge must not prevent efforts to provide clear definitions. The inclusion of a diagram in the appendix to support their accessibility is welcomed. We welcome the detail included in the definitions in the guidance, and we agree that from a technical, legal perspective, these are clear. However, our concern is that without further elaboration or scenario examples, these may not be easily recognised or clear to practitioners working with children in education settings.

Our significant concern is that the definitions used within the guidance for education settings do not align with those used in other settings. Alongside their accessibility, it is critically important to ensure definitions of restraint and restrictive practices are understood by children and young people, their families, and professionals, and are transferrable across all sectors, given the limited purpose and function they might serve if these are not understood in the same way by those directly affected by them.

Across the multiple settings in Scotland where physical intervention is currently used, a range of definitions of restraint and restrictive practice have been adopted at a local level. Through our work with the Scottish Physical Restraint Action Group (SPRAG), we are aware of the concern acknowledged across the children's residential care sector that a lack of clarity and consistency in such definitions resulted in inaccurate data collection, and a misrepresentation of the experiences of children, young people, and the workforce.

To improve consistency, in 2021, work was begun by the Care Inspectorate in partnership with SPRAG to develop, agree and implement a consistent set of definitions nationally across the children's residential childcare sector, and in May 2022, the Care Inspectorate incorporated these definitions into guidance for all children's care services registered with them.[7] These definitions can be found here (page 4). These definitions, which the residential care sector have been following for some time, are not aligned with the definitions proposed in this consultation document. There are several settings, for example, special residential schools and secure care centres, where the care and education settings overlap. A discrepancy between definitions, has the potential to result in an inconsistent response and approach to children and young people in distress and the inaccurate data and misrepresentation of children and young people's experiences of physical intervention. This has already been the case within the care sector. Through our Education Forum discussions, practitioners noted that they broadly welcomed the definitions, but were consistent in calling for an 'aligning of ambiguities' and more clarity of definitions. This guidance presents a timely opportunity to align the definitions used in education settings with those already operating in the care sector.

A challenge that may arise in the implementation and understanding of definitions, and recording of incidents, are the occasions whereby the act of the intervention may change mid-process, such as an initial restrictive practice which develops to a hug or non-restrictive relational touch during the incident. Such examples highlight the fluid nature of situations as they unfold, and the related ambiguity that sometimes makes consistent reporting a challenge. As a result of the recognised nuance and overlap between restraint and restrictive practice, clarity must be reached in defining the terms used and referenced, and these terms need to be shared by all and adopted as widely as possible within and across sectors. While definitions will not curtail varying applications of

[7] Care Inspectorate (2022) *Records that all registered children and young people's care services must keep and guidance on notification reporting.* Publication code REG-0821-067

meaning to restraint and related practices, clear definitions and a robust process of implementation will reduce their range. The challenge of providing definitions for such complex practices as restraint and restrictive practice, within the context of multiple frameworks and existing definitions, *and* across multiple practice settings is recognised. While there is a valid question as to whether one set of definitions can cover such levels of complexity, this forthcoming guidance offers an opportunity to support advancement and development of such an outcome.

Furthermore, consideration should be given to understanding the needs of children and young people from a developmental perspective, viewing restraint and restrictive practice through this lens, and reflecting this within the definitions. Greater emphasis should be placed on relational practice, love, and attending to individualised needs - such approaches to children and young people ensure their rights are upheld and clearly align with the developing broader children's care and education policy and practice landscape, for example The Promise (2020), The Plan 21-24 (2021), and The Additional Support for Learning Review (2020).

Whilst acknowledging the complexities of assessing 'last resort' in practice, the wording and guidance around this and what the thresholds for this should be, need to be clearer. At the point of physical restraint, staff should be making a complex assessment of the degree of serious, imminent harm, weighing the potential risks of physical restraint with the potential risks of not physically restraining, and how to uphold children's rights within this. Interpretation of 'last resort' and related thresholds can and will vary across individuals, teams, settings and services, so more detailed guidance is required to support consistent practice.

We welcome the section of the guidance on leadership and culture. Organisational culture has an impact on the availability and quality of coaching, training and support available to ensure all practitioners working with children understand the process and procedures required to keep both themselves and young people physically, emotionally, and psychologically safe. Where this is in place, the functionality of the definitions, the credibility of data and the opportunity to influence change positively and proactively with regards restraint and restrictive practice within settings is supported. There are overarching areas of knowledge, skills and principles of good practice that support the implementation of definitions, no matter what definitions are put forward to the sector(s). Without an understanding of legal and ethical responsibilities of all, a reflective practice culture, appropriate training, coaching models, support, adoption and understanding at all levels of the system, the definitions will not achieve the intended outcomes.

Additionally, there are a range of models of physical intervention delivered by various training providers. Consideration should be given to what extent different sectors and training providers will be encouraged (or required) to

recognise and adopt these new definitions moving forward and adapting their training accordingly.

Question 3: In addition to the safeguards (protections) to ensure lawful practice and protect the wellbeing of children and young people and staff listed in the 'physical intervention' section (pages 14-25), are there any other safeguards (protections) that should be included?

Yes

Please provide details:
Schools and education providers are immersed in and familiar with the fundamental principles of safeguarding and protecting children and young people. The challenge for the sector lies in the complex space of upholding children's rights and protecting them, in the context of where carrying out physical interventions and restrictive practices is deemed necessary. This guidance is a good attempt to inhabit this complex space and provides a level of technical detail, although far less on the day-to-day specifics of practice. The guidance would be strengthened by articulating a streamlined framework or taxonomy that points to the ingredients, factors, or characteristics that, taken together, 'work' and contribute towards the eradication or reduction in the need for physical intervention. Such a framework could be developed through a co-production process with services already engaged in restraint reduction activity, and informed by the lived experience of children and young people.

Practitioners would benefit from a guide that reflects the diversity of practice and experience, the diverse needs of children and young people, and recognises that physical intervention is rare in some schools and more common in others. Safeguarding and protecting children is therefore particularly complex and needs to be integrated within this wide range of contexts. For example, whilst for most children and young people restraint should not be part of an education plan, for some learners and education providers restraint may be foreseeable, most notably to keep that child safe. There will be situations where it is appropriate for physical intervention to form part of a child's plan or a school's relationship policy, as a fundamental way to address and meet children's need for safety and protection. What is important is the frame through which this is developed, which must always be rights-respecting. The guidance includes some terms and approaches where there is a potential for different interpretations (e.g. 'last resort,' restorative justice, trauma-informed) which could all sit under a rights-based approach, but this could be made more explicit and reflective of the diversity of approaches that schools, and education providers may choose to take in any of their relationship policies.

Question 4: In addition to the types of restraint in the 'physical intervention' section (pages 16-25), are there any other restraints used in schools that should be included in the guidance?

Yes

Please provide details:
Children and young people have told us that one of the ways they experience love is through appropriate and positive touch.[8] The Independent Care Review is clear that love cannot be written into policy and procedure, and as such, there is the potential risk of unintended consequences of attempts to define appropriate touch, for example, a polarisation of responses to and from staff dependant on interpretation and understanding of the definition. It is important to have this context - i.e. that touch can be appropriate, individual, and personalised - recognised in both the definitions of types of restraint and restrictive practices, and the guidance as a whole.

Through our work with SPRAG, we are aware that within care settings where restraint and restrictive practice is currently recorded, there can be a disconnect between the procedures, and the experience of direct practice. Connections have been made to incidents where positive touch, hugs, proximity, and space have been used to support children and young people, and as such, are a form of physical intervention. A definition of such practices, with the descriptor 'metaphoric holding' could be developed and included in guidance, in recognition of these positive practices, acknowledging that containment and support for children and young people (many of whom have been traumatised before and during the process of coming into care) can be experienced and presented in a loving way[9].

More nuance should be developed in the information provided about seclusion. How children and young people interpret their experience is of fundamental importance. It is important to recognise that being behind a locked door is not the only form of seclusion: defined areas, or isolated or secluded locations can operate as environmental seclusions, as can a child or young person's interpretation of the space or room that they are in. If a child or young person 'feels' like they cannot leave a space or a room, they could be experiencing seclusion. The Mental Welfare Commission for Scotland identify two levels of seclusion, Level 1 involving a closed or locked door, and Level 2 where staff presence prevents a person from freely moving between different spaces.[10] It may be helpful to refer to these in the guidance.

[8] Independent Care Review (2020) *Evidence Framework: Participation and Engagement Report*. Independent Care Review
[9] Steckley, L. (2012). 'Touch, physical restraint and therapeutic containment in residential child care'. *British Journal of Social Work*, 42, 537-555.
[10] Mental Welfare Commission for Scotland (2019) Use of seclusion: good practice guide. Edinburgh: Mental Welfare Commission for Scotland.

There are ways that a child or young person might experience restrictive practice that may not be immediately obvious or have not previously been considered as restrictive. Consideration might be given to restriction of movement (walking/running, as well as self-soothing movement), positioning of light switches or door handles, support for movement e.g. availability of adults to push wheelchairs, or ensuring power to wheelchairs is switched on.

A descriptor of 'blanket restrictions,' 'blanket policies,' 'environmental restraints,' 'chemical restraint' and 'psychological power and control' would also be helpful additions to this section.

Question 5: Are there any changes you would make to the recording, monitoring and reporting advice on pages 28 to 31?

Yes

Please provide details:
The role of data collection and analysis, through recording, monitoring, and reporting advice is key in the journey towards positive restraint reduction. The guidance must be clear and unambiguous in this regard in order that everyone is aware of their roles and responsibilities. This is an area in which improvements to the current draft of the guidance are required.

Care Inspectorate guidance on recording and notifications outlines the responsibility of services to notify the Care Inspectorate of incidents of restraint and restrictive practice related to young people in registered children and young people's care services only.[11] The Care Inspectorate collates this information and analyses it to support an understanding of the use of restraint and restrictive practice in care settings. The draft guidance however (para 96) states that "Schools offering residential services are required to report the use of any form of restraint to the Care Inspectorate". ***However, this is not the case, the Care Inspectorate holds regulatory responsibilities in relation to restraint and restrictive practices in care settings only, not incidents which take place in an education setting – even where the education setting is a residential school.***

It is not clear from this guidance what independent body, if any, will have regulatory oversight of the restraint and restrictive practice data collated within education settings. An independent regulatory body which oversees all data collated about children's experiences of physical interventions would strengthen the potential to ensure accountability, bring consistency of approach within and

[11] Care Inspectorate (2022) *Records that all registered children and young people's care services must keep and guidance on notification reporting.* Publication code REG-0821-067

across settings, align the approach to monitoring and regulation, support the functionality of shared definitions, and enhance the credibility of data.

There are ambiguities in the guidance, at times suggesting elements of recording are optional. For example, paragraph 98 of the guidance states "*it may be helpful for education providers to have an appropriate recording and monitoring process in place to aid the analysis of distressed behaviour"* whereas paragraph 100 states "*Recording must be completed"*. Inconsistencies like these carry real risk to improving any practice and so need to be reviewed to ensure consistency of approach and a clear understanding of what is required and expected.

Regarding the dataset template in annex G, we offer the following specific suggestions:

- Clarify who the 'reporter' is – is this the person who led the restraint? were they present? a witness? or is it suitable for this to be a second-hand account?
- Change "Does the child have a plan that has been agreed with parent/carers and appropriate staff?" from a closed question to an open question with the addition of, 'if not, why not?.' Also, add 'within what timescales is a plan expected to be completed?.' This suggestion considers paragraph 94. *("Where relevant, the use of restraint should prompt an assessment of the child or young person's additional support needs under the 2004 Act.")*
- Regarding the question "Did anyone else observe the restraint? Please provide details," considering paragraph 65 that states there should be a witness to any restraint, a prompt should be included to explain and detail why there might not have been a witness present and what decisions were made that resulted in the physical intervention occurring anyway.
- Regarding the question "Were the members of staff involved trained in the safe use of restraint?," we suggest offering a definition of 'trained'
- The question "Why was restraint used?" and the question 'detailed account of restraint' should be combined.
- Adding 'by whom?' to the first two questions in the section "Additional information for staff-led withdrawal (without consent) and seclusion recording."
- Regarding the question "Has the child's plan been reviewed to take account of changes required?," we suggest changing this from a closed to an open question with a prompt to record if the plan were not reviewed, why not; when would be reasonable to expect a review to take place; and by whom?

Question 6: Are there any changes you would make to the roles and responsibilities summary on page 47?

Yes

Please provide details:
The underscoring of all approaches and initiatives which individually or together, directly, or indirectly contribute towards a learning community that prevents the need for restraint cannot be underestimated.

Schools and education providers have a wide range of legal and moral responsibilities towards the learners they teach, the staff they employ and the communities they serve. Whilst the culture and ethos of individual schools will differ, each should be underpinned by a foundation which upholds children's rights. It is on this foundation that individual school's relationship and behaviour policies, and the role that all members of a school community have in preventing, reducing, or eliminating the need for physical intervention, are built, and understood. Whilst we welcome a section in the guidance on roles and responsibilities, an addition of this context, that highlights the fundamental principles that contribute towards this culture, would strengthen the guidance. This could include reference to 'rights respecting schools,' pupil participation and voice, as well as trauma-informed and attachment aware schools.[12] Through our Education Forum, practitioners have told us they would welcome more detail in this section, particularly for those working directly with children. For example, Designated Managers in schools are a point of contact for care experienced learners, they are likely to know care experienced learners well and have a detailed understanding of their history. Similarly, Virtual School Head Teachers (who are senior education leaders with responsibility for the education and wellbeing of all care experienced learners), and their equivalents, have strategic oversight of the needs of care experienced learners in their educational community. Their role in tracking and monitoring data relating to care experienced young people's experience and outcomes in education, and offering an additional layer of support, is key in ensuring that care experienced learners as a group are not disproportionately subjected to restraint, seclusion, and deprivation of liberty.

Schools will have a diverse range of experiences and understanding of restraint, physical intervention and seclusion within their practices and community. Many (including residential schools) will be familiar with this subject area and have confident practitioners who know how to navigate this complex arena. Others working in settings where incidences of physical restraint are rare and who are new to the definitions will benefit from a clarification of their role, explicit signposting, and prompts, particularly for the purposes of reporting. There should be no assumptions, and members of staff may need to be made aware of the importance matters such as the debrief. This is a responsibility both for staff to seek, and for senior managers to make accessible and part of routine practice.

[12] https://education.gov.scot/improvement/learning-resources/nurture-and-trauma-informed-approaches-a-summary-of-supports-and-resources/

Question 7: Is there anything you would add to help people use this guidance in schools?

Yes

Please provide details:
The Scottish Physical Restraint Action Group (SPRAG), in their Care and Justice Bill consultation response, and (as far as we understand based on our membership of the group) the group's response to this consultation, based on collective experience and understanding of the nuance and complexity related to restraint and restrictive practice, strongly advocate for the development of co-produced, updated practice guidance in relation to restraint and restrictive practice in care settings, proposing that rather than a standalone document, guidance should comprise of a suite of resources and tools subject to regular review. This is a view we support, and applies equally to guidance relating the education settings as it does to care settings: indeed, while there will be specific information required by practitioners in relation to different settings in which children might experience physical intervention, any guidance should be seamlessly aligned and operate in the same framework of principles to uphold children's rights.

Done well, the process of developing such practice guidance, and its dissemination and consistent implementation requires significant resource, which must be factored in from the earliest possible stage. It must be developed in collaboration with and across sectors, and with individuals with lived experience of restraint. Such guidance would have the potential to lead practice change, provide a clarity for expectation that services and settings should follow, as well as provide clarity for inspection bodies, advocates, parents, children, and young people in relation to their rights, the law, and best practice. Positive practice examples and scenario illustrations which make clear the distinction between good and unacceptable practice, must form a key feature of the guidance. The wording of these would need to be trauma-informed and include references to further support for readers if required.

School leaders and local authority managers must be clear that exclusion should not be used as a response to incidents involving restraint or seclusion. Our stakeholders have raised concerns that an unintended consequence of this guidance may be a rise in exclusions of children and young people who have been restrained in school, either as a response to the incident involving restraint itself, or due to a school's inability to meet a child or young person's needs without the use of restraint.

Fundamentally, it must be noted that guidance alone does not lead to practice change. Alongside clear guidance, there is a need for concerted attention, action, and resource to be planned and in place from the earliest stages to

support its implementation. It is only through sustained attention to implementation that advances in guidance translate to sustained change in practice.

The Summary Statistics for Schools in Scotland 2021 indicate that children with additional support needs are five times as likely to be excluded from school than all other pupils, and children living in Scotland's most deprived areas are four times as likely[13]. The Education (Additional Support for Learning) (Scotland) Act 2004, as amended (2009) states that 'looked after' children should be presumed to require additional support for learning unless an assessment of need provides evidence to the contrary. The most recent statistics however show that 'looked after' children have unacceptably high exclusion rates compared to all other children, with exclusion rates for this group of children being six times higher than they are for all children[14]; higher even that children with additional support needs and children living in Scotland's most deprived areas. While these statistics give us an insight into the number of 'looked after' and care experienced children being formally excluded from school, these statistics do not report on 'informal' exclusions which we are aware, from a number of our stakeholder groups, are an enduring issue for this group of children. In recognition of this inequity, and the risk that exclusion poses for care experienced children, The Promise set out ambitions within Change Programme One that the formal and informal exclusion of care experienced children should end by 2024 (pg. 28). This will require all local authorities, schools, and other agencies to be proactive and relational in their approach to ensuring the needs of children and young people with care experience are met, and that any new policy or legislation does not result in unintended consequences which could disproportionately, negatively impact these children and young people.

This guidance must contribute to how children are supported to participate in their education within schools. It would be deeply concerning if it were misused: for example, whereby a school suggested they could not keep a child safe without secluding them in the education setting, and thus the child could come to school and would potentially be 'informally excluded.' This risk could be more explicitly set out within the guidance, and monitoring and accountability mechanisms must be robust enough to ensure any such incidents are identified and investigated.

Question 8: Are there any other changes you would make to the guidance?

Yes

Please provide details:

[13] https://additionalsupportneeds.co.uk/2021/12/20/exclusion-statistics-2020-21/
[14] https://www.gov.scot/publications/education-outcomes-looked-children-2020-21/pages/6/

We welcome the clear effort to ensure a rights-based orientation is taken to the guidance, and the attention given to the range of voices and views from stakeholders as part of the working group supporting its development to this stage.

To truly reflect a rights-based approach, there is a need to ensure children's participation is integral to the ongoing development of the guidance, and its implementation and evaluation. This requires a co-production approach, where power is shared with children and their right to meaningful participation in decision-making is upheld.

We welcome that this guidance recognises the complexities involved and does not call for a ban on the use of physical intervention where this is necessary to keep children safe, but strengthens the knowledge and parameters around where it is used. The sections on prevention (particularly paragraphs 23 and 29) may benefit from more detail around who must and/or should be involved in preventative planning for children. Examples of practice which cover the range of settings and scenarios that may be encountered would also strengthen the usefulness of the guidance to practitioners.

The guidance would also significantly benefit from a specific section reflecting the lived experienced of children with diverse needs. For example, children who have experienced trauma, or children who are neuro-diverse, may have developed self-soothing behaviours which may lead to the requirement for adults to physically intervene, for example severe hair pulling or twisting. For most learners in school settings this will not be an issue, but for those for whom it is, physical intervention could become significant daily issue. Education providers need to have daily vigilance and consider children's rights and wellbeing in a dynamic and ongoing way, ensuring that physical intervention never becomes routine and is only ever used when there is no other way to keep children safe.

Thank you for providing us with this opportunity to respond, we would be happy to provide further information in respect to any of the areas discussed here.

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