



24 January 2018

REDUCING THE NEED FOR RESTRAINT AND RESTRICTIVE INTERVENTION CONSULTATION RESPONSE

About us

Article 39 fights for the rights of children living in institutions in England. We are a registered charity (no. 1166092). Our name comes from Article 39 of the United Nations Convention on the Rights of the Child (UNCRC), which entitles children to recover from abuse and neglect in environments that nurture their health, self-respect and dignity.

Article 39 is currently disputing the authorisation of pain-inducing restraint during the secure escort of children detained in secure children's homes. We are one of several NGOs working together on the Mental Health Units (Use of Force) Bill (Seni's Law). In partnership with the National Children's Advocacy Consortium and the National Association of Independent Reviewing Officers, we also co-ordinate a national campaign to strengthen children's independent advocacy.

We welcome this draft non-statutory guidance. The overall approach and tone of the document is very good. The case studies in Annex B powerfully illustrate good practice. However, we are concerned that some of the detail included could make the child or young person identifiable to those who know them.

As this is non-statutory guidance, we suggest the inclusion of direct quotes and reflections from children and young people.

We additionally suggest the draft guidance could be improved in the following ways:

- Include the threat of use of force in the Definitions section (paragraph 1).¹

¹ This would be consistent with Regulation 13(7) The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: "a person controls or restrains a service user if that person—
(a) uses, or threatens to use, force to secure the doing of an act which the service user resists, or
(b) restricts the service user's liberty of movement, whether or not the service user resists, including by use of physical, mechanical or chemical means.

- Include early on a description of the effects – physiological, psychological, emotional and behavioural – on children and young people of restraint and restrictive intervention, and the inherent risks.² Cross-referencing to the very helpful case studies at the end would show that restraint can nearly always be averted by skilled, imaginative and child-centred practice.³ This should quickly establish to the reader why there is a need to minimise the use of restraint and restrictive intervention.
- Acknowledge that being in an education, health or care residential setting can give rise to behaviour by a child which is his/her way of adapting and coping with a new environment. Additionally, settings and services should guard against perceiving and responding to behavior as challenging, when in other contexts it would not be seen as exceptional for the particular age or stage of development of the child.
- Stress *minimising* rather than reducing restraint and restrictive intervention. This reflects the last resort legal and professional requirements in a number of settings⁴ and concurs with your first key principle on page 12.
- Include references to the UNCRC and the UN Convention on the Rights of Persons with Disabilities.
- Insert new introductory bullet points in the Core Values, along the lines of:
 - Settings and services are committed to providing high quality care where children are safe, respected and listened to, and their individual needs are understood and met.
 - Settings and services only use restraint and restrictive intervention as a last resort, and are committed to working with children, young people, parents and carers to minimise its use.

² See, for example, ‘Practice issues’ on page 49 of Department for Education (2015) Guide to the Children’s Homes Regulations including the quality standards.

³ See also NICE (2017) Violent and aggressive behaviours in people with mental health problems. Quality standard.

⁴ In secure training centres, for example, statutory rules permit the use of restraint for the purpose of preventing escape, injury and property damage only where no alternative method is available – see Rule 38, The Secure Training Centre Rules 1998. The Government has further stated that restraint “should only ever be used against children as a last resort where it is absolutely necessary to do so” in custody, including secure children’s homes (Ministry of Justice, 2012, Use of restraint policy framework for the under-18 secure estate, page 6).

Children’s homes’ staff are permitted to use restraint only when it is necessary and proportionate (Regulation 20(2) The Children’s Homes (England) Regulations 2015) and staff are required to record details of any methods of control, discipline or restraint used or steps taken to avoid the need to use the measure (Regulation 35(3) The Children’s Homes (England) Regulations 2015).

Standards for Children and Young People in Emergency Care Settings (published by the Royal College of Paediatrics and Child Health, 2012) state: “In this age group, pharmacological and physical restraint should be regarded as a last resort and clear guidelines must be available. Most situations can be managed by calming manoeuvres or a clear show of force by fully trained staff and the need to instigate restraint should be in the best interest of the child/young person as physical and pharmacological restraints both have the potential for complications”.

- In 'Key Principles', page 13, strengthen the bullet point on punishment, pain, suffering or humiliation so it says it 'will never' or 'will not' be used.⁵ Please also consider changing advocates being involved in reviewing plans 'where appropriate', to 'where the child or parent wants this'.
- Include in the good practice bullet points for 'A Clear Policy' (paragraph 29):
 - That restraint will never be used with the intention of punishing a child or young person, or causing them pain, suffering or humiliation.
 - A description of the restraint methods that may be used by the setting or service, and confirmation that the methods have been medically risk assessed and are appropriate for use with this age group.
 - That settings and services have undertaken equality impact assessments in respect of the restraint methods and each of the protected characteristics in the Equality Act 2010.
 - How the setting or service will assign a member of staff (as observer) to monitor the child's welfare during any use of restraint (page 27).
 - Arrangements for informing parents and carers when a child or young person has been restrained.
 - Arrangements for ensuring children and young people are offered advice and assistance from an independent advocate after each use of restraint, including during debriefing and post-incident review (page 24).
 - Arrangement for responding to any concerns or allegations of misuse of restraint or restrictive intervention, including the procedure for notifying the local authority of any child protection concerns.
 - Arrangements for informing children, young people and parents of the policy.
- In 'Governance and Accountability', it would be good practice to inform children, young people and parents of the roles and functions of the lead person and champion (page 15).
- In 'Training and Development of Staff', it is not clear from its website that the Institute of Conflict Management (page 19) has expertise in children's settings. Given the purpose of the guidance is to ensure restraint and restrictive interventions are used as a last response, it would be helpful to signpost organisations who provide training around communicating with children and young people with learning disabilities, autistic spectrum disorder and mental health difficulties, child development and human rights.
- There is reference to risk of respiratory and cardiac distress in 'Escalation' (page 22); we believe these risks should be highlighted much earlier in the document.
- In 'Recording and Reporting' (pages 23-24), since this is non-statutory guidance we strongly recommend that settings and services are encouraged to notify parents and carers (and the child's social worker when she or he is looked after) of any use of

⁵ See, for example, the prohibition of corporal punishment in Regulation 19 The Children's Homes (England) Regulations 2015. In addition, Department for Education (2013) Use of reasonable force. Advice for headteachers, staff and governing bodies: "it is always unlawful to use force as a punishment" (page 5).

restraint. Settings and services should also be advised to publish an annual report containing data on the use of restraint and restrictive intervention, the methods used, any injuries suffered by children and young people, medical treatment (including hospital attendance) and any changes in policy and practice introduced as a result.

- The advice in ‘Reviewing Actions to Improve Support’ and ‘Debriefing and Post-Incident Review’ sections (pages 24-25) could be more precise, for example by expecting settings and services to have processes which endeavour to ascertain the child’s (and/or parent’s) perspective of the reasons why they were restrained, how it felt to be restrained and how they believe the restraint may have been avoided. Independent advocates should be involved in this process, unless the child and/or parent objects. The reference to patterns or persistent use of restraint should also acknowledge the potential need for staff training and development. Child protection procedures should be followed where there are concerns restraint may have been used unlawfully and/or to deliberately harm a child.
- The reference to not inflicting pain in an attempt to force compliance (page 27) is too narrow and it doesn’t reflect existing statutory guidance on children’s homes or the Mental Health Act 1983: Code of Practice, which both prohibit the use of pain-inducing restraint per se. We have already suggested that the inherent risks of restraint be emphasised earlier in the document. If a description of the risks is kept in paragraph 89, we recommend the text is strengthened to underline that children have died and suffered terrible injuries following restraint. Settings and services must be told to desist restraining a child if he or she complains of not being able to breathe.
- We strongly recommend that the advice on mechanical restraint is that it ‘must never’ be a first response (rather than ‘should not’).
- The sections on ‘Withdrawal and Seclusion’ and ‘Long-term Segregation’ would benefit from some small revisions – e.g. obtaining the consent of parents for under 16 year-olds where they lack consent (and reference to children’s Article 5 ECHR rights) and the legal position of children who are the subject of a care order; clarifying that long-term segregation of children and young people is an extreme measure with inherent and serious risks to the child’s welfare and development.⁶ In a similar vein, it is difficult to imagine circumstances in which blanket restriction of access to outdoor space or refreshments (paragraph 99) would be lawful, so other examples would be preferable.⁷

Contact:

Carolyne Willow

Article 39 Director

carolyne.willow@article39.org.uk

⁶ See the Royal College of Nursing (2013) work for the Department for Health: Draft guidance on the minimisation and alternatives to restrictive practices in health and adult social care and special schools. This explained: “Segregation in itself has no therapeutic value”.

⁷ See Regulation 19 The Children’s Homes (England) Regulations 2015 which prohibits “any measure involving punishing a group of children for the behaviour of an individual child”.