

NAHT response to consultation on *Reducing the Need for Restraint and Restrictive Intervention*

1, 2 and 3 - The first three questions ask only for contact information.

4. Does the content meet the aim of the document to: “help special education, health and care settings develop plans to support children and young people whose behaviour challenges in order to reduce the incidence and risk associated with that behaviour and promote and safeguard the welfare of children and young people in their care..”?

Yes / **No**

Comments:

Introduction

NAHT welcomes the opportunity to comment on *Reducing the Need for Restraint and Restrictive Intervention*. This consultation is relevant to the full breadth of NAHT membership: as the UK's largest professional association for school leaders we represent more than 29,000 school leaders in early years, primary, special and secondary schools; independent schools; sixth form and FE colleges; outdoor education centres; pupil referral units, social services establishments and other educational settings, across England, Wales and Northern Ireland.

In addition to the representation, advice and training that we provide for existing senior leaders, we also support, develop and represent the senior leaders of the future through NAHT Edge, the middle leadership section of our association. We use our voice at the highest levels of government to influence policy for the benefit of leaders and learners everywhere.

Scope of the consultation

NAHT welcomes the government's recognition of the need for guidance on the difficult issues associated with restraint and restrictive intervention. However, we are dismayed at the limited scope of this long awaited and much anticipated consultation. NAHT has long pressed for **definitive guidance** on the restriction of liberty and the use of restraint in **all** school settings in order to provide school leaders and their staff with clarity on these matters.

NAHT's view is that the scope of the draft guidance is too limited; its application only to children with learning difficulties, those on the autistic spectrum or those with mental health difficulties in a restricted range of settings means that it is of very limited utility. At paragraph 8 the draft guidance states that it will be 'of interest but does not apply to' mainstream schools (including academy and free schools), independent mainstream schools and colleges, and (nearly all) pupil referral units and Alternative Provision academies and free schools. NAHT is unclear why both Departments have chosen to exclude nearly all schools from the guidance.

Mainstream schools provide for a broad cross-section of pupils some of whom present persistent challenging behaviour but are not in receipt of an Education, Health and Care Plan (EHCP). The exclusion of PRU and other forms of alternative provision from the guidance is

even more perplexing – our members who lead and manage these institutions have been at the forefront of calls for greater clarity about the use of restraint, and the need for a better working definition to assist and guide their understanding of both restriction and deprivation of liberty.

The draft guidance does not take account of some complex PRUs. These institutions provide for pupils under hospital treatment or with particular health needs that would fall within the scope of the draft guidance; however they also educate other pupils that do not fall within these definitions, and would therefore be exempt from the guidance. NAHT notes that the guidance is silent on whether the draft guidance would be applicable to all, or just some, of the pupils in these circumstances.

As it stands the draft guidance is at best partial. What **all** schools require is a clear framework to work within, that sets out unambiguous and clear guidance on the use of restraint or restrictive intervention underpinned by a workable approach to understanding and responding to the legal issues that arise. Clear guidance on appropriate training, including approved and unapproved methods of restraint are required, alongside a detailed exposition of the principles and practice of dynamic risk assessment.

The draft guidance does not achieve this aim. It is therefore deficient, not least in that it provides no concrete support for maintained schools, PRUs or alternative provision settings. NAHT urges both the Department of Health and the Department for Education to remedy this as a matter of urgency, by extending both the scope and detail of the draft guidance to ensure that it covers all school settings and all relevant pupils.

Rooms used for seclusion ('safe rooms')

The use of seclusion or 'safe' rooms in a manner that is consistent with the rights of the individual is a matter of considerable concern to NAHT. Our members in all forms of school provision, and across all phases of education, require clear and unequivocal Departmental guidance on this matter. Of particular concern is establishing when restriction of liberty is permissible, in accordance with the rights of the individual and relevant legislation. Of equal importance is clearly establishing which actions would constitute deprivation of liberty in order to avoid transgressing Human Rights and other relevant legislation.

Paragraphs 94-99 of the draft guidance go some way towards this. However, the general and broad nature of the guidance is at such a high level that it is of little *practical* value to school leaders (perhaps with the exception of paragraph 98), individual staff or governing boards. What school staff and governors need is a much more definitive approach.

Unhelpfully, the guidance conflates restraint with restriction. For example, paragraph 94 states that withdrawal '**...could** be regarded as a restriction of liberty but one taken under a setting's duty of care in order to protect the child from harm, or risk of harm, to themselves and/or others.' Yet the next paragraph explains why self-regulation would be 'unlikely' to constitute restraint. Overall, NAHT is concerned that there is very little of practical value for school leaders, their staff or their governing boards in the draft guidance provided.

Paragraph 99 poses more questions than it answers. It states that blanket restrictions may breach Human Rights Act, or legislation on the secure accommodation of children, but goes on to say that where it is 'considered' necessary there should be a clear policy stating *how* it complied with the Human Rights Act and other relevant legislation, without setting out how such an arrangement may be lawful. Again this provides no practical guidance for those managing institutions.

The acid test is whether the draft guidance would enable professionals to confidentially assess whether, in a given situation, a temporary confinement in a calming room would be an acceptable and lawful restriction of liberty or an unlawful deprivation of liberty. NAHT is clear that it fails to make any substantive contribution on this point.

5. Are the core values and key principles clear and relevant? (paras 24-26)

Yes / No

Comments:

NAHT regards the core values and key principles set out by the draft guidance as broadly useful. They set a helpful context, and provide a clear exposition of the need to devise policies, procedures and practices that minimise the use of restraint or restriction.

However, the guidance is short on supporting material to guide schools in establishing this regime. For example, at paragraph 25 the draft guidance indicates that restraint should be a 'last response' to managing challenging behaviour. It states that de-escalation techniques 'appropriate to the child or young person' should be used, but provides no further guidance. We say more about this in our response to question 6.

A critical failing, noted above, is that the core values and key principles are not applicable to mainstream schools, PRUs or academies. NAHT is concerned that after a lengthy wait for what school leaders hoped would be definitive guidance, the material produced offers no formal advice for the majority of schools.

6. Do the key actions support services and settings to work with children and young people, promote good behaviour and reduce the need to use restraint?

Yes / **No**

Comments:

NAHT had hoped that the draft guidance would provide a clear and supportive framework for schools to work within (see question 4 above). The advice provided in the section on key actions to promote good behaviour and reduce the need for restraint remains too generic.

For example, paragraph 29 lists a range of areas that policies should set out. It states that doing so is 'good practice, and in some cases a legal requirement...' but does not indicate which examples **are** legal requirements.

Similar ambiguity is present in paragraph 17 which recognises that 'high quality training for staff' is a critical in eliminating the use of inappropriate restraint and minimising its use, but the remainder of the document is silent on the nature of that training, save for a broad set of bullet points (paragraph 47) that 'could usefully' be included. Similarly, paragraph 38 indicates that '...it is possible to achieve significant reductions in the need to use restrictive intervention...' but does not set out a range of recommended practices, or describe a 'scale' of responses. Again, the guidance is pitched at a generic level, which while broadly helpful, remains too general to be of practical use to school leaders.

The guidance offers no assistance to school leaders in selecting appropriate training providers, or training content, stating that 'there are no universally accepted standards for the use of restraint or training' (paragraph 48) and that 'It is up to settings and services to commission the training they require...' (paragraph 49). School leaders and governing boards are therefore left to navigate the training market unaided, with no quality mark or approved status that might give schools assurance that the training offered is of an appropriate quality, coverage or in line with statute. Training in this area is very expensive, requires a differentiated approach for staff at different levels and needs constant updating and refreshing. As a result of the school funding crisis many schools have been forced to slash their professional development budgets; schools need to know that their limited funds are delivering the very best in both value and quality.

Government has not set out any 'core' content that should be covered, or even a range of approved or techniques. This vacuum poses very significant risks to individual teachers and other school staff, school leaders and governing boards. Schools may establish policies, undertake training in good faith and follow a set of practices that a court may later criticise as deficient. NAHT is clear that government has a role to play in setting a proper framework for the use of restraint and restrictive intervention, accompanied by core principles and methodologies that should underpin any training. It may be that such a framework will require flexible application depending on the setting, and the needs of an individual pupil, but some level of consistency is clearly required to guide and protect school staff. Such a framework **must** include mainstream schools, PRUs and other AP settings.

Without such a framework individual institutions may be held accountable by external bodies, including Ofsted, on the basis of this nebulous guidance. Against the background of a low-trust high-stakes inspection system, NAHT is concerned that the Ofsted's existing guidance (as set out below) is already inconsistent.

Ofsted's *Inspecting guidance in early years, education and skills settings* [August 2016] states:

The signs of successful safeguarding arrangements

(P9) 'Positive behaviour is promoted consistently. Staff use effective de-escalation techniques and creative alternative strategies that are specific to the individual needs of children and learners. Reasonable force, including restraint, is only used in strict accordance with the legislative framework to protect the child and learner and those around them. All incidents are reviewed, recorded and monitored and the views of the child or learner are sought and understood. Monitoring of the management of behaviour is effective **and the use of any restraint significantly reduces or ceases over time.**' [emphasis added]

However, Ofsted's *Social Care common inspection framework (SCCIF): boarding schools and residential special schools* [February 2017] states:

5. Evaluation Criteria

5.2 How well are children helped and protected.

Restraint is used only in strict accordance with the legislative framework to protect the child or young person and those around them. All incidents are reviewed, recorded and monitored and the views of the child or young person, dependent on their age and understanding, are sought and understood.

So, Ofsted's guidance implies that in mainstream, PRU and AP schools "the use of any restraint significantly reduces or ceases over time", but that this is not the case in boarding schools and residential Special schools. NAHT has pressed the DfE and Ofsted for consistency on this matter.

The draft guidance does not in any way clarify or inform the situation, since it makes clear that it does not apply to mainstream, PRU or AP schools. While NAHT agrees that settings should minimise the use of restraint using approaches described in the guidance, there are occasions when there will be a legitimate need. We reiterate our point that **all** schools need Departmental guidance that provides certainty and consistency.

Overall, NAHT is unclear as to the *purpose* of this Departmental guidance. Set against the unabated crisis in recruitment and retention of teachers, and the worsening funding crisis that is placing school budgets under ever increasing pressure, the need for clear guidance that is applicable to **all** schools, could not be more pressing.

7. Does the guidance provide sufficient advice on the involvement of children and young people and their families/carers in decisions and planning about restraint that affects them?

Yes / No

Comments:

While the draft guidance indicates the importance of involving children and families, it lacks the required granularity to ensure that there is engagement at the appropriate stages, or that there is consistency in the way in which schools might approach this. In NAHT's view a much more detailed guidance document is required, as we have set out in our answers to questions 4 to 6.

The advantage of detailed national guidance or a framework would be that parents and carers (and young people themselves) would be provided with a better understanding of the approved steps that institutions take to manage behaviour; their approach to minimising the use of restraint or restrictive intervention; the circumstances when restraint or restrictive intervention may be used; the procedures followed to ensure that such actions are undertaken in as safe a manner as possible; and that these are underpinned by approved, high quality training with national currency. Such a document could be helpful in explaining the concept of dynamic risk assessment and would ensure the greatest possible transparency.

Again, NAHT urges both Departments to revisit the draft guidance, expanding it along the lines suggested here, to cover all schools and all relevant pupils.