

## **PE1709/C**

Scottish Government submission of 21 December 2018

1. Thank you for the opportunity to respond to the above petition and the discussions that took place at the Scottish Parliament's Public Petitions Committee on 22 November 2018. I would like to respond on behalf of the Scottish Government where a range of policy teams have an interest in this important issue.

### **Keeping young people safe in school**

2. The health and safety of all pupils whilst at school in Scotland is of paramount importance to the Scottish Government. We have a distinctive approach to safeguarding in Scotland linked to Getting It Right for Every Child (GIRFEC) which promotes a range of action(s) to improve the wellbeing of every child and young person. Safeguarding children and young people in schools also involves consultation and teamwork with parents and carers.
3. Safeguarding is a key thread that runs throughout the curriculum. The aim is to support the development of learner's knowledge, skills and resilience to keep themselves safe and protect themselves and to develop an understanding of the world so that they can respond to a range of issues and potential risky situations arising throughout their lives. As such, it permeates many features of the education experience including leadership, values, vision, the curriculum, learning and teaching, positive relationships and building learner resilience.
4. All Scottish teachers have a commitment to protect children as part of the Standard for Registration of the General Teaching Council Standards (GTCS). This is referred to in the GTCS Standard for Full Registration under:
  5. Professional values and personal commitment - registered teachers show in their day-to-day practice a commitment to social justice, inclusion and caring for and protecting children.
  6. The Scottish Government established the Child Protection Improvement Programme (CPIP) to ensure effective protection is in place for all children and young people at risk from abuse and neglect. The implementation of the recommendations within CPIP and the Child Protection Systems Review is overseen by the National Child Protection Leadership Group to ensure we strengthen and improve a functioning child protection system and do better for vulnerable children and young people.
7. Following the Scottish Government's publication of its commissioned research titled: Disabled Children and Child Protection in Scotland: An investigation into the relationship between professional practice, child protection and disability, the updated National Guidance for Child Protection in Scotland 2014, which is being reviewed in 2019, clearly highlights the additional and appropriate support required by children and young people with disabilities as well as setting out the key messages for practice.

8. In 2019 Scottish Government will be involved in supporting a revival of Child Protection, Children with Disability network, which is for practitioners who work with Child Protection and disability. The purpose of the network is to enable practitioners to share knowledge and expertise and provide mutual support. The Network aims to support and empower practice and practitioners.
9. It may be helpful for the committee to also be aware that the Disabled Children and Young People Advisory Group (DCYPAG) exists to advise the Scottish Government on issues relevant to the development and implementation of policies which impact upon disabled children, young people and their families. Its membership aims to be representative of the children's disability sector, as well as organisations representing young disabled people and families of disabled children, and is drawn from a range of public and third sector organisations and individuals.
10. A key responsibility of the DCYPAG is to promote and facilitate on-going engagement and participation of disabled children and young people in the development and implementation of relevant legislation and policies. As such, a Young Disabled People's Forum was established (now Youth Action Success) and a feedback loop has been set up with the Disabled Children and Young People's Advisory Group to ensure that their voices are heard in the development and implementation of policy and so that their work complements that of the DCYPAG. Genuine consultation, engagement and co-production with disabled young people is a key outcome.

### **Grant-aided Special Schools**

11. Grant-aided special schools are managed by a Board of Governors who are responsible for managing the day to day business of the school, including services provided within school. Grant-aided special schools receive annual grant funding from Scottish Ministers in exercise of their powers under the Special Schools (Scotland) Grant Regulations 1990. Such grants are subject to conditions determined by the Scottish Ministers in and include a section on safeguarding and the protection of vulnerable groups. Conditions of grants to grant-aided special schools state that 'The Grantee must have robust safeguarding policies in place to protect vulnerable groups. The Grantee must also have in place clear processes which must be followed if it becomes aware of specific incidents, including referral to the relevant authorities where necessary' and 'The Grantee must report all and any cases of suspected abuse or malpractice relating to anyone involved in the delivery of the Project or any beneficiary of the Project to Scottish Ministers and the relevant authorities immediately'.
12. In addition, the Requirement for Teachers (Scotland) Regulations 2005 were amended in 2017 to require all teachers employed in grant-aided special schools to be GTCS-registered. The GTCS Standard for Full Registration applies to teachers employed and working in grant-aided special schools. Paragraph 4 above also refers.
13. Some grant aided special schools use CCTV within their schools. This maybe something that the Committee wishes to explore directly with the schools.

## Independent Schools

14. A number of registered independent schools in Scotland are special schools. The legislative framework for the registration and regulation of independent schools is contained within sections 98 to 103B of the Education (Scotland) Act 1980 with specific requirements related to safeguarding and promoting the welfare of a pupil attending the school. The Registration of Independent Schools (Prescribed Person) (Scotland) Regulations 2017 require all teachers employed in independent schools to be GTCS-registered. The Scottish Council for Independent Schools (SCIS) provides the sector support and professional learning on child protection including publication of guidance: Guidance on Wellbeing and Child protection 2015 <http://www.scis.org.uk/looking-for-information-and-advice-on-applying-and-meeting-the-cost/safeguarding/>

## CCTV use in public schools

15. The Education (Scotland) Act 1980 places a statutory responsibility on all local authorities to manage and maintain their school estate and provide a safe school environment for all school users. They should make arrangements as they consider necessary for pupils residing at, or attending schools in their area. It would be for a local authority to decide whether or not to use CCTV cameras on their premises.
16. Where the use of CCTV is considered the rights of children and young people, as well as staff, must be a key consideration whilst striking a balance between privacy and protection.
17. There may be human rights implications as a result of the proposals within the petition. The right to private and family life contained in Article 8 of the European Convention on Human Rights (ECHR) is a qualified right, which means that reasonable restrictions or limitations can be placed on it in specified circumstances to achieve a legitimate aim. These are set out in Article 8(2):

“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”
18. Therefore, interference with the right to private life must be necessary and proportionate in order to achieve a legitimate public policy objective, within the overall context of a modern, democratic society. This would involve balancing potentially competing considerations, including both the rights of individuals and the wider public interest – in the considering of this petition relevant factors would include preventing harm and keeping children safe.
19. Due consideration would also need to be given to the United Nations Convention on the Rights of the Child (UNCRC) in particular Article 16 which covers the right to privacy and article 19 which covers the right to be kept safe from abuse, including physical abuse. Children’s interests protected by these provisions would have to be balanced carefully.

## **Social Work Services**

20. With regard to the petitioners request for social workers to be placed in all additional support needs schools, Local Authorities are responsible for the delivery of social work services. Local Authorities are distinct corporate bodies accountable to their electorates, and their functions are set out in statute. It is up to each local authority to manage its day to day business, including the delivery of social services, including services provided within schools.

## **Recording and Monitoring**

21. Our school exclusions guidance 'Included, Engaged and Involved Part 2: A positive approach to preventing and managing school exclusions' (IEI2) provides clear guidance to schools and local authorities in relation to physical intervention. Any incident where a decision is made to physically intervene within a school must be recorded and monitored. Details on how this should be undertaken should be included in an education authority's policy on de-escalation, physical intervention. The recording and monitoring of such incidents will help education authorities to monitor the effectiveness of their policy and practice. It will ensure transparency, enable them to review and improve their policy and help identify professional learning needs and further supports where appropriate.

22. The guidance is also clear that the rights of all children and young people must be a key consideration where physical intervention is being considered. It is important to consider the UNCRC in this context. Article 37 states that 'No one is allowed to punish children in a cruel or harmful way.' Article 3 states that 'the best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children'.

## **Petition PE1548 – National Guidance on Restraint and Seclusion in Schools**

23. As the Committee will be aware there is an ongoing petition which calls for 'National Guidance on Restraint and Seclusion in Schools'. The Petitions Committee have considered the Petition and related matters several times. On 20 April 2017 the Deputy First Minister (DFM) gave evidence to the Petitions Committee. The Committee was seeking particular reassurance that the guidance would be appropriately implemented and if further steps (legislative) were required that these may be considered in future.

24. To support the implementation of the guidance Scottish Government officials will be undertaking a programme of engagement with all Education Authorities to discuss their physical intervention policies to enable consideration to be given as to whether there are any barriers to implementation of IEI2, with a focus on prevention and de-escalation, in order to identify if any further support is needed.

## **No Safe Place: Restraint & Seclusion in Scotland's Schools**

25. On 14 December the Children & Young People's Commissioner Scotland (CYPCS) published <https://www.cypcs.org.uk/ufiles/No-Safe-Place.pdf> their first formal investigation into Restraint & Seclusion in Scotland's Schools.

26. The key recommendations are:

- Local authorities should, as a matter of urgency, ensure that no restraint or seclusion takes place in the absence of clear consistent policies and procedures at local authority level to govern its use.
- The Scottish Government should publish a rights-based national policy and guidance on restraint and seclusion in schools. Children and young people should be involved at all stages of this process to inform its development.
- 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.
- Local authorities should ensure that all recording forms at school level include sections for de-escalation techniques considered and attempted, the child's and parents and carers views.

27. The Commissioner has laid the report in the Scottish Parliament, and has made recommendations for the Scottish Government, Local Authorities, Education Scotland and the Care Inspectorate. We are currently considering the recommendations made to Scottish Government with a view to responding officially to the Commissioner by the end of January 2019.

I hope that the committee and petitioner find the information above helpful.