

Jenny Gilruth MSP, Cabinet Secretary for Education and Skills

Shirley-Anne Somerville MSP, Cabinet Secretary for Social Justice

Neil Gray MSP, Cabinet Secretary for Health and Social Care

Angela Constance MSP, Cabinet Secretary for Justice and Home Affairs

Natalie Don-Innes MSP, Minister for Children, Young People and The Promise

Maree Todd MSP, Minister for Social Care, Mental Wellbeing and Sport

**Via email: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)**

14 February 2025

Dear Cabinet Secretaries and Ministers,

### **Statutory Framework on Restraint and Seclusion**

We write in relation to the letter dated 26 January 2024 from Stacey-Ann Lindsay on behalf of the responsible Scottish Ministers, in response to our joint letter dated 23 November 2023. Notwithstanding our disappointment with the response, we are seeking a constructive way forward.

We sought a commitment from the Scottish Government to put in place a coherent statutory framework on restraint and seclusion across all settings in which children are under the care and/or supervision of the State.

We considered that this would need to include as a minimum; early years, education, residential and secure care, health and mental health settings, as well as prisons and custody environments.

We note that in its response the Scottish Government stated *“that an overarching piece of legislation across all settings is not necessarily the most effective means to achieving the reduction, or eradication, of restraint and/or seclusion, that we would all like to achieve. It is the Scottish Government’s view that it would be more appropriate for the outcomes that you have identified, in terms of scaffolding and support for all children and young people who experience restraint and seclusion, to be considered and addressed by each area independently to ensure that any support, training, guidance and reporting meets their needs in those particular settings.”*

We are disappointed with the response from Scottish Government, which gives little assurance that the current siloed approach to policy and law-making will change. As we have noted before, children do not experience their lives in conveniently (for adults) delineated and distinct policy areas. As Ministers are aware, [the promise](#), which received cross-party support, commits Scotland to being a nation that strives to no longer restrain its children (Pg 85).

Furthermore, we remain concerned that the current legislative provisions to protect children from unlawful, unnecessary and excessive use of restraint can be described as “patchwork” at best, resulting in arbitrary seeming distinctions in the level and nature of protections provided.

As an illustration, just before Christmas we were made aware that the Care Inspectorate has told secure providers not to report incidents of restraint that take place in their educational provision. We understand that the Inspectorate has done this in order to clarify what it understands to be the limits of its statutory remit and that it has raised the gap in notification with Education Scotland, which does not seek or receive such information.

We also understand that the Inspectorate’s view is that the provisions set out in Regulation 4(1)(c) of The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011, do not apply to restraint in secure education. In other words there is no requirement to *“...ensure that no service user is*

*subject to restraint, unless it is the only practicable means of securing the welfare and safety of that or any other service user and there are exceptional circumstances”.*

We note that there is currently therefore no legal protection, notification provision or proportionate external scrutiny of restraint in secure education. Given the vulnerability of this group of children and young people, we are deeply concerned that the level of legal protection for a child in secure accommodation depends entirely on whether restraint takes place in the care or education part of the secure estate.

On 12 December 2024, the Children and Young People’s Commissioner Scotland sought an explanation and response on this specific issue from the Minister for Children, Young People and the Promise. We note that there may be an urgent need to consider legislation in this area via the Education (Scotland) Bill currently before the Scottish Parliament, along with an interim practice solution.

You will also be aware of the deeply concerning BBC Disclosure documentary released on 10 February in which children describe a “culture of cruelty” in Skye House, which involved excessive and unlawful use of restraint. As we noted in our previous letter, the Mental Health Law Review noted in 2022 that: *“There are no specific legislative safeguards for restraint and seclusion...”* in mental health settings. Progress in addressing the Review’s recommendations has been extremely slow. This must now change.

In the interests of attempting to move forward constructively, we note that there are a number of pieces of individual legislation which are already before the Parliament or which we anticipate are forthcoming, and which if properly co-ordinated would permit a coherent approach to be taken which aligns legal protections across a number of sectors.

We are referring specifically to:

- Daniel Johnson MSP's Members Bill on restraint and seclusion in educational settings
- The Education (Scotland) Bill
- The Promise Bill
- A Bill to reform the Adults with Incapacity Act and wider reform of the mental health and incapacity legislation as recommended by the Mental Health Law Review

Aligning provisions on restraint and seclusion in these Bills would have significant benefits, but would require Scottish Government to co-ordinate work across a number of different policy and Bill teams, to establish consistent approaches to (inter alia); definitions of restraint and seclusion; clarifying the limited circumstances in which restraint is lawful; recording, reporting and monitoring which is consistent with provisions of The Equality Act 2010; and setting out legal powers to produce sector-specific statutory guidance. It would also further work to keep the promise and link to or further advance the actions identified in the route-map around rights set out in Plan 24-30.

The use of restraint engages the right to freedom from torture, inhuman and degrading treatment, the right to private and family life and the prohibition of discrimination under the European Convention on Human Rights, along with a range of rights outlined by international treaties such as the UN Convention on the Rights of Persons with Disabilities. The Scottish Human Rights Commission's report, 'Review...Recommend...Repeat' in July 2025 highlighted a lack of progress by the State in addressing recommendations from human rights bodies to improve restraint practices.

We note that the Equality and Human Rights Commission published a Human Rights Framework for Restraint in 2019. This framework applies to England, Wales, and Scotland, where the SHRC consented to the EHRC providing this analysis in line with our respective mandate. This Human Rights Framework has already informed policy

and legal developments in England and Wales, and could be used as a starting point for work on specific legislative provision in Scotland.

Together, the signatories to this letter therefore call on Scottish Government to commit to the following steps:

- Set up a short-life legal working group to develop a model for provisions which could be applied across different pieces of legislation. This to be done in time to inform the content of all relevant legislation.
- Support the principles of Daniel Johnson MSP's Members Bill
- Include specific provisions on reporting and notification of restraint, and inspections within the Education (Scotland) Bill
- Confirm that provisions on restraint and seclusion will form part of the Promise Bill
- Accelerate work on the legislative elements of the response to the Mental Health Law Review

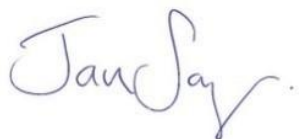
Given the legislative deadlines we look forward to hearing back from you with specific responses to our calls by Friday 14 March 2025.

Please respond to Nick Hobbs, Head of Advice and Investigations at the Children and Young People's Commissioner Scotland, via email: [nick.hobbs@cypcs.org.uk](mailto:nick.hobbs@cypcs.org.uk).

Yours sincerely



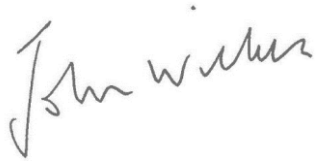
**Nicola Killean, Children and Young People's Commissioner Scotland**



**Jan Savage, Executive Director, Scottish Human Rights Commission**

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**Fraser McKinlay, Chief Executive, The Promise Scotland**

A handwritten signature in black ink, appearing to read 'John Wilkes', written in a cursive style.

**John Wilkes, Head of Scotland, Equality and Human Rights Commission**