

30 September 2021

Department of Health
Adult Mental Health Unit
Room D4.26
Castle Buildings
Stormont
Belfast
BT4 3 SQ

Dear Sir/Madam

Re: Regional Policy on the Use of Restrictive Practices in Health and Social Care Settings And Regional Operational Procedure for the Use of Seclusion

The Equality Commission for Northern Ireland welcomes the opportunity to respond to the Department's consultation on the above-mentioned policy and procedure.

Introduction

The Equality Commission, together with the Northern Ireland Human Rights Commission, has been designated, under Article 33 (2) of the United Nations Convention on the Rights of Persons with Disabilities ([UNCRPD](#)), as the Independent Mechanism for Northern Ireland (IMNI)

to promote, protect and monitor the implementation of the Convention here¹.

Together with the Scottish Human Rights Commission and the Equality and Human Rights Commission we comprise the United Kingdom Independent Mechanism (UKIM).

The United Kingdom ratified the UNCRPD in 2009.

United Nations Convention on the Rights of Persons with Disabilities

[Article 15](#) of the UNCRPD requires that:

‘1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.’

[Article 17](#) of the Convention, Protecting the integrity of the person, which requires that ‘Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others’, is also pertinent.

[Article 26](#), Habilitation and rehabilitation requires that the State Party [T]ake effective and appropriate measures [...] to enable persons with disabilities to attain and maintain maximum independence [and] full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life’.

¹ Further information about the work of the Independent Mechanism for Northern Ireland is available [here](#)

In Defence of Dignity

In 2012, the NI Human Rights Commission (NIHRC) reported on its investigation of the human rights of older persons² in nursing homes, 'In Defence of Dignity'³.

The report addressed the use of restraint against the provisions of a range of human rights standards additional to the UNCRPD, including the European Convention on Human Rights (ECHR)⁴, the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT).

The report identified that in certain circumstances the excessive use of restraints, routinely used in care homes, can amount and indeed had amounted to individuals being treated in an inhuman and degrading manner⁵. Instances of abuse had occurred as a result of the excessive application of restraints, both physical and chemical. The NIHRC identified that the absence of a statutory definition of restraint had contributed to a lack of coherent guidance on the acceptable use of restraint⁶.

Whilst noting that the mental capacity legislation makes provision for a statutory definition of restraint where an individual is considered to lack capacity, the Commission considered that there was a need for broader awareness of the potential for the application of restraint in health and social care settings to impact adversely on the right to freedom from torture, or cruel, inhuman or degrading treatment.

The NIHRC recommended the use of the human rights-based standards adopted by the Committee for the Prevention of Torture (CPT) regarding

² Many older persons living in care homes have acquired disabilities.

³ NI Human Rights Commission (2012): [In Defence of Dignity: The Human Rights of Older People in Nursing Homes](http://www.nihrc.org/documents/research-and-investigations/older-people/in-defence-of-dignity-investigation-report-March-2012.pdf) (Belfast: NI Human Rights Commission). Available at: <http://www.nihrc.org/documents/research-and-investigations/older-people/in-defence-of-dignity-investigation-report-March-2012.pdf>

⁴ Incorporated into UK domestic law through the Human Rights Act 1998.

⁵ NI Human Rights Commission (2012): Op.Cit.

⁶ Ibid.

psychiatric establishments to inform the use of restraint in the context of health and social care in Northern Ireland:

- that restraint is subject to a clearly defined policy
- initial attempts of restraint should as far as possible be non-physical
- physical restraint should in principle be limited to manual control
- staff should receive training on the use of non-physical and manual restraint, and
- all instances of physical restraint should be recorded in a specific register and in the person's file⁷.

The NIHRC pointed out that the CPT also requires that the use of “chemical restraint”, that is, sedating medication, should be governed by clear rules and subject to the same oversight as regards any other means of restraint⁸.

NIHRC also drew attention to the use of electronic means of restraint e.g. ‘wandering’ technology such as ‘tag’ monitors or alarm mats, a type of restraint not acknowledged in the consultation document⁹.

The report also highlighted Article 27 of Council of Europe Recommendation (2004)¹⁰ requires that restraint should only be used in compliance with the principle of least restriction, to prevent imminent harm to the person concerned or others, and in proportion to the risks entailed. Measures of restraint should only be used under medical supervision and appropriately documented. In addition, the reasons for and duration of restraint should be recorded in the person's records. All

⁷ NI Human Rights Commission (2012): page 59

⁸ Ibid.

⁹ NI Human Rights Commission (2012): page 62.

instances of physical restraint should also be recorded in a register so that the use of restraint can be appropriately monitored¹⁰.

Independent Mechanism

In [Disability Rights in the UK](#) (2017,) the UK Independent Mechanism expressed concern about the use of physical and/or chemical restraint in detention, healthcare and some education settings¹¹.

UKIM recommended that evidence on the extent of the use of physical, chemical and mechanical restraints and segregation and seclusion, is routinely published in relation to: prisons; the youth justice system; health and social care settings; and education settings¹².

UKIM also recommended that the UK and devolved governments should take steps towards eradicating the use of physical and chemical restraint for reasons of disability, including mental health related disability, in all settings. Steps could include:

- A commitment to achieving a shared understanding and consistent human rights approach across all government regulators, inspectorates and ombudsmen.
- Reviewing national and international use of best practice on methods of de-escalation and other practices which avoid resort to the use of restraint.
- Requesting technical assistance from the UN Special Rapporteur on the Rights of Persons with Disabilities.
- Ensuring all relevant professionals and staff have appropriate training and knowledge of best practice.

In any steps taken, the UK and devolved governments should ensure that reduction in the use of force or chemical restraint does not lead to

¹⁰ Council of Europe Committee of Ministers: [Recommendation No.REC \(2004\) 10 concerning the protection of human rights and dignity of persons with mental disorder](#), paragraphs 191-204, pages 37-38. The use of chemical restraint is addressed at paragraph 145, page 32.

¹¹ United Kingdom Independent Mechanism (2017): [Disability Rights in the UK](#), paragraph 11.1, page 75.

¹² United Kingdom Independent Mechanism (2017): [Disability Rights in the UK](#), paragraphs 109-110, pages 28-29.

an increase in other restrictive practices which threaten human rights such as segregation or isolation.

UKIM point out that in Northern Ireland, the Mental Capacity (NI) Act 2016 makes provision for a statutory definition of restraint but that this only applies in circumstances in which an individual is deemed to lack capacity¹³.

In [Disability Rights in Northern Ireland](#) (2017) the Independent Mechanism for Northern Ireland highlighted that the Criminal Justice and Courts Act 2015 which applies to England and Wales provides a free-standing offence for a care worker to ill-treat or neglect a person they have care of, noting that there is no equivalent free standing offence in Northern Ireland¹⁴.

Committee on the Rights of Persons with Disabilities

The Committee on the Rights of Persons with Disabilities, in its [concluding observations](#) (2017|) following examination of the initial report on implementation of the Convention by the UK, expressed concern about:

‘the continued use of physical, mechanical and chemical restraint, including the use of Taser guns and similar weapons, on persons with disabilities, which affects persons with psychosocial disabilities in prisons, the youth justice system, health-care and education settings, as well as practices of segregation and seclusion’¹⁵.

Furthermore, the Committee expressed its deep concern that ‘these measures disproportionately affect black and other persons with disabilities belonging to ethnic minorities’. It is also expressed concern about the absence of a unified strategy in the State party to review these practices and at the occurrence

¹³ United Kingdom Independent Mechanism (2017): [Disability Rights in the UK](#), paragraph 166, page 78.

¹⁴ Independent Mechanism for Northern Ireland (2017): [Disability Rights in Northern Ireland](#) – Supplementary Submission to inform the CRPD List of Issues on the UK, page 18.

¹⁵ UN Committee on the Rights of Persons with Disabilities (2017): [Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland](#), paragraph 36, page 7

of non-consensual electroconvulsive therapy across the devolved governments and particularly in Northern Ireland¹⁶.

The Committee recommended that the State party:

(a) Adopt appropriate measures to eradicate the use of restraint for reasons related to disability within all settings and prevent the use of Taser guns against persons with disabilities, as well as practices of segregation and isolation that may amount to torture or inhuman or degrading treatment;

(b) Set up strategies, in collaboration with monitoring authorities and national human rights institutions, in order to identify and prevent the use of restraint for children and young persons with disabilities;

(c) Implement the outstanding recommendations contained in the February 2015 report of the inquiry by the Equality and Human Rights Commission entitled “Preventing Deaths in Detention of Adults with Mental Health Conditions”;

(d) Prohibit any use of non-consensual electroconvulsive therapy on the basis of any form of impairment, in all regions, ensure that safeguards are based on the human rights model and are not limited to medical criteria, and work through appropriate authorities to ensure monitoring of this development, particularly in Northern Ireland¹⁷.

¹⁶ United Nations Committee on the Rights of Persons with Disabilities (2017): [Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland](#), paragraph 36, pages 7-8

¹⁷ United Nations Committee on the Rights of Persons with Disabilities (2017): [Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland](#), paragraph 37, page 8.

Conclusion

In the context of the above-mentioned concerns and best practice guidance, the Equality Commission welcomes the acknowledgement in the consultation document that *‘Best practice highlights that restrictive interventions, restraint and seclusion should only be used as last resort when all other interventions have been exhausted and there is a presenting risk to the person or to others’*¹⁸, and the direction that any restraint should represent the least restrictive intervention, for the least amount of time possible, proportionate to the prevailing risks and that all use of restraint must be monitored and recorded¹⁹.

We also welcome that the seven standards set out in the consultation document are underpinned by the principle of early intervention measures to minimise and eliminate the occurrence of restrictive practices and promote the principle of least restriction possible; the proposed establishment of a baseline of the use of all restrictive interventions; and the development of a standardised, regional approach to recognition, implementation, recording, monitoring, learning and quality improvement²⁰.

The Commission also acknowledge the designation of analytical and monitoring roles respectively to the Public Health Agency and the Regulation and Quality Assurance Agency.

Recommendations

The Commission notes that the policy sets out provision for ‘exceptional’ circumstances where prone restraint is permissible but does not define what might constitute such circumstances are or provide examples²¹.

¹⁸ Department of Health (2021): [Regional Policy on the use of Restrictive Practices in Health and Social Care Settings](#), paragraph 1.3, page 1.

¹⁹ Ibid, paragraphs 5.18 and 5.20 page 12.

²⁰ Ibid, paragraphs 1.6 – 1.8, page 1.

²¹ Ibid, paragraph 5.25 (vii), page 13.

The Commission **recommends** that the policy and associated guidance provide greater clarity on this issue including the provision of examples.

We **recommend** that the policy and associated guidance includes reference to electronic means of restraint.

We also **recommend** that all relevant HSC staff are provided with training on the rights set out in the UNCRPD and other relevant human rights standards

Finally, the Commission **recommends** that further consideration is given to the application of the human rights standards highlighted above and to the recommendations, in particular, of the UK Independent Mechanism and the UN Committee on the Rights of Persons with Disabilities.

If you require any further information, please contact me.

Yours sincerely

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