OFFICIAL REPORT
AITHISG OIFIGEIL

# Education, Children and Young People Committee

**Wednesday 24 September 2025**

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

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## EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE
**27th Meeting 2025, Session 6**

**CONVENER**

*Douglas Ross (Highlands and Islands) (Con)

**DEPUTY CONVENER**

*Jackie Dunbar (Aberdeen Donside) (SNP)

**COMMITTEE MEMBERS**

*George Adam (Paisley) (SNP)
*Miles Briggs (Lothian) (Con)
*Pam Duncan-Glancy (Glasgow) (Lab)
*Ross Greer (West Scotland) (Green)
*Bill Kidd (Glasgow Anniesland) (SNP)
*John Mason (Glasgow Shettleston) (Ind)
*Paul McLennan (East Lothian) (SNP)
*Willie Rennie (North East Fife) (LD)

*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Ben Higgins (Restraint Reduction Network)
Nicola Killean (Children and Young People's Commissioner Scotland)
Sarah Leitch (British Institute of Learning Disabilities)
Suzi Martin (National Autistic Society Scotland)
Kate Sanger
Dr Simon Webster (Enable)

**CLERK TO THE COMMITTEE**

Pauline McIntyre

**LOCATION**

The Robert Burns Room (CR1)

# Scottish Parliament

## Education, Children and Young People Committee

*Wednesday 24 September 2025*

*[The Convener opened the meeting at 09:00]*

## Restraint and Seclusion in Schools (Scotland) Bill: Stage 1

**The Convener (Douglas Ross):** Good morning and welcome to the 27th meeting in 2025 of the Education, Children and Young People Committee. The first item on our agenda is evidence on the Restraint and Seclusion in Schools (Scotland) Bill, and we are hearing from two panels.

For our first panel, I am pleased to welcome Dr Simon Webster, head of research and policy at Enable; Kate Sanger, family carer and co-creator of the communication passport; and Suzi Martin, who joins us remotely and is external affairs manager at the National Autistic Society. I thank you all for joining us.

Ms Sanger, I will start with you. Beth Morrison has submitted written evidence and she has been behind the campaign for coming up to 15 years. We very much recognise what her son Calum has been through; the family is on a trip to Disneyland and we would all concur that it is important that Calum and the family get time away. Beth puts a lot of onus on you, in her place, to adequately articulate the calls for these changes. Could you start by explaining your background in relation to your daughter Laura and why the campaign is so important to you, Beth and many other campaigners?

**Kate Sanger:** Absolutely. I am mum to three young adults. My youngest daughter was born with a rare syndrome, which means that she has a severe learning disability and a complex communication disorder. It has been 10 years and six months since Beth Morrison and I were in the Parliament, looking for the introduction of standards around restraint and seclusion.

Beth's young son, whom you mentioned, was restrained in 2010 and was severely injured. He had more than 60 bruises on his body. He was taken to the floor by four adults and, to this day, he remains traumatised.

My daughter attended a nursery and a school for children with learning disabilities. In her nursery and primary schools, she never experienced restraint or seclusion and never knew what it was to be restrained or locked in a place away from others.

However, on her very first day at her secondary school, which appeared to have a culture of restraint, she was restrained and isolated, and that really affected her. Several months into her secondary school years, she would scream every time she saw the uniform. She did not have many vocalisation or verbal skills then, so that was her way of telling me that she was terrified to go to school, and that persisted. It was a journey for her throughout her years in secondary school to be continually isolated and restrained. To this day, she suffers the trauma from that.

Mrs Morrison and I got together and realised that there were many families out there with similar experiences. Mrs Morrison set up a group called SHAME—Scotland's hidden abuse must end. The group was to give parents and professionals a place where they could chat freely without judgment and feel easy about telling their stories. We heard from more than 600 parents who had had similar experiences to ours, and the only reason why they knew their children were being restrained was that they were coming home with bruises and cuts. They were never informed; it was always the injuries that sparked off the knowledge that their child was being restrained.

The stories that we heard were really frightening, and the pictures that we saw were worse. We actually shared the pictures with the Scottish Government, Mr Swinney and education staff. We took the pictures and showed them. They were not pleasant—they were really quite upsetting pictures, and everybody agreed that such practices should not be happening in our schools.

The types of injuries that we are talking about are severe bruising, broken teeth, burst lips, dislocated elbow, bleeding and broken nose; just recently, a six-year-old non-verbal child was taken to the floor by two adults and she sustained a broken collarbone.

The list goes on, and there are too many injuries to mention, but the reason for this campaign is really frightening. We all hear that restraint should be the last resort, but restraint is happening as a first approach in many instances.

I do not blame the teachers, because they sometimes feel that that is the only way to deal with things. They have never been given the knowledge or the skills that they need to be proactive. There is much more that they could do before resorting to restraining a child. That is where the importance of training comes in.

The reasons that are given for restraint include non-compliance, children making poor choices, sensory overload, bad language and screaming.

However, some of our children scream because of their syndromes. They do not have language skills or verbal skills, and screaming is a way of communicating their needs. Parents know what the screams mean. That is why I created the communication passport so that teachers and staff would have the information about the vocalisation that a child might make and what it means.

Children go to school to be nurtured, to learn new skills and to experience happiness, but there is nothing therapeutic about restraint. We have overwhelming evidence that all that it does is damage children, and they are getting damaged at a very young age—at four or five. They then go on to be damaged teenagers and damaged adults. We are setting them up for failure and costing a lot of money along the route rather than supporting these children.

I understand that, for a very small proportion, restraint might be needed. My daughter is one of those children who may have to be restrained to safeguard her life, and that is fine. That is what we call the last resort, when restraint is used to safeguard the child or someone else from serious injury. Sadly, however, the use of restraint as a last resort is not what is happening. We find that it is being used as the first approach. In 2025, about 259 families applied to join the group. It is worrying me that, since the schools went back in August, 81 families have contacted us in one month and shown us pictures and told us horror stories—yet again—of restraint.

Having a learning disability, being autistic and being neurodiverse should not be a barrier to people having their human rights upheld. I want my daughter's human rights to be upheld in the same way as everyone else's. Scotland now has an opportunity, through Daniel Johnson's bill, to lead the way in making Scotland truly a safe and good place for children with disabilities to grow up and feel safe and nurtured. I hope that we will move forward and take this opportunity to lead the United Kingdom in a change that is much needed.

**The Convener:** Thank you. That sets us up very well for the remainder of our evidence session and the further evidence that we will take.

Dr Webster, in your response to the call for views, you say:

> "Enable's own Scottish Council—which sets our campaign priorities—identified ending abusive restraint and seclusion as a top priority in recent years. The overwhelming weight of evidence from our members and others shows that without legislation, children's rights will continue to be breached."

You support the bill. Why has it taken us so long to get to this stage, if you and your members and campaigners have been calling for this for many years?

**Dr Simon Webster (Enable):** That is a very good question. The reason is not entirely clear to me. In essence, we are talking about the protection of children within state-provided services, so it is quite surprising that it has taken so long to get to this point. Of course, we have got to this point because of the work of Kate Sanger, Beth Morrison, the other campaigners, Enable and the Children and Young People's Commissioner Scotland.

Whatever the reasons why it has taken so long are, we at Enable are very glad to have got to this point. We are very glad that those who have experienced restraint and seclusion and those parents who have experienced not knowing what has happened to their child have had an effect and are being listened to by the Parliament.

As Kate Sanger said, it is important to understand that we are talking about approaches to working with children and young people that will cause harm. Even when restraint and seclusion are used with good intent and with training, we have to assume that they can cause lasting damage to children and young people, including many with disabilities. That is why we are so pleased that Daniel Johnson introduced the bill that the committee is now considering carefully. It reflects the asks that Enable's membership made following research that we have conducted and reported on, particularly in 2022 with the "in safe hands?" campaign, which was a follow-up to the 2019 campaign.

The measures in the bill, including the need for training, for a register of trainers, for monitoring, for transparency and democratic accountability to the Parliament and the expectation of standardisation, are all vitally important, but there is a broader context. Enable believes that we need to work towards the elimination of the use of restraint and seclusion in schools.

**The Convener:** Ultimately, you believe that there should be no circumstances in which restraint and seclusion would be available. The vast majority of respondents say that they should be available as a last resort. Are you saying that they should be excluded completely?

**Dr Webster:** We might not quite get to that position, but it is important to work towards that. Reflecting on what Kate Sanger said in her contribution, we recognise the circumstances in which we find ourselves, and in which education staff find themselves when they feel that they have no alternative at times. There have been instances where interventions have taken place to save lives. Those circumstances exist at least partly because of the need for much more investment in inclusive education in all its forms—more staff, more training, smaller class sizes, and so on.

From our perspective, the context in which restraint and seclusion are being overused is one in which teachers and other staff are under extreme stress and they are trying to work with children and young people who are experiencing extreme distress in a system that requires more investment. Until it has that investment, conditions will continue to lead to distress and staff will continue to struggle to support children and young people, and to work in the environment and the circumstances that exist in schools.

It all comes back largely to children with disabilities who are at risk of serious long-term physical and psychological harm from the unregulated practice of restraint and seclusion. I do not think that we would accept that in any other sphere of society or any other public service.

**The Convener:** Ms Martin, I come to you. I want to talk particularly about the figures that Ms Sanger gave during her opening remarks that, in the month since the schools went back, 81 families have contacted SHAME with concerns. Is that the type of number that the National Autistic Society is hearing from? Is that the level of the problem that we in Scotland are facing?

**Suzi Martin (National Autistic Society Scotland):** First, I thank the committee for inviting us to give evidence on this important and emotive topic.

Yes, we hear from families regularly about the restrictive practice that their children are experiencing in schools. We know that it happens frequently and that when it is done, it is often done inappropriately and in unsafe ways. However, we do not have the data that shows the scale of the problem. Although we hear from families, as do Kate and Beth, and although the Children and Young People's Commissioner Scotland and Enable have done great work to establish how much of a problem it is, it is still largely an invisible problem. That is why it is important that we start to collect that data, otherwise it will continue to be an invisible problem and children and young people's human rights will continue to be violated, particularly those of autistic children and young people and those with learning and other disabilities.

The Children and Young People's Commissioner Scotland has already said that schools are at increasing risk of legal action over the issue. We are certainly hearing about more cases of restrictive practices being used in schools and we entirely agree with Enable and with what Simon Webster has just said. In our view, the increasing use of such practices is symptomatic of an education system that is not inclusive of children and young people's support needs, particularly those of autistic children and young people. To achieve that inclusive system, we need the right physical environments for children and young people to learn in, we need the right training to be in place and we need increased specialism within all settings, particularly mainstream settings.

For this particular issue, it is also very important that a legal framework is in place to protect children and young people. It is entirely unacceptable that that does not exist.

We are supportive of the bill, statutory guidance, mandatory reporting and monitoring and a regulated training landscape, and we hope that the Scottish Government and the Parliament will support the bill.

I have a quick note on language before I pass back to you, convener. I will refer to "restrictive practice" throughout this evidence session. I am aware that the bill refers to "restraint" and "seclusion", but I will use the other term, not to minimise the very serious harm that is caused by restraint and seclusion and restrictive practice, but to ensure that we capture all forms of restraint and seclusion, some of which may be perceived to be not as serious but which nonetheless have a lasting and very traumatic effect on autistic children and young people in particular.

09:15

**The Convener:** On that point, do you think that the terminology should be changed if the bill progresses?

**Suzi Martin:** I think that the definitions of "restraint" and "seclusion" in the bill are sufficient. When we are talking about it, I will refer to restrictive practice, because restraint and seclusion brings to mind very serious instances. However, we are happy with the definitions in the bill.

**The Convener:** I have one final question before I pass over to Ross Greer, who will ask the next questions.

I am a parent of two boys—one in primary 2 and one in nursery. When they trip and fall, we immediately get a phone call, or we get a note when we pick them up, and we have a word with the nursery teacher or the classroom teacher.

I cannot get my head around the idea that for very minimal distress or injury—sometimes we can barely see it—we are informed fully, yet with restraint and seclusion, that is not happening. How can it be, if schools already know that they have to inform parents of the most minor incidents, that they are not doing it for your children?

**Kate Sanger:** It is unbelievable that a child comes home after being restrained and has perhaps sustained a bump on the head, and we are not told. We would need to monitor our child to

ensure that they did not develop a haemorrhage or something during the night, which could prove fatal, but we are not told.

I cannot believe that that is happening, but it is. The families know about it only because of the bruises, and the school would have to then backtrack. It is a safeguarding issue, and I do not know how they have got away with it for so long. Our children can be injured during restraint and we are never notified. It is a very worrying issue and it will—thankfully, I hope—be remedied in the bill.

**The Convener:** I just do not understand how it is happening. If I am told about the most minor incident with my sons, when they barely noticed what happened, I do not understand how you cannot be told about something as severe as restraining a child. We heard that Calum came home with blue lips and that his mum had to take him straight to hospital. How could an incident that severe not trigger a teacher or an education professional informing the parent, whereas the vast majority of parents are told of the most minor incidents?

**Kate Sanger:** I have no idea why it has happened. I am just glad that, so far, we have not had a fatality. Very often, the parents are left having to take their child to the doctor's or the hospital. Sometimes, we have been told that the bruises did not happen at school, so the parent is left with the feeling that they are being blamed. That is why it is so important to notify a family as soon as the restraint has taken place, so that they can safeguard the child and get them the appropriate treatment should they need it.

I have no idea why that has not happened until now—it is horrendous, to be frank.

**Dr Webster:** As Kate Sanger said, I do not know why. The research that Enable has conducted has not brought out answers to those questions. One survey that we conducted on inclusive education more broadly had responses from 200 education staff at all levels and raised the same types of concerns that we had expressed.

Enable appreciates that a large proportion of education professionals would perhaps have sympathy with the general direction of the bill. However, on the particular question of why parents would not be informed of instances of restraint or seclusion, including much more serious instances, as has been said—in short, we do not know. That could be an important question to ask education professionals. There may be a cultural issue behind that and I think that it would be important to understand why, not least for the implementation of any act that is passed.

**Ross Greer (West Scotland) (Green):** I would like to start with Kate Sanger. You mentioned that a lot of teachers and school staff end up using restraint and seclusion because they feel that they have no other option. If I picked you up right, in your view, that is because they have not been trained and supported to understand what the other options are.

Will you expand on that a bit and explain what other approaches could be taken that would mean that the instances in which restraint might be inevitable could be reduced to almost zero? What is it that teachers and other school support staff are not being supported and trained to do?

**Kate Sanger:** Having spoken to people in the education system as well as teachers, I know that, when a care assistant starts a new job, they are often sent on restraint training without even understanding why a child would perhaps act in the way that they have acted. I am thinking of someone like my daughter, who would not have had any verbal skills, and who, if she felt overloaded by the lights in here, would probably hit Simon Webster here beside me to try to escape.

If it were me, I would be educating people about all the proactive things—for example, by pointing out that, if a child has sensory issues, bright lights might affect them. It is all about educating staff and ensuring that they understand that such behaviours are a way of communicating that something is wrong and that the child uses their behaviour to escape. However, staff are being sent to restraint training straight away; as a result, if a child comes up and is anxious, the staff go to grab them, because that is what they have been taught.

That is why we are asking for the right training to be given—so that people understand that all behaviours are messages of communication. Behaviour is just an action, so it is not unusual for our children to use it as their loudest voice. They have complex communication needs, and they have no verbal skills, so they use their behaviour to escape situations that they find very difficult. For example, when they are asked to do tasks, they might not understand what is being asked of them, so they might just drop to the floor. Then they are restrained, picked up, carried out and put in what might be a cupboard, sometimes, or some other area.

It is all about understanding behaviours and why they happen. If teachers had the right training, they would be much happier in their jobs. It must be so hard for them having, say, six children in their class who all have special needs, with two children perhaps doing the same behaviour but for two different reasons.

That is why I developed the communication passport—to give the child a voice so that they

could inform staff, “This is why I’m doing this, and this is what you need to do to help me not do it.” Unfortunately, the training has been all wrong. It needs to concentrate on ensuring that staff understand what behaviours are and why people do these things. A small number of children, like my own daughter, might need to be restrained in difficult situations, but those staff—that small number of staff—should be sent on the right training courses.

In this day and age, you can get Joe Bloggs coming into our schools and setting up his training courses without knowing anything about our children. That is very scary and very worrying, and it is why our children are getting injured.

It is also why the British Institute of Learning Disabilities, which is represented on the next panel, has created training standards; they are to ensure that people cannot slip through the net. A lot of money—a massive amount of money—gets made on the backs of the misery of our children through restraint, and it is time to rectify that. It is time that we put the right training in place for teachers so that they understand behaviours and can support the child. This is not about changing the child—it is about changing the environment and giving the staff the right tools to work with.

I hope that that answers your question in some way.

**Ross Greer:** Absolutely. That was really useful.

Perhaps I can press you just a bit further. I have sat on this and similar committees for nine years now and, in that time, really compelling cases have been made to us for all the things that teachers need to be trained in but which they are not being trained in. A couple of times in that period, the committee has done inquiries on initial teacher education, and it has, quite often, come to the same conclusion that, with the best will in the world, and even with a full four-year degree course rather than the one-year postgraduate diploma in education, teachers cannot be trained in absolutely everything.

We are coming to the point that half of all children in Scotland have some kind of additional support need. I am not saying that they are all complex needs—they can vary from their being exceptionally gifted or having English as a second language to the kind of complex needs that your daughter has. Some of the feedback that we get is that, realistically, not every teacher can be trained in everything, and what is really needed is more specialist staff in schools. In your view, what is the balance between trying to train every classroom teacher and every classroom assistant and having more specialist staff on hand in every school?

**Kate Sanger:** What is missing is upholding the human rights of our children. What was needed is compassion, connection with our children and understanding the humanity of our children, but that was missing. Why would we not give teachers the skills and the tools that they need to do their job correctly? My eldest daughter, who is an academic, told me during the summer holidays that she got more training in Costa Coffee—on how to serve a cup of coffee—than she got during teacher training. That is not good enough—we have to give teachers the right skills.

There are a lot of children with special educational needs. Sometimes, it is about things as simple as working with the parent, understanding the language and understanding why the child is doing what they are doing. If we do not do that training, we will set those children up, from the age of four, for complete failure right through the education system, and that will cost the Government an awful lot of money. We need to put money in early, give teachers the right training and target children—especially young children.

We have found that the ages at which most children get restrained in our schools are six and seven. It is not big children who are getting restrained—it is children at the ages of six and seven. If you damage a child at that age, they will carry that through their adulthood.

Please invest the money and invest in the training. If we do not do that, we will spend a lot of money and a lot of children and families will be damaged.

**Ross Greer:** That is really useful—thank you.

**Suzi Martin:** Thank you for the questions—they are important and I want to touch on both of them. What are teachers not doing to avoid situations in which restrictive practice may be required? It is not necessarily about individual teachers; it is a case of the whole system not working to support children and young people—especially those with additional support for learning needs, autistic children and young people, and those with learning disabilities.

To echo something that Kate Sanger said, all behaviour is communication. I will say a bit about autistic children and young people’s experiences. They may respond with behaviour that is perceived as challenging when confronted with situations or environments that they cannot easily cope with. They can experience difficulty with managing unexpected changes or with processing information, including sensory information, which can cause sensory overload, dysregulation and overwhelm. That in turn can cause anxiety and often physical pain, which can result in a child or young person behaving in ways that appear challenging. It is not always obvious to individual staff members that a child or young person is

struggling until they reach that crisis point, which is what makes some situations very challenging.

There are also situations in which behaviour might be perceived as naughty because autistic children and young people are unable to follow instructions or adhere to rules and structures because of social communication differences, which is not readily recognised.

It is more helpful to focus on identifying triggers. That is partly about a lot of the work that Kate Sanger has done on things such as communication passports to identify triggers that are causing behaviour that is perceived as challenging, while also supporting differences. It is ultimately about recognising that behaviour is an important form of communication.

It is not necessarily that individual staff members do not want to do that or do not have some, if not all, of that knowledge. However, there are things that could happen in schools that would make things easier for staff. As you alluded to in the question, we can increase specialism, but training is not a zero-sum game. As I have said at the committee before, it is not a case of there being either only specialist training or only training that gives a basic understanding; there is a place for both.

We need training across the board, whether that happens at the initial teacher education level, PGDE level, in schools or all of that. That would provide a basic understanding, which would ideally be for all school staff, not just teaching staff. It does not need to be onerous training, but there needs to be a basic level of understanding of autism, learning disabilities, communication differences, sensory differences and support needs.

There is a place for specialism, too, and we absolutely need to increase the number of additional support for learning teachers. We need to increase and professionalise behaviour support assistants and pupil support assistants, which I know is something that Ross Greer is passionate about.

09:30

It is not always recognised that things such as restraint and seclusion or restrictive practice can escalate a situation further. What we want to focus on is de-escalation. Teaching and school staff do not get enough support with de-escalation, and our concern about the draft guidance that was shared with us in 2022 was that its focus was on the safe use of the techniques rather than on de-escalation. The first mention of dysregulation, sensory overload and communication needs was pages into the guidance. In our view, that is completely the wrong framing.

There are things that can happen in the school setting, and the bill will play a really important part, especially by putting guidance on a statutory footing. If that is framed in the right way, it could be really supportive for teaching staff in schools.

**Ross Greer:** That is great. I am conscious of the time. I ask Simon Webster to set out Enable's position on the positive alternatives to restraint and seclusion. What can teachers and school staff be trained and supported to do that would avoid restraint and seclusion?

**Dr Webster:** I am thinking in particular of the findings from Enable's "#IncludED in the Main?!" research in 2016. Responses from teachers showed that 62 per cent of teachers were experiencing stress and anxiety about not having the right support that they felt that they needed; 98 per cent of the education workforce felt that teacher training did not adequately prepare them for teaching young people with learning disabilities; and 86 per cent of class teachers said that there was not enough additional support for learning in schools. There is work to be done on the detail of what that entails, but that gives you a sense that the teaching profession itself is seeking this support.

**George Adam (Paisley) (SNP):** Good morning. It is nice to see you all. I find myself in the strange position of agreeing with something that the convener said, which, as you will know if you have watched any of the committee's proceedings, is quite unusual.

**The Convener:** [*Inaudible*]—a couple of weeks ago, Mr Adam.

**George Adam:** It was not in connection with the convener, right enough.

I am at a different stage of the parenthood malarkey from the convener, because I am a grandparent now, but my experience was the same as the convener's: the kids get a sniffle and the school is on the phone to you. I find it difficult to think that restraint and seclusion are happening and going unnoticed. I am shocked, because my daughter complains about how often the school is on the phone and sending kids home. Suzi, is this connected with the lack of data that you mentioned? You said that it is an invisible problem. How would you get the data that you talked about, to deal with the issue?

**Suzi Martin:** We need to better understand the scale of the problem. As I said, we have a bit of an understanding from the anecdotal evidence that we have as an organisation, and also from the work done by the Children and Young People's Commissioner, by Kate Sanger and Beth Morrison, and by Enable.

It is an invisible problem because there is no mandatory reporting, recording and monitoring of the issue. That does not address the issue of why schools are reporting some things and not other things. I do not have the answer to that. However, creating a legal framework, which the bill seeks to do, will address the problem of these instances—some of which are very, very serious—not being reported.

It is also about establishing lines of accountability. We need individual schools to notify parents; we need those instances to be recorded by schools; and we need the information to be handed to the education authorities and then also to the Scottish Government for oversight, so that a report can be laid in the Parliament and so that our progress on eliminating restrictive practice in our schools can be closely scrutinised. If we lift the lid on the problem, schools will take action to prevent it from happening. That is not to say that individual schools are not doing that work—some are—but we know that unsafe and inappropriate use of those practices is happening and will continue to happen until we start to collect the data and lift the lid on the issue, which Beth Morrison rightly described as a hidden shame.

**George Adam:** That brings me to some of Kate Sanger's evidence. Suzi Martin already knows about this because I have cried on her shoulder about it with regard to my two autistic grandchildren. You brought up how you deal with it on a one-to-one basis with the teachers. It is about basic humanity. I have seen my daughter in these situations, where the two children are absolutely screaming the place down and she just talks to them quietly and deals with it. Surely, in reality teachers also do that because, as you say, it is the human thing to do.

**Kate Sanger:** Sadly, it does not happen like that. Teachers, especially in mainstream schools, may have two or three children in their class with additional needs. Their answer is that they are overwhelmed and just do not have time. I see that happening.

I would have that compassion, but I do not know whether everyone is born with compassion and connection. Sometimes, the first thing that staff do is make the situation 10 times worse because of the way that they respond. I have seen that happen. You can have a child who is already aroused or agitated and the care assistant or the teacher responds negatively, shouting and making the situation worse so that it escalates. You can end up in a really difficult situation with three people carrying that child out of the room and the child getting hurt, when the situation could have been prevented in the first place if there had been better understanding, more support for the teacher or more support staff.

I think that that will continue unless we have a legal framework and accountability. Having a legal framework would mean that we were at least giving the teachers something. There are 32 different councils with different policies. Some teachers work as part of a bank and go from school to school and those teachers are struggling. A national mandatory framework would give much better support to our teachers, who sometimes find themselves in a difficult situation.

**George Adam:** That brings me to my final question. The bill has a broad definition of "restraint". Will that cause problems? Should there be more focus on what restraint is? I will tell you some of the things that have been said to us, because we have to ask questions. We are told that holding a child's hand to cross the road, or using a hoist or moving equipment for children with complex needs, could be taken for restraint. If the bill becomes primary legislation it will be the law, so how do we get a definition that everyone is comfortable with? How do we make sure that teachers are comfortable and know what they are doing and that everyone knows—for want of a better term—what the rules of engagement are?

**Kate Sanger:** That is a really difficult question. Restraint means making someone do something against their will or stopping them doing something. In a hospital situation, my daughter would be restrained to put in a drip to save her life. That is a restraint but it is to safeguard her life because she is so ill that she does not know that she needs that drip and has to be restrained to get that drip.

You are right that we have to make the definition much cleaner, perhaps by giving examples of what is and is not restraint. Someone might need postural support to sit in a chair and be fed without choking. Although people might say that that is a form of restraint, it is a form of safeguarding that would be planned by an occupational therapist to ensure that that child is fed and does not choke. I hope that, as it proceeds, the bill will clarify those issues, because it is a somewhat grey area. I imagine that the witness from BILD will say more about what restraint is and is not.

It is a grey area, but I see only the simple idea of stopping someone from doing something or making someone do something. If something is being done to promote or safeguard a person's life, I do not see that as restraint; I see it as a safeguarding issue.

**George Adam:** Does anyone else have anything to add?

**Dr Webster:** I can add an analogy. Enable did some work on exclusion and found that many children and young people were being excluded without that being recorded. That shows that it is

possible to create a system where workarounds are possible or are even encouraged. It might be important to have a broad definition of “restraint” and to work backwards from that by giving specific examples of what is acceptable, as Kate Sanger said.

**Suzi Martin:** Thanks for the question on definition, George. There should not be room for ambiguity on this. However, you touched on a really important point in relation to the challenge of defining “restrictive practice” or “restraint” and “seclusion”—whatever it will be called in the bill. As I said in my opening statement, in our view, the bill should not cover just the most serious instances. From speaking to autistic young people, we know that there are forms of restrictive practice that might not be perceived to be harmful but, when carried out on an almost daily basis, are very harmful and are not supportive.

Kate Sanger described the difference between something that is supportive and enabling and something that is done without consent in order to restrict someone’s freedom of movement or ability to do something that they want to do—whether that is to regulate or to be able to stay in the classroom in order to learn effectively. We hear of autistic children and young people having fidget toys and tools forcibly removed from them, or whose limbs—their wrist, arm, shoulder or leg—are touched or grabbed inappropriately in order to stop them stimming. We hear of autistic children and young people who are removed from spaces, perhaps not forcibly, but against their will and without their consent. I will read out a quote that gives a sense of that and shows how challenging legislating might be for parliamentarians, but also how important that is:

> “The staff had no training or real understanding of autism or dyspraxia, and, in his time at a mainstream school, my son was taught at a desk behind the stage in the hall with very little teacher input. It was a very traumatic time for my son and myself. I couldn’t even walk from one room to another without my phone in my hand, expecting the almost daily phone calls. The resentment from other parents and staff themselves is something that will never leave either of us.”

In our view, that is seclusion. It gives a sense of the challenge and also of the importance of the definition.

**Jackie Dunbar (Aberdeen Donside) (SNP):** I want to follow up on what you said just now, Suzi, and on what Kate said, which was that what might be safe and enabling for one child could be considered restraining for another. How do we get it right? How do we ensure that we get it right for both the child that needs something in order to be safe and enabled and for the other child where the same thing is restraint? That might be a difficult question.

**Kate Sanger:** It is a good question. When a child is assessed by an occupational therapist, the occupational therapist might say that the child needs a particular chair to support their limbs and that the chair may have straps. That is okay, because it is something to support that child and to enable them to have a better life or, as I said, to make sure that they do not choke.

However, we have found that a lot of chairs have been used for children who are mobile and who can run about. They have been strapped in those chairs with brace straps and ankle straps in order to keep them in the chair and stop them from running about the classroom in order to manage the classroom. To me, that is a deprivation of liberty. It is a terrible thing. It happens a lot. That is the kind of restraint that I am extremely worried about, and it is being used today.

An occupational therapist will always be involved when support has been ordered or issued for a child. There is paperwork, and they will have spoken to the family to say, “This is why your child is going to sit in this chair.” I have a chair at home for my daughter as part of her support. Families recognise and understand that it is for the wellbeing of the child. However, in other cases, we are seeing children being strapped in mechanical restraints who should never be. That is happening on a daily basis.

**Suzi Martin:** That is an important point, and I think that that is where the guidance and the training that is proposed through the bill becomes important. If we have statutory guidance, and if we have a broad definition—as Simon Webster alluded to—and work back from that, we can use the guidance as a means of ensuring that schools, education authorities and staff are aware of what is supportive and what is unnecessary, inappropriate and unsafe restrictive practice. That is where the guidance comes into its own and where the training becomes important, along with the need to ensure a high standard of training.

09:45

With regard to training, we would welcome a list of approved providers, but it is important that the list is an indication of quality. The bill could perhaps be amended to improve it by introducing some type of quality training standard for the approved list of training providers.

It is not a case of trying to establish a difference within the definitions—it is about utilising the guidance and the training to ensure that staff and education authorities are aware of what is safe and appropriate, what is a last resort and what is unsafe, inappropriate and unnecessary.

**Dr Webster:** Part of the question was about where the same approach might be helpful for one

person but not for someone else. That is, at least in part, about understanding what works for the child or young person as an individual. Every teaching professional with the opportunity to do so will, we presume, want to work to understand, from the child's perspective and from the family's perspective, what works for them.

We have to assume, from what we have heard from teaching staff and from others, that the resources, in a general sense, are not in place to facilitate inclusive education to that extent, in a range of ways. With regard to implementation, it will be crucial, if we are to understand and to hear—in every sense—from a child or young person about what works for them and what is supportive, that staff have the time and the capacity to work fully in partnership with families to understand their deep experience of what works for specific children and young people. That will require additional resource.

Some of the advocates at Enable themselves remember being held down or locked in a room at school when they were young, and they still carry the emotional scars from that. As a good summary of the consensus in our forums, one individual said:

> "Restraint and seclusion in schools and other services needs to end. The human, education and physical resources need to be in place for this to happen."

From our perspective, the bill is an essential component of making that happen and, in essence, doing away with that option of doing things differently—very differently—in such an important arena. We have heard the examples from parents who would expect to hear routinely, in a mainstream setting, about small things that have happened. There is a contrast with parents not hearing about very serious things that have happened to their children. That is, at least in part, what the bill is about. It is about bringing consistency through duties, which requires this level of attention.

**Willie Rennie (North East Fife) (LD):** I have supported Daniel Johnson's bill—I have signed up to it and I have done a bit of work on the issues, in particular with Beth Morrison—but I will ask some probing questions, because it is our job to ensure that we get this right.

I have not heard this morning about what is, in the most extreme of circumstances, considered to be acceptable restraint. Let us say that a young person is uncontrolled and they are a danger to themselves. How far can you go?

**Kate Sanger:** I am trying to think of an instance. If you are out walking with a group of children and a child goes to run into the road, you can restrain that child. I would hope that you would restrain my daughter in that situation, if that means holding her and sitting down, but I would hope that you would have the appropriate training to do that. In an emergency situation, you can restrain without training, because you are going to safeguard someone's life—

**Willie Rennie:** I am sorry to be more probing—

**Kate Sanger:** No, on you go.

**Willie Rennie:** So, you would hold the child. How tight, for how long? When, and in what position? What can you do to save that child's life?

**Kate Sanger:** The training on restraint is about teaching people the appropriate holds—

**Willie Rennie:** Explain it to me, then.

**Kate Sanger:** For someone whom you are holding, you would have to try holding them round—I would put my hand around my daughter and hold her as tight as I can. If she was trying to get away, we may drop to the floor and we would have to sit there. However, certain holds are being used that should never be used; you will hear more about them from the other witnesses. The guidance says that prone restraint, which is face-down restraint, should not be used, but Beth Morrison and I are hearing from families that it is still being used. That is very serious.

**Willie Rennie:** Okay. I know what is not good. What I want to hear about is what is okay—not good, I suppose, but okay in extreme circumstances. You mentioned holding a child and sitting them down. How long could that go on for?

**Kate Sanger:** It should be for as short a time as possible.

**Willie Rennie:** How long?

**Kate Sanger:** It is difficult to say, because we have to consider the situation. I would deem the appropriate time to be the shortest time that is possible for the child—someone like my daughter—to regulate themselves and get themselves back in control. Some children do not get themselves back in control and you may then have to call for others to help you.

Each situation will present something different, and that is what the training is about. There are many holds and many positions, but the training must have appropriate standards. We have talked about quality assurance, but I am worried that the training that is out there does not have quality assurance. That is where the British Institute of Learning Disabilities comes in, because none of its training is done without very strict quality assurance. You will hear about that.

**Willie Rennie:** You have read what the Educational Institute of Scotland has said. It is worried that, if you put this on a statutory footing,

staff and teachers will just withdraw because they are fearful of stepping over a line that will move.

**Kate Sanger:** It is a safeguarding issue. If a staff member would allow a young person to run on to a road because they feel that the young person should not be restrained, they should not be doing the job. I hope that all training and common sense would say that, if a child's life or someone else's life is in danger—this is where the "last resort" applies—or there is a risk of serious injury, you should stop them.

**Willie Rennie:** It is about what happens in the moment when the child has lost control, is it not? You might think, "Have they really lost control? Should I step in now or should I wait a little longer?" That might be the crucial moment. You are right—if it is obvious that a child is going to run on to the road, any teacher would do what they could to save them, because that situation would be clear cut. It is the moment of hesitancy that people are worried about. They are saying that, if anything puts up a barrier to them safeguarding the child for fear of being prosecuted for using what would be an illegal restraint, that would be a step too far for them. Can you understand that?

**Kate Sanger:** Yes, but I do not think that it would be an illegal restraint if they were safeguarding someone's life. You have to think to yourself, "What's going to happen if I don't restrain this child and what will happen if I do restrain them?" If I restrain them to safeguard their life, I am doing the right thing. If I do not restrain them and they are killed, I have done the wrong thing. You make that decision—

**Willie Rennie:** But it might not be as black and white as that.

**Kate Sanger:** I think that there will be more clarity. I think that we will have to give absolute examples. Beth Morrison and I have always called for examples to help staff to understand what is a last resort and what is not, and I think that staff need that. We need clear examples to help staff to understand what is a last resort and what is not.

**Willie Rennie:** I apologise for pressing you. Suzi, do you want to comment?

**Suzi Martin:** Yes. Thanks for the question. First, I note that the current situation probably already exacerbates that problem of staff hesitating and not knowing what to do, because we do not have a framework in place and we do not have appropriate guidance and training. We are already in that space of individual staff members potentially being hesitant or reluctant to step in. In my view, having a legal framework, guidance and training will be more supportive for staff than the absence of all that. We can only improve the situation for individual staff members by introducing a legal framework, which the bill proposes and which will be introduced if the bill is passed.

On your point about fear of legal action, the bill does not propose an outright ban, it proposes statutory guidance. Schools are already at risk of legal action. I have not heard of cases in which individual staff members in schools have been at risk of legal action—Kate might be aware of some scenarios. However, the current situation is unacceptable and we need a more supportive system for staff. That is what the bill is attempting to do. I would rebut some of what has been said elsewhere.

**Willie Rennie:** Those are all very powerful and effective arguments. However, we have seen that when something moves from being guidance to being statutory, there can be mission creep. Staff can overcompensate because the guidance has a legal footing. In other words, when that happens, things grow arms and legs. Do you not see a circumstance in which—even though there is all the best training and all the right guidance—a staff member might hesitate? What is right for one child is different from what is right for another. The line between what is acceptable and what is not is not clear: it is an invisible line that moves constantly. Do you not see that staff members, with all the other things that are going on in the classroom, might just hesitate for a split second because of that mission creep?

**Suzi Martin:** I can see a scenario where staff would hesitate, but I would hope—and my view is—that introducing clarity will reduce hesitation rather than increasing it. We are already in that space where staff do not know what to do and how to deal with such scenarios. More clarity and a supportive system for staff will reduce that hesitancy to intervene. It will give staff more confidence that they are able to intervene, rather than the opposite.

**Miles Briggs (Lothian) (Con):** Willie Rennie has touched on a really important area—I know that from some of the conversations that I have had with Beth Morrison and Daniel Johnson about it.

There is some concern about one aspect of the bill in relation to schools, although I know that Beth is keen that the campaign is not framed around it. You have outlined really well the situation with children with additional support and complex needs. Restraint and seclusion should not be taking place in Scotland today, but they are. Sadly, we have violent behaviour in our schools, and we have heard from teachers who want to know whether, if a pupil comes to hit or punch them, they can hold that individual and what restraint can be used.

The position needs to be clarified. Such incidents need to be recorded, but they are not, and the level of attacks on teachers is totally unacceptable. As Suzi Martin outlined, guidance can provide clarity. However there is a lot of concern in the teaching community that we could say that they are not allowed to touch anybody. Kate Sanger gave the example of grabbing someone who is running into the road. Let me turn that around: if someone tries to physically attack a teacher, what would it be appropriate to do, in your view? The guidance cannot be woolly in that area. We have to make sure that we get it right.

**Kate Sanger:** I want to make it clear that all the children that we worked with had learning disabilities—they were all autistic or neurodiverse. There was not one neurotypical child who was restrained. We must remember that our children have protected characteristics.

If a child like my daughter were coming towards you to hit you, I would advise that you move out of the way and allow her time to regulate herself and get herself back in control. I cannot talk about children who are neurotypical. There might be a lot of aggression and violence in schools from neurotypical children, but that is not what I am here to talk about. I can only discuss children who have a learning disability, or who are autistic or neurodiverse. For them, we suggest that you stand back and allow that child time to calm down and cool down.

Our children's classes can be quite small, with maybe three or four children who have learning disabilities. I have often seen staff take the other three children out of the classroom and take them for a walk to allow that one child to calm down. If a teacher allowed a child to punch them, I would suggest that the teacher should move well out of the way of that child.

I just do not want to blur the lines between neurotypical children and children with a learning disability. Very often, our children with learning disabilities push you away because they are scared and frightened. When they are pushing you away, you might get hurt, and that is why we ask the teacher always to stay well back. My daughter's communication passport says, "Do not go within striking distance if Laura is agitated." There are lots of things that teachers can do to avoid being hurt by children with a learning disability.

10:00

**Miles Briggs:** It is also important to know where the element of self-defence is for a member of staff. I am not necessarily talking about children with additional support needs; I am talking about teachers who tell us about a disruptive teenager being violent in school. We need to be clear about what would be acceptable in such a case and what that would look like. In many cases, such situations are not being regulated—it is purely about self-defence and those situations are not being recorded. I am not sure what you would suggest that a teacher in a school could do.

**Kate Sanger:** All teachers should be protected in schools regardless of who is involved, but I am here today to talk about a different area. I do not know whether Simon Webster wants to talk about how to deal with a teenager who does not have a disability and who is out of control.

**Dr Webster:** Enable is Scotland's largest disability charity, and we have a long history of working with people with learning disabilities in particular. That is our focus, but we also work with a range of other children and young people. The research that Enable commissioned covered, in the main, those groups of children and young people.

In short, the specific and serious issue of how teachers should be able to protect themselves from—for the sake of discussion—intentional and direct assault by an older teenager who has no disability is very important, but it is not something that Enable has researched or would advise on.

**Miles Briggs:** Suzi, is there anything that you would like to add?

**Suzi Martin:** Yes. I understand why you are asking the question. It is important to acknowledge that the three organisations here today represent children and young people who have additional support for learning needs, autistic children and young people, and children and young people with learning disabilities and other complex needs. Restrictive practice disproportionately affects those children and young people. First of all, we need to acknowledge that, according to the data and anecdotal information that we have, restrictive practice is happening disproportionately with that group of children. That is why the reporting is so important. Again, I see the bill as supportive of teachers in that space. At the moment, we have no formal reporting mechanism for instances of restrictive practice, restraint and seclusion. Staff are also at a disadvantage. As you say, a lot of these scenarios are simply not being reported or recorded.

Kate Sanger referred to the "last resort", which the draft guidance in 2022 spoke about, but, in our view, it was not defined well in that draft guidance and is not defined well currently. The "last resort" should not refer to the last behaviour management tool in my pocket; it should refer to the prevention of immediate risk of harm, whether to that individual or another individual, including the teacher.

Having a statutory reporting and recording mechanism in place will support teachers, because it will allow them to outline the circumstances that led to the restrictive practice taking place. At the moment, we rely on individual staff members raising a situation and trying to get redress. We also rely on children and young people disclosing, but, as Kate has said, a lot of those children and young people are unable to disclose. I think that the bill is supportive, not just of children and young people by protecting them, but of staff who might be on the receiving end of potentially harmful or violent behaviour.

It is about bringing it back to the fact that all behaviour is communication. It is important that those systemic issues are dealt with, but we still need this legal framework in place.

**The Convener:** I call Paul McLennan.

**Paul McLennan (East Lothian) (SNP):** My apologies for being late, convener—I was stuck in an accident this morning.

Some of the debate has been around disabled pupils and pupils with complex needs, and those who are care experienced. Is the balance right in the bill, or should there be more specific guidance on specific aspects—for example, relating to those with care experience?

As members, we have probably all dealt with casework on these issues and heard parents talking about them. In your view, should there be specific guidance on the different areas where restraint and seclusion might be applicable?

I will come to Kate Sanger first, as I know that she has particular expertise in this area. Kate, what are your thoughts on that point?

**Kate Sanger:** All the evidence shows that it is children with learning disabilities and autistic children who make up the highest proportion of children who are being restrained and secluded. I am really keen to get the data, because that will clarify exactly where the issues are and why restraint and seclusion are happening, and give us a chance to provide redress. It will also give us a chance, where a school is struggling, to go in and help that school and provide extra support.

As I said, of all the children who have come to us, we have never had the family of a neurotypical child or a child without a learning disability come to us to say that their son or daughter has been restrained. It is always a family whose child has additional needs, and that paints a huge picture. That is what we need to concentrate on.

It is not simply about restraint happening on one day—as we have said, the effects are lifelong. I speak to people with mild to moderate learning disabilities who are in their 60s, but who remember being restrained and taken out of the classroom; they say that they still have nightmares today about being held face down. It is a lifelong trauma, and we should be preventing that. As I said, it costs an awful lot of money for people to have therapy and to be supported as they go through their lives. Those with learning disabilities make up the highest proportion of people who are being restrained.

I do not know whether Simon Webster wants to add anything to that—

**Paul McLennan:** I will just come in on that point, because it is important. I remember meeting with an organisation in my constituency; there were parents there with children who had gone through that experience. Those children are now in their 20s or 30s, and the trauma is still there. We talk about the need for the bill—the trauma is still there 10, 15 or 20 years later, for a lot of the parents and obviously for the children themselves. That is a really important point.

**Kate Sanger:** It is. My own daughter is 33 and was restrained at her secondary school at the age of 12. She was carried along the corridors by staff and put in what people would deem a nice room—it was a plastic room with balls in it, and it had a zip. They placed her in it and they would observe her through the plastic window.

People might think, “That’s quite a nice place for her to go,” but it has left her with such trauma. I cannot have a door closed in my house; she cannot bear it. Her bedroom door had to be removed because she has a fear of closed doors. She hates anyone being behind her—she is terrified. She cannot verbalise that, but I can see it in her behaviour. She screams if the door is closed.

We are talking about trauma still being there 20 years later, and we have to prevent that. However, we are seeing it happen still. A lot of parents are taking children out of school, and children with learning disabilities are being home-schooled, because of the fear that their child will be restrained and traumatised. That paints a big picture, too.

**Paul McLennan:** I will go to Simon Webster next—I will come to Suzi Martin in a minute.

**Dr Webster:** Your question was, in part, about care-experienced young people and the possible need for detail and guidance on different groups of children and young people. I turn to care-experienced young people as an example. Enable’s “In Safe Hands?” update report, from 2022, quoted The Promise Scotland, which said:

“The workforce must be supported to ensure a caring, relational and trauma-informed response to challenging behaviour”,

and stated that we

"must also pay attention to the use of seclusion,"

which

"is not an acceptable part of trauma informed care."

There may be important nuances between different groups of children and young people, but schools and staff need to be resourced and equipped to provide trauma-informed care. It is about not just training, but having enough resource to do the job. That will be important for care-experienced children and young people in particular, but it is just as important for children with learning disabilities and young people who are autistic, and for the school community in general.

On the one hand, teaching professionals may find it helpful, and may be best able to connect from their own angles with particular focus within guidance, but I think that there is so much in this that really is applicable to all children and young people. When we create and resource the environments that children with disabilities need, in terms of sensory needs, staffing levels, and staff feeling supported and having clarity on what they can and cannot do through guidance, that is beneficial not only in reducing the need for restraint and seclusion or in creating a safer environment, but because it creates an environment that helps every child and young person to learn.

There may be a need for some specific guidance about particular groups, but so much in the bill is for everyone and for all staff in all settings.

**Paul McLennan:** That is a good point, and it has got me thinking of another question. Kate Sanger talked about the level of expertise in schools, and about training. I am in East Lothian, where we have a number of schools in a geographically tight area. Some schools have an area of expertise that means that kids from all over East Lothian go there and the teachers also get more training. It is important to get a balance between what is provided at local authority level and what happens in each individual town, because parents and children might have to travel. Suzi, what are your thoughts on that?

Kate spoke about focusing on training, but are we spreading that too thinly? Should we try to have specific schools that have expertise in dealing with kids who have learning disabilities until that training is in place? I ask Kate and Suzi for their thoughts on that.

**Suzi Martin:** That is a really great question. I whole-heartedly agree with Simon Webster that creating a legal framework, having guidance and ensuring that there is training so that a trauma-informed approach can be taken will benefit everyone. The guidance may touch on some specific groups that are at higher risk. We know that children and young people who are autistic or have learning disabilities are at higher risk, but those groups might also include care-experienced young people and some from other groups.

The bill takes account of that and says that guidance

"may make different provision for different purposes, including different provision for different education providers or different schools".

That is important because different scenarios might occur in different settings and because the differences between specialist and mainstream settings must be acknowledged. A lot of that goes back to resourcing rather than guidance, because the guidance should be for all children and young people, and we should think about all of them when we consider this issue. What matters is how individual settings are resourced and which specialisms resource is put into.

There is definitely a place for increasing specialism within mainstream education and we would strongly argue for that, but we must also resource expertise and specialism—they already exist, but they need to be improved and bolstered in specialist schools.

The guidance must be for everybody, but resourcing might look different in different settings, and it will be important to have a list of training providers in order to establish which provider is right for each setting.

**Paul McLennan:** You have already kind of answered my next question, which Willie Rennie also touched on. What do you think of the current Government guidance? What do you think about having statutory guidance? Do you want to add anything to what was said when he asked about that? I think that Suzi answered the question, so I ask Kate and Simon where they think that the guidance should sit and whether they have anything else to add about guidance becoming statutory.

**Kate Sanger:** Beth Morrison and I were part of the group that helped with the guidance. There are some good things in the guidance, but there are some conflicting and confusing things, too.

We had guidance back in 2017, but it was only about two pages long and it was never implemented. We now have 60 pages of guidance, but the fact that 81 parents contacted me in one month shows that that guidance has not been implemented either. That is why the legal framework is so important.

We have had lots of discussions and I think that it is time to recognise that non-statutory guidance is not working and that we need a legal

framework. The children and the teachers need it; everyone needs it.

10:15

On the trauma point, I think that we forget about the trauma for the teachers, and for the pupils who watch the restraint. Some pupils who witness restraint are traumatised and I have spoken to some teachers who are no longer in the profession—who are perhaps retired—but are still traumatised from having had to restrain pupils. It affects quite a large number of people, not just the individual.

There are some good things, some conflicting things and some confusing things in the restraint guidance, but I think that it is time for a legal framework with more clarity that will help to support our teachers and help to support and safeguard our children.

**Dr Webster:** From the perspective of Enable members with learning disabilities and their families, it is really important that any and all guidance and training starts with the sort of things that Kate Sanger and Suzi Martin have been discussing about communication methods, understanding sensory overload, preventing crisis and de-escalating distress.

It is also very important that we do not inadvertently create an environment where restraint and seclusion are encouraged. That would be another important dimension to include. We do not want to end up in a situation where there is an expectation that restraint and seclusion will be used. That is not the intent.

**Pam Duncan-Glancy (Glasgow) (Lab):** Thank you all very much for the information that you have given so far, as well as all the information that you have submitted, and for the passion that you have done it with. I can see the importance of this and that we have to take action, not only as a result of what you have said today, but other things that I have heard in my constituency casework as well.

I think that it was Kate Sanger who said earlier that accountability is really important, and I agree. I think that there are various complaint mechanisms—or, there should be various complaint mechanisms. How accessible are those mechanisms to parents and carers—or, indeed, children—if they are unhappy with the use of restraint and seclusion in schools?

**Kate Sanger:** What I am hearing is that very often when you complain that your child is being restrained, you are told, “Well, there’s nowhere else for them to go.” Sometimes, when we are being asked to use chemical restraints—to use medicines to quieten our children down—and we say that we do not want to go down that route, we are told, “Perhaps the school’s not suitable for you, then.” That is why we set up the SHAME group, as parents felt that they were being almost blackmailed with the message, “If you don’t like restraint, your child will have to go somewhere else.” Because of that, we sometimes do not get that accountability. Sometimes, parents will put up with the situation because they are frightened to complain just in case their child loses their place at a school.

For me, accountability—reporting restraint—is never about blaming the teachers or blaming the school. Accountability, for me, is about learning from it. If someone has restrained Laura, I put in her communication passport, “Let’s have a meeting,” so we can discuss why it happened and what we can do to prevent it from happening again, because I want to help the teachers understand a better way of doing things and I want to communicate.

I suggest the same approach to other parents. I say, “Work with the schools and try to find a way to get your message across.” It is not easy. Some parents feel intimidated. Some parents cannot articulate themselves, for many reasons, so we do not get accountability.

For me, the recording is never about apportioning blame. It is always about finding out where there is a problem and what we can do to help that school—are there any other measures that we can take to support teachers and show them a better way of doing things than using restraint?

**Pam Duncan-Glancy:** You mentioned that some parents find it difficult to make a complaint or to advocate for themselves and for their young person. What could be a solution to that?

**Kate Sanger:** I always suggest that, first, you contact the school. You try to work with the school and get your point across. If that does not happen, parents usually come to a support group, and maybe someone from a support group will act as an advocate to help them.

Very often, you will want to do that before a breakdown takes place, but, sadly, a breakdown can happen, because the parents feel intimidated and frightened.

I do not feel there are enough places for parents to go—and even for teachers to go. I have had teachers contacting me to say that they are witnessing things that they do not want to witness, but they do not know whom to talk to, because they feel that their job is in jeopardy. That should not be happening—these things should be open and transparent. When they are not transparent, parents think that teachers are hiding something.

That is why I always say to schools, “There needs to be transparency. Tell us what’s happening, and we will help you.” Accountability is a must, but it must not be about placing blame; it must be about finding another way of helping and readdressing this issue. That is what it is for me, anyway.

**Pam Duncan-Glancy:** Do you think that parents know where to go?

**Kate Sanger:** They know to go to the school, because that is what it says in the policies: you are always advised to go to the school. However, when they come across that first barrier of “Where is your child going to go?”, they will very often withdraw, not take things any further and just leave the situation as it is.

**Pam Duncan-Glancy:** Thank you. Dr Webster, Enable has said in submissions that the complaints mechanism should be simple, clear, easily accessible and linked to national standards and oversight. Who should provide that oversight?

**Dr Webster:** Ultimately—in the bill as proposed, which we support, of course—that oversight will happen on an annual basis with yourselves as the Scottish Parliament. The important thing is that it will look at systemic accountability. It is not about targeting anyone—say, individual teachers; instead, it will begin to create a space in which there is more clarity for teaching professionals, and more clarity for children and young people and their parents. People will begin to see what the standards are across Scotland.

Of course, the bill does not propose to change existing complaints mechanisms as such—existing processes will stand. However, the fact is that children and young people, their parents, Enable members and others often do not get far enough in that process or find the resolution that they need through complaints mechanisms. That is another important aspect of this bill: if passed, it will give greater clarity.

I come back to the point about learning, because I think that the intent behind this is to create an environment in which teachers, schools, children and young people, and their families are able to work more effectively together with that clarity, to be honest about the incidents that should not have happened, and to work through them. Having that duty of candour is critical; indeed, we see it elsewhere in public services. As Kate Sanger has said, it is all about having that candour and that restoration of trust—it is just what everybody in here would expect for their own child. What the bill is bringing in is almost a culture-changing element.

I would say that the demands arising from the bill are not particularly onerous or difficult—it is just taking guidance and putting it on to a statutory footing. However, the message behind it is that this is a standard for Scotland that needs to be applied across all settings. When it does not work, we need to talk about it, and to work through it with clarity.

**Pam Duncan-Glancy:** A lot of the evidence that we have received refers to an external organisation. You have mentioned Parliament, but should any other bodies or organisations be involved in external oversight?

**Dr Webster:** That is a really interesting question. On the point about the Parliament, it was made clear in last week’s debate on future Scottish Parliamentary Corporate Body-supported commissioners that there will be no advocacy commissioners, as they were termed. I think that that again emphasises the importance of the role that you, perhaps individually as MSPs, play for constituents in such matters. I just wanted to acknowledge that that approach exists, and it plays a very important part in resolving these issues.

Beyond that, Enable has no particular position. We have called for more scrutiny or oversight, and it would be interesting to see any further proposals in that respect. We have seen, for example, the Care Inspectorate getting very involved in other sectors, and the Mental Welfare Commission for Scotland regulating deprivation of liberty. We do not have a particular position on the matter, but we would be interested in and open to any suggestions.

**Pam Duncan-Glancy:** Thank you. I have a final question for you, Dr Webster, before I move on to Suzi Martin. Are there any triggers for escalation that should be included?

**Dr Webster:** Do you mean, in the guidance?

**Pam Duncan-Glancy:** Yes.

**Dr Webster:** Yes, I think that would be important. It is often central to what goes wrong and the situations that Kate Sanger and others have described. It is often such triggers that make matters worse, and they can be individual. There are sometimes commonalities, such as environments that anyone might walk into as a teacher or a child before realising, “This is not a pleasant place to be,” because of sensory overload, for example.

There is something in that that could be in guidance, but that is a deeper issue about investment and the resources that we have in our education estate. More specifically, for individuals, there is something important for all children—as exemplified in the communication passport—in understanding specifically what will highly distress an individual child and what are the ways of not

responding to that particular child when they are distressed, for example.

**Pam Duncan-Glancy:** Suzi Martin, in the National Autistic Society's evidence, you say that you support plain-English policies, and that structured post-incident reviews and national reporting are important so that patterns can be highlighted and early intervention can be enabled. Who should be responsible for national reporting? How would you link early intervention with the approach that we have just discussed to triggers for escalation?

**Suzi Martin:** We support the proposals in the bill on reporting and monitoring for accountability. Kate Sanger made an important point and it is certainly something that we hear. Most of the families whose child or young person has experienced restrictive practice are looking for evidence that learning has taken place and that progress is being made. The provisions on recording, monitoring and scrutiny by the Parliament will help make it clear to families that, as a country, we are taking the issue seriously and we are trying to reach a point at which we reduce, if not completely eliminate, the use of restrictive practice, restraint and seclusion in our schools.

To go back to the original question about the accessibility of our complaints mechanism, when people contact us about this kind of issue, they have usually exhausted many of the options that are open to them. The people who contact us are usually capable advocates for the child or young person, and they have explored every option. We often have very limited advice to give them because they have explored every route.

Simon Webster touched on an important point about general accountability of public services in Scotland, especially when we think about how disabled people and autistic people access those services. We hoped that the human rights bill would clarify a lot of that, but that has obviously been delayed. That is why reporting and monitoring are so important. Although the bill does not seek to change any complaints mechanisms, clarity for families is crucial and they want to see learning taking place. We are therefore supportive of that.

When families contact us, they are often left with no option but to take legal action for disability discrimination under the Equality Act 2010. Families usually do that because, when a child has been restrained or secluded, or restrictive practice has been used, they are usually so traumatised that they are forced out of education. In addition to saying that learning is taking place, it is also important for families that their child or young person receives an education, but the only way that they can get that child or young person back into school and education in a suitable environment, whether that be provision at home, a different school or a specialist setting, is to take the disability discrimination route. That is often when families see results from education providers. It is a real problem and it is down to resource. It comes back to education authorities being well enough resourced to provide for children and young people who have additional support for learning needs and might require a change in circumstances.

**Pam Duncan-Glancy:** Thank you—that is much appreciated. Convener, are other members intending to come in on the timing for reporting?

**The Convener:** I was going to, but if you want to come in on it, please do.

10:30

**Pam Duncan-Glancy:** I will do so briefly. I meant to ask about this earlier, when I was asking some of the other questions.

The first question was about the family getting told pretty much on the same day if a young person gets a scrape or a scratch. Kate Sanger, what are your views on the provision that parents should be notified "as soon as possible" and within 24 hours of an incident in school?

**Kate Sanger:** I think that parents should be notified straight away if a child has been restrained that day, as soon as it is possible for the teachers to do so. That means the parent can monitor the child's health when they return home, which could be a life-saving situation.

I understand that the teachers might want to have a debriefing. That can be done the next day, once everything has cooled down and calmed down. I would not expect everything to be written up. However, the family should be notified straight away about a child having been restrained.

**Pam Duncan-Glancy:** Do other panel members have a view on that?

**Dr Webster:** We would agree with that. Twenty-four hours seems to our members to be quite a long time, so immediate notification should be the expectation, particularly when a child might need medical support or support to process something that was highly traumatic.

**Pam Duncan-Glancy:** Suzi Martin, do you have anything to add?

**Suzi Martin:** Yes. I think that it should happen as soon as possible.

It is also important to have that outside limit in legislation. We have said in our response, however, that rather than 24 hours, the limit could be before the next school day begins. That is in acknowledgment that if an incident occurs towards

the end of the school day, notification within a 24-hour period might mean that the child is back in school before their parent or carer is notified. We would want families to have the opportunity to talk to the child or young person ahead of the following school day to assess the psychological and physical safety of the child going back into school, and to make a decision about whether the child is in a position to do that. Instead of the outside limit being 24 hours, it could be before the start of the next school day.

**Pam Duncan-Glancy:** Thank you. I appreciate that.

**The Convener:** I was going to ask about that point, Ms Martin. Would that not mean there could be a circumstance where an incident happens on the last day of term before the summer holidays and a family is waiting up to two months before they are informed, because the next school day is not until the children go back to school in August?

**Suzi Martin:** I guess that if it were written that way in legislation, it could be interpreted like that. Exactly how it is to be worded in the bill might be something to discuss with the lawyers so that we do not end up in a situation where the whole school holiday can pass before something is disclosed. In essence I am saying that the outside limit should account for the possibility that a child could go back into school without their family having been notified.

**The Convener:** Again, that is the point that I wanted to ask about. The Association of Headteachers and Deputes in Scotland has said that there is a risk of

"inadvertent breaches"

of the timescales that are proposed in the bill should the incident occur

"at the end of the school week or school term".

My worry is that that is when it is more vital for families to get the information sooner. There might be a reason not to do that; we will ask education officials about that when they come before us. There might be some mitigating reason, but I cannot think of it. Surely, at the end of a school week, you would want that information to go to the family before a child goes home for the weekend and the family is left unaware of what went on at school. Would the panel agree with that?

**Kate Sanger:** For my part, if my child had been restrained, I would want a phone call. If they could not write it down or were too busy to do that, some member of staff should phone and tell me that my child has been restrained. They should tell me if there is a bruise or a bump, or that there is nothing of that sort but that I should just keep an eye on the situation.

What makes it even worse is that our children are non-verbal. If they are being restrained and the staff has not been able to make the family aware of it, and we are putting them back into that situation, the trauma that that causes must be horrendous. As a parent, I want to know as soon as possible.

**Dr Webster:** In a context where the intent behind the legislation is to increase the partnership and trust between school and home, it is obviously vital that children's parents are informed as soon as possible and that we end this unawareness.

**Miles Briggs:** The Scottish Government's policy memorandum to the bill explains that care providers and care services have a duty to record instances of restraint. I thought it interesting that in its evidence to the committee the Government suggested that there had been 6,263 incidents of physical restraint and 509 incidents of seclusion in 2024, showing that there had been 30 per cent fewer instances of seclusion than in the previous year. Does the panel have any evidence of what is behind that reduction and on whether the conversation that is going on nationally is helping to change children's services?

Moreover, what role would the school inspectorate play with regard to the bill? Witnesses have mentioned that the information will be reported to Parliament, but if the school inspectorate is going to go into schools, it will be taking a formal look at how the policy is implemented, too.

**Kate Sanger:** I will answer the question about the school inspectorate. The school inspectorate will need to be trained, need to have understanding and need to ask the right questions, because inspectors might come in and not do that. The inspectorate should ask whether the school has to use restraint or seclusion and, if the school has to use seclusion, where it puts the child.

Some of the pictures that we have had of the rooms used for seclusion have shown cupboards with boxes piled sky-high with materials. A child with epilepsy was placed in a room like that for quite a few days each week. If the school inspectorate had asked about that and had been shown that area, it would have said that that was a wholly inappropriate place to put a child. The school inspectorate will need more understanding of the questions that it should ask.

**Dr Webster:** Although Enable has not given a view on whether a particular statutory body, in addition to the Parliament, should have oversight, I would just make the general point that the level of care that we take when gathering such data is important. Therefore, if that requires the support of some kind of inspectorate or body, it will be for the

Parliament to decide which one. We have examples from elsewhere—the Care Inspectorate and the Mental Welfare Commission for Scotland—where resource has been dedicated to looking at the use and misuse of restraint and seclusion to ensure that those things are being properly monitored and that data is gathered. However, there could be longer-term strategies to ensure that measures taken consequent to the bill lead to a reduction in restraint and seclusion, such as those that the member described.

Any factors behind the reduction have not come out in Enable's research, but I am aware of one local authority in which there was a major change in relation to residential childcare. That came about through the sorts of measures that we have discussed in relation to implementation—additional resource to have a better estate, more support for staff, more training and a different, and trauma-informed, perspective. There are good examples from other sectors in Scotland, so we know that a difference can be made, and it is not impossible for the same to happen in education.

**Suzi Martin:** I will come in briefly on the point about the school inspectorate. I do not have anything to add to what Simon Webster has said about seeing a reduction in seclusion in other sectors.

In our contributions to discussions on education reform in Scotland, we have said that we want more emphasis on additional support for learning as part of any new inspection regime in Scotland. We welcome the creation of a new independent education inspectorate in Scotland, but in our view, the current inspection regime does not have additional support for learning at its core, and the issue is not being well considered. Given that more than 40 per cent of the school population now has an additional support for learning need—yes, it is a broad figure, but we need to recognise the increase—it is important that that be considered as part of the inspection regime.

The recording and reporting that the bill will introduce will provide important information for a new inspectorate to assess how well a school is supporting the most vulnerable children and young people in our schools.

**John Mason (Glasgow Shettleston) (Ind):** Training has been mentioned a few times, so I will try to build on what has been said and pin the issue down a bit.

Ms Martin, say, for example, that there is a secondary school in my constituency that has a unit attached to it for autism and other special needs, with the kids spending some of their time in the unit and some of their time in the mainstream school. Who needs to get training in that area? As I think that we heard from Ross Greer, we cannot train all teachers in everything.

**Suzi Martin:** That is a good question. When we create additional support for learning units, it is important to recognise that different staff work in them. The National Autistic Society fully supports inclusive education and the presumption of mainstream education, and we think that it is a really important principle. However, it is not being effectively implemented. As an organisation, we do not want to roll back to a place where we have increased segregation of children and young people with additional support for learning needs.

Obviously, ASL units and bases have been around for a long time—since the mid-1990s, if not before—and they are a way of including children and young people with additional support needs in a mainstream environment. Ideally, we want to get to a place where the specialism required to support those children and young people is embedded even further in mainstream settings as opposed to there simply being a base attached to a school—although I should say that there is a place for additional spaces for children and young people who need that sort of provision.

As I think that I have already said, it is not a zero-sum game when it comes to training. There is absolutely a place for specialism in mainstream education, and we need to increase it. The training that comes along with that specialism will look different to the training provided to a classroom teacher who is not working in an ASL base, which is only right. However, there is also a place for training that provides a basic level of understanding of additional support for learning needs, particularly the needs of autistic children and young people, who are increasingly making up a larger proportion of the cohort of pupils with such needs. Therefore, in my view, this is not a zero-sum game.

**John Mason:** Would you include, say, the school janitor and school admin staff who might happen to witness an incident, or would you tell them, "No, you do not get involved. You call an appropriate teacher"?

**Suzi Martin:** That brings us back to some of the issues that Willie Rennie was trying to tease out about how individual staff members react in individual scenarios. It is difficult for us to comment on that without knowing what an individual scenario looks like.

It is also important to recognise that schools do have safeguarding policies in place. When it comes to those instances in which people are at risk of immediate harm, there should already be policies and training in place on how staff should react to such scenarios in order to safeguard children and young people. We need to be mindful

that we are not necessarily starting from scratch here.

We know, too, that autistic children and young people and those with learning disabilities are disproportionately affected by restraint and seclusion, so appropriate training should be provided for different roles. As I have said, there is a place for training that provides a basic level of understanding, and that will help create a more inclusive educational system as well as help with staff understanding—and, yes, in an ideal world, I would include janitors, catering staff and cleaners in that scenario, as they are part of creating an inclusive educational environment. They need to know that all behaviour is communication, and they need to understand what the autistic experience looks like.

When it comes to engaging in restrictive practice, we ideally want to get to a place where it does not happen very often and where, when it happens, it does so in a safe and appropriate way. We would not necessarily expect all school staff to have that expert training, but we would expect all staff to be able to react—

**John Mason:** I think that we would agree with all of that, but the question is who should be getting the training—that is what I am trying to pin down. Ms Sanger, should we be more relaxed about that at this point and leave that to guidance, or should the committee, in looking at the legislation, get into the issue of who gets trained for what?

10:45

**Kate Sanger:** If we want true inclusion, it has to be more than just the child being included in the building. The staff who support that child in a mainstream school need the tools and skills, and the training, to enable them to do their job effectively and let them go home at the end of the day, feeling that they have done a good job.

Staff who support any child with additional support needs, or any autistic child, should have the necessary training, and an understanding of their behaviour. If staff come in from a unit and spend some time in the mainstream, they can participate in and help with training, because they will have been trained themselves. It does not have to be some big thing that involves money being spent on training from outside; the staff themselves will know the child and will be able to help by exchanging information on what the triggers are that might prompt that child to become aroused or agitated.

**John Mason:** Thank you. That was helpful.

Dr Webster, that brings us to the subject of who should be doing the training. One of the councils has argued that it should be allowed to do its own in-house training, with the idea that staff would then train other staff. Should there be a list of trainers?

**Dr Webster:** Yes. From Enable's point of view, there should be a list of trainers, and inclusion on that list would be determined by meeting standards that would presumably be set by the Scottish Government as an indicator of quality.

Having and maintaining such a list would allow for any developments, too. For example, as a result of developments in research, we know more than we did in the past about the traumatic effects of restraint and seclusion, even when they are done according to training. That tells us that there might be forms of training that seemed valid in the past that we would not want in the future. The dynamic nature of that list is important, and simply having a list—

**John Mason:** But on that point, Governments are not known for anything dynamic. Might it actually be detrimental to have a fixed list, as it might mean that new ideas do not get in?

**Dr Webster:** A fixed list would be problematic—it would have to be updated over time. Having a list should assist education providers in the task of identifying appropriate training.

On your specific point about local authority training, I think that that would come down to whether it met the specified standards.

**John Mason:** Ms Sanger, one of the submissions—it might not have been yours; it might have been from one of your colleagues—suggested that we should have some bad list of people who are not to do training. Is that a serious suggestion?

**Kate Sanger:** All I am saying is that all training should pass quality assurance, because anybody can set up a training business and come into our schools, and they can really hurt and injure our children. The committee will be hearing from the British Institute of Learning Disabilities, which has training standards and, indeed, is quite strict in that respect. In my view, all trainers should be approved by that organisation, as that will guarantee that the least restrictive training will be given and that any such scheme will be more proactive. The training will involve only those children who, like my daughter, might need to be restrained. That will save an awful lot of money in the long run.

**John Mason:** Might it be better to say that all the trainers have to adhere to a certain standard or be passed as qualified, instead of saying, "Here is a list of names"?

**Kate Sanger:** For me, it is definitely about quality assurance. I have seen so many injuries

from bad training providers, so there has to be quality assurance to ensure that the training is fit for purpose.

**John Mason:** Barnardo's Scotland has commented that a little bit of training might actually do more harm than good, because it gives people the idea—[*Interruption*.] I see that you are shaking your head.

**Kate Sanger:** A little bit of bad training can do a lot of harm. However, quality assurance would mean that people would be trained to understand that all behaviours are communication, and that not every child needs to be restrained—indeed, very few people need to be restrained—and it would ensure that they are shown all the other things that they can do beforehand to prevent their having to use restraint.

**John Mason:** Dr Webster, there is the idea that a little bit of training actually enables people to think, "Oh well, I will do restraint." Is that a fair concern?

**Dr Webster:** I suppose that there would be a risk in saying that everyone everywhere in the education system needs to be trained in restraint and seclusion. As we understand it, training is not about encouraging the use of restraint and seclusion. Kate Sanger talked about what we can do, and what we need to do, to prevent the need for restraint. That is the primary aspect. Related to that, any approach that puts restraint first—if such approaches still exist—would be difficult.

**John Mason:** Ms Martin, are you broadly in agreement with that?

**Suzi Martin:** Yes, absolutely—I have nothing further to add. Simon Webster and Kate Sanger have hit the nail on the head.

**John Mason:** That is great. Thank you.

**The Convener:** I have a final question. We have spoken a lot today about restraint. Do you want to put on record anything in relation to the seclusion element of the bill? I am thinking about any aspect of current practice or what the bill is looking to do around seclusion in particular, and your hopes for the future with regard to that area.

**Dr Webster:** This point is not specifically about the bill, but more of a general observation. I would just point out that seclusion is a form of detention, and that any detention with no clear authority and no defined legal framework rightly draws significant concern when it happens to adults. It is important that we do not perceive that practice as less of an issue when it happens to children—whose rights are, of course, equal to, or stronger than, those of adults who are detained or restrained in such circumstances.

We should acknowledge how seriously the issue of seclusion is taken in other spheres. I am thinking, for example, of detention under mental health law.

**Suzi Martin:** This point is not necessarily related to the bill—as I have said, we are happy with the definitions in it—but I would go back to the quote that I read out at the start of the session, outlining that, in our view, seclusion should be considered quite broadly and that, even if a locked room is not involved, autistic children and young people should be considered as being secluded when they are removed from a normal learning environment, from their peers and from teaching staff. However, we believe that the definitions in the bill are broad enough to cover that.

**Kate Sanger:** Seclusion is quite a serious matter, because very often our children, in order to be secluded, are carried along. When they have a fight-or-flight response, they drop to the floor, and staff get them to the area where they want to seclude them by carrying them there. They are being restrained and then secluded. In my view, that is extremely traumatic.

**The Convener:** Thank you all for your evidence today and your answers to our questions. It has been a very helpful start to our stage 1 consideration of this non-Government bill from Daniel Johnson.

I suspend the meeting briefly.

10:52

*Meeting suspended.*

11:02

*On resuming—*

**The Convener:** I welcome our second panel of witnesses: Sarah Leitch, director of development at the British Institute of Learning Disabilities; Nicola Killean, the Children and Young People's Commissioner Scotland; and Ben Higgins, chief executive officer of the Restraint Reduction Network. I welcome them all and know that most of them were here watching the first panel.

Ms Killean, I will start with you. My question to the first panel was about why it has taken us so long to get to this point. Your evidence says that the Government has missed opportunities to use its own legislation to do something. Campaigners have been calling for change for a long time and there have been opportunities for the Government to make changes, but we are now looking at a non-Government bill. Why has that happened?

**Nicola Killean (Children and Young People's Commissioner Scotland):** Thank you for inviting me to give evidence when we have such an

important opportunity to put greater protection in place for children and young people across Scotland. As you will know from my submission, I fully support the bill. I am really grateful to Daniel Johnson for introducing it and to the parents, carers and organisations who have, as you said, campaigned for many years to reach this significant milestone.

I cannot answer for the Government on those missed opportunities, but I am sure that you will put that question to the minister. My emphasis is on the opportunity presented now. It is absolutely vital that the bill progresses and I am grateful for the opportunity to answer questions as part of the committee's scrutiny of it.

**The Convener:** Do you think that you or your predecessors could have done more to get the Government to do something sooner?

**Nicola Killean:** You heard the earlier evidence and will be very aware that the commissioner's office undertook an investigation and reported on it in 2018. We recommended then that guidance should be put in place and that there should be a much broader network of support and monitoring around that.

Alongside the Equality and Human Rights Commission, we approached the Government a number of years ago to ask it to consider a judicial review of the fact that guidance had not been put into place. Members of my team were also involved for some time in consideration of the non-statutory guidance. From 2019 onwards, the previous commissioner—and then I when I came into post—have continued to say that the guidance must be on a statutory footing.

I think that my office has been really consistent with our message. I hope that, throughout this morning, I will be able to tell you more about what we have been doing more recently on this.

**The Convener:** Given what you said about consistency and what more you have been doing, it struck me from your evidence that there are a couple of examples where you do not take a position. I would have thought that the Children and Young People's Commissioner Scotland would have a position on the definition of "restraint" or "seclusion", and on whether all incidents of restraint and seclusion in schools should be recorded, collated and reported to the Parliament annually.

Given that you are the voice for children and young people and you have an important role in informing the Government and the Parliament, why would you not take a position on those important aspects of the bill?

**Nicola Killean:** My position is that the definition has to be clear, and it has to be clear where those practices can and cannot be used. We have called for the definition to be consistent across different sectors, because that is really important. The bill presents an opportunity for consistency in education, care and mental health settings for children and young people.

This is not in my evidence, but earlier this year, I wrote to His Majesty's Inspectorate of Education, the Mental Welfare Commission for Scotland and the Care Inspectorate and asked them to come together and work on the creation of a consistent definition. I had some positive responses, and I believe that they have started to meet to discuss that process.

It is important to me that the definition is consistent and clear for practitioners, and that it is absolutely crystal clear when the legal benchmark, which meets international human rights standards, can be met. That will keep children safer, and it will keep professionals safer.

**The Convener:** I am speaking personally here: do you understand why some politicians and maybe the public would think that the Children and Young People's Commissioner Scotland would have an idea of a definition of "restraint" and "seclusion"?

**Nicola Killean:** I think that I am being as clear as—

**The Convener:** No—your evidence says that you want a clear definition, but you also quite clearly state that you

"do not take a position on the preferred definition of restraint and seclusion".

I thought that you would. There might be some disagreement about the definition, and we can have that debate, but surely you should be able to offer your view, and the commissioner's office's view, on a clear definition.

**Nicola Killean:** With regard to a definition, it is clear is that the practices have to be used as a last resort. They must be used only in a situation where there is a need to ensure the safety of a child or of others. That is my clear perspective, and that is set out in the United Nations Convention on the Rights of the Child international standards. The definition has to be compliant with children's rights. It was important for me to get across in our submission that we want the definition to be clear for professionals. We have heard from a number of organisations—representatives of some of which I am sitting alongside today—that have real expertise to bring to the table in shaping that. It is about those organisations working together to ensure that there is clarity and that the definition is consistent across different sectors.

**The Convener:** I will put to Ms Leitch and then to Mr Higgins another question that I put to the first panel.

As a parent of two children in mainstream education, why do I get a phone call as soon as there is a minor scrape on my child's knee, but parents whose children are restrained and secluded get no notification at all? Why is that continuing to happen today and why does it take legislation such as the bill to sort that out?

**Sarah Leitch (British Institute of Learning Disabilities):** I cannot say why it is happening, but I can guess that it might be because it is not mandated and is not considered to be as important, although it is more important.

**The Convener:** Is it mandated that they must tell me that my son has tripped over in the playground and scraped his knee?

**Sarah Leitch:** I think that it is mandated in some school policies, but, in general school policies, it is not clear that parents have to be informed. Some of the parents who come to BILD and talk to us—and some of the parents whom we know through Beth Morrison and Kate Sanger's campaign—have told us that they have to take the initiative, so they find out too late.

I do not know why that is happening. I think it is maybe because it is not mandated in school policy, but sometimes it is maybe about custom and practice. Schools expect some of those children to get restrained every day, so they do not see it as an unusual event.

**The Convener:** So it almost becomes the norm.

**Sarah Leitch:** We have definitely heard that schools do not see it as an unusual event. We have heard from people who, for a long time, have not known that their children were being restrained or secluded on a daily basis.

Therefore, I think that that sort of thing needs to be in legislation, because it needs to be made really clear that it is important. If my child were still at school, I would absolutely want to know, by the time that they came home, what had happened to them. It is really distressing for families to think that the support and comfort that the child needs has not been provided.

**The Convener:** Particularly when we have examples of families who clearly know that something has happened but do not know what it is.

**Sarah Leitch:** Exactly.

**The Convener:** Mr Higgins?

**Ben Higgins (Restraint Reduction Network):** I agree with you, convener—it makes no sense why what you describe would be the case. If my children came home from school with a scratch on them, I would want to know that they had fallen over. With any form of physical or psychological harm—and restraint is by its nature harmful and traumatic—parents have a right to know what has happened, and to know the same day that it happens.

I think it is good practice that when a child falls over and gets a scratch, a mark, a bump or a bruise, the parents are informed. Why would that not apply in the case of restraint or seclusion? Moreover, when a child falls over, that is an accident. When a child is deliberately and intentionally held down, potentially on the floor and potentially for some time—which could be incredibly traumatic—it makes no sense at all not to tell the family about it.

I am hugely supportive of the bill, because it will be a really positive step. The guidance that came out last year was a positive step; the bill will be a further step forward and, of course, what is in it will be statutory. However, one amendment that I would like to see would require parents to be notified the same day that an incident happens, so that when their child—who might be non-verbal—comes home distressed, they understand what has happened and can empathise with them. That would be a critically important amendment.

I think that Kate Sanger mentioned this earlier, but the only other thing that I would add is that there might be a difference between recording incidents and reporting them to parents. The reporting to parents has to happen the same day—I just cannot see how that cannot be the case. However, we might get more helpful recording of information if we allow that to happen by the end of the next day. If you are a teacher—I am a headteacher by background—and you have had a very difficult day, because the situation has been difficult and you are in a very emotional or distressed state, your recording might not be that reflective. In other words, there might not be as much learning from it. Restraint is harmful, but it is also a learning opportunity every time that it happens. If we can let the temperature go down a bit and wait until the next day, we can be more reflective and more able to think, "Actually, we as the adults, as the teachers and as the school have a responsibility to look at how we avoid this happening again."

Otherwise, the use of restraint becomes routine, which is the bit that I have a real problem with. If a child runs into the road, they need to be pulled out of it—we are not saying "Never use restraint"—but the routine use of restraint is a concern, because it represents a missed learning opportunity. Allowing some of the recording to happen the next day so that we can get that reflective practice and learning will be critical. In short, then, reporting to

parents has to happen the same day, with recording potentially happening the next day.

**The Convener:** I know that we will delve into those issues further, so I will move on to other members. First, I call Jackie Dunbar.

**Jackie Dunbar:** Good morning, panel. I would like to ask you quite an open question. In what circumstances would you see it as appropriate for staff to use restraint or seclusion? How would that compare with current practice in Scotland?

Ms Killean, can I come to you first?

**Nicola Killean:** We are clear that restraint should only ever be used as a last resort, and it should be used to keep either the child or someone else safe. We know from evidence that that has not been happening; indeed, you heard earlier about the cases that Beth Morrison and Kate Sanger have been collating, in which a child has demonstrated some form of distress, but things have not reached the point where they have actually needed to be restrained. In such cases, other tactics or preventative solutions could have been put in place.

**Jackie Dunbar:** How do we get into law what would be considered as the last resort for one child but not for another? I am finding that a little bit difficult to understand.

**Ben Higgins:** I am happy to come in on that. Having spent many years as a teacher and a headteacher, I recognise that this is a really difficult area for teachers, and we need to provide clear guidance on when you do, and do not, intervene. In the Restraint Reduction Network, we try to frame the issue by linking it to the Human Rights Act 1998 and looking at when you can and cannot intervene.

Clearly, there is a duty of care to look after people at certain times. When my children run into the road, I will pull them out of the road. I talked earlier about learning opportunities; when you pull your children out of the road, you want to teach them not to run into the road in the future instead of your having to pull them out of the road every day. There is the learning opportunity, but there is a duty of care, and we need to be clear that teachers have such a duty, too.

Then, we can make a human rights-based judgment about when it is okay to intervene, as opposed to when it is not okay. Any type of restrictive practice has to be justified, so what is the justification? Well, my child has run into the road, therefore I will be justified in pulling them out of the road. It has to be proportionate. I can pull them out of the road; I cannot then hold them face down on the pavement—that would not be proportionate.

11:15

So, there is something about action being justified, proportionate and the least restrictive approach that can be used. If we can make that explicitly clear for teachers, it will give them something more tangible to hold on to in order to understand when we restrain and when we do not.

There will never be a crystal-clear line and, at times, professional judgment will have to be used. Quite often, in reflective practice, there might be differences of opinions. Some teachers might think that it is necessary to intervene, while others might not. We need clearer guidance on the matter. It is incredibly important to link it to human rights and to make sure that we talk about action being proportionate, justified and the least restrictive approach.

I worry that the term “of last resort” can be confusing for people. Kate Sanger mentioned that, especially in more specialist schools, the first thing that a lot of support staff are taught—in almost their first week of induction—is how to restrain people, without any prevention being taught. I have huge concerns about that. It means that what is the last resort is also the only tool in their toolbox, so it might actually be the first resort as well. That is why I think that it is more helpful to talk about whether the practice is justified, proportionate and the least restrictive option. That can give people much clearer guidance.

**Nicola Killean:** In the non-statutory guidance that there is at the moment, there is some helpful detail about the importance of a child’s plan. As the earlier panel touched on, there are some children who may need some form of mechanical restraint or supportive equipment, perhaps for feeding, which would be incorporated into their plan to support them. Those things will use a form of restraint, but it is anticipated—it is planned for and would have the involvement of, for example, an allied health professional. The guidance is clear about what types of practice are recommended and supported by a health professional, and educationalists are trained on that.

However, I note that one thing was missing from the non-statutory guidance: it does not note explicitly that the parent or carer has also been informed and has agreed with the plan. The Government’s review of that, which is happening at the moment, is a useful opportunity to be clear about how informed parents must be about what is being used with their child.

Ben Higgins touched on the importance of the recording and monitoring, and the on-going analysis of that. If any of the equipment ever tended to cause bruises or distress to the children, at that point, it would have to be reported and reviewed. In other instances, a child may be in a

situation in which they might cause themselves or others to be at extreme risk of harm. That is when there might be restraint that was not planned for—although I hope that there will be some indications, which would then be part of the training and learning process for the organisation.

**Jackie Dunbar:** Maybe a little bit of change to the language might be helpful as well so that procedures are in place for unplanned restraint—that is, for matters of last resort rather than planned restraints. I think that that is what Kate Sanger was going on about.

**Nicola Killean:** It is crucial that it is linked to the child's plan. The guidance has those recommendations in it. We heard clearly from Kate, as a mum, that she is aware and supportive of the fact that sometimes, for her child's wellbeing and safety, restraint would need to be used. It is important that the child's plan is linked and it is essential that, when we talk about restraint training, that means restraint reduction training and it emphasises preventative actions. What are all the steps that can be put in place proactively, in the environment that the staff are working with children in and in their approaches and skills, to avoid children having to be restrained whenever possible?

**Jackie Dunbar:** Ms Leitch, do you have anything to add before I hand back to the convener?

**Sarah Leitch:** The only thing that I would add is that teachers are often trained in restraint but not in prevention approaches, or they have been tested as competent in restraint techniques, which is an important part of the training, but they have not been tested as competent to use de-escalation or understand how to meet children's needs beforehand. That needs to be turned the other way up, because it is one of the reasons why people reach for restraint as a first resort.

**George Adam:** I would like to go down a similar route to the one that I took earlier and ask about the broad definition of restraint in the bill. As you all know, this is primary legislation. If it becomes law, teachers and everyone else will have to abide by it.

The bill defines restraint as

"anything done by a member of the staff of an education provider with the intention of restricting the physical movement of a child or young person".

That captures a lot of things. A member of staff might be trying to help a child or young person as in the example that we heard earlier of a child who is about to run on to a road. Using a hoist or other equipment for a child who has complex healthcare needs could also fall under the definition of restraint, as could the basic standard physical care of a child who has complex needs.

Clearly, work needs to be done on the definition, because it cannot be so broad as that provided for in the bill when you are dealing with such issues.

**Sarah Leitch:** It is important to have a clear definition that everybody understands or people will not know when they are slipping into using restraint. One of the reasons why a lot of incidents are not reported to parents is that staff do not understand where their practice has slipped into seclusion or even physical restraint.

If we have clear definition, even though there might be lots of practices that meet the criteria, we can go back to what Ben Higgins said. The advice that we have given to our policy writers is to think about whether something is justifiable. A practice might slip into the definition of restraint, but is it justifiable, proportionate and the least restrictive? If those three questions are asked about every incident, it becomes much clearer. It is important to identify that in the bill. That needs to be dealt with through training, which will enable staff to feel safe. They might think that something that they are doing is moving into restraint, but that is the framework that they can use to think about it.

**George Adam:** I know that everybody else wants to say something, but I have an addendum to what I have asked. Let us look at it from the point of view of a lawyer. What if, after the bill becomes law, there is an incident and a parent ends up saying, "That was over the top. I'm going to go to a lawyer"? If the definition is that broad, all kinds of things could happen when the law is tested in court. It is quite concerning. I am sorry; I am just gibbering now. Nicola Killean, did you want to add something?

**Nicola Killean:** It is important to say that the bill sets the legal and administrative framework; it does not create new criminal offences. I believe that that will reduce the amount of restraint that is being used, and it will ultimately reduce the risk to practitioners of being in a situation where either they do not know what is expected of them or they have not had the appropriate training, and if they have had to use physical restraint, they have been able to meet the test in the definition.

**George Adam:** The definition is quite broad, however. Surely it needs to be tightened.

**Nicola Killean:** That discussion should be continued throughout the process. From my perspective, the guidance must be clear about what is appropriate and how staff members can reassure themselves that they will meet the legal tests, but there should also be an absolute focus on preventative approaches to the need to use restraint.

**George Adam:** I totally agree with that. The problem is that that definition is in the bill. We are having the opposite argument to the argument that

we often have in here about stuff being put into guidance. Surely you have to admit that work must be done on the definition.

**Nicola Killean:** It is important to be clear that this piece of legislation does not make it illegal to use restraint on a child. The bill is about reducing restraint and putting an administrative framework in place to ensure that parents are aware of when that is happening and that there is appropriate and certified training. I think that everybody is saying there is a bit of work to do to provide clarity. I am not ready to say whether the definition should be narrowed, but it is certainly a live discussion.

**Ben Higgins:** Kate Sanger explained earlier that restraint is preventing someone from doing something that they want to do or stopping them from doing something. We know what restraint is. The difficulty in having a legal definition is that a lot depends on the will of a person, which we do not always know. That makes definition problematic.

The definition in the bill is different to the one in the guidance that came out last year. I am slightly struggling with how broadly to define restraint. At the moment, the bill deals only with physical restraint, but the Restraint Reduction Network often talks about restraint as stopping someone from doing something that they want to do. That could be through physical restraint, but it could be through mechanical or chemical restraint or through environmental restraint, such as seclusion. Those are all types of restraint, so things might get confused if we say that restraint is only physical.

The guidance that was published last year talks about physical, environmental and mechanical restraint, which are different types of restraint.

**George Adam:** What you have all said makes more sense to me than what the bill says, which is that restriction is

"anything done by a member of the staff of an education provider with the intention of restricting the physical movement of a child or young person".

That is all it says, but you are saying that restriction is stopping someone from doing something that they want to do. That might be a better explanation.

**Ben Higgins:** It is arguably better, but the challenge is that we do not always know what a person's will is, which brings us to the question of whether an action is justified and proportionate and whether it is the least restrictive action possible. We must link together what restriction is and when it can or cannot be used. We are not saying that you can never restrain—I do not think that we can say that—but we are saying that you must very carefully consider any use of restraint to be sure that its use is legal.

**Paul McLennan:** I will ask about the definition of a child. The definition in the bill is taken from the Education (Scotland) Act 1980, which is not the same as the definition in the UNCRC. The commissioner and others have suggested that the bill should mirror the UNCRC. What are the practical and legal impacts of those different definitions?

I have a second question, which is on an issue that we have touched on and which I will put to Nicola Killean first. What are the strengths and weaknesses of having statutory guidance rather than non-statutory guidance?

**Nicola Killean:** You will have seen in our evidence that we have picked up on the fact that the bill refers to the 1980 act and that, in doing so, it excludes 16 and 17-year-olds, making that definition incompatible with the UNCRC.

There is an easy fix. My team has been in touch with Daniel Johnson's team and will be happy to offer support if that is helpful. We believe that, rather than referring to the 1980 act, the definition of a child can be lifted from the UNCRC and put into the bill. That would be a straightforward way of ensuring that the bill complies with the UNCRC, which is really important. If the bill is not compliant, children will not be able to legally enforce their rights, so I am really hoping that the suggestion will be taken forward.

You asked about statutory and non-statutory guidance. There have been concerns about that for years. You have heard compelling evidence from families that children are not getting the same protection in different parts of Scotland currently. I looked at the responses to the call for views and was particularly struck by the submission from the Association of Directors of Education in Scotland, which supports the guidance being put on a statutory footing. ADES members are key officers who are tasked with ensuring consistency across Scotland in our educational settings. It is compelling that they are saying that the guidance being put on a statutory footing will help them to get that consistency. We believe that that will increase protection for children and young people and ensure that all children and young people across Scotland have the same protections in law.

11:30

**Paul McLennan:** Ben Higgins, I come to you on those two questions on guidance and on the UNCRC definition.

**Ben Higgins:** You have articulated the issue of definitions well. As I have said, when it comes to justifying the use of a definition, it is easiest to do that if we use the one that is based on the Human Rights Act 1998. Taking definitions from there would create synergy with the 1998 act, and that

would make the bill's definition much easier to implement.

I completely recognise the challenges. As we mentioned earlier, it is a difficult situation for teachers, and we need to provide them with clear guidance on when to intervene and when not to.

An issue is making sure that actions are justified—that they are proportionate and they are least restrictive. However, the definitions are going to be equally important in that regard.

It is really important to hold in mind that we are not saying that all restraint is a never event. We need to be very clear about what restraint is: it is preventing someone from doing something that they want to do or making them do something that they do not want to do. That is the broadest definition of restraint. Then we get into different types of restraint.

**Paul McLennan:** Sarah Leitch?

**Sarah Leitch:** I have nothing else to add. I think that it has been covered.

**Paul McLennan:** Thank you, convener.

**The Convener:** My point moves us slightly away from the bill, but it relates to Paul McLennan's question about the UNCRC.

We are scrutinising a Government bill that has similar problems. These questions are probably best addressed to Nicola Killean. Should there be better guidance? Numerous pieces of legislation are now coming forward that are all potentially becoming unstuck for the same reason. I think that your colleague who spoke to us a couple of weeks ago said that things were the same for the Housing (Scotland) Bill, which is now going through stage 3. There is also a member's bill, which is being supported by the non-Government bills unit, and a Government-supported bill on the Promise. Why do we have to make corrections to bills later on in the process? Why is that not sorted out to begin with?

**Nicola Killean:** Those are good questions. It must be that more work needs to be done within Government, potentially with the bill-writing teams and the children's rights department, with greater promotion of that issue by the Government. I appreciate that it is a huge organisation. I wonder whether additional training and understanding are needed.

The Restraint and Seclusion in Schools (Scotland) Bill is a complex bill, and the committee will be aware of what has been written in relation to its compliance with the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. However, we would like to see greater progress being made so that, when introduced, bills are within scope and are compatible with that legislation.

**The Convener:** It is a complex bill, but it did not take consultees to our call for evidence much time to highlight that as a deficiency in this bill and in other pieces of legislation. Is there more that your office could do with Government, or are you doing enough to get the issue higher up the agenda and it is incumbent on Government now to listen to those concerns?

**Nicola Killean:** I have certainly raised it with the Cabinet Secretary for Education and Skills and in meetings with the Minister for Children, Young People and The Promise. We will continue to do that for new bills, as well as in the audit of existing legislation that is out of scope and Government's commitment to amending that. That will continue to be high on our agenda.

**The Convener:** We move to John Mason.

**John Mason:** I unwisely volunteered to ask questions that no one else wanted to ask, so I have things that are dotted around the bill.

Clearly, we have a responsibility to kids, especially to young people with special needs. We also have responsibility to staff, including council employees, whether they are employed directly or indirectly. The NASUWT talks about taking into account

"the duty of care to all in the school community by ensuring rights are not viewed exclusively through the lens of the child who may be the subject of an intervention".

Do you think we are getting the balance right between our duties to an employee—such as a teacher who might be subject to physical threat—and the rights of the child?

**Sarah Leitch:** Yes, I do, because I think that good-quality training and good-quality recording is good for everybody. At the moment, there are situations in which education staff do not quite know what the right thing to do is. They are being taught one thing, which they will apply, but they still do not know if they have done the right thing. We know that the impact of restraint is quite severe, including on the people who apply it, on the people who receive it and on their families. Therefore, we probably have situations in educational settings—and in other settings that we know about—where traumatised staff are restraining traumatised children, which is not good for anybody.

Following the introduction of mandatory training standards in health, staff who had been through good-quality certified training and had learned about other ways to work with people were less likely to use restraint, which was better for everybody. Shoulders are going down, there are fewer incidences of restraint, people are feeling

safer in their work environment and they are able to do the jobs that they go to work to do, which, in essence, are to help children to learn and thrive.

None of this is about thinking that teachers are bad people. Teachers do not go into work every day to restrain children. I do not think that anyone is doing that. What they want to do and what they want to know how to do and to be supported to do is not to restrain children but to make sure that children are happy and thriving in classrooms where they can learn. Therefore, that approach is better for everybody, but we need to recognise the balance, and it is really good that the issue is continually being raised, because we do not want teachers to feel that they are being punished by this—that is not the right way to do it.

**John Mason:** That is a helpful comment. Ms Killean, do you have the same view?

**Nicola Killean:** Yes, absolutely. Restraint reduction, which is what the bill is fundamentally about, is good for everyone. You have heard already that restraint is being used disproportionately on children who have disabilities and on non-verbal children who cannot speak out for themselves, and you have heard about the lack of notification and understanding, which leads to a lack of learning. We need to understand how not only children but professionals can be better supported. I see the bill as an essential protection for children and young people but also as an additional protection for professionals who work in that space.

**Ben Higgins:** It is absolutely right that we are thinking about everybody. It is about children and it is about teachers and staff—we have got to look at everybody across the board—so I am very pleased that that was the view of the unions. I have spoken to a number of the teaching unions about the issue. Obviously, their primary role is focusing on teachers and keeping teachers safe. However, sometimes, there is work to be done to help people to understand that, as Nicola Killean mentioned, with the focus being on restraint reduction, we are trying to prevent people getting distressed in the first place, which, ultimately, will keep everybody safe.

We are not saying that you cannot ever restrain someone—that, if a child is highly distressed and they end up attacking you, you cannot do anything. No one is saying that. That is misunderstood sometimes, so we need to be really clear about it.

On what we mean by restraint reduction, it is really a culture change programme. There are lots of brilliant schools out there with really positive cultures that are focused on young people's wellbeing and having nurturing conversations, and they have minimal reliance on restrictive practices. There are other schools that do not have the benefit of that really positive culture; they have a more toxic culture, they take a highly punitive approach and they have an overreliance on restrictive practices.

Through the bill and through work on reducing restrictions or getting better training, we are trying to prevent the need to restrain in the first place. It is not about how to restrain better; it is about preventing the need for restrictive practices. Ultimately, that is about how we better meet young people's needs to prevent them becoming distressed wherever possible, and that is about minimising distress.

It is absolutely right that we are thinking about everybody's rights. It is also absolutely right that we consider the term "violence", which sometimes comes up, and that we recognise that violence can also happen both ways. The experience of teachers is sometimes that there is an incident of violence from a child; the experience of children who are being restrained is sometimes that there is an incident of violence from staff. We must not lose that voice either, so it is about everybody. I believe that that is what the bill is doing—it is trying to ensure that we prevent people becoming distressed in the first place and minimise the need for restrictive practices, but we are not putting a blanket ban in place.

**John Mason:** You mentioned training as part of that, which leads me to my next question. As you possibly heard, we spent a lot of time discussing training with the first panel of witnesses—most members raised the issue. There was a suggestion that a little bit of training could do more harm than good, because then everybody thinks that they know how to restrain people and they jump in to do that. What is your view on training as a whole? Is bad training happening as well as good training?

**Ben Higgins:** I believe so. Personally, I find it remarkable that we have a situation in which we can teach people to hold a child on the floor against their will when they are highly distressed, when that can cause physical and psychological harm. People also die from restraints—that happens. It is an incredibly dangerous thing to teach people, but there is no mandatory quality assurance around that. That cannot make any sense at all; there must be quality assurance.

For me, this is another key area of the bill. Section 5 focuses on training and, clearly, there probably needs to be a bit more in there. However, quality assurance is the key mechanism. I suppose that it is a question of how far the Government would want to go with that in the bill. However, essentially, there must be quality assurance of that training.

We could also be confusing the issue, as there are different types of training. There is a danger in thinking only about training in restrictive practices. If you have new support staff or teaching assistants and the first thing that they are taught is restrictive practices, it is the only tool in their box and they are likely to use it, so you will probably see restraint go up, not down.

Good training should not be focusing on restraint and restrictive practices; it should be focusing on prevention and on human rights. It should be focusing on hearing from people with lived experience, whether that is Beth Morrison or Kate Sanger, for example, or the children who are affected, about how distressing that can be—and, sometimes, that can be lifelong distress.

The first time that I was taught restraint training, which was back in the last century, I never had the benefit of hearing from a young person about how distressing it was. If I had heard that, it would have changed my practice.

The background to the training standards is that the Royal College of Nursing looked at the issue—soon after the turn of the century, I think—and voted on it. It was one of their strongest votes. I think that 98 per cent of its members said that there had to be quality assurance of restraint training. They said that it was really dangerous, there needed to be quality assurance and that we needed to move the focus on to prevention. Ten years later, there was still nothing in place. That is why, in the end, we thought, "Someone's got to do something," and we got that set up.

**John Mason:** I think that it is in your submission that the term "training needs analysis" is used. Can you explain what you mean by that?

**Ben Higgins:** Absolutely. The training needs analysis is an absolutely critical part of the training standards. It does two different things. You mentioned the question of who is trained and what training they get—it is exactly that.

In any school or any large institution, different people will need different levels of training. It is about who needs what, essentially. Training standards work first on the basis of prevention and build up to looking at de-escalation and then at how you can break away. That is all before you get into the highly restrictive techniques, which people should be taught only if absolutely necessary. The vast majority of people in the vast majority of schools do not need training in restraint. The training needs analysis makes sure that we teach that only where it is absolutely necessary.

**John Mason:** So the janitor and the admin staff would not be getting that training.

**Ben Higgins:** No, but they should probably have some other training. They might not need to do prevention in the same way, either, because a lot of that might be down to things that we put in place in the classroom, but a child who is distressed might go past them, so they might need some de-escalation skills.

The training needs analysis tries to look at who needs what across all the staff working in the school. We make sure that only the people who absolutely need the restraint training get it.

I would hope that, in a lot of schools, no one would need that training, but even for people who need it, it is about looking at the techniques, because it might just be about a two-person escort to escort someone to a safer place, such as taking them out of the road.

**John Mason:** That will vary for every single school, because some are mainstream with a unit, some are special needs and so on.

**Ben Higgins:** Exactly. That is one of the things that is done through the training standards and through certifying training. When you go into a school, you sit down with the people in that school and work out who needs what. The decision on who has what training is bespoke to that particular setting rather than, for example, commissioning one training provider to do training across the board. I think that I am right in saying that that is what happened in Northern Ireland. It ends up with a blanket training approach where everybody gets the same training and suddenly people might be taught floor techniques that they should never be using.

The training needs analysis is about making sure that training is proportionate to the needs of the population, so it is about what we train people in and who gets what training.

**John Mason:** We could probably go on all day about this; it is really interesting. Ms Leitch, do you want to add anything on that?

**Sarah Leitch:** Just to reinforce the point that the introduction of a training needs analysis before people could commission restraint training was probably one of the most significant cultural changes in an industry that has been described as the wild west. Before it was introduced, we were hearing about schools and other settings that were employing security guards and karate teachers to come in and teach restraint on children. That is not really a situation that we like to think about.

**John Mason:** Would the training needs analysis be carried out by the headteacher?

**Sarah Leitch:** Yes, probably in partnership with the person they are commissioning the training from. That has been a success of the RRN training standards—the development of joint working

rather than the previous approach, with people saying, “Let’s buy something off the shelf and hope it meets our needs.”

**John Mason:** Ms Killean, do you want to come in on that point?

**Nicola Killean:** I have nothing to add—I think that we have covered the subject fully.

**John Mason:** That takes me on to a third area, which you have already mentioned. Regimes in schools may be different from those in other children’s services. Should there be more of a joined-up approach? Should the bill cover not just schools, but care homes, children’s care services and all sorts of things? How should we take that forward?

11:45

**Nicola Killean:** It is great that the bill looks specifically at education, and we welcome the fact that it covers independent and grant-aided schools as well.

What is important is that there is a shared understanding of definitions across the different sectors, which I touched on that earlier. That is why I have contacted the Mental Welfare Commission, the Care Inspectorate, which is the main regulator for accommodation, care facilities and secure care, and HMIE, assuming that it will have a further role to play in the area.

**John Mason:** A school is a slightly different setting from a children’s care home or whatever. Can we just make the rules for the two the same?

**Nicola Killean:** I come back to the definitions. I described what you have heard about today as a last resort to keep children and other people safe. Ben Higgins expanded on that and touched on the issue of proportionality.

Those things can be the same—we really believe that. Children do not live their whole lives in one setting. They might be in school during the day and go to a care home in the evening, so it is important for those children that there are consistent standards and understandings, and consistent practice.

I see the bill and the opportunity within it for those sectors to work together on a consistent definition as a real opportunity to take Scotland closer to that.

**John Mason:** So we get the bill through, and then it may spill out into the other sectors.

**Nicola Killean:** There are opportunities already in the work that the Mental Welfare Commission does, and in the work to update the code of practice from the Scottish Government from a mental health perspective. The Care Inspectorate already has standards in place, so there is an opportunity to get the bill through while ensuring that, in doing so, those conversations are happening in order to get consistency across the piece.

**Ben Higgins:** I have one brief comment to make. I think that it is right that the bill is focused on education, but—exactly as has been mentioned—the guiding principles need to apply across the board. I have been headteacher of a school that is a children’s home as well, and it is confusing and unhelpful when we end up with different regulations according to the time of day or which setting we are in.

I return to the point that the more consistent we can be in the definitions, the more we can reduce confusion for staff. It is about the core principles and linking things to the Human Rights Act 1998—that is probably the clearest way to do it. The guiding legal principle of when to restrain and when not to restrain can be the same across both areas, but it makes sense that the bill is education specific.

**Bill Kidd (Glasgow Anniesland) (SNP):** My question, which is specifically for Nicola Killean, is about getting a wee bit more background detail.

The CYPCS report in 2018 led to the Government agreeing to develop specific guidance on restraint and seclusion, but that was delayed by the pandemic and did not come forward until November 2024.

Can you give a brief narrative, if possible, on how the agreement with the Government came about in the first place, and the process leading to the publication of the guidance when it came out last year?

**Nicola Killean:** I can update you on my understanding of the process, but there is probably more detail within my team, who were there and worked through it. I can follow up on anything if that would be useful.

I touched briefly on this earlier. The results of the investigation were published in a document that contained a number of recommendations, but my understanding is that there was no movement towards the non-statutory guidance. That is when my office and the EHRC considered going to judicial review regarding the failure of the Scottish Government to publish the non-statutory guidance.

At that point, the Government committed itself to certain undertakings, among which was the creation of the non-statutory guidance. Again, we did not expect it to take so many years for that to be put in place.

My office has consistently been in touch with the Government on the matter and has been trying to push for it. However, it became quite clear early

on that non-statutory guidance was not going to enable consistency, which is why, from 2019 onwards, the previous commissioner strongly articulated his belief that the guidance had to be put on a statutory footing. It was really compelling to hear Kate Sanger talk earlier about the number of parents who have been in touch, even since August, because it shows that there is continual evidence that we do not yet have that consistency of application.

**Bill Kidd:** Thank you for that. Have the delays and the issues with working through what was produced by your office in the first place led to the need for the bill? I think that you said that the hope was that most of this would have been progressed already, but it has not been.

**Nicola Killean:** The bill has come about because the guidance was never put on a statutory footing. It addresses the importance of having these safeguards and protections in place for children and young people, and the fact that all of this should be on a statutory footing to ensure consistency of application and regular monitoring of the data and notification of families.

As we have all touched on, this is ultimately about reducing the use of restraint, and strategies to reduce the use of restraint are about all those different parts. This is not just about ensuring that a strong framework is in place, but about having the data, the monitoring, the learning, the notifications, the involvement of the different parties and the leadership. I see the bill as an opportunity not just to send a strong message from Parliament with regard to leadership when it comes to expectations about how our children should be kept safe, but to show support across the board for children, young people and professionals around what needs to be in place to ensure that everyone understands what is expected of them and, as we have all discussed, to prevent the need for restraint wherever possible.

**Bill Kidd:** It is specific guidance on restraint and seclusion that we are talking about, rather than some airy-fairy "This would be a good idea" sort of approach. It is all about putting it down in a hard and fast way, so that it can be developed across the country.

**Nicola Killean:** Yes. It is about having statutory guidance to put the legal and administrative frameworks in place. It also responds to one of the 2023 concluding observations of the United Nations Committee on the Rights of the Child. That committee called on all UK Governments

"To develop statutory guidance on the use of restraint on children to ensure that it is used only as a measure of last resort".

There are many voices saying that this is the right thing to do and that children really need those protections to be in place.

**Bill Kidd:** Thank you. It is great that the office of the Children and Young People's Commissioner has been so strongly involved and has kept at it over that period of time.

If no one else wants to come in, I just want to say that that was very helpful. Thank you very much indeed.

**Miles Briggs:** I will return to the line of questioning that I put to the first panel in relation to the importance of national reporting of incidents. We have already touched on the value of data and, with the previous panel, I discussed some of the data that care services are now having to report. Do you think that national reporting will make a difference here?

I do not think that there are any proposals to record chemical restraint, which Ben Higgins referred to earlier. Indeed, Kate Sanger mentioned the matter, and I think it important that we get some understanding of what that could look like, too.

I will bring you in first, Ben.

**Ben Higgins:** I actually referred to different types of restrictive practice, all of which it is vital to record. Obviously, they will include physical restraint, seclusion, which is a hugely important issue, and mechanical restraint, which is used in schools and needs to be recorded, too. I think that it is vital that we cover all those things.

As for chemical restraint, a lot of children in schools are on different cocktails of medication, which can ultimately be restrictive. That medication is usually administered by a psychiatrist or someone else who has prescribed it, not the school itself. It is different in a mental health institution, for example, where injections might be administered in emergencies.

I do not necessarily think, therefore, that the bill needs to consider the chemical side. It is more that there are different types of restraint and that there are schools in which there is an overreliance on physical, mental and mechanical forms of restraint.

**Nicola Killean:** It is important that we are clear that recording and monitoring should be on-going. Recording should happen as soon as possible, but monitoring should be on-going.

There are also different levels of recording and monitoring. We expect education authorities to be aware of when restraint has been used in an education setting for which they are responsible, and that they will review why it happened. We touched on the point that they will report to the

Scottish Government at the national level, and that the information would be available for the Parliament to scrutinise. However, I think that there is also a potential role for HMIE. The non-statutory guidance mentions that HMIE already has a role in the inspection of education authorities, but HMIE has recently reintroduced inspection of local authorities. That is a natural opportunity to ensure that there is a thorough look at paperwork that has been recorded and whether reviews have been done at the HMIE level.

The question whether independent and grant-aided schools would report to the local authority or whether it might be better for the Scottish Government or HMIE to collate and monitor that data has also been touched on.

**Sarah Leitch:** We need to make sure that, at the level at which it is done, recording is not too onerous and that good systems are in place, because people are busy. There are certain key principles around the information that is useful for restraint reduction and for monitoring the wellbeing of children. There is a link to having a clear definition, and I think that we can be prescriptive about what people need to record.

Recording is also part of training. People should be allowed to say, "It's not that this is taking a long time; I am just getting the key bits of information, because they are important and will help us to think about how we might avoid future issues at the individual level, the setting level and the wider level."

**Ben Higgins:** We have already mentioned the importance of informing families on the day of recording and of reflecting on any learning to ensure that we change our approach to how we work with that young person in future. As Nicola Killean mentioned, we need to make sure that that information is used by the school effectively and that it looks at how it can reduce its reliance on restrictive practices.

We talk about the six core strategies of restraint reduction, for which there is an international evidence base. They are about leadership, involving people with lived experience, and reflection and learning post-incident, but data is also key. We need to make sure that we are proportionate in recording the data that we need without being excessive.

I go back to the first question, which was about why we do not have the bill and the statutory guidance already, and a big part of the answer to that is that we do not have that recording and reporting. We seem to have got stuck in that cycle.

There is a clear issue around reporting to parents and recording incidents so that we can learn from them. However, there is also a national angle, as you mention in your question. We need national data so that we can see how we are doing, but I would argue that we should publish the information. That happens in some areas in mental health in at least two of the nations in the UK. Why can the information not be made public so that we can see how different areas are doing, the trajectory that people are on and whether they are reducing their reliance on restrictive practice or whether its use is increasing? When the inspectorate goes in and sees that it is increasing, it can challenge that and take that line of inquiry.

**Nicola Killean:** Again, that is an area in which adding in the Care Inspectorate would be helpful. I know that its submission suggests that there should be an additional scrutiny level. My understanding is that organisations must report to the Care Inspectorate when a restraint incident has happened and that it has a live database that is monitored every day, so that, if it sees any red flags, it is able to act quickly. That shows the importance that is placed on the issue by another sector, and it should be reflected here.

I also reinforce the point that we really believe that there should be as few incidents as possible.

12:00

**Miles Briggs:** The bill is specifically about restraint and seclusion. I go back to John Mason's point that there is no national guidance in Scotland on how to keep children safe. It is interesting that earlier this month, in England, the Department for Education published statutory guidance for schools and colleges on this very issue. The document is called "Keeping children safe in education 2025". Do you support taking a similar approach in Scotland, with teachers having that wider set of statutory guidance?

**Nicola Killean:** What is interesting about the discussion around restraint concerns the strategies for prevention and de-escalation. The previous panel touched on the gap in the understanding of some professionals within our education settings of the additional support needs or the other needs of the children and young people whom they are working with. I definitely feel that there is a lot more work to be done on the gaps not only in how well children are supported but in how professionals within education are supported to meet the needs of all the children with whom they are working.

I also believe that the bill's promotion of and emphasis on prevention, de-escalation and understanding how different needs present will ultimately keep children safer as well.

**Ben Higgins:** I fully support the bill's focus on prevention. The challenge is how we support teachers in that regard—that is the bit that is potentially missing. As I mentioned, I think that

there is a danger that we think about training as teaching people restraint techniques, but there are different types of training that we must consider, such as training on meeting additional needs. In the previous session, the point was made that we cannot expect all teachers to know everything. I was a headteacher in special schools, but there are rare conditions that I know very little about.

You cannot expect everyone to know everything, but we can do more in terms of training on additional needs, certainly in relation to teacher training, and making sure that there is more consideration of those needs. That is not about being an expert in every single condition; it is about the culture that I mentioned and about how we understand and meet needs to prevent people from becoming distressed, because when people with additional needs become distressed, it is quite often because we have not met their needs in the first place.

There is a second bit around making sure that all teachers have had the benefit of training in prevention, which includes understanding human rights and proportionality, and hearing from people with lived experience about how distressing restrictive practices are. Only a very few need training in restraint, and only where absolutely necessary.

The section on training needs more work. The training standards have been quite helpful, because they ensure that someone can have training in restrictive practices only if it is demonstrated to be necessary for that particular person in that particular school. However, they must have had the other training in prevention and de-escalation first.

There should be a more nuanced approach, and by having certified training that meets the training standards, by default, you end up with a list that can be filtered of the training providers who meet the quality assurance criteria for education in Scotland. There is already a mechanism there that could work. How far we want the bill to go on that is a different matter, but it certainly needs to mention that there must be quality assurance of training. It does not need to say what the solution is because that might go in the guidance, but we need to be clear there must be quality assurance of the training.

**Miles Briggs:** Thank you.

**Pam Duncan-Glancy:** Good afternoon. I thank the witnesses for answering the questions that we have had so far. The questions around training have covered some of the detail of this, but some of the evidence suggests that we need to have a directory, and some people have suggested there should be a “do not use” list of people who provide training in this area.

I have been struck by the comments from this panel of witnesses about prevention and the need for training in prevention before it gets to the restraint point, as well as the need for quality assurance. Do you have any views on whether having a directory or register of training providers is the important part, or whether oversight is more important, or whether both are needed in order to have the oversight and protection required to provide the necessary level of quality assurance?

**Ben Higgins:** This follows on from the previous point. It is a good question. I do not think that there is any harm in having a list of approved training providers, but only if they have met a quality mark; otherwise, what are we doing? We would be creating a list but you would not know whether they were good or bad. The training therefore must have quality assurance, which is the more important part than having the list. By default, the quality assurance process will result in a list anyway—that will come as secondary.

There must be a quality assurance process, and it would need to cover certain key principles relating to the training standards that exist, including having a focus on human rights, the inclusion of lived experience, having a focus on prevention, and recognising the trauma involved for staff and for young people. It is about having a focus on creating positive cultures and understanding that people become distressed for a reason and, as Kate Sanger mentioned earlier, that all behaviour is communication.

It is also important to talk about the importance of transparency and candour, because something that we are quite concerned about—this is where the seclusion segregation element comes in—is that a lot of schools will have people going into a room that they call a calming room, which makes it sound like it is a perfectly fine thing to do, but when we have gone into schools, we have seen children being dragged into those rooms against their will. I am taking about a minority of schools, and when we say to headteachers that this is pretty poor practice and is really distressing for the child, they will close the rooms and repurpose them. The concern is that a lot of people do not recognise just how poor practice that is, so you need much better guidance around it.

For me, it is much more about getting good-quality training that helps teachers. It goes back to the previous point about how teachers know when to restrain and when not to. That is all part of good-quality training, and they might not be getting that. The list is secondary; you must get that quality assurance of training. As I mentioned earlier, this is one of the most dangerous things that we are going to teach teachers to do, so it has to be quality assured.

**Pam Duncan-Glancy:** Do you think that certification would help with procuring services that are quality assured, or is there another mechanism that could be used?

**Ben Higgins:** It is a mechanism that we know works. It has had an independent evaluation and, where it has been put into statutory guidance, we have evidence that it has improved practice significantly. We have evidence that it works. If the Scottish Government wants to create a different system, that is fine—I am not saying that it has to be that one, but it is a system that works.

The key is that there is quality assurance, and that the training cannot happen without being quality assured. Only then can you go on to a register. Having a register is helpful, but through people being certified as meeting the Restraint Reduction Network training standards, a headteacher who is trying to commission training can then go and filter down the list. We should bear in mind that a headteacher's expertise is, I hope, not in restraint training. You can filter down, which is helpful in commissioning training that is outside your area of expertise.

There is a benefit to having a list, but it is much more important to have quality assurance in place and to ensure that teacher training has a sufficient focus on meeting additional needs and recognises that restrictive practices are harmful.

**Pam Duncan-Glancy:** Thank you. Nicola Killean, your submission speaks about the importance of effective oversight and cross-sector consistency, rather than having a directory. Have you anything to add on that?

**Nicola Killean:** I agree with Ben Higgins. We are less concerned about the list and more concerned that training is in the bill and that it is certified training.

**Pam Duncan-Glancy:** Thank you. Sarah Leitch, do you have a view?

**Sarah Leitch:** Certified training provides other protections, which we have seen. Not only is it based on a training needs analysis, so it meets those conditions, but if people are taught those restrictive physical intervention holds, they are properly risk assessed for that population. That is a really important point, if you think about how dangerous holding someone is and about the number of deaths and injuries that we have seen. It would be worrying if it were otherwise.

**Ben Higgins:** I have one last comment on that. The guidance that was published last year was a helpful step forward. The bill goes a hell of a lot further and is a really positive step forward. My worry is that the element on training might end up being a step backwards, not forwards, compared with the previous guidance. The guidance talks about why training should be certified and all the benefits of that, so why would we not include that in the bill?

**Pam Duncan-Glancy:** Part of training is having an understanding of what is or is not acceptable use of restraint or seclusion—if that is the right way to describe it.

We have had some evidence suggesting that any form of seclusion where the young person is unable to leave would be unlawful. What is your view on that?

**Nicola Killean:** Any use of seclusion where a child is unable to choose to leave that space would be a deprivation of liberty. That is why we welcome the fact that the bill deals with restraint and seclusion. It is important to have guidance that will help professionals to understand that, because we think that there is huge under-reporting of the use of seclusion and a lot of confusion about what can be used.

We have heard, as you will have, that there can be good use of calming spaces and places that children and young people can choose to use as part of their plan and that will allow them to remove themselves from a space where they might be feeling sensory overload or are upset and stressed. It is important and welcome that the bill focuses on seclusion.

**Pam Duncan-Glancy:** In circumstances where there are worries about a young person's safety, are there authorisation thresholds that should be required if the young person is to be maintained in a space? Is there a distinction between a place of seclusion and having planned or timed breaks from?

**Nicola Killean:** We would not expect to see a planned or timed break in a child's plan if that was to be in a space that they could not choose to leave. We need to know if seclusion means being in a locked space or in one where they do not have the ability to move. However, as has been touched on today, emergency or duty of care situations can happen and there must always be a balanced professional judgment.

**Ben Higgins:** One of my concerns is that there is confusion in a lot of schools about good and poor practice regarding seclusion. Part of that comes from a lack of transparency in language and things getting muddled.

There can be good practice when Johnny is distressed, leaves the classroom and goes to sit on the swings because that is what Johnny has chosen to do and he has taken himself away. That might be called "time out" or "seclusion", but there are also "time out" or "seclusion" rooms to which someone is dragged against their will, which is highly distressing. Those rooms quite often do not

have a toilet or access to water. That is, at best, borderline legal and it is certainly highly distressing for the young person as well as not making it easier to meet that person's needs in future. That should happen only in incredibly extreme situations and I like to think that, in five years' time, we will be looking back and wondering what the hell we were doing locking children in cupboards in schools. What are we doing? We probably all know that that is by no means good practice.

It is important that the bill covers seclusion and that we take a clear line on that, but we must differentiate. As Nicola Killean said, it is about the child's choice and that of their family, and the support or care plan must make clear what that person needs when they are distressed. That is not the same as someone being dragged against their will, which is a type of restraint and restrictive practice that can be incredibly harmful.

**Pam Duncan-Glancy:** That is helpful; thank you.

**The Convener:** Mr Higgins, you say that it is good for seclusion to be included in the bill. However, the submission from Clan Childlaw states:

"The definition of seclusion in both the Bill and the Guidance specifically includes the condition that the child must not be able to leave the place that they have been isolated in."

If we pass the bill, we will basically be endorsing that even though everyone says that it is a breach of the child's human rights.

**Ben Higgins:** The definition of seclusion is not being able to leave. There can sometimes be confusion in schools, with people saying, "They can leave; we are just standing in the way." Seclusion does not necessarily mean a locked space: it could mean a person standing in the way or could even be coercion not to come out. That is still prevention.

**The Convener:** Does it matter whether there is the physical barrier of the locked door or a person, or a verbal instruction not to move?

12:15

**Ben Higgins:** No. I do not think that it does. They are all types of seclusion whereby you have a child who is on their own in a room with no social interaction and is unable to leave. That is clearly poor practice and a type of restraint, and something that we need to be moving away from in schools.

**The Convener:** Is this bill not the opportunity to move away from it? I understand restraint as a final tool to stop a child from injuring themselves or others, but seclusion is not really the same, if you are saying that it breaches that child's human rights.

**Ben Higgins:** I agree. It is an opportunity to go further. I would very much hope that, in five years' time, we will look back and think, "What the hell were we doing with this practice?"

**Nicola Killean:** Convener—

**The Convener:** I am sorry; I will come to you in a second.

But this is happening today, and so what action is being taken to safeguard children's human rights? It is perhaps being underreported, but we all know that it is happening at the moment and that the breach of their human rights is occurring as we sit here this morning.

**Ben Higgins:** We go into a number of schools, particularly special schools, and we see the practice happen. It happens in a minority of schools, but still too many. We always feed back and say to the headteacher, "This is poor practice. We strongly recommend that you end this practice and repurpose this room."

**The Convener:** But a teacher could say to you, "There is a bill going through Parliament at the moment that would try to reduce it, but that does not in any way outlaw it."

**Ben Higgins:** It is an area that the bill can go further on.

**The Convener:** Ms Killean, would you like to come in?

**Nicola Killean:** I was just going to come back to the opportunity in the bill to ensure that professionals understand what is, and is not, appropriate.

We all believe that this is hugely misused and underreported. By including it in the bill, there is an opportunity to ensure that it is covered by training so that people understand what they are doing; the impact that it has on children and young people where it is being inappropriately used; and that, if they choose to use it, it has to be reported and there would be follow-up action.

At the moment, we are all concerned that it is still happening, and that there is no monitoring or scrutiny of it at all.

**The Convener:** What are you doing as the children's commissioner? You know that this is happening in Scotland, and you know that, when it is happening, it is breaching the human rights of that child. What are you doing about it?

**Nicola Killean:** The work to get to this point has been a huge part of what our office has done. We have touched already—

**The Convener:** I understand all that. However, you know that there is a breach of multiple people's human rights, every time that this occurs.

**Nicola Killean:** Part of the issue is that we do not have the data and information to be able to know that.

**The Convener:** If a parent contacted you this afternoon—perhaps this session will raise awareness—to say that their child has been or is regularly secluded and locked away on their own and told they cannot leave, what advice would you give?

**Nicola Killean:** In the first instance, we would encourage parents and carers to go through the complaints process to raise concerns at a local authority level. The next step would be the Scottish Public Services Ombudsman, if they felt that the education authority had not dealt with it.

However, we are here today, and what I am doing as the children's commissioner is asking all of you to support this bill and for it to go through Parliament.

**The Convener:** But this bill legitimises it. I think that we have just agreed that.

The definition of seclusion in this bill is the condition that a child must not be able to leave the place that they have been isolated in. On the one hand, you are telling us to pass this bill. However, on the other hand, you are telling us that the seclusion element of it breaches human rights; that that is currently happening, and that it would still happen after this bill passes.

**Nicola Killean:** That is a really useful question to be asking to continue to probe throughout the committee's scrutiny, because there could be arguments for and against it.

Where I see the positive of including it would be that it would give us the opportunity to ensure that, across all authorities and educational institutions, we have a profession that understands what seclusion really means. It would remove the malpractice and poor practice that we believe exist, but that we do not have any data on. It would ensure that the recording is in place, and that there was the ability to follow-up.

I think that it is a good question to continue to explore.

**The Convener:** Ross Greer?

**Ross Greer:** I have no further supplementary questions. That covers it.

**The Convener:** My final point—

Mr Higgins, do you want to come back on that?

**Ben Higgins:** Seclusion in schools was mentioned. There is potential to go further. Again, it is important to build on the guidance that came out last year. Its paragraphs 73 and 74 talk about the use of seclusion in schools. Paragraph 73 says:

> "Seclusion is not recommended for general use in schools, either as part of routine practice or as a 'default' response to distressed behaviour."

We need to make sure across the board that the bill builds on that and goes further on the issue.

**Nicola Killean:** I have an unrelated point. At the moment, the bill suggests that nurseries will not be included. Is the committee able to explore that, over the next few weeks? If we get the definitions clear, the bill could be applicable to nurseries. There are likely to be reasons why Daniel Johnson's team has not included them but I wonder, if more work is to be done because of greater complexity, whether there is an opportunity, through regulations, for delayed implementation for nurseries. We have talked a lot about getting consistency—ensuring that all children have the same protections—so I bring it to your attention and ask whether the committee would consider exploring that.

**The Convener:** I am sure that it will in our further panels, and with both the cabinet secretary and the member in charge.

My final question is on something that Ben Higgins touched on. You think that the incident should be reported to the parents on the same day—

**Ben Higgins:** Yes.

**The Convener:** —but that it should, potentially, be recorded the following day, to take the emotion out of it and make sure that we have the right information. The bill currently says

> "as soon as possible and ... no later than 24 hours after ... the incident".

Are you saying that that needs to be tightened? Twenty-four hours means, potentially, that if the incident happens at the end of one school day, the child has gone back before the end of the next school day.

**Ben Higgins:** The reporting needs to be done before the staff go home that day. If that is at the very end of the day, as the child is being picked up, it will not always be possible to notify the parents immediately beforehand. However, it absolutely needs to happen before people go home that day, in exactly the same way as slips come home or phone calls are made about a graze on the knee. That happens on the same day, so why can this not? Informing parents has to be on the same day, so sufficient time needs to be allowed. I recognise that that might not always be before the child is collected, but it needs to happen on the day of the incident.

However, the recording might be started on that day but it should be allowed until the end of the following day, so that reflective practice and learning can be brought in. I am conscious that schools are busy and that team members cannot always cover for one another. Sometimes, therefore, it might be done at the end of the school day. Allowing until the end of the school day for the recording side will make sure that the learning is captured.

**The Convener:** What are witnesses' views on the AHDS submission, which said that there is a risk of inadvertent breaches in the proposed timescales if the incident occurs at the end of the school week or school term? Basically, it says that having a weekend or a number of weeks off may lead to breaches if the constraint is 24 hours. I have some concerns about that. Are those shared, or do witnesses agree with the points that were made by that association?

**Nicola Killean:** I share your concerns, convener. As we have heard, because of the impact and trauma of an incident, it is essential for a parent or carer to have the particular ability to support their child over a weekend or into holiday periods, because the level of anxiety can develop.

**The Convener:** I am seeing nods of agreement from other witnesses.

I thank you for your time and your evidence. That concludes our consideration of the bill and the public part of our proceedings. The committee will now move into private session to consider its final agenda item.

12:23

*Meeting continued in private until 12:36.*

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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