



Association of **Lawyers for Children**

Promoting justice for children and young people

**Department of Health and Department of Education Consultation:
Reducing the Need for Restraint and Restrictive Intervention
Children and Young People with Learning Disabilities, Autistic
Spectrum Disorder and Mental Health Difficulties**

Response of the Association of Lawyers for Children

Consultation period: 29 November 2017 to 24 January 2018

This response dated: 24 January 2018

Contact: Ms Natalia Dawkins

ALC Operations and Development Officer

PO Box 283 East Molesey, KT8 0WH

Telephone: 020 8224 7071

Email: admin@alc.or

Details

The ALC submitted a short online response to the consultation, by the Department of Health, on the draft guidance on, reducing the need for restraint and restrictive intervention for children and young people with learning disabilities, autistic spectrum disorder and mental health needs.

The consultation sought views on how well the draft guidance helps a range of settings and services to support children recognised as being at higher risk of restraint. The guidance applies to health and care settings and special educational settings.

Responses to specific questions

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

This question appears to be aimed at providers and, as such, is outside our area of expertise.

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

We welcome the inclusion of core values and key principles in this guidance and we think that the proposals are clear and relevant. We would however make a few comments, from our perspective as an organisation of lawyers who represent children and their families who are involved in legal proceedings:

The body of the Guidance refers at several points to the need to involve children, young people and families in planning and decision-making. We wholeheartedly agree with this and we discuss it in more detail in our response to Question 7. The Core Values and Key Principles are however silent on this, at least in relation to children/young people themselves. This could usefully be added to the second Core Value, so that it reads "Children, young people, parents and carers and staff, should be treated fairly and with dignity and respect and their view should be obtained and taken into account during planning and review.

In the fifth of the Key Principles, it can never be appropriate to use restraint for these purposes. To ensure that this is clear, "should not" should read "must never

The final Key Principle should include a reference to the child/young person being involved in reviewing plans. We accept that there may be occasions when this is inappropriate or may not be practicable, but it is important to reflect the aim that young people should be involved whenever possible.

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

This question appears to be aimed at providers and, as such, is outside our area of expertise.

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

We welcome the inclusion of references to involving children, young people and families in decision making, for example in paras. 57 and 84. As we have said in our response to Question 5, we think that this should feature prominently in the Core Values and Key Principles. We would like to see a stronger presumption in favour of involving young people, who are after all experts in their own circumstances, in planning and review.

For example, the Summary of Key Actions in para. 26 refers to young people and carers "as appropriate". This suggests that it may sometimes be appropriate to do this, but there is no expectation that it should be the norm. We are concerned that, episodes of restraint tend to be traumatic for all concerned and are seen as representing a temporary breakdown in the normal care/therapeutic relationship. In consequence, we are concerned that there may be an understandable, but misplaced, desire on the part of professionals to 'protect' young people from discussing such matters. This is likely to lead professionals to decide that it is not appropriate to involve the young person in planning and review.

We know from our extensive experience of advising and representing young people that they generally benefit from being involved in decision-making about their own care. Even if the issues are difficult for them to deal with, they prefer to be involved than to feel excluded. Involvement of the young person in decision-making is also likely to produce better behavioural outcomes.

We propose therefore that, where there is a reference to involving children/young people where appropriate, this should be amended to require that the young person is involved unless there is evidence that this will cause disproportionate harm to the child.

In para. 34, it would be helpful to emphasise that the benefits of involving young people do not cease or diminish simply because the subject under consideration happens to involve restraint.

In para. 47, the competences to be covered in training should include involving children, young people and families in decision-making and review.

We are troubled by para. 84 of the draft which reads: "Wherever possible, the families of children and young people should have the opportunity to participate in post-incident reviews - though this may not always be appropriate, for instance when the child is looked after by a local authority." This wording implies that, where a child is looked after, it will be inappropriate to involve the parents in reviews. This simply does not reflect the provisions of the Children Act 1989 (CA 1989) and the accompanying Regulations and statutory guidance.

Where a child is looked after in voluntary accommodation (by a local authority) under s20 CA 1989, the parents retain parental responsibility (PR) and the local authority does not gain PR. There is therefore no reason not to involve the parents in the review.

Where there is a care order in force, then the local authority has PR and has the power (s33 CA 1989) to restrict the exercise by the parents of their PR, if the welfare of the child so requires. There may therefore be occasions where a care order is in force and the local authority has decided to restrict the parents' involvement, but these are a small fraction of looked after children cases. This part of the Guidance is therefore misleading and needs to be changed.

We would like to make one further comment, which falls outside the scope of the consultation questions but which we hope will be helpful nonetheless. We refer to Annex A, footnote 19 on page 33. The footnote refers to the case of D [2016] EWCOP 8. That decision was recently considered in the Court of Appeal (Re D (A Child) [2017] EWCA Civ 1695), which concluded that there is no rule of law to prevent a parent from consenting to a deprivation of liberty for a 16/17 year old, if that is an appropriate exercise of PR. Para. 11 of the Annex, and the footnote, need to be updated to reflect this decision.