

Consultation response submitted by  
Association for Real Change, Northern Ireland (ARC NI)

SEPTEMBER 2021

## **Regional Policy on the Use of Restrictive Practices in Health & Social Care**

ARC NI supports 48 cross-sector learning disability providers who employ over 20,000 people working in social care and supporting people with a learning disability in all aspects of their lives. ARC NI welcomes the opportunity to provide feedback to the Department of Health policy leads on the behalf of the membership.

**ARC NI does not believe in the use of restrictive practices and welcomes the emphasis of elimination within this consultation.**

### **1. Policy or legislation**

In 2014, the RQIA undertook a small themed<sup>1</sup> review in December 2014 in relation to the awareness and use of restrictive practices in mental health and learning disability inpatient settings across all five Health and Social Care (HSC) Trusts in Northern Ireland. Considerations listed within the report included:

- A regional definition of restrictive practice could be agreed and made available.
- Revised regional guidance
- Trusts' governance arrangements for monitoring the use of restrictive practices should also be considered

ARC NI therefore welcomes this consultation which attempts to modernise existing guidance on the use of seclusion including strengthening regulatory requirements, formal standards for recording, reporting and monitoring this area of health and social care activity.

However, a person with a learning disability is at risk of experiencing restrictive practice at any stage of their life, including childhood. As recent as May 2021, there has been an acknowledgement by the Department of Education that their guidance is also outdated and now under review<sup>2</sup>. ARC NI notes the Department of Health are acknowledged as a stakeholder.

Unfortunately evidence suggests that the frequent and inappropriate use of restrictive practices continue, which have resulted in significant and ongoing trauma experienced by people with a learning disability and on too many occasions, concluded in their avoidable death.

ARC NI is aware of *The Mental Health Units (Use of Force) Act 2018*<sup>3</sup> (colloquially referred to as 'Seni's Law') which received Royal Assent on 1 November 2018 but has not yet been brought into force by the English Government. Whilst this is specific to mental health units,

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<sup>1</sup> <https://www.rqia.org.uk/RQIA/files/05/0547a7dd-be6f-4dc0-a29f-1fabfc595b71.pdf>

<sup>2</sup> <https://www.education-ni.gov.uk/sites/default/files/publications/education/DE%20Circular%2013%20of%202021%20-%20Restraint%20and%20Seclusion.pdf>

<sup>3</sup> <https://www.legislation.gov.uk/ukpga/2018/27/enacted>

the statute nature is stronger than what this regional policy can lend to Northern Ireland and offers accountability and justice to the people who may experience restrictive practice.

The Residential Care Homes Regulations provide a legal framework for Care Homes in Northern Ireland. Yet restrictive practices are frequently used by our in-patient units for people with a learning disability. As highlighted in July 2021 within a House of Commons HSC Committee Report<sup>4</sup>, *“Inpatient facilities do not consistently meet the needs of autistic people and people with learning disabilities and too often this is because of factors such as the unnecessary use of restrictive practices...”* (page 28).

This would therefore suggest the need to apply regional definitions, stipulate practice and prescribe governance and accountability standards across all types of services and support.

**ARC NI would welcome the consideration of introducing equivalent legislation which is application across all types of services and supports.**

## 2. Accountability

As outlined specifically in Standard 6 of the draft document, to govern the principle of elimination, or worst case minimalization of restrictive practice in Northern Ireland, reviews, reflection and monitoring must be robust at an organisational and regional level. The data requested and analysed is key. In ARC NI’s view the specific detail of data captured should be co-produced by the sector.

The draft policy refers to the structures and specific roles that have this responsibility however recent similar examples, such as the NI Adult Safeguarding Partnership were reported by Independent Reviewers, CPEA<sup>5</sup> to have failed.

This also opens up the debate of the frequency and appropriate use of restrictive practices, and whether this dovetails within the safeguarding arena. The Health & Social Care Board are acting as an interim chair of a newly established Adult Protection Board which also has sub-groups beneath it. These include:

- Performance and Data subgroup
- Training and development Subgroup
- Procedures Subgroup (Joint Protocol initially)
- Serious Case Review Subgroup (chair to be agreed)

All of these areas arguably are, or may be relevant to this Regional Policy on the use of Restrictive Practices.

**ARC NI recommends the governance and accountability of restrictive practices fall within the consideration of these newly developed safeguarding structures.**

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<sup>4</sup> <https://committees.parliament.uk/publications/6669/documents/71689/default/>

<sup>5</sup> <https://www.health-ni.gov.uk/sites/default/files/publications/health/Adult-Safeguarding-Briefing-%20Dunmurry-Manor-Review-Team-Sept-2020.pdf>

### 3. Parity of Esteem between stakeholders

ARC NI promotes a rights-based person-centred approach in all it does and therefore welcomes the inclusion of human rights and the FREDA principles within the draft policy.

#### 3.1 Statutory v's non-statutory

ARC NI also believes in keeping things simple where possible. The consultation document acknowledges the inability to enforce non-statutory providers to adhere to policy guidance in the absence of legislation. It however states that *"It is expected that HSC organisations commissioning services from non-statutory health and social care providers will include compliance with this policy within contracting arrangements"* (page 3).

These semantics, in ARC NI's opinion weakens the desired purpose of this procedure which is to eliminate the use of restrictive practice, and furthermore is at risk of removing both an individuals' and organisations' responsibility to operate in a rights-based approach.

This is demonstrated on page 6, where Action 1-4 apply equally to all providers of health & social care but suggest that non-statutory 'should', rather than must.

ARC NI feels strongly that providers of services should be considered as such, regardless of whether they are statutory or non-statutory.

**ARC NI recommends the word 'should' in key action 3 and 4 be changed to 'must'**

#### 3.2 Supporting Workforce (and their training)

The RQIA as referred to above identified one of the considerations that was required was that of training. Specifically that training requirements for all grades of staff, and the content of training programmes and educational programmes, could be regionally defined, particularly when staff work in specialist roles and/or facilities.<sup>6</sup> The consultation document states the draft policy can be delivered within existing funding and whilst there may be training needs, funds are available. This is not the experience of ARC NI.

ARC NI is aware however that one provider, Crisis Prevention Institute, holds the training contract for all our statutory health partners. The competitive tendering process is unclear and ARC NI raised this with the Department of Health in January 2020. Furthermore, statutory commissioners began making contractual demands on non-statutory providers that they too use Management of Actual or Potential Aggression (MAPA). ARC NI members have self-funded the introduction and embedding of positive behaviour support in their daily practice for years and have sourced support from a range of expert training providers such as Studio 3. This expectation of using MAPA was therefore challenged by some providers with their commissioning Trusts. Yet Crisis Prevention Institute's programme continues to be promoted by the Health & Social Care Board, including in our university qualifications relevant to learning disability.

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<sup>6</sup> <https://www.rqia.org.uk/RQIA/files/05/0547a7dd-be6f-4dc0-a29f-1fabfc595b71.pdf>

ARC NI feels a regional commitment to ensuring training meets an agreed set of standards would be more appropriate, for example

<https://restraintreductionnetwork.org/know-the-standard/>.

**ARC NI would recommend the Department of Health work in partnership with the sector to identify training standards and ensure the regional roll out of this is equitable and financially accessible for all providers.**

### 3.3 Person-centred Practice

ARC NI welcomes this draft having included the voice of those with lived experience and our Telling It Like It Is members met with the departmental leads in April this year to provide their insight in advance of public consultation. ARC NI also believes that the practice of restraint and/or seclusion should be person-centred and as such, openly discussed and explored with the individual, and where appropriate their family/representative.

In July 2021, the Health & Social Care Committee's report 'The treatment of autistic people and people with learning disability' recommended that *"all providers are required to meet with both families and commissioners within a month of each incidence of restraint, whether chemical or physical, to explain why it happened and what measures are being taken to prevent a reoccurrence (page 27).*

The draft Northern Ireland procedure states *"Providing person centred care is essential to the development of care and treatment plans. In order to provide good quality care and support to a person, it is important that all professionals are able to work together in partnership with the person, and their families and/or carers where identified as partners in care, to ensure respect and dignity is afforded to everyone involved"* (page 31).

Yet within Step 1 of the Three Steps to Positive Practice Framework outlined within the draft policy, reference is made to 'discussed and decisions communicated' and Step 2 refers to 'providing information to increase understanding'. It is unclear how people supported, and where appropriate their families will be engaged in Step 3 Review & Reflect and furthermore, Incident by Incident Reviews.

ARC NI feels that meaningful partnership and engagement need to be strengthened within this current draft.

**ARC NI recommends person-centred practices resulting in partnership working with the person supported, and where appropriate meaningful engagement with family members are clearly articulated within the Three Steps to Positive Practice Framework.**