

Ofsted Inspectors and Physical Restraint

Report by Mark Dawes - Wednesday, August 21, 2013

I recently wrote to Ofsted under the Freedom of Information Act 2000 and the content of my correspondence to them was as follows:

"I am requesting information under the Freedom of Information Act 2000 on what specific training Ofsted Inspectors receive in relation to the use of force / physical restraint as part of Ofsted's statutory requirement to ensure that Ofsted Inspectors are both qualified and competent in being able to assess any use of force / restraint training or activity within the organisations and schools that its inspectors inspect to a professionally competent standard.

To this end I would like to view a detailed copy of the training programme containing:

1. A breakdown of what subject matters are covered within it, along with the learning outcomes and assessment requirements clearly identified and listed.

2. The amount of direct and guided learning hours allocated to the training.

I look forward to your reply within a reasonable period of time, hopefully not exceeding twenty working days, as required under the Freedom of Information Act 2000.

Once again, just to ensure clarity, I am requesting specific detailed information on this matter, not a brief summary."

On the 8th May 2013 I received a reply and the following is a summary of Ofsted's response:

"We do not train our inspectors in restraint techniques and it is not for our inspectors to assess the training that a provider chooses to commission. Any training undertaken is to enable inspectors to understand the regulations and guidance that underpins the work with children and young people, including that relating to the use of force / physical restraint and to have a shared understanding of the range of questions and issues they need to consider in evaluating practice with children and young people, making sense of responses to children and young people in the wider context of behaviour management.

While we do train inspectors about the use of force, including restraint and the restriction of liberty, we do not hold a document which could be considered to be 'the training programme'. We have therefore provided you with a breakdown of the subject matters covered and information regarding learning outcomes, assessment and learning hours. We are also providing you with an extract of the training materials, in case this is of assistance to you in understanding the subject matter.

We hold some additional information about training undertaken by some groups of staff, but we do not hold training programmes or additional information in relation to these.

We also hold some information about training that smaller groups of staff have attended which cover this subject matter; however we do not hold copies of the training programme(s) or detailed information about these.

Please find enclosed in Annex A the learning outcomes and a breakdown of the subject matters covered within the training for inspectors on 'the use of force, including restraint and the restriction of liberty, in care and education settings'. There are no assessment requirements. This subject forms part of a wider training programme and we would estimate the duration as 2-3 hours."

So in a brief summary, this is the situation:-

1. Ofsted inspectors are not trained in restraint techniques. Therefore (according to their own admission) "they are not expected to assess the training that a provider chooses to commission".
2. They do train their inspectors on the 'use of force', including restraint and the restriction of liberty, but they do not hold a document which could be considered to be 'the training programme'.
3. This training in point 2 above lasts for between 2-3 hours, and as they have supplied copies of the powerpoint training slides, the presumption is that the training is classroom or online based. A copy of the slides used can be downloaded here: [Ofsted Powerpoint Training Slides](#).
4. There are no assessment requirements, therefore no degree of competency is required by Ofsted inspectors in this area.
5. Yet Ofsted inspectors are then expected to go and inspect care homes and schools, many of whose staff will have had longer training programmes (2-3 days as opposed to 2-3 hours), with physical training and formal assessment requirements, that require a pass in both areas.
6. These inspectors also have the authority and power to make subjective decisions and recommendations, based on nothing more than their own interpretation of the relevant regulations and standards. These subjective decisions and recommendations are seemingly based on (in relation to restraint and the use of force) an incomplete and incompetent standard of training and assessment that the inspectors themselves get and that can result in major negative consequences for the homes and schools involved.
7. In addition, which is far outside of their scope and degree of competency, some inspectors have even been known to 'recommend' that homes and schools only use 'BILD Accredited' Training Providers' which is way outside of their scope. In fact Ofsted and CQC cannot make that recommendation and are not allowed to do so. The decision and responsibility for that choice has to rest with the employer. To read more about BILD Accreditation click here: http://nfps.info/blog/NFPS_Blog/post/bild-accreditation-what-is-it.

The Human Rights Issue

In considering the above it is also worth bearing in mind that any flawed information that has negative consequences, especially if given by an 'agent of the state', is a potential breach of Article 13 of the European Convention on Human Rights, which states:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

In lay terms this means that if anyone has been violated by someone working or acting in an official capacity they are entitled to a remedy before a national body - and possibly even an enforceable right to compensation (Article 5(5) of the Human Rights Act 1998).

Interestingly the Police are quoting Article 13 on some of their training material on the use of force!

To read an article about a Article 13 of the ECHR >>> [click here](#):

The Right to Peaceful Enjoyment of One's Possession (including Property and Business')

In addition, if this affects an individual's right to earn an income then it is potentially a breach of Article 1 of Protocol 1 of the Human Rights Act 1998; which allows for the peaceful enjoyment of an individuals possessions and which includes the right to run a business.

Therefore, if any Ofsted inspector (or indeed any inspector from any Government agency) interfered with the right provided by Article 1 of Protocol 1 by revoking a license to run a care home or school for example, based on making a subjective recommendations that was incorrect or incompetent, or by imposing sanctions that were legally flawed and outside of their scope and professional competence, that is possibly a breach of that Article. And if that breach is discriminatory then it is also a violation of Article 14.

In Accordance With Law

In many cases decided by the European Court of Human Rights (ECHR), interferences have been in breach of various Articles because they have not satisfied this first condition of being "In Accordance with Law". In order for an interference to be in accordance with law, the interference must have a proper legal basis.

The law or rule must also be understandable, detailed and clear enough to allow a person to regulate his or her behaviour - a secret, unpublished memo in a government department will not suffice, for example.

The requirement on public authorities to act compatibly with Article 1 of Protocol 1 is contained in Section 6 of the HRA. Section 6 provides that central government, local government and other public bodies, such as the police and the courts, must all act compatibly with your rights.

The Question?

Therefore, my question is this: How can an Ofsted inspector's (or indeed any other Government inspector's) interference, in relation to a restraint or use of force related issue, be "in accordance with the law" if they are not trained to a legally competent standard as required under Health and Safety and various other pieces of legislation?

These issues are of course wide ranging in terms of it's implications, but it seems that in some cases people can be brow-beaten into submission by people in positions of authority who themselves have little or no knowledge, training or competence in what they are inspecting. Not wanting to "upset the inspector" (and I've heard that many a time) for fear of negative consequences can't be a viable option. In fact that very much sounds a bit like intimidation and bullying.

We all live in a democratic society and are protected and governed by laws. No one is above the law no matter what badge or uniform they wear.

This material was originally posted by Mark Dawes on the National Federation for Personal Safety website:

http://www.nfps.info/blog/NFPS_Blog/post/ofsted-inspectors-and-physical-restraint/

Mark Dawes

Mark Dawes is a Director and National Coach Tutor of NFPS Ltd.



Mark has worked as a hostage negotiator and is a competent physical skills instructor with over thirty years of experience to fall back on. In addition he is a member of the Expert Witness Institute, a certified competent Risk-Assessor, a registered and qualified Stress Consultant (Registered in 1994), a Licensed Cognitive Hypnotherapist licensed with the National Council for Hypnotherapy, a Master Practitioner of Neuro-Linguistic Programming licensed through the Society of Neuro-Linguistic Programming and the founder of Quantum Thinking.

During his career he has undertaken audits, risk assessments, training needs analysis' and post incident reports for his clients in relation to staff safety and the use of physical force. In addition, Mark has written reports for court cases ranging from negligence to Manslaughter and has provided written evidence for a House of Lords and House of commons Joint Committee on Human Rights in relation to the use of physical intervention.

He has delivered training to other diverse public and private sectors including: NHS Hospital Trusts, Health Care Authorities, Social Services Departments, Charities, Colleges, Transport Companies, Courts, Security Companies, etc., and has also been involved with various Crime Prevention Initiatives.

He is also the author of a number of books including: 'What is Physical Intervention?', 'Understanding Reasonable Force', 'Understanding Unreasonable Force', 'Understanding Quantum Thinking', 'Live This Life' and 'Managing the Monkey'.

Gerard O'Dea

Gerard is Principal Trainer and Adviser for Dynamis Insight



Gerard has delivered training in personal safety, conflict risk management and physical intervention for over 150 organisations and frequently provides professional consultation and advice on:

- *The issues in common and criminal law in relation to use of force*
- *How the Human Rights Act 1998 impacts on training and management of violence*
- *How Health and Safety legislation relates to staff who face occupational violence*
- *Restraint-related risks of sudden death*
- *Human Factors-based Training Needs Analysis and Programme Design*
- *Psychological and Physiological factors in high-risk violent confrontations*
- *Obligations of managers under the Management of Health and Safety at Work Regulations 1999*
- *The impact of legislation and national guidance for the care of vulnerable people in crisis*

Gerard's client list includes the Scottish Prison Service, Police Services, HM Courts Service, State Hospital at Carstairs, Critical National Infrastructure Agency Rapid Response Team, NHS primary care, Dubai Hospital Security services and hundreds of private care providers and educational institutions across the UK.