Expert Report 2015 by the Ombudsman for Children in Norway

The use of force against children in residential child care and mental health care

Thanks to everyone who contributed!

It is illegal to use force if the same result may be achieved through other, less invasive means. Nevertheless, over the course of several years, the Ombudsman has received numerous messages of concern about the extensive use of force against children and young people in residential child care and mental health care establishments. These messages can be about physical restraint by personnel, the use of belts and straps, personnel following children and young people around, searches, or what are seen as excessively stringent house rules. We have also recently received information from children, young people and foster parents that the use of force is also taking place in foster homes.

Consequently, for this year's project, we visited children and young people in residential child care, mental health care establishments and foster homes to hear about their experiences with the use of force. We have also used our right of access to administrative decisions on the use of force, records and complaints in order to gain an overview of how these mechanisms, designed to safeguard the legal protection of children, actually work. Our concern has not been lessened.

We have received information about young children with mental health issues being held in arm locks, girls who have been sexually abused being forced to the floor by men much bigger than them, and young people being followed around 24 hours a day. The children describe the use of force as violating and frightening. Our impression is that some establishments do very little preventative work to counter the use of force, and that there is no communication with the children afterwards with a view to preventing the use of force in the future. The complaints procedure in mental health care and foster homes is not very child-sensitive or easily accessible for children. This is in contravention of the child's right, pursuant to the Convention on the Rights of the Child, to participation and influence in his/her life. There is a better complaints procedure for children in residential care, but even here there is still substantial room for improvement.

Children living in residential care and foster homes are vulnerable and completely dependent on our protection. Where the state bears responsibility for their treatment and care, the expectation must be that children will receive the assistance they are entitled to and will not be subjected to unnecessary force and gross violations of their personal integrity.

Sometimes the use of force is required in order to protect the child/young person, but adults working with children must always make a thorough assessment of whether or not the use of force is necessary. Using force must never be an emergency solution to a lack of preventative action and expertise on the part of the adults.

The unnecessary use of force contravenes the fundamental human rights of the child. In addition, it weakens the child's respect for and confidence in the care service provider. This results in inferior levels of care, treatment and health. Children and young people in residential care need a place they can feel at home, where predictable parameters and good communication produce feelings of safety and belonging.

We have met lots of children who need help from both the mental health care and the child welfare systems. These two services often do not cooperate closely enough. It is a serious matter when children with mental health issues do not get the help they need. Children with mental health problems in residential care are subjected to unnecessary force because the adults lack expertise. The law must be changed here. Children who need it must be guaranteed help from both services – i.e. seamless care.

I want to say a big thank-you to everyone who contributed to the work of putting together this report. An extra big "thank you" goes to the children and young people who contributed their experiences with, and thoughts and feelings about, being subjected to force in the places that for varying periods of time were supposed to be their homes. One of the boys we spoke to summed things up rather aptly: "being forced feels like hell."

Anne Lindboe

Main chapters:

1. Human rights and force
2. Mental health care establishments
3. Residential child care establishments
4. The right help at the right time – less force?

Contents

Preface 4
Summary 7
Methodology 9

1. Human Rights and the Use of Force

The right to care and the right to health 14
Force is interference with personal integrity 15

2. Mental Health Care Establishments

Legal backdrop 20
Children in mental health care 23
Children's and young people's experience of force 24
Where is the system failing? 29
Major differences and disparate cultures 30
What needs to happen to minimise the use of force? 32
Monitoring the use of force in mental health care establishments 34
Challenges linked to treatment outside establishments 36
Conclusion and recommendations 39

3. Residential Child Care Establishments

Legal backdrop 43
Children and the child welfare system 44
Children's and young people's experiences of force 44
Access to use of force incident reports and complaints 48
Major differences and disparate cultures 50
What needs to happen to minimise the use of force? 50
Monitoring the use of force in residential child care establishments 54
Conclusion and recommendations 56

4. The right help at the right time – less force?

The importance of early interveition and coordinated services 60
Links and Endnotes 62

Summary

For this project "The use of force against children in residential child care and mental health care", we gathered together experiences with the use of force against children, through, amongst other things, dialogues with children, personnel and professionals, and access to case files.

Force often entails grave interference with personal integrity and may result in a serious offense against the individual. Human rights therefore set stringent conditions for the use of force. These conditions build the framework within which the Ombudsman examined the use of force during this project. The premise of this report is that any infringement of an individual's personal integrity against that individual's will is deemed "use of force".

To find out more about children's and young people's experiences with the use of force, we spoke to children/young people who have been admitted to inpatient mental health care, in residential child care and in foster homes. The children/young people we met had different experiences with the use of force: some had experienced it often, others very rarely. We have made a number of recommendations in this report on the basis of the information we received.

Mental health care establishments

The legislation on the use of force in mental health care does not sufficiently take into consideration the specific needs and rights of children. It is very unfortunate that the fundamental principles of the Convention on the Rights of the Child (CRC) and the specific needs of children are not reflected in legislation. The Ombudsman believes that the age thresholds in the Mental Health Care Act are not in line with the rights of the child pursuant to the CRC.

The Ombudsman is also concerned about the lack of knowledge about and expertise on the use of force against children in mental health care settings and we call for more knowledge and expertise on the use of force against children.

We have seen a great deal of variation across the establishments in terms of the frequency with which they use force, how personnel interpret the legislation, the degree of focus on preventative measures and how they define "momentary restraint". Although the regulations allow for significant doubt and variations in practice, we saw some evidence of competent personnel, professional confidence and awareness around the use of force compensating for this.

Good communication with the children/young people appears key to preventing the use of force. The children and young people also want to be involved in, amongst other things, coming up with "house rules", co-creating their own treatment plans and volunteering suggestions for how difficult situations should be handled.

The Ombudsman believes that current oversight of mental health care establishments does not satisfy the human rights requirement regarding effective monitoring of the use of force against children. The supervisory system does not safeguard the child's right to be heard. Among other things, this is due to the lack of follow-up and dialogue with children/young people who are in-patients in mental health care establishments, and the fact that very few complaints are made by children/young people. The standard forms for reporting use of force incidents are short, making it difficult for inspection agencies to assess the extent to which the use of force was necessary. Reporting procedures allow children/young people very little opportunity to express their views on and/or experience of the situation. In the use of force incident reports to which we had access, the voice of the child/young person was completely absent.

The Ombudsman's Recommendations

The Ministry of Health and Care Services must ensure that:

- the legal framework for mental health care provision to children and young people is revised and formulated with a view to meeting their specific needs and safeguarding their right to protection
- the fundamental principles of the CRC are made visible within the legislation
- the use of force outside the facility is investigated separately
- the necessary skills and knowledge on the scope of the use of force against children are in place and that more research is conducted into the use of force on children in mental health care settings
- a handbook is created on countermeasures against the use of force
- new templates are created for use of force incident reports which will safeguard the child's right to be heard
- the creation and dissemination of new, child/young person-oriented information materials explaining the complaints procedure and associated rights

Residential child care establishments

In the residential child care establishments, we saw that for many children, being subjected to force can be a frightening and violating experience. Many of the children compared it to being subjected to violence. Not only was being subjected to force difficult for them but it was also frightening to witness others being restrained or forced to the floor.

Our access to information revealed that children who are subjected to force often have mental health issues or conditions. Often, personnel use force because a routine boundary-setting intervention has escalated out of control. We found that young children are also subjected to force.

There are major variations and disparate practices across the residential child care establishments, particularly in relation to preventative work to avoid using force. Dealing effectively with this issue requires expertise and professional confidence, an understanding of the reaction patterns of children and young people, stable working conditions and resources, and good communication with the children.

In recent years, developments have taken place within Child Welfare Services in terms of underpinning the child's right to be heard and creating more opportunities for this right to be recognised. However, there is still room for improvement to ensure that the voices of children and young people are made sufficiently audible. Children in residential care are completely at the mercy of the adults in the establishment to be able to convey their views in a way that the County Governors can understand. In addition, processing complaints takes a long time and children rarely have their complaints upheld.

The Ombudsman's Recommendations

The Ministry of Children, Equality and Social Inclusion must ensure that:

- **requirements are introduced regarding regular training courses and guidance for personnel in residential child care establishments to ensure a proper understanding of the rules pursuant to the Regulations concerning Rights and the Use of Force during Stays in Residential Child Care Establishments (the Rights Regulations)**
- **more stringent requirements are set in terms of the professional expertise of personnel in residential child care establishments**
- **personnel help those children who wish to make a complaint about the use of force**
- **the maximum processing time for complaints made by children to the County Governor is reduced from three months to one month**

The right help at the right time – less force?

During the project, we identified a lack of coordination and cooperation between Child Welfare Services and mental health services. We met many children in need of help from both services; children in mental health care who had experience with Child Welfare Services and vice versa. Some of these children had moved several times from foster home to residential child care home to mental health care establishment – and back again. Frequent moves and unstable life circumstances often serve to aggravate the problems the child had in the first place.

It was clear to us that the increasing prevalence of children with mental health issues in residential child care is a challenge. We received feedback that many municipalities do not have child welfare or health care services that are capable of working preventatively on behalf of children. This applies to children in unstable care situations and children who are in the process of developing mental health problems, and often a combination of the two.

The Ombudsman is concerned about the serious repercussions of failing to provide children with mental health issues in residential child care with the treatment they need, and we believe this is a violation of children's rights. Our opinion is that the legislation must be changed to ensure the provision of comprehensive services that prioritise the needs of the child.

The Ombudsman's Recommendations

- **Mental health care provision by municipalities must be reinforced, for example by earmarking funding to municipal health services.**
- **The child's/young person's needs and mental health must be thoroughly investigated before he/she is placed in a foster home or in residential care.**
- **The Ministry of Health and Care Services and the Ministry of Children, Equality and Social Inclusion must ensure improved coordination of child welfare and mental health care services.**
- **Changes must be made to the legislation and its applications that strengthen the child's right to the coordinated provision of services by child welfare and mental health care services.**
- **Common establishments must be created for children and young people who need help from both child welfare and mental health care services.**

Methodology

Young experts

Article 12 of the CRC states that all children have the right to be heard and express their own views in all matters affecting them[1].

The Ombudsman is the children's representative. Our task is to promote the interests of children to the public and private sectors and to monitor the conditions in which children are growing up[2]. To be able to perform this representative function, an important part of our job involves talking to children. We use our "Young Experts" method and have put together a handbook to this end[3]. This report is not a research study. It is first and foremost input from children/young people to the authorities on what can be done to ensure that the two services use minimal force, and, when force is used, it is employed in a way that is as considerate of the child as possible.

The Ombudsman holds expert meetings where the children/young people are the experts. We do this so that children and young people with different experiences will be heard, and so that their views and experiences will get through to the authorities when they make decisions affecting the relevant group of children. The Experts' task is first and foremost to give us advice on the recommendations we should make to enable society to better help children and young people in similar situations.

During the project, the Ombudsman's personnel had dialogues with a total of 51 children and young people between the ages of 10 to 18 who were living in mental health care facilities, residential child care establishments or foster homes.

In addition, we spoke to 13 young people who had experienced living in residential child care establishments or foster homes. For each discussion we were given written or oral consent from the children and their parents/guardians or from Child Welfare Services/ the children's residential care establishment.

Most of the discussions were one-to-one, while a few took place in pairs or groups. Although we often speak to groups of children, we recognise that where some topics are concerned, it is better to speak to children individually.

The topic of force is a sensitive one and we often experienced that children wanted to tell us more when they spoke to us alone. Two Ombudsman personnel were present during every discussion. A couple of the children also wanted to have a personnel member present during the discussion and, in those cases, a member of personnel sat in the room and listened.

In dialogues where the information provided raised concern, we reported this to the appropriate authority. We are obligated to do so in accordance with the Act relating to the commissioner for children.

Digital narrative

During the project, some of the children we met created digital narratives. Digital narratives are short, personal films or illustrated stories. The narratives were created with the help of iPads. The digital narratives are no longer than 2 to 3 minutes and are personal accounts told in the voices of the person who experienced them. The children created these narratives themselves; they wrote the script, recorded the dialogue and added images and music. The children themselves decided what the narratives should be about within the topic of force. The children's digital narratives form an important contribution to our project in that we are not just recounting the things the children and young people have told us but actually allowing the children to tell their own stories directly. This allows the children's voices to be heard, clearly, directly and honestly.

Meetings with professionals

When we visited establishments and spoke to the children we also met the personnel working in those establishments. This has taught us more about how people working with children administer the regulations and the kind of challenges they experience in their work. Discussing the issue of force with committed and competent professionals at the establishments was extremely informative for us.

In addition to meetings with children and personnel, we also met with many different professionals and organisations including: the National Association for Child Protection in Norway, the Norwegian Association of Youth Mental Health, the Norwegian Foster Care Association, the County Governors in Oslo and Akershus, Rogaland and Tromsø, the Supervisory Commission in Rogaland, the Norwegian Directorate of Health, the Norwegian Directorate for Children, Youth and Family Affairs, the Ombudsman for Children in Sweden, the Commission on the Use of Force in Denmark, the child research milieu in Tromsø, the Norwegian Research Network on Coercion in Mental Health Care [*Tvangsforsk*] and researchers Astrid Furre, Reidun Norvoll and Gro Ulset.

We also sent out a questionnaire to all 52 of the Supervisory Commissions in Norway to gain a better insight into their work with children.

The Ombudsman's access to information

Pursuant to Section 4 of the Act relating to the commissioner for children, the Ombudsman shall have unrestricted access to all public and private establishments for children.

Unrestricted access to residential care establishments for children

We made use of this right of access by visiting residential child care and mental health care establishments. However, we were dependent on the establishments making the appropriate arrangements for our visits. This meant that the children/young people were prepared and allowed us to meet as many of them as possible.

In order to meet children/young people in hospitals or care homes or, we contacted the relevant wards and establishments directly. In the case of foster children, we recruited children via Child Welfare Services and our own Facebook page.

Recruiting children via Child Welfare Services was a challenge. In total, we contacted 14 Child Welfare Services branches; only three were able to help us with recruitment.

Access to documents

- **Documents concerning the "Motivation Collective" (a residential child care establishment), where one section had been closed down in connection with, amongst other things, the establishment's use of force.**

- **Use of force incident reports and associated complaints from residential child care establishments lodged with the County Governor of Oslo and Akershus in the period January 2014 – March 2014. We reviewed all the incident reports in relation to Section 14, Use of force in dangerous situations.**

- **Use of force incident reports and administrative decisions on the use of force from three psychiatric wards for children and young people**

Glossary

FORCE: In this report, the Ombudsman defines the use of force as any interference with the personal integrity of an individual against that individual's will. We have used human rights as the frame of reference for this definition. What we refer to as "force" in this report is sometimes also referred to as "coercive measures" in other publicatons.

USE OF FORCE INCIDENT REPORT: In both residential child care and mental health care establishments, personnel are required to fill in a "Use of Force Incident Report" every time they make an administrative decision on the use of force.

RESISENTIAL CHILD CARE ESTABLISHMENTS: Generic term for child welfare establishments. These may be private or public sector or idealistic organizations. There are different types of child welfare establishments, including: emergency placement and assessment establishments, care homes and youth care homes.

MENTAL HEALTH CARE ESTABLISHMENTS: "Mental health care establishments" is the collective term we use in this report when discussing establishments within mental health care. In practice, these are most often hospital wards, but may also be separate establishments.

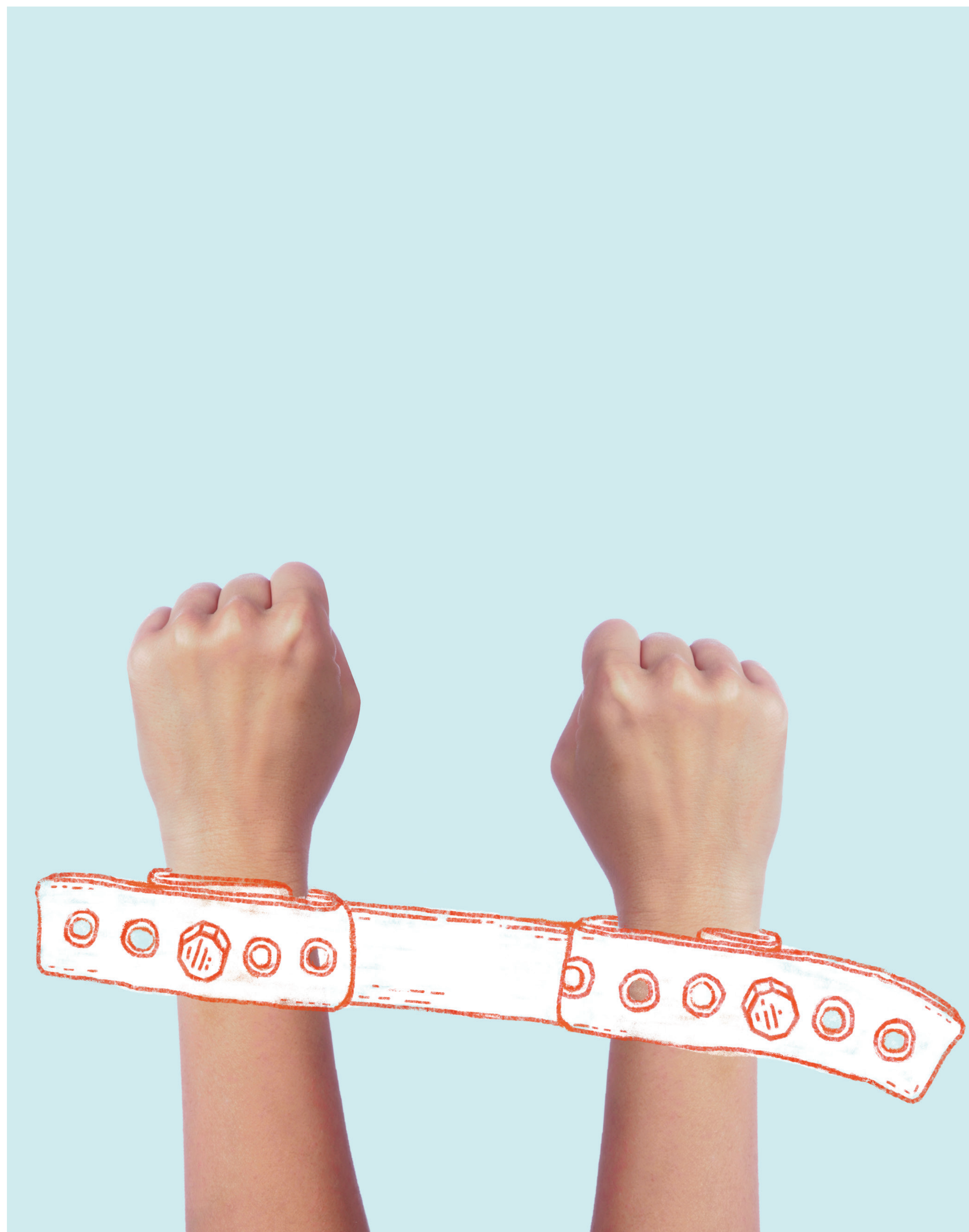
IN-PATIENT UNIT: We use the term "in-patient unit" when children/young people in the mental health care system are admitted to an establishment on an in-patient basis.

COUNTY GOVERNOR: The County Governor is responsible for monitoring residential child care establishments and ensuring that children/young people receive adequate levels of care and treatment. The County Governor is also charged with ensuring that any use of force within the establishment is kept within legal boundaries.

THE SUPERVISORY COMMISSIONS: The Supervisory Commissions are charged with safeguarding the legal protection of the individual in his/her encounters with the mental health care system. They are therefore responsible for conducting inspections of mental health care establishments and reviewing incident reports.

THE UN COMMITTEE ON THE RIGHTS OF THE CHILD: The Committee monitors other state parties implementation of the Convention of the Rights of the Child (CRC).[4]

UNPLANNED MOVE: An unplanned move takes place when a child is removed from a foster home earlier than planned due to difficulties that have arisen[5].



1.
HUMAN RIGHTS AND THE USE OF FORCE

The right to care and the right to health

Child Welfare Services and mental health care are two separate services that are founded on fundamentally different needs. This is reflected in two discrete rights within the UN Convention on the Rights of the Child (CRC). Child welfare falls under Article 20 of the CRC on the right to alternative care where a child cannot receive adequate care in his/her own home. Mental health care is a subset of the child's right to the enjoyment of health, in accordance with Article 24 of the CRC, and is based on a need for healthcare services.

The division is the same in the Norwegian system. Child welfare is subject to the Ministry of Children, Equality and Social Inclusion and is regulated by the Child Welfare Act. The purpose of the Act is to ensure that children are able to grow up in a secure environment. Mental health care is subject to the Ministry of Health and Care Services and is regulated by healthcare legislation, especially the Mental Health Care Act. The purpose of the Act is to ensure the provision of health services such as examination and treatment.

However, this division is not a given for the individual child in need of help. In practice, it is not the case that the child needs either one or the other; in many cases the child needs both services. The findings in this report show that inadequate coordination and cooperation is a source of significant strain on the individual child and may constitute a breach of his/her rights.

The experiences gained from this project show that children and young people in the no-man's land between child welfare and mental health care services are the ones being subjected to the most force, especially the physical use of force, such as physical restraint.

The systematic and legal basis for these services and the issues these raise therefore provide an important underlying perspective from which to view the challenges that are described in this report.

Human rights and force

Human rights are rules that apply between the authorities and the individual. These rights apply to everyone in Norway, regardless of their age, who they are, where they live and what they have done. The rules are prescribed in international conventions and the most important conventions are made into Norwegian law through the Human Rights Act.[6] The Constitution of Norway also contains provisions on human rights, something which affords these rights a particularly high level of protection. Finally, there is special legislation, designed to safeguard the rights of the individual within different special fields. It is important to note that it is the provision that at any given moment affords the individual the strongest rights, and constitutes the legal framework for permissible behaviour.

The CRC lays down the fundamental principles that apply in all cases involving children. The principles emphasise the special considerations that must be observed in all decisions where children are affected. This entails that the principles of: the best interests of the child, the child's right to full development, and the child's right to be heard, must be staked out, assessed and given due weight in each and every decision concerning the use of force.

Child welfare and mental health care – both residential and non-residential – are services the State provides to its citizens. Although human rights allow the State a lot of leeway to organise these services as it sees fit, they also set strict limitations when it comes to interference with the freedom of the individual. Later in this chapter we present the limitations set by human rights on the use of force within the child welfare and mental health care system.

The right to personal freedom and integrity

Everyone has the right to self-determination and personal freedom. This is a prerequisite for being able to enjoy the full benefits of other rights. An important part of this personal freedom is being able to make decisions about yourself and your body. This right is described as the right to personal integrity and includes both physical and psychological integrity.

The right to personal integrity is also regulated in Article 16 of the CRC and Article 8 of the European Convention on Human Rights (ECHR). Section 102 of The Constitution of Norway contains a general provision on protection of personal integrity. In addition, Section 104, third paragraph of the Constitution, the personal integrity of the child is given especial protection in that it states: "Children have the right to protection of their personal integrity." This affords the personal integrity of children a particularly high level of protection.

Force is interference with personal integrity

In this report, the Ombudsman defines the use of force as all interference with personal integrity against a person's will.

Force often involves significant interference with personal integrity and can constitute serious offences against the individual.

Human rights therefore set strict conditions for the use of force. Milder forms of force may be necessary to satisfy a duty of care towards a child, which can make the delineation of boundaries difficult. Regulations governing violence, assault and neglect form the definitive boundaries in terms of what is permissible within a duty of care setting, but beyond this, interference with the personal integrity of a child is sparsely regulated. An analysis of this falls beyond the remit of this report, but the issue is extremely pertinent in foster homes and is also relevant for residential child care and mental health care establishments.

Human rights standards concerning the use of force[7]

Three concrete requirements have been set in relation to interference with personal integrity: 1. All interference must be prescribed by law, 2. There must be a legitimate aim, 3. It must be necessary in a democratic society.i These obligations are intended to ensure that illegal force is never used against the individual. The European Court of Human Rights has set strict requirements in terms of monitoring these fundamental legal safeguards in cases where individuals, under the auspices of the public sector, are subjected to the use of force.[9]

1. Legal authority

First and foremost, any act of interference with personal integrity must have legal authority. This is important because severe interference with personal integrity must only be decided on by legislators. The individual must be able to predict when the authorities will intervene with force. In order to ensure this, the law is required to be sufficiently clear so that both the person using force and the person being subjected to force are able to understand the content of the law. Requirements have also been set for the handling of such cases, for example, it should be made clear who has decision-making authority in relation to the use of force. The law should stipulate the forms of force that are legal. Any use of force that is not mentioned in the law is illegal.

2. Legitimate aim

Secondly, the interference must have a legitimate aim. This is stipulated in Article 8 of the ECHR. Three objectives are relevant to child welfare and mental health care: interference can take place to avoid physical or mental harm, to prevent criminal behaviour or damage, or to protect the rights and freedoms of others. The aim of the intervention was rarely the challenging factor in the cases we reviewed during the project, and will therefore not be discussed further in this report.

3. Strictly necessary and proportionate to the individual

A final, pivotal, requirement is that interference with personal integrity may only take place where strictly necessary. This means that the use of force is not permissible where the same result may be achieved through other less invasive means. This is called the "principle of least restriction" and assumes that all other available options have been exhausted prior to any intervention involving force. The necessity requirement also implies that there must be an assessment of the proportionality between the needs of society and the invasiveness of the intervention for the individual. An important factor in this assessment is the vulnerability of the individual. In this context, the European Court of Human Rights of defines children and young people as a vulnerable group. Due care is therefore required when using force against children. A thorough assessment must be made concerning whether or not the use of force is strictly necessary and of the proportionality of the use of force against the child. In this assessment, the best interest of the child must be a fundamental consideration.

Requirement for effective monitoring

Human rights require the State to have established efficient monitoring procedures to ensure that these conditions are met in practice. This entails that effective supervisory and complaints systems must be in place.[10]

The State must ensure oversight with the means to uncover irregularities and the tools to end practices that are in conflict with the requirements for the use of force. In addition, the individual must be afforded genuine opportunities to submit complaints, which necessitates a complaints system that is accessible and comprehensible to the individual. The complaints process must be adapted for children and young people.

Article 25 of the CRC sets requirements for oversight of the situation for children who are receiving treatment within the health service or in alternative care. This oversight must monitor whether or not the service being provided to the child meets the requirements of Article 39 of the CRC which states that rehabilitation of the child "shall take place in an environment which fosters the health, self-respect and dignity of the child".

The fundamental principles of the CRC must form the basis of all cases

The principle of the best interests of the child is embodied in the CRC's Article 3, item 1, which implies that the best interests of the child must be a fundamental consideration in all cases affecting children.

Where force is used against children, a separate assessment of the best interests of the child must always be made. Assessments must also be conducted in the case of groups: for example, to determine whether or not the regulations on the use of force and the application of these regulations are in line with the principle of the best interests of the child.

In its recommendations to Norway, the UN Committee on the Rights of the Child expressed concern that "those who are responsible for safeguarding the best interests of the child do not always have the sufficient training to make a thorough assessment of what is in the best interests of the child in every single case".[11] The Committee therefore recommends that Norway continue with and strengthen its work to ensure that the best interest of the child is incorporated into all laws and legal and administrative decision-making processes.

The principle of the child's right to express his/her views and be heard in all matters affecting him/her is embodied in Article 12 of the CRC. This implies that children have the right to be heard in all legal and administrative procedures that affect them, including where there is use of force. The child must be given a say in decisions concerning them in accordance with age and maturity.

In its recommendations to Norway, the UN Committee on the Rights of the Child expressed concern that the child's right to be heard has not been completely implemented in situations where decisions or arrangements affecting the child's life are made, particularly in cases concerning the care of the child. The Committee also expresses regret that where health issues are concerned, children only have the right to be heard after the age of 12.

2.
MENTAL HEALTH CARE ESTABLISHMENTS

Mental health care establishments

The Ombudsman visited nine in-patient facilities within mental health care for children and young people and had dialogues with children, young people and personnel. The children/young people we met were between the ages of 10 and 18. The establishments were located in different parts of Norway.

We were given access to incident reports and administrative decisions on the use of force in three of the establishments we visited.

We also retrieved information from the Norwegian Patient Registry on the number of administrative decisions on the use of force involving children and young people in mental healthcare every year, since public statistics for this do not exist. To obtain further information on the Supervisory Commissions' work with children we also distributed questionnaires to all the commissions.

«The worst part was being held down. I couldn't breathe or get away."

Girl, 17

Legal backdrop

Within health services, the rights of patients, for example the rights to self-determination and participation are stipulated in the Patients' and Users' Rights Act[12], while the use of force is governed by the Mental Health Care Act[13]

Controversial regulations

The use of force within mental health care settings has been and continues to be very controversial. Calls for a revision of the legislation have long been made. In 2011, the Paulsrud Committee submitted a public report detailing how the legal protection and self-determination of patients in mental health care settings can be better safeguarded.[14] This has never been followed up in terms of changes to the law. However, the use of force against children in mental health care settings was not covered by the report since the Paulsrud Committee decided to limit the scope of their report due to a lack of resources. The Ombudsman was critical of this limitation and voiced our concerns to the Ministry of Health and Care Services in connection with the need to report on the situation for children too.

The rights of the child: a lack of visibility

The Mental Health Care Act applies to both adults and children (those under 18 years of age). The regulations do not sufficiently reflect the special needs and rights of the child. For example, the legislation does not make it clear that children represent a vulnerable group in special need of protection when it comes to personal integrity, and that children have a limited role in the decisions that are made about them. Neither have the authorities incorporated into the Act the fundamental principles of the CRC concerning the best interests of the child, or the child's rights to participation and optimal development. It cannot be taken for granted that these considerations, designed to safeguard the legal protection of the child, are common knowledge among personnel in mental health care settings. It is extremely unfortunate that the CRC's fundamental principles and the special needs of children have not been prominently included within the Mental Health Care Act.

On age thresholds in the Mental Health Care Act

The special protections afforded children/young people under the Constitution and by human rights apply to those under 18 years of age and are justified by the fact that children are in a vulnerable phase of development and thus need especial protection. This consideration is even more applicable to vulnerable groups of children in difficult situations.

Pursuant to healthcare legislation, one reaches full age and legal capacity at the age of 16.[15] This is in accordance with the CRC's principle that the child's level of self-determination should rise in line with his/her age and maturity. However, this has led to children over the age of 16 being treated like adults when it comes to use of force. There can be no doubt that children between the ages of 16 and 18 who have been placed in a mental health care setting need special protection. When children over the age of 16 are treated according to the same set of rules as adults they are not afforded the special protections to which children are entitled. For example, this entails that the prohibition of mechanical restraint that is meant to protect children against severe forms of coercion, does not apply to children over the age of 16.

For children under 16 years of age, treatment within the mental health care system is, as a rule, based on parental consent. This implies that admission is also regarded as voluntary. For children under 16, this means that in many cases any use of force by personnel after admission will be premised on parental consent. The consequence of this is that there is an insufficient requirement to weigh the child's case against the strict conditions in place for the protection of personal integrity.

However, this is not the case for all interventions involving force against children younger than 16. The interventions that always require an administrative decision are: segregation, searching rooms and property, body searches, confiscation of property and use of force.

Children between the ages of 12 and 16 can oppose admission and can then bring their case before the Supervisory Commission with their own lawyer. However, full rights as a party will not be granted.

Children under 12 years of age have no such opportunities to appeal and are thus completely at the mercy of their parents' judgement.

Pursuant to Article 12 of the CRC, a child has the right to express his/her views and to be heard, and for his/her views to be given due weight in accordance with age and maturity. Pursuant to the Children Act, the child shall be heard from the age of 7. The Patients' and Users' Act stipulates that children be allowed to express their views on matters pertaining to their own health from the age of 12. Thus, the provisions of healthcare legislation afford the child weaker participation rights than the more general regulations.

The Ombudsman is critical of the fact that the threshold for children to be heard regarding health matters is set at 12 years of age, whereas in other legislation the threshold is 7.[16] In the concluding observations from the UN Committee on the Rights of the Child, the Committee recommends that Norway continue to work towards harmonizing Norwegian law with the CRC.[17] One of the three areas highlighted by the Committee is, notably, the child's right to be heard in health matters.

The Ombudsman has, on several occasions, asked the Ministry of Health and Care Services to follow up on this, but so far the response has been that it has not been possible to prioritize this work.[18]

Summary of the legal basis for the use of force in mental health care establishments

The regulations that provide the legal basis for the use of force during stays in residential mental health care establishments are found in Chapter 4 of the Mental Health Care Act. The types of force that are permissible are stipulated in separate legal provisions. This entails that a parliamentary majority has come to a decision regarding the types of force that are acceptable within mental health care establishments in Norway. The rules are further expanded on in a separate regulation.[19]

The regulations are constructed differently and use different terminology. They appear complicated and not very accessible for the individual patient who has experienced the use of force. This is especially applicable to children and young people. The human rights legal authority requirement assumes that the regulations are accessible and comprehensible, so that an individual is able to anticipate the kind of situations in which the use of force may be employed.

The complex regulations result in children being unable to predict when force may be used or the type of force that may be used. This constitutes a threat to the child's legal protection.

Section 4-2 of the Mental Health Care Act "Protection of Personal Integrity" forms the principal basis for protection of the patient against illegal interventions. Residential stays in mental health care establishments shall, as far as possible, be organized in such a way that the patient is able to make his/her own decisions. Even though it is the parents who give their consent to the admission of children under 16 years of age, the CRC and the Children Act require that the child has a say in the decision in accordance with his/her age and maturity. Force may only be used when strictly necessary. The Act stipulates that force must be proportionate and states "...the effect of the intervention must be beneficial to the extent that it clearly outweighs the disadvantages." This is in line with the human rights requirements regarding necessity and proportionality. These fundamental conditions must form the basis of all cases involving force in accordance with the Mental Health Care Act. Below we present a brief summary of the provisions and permissible types of intervention.

Section 4-3 Segregation (the patient is kept completely or partially segregated from the rest of the establishment)

Section 4-4 Treatment without the consent of the patient (includes involuntary administered medical treatment and nutrition)

Section 4-5 Restriction of contact with outside world

Section 4-6 Inspection of rooms and possessions and bodily searches

Section 4-7 Seizure of property

Section 4-8 Use of coercive means in institutions for in-patients:

a) Mechanical coercive means which hamper the patient's freedom of movement, including belts and straps and clothing specially designed to prevent injury

b) Detention for a short period of time behind a locked or closed door without a staff member present

c) Single doses of medicines with a short-term effect for the purpose of calming or anaesthetizing the patient

d) Briefly holding the patient fast

Children in mental health care

Figures from the Norwegian Board of Health Supervision show that in 2014, approximately 55,000 children and young people received treatment within the pediatric mental health care system.

This is equivalent to 5% of the population under the age of 18. The figures show that treatment is mainly polyclinic-based, while 5% were admitted to in-patient facilities. Based on this, the number of children and young people admitted to in-patient mental health care facilities amounts to between 2500 and 3000 per year, but there are not precise figures to support this.[20]

The most common reasons for referral for children in mental healthcare are suspected depression, anxiety or ADHD.[21] In terms of children in in-patient facilities, there are no equivalent figures for the most prevalent conditions, but from what personnel told us, depression, anxiety, self-harming and risk of suicide are common. There are also many cases of eating disorders and psychoses.

There are no accurate figures detailing how many children in mental health care are receiving help from Child Welfare Services. Figures from the Norwegian Board of Health Supervision do however indicate that the percentage of children receiving assistance from Child Welfare Services is higher in establishments than it is among children in out-patient treatment.[22] One study shows that in 2005, between 20% and 30% of children admitted to pediatric mental health care wards were in contact with Child Welfare Services.[23] Ten years later, our impression is that an extremely high number of the children admitted to in-patient facilities are in unstable care situations. Many of the establishments we visited gave us feedback about this. The manager of one establishment told us that around 80% of the children were in contact with Child Welfare Services and continued "the care they get at home is either inadequate or suffocating."

The vast majority who are admitted to in-patient facilities are there on a voluntary basis, often with parental consent. For a small minority, their admission was involuntary.[24] Every year, the health authorities present statistics showing the number of administrative decisions made on the use of force in relation to adults admitted to mental health care establishments over the previous year. No equivalent figures are ever presented in relation to the number of administrative decisions on the use of force involving children and young people. Consequently, the Ombudsman contacted the Norwegian Board of Health Supervision and the Norwegian Patient Registry (NPR) and asked for a summary of administrative decisions on the use of force involving children and young people, pursuant to Chapter 4 of the Mental Health Care Act. When we received the figures, the NPR stressed that there was some uncertainty attached to whether or not the figures represented the full picture and, in view of this, advised caution when using the figures.

The figures from NPR show that in 2014 there were approximately 570 administrative decisions on the use of force involving young people between the ages of 16 and 18, while the number of administrative decisions on the use of force involving children under 16 years of age was 226. These were administrative decisions on the use of force that were taken while they were living at the establishment. For both age groups, momentary physical restraint was most prevalent. For the 16-18 age group, there were 236 administrative decisions on physical restraint. In second place came room, property and body searches, with 82 administrative decisions. The use of mechanical restraints came third (belts) with 55 administrative decisions recorded.

It is disturbing that so many administrative decisions were made concerning the use of belt restraint on young people between 16 and 18 years of age.

For one girl aged 17, ten administrative decisions were made regarding belt restraint in 2014, while another girl aged 16 was the subject of nine such decisions. This highlights that a few young people are frequently being subjected to the use of force. This is also reflected in the summary of the number of administrative decisions on momentary physical restraint: one girl aged 16 was the subject of 77 administrative decisions on this, while another experienced 62 such decisions.

For children under 16 years of age, there were 115 administrative decisions on momentary physical restraint. Next came room inspections and property and body searches (92 administrative decisions). Even though the use of mechanical restraint is not permissible for children under the age of 16, there were two administrative decisions on this in 2014. This is in contravention of the law.[25]

Children's and young people's experiences of force

To find out more about how they experience the use of force, we spoke to children and young people placed in mental health care establishments. The children we met had different experiences with the use of force. Some had experienced many different forms of force, while others only had limited experience. The majority of the children/young people had concerns about involuntary admission to the establishment. In terms of the use of force in the establishment, they were most concerned about momentary physical restraint, whether they had experienced it themselves or had witnessed others being physically restrained. They also had concerns about the house rules and being followed around.

Most of the children and young people we met held positive views about the personnel, but were also distinctly aware of the differences between the people working at the establishments. Some personnel were stricter than others, thus there were variations in the things the children/young people were allowed to do depending on who was on duty. But the majority of the children/young people stressed that establishment personnel were good at listening and talking to them.

"The most important thing is that you are treated like a person... that you're not looked down on."

Girl, 15

How do the children/ young people define "force"?

«Force is when you have to do things you don't want to do.»

«Force is being kept somewhere you don't want to be.»

«Force is being forced to eat.»

«Force is something you don't want to do, something they make you do.»

«Not having the option to leave when I want to.»

«Locked doors. I'm kind of here against my will.»

«Something that must happen.»

«Someone who's in a stronger position than you says that you have to do something even though you don't want to.»

«I think it's when you can't decide for yourself. Someone makes the decisions that you're not able to make.»

«Force is eating food.»

«Force is something you can't get away from. It doesn't have to be physical force, just hassle you can't avoid.»

Children's and young people's experiences of physical restraint

The majority of the children we spoke to had experienced momentary physical restraint. The children had different experiences with physical restraint, some felt that it had sometimes been necessary, others that it could be experienced as a violation.

One boy told us that he had been forced to the floor when he had tried to run away. Afterwards, he understood why he had been held down on the floor and "ten minutes later it was OK". He had tried to run away and the personnel were probably worried that he would hurt himself. Since he understood why this kind of force was used, he felt it was unnecessary to talk through the incident with personnel afterwards.

One girl wished the personnel had restrained her in a different, less violent way. She would have preferred them to have taken her by the shoulders and spoken calmly to her. The girl said that the personnel did not have a proper conversation with her after the incident where she was held down.

«The worst part was being held down. I couldn't breathe or get away.»

Girl, 17, restrained during insertion of a feeding tube

Another group of young people (The Mental Health Pros) express their views of the mental health care system in a previous report, stating that they too experience being subjected to physical restraint as invasive. One young person said that you quickly stop trusting the people who restrain you and that trust is not easily regained.[26] In general, the children/young people we met agreed that being restrained was easier when they understood the rationale for it. This would require that children/young people receive information beforehand, that their views are heard and that incidents are evaluated afterwards, together with the child/young person.

Witnessing the physical restraint of other children/young people

Many of the children had experienced others being subjected to physical force (momentary physical restraint) at the establishment. This had made an impression.

«I saw another girl being dragged into her room. She shouted that she didn't want to. It was awful. It was hard to watch. (...) Nobody talked to me about it afterwards.»

Girl, 15

An 11-year-old girl found it very difficult when some of the other children were physically restrained, she felt very sorry for them. She would usually withdraw into herself when she got angry. She said that she always started to cry when someone else was being physically restrained.

«I think they could have done it a bit differently. Just let them be, don't restrain them, just comfort them instead. They could take them into an empty room, and just sit and watch them. And I also think they should hold around them instead of making them lie on the floor.»

Girl, 11

This would suggest that witnessing others being subjected to physical restraint can be just as upsetting an experience as being subjected to it first-hand.

Involuntary admissions – being at the mercy of your parents

For most children under 16 years of age, admission is based on parental consent and is therefore regarded as voluntary. However, this does not mean that the children experience this as voluntary. To many of the children we met, force meant being placed in an establishment against your will.

«Force is when you're made to do something. I try to tell them that I don't want to be here but they don't listen to me.»

Girl, 11

«Force is when kids who don't want to get admitted are admitted anyway.

Girl, 14

«Force in an institution is being admitted against your will.»

Girl, 15

One personnel member told us that the majority of children under 16 years of age had been talked into admission by their parents. Most of the children did not want to be admitted but had gone along with it because it was what their parents wanted. Often it was advised by a doctor or a psychologist. Personnel spent a lot of time explaining to and persuading the children that it was important for them to be at the establishment and get help. This could explain why the majority of the children said that they did not want to be admitted but changed their minds later on.

«It was mum and dad who decided. I didn't have the heart to refuse; they get so sad and worried.»

Boy, 16

Children experience "house rules" as force

All the establishments we visited had written house rules, apart from one. All the establishments also had a fixed curfew that dictated when children had to return to their rooms in the evening. The majority of the children found this completely acceptable. Examples of other written and unwritten house rules included bans on sitting on hallway floors, closing the door while in someone else's room, lying on the sofa, talking about illness in communal areas or standing next to the toaster. There were also rules concerning time limits for visits from friends and family.

The Ombudsman believes that house rules are an important factor when addressing the use of force against children/young people. Firstly, the subject of house rules often arose during conversations with the children/young people. Many of the children/young people in establishments experience harsh restrictions in their everyday lives due to extensive house rules. Secondly, situations frequently arose in which definitions became blurred in terms of what constituted a house rule, formed part of a voluntary treatment plan, or an incident involving the use of force for which an administrative decision on the use of force is required.

Opinions about the house rules differed. Some did not bother about them, others thought the rules were reasonable, while still others felt that the rules were too numerous and too strict.

«Completely normal things are really restricted.»

Girl, 16

One common house rule involved confiscating mobile phones at bedtime. All the establishments we visited confiscated phones at either 10 pm or 11 pm, with the exception of one establishment at which the children were instead encouraged to limit their use of mobiles. Most of the residents found this unacceptable and some of them experienced it as force.

For establishments to confiscate mobile phones, an administrative decision has to be made concerning the confiscation for young people over the age of 16. For children under 16, parental consent for the confiscation is sufficient. However, during the project, we observed that the establishments rarely made an administrative decision on this regardless of whether the resident was under or over 16 years of age. A couple of personnel members admitted they were aware of "operating in a grey area" when they confiscated mobile phones at bedtime.

Having house rules in an establishment is not necessarily a bad thing. The Ombudsman sees that it may be useful to have some concrete rules to relate to where a large number of people are living together in a limited space. Furthermore, setting boundaries is part of the duty of care that arises when children/young people live together in an establishment. However, it was interesting to note that so many of the children experienced house rules as a form of coercion.

Actions that are not defined as force in legislation are defined and perceived by the children as precisely that.

Locked doors

Another issue is whether or not it is necessary to lock the doors, the extent to which this is actually assessed and whether or not children/young people are heard in this regard. Undoubtedly, restricting free movement within the establishments is a form of force. At the same time, the majority of the children have been placed on a voluntary basis and locked doors would therefore require special grounds. The children/young people were concerned about the locked doors on the wards. One girl clearly expressed that she experienced this as "claustrophobic".

«I don't like being here at the weekends. The locked front doors make me feel claustrophobic.»

Girl, 16

We visited an establishment that did not lock its doors. Normally emergency placement and assessment establishments have locked doors. At this establishment, the children could walk out if they wanted to, or climb out of the windows. The ward was located on the ground floor but the children rarely left the establishment of their own accord. Upon admission, the personnel clearly stated that even though the children had the option to leave whenever they wanted, they were encouraged not to leave the ward. Personnel stressed the importance of the children remaining inside the establishment for their own good.

It was difficult to ascertain why almost all establishments chose to lock their doors when one establishment with an open doors policy did not have any problem in terms of children/young people running away. The Ombudsman has no grounds for saying that the other establishments are misjudging the children/young people at their establishments. However, it is interesting to note that establishments that treat the same type of patients are evaluating circumstances and associated security measures in such disparate ways.

Is following coercive or part of the treatment?

Many of the children we talked to were concerned about being followed around after admission and many experienced this as a violation. Following entails personnel at the establishment maintaining constant "visual contact with the patient."[27] For example, it could involve following the child around or accompanying them into the bathroom. No separate administrative decision has to be made regarding this visual contact with the patient because it forms part of the treatment. However, many children experienced being followed around or supervised against their will as a form of coercion.

The human rights requirement concerning a clear legal basis for the use of force is based on the individual's ability to foresee the kind of situations in which force may be used. This is important both for the person being subjected to force and the person exercising that force. Personnel told us that they feel it can be difficult to distinguish between measures that are part of a treatment plan and measures in the grey area, and for which, strictly speaking, administrative decisions on the use of force should be made. This was found to be particularly problematic in relation to following a patient.

There may be good grounds to follow a child who has been admitted. He/she could be a suicide risk, or in some other way a danger to him/herself or others. Children with eating disorders are especially closely observed and monitored by personnel. In addition to close observation during mealtimes, personnel will check that they are eating according to their meal plan and will not allow them to be alone during the first 30 minutes after the meal or to go the toilet unaccompanied. This is to prevent the child/young person from vomiting the food they have eaten or exercising to burn calories.

«You don't need that much space to do a few sit-ups or other strength training exercises.

Personnel member

The children expressed that they experienced being followed around as extremely invasive.

«Not being able to go to the toilet when you want. You feel like a big part of your freedom has been taken away.»

Girl, 16

One boy told us that he had stopped going for walks because he was never allowed to go outside by himself. He could not bear to be followed so he just stopped going outside. Several children/young people also experienced repeated inspections during the night. Room doors were opened and they were searched by the personnel on duty. Although personnel tried to carry out this procedure considerately, the children/young people found the experience disturbing and uncomfortable. One boy was woken up on average four times a night by a person standing in the doorway of his room.

«They bugged me with questions like 'are you sleeping?' and 'what are you doing?'»

Boy, 17

Although the Mental Health Care Act does not require an administrative decision on following patients, it should not be assumed that this is in line with our human rights obligations.

It is clear that children experience this practice as both invasive and an infringement of their freedom. The degree of interference with the child's/young person's personal integrity indicates that a concrete assessment of the necessity of this practice is required in addition to examining whether or not it constitutes a proportionate measure for patients. This assessment must also retain the CRC's fundamental principles regarding the best interests of the child as a core consideration and ensure that the child's right to be heard is respected. For such an invasive measure, the assessment should be verifiable via supervision and opportunities to submit complaints.

Where is the system failing?

Major gaps in the knowledge platform

Comprehensive knowledge about the use of force is a key factor in preventing unnecessary force against children and young people in the mental health care system. In the project's initial phases we were unable to find a general summary of administrative decisions on the use of force against children/young people.

We also experienced a lack of knowledge in terms of how force should be employed and implemented in relation to children/young people who have been admitted to mental health care establishments.

In addition, we know very little about how children experience the use of force within the mental health care system. The majority of the people we spoke to referred to the research report "The use of force in mental health emergency response units for young people" which examined the use of force in certain mental health care establishments for children and young people.[28] In the report, the researchers stress that there is a lack of knowledge about the use of force against children in the mental health care system and recommend further investigation and research. Some experiences from the children and young people themselves are found in the report from 2014 mentioned earlier, in which a group of young people calling themselves the "Mental Health Pros" conveyed their experiences of the use of force.[29]

The Ombudsman's request to the Norwegian Patient Registry (NPR) revealed unacceptable statistics on the use of force against children and young people. As mentioned previously, NPR stressed that the figures should be used with caution due to the uncertainty connected to the quality and comprehensiveness of the administrative decisions that have been recorded. This would surely suggest that the figures reported to the healthcare authorities are not sufficiently accurate. The central health authorities must therefore not be in possession of the full picture when it comes to the scope of the use of force in the mental health care system.

The use of force against children and young people is far-reaching and can have serious consequences. Human rights therefore set requirements for authorities in terms of employing tools to counter the use of force. Sufficient expertise in the use of force is one such tool. If the use of force is not made visible, for example by making its scope common knowledge, this alone may lower levels of awareness about children being subjected to force and thus effectively conceal the reality. Significant criticism has been levelled at the use of force within mental health care as a whole[30] and there is little reason to believe that the situation for children is any better.

The Ombudsman is concerned about the lack of knowledge about the use of force against children in the mental health care system and we call for more insight into: the scope of the use of force against children, the effectiveness of the regulations, children's experiences of force and its effects on children placed in mental health care establishments. The existence of sound, up-to-date knowledge/information about how children experience the use of force and the adequacy of the regulations and their application is of vital importance for the wellbeing of children.

The Ombudsman calls on the Ministry of Health and Care Services to immediately implement measures to secure the necessary knowledge about the scope of the use of force against children in the mental health care system. The Ministry must also take the initiative in conducting further research into the use of force against children in the mental health care system to ensure that force is only used when strictly necessary.

Problematic age thresholds

The legal backdrop raises questions about the age thresholds stipulated by the Mental Health Care Act. This is particularly the case with the use of force. Children and young people are at a vulnerable stage of development and both the Constitution and the CRC stipulate that their personal integrity requires special protection. Children and young people who have been placed in a mental health care establishment are in a situation where they are especially vulnerable.

The question is whether or not the regulations are sufficiently upholding the child's/young person's right to special protection of his/her personal integrity, and whether the principles of the best interests of the child and the right to participation can be sufficiently safeguarded given that they are not discernible within the regulations. Children's and young people's experiences of involuntary admission clearly show that being at the mercy of parental authority is not as unproblematic as the formulation of the regulations would seem to suggest.

One of the problems is that young people over the age of 16 are treated like adults. Another is that the treatment of children under 16 is to a large extent based on the wishes of the parents. .

If a child and his/her parents disagree about placement in an in-patient facility, it is the parents who will have the final say. Children under 12 are also unable to appeal against admission. Children between 12 and 16 years of age may appeal, but the feedback the Ombudsman received from personnel was that they found it difficult to know how much objection there had to be before the Supervisory Commission should be contacted.

The Ombudsman is concerned about the legal protection of children and young people in the mental health care system and we believe that the Ministry of Health and Care Services should assess whether or not the age thresholds in the Mental Health Care Act are in line with the rights of the child in accordance with the CRC.

Major differences and disparate cultures

During the project, we found major differences among the various mental health care establishments for children and young people. This was in relation to how the establishments work with the children, different rules and routines, and, not least, major differences in the establishments' focus on the use of force.

In some of the establishments people felt that it was rarely necessary to use force; they worked actively and purposefully towards preventing the use of force. At other establishments, force was used more frequently. Our experience was that the frequency with which force was used was often related to the establishment's level of awareness around the issue. The Ombudsman finds it worrying that, in addition to finding different levels of awareness, we also found relatively major variations in perceptions of how the regulations should be put into practice.

Momentary physical restraint

Experiences from the project show that momentary physical restraint is the compulsory measure that is most often used.[31] Despite significant use of momentary physical restraint, there has been little debate about the kind of challenges and professional concerns that may be connected to this form of force.[32]

Momentary physical restraint may be used to prevent a child being a danger to themselves or to someone else, or causing significant material damage. It borders on cases where the aim of such restraint is care and boundary-setting, is not very invasive, and the patient offers little resistance, for example, when a child exhibits little or no resistance to being led into his/her room.[33]

Human rights require both that the force being exercised be foreseeable and that the necessity of the use of force must be judged to be strictly necessary. Personnel should therefore have a high level of awareness about the nature of momentary physical restraint. In meetings with personnel, we found that the establishments have varying definitions of momentary physical restraint. There is not always an administrative decision in place when a child is restrained. Some establishments come to administrative decisions as soon as they have to restrain a child/young person; others interpret the rules to mean that they can restrain a child/young person for a given number of minutes before an administrative decision is required.

Both through dialogues with personnel and our own access to information, we got the impression that there are varying interpretations of what is meant by "momentary physical restraint".

"Momentary" is understood to mean anything from a couple of minutes up to 20 minutes. Experiences also show that momentary physical restraint is often seen as necessary with children/young people who have eating disorders. If the child/young person refuses or is unable to feed him/herself during mealtimes, the doctor may decide to have a feeding tube inserted in the child's/young person's nose. The establishment thus comes to an administrative decision on momentary physical restraint where this is necessary in order to insert the tube. One of the use of force incident reports described an episode involving physical restraint during insertion of a feeding tube that lasted approximately 70 minutes. Another incident report showed 15 administrative decisions on momentary physical restraint concerning the same girl within a one-month period. Many of these administrative decisions were made on the same day. Figures from the Norwegian Patient Registry (NPR) showed one 16-year-old girl being subjected to restraint 150 times during the course of 2014.

The personnel we spoke to said that a number of dilemmas arise when momentary physical restraint takes place. Firstly, it is difficult to know when the restraint should be categorized as care-giving and boundary-setting and when it goes beyond that to what the law defines as force. At one establishment, a personnel member told us that they do not keep records on ordinary boundary-setting in the form of restraint because often it is the parents who restrain the child while the personnel administer treatment (feed the child via the feeding tube). Through our access to information, we found that one establishment keeps separate "boundary-setting records" that were often referred to in the administrative decision on the use of force. These records often describe what happened prior to the restraint and contain the actual assessment of whether or not other measures were attempted and deemed unsuccessful. These records were however not accessible to personnel unless they specifically requested to see them.

As previously mentioned, we sent out questionnaires to all the Supervisory Commissions in Norway. One commission pointed out that the line between "boundary-setting" and momentary physical restraint as method of enforcement can often be crossed.[34] The head of the commission wrote that this is a challenge that the commission has been monitoring. However, we know little about the extent to which the other commissions share this concern.

The dilemmas connected to physical restraint and setting boundaries are supported by research showing significant variation among pediatric mental health emergency wards within the mental health care system for young people, both in terms of scope and the type of enforcement measures employed.[35] A small number of young people were subjected to force extremely frequently, all of whom were girls who had issues related to eating disorders or self-harming.

On the basis of this, it would be natural to assume that many incidents involving force take place for which no administrative decision on the use of force is recorded.

Practices seem to vary from one establishment to another. This is not in line with the requirement for predictability and indicates that assessment of what is deemed as necessary varies too widely. It is also important that both the nature of the previously tried measures and the assessment of what is necessary and proportionate are stated in the administrative decisions, so that these can be reviewed by the supervisory authorities.

The Ombudsman is concerned that the variations in the use of force could signal excessive use of force against children/young people in some establishments and that variable practice may indicate that the legal protection of children is not being adequately upheld. It is necessary to continuously monitor the underlying reasons for the use of force in establishments and to ensure that personnel are well aware of when they are allowed to use force and when they are not. The regulations' definition of momentary physical restraint may be problematic when seen in the context of special protection of the child's personal integrity. The Ombudsman therefore deems it necessary that the health authorities specify the difference between momentary physical restraint and setting boundaries.

What needs to happen to minimise the use of force?

The Ombudsman was keen to identify the characteristics of an establishment that employs minimal force. Personnel at one of the establishments where force was not often used told us that the most important factor is probably the employees, that they have enough time and are confident in their position, something which in turn leads to less frequent use of force. This, in addition to safe procedures, means that they are always two steps ahead and can more easily avoid the kind of situations that can trigger the use of force.

Knowledge about children and professional confidence

Although the regulations allow for significant doubt and variations in practice, we saw some evidence of competent personnel, professional confidence and awareness around the use of force compensating for this. In the establishments that allow room for discussion, evaluation and training on different situations where force may need to be used, this leads to a level of assurance that is preventative in itself. Both the children/young people and the personnel we met agreed that adults having time to get to know the children/young people and talk to them is a key factor in minimizing the use of force. Personnel told us that adequate resources were essential, both in terms of the number of employees, qualified personnel and opportunities for training in the use of force and preventative methods. These findings concur with research on adults in mental health care settings, which among other things shows that guidance, communal reflection and working on attitudes and skills can have a preventative effect on the use of force.[36]

The Ombudsman sees a lot of potential in learning from the experiences of establishments that have a heightened awareness of how they use of force so that other establishments can follow suit.

The positive experiences found in establishments with a high-level of awareness around the use of force against children/young people can be collated and made more accessible. It would be useful to create a handbook on how establishments can work preventatively in relation to the use of force against children/young people.

Good communication with the children

Article 12 of the CRC states that the child has the right to be heard in matters affecting him/her. Knowledge about how the child experiences the situation will be instrumental in finding the most appropriate solution.

One establishment we visited usually tried to talk to the children/young people prior to their admission. This conversation, helped to prepare the child/young person for coming to the establishment. In the case of planned admissions, the establishment's personnel also tried to visit the child/young person in his/her home environment. The personnel felt that such preparation could help the child/young person understand why he/she was being admitted and thereby prevent resistance.

We also witnessed that breaching the house rules can lead to situations that escalate to the point where personnel conclude that the use of force is necessary. We find this alarming. Two establishments we spoke to have done away with written house rules precisely for this reason.

> *«We had house rules with umpteen points but after a while there was a rule for everything. It turned into a vicious circle because it led to the use of force for breaking the house rules.»*
>
> **Member of personnel at one of the establishments**

The establishment's management and employees had in this case worked to cut down on the use of force. This was probably the reason personnel noticed this negative development and discontinued the practice of observing written rules. The other establishment we visited got rid of their house rules altogether. Instead of using time on boundaries and rules, the establishment concentrated on giving each child his/her own personally customized treatment plan. The parents were also included in the treatment plan along with the child. Taken as a whole, this led to a 90% reduction in the use of force.[37]

Very few of the children we spoke to had experienced having any say in the house rules, something they said they really wanted. Involving children/young people in formulating the rules they have to follow can prevent the use of force. When they get more information about what happens inside an establishment and are allowed to influence or change the house rules, this in itself may contribute to preventing the use of force. Being allowed to participate in working out the rules also lowers levels of frustration about the rules. In this way, children/young people are able to experience a higher level of involvement in shaping their everyday lives.

Opportunity to influence personal treatment plans can prevent the use of force

All patients must have a treatment plan that describes how their treatment will take place. During our meetings with children/young people we asked them if the treatment plan included their wishes in relation to what they would like personnel to do when a child/young person is having a difficult time. We asked this because we thought it might tell us something about the establishment's preventative efforts in terms of the use of force on an individual level.

Many of the children told us that they had spoken to their therapist about how they would like difficult situations to be resolved and therefore believed that personnel knew exactly what they needed in the event of a difficult situation. However, this was not the case for all the young people. Where the establishment included this information in their treatment plans, it was not formalized and was not something any of the children had been involved in formulating.

The children we spoke to had generally had little to no influence on their own treatment. Several of them would have liked a say on their own treatment. We are not excluding the possibility that personnel may have been under the impression that a child had been given a chance to express his/her views but that the child him/herself had not experienced things that way. The Ombudsman believes that it is important to ensure that Article 12 of the CRC becomes incorporated into the establishments' working practices so that the use of force may be prevented through the participation of the children/young people. In that event, one of the measures could be to make sure that the child him/herself is allowed to participate in formulating his/her own treatment plan, particularly in relation to the issue of how the establishment should manage any difficult situations involving the child/young person.

Monitoring the use of force in mental health care establishments

Human rights set requirements for effectively monitoring that the conditions for the use of force are being adhered to in practice. The supervisory authority must have access to the information required to be able to uncover irregularities and have the means to put a stop to any illegal practices. The supervisory system must be accessible to the individual. This implies a requirement for an efficient supervisory and complaints system.

Supervisory and complaints systems in mental health care

It is the duty of the Supervisory Commission to monitor the welfare of patients. The commission may take on cases on its own initiative or in connection with a complaint by a patient or his/her next-of-kin. Each commission must consist of a legal advisor, a doctor and two other members representing the patient's side. The Supervisory Commissions must have access to all information they deem necessary and visit in-patient facilities at least once a month and other establishments at least four times a year.[38]

During inspections, the commissions review the establishments' use of force incident reports but can also decide if they need more detailed information, for example, administrative decisions on the use of force. The establishments' reporting procedures for the use of force are extremely brief while records of actual administrative decisions are more detailed. The patient or his/her next-of-kin may appeal to the Supervisory Commission against administrative decisions.

The regulations do not include any special rules for children and young people. It is up to the Supervisory Commissions themselves to decide whether or not they will talk to the children.

«The Supervisory Commissions see the children as small adults.»

Employee

When the Ombudsman sent out questionnaires to all of Norway's 52 Supervisory Commissions, 34 Supervisory Commissions provided some feedback, while 19 answered all the questions in the questionnaire.[39]

The majority of the Supervisory Commissions that responded said that they tried to talk to all the children who were admitted regardless of whether or not they had submitted a complaint. Three Commissions stated that they only talked to children who were admitted after their last visit, or where the child/young person had complained about different administrative decisions related to the use of force. Almost half the respondents talked to children under the age of 12, while the other half answered that they only talked to children under 12 when they wanted to make a complaint (despite the fact that children under 12 do not have the right to submit complaints).

Most of the children we met had received information about the Supervisory Commission but we also met several children who had not heard about the Commission prior to speaking to us. In the questionnaire, half the Supervisory Commissions answered that children received sufficient information about the Supervisory Commission.

«...there should be informational material designed for children and young people, the Supervisory Commission and its responsibilities and work tasks are not necessarily easily accessible for most of them.

Head of one of the Supervisory Commissions

During the project, we saw variations in the levels of involvement of the Supervisory Commissions.

«The Supervisory Commission does not talk to the children on its own initiative. The Commission is here for 10 minutes and then they leave. They could quite easily have been more active but they trust us.»

Personnel member, in-patient unit

Few complaints from children/young people

During the Ombudsman's investigation, it became evident that very few children and young people submit complaints about administrative decisions on the use of force. This was also highlighted by the Supervisory Commissions.[40] There could be many reasons for the low number of complaints. It could be due to a lack of information about opportunities to complain, that the complaints procedure seems unfamiliar and inaccessible, or that children and young people do not believe there is any point in complaining. As previously mentioned, we also met personnel who found it difficult to know how many objections a child/young person had to raise before the Supervisory Commission should be contacted. The head of one of the commissions wrote that there is a high threshold for complaints:

«There are few complaints. This is probably due to a number of factors (...). Many probably complain in real terms (show resistance/opposition) but this never reaches the Supervisory Commission in the form of information that there is an actual complaint about something.»

During visits to the establishments, we met individual children/young people who had complained to the Supervisory Commission about their admissions. These children/young people were all extremely satisfied with the meetings they had, during which they were listened and attended to.

The Ombudsman sees it as encouraging that the children/young people who had complained to the Supervisory Commission were satisfied with the way in which they had been treated and taken care of. Although this did not involve a large number of children/young people, it nonetheless indicates that this arrangement is designed to attend to the needs of the children/young people. There should therefore be grounds for putting additional measures in place in terms of opportunities for children and young people to complain to the Supervisory Commission, for example via additional information and clearer guidance as to when opposition and protest constitute grounds for contacting the Commission.

Use of force incident reports do not supply adequate information

The Ombudsman had access to use of force incident reports and administrative decisions on the use of force in three establishments to ascertain how they record administrative decisions and to be able to compare these with the recording of use of force incident reports and administrative decisions within Child Welfare Services. Furthermore, reviewing the incident reports and administrative decisions was important in ascertaining the nature of other measures that were tried prior to the incident involving the use of force, and the extent to which the child had the opportunity to express his/her views on the use of force.

The necessity requirement implies that an assessment of proportionality must be made in terms of the needs of society and the invasiveness of the measure for the individual.

The use of force is not permissible if the same result may be achieved through other, less invasive means.

Establishments within mental health care are obligated to record administrative decisions on compulsory examinations and treatments, enforcement measures, and segregation in special incident reports. There is however no formal requirement in terms of how the Supervisory Commissions have to review these records.[41] On reviewing use of force incident reports, it is natural for the Supervisory Commission to check that the information stated in the records is in accordance with the administrative decision reached but no requirement has been set in relation to this.

Based on our access to the information, it would appear that the establishments are relatively conscientious in terms of recording incident reports and administrative decisions.

However, the content of the incident reports on the use of force that the Ombudsman reviewed was extremely brief and did not provide an adequate basis to assess the necessity of the use of force. The administrative decisions were generally standard administrative decisions in which the conditions were repeated, often without a description of the situation or the extent to which other measures had been tried and deemed unsatisfactory. The Supervisory Commission will find it difficult to assemble a complete picture of the situation from these records. It is possible that more detailed descriptions of situations are to be found in the children's personal records where administrative decisions are also logged but the Supervisory Commission does not have access to these records unless they specifically request to see them.

The Ombudsman believes that questions should be asked about several factors in relation to the supervisory authority's capability to effectively monitor the legal protection of children with regard to the use of force. Firstly, it is alarming that some of the children have no knowledge of the Supervisory Commission and how they can submit a complaint to it. Secondly, it gives cause for concern that the Supervisory Commissions hardly speak to the children themselves, especially when so few children submit complaints about administrative decisions. And not least, questions should be asked about the feasibility of the Supervisory Commissions reviewing the establishment's assessment of the necessity of the use of force, especially in the light of the limited information that is to be found in the use of force incident reports.

The Supervisory Commissions' work with children/young people cannot be deemed to satisfy the human rights requirement to effectively ensure that the use of force only takes place when strictly necessary.

The children's/young people's voices are absent

The Ombudsman's impression after their review of the information is that the child/young person has severely limited opportunities to express his/her views and/or experience of situations. The voices of children/young people were completely absent in the material we reviewed. Contrary to the use of force incident reports from residential child care establishments, neither the incident reports nor the administrative decisions were formulated to allow the child/young person to provide his/her version of the events that took place.

The incident reports only state the legal bases used and use keywords to describe the incident. In the administrative decisions, which are supposed to provide a more detailed description of the incident, the wording and the terms used are complex. If the child were to be given the opportunity to comment on the content of an administrative decision, it would be difficult for him/her to understand both the conditions and the basis for the administrative decision. It has simply not been designed to allow the child to be heard.

Example of grounds for administrative decision on the use of force pursuant to § 4-4 (compulsory treatment) and § 4-8 (momentary physical restraint): "Long-term state of severe restrictive anorexia and emotional self-regulation issues, ongoing and apparent pronounced ambivalence".

Some establishments use a standard form where they have to tick off that the patient and next-of-kin have been informed about the complaints procedure. But there is no space for the child to agree or disagree with how information has been presented, state his/her interpretation of the situation or tick a box to indicate that he/she has been informed about the complaints procedure and may wish to proceed by submitting a complaint to the Supervisory Commission.

The Ombudsman believes the supervisory system does not uphold the child's right to be heard and that it would be correct to say that the child's right to be heard is being disregarded within mental health care for children and young people. We therefore urge the Ministry of Health and Care Services to immediately ensure that the Supervisory Commissions uphold the child's right to be heard. New templates for use of force incident reports must also be created, including a separate section that safeguards the child's right to be heard.

In addition, the human rights requirement for efficient monitoring of the use of force against children must be met. We believe that if the CRC's fundamental principles on the best interest of the child, the child's right to full development and the child's right to receive information and be heard were to be made visible within the regulations, the legal protection of the child would be better preserved.

Challenges linked to treatment outside establishments

In line with the general societal trend towards reducing the use of institutions, the preferred policy within mental health care is for fewer children to be admitted to in-patient facilities and instead receive follow-up treatment at polyclinics or via mobile mental health services.[42] An example of a mobile mental health service could be where a child registered at an in-patient facility receives follow-up supervision from personnel concerning the child's daily tasks such as school, leisure time activities, etc. These are often called "flexible arena measures". The challenge associated with flexible arena measures is akin to the challenge for foster homes: unclear legal boundaries in terms of permissible actions in situations where force is necessary.

The regulations on the use of force only apply to establishments. Force exercised as part of measures outside an establishment is therefore based on criminal law considerations concerning self-defence or the principle of necessity, or where parental consent has been given. The problem with exercising force on the basis of parental consent has been discussed above. In relation to the regulations on self-defence and the principle of necessity, these do not provide a legal basis for the use of force but dictate that where there is a danger to life or health, one may be exempted from punishment for an act that would otherwise have been punishable.

The Ombudsman visited in-patient facilities that practised flexible arena measures. The personnel were aware that the regulations concerning the use of force only applied inside the establishment and recognized the challenges linked to this. The issue had been discussed with the Supervisory Commission and had led to any use of force outside the in-patient facility – often momentary physical restraint – being recorded. This was done in an effort to preserve the legal protection of the child despite insufficient regulation.

Many of the Supervisory Commissions blamed the problems linked to the use of force outside establishments on the use of flexible arena measures. The Supervisory Commissions have no formal role as a complaints body or supervisory authority for children receiving flexible arena services at home. Nevertheless, children are still being subjected to the types of force for which records would have been created inside an establishment..

«It is difficult to have full oversight because some uses of force aren't regulated anywhere. There is therefore a relatively high chance that there are hidden statistics in relation to the use of force outside in-patient facilities..»

Head of a Supervisory Commission

«...in relation to the use of force without legal authority, there is no complaints procedure (beyond the option to appeal against unwarranted treatment, but that's really complicated for children and young people).»

Head of a Supervisory Commission

The Supervisory Commission's role in treatment outside the establishment can at best be described as unclear. The lack of oversight and the child's lack of opportunities to complain about the use of force while using flexible arena services endanger the legal protection of children in mental health care.

This is also illustrated in a memo from January 2012 requested by the Norwegian Directorate of Health.[43] The Directorate forwarded the memo to the Ministry of Health and Care Services and recommended that the Ministry implement measures to amend the regulations. The Ministry of Health and Care Services have not responded to this request.[44] The issue was again raised with the Ministry in an exchange of letters in 2013.[45] On 17 June 2014, the Ministry of Health and Care Services replied in a letter that they had discussed the issue in a meeting with the Directorate and had asked the Directorate to carry out a more detailed assessment of the options for the use of force that are available within the current regulations. This was the Ministry's only involvement in the matter.

In the light of the legislators' prohibition of the use of force against adults in similar situations,[46] it would be inconceivable for children and young people not to be entitled to the same level of protection. We believe that the Ministry of Health and Care Services' lack of involvement in the matter, despite well justified requests to review the regulations, should be deemed a breach of the rights of the child, and that an investigation into regulations and practice in this area should be conducted. The Ombudsman is not in principle against all forms of force within this type of measure but we believe this area has to be regulated and concur with the human rights requirement concerning legal authority for the use of force.

A special note on schools

During the project period, the Ombudsman had meetings with various parties during which we heard accounts of the extensive use of force in schools. We feel compelled to mention such a serious state of affairs. Many of the children were also concerned about this issue. One boy we met, who was receiving flexible arena services, told us that the school had used a lot of force, especially physical restraint, against him.

Aside from situations involving unambiguous self-defence, exercising force in schools is not permissible. Children, young people and establishment personnel told the Ombudsman about severe and extensive force being exercised against individual children in schools, including segregation and extensive use of physical restraint. The use of force sometimes goes on for long periods of time. Typically it will involve a child with major challenges, with the school trying to teach the child the curriculum and offer educational facilities without allocating the required resources, so that segregation and physical restraint end up becoming part of the monitoring regime. The individual child experiencing this is in an extremely vulnerable position, and this force is often exercised without a clear therapeutic plan or monitoring. The Ombudsman believes that the seriousness of this information requires us to ask the responsible authorities to begin working towards a closer examination of the use of force in schools.

Flexible arena measures and the use of force in schools are two areas within which situations may arise that necessitate the use of unauthorized force. The Ombudsman believes that one must ensure that the Mental Health Care Act upholds the legal protection of the child within the context of current practice, where treatment and follow-up services outside of the establishment are more commonplace.

Conclusion and recommendations

The regulations on the use of force in mental health care do not reflect the special rights and needs of the child to any significant degree. It is extremely unfortunate that the CRC's fundamental principles and the special needs of the child have not been rendered visible within the regulations. The Ombudsman believes that the age thresholds in the Mental Health Care Act are not in line with the rights of the child pursuant to the CRC.

We are also concerned about the lack of knowledge about the use of force against children in mental health care and call for a higher level of awareness around the use of force against children/young people.

Although the regulations allow for significant doubt and variations in practice, we saw some evidence of competent personnel, professional confidence and awareness around the use of force compensating for this. We have witnessed significant differences between the various establishments in relation to how they use force, the personnel's understanding of the regulations, the level of focus on preventative work and how short-term physical restraint is being defined.

Good communication with the children is decisive in preventing the use of force. The children themselves want to be involved in, amongst other things, developing the house rules, contributing to their own treatment plans and coming up with suggestions for how difficult situations should be managed. The Ombudsman believes that current practice within mental health care does not guarantee the human rights requirement for effective monitoring of the use of force against children. In addition, the supervisory system fails to uphold the child's right to be heard.

The Ombudsman's Recommendations

The Ministry of Health and Care Services must ensure that:

- **the legal framework for mental health care for children and young people is revised and developed with a view to the special needs of children and their right to protection**
- **the CRC's fundamental principles are made visible within the regulations**
- **the use of force outside establishments is investigated separately**
- **the required knowledge and expertise regarding the scope of force against children is in place and further research is conducted on the use of force against children in mental health care settings**
- **a handbook on preventative measures in relation to the use of force is created**
- **new templates are developed for use of force incident reports that will ensure the child's right to be heard**
- **informational material aimed at children and explaining complaint procedures and the rights of the child in this process is created and disseminated**

3.
RESIDENTIAL CHILD CARE ESTABLISHMENTS

Residential Child Care Establishments

The Ombudsman visited five residential child care establishments where we had dialogues with children/young people and personnel. The children/young people we met were aged between 14 and 18. We visited one residential child care establishment where children are placed due to conditions in their home environment, one youth care home, one home for children with behavioural problems, one commune, and an emergency placement and assessment establishment. The establishments are located in different parts of Norway. Most of the children we met had experienced living in other establishments.

In addition, we exercised our right of access and requested access to use of force incident reports, administrative decisions on the use of force and associated complaints. We also met with three County Governors in different parts of the country, and spoke to researchers, service user organisations and professionals, who gave us their feedback on the issue. Taken as a whole, this material has expanded the knowledge and overview we had gained from visiting the establishments.

«I don't think it's OK that they can put me in an arm lock.»

Boy, 7

Legal backdrop

The special rights of children in the child welfare services are laid out in the Child Welfare Act. The purpose of the Act is to ensure that children receive adequate care and grow up in a safe environment. The regulations concerning the legal position of a child/young person in the child welfare system have, in recent decades, gone through an essential overhaul and current regulations have a completely different level of awareness of the legal protection of the child than was previously the case.

The Child Welfare Act applies to everyone under the age of 18, and in some cases up to the age of 23. The principle of the best interests of the child has been directly incorporated into the Act and must be the guiding principle for all actions taken by Child Welfare Services. The principle of the child's right to be heard has also been incorporated into the Act and must be taken into account in all decisions made by Child Welfare Services, including within establishments.[47] Child Welfare Act's point of departure is that the municipality and the parents are the parties to the case. However, the child has the right to be a party in a case from the age of 15. In cases involving involuntary placement on the basis of the child's behaviour, the child must always be a party to the case.

Child Welfare Services can come to an administrative decision on placement outside the home on a number of different grounds. The placement may take place voluntarily or involuntarily in relation to the parents and/or the child. The background for the placement may be the child's/young person's care situation or his/her behaviour.

Summary of the legal basis for the use of force in residential child care establishments

The legal basis for the use of force against children living in a residential child care establishment is found in the § 5-9 of the Child Welfare Act relating to rights during a stay in an establishment. The provision ratifies the child's right to self-determination and freedom of movement and asserts that compulsory medication, physical punishment, segregation and the use of mechanical restraints (e.g. belts) are not permissible. Aside from this, the Ministry is given the authority to stipulate additional rules for the use of force in regulations. Detailed regulations governing the use of force in residential child care establishments were issued in: "Regulations concerning rights and the use of force during stays in residential child care establishments (Rights Regulations)."[48]

The human rights requirement regarding legal bases presupposes that permissible types of force should be apparent from the Act itself. The justification that the use of force is so invasive for the individual that the onus should be on the legislator to directly address what types of force should be allowed, must be given significant weight wherever a child/young person is subjected to force. Accordingly, questions may be asked about whether the provisions in the Rights Regulations should form part of the Child Welfare Act. Using force against children is an intervention that can result in serious violations involving especially vulnerable individuals. This requires that Parliament itself should assess the issue of the types of force that should be permissible.

The Rights Regulations stipulate that the purpose of the stay is to ensure the adequate care, safety and development of the child/young person. Residents must be treated with respect for their personal integrity and the preservation of their legal protection.[49] The regulations appear easy to understand and ensure the predictability of the use of force. The fundamental human rights requirement regarding the necessity of the use of force is reflected in Section 12, where it is asserted that force may not be used unless it is necessary and that other measures must have been tried first.

The premise is that personnel at a residential child care establishment are not allowed to use any form of physical force or coercion on children in an establishment.

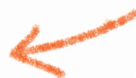
Section 13 of the Rights Regulations stipulates that force may nonetheless be used where it is clearly necessary in order to provide adequate care, or out of consideration for the safety and wellbeing of others in the establishment. We have presented a brief summary (below) of the permissible forms of force.

§ 14 Use of force in dangerous situations, physical coercion and emergency segregation (referred to as "isolation")
§ 15 Bodily searches
§ 16 Searching rooms and property
§ 17 Confiscation, destruction and transference of property to the police
§ 18 Monitoring of correspondence
§ 19 Voluntary urine testing
§ 20 Returning a child to an establishment after an escape attempt

Special rules for children/young people placed in an establishment due to behavioural issues:
§ 22 Restrictions on movement outside the grounds of the establishment (limited freedom of movement)
§ 23 Restrictions on visits to the establishment
§ 24 Monitoring electronic communication devices
§ 25 Involuntary urine testing

Children and Child Welfare Services

As of 31.12.13, 1246 children were living in residential child care establishments in Norway.[50]



There are different kinds of child care establishments. Emergency placement and assessment establishments are designed for children/young people who need help from Child Welfare Services outside the home at a moment's notice. Often, various crises trigger such placements. Children are not meant to live in establishments for long periods and the goal is to identify the best solution for the child in the long run. There are also residential child care establishments in which children/young people live for longer periods of time. These establishments are either for children/young people with serious behavioural problems or those who, for different reasons, are not able to live at home or in foster homes.

There are different reasons why children/young people live in residential child care establishments. The reason for the placement will be significant in terms of the rules and the types of force that the child/young person may be subjected to when he/she comes to live in an establishment. There is expanded access to the use of force in relation to children who have been placed on the grounds of their behaviour (see the provisions on the previous page).

Every time a child is subjected to force an incident report describing the situation must be submitted.[51] The number of use of force incident reports has risen in recent years. Some children in residential child care establishments are subjected to a lot of force, while others are not subjected to any. The most common interventions involving force are the use of force in dangerous situations, taking urine samples and searching rooms and property. It is hard to identify the reason for the rise in the number of use of force incident reports. It could be to do with changes in routines, better awareness of the conditions for the use of force and the requirements for documentation, or perhaps the incidence of the use of force has simply increased.

When addressing the use of force, specifically in terms of how one should work preventatively against the use of force in establishments, an important factor is knowledge of the child's background. Both in relation to knowing what kind of help they need but also how the establishment should approach the child/young person as part of its work on preventative measures.

We met different children who came from different family backgrounds and whose needs varied. As is the case in many other arenas through which children pass, residential child care establishments have a multifaceted picture of who the child/young person is. The majority of children receive help from Child Welfare Services due to a lack of care in the home. This could entail the child being subjected to violence or witnessing violence, deficient parenting skills, high levels of conflict in the home, drug or alcohol abuse, or parents who suffer from mental health conditions.[52]

For many children force, and particularly physical coercion, is experienced as frightening and in some cases as another violation. Against this kind of backdrop, the Ombudsman believes, a sharper focus on the use of force in residential child care establishments is required.

Children's and young people's experiences of force

Children's experiences with the use of force formed the core of this project. Amongst other things, it was important to learn how children define the word "force".

«Being held down on the floor, which annoys me, prison, being forced to do something you don't want to do, being locked inside.»

Girl, 16

«Urine samples, getting up early in the morning, routines, everything is forced. The whole place is forced.»

Girl, 17

«Force is hellish.»

Boy, 16

«They force our moods here too. For example, if I'm grumpy one day, they'll take a urine sample, because they think something's wrong.»

Girl, 16

«Being locked inside - it's irritating.»

Boy, 16

«When someone in a more powerful position than you does something you don't want them to do.»

Girl, 14

The children we met had different experiences. Some of them had only had negative experiences of force, others did not have any specific experiences of having been subjected to force, while still others made a distinction between force that was necessary and force that could have been managed differently. All the children mentioned that sometimes force could be necessary. Most of them felt that force can be used in a positive way. For example, if a child attempts to jump out of a window, tries to escape or take drugs or alcohol. The children/young people said that in those situations it was right for personnel to use force. One girl described necessary force in connection with the time she tried to escape from an establishment:

«I was subjected to force once when I tried to run away. A personnel member ran after me and held me back. I kicked and he held me down on the ground until I calmed down. It had to be done.»

Girl, 15

The children were very aware of which establishments were good to live in and which were not. This was often connected to the scope of the use of force but also with how the personnel behaved and the extent to which the children felt taken care of and involved.

One girl told us that the most important thing for her about living in an establishment was to feel at home. The children also told us how important it was to them to live in a place

«I just want to feel at home.»

Girl, 16

where the adults cared about them and had time for them, a place they felt good about. The personnel told us the same thing. Research shows that when establishments cannot be associated with a "normal" home, this can be due in part to the implementation of multiple interventions involving force and how these affect relationships between the personnel and the children.[53]

Children are in a vulnerable phase of development and are therefore entitled to special protection. Force may only be used where it is strictly necessary and the best interests of the child must be a fundamental consideration. Children in Child Welfare Services have in addition a history that may make them especially vulnerable, which is an important factor in assessing whether force is proportionate in relation to the individual child/young person. In this context, it is essential to take seriously the children's/young people's experiences of some of the most invasive interventions. Next, we describe the children's experiences of various interventions involving force.

Searches

The children we met told us that being searched felt especially invasive; the girls in particular were concerned about how it felt to be subjected to body searches.

«Nobody told me that I would have to undress and take a shower while two personnel members looked on. They searched my things and I had to bend down and cough. It was really embarrassing.»

Girl, 17

Several girls told us that the body searches upon their arrival at the establishment would have felt less like a violation if they had been notified in advance that they were going to be searched. Our findings concur with a study that shows that body searches, involving the removal of clothes and the taking of urine samples under the observation of personnel, are experienced as difficult and violating for young people.[54]

Force in dangerous situations

Force in dangerous situations entails the child/young person being subjected to physical force. It often involves different methods of being held back or kept physically still, which can entail the child being held down on the ground while the adult sits astride them holding their arms tightly. The children/young people we met during the project had multiple experiences of the physical use of force.

«I've been held down on the ground a couple of times. I was being violent so I don't know if the personnel could have done anything else. But it was kind of wrong that they did it.»

Girl, 16

One 16-year-old boy, who was carried from the establishment's lounge area to his room, described his experience:

«It was a bit uncomfortable but they have to do their job. I always knew that it was going to happen.»

Another boy we met found it frightening and violating to be restrained or held down on the ground. He described a situation where he was held down on the ground:

«There was one time I had to puke because I was so scared. I'm a human being after all.»

Boy, 16

Some of the children also talked about how difficult it sometimes was when the adults used physical force in different ways, especially in ways that caused pain.

«Lots of them use force wrongly and in nasty ways. X is the strongest. He is strong when he uses force. He doesn't understand how serious force is.»

Boy, 16

For many children, physical restraint can be frightening and feel like a violation. A lot of children equate the use of physical force to being subjected to violence. This was also seen in a study that showed that young people experience feelings of fear and insecurity when subjected to force in dangerous situations.[55]

Witnessing physical force

Many of the children we spoke to had seen other residents at the establishment being subjected to physical force. They told us that it was a frightening thing to see.

«She smashed the mirror. I've never seen anyone freak out like that. Seriously, I got scared. I didn't know people could get so angry.»

Girl, 15

This girl experienced the whole situation as frightening, both seeing another resident get so angry and a member of personnel having to intervene with physical force. Some of the young people experienced physical force being used on others as "normal" because they were used to violence:

«I don't think it was difficult to see others being subjected to force. I'm used to violence. It's normal in my homeland.»

Boy, 16

«I've seen others being held down on the ground. It was OK. It was normal to me. Violence was normal to me.»

Girl, 17

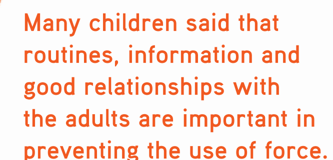
The children's experiences signal the importance of recognizing that children/young people who witness other residents being subjected to force, particularly physical force, may need some follow-up after the event.

Good communication

Many of the children/young people were focused on the necessity for personnel to treat all the residents equally, and where they fail to do so, to provide an explanation. We had feedback from the children/young people that it was difficult to live in establishments where there were major variations in the attitudes of the personnel to the use of force. It is also difficult if personnel treat the children/young people differently.

«If someone has done something, and someone else does the same thing, the first person might end up getting put in segregation and the other one won't.»

Boy, 15



Many children said that routines, information and good relationships with the adults are important in preventing the use of force.

Knowing the establishment's routines, and the rights the children/young people have, contributes to a better understanding of daily life at the establishment and lowers frustration levels among the children/young people.

Similar to children/young people in mental health care, children/young people in residential child care establishments are also concerned about house rules. They would like to be able to have a say about the house rules but this only happens to varying degrees. Examples of where the children may have a say include bedtimes and the areas and times within the establishment where mobile phones may be used.

Access to use of force incident reports and complaints

The Ombudsman used its right of access to information to gain further insight into record keeping in relation to incidents involving the use of force and the associated subsequent processing of complaints. Our review focused on the use of physical force pursuant to Section 14 of the Rights Regulations regarding the use of force in dangerous situations. There are many reasons for this. First and foremost, children experience physical force as extremely invasive. Secondly, a complicated balancing act is required between deciding that force was strictly necessary and the preventative measures that should have been tried first. At the same time, this is one of the most frequently cited legal bases.

Force must not be used in excess of the level necessary to achieve the goal. Strict requirements must be set for the use of physical force particularly in terms of proportionality between the level of risk present and the level of force used. During our review of the information we focused on gaining a deeper insight into residential child care establishments' interpretations of Section 14 of the Rights Regulations, the extent to which the voices of children are reflected in the incident reports and how the County Governors process the complaints they receive.

Throughout our review of the information we attempted to find the answers to two questions in particular:

1. Do the incident reports reflect the provisions in Section 14 regarding the use of force in dangerous situations?

2. In what ways are the children involved?

Variations in how the establishments complete incident reports

To find out whether or not the incident reports reflect the requirements in section 14 of the Rights Regulations, amongst other things we looked at the extent to which sufficient grounds were stated to justify the necessity to use force in the situation described. In addition, we reviewed whether the establishments adequately described the other measures that had been tried prior to the incident, in order to evaluate whether the requirements of the regulations had been met.

On the basis of the incident reports alone, it was difficult to ascertain whether the force that was exercised had actually been necessary. The incident reports seldom contained descriptions of other preventative measures that had been attempted.

The establishments completed use of force incident reports in different ways. There is a requirement that other measures must be tried or evaluated and found ineffective. A small number of establishments adequately and clearly described the other measures that had been attempted prior to the incident that involved the use of force. Other establishments did not provide such good descriptions of the other measures tried and it was therefore difficult to assess whether the use of force in the situation had actually been necessary. Several incident reports only described the situation from the moment the use of force was deemed necessary, after which the use of force itself was only relatively briefly described.

In some cases, the comments of the children/young people conveyed that they would have preferred it if personnel had described the events just prior to the intervention involving force. The children/young people felt that "freezing" the description of the situation at the moment when the intervention was in the process of being carried out did not allow an accurate account of the sequence of events. According to their comments, important information was not being conveyed. In addition, some of the children also expressed the opinion that personnel had gone further than necessary, thus indicating that the requirement for proportionality had not been met.

Breaking the rules – a trigger to use force?

In the use of force incident reports, the catalyst was, seemingly without exception, either a boundary-setting situation or a situation in which the child/young person posed a danger to him/herself or others.

Our review of the information showed that Section 14-type situations frequently start off as normal boundary-setting, often connected to the house rules of the establishment. For example, it could revolve around the fact that there are rules in place governing bedtime. Such situations can often be challenging for children/young people, and set specific requirements in terms of the communication between personnel and children/young people.

Our access to the information gave us insight into the necessity for establishments to be given instruction and regular training in such "boundary-setting situations".

This could involve training in different specific situations that personnel may encounter. How can personnel prevent a difficult situation escalating to the point where it becomes necessary to use force?

It is also important for residents in establishments to be involved in evaluating and influencing the house rules. It is easier to accept rules that one has played a part in creating. The children/young people we spoke to were concerned about this. They had experienced varying degrees of opportunity to influence the house rules. Being part of influencing the rules at an establishment is instrumental in terms of the child's/young person's sense of agency over his/her own daily life. The Ombudsman believes that if children/young people were allowed to be more involved in influencing and changing house rules, this may lead to a greater sense of ownership over the rules and would have a conflict-reducing effect.

Children who are subjected to force often have mental health problems

Some establishments use force more frequently than others. Our review of the information revealed, rather surprisingly, that force at these establishments is used on a minority of children/young people. Most commonly this means one to three children were being subjected to the extensive use of force. These children often had mental health problems and/or conditions. Self-harming, suicidal tendencies and severe behavioural problems seemed to be recurring factors among these children. In other words, where one establishment frequently uses force, this does not necessarily mean that a high number of children in the establishments are being subjected to force. This extensive use of force against certain children can often be accounted for by the risk to the child's/young person's own life or the lives of others. It is nevertheless relevant to question whether or not other measures/services could have led to a reduction in the use of force against these children/young people.

There are some statistics and research studies on children/young people and the use of force in residential child care. However, no aggregate survey exists of how many children/young people have been subjected to force. We know the number of administrative decisions on the use of force but not the number of children these decisions applied to. There is a gap in the statistics here. It is of course important to know how many children/young people are being subjected to force, not just the number of incidents involving the use of force that have taken place. The Ombudsman believes that an aggregate survey should be conducted into the number of children who are being subjected to force.

Young children are also being subjected to physical force

Another important finding is that even the youngest children in establishments are subjected to physical force. In 2014, the County Governor of Oslo and Akershus reviewed 2381 incident reports and administrative decisions on the use of force. For 451 of the entries, the legal basis used was Section 14 regarding force in dangerous situations. Many of the entries concerned children younger than 10 years old.[56]

Among the cases we had access to, there were multiple examples of children as young as 7 – 9 years old being repeatedly subjected to restraint over a three-month period.

The majority of the contexts had to do with boundary-setting that developed into situations involving the risk of damage to property or injury to others. We found significantly fewer incidences of this at the mental health care establishments, where better resources and more coordinated staffing worked preventatively to ensure that boundary-setting situations did not escalate.

«I don't think it's OK that they can put me in an arm lock.»

Boy, 7

The Ombudsman can see that the use of force against these children may have been necessary. Nonetheless, that young children are being subjected to the extensive use of force gives cause for concern. Using force is an extremely invasive measure. When such young children are subjected to the extensive use of force, it becomes essential to continuously assess whether the help the child is receiving is meeting his/her needs, and whether additional measures are required to minimize the use of force.

Major differences and disparate cultures

During the project, the Ombudsman learned that practices among the establishments in relation to the use of force vary significantly. A key factor here is the establishments' awareness around the use of force against children and their commitment to methods that ensure that children are subjected as little force as possible.

During our review of the use of force incident reports, we found major variations in the degree to which establishments work in a goal-oriented way to counter the use of force. Some of the establishments were good at describing what they planned to focus on in their interactions with the children/young people subsequent to incidents involving the use of force, other establishments were totally lacking in this perspective.

The personnel we met told us that the establishments had different professional methods that they used in more or less goal-oriented ways. Some of the establishments work continuously to counter the use of force, provide training for different situations and conduct evaluations. Other establishments reported a lack of training opportunities and little focus on preventative work to counter the use of force. These establishments expressed a wish for additional resources to be put towards skills development.

Research into and monitoring of Child Welfare Services has also demonstrated the presence of major differences and disparate cultures among the establishments in relation to the use of force. Definitions of the nature of force, how the regulations should be interpreted and when force should be deemed necessary are recurring themes for personnel at the establishments.[57] The County Governor's office in Rogaland addressed this issue in their annual report for 2013 in which they expressed concern regarding the extensive use of force in dangerous situations taking place at certain establishments. In several cases, the County Governor deemed the use of force to have been illegal.[58]

The threshold for actions to be "strictly necessary" should be measured according to the individual child/young person. This assessment should take into consideration the vulnerability of the child, and the best interests of the child must be a fundamental component of the assessment. Individual differences among children do not however justify major variations between establishments. It is an unconditional requirement that the use of force must be strictly necessary. Variations in access to resources, the lack of instruction/training in or awareness of the use of force are not good reasons to use force more extensively at some establishments than at others.

The Ombudsman is concerned that the variations in the use of force may signal excessive use of force against children in some establishments.

A continuous focus on the underlying causes for the use of force in establishments and high levels of awareness among personnel in relation to when they can use force and when they cannot are both essential. It is a cause for concern that establishments are adopting such widely disparate approaches to the use of force.

What needs to happen to minimise the use of force?

Interference with personal integrity should only take place where strictly necessary and requires other methods to be attempted first. This entails that establishments have to work systematically to prevent situations that may lead to the use of force.[59]

From the examples above, it is evident that some children/young people experience the use of force in dangerous situations as frightening. The previous experiences of the child/young person contribute to shaping his/her experience of the use of force. For some individuals, the use of force in dangerous situations may be experienced as one more violation. Since children experience this as invasive, it is important to assess whether or not other measures could have been implemented and the use of force avoided. It is also important for force not to become a part of daily life. One study showed that children experience force as part of everyday life at the establishment after experiencing the use of force on multiple occasions over time.[60] To prevent this happening, personnel must have a high level of awareness around the effects of force on children.

Expertise and professional confidence

Personnel at residential child care establishments must employ professional methods in order to avoid the use of force whenever possible.[61] Our experience is that implementation of the regulations varies and that it is essential that personnel receive regular training and instruction, and take part in discussions concerning their understanding of the provisions of the Rights Regulations. Although the regulations are clear, working practices will entail complex professional deliberation when it comes to deciding whether or not interventions involving force are necessary in certain cases.

It is important that those charged with implementing the regulations have the necessary expertise to understand them and use them in a way that safeguards the legal protection of the child/young person.

The use of force is a complex and challenging area and personnel need training in how to handle various situations, evaluate incidents involving force and discuss issues connected to the use of force against children/young people.

Training in the different types of situations one may face makes personnel feel secure and better equipped to deal with difficult situations without using force.

We met personnel who virtually never had time to work actively on measures for preventing the use of force. They told us that it was uncomfortable to encounter a situation that involved force if they had not received training on it. Conversely, we also met personnel who had weekly training on the different situations they may face and who evaluated every single incident in which force was involved, both with other personnel members and with the child/young person in question. The children/young people too felt that personnel had to receive training on the different kinds of situations they could encounter and spend time on preventative work.

Knowledge of children's reaction patterns - less use of force

As mentioned at the beginning of the chapter, it is important for personnel to have knowledge/information about the children/young people in terms of their experiences and how these may affect them. The children/young people themselves say that it is important that personnel in establishments want to get to know the children/young people and know who they are.

One boy told us about an experience he had when personnel did not take into consideration what one young girl had been through:

«It is not OK for children who have been abused to feel threatened. Girls can experience big men as threatening, especially when they use force. It is not OK for them to hold her down on the ground. She's really small and she's scared of men.»

Boy, 16

Personnel say that when they are given more information about why children who have been exposed to violence and abuse react the way they do, the frequency with which they use force falls dramatically.[62]

Even after a child/young person, who has previously been exposed to abuse, is placed in a safe environment he/she can still react as if he/she is in danger. In an emergency placement establishment where multiple children in crisis are living, the surroundings themselves can be a trigger that creates feelings of insecurity, which puts the child/young person in a state of alert. Knowledge and understanding about traumatic experiences and recognizing stress in children can contribute to increased levels of confidence and calm for personnel, and in turn benefit the child and reduce the use of force.[63]

The Ombudsman believes that this demonstrates that an important component in preventative work is personnel getting to know the children, gaining knowledge about their backgrounds and being given information about how difficult situations should be handled. Working with children who have been exposed to neglect makes special demands on the expertise of the personnel. They should have expertise on the different reaction patterns in children/young people who have been exposed to abuse or neglect, so that they will be aware of them and take into consideration the backgrounds of the children/young people when difficult situations arise.

Stable working conditions and resources

The Ombudsman received feedback from several personnel members that reorganisation and inadequate working conditions, for example cuts in staff numbers due to cutbacks in state Child Welfare Services, also affect the quality of the work with children/young people. Such instability affects relations among the personnel as well as among the children/young people. The personnel we met told us that professional confidence and stable working conditions were essential for them to be able to work actively on issues connected to the use of force. Frequent use of temporary workers, high turnover and reorganizations provide fewer opportunities to build up a universal understanding of how force can be avoided. Cutbacks in state Child Welfare Services lead to downsizing and replacement of personnel. We are concerned about how this affects working with the children.

The Ombudsman sees major differences between Child Welfare Services and mental health care in terms of resources.

Our experience is that there are stricter requirements in terms of professional expertise and the number of personnel members per child in mental health care establishments than in residential child care establishments.

In residential child care establishments the workforce can be made up of up to 50% unskilled employees.[64] This would appear to be extremely problematic, particularly since these two services are often intended to assist the same children/young people.

Good communication with children/young people

We received feedback from both personnel and children/young people that good communication, and adults who keep a close eye on the children and care about them seem have a preventative effect on the use of force. All the children/young people we met were preoccupied with being heard and listened to. They wanted to be taken seriously during incidents involving the use of force. Some children/young people told us that it was harder to understand why personnel had to use force when they first came to the establishment. As time went on, it became easier to understand intentions behind the use of force.

Many of the children said getting adequate information about the kinds of force that may be used in the establishment and when they may be used was important. The predictability of daily life meant a lot to them. This reflects the central nature of the human rights requirement regarding predictability. There is so much to learn, particularly on arriving at an establishment, and not just in terms of rights and regulations, but also in relation to getting to know the personnel and the other children/young people.

Pursuant to the Rights Regulations, personnel and children/young people have to review incidents involving force in order to be able to prevent similar incidents occurring in the future, or handle similar incidents more appropriately. A security/contingency plan should also be created in relation to how they should handle similar situations in the future.[65] Some of the personnel mentioned that the use of force incidents reports in residential child care establishments could be an appropriate tool for such an evaluative conversation. Others had a completely different impression because they experienced that children did not have the energy to talk further or create a plan after going through the incident report.

The Ombudsman also believes that the establishments should look more closely at the events just prior to the incident involving force. We learned about situations that did not initially need to lead to the use of force escalating to the point where force became necessary. Thus, in these situations, communication with the children/young people is important.

The Ombudsman is particularly concerned about children/young people getting the opportunity to provide feedback on how they would like personnel to handle difficult situations.

The establishment should evaluate the situation afterwards together with the child/young person and collaborate on creating a new plan. The Ombudsman recognizes the necessity of creating a higher level of awareness in establishments around methods for preventing difficult situations from escalating.

As things currently stand, we fear that it is the way boundaries are set for the child/young person that often triggers the use of force. That witnessing the use of force on others has a significant effect on children/young people is also something that should be taken seriously. This particularly applies to the exercise of physical forms of force such as restraint, something which some of the children/young people liken to violence. There are currently very few established routines for caring for children/young people who have witnessed the use of force. The Ombudsman finds it alarming that there is so little knowledge about the effect on children of witnessing others being subjected to the use of force, when we know the severe effects on children of witnessing violence.

The children's/young people's recommendations for prevention

To conclude, we will summarise the children's/young people's recommendations for what personnel and politicians should focus on in their efforts to prevent the use of force.

The children's/young people's recommendations to personnel:

- Everyone working in a residential child care establishment has to attend training courses on the use of force.
- Personnel must think twice before they use force.
- We should be told what they are saying about us in the documentation they keep.
- Personnel should have more open discussions than they do now.
- Personnel should take the time to get to know us.
- Personnel should listen to what we have to say and actually take it on board.
- It is important that personnel motivate us.
- Personnel must accept our mindsets.
- Show understanding and empathy!
- It is important that personnel are able to show their feelings and have a sense of humour.

The children's/young people's recommendations to politicians:

- Establishments should not mix young people with drug or alcohol problems with others who do not have such problems.
- No establishment should make you feel like there are bars on the windows.
- When the Norwegian Directorate for Children, Youth and Family Affairs is hiring or firing people, they should talk to the children/young people who live in the establishment about it first. We know what we need.

Monitoring the use of force in residential child care establishments

To ensure that the human rights requirements are being met in practice, human rights demand that the State has an effective supervisory system in place. An effective supervisory and complaints system is therefore required. The individual must have genuine opportunities to submit complaints, necessitating a complaints system that is accessible and comprehensible to the individual. The processing of complaints must make special provision for its accessibility to children. The supervisory system must ensure that the CRC's fundamental principles of the best interest of the child and the child's right to be heard are upheld. The County Governors must therefore uphold these principles in their own working practices, as well as keep track of the efforts of the establishments in this regard[66]

The County Governor is responsible for monitoring residential child care establishments and ensuring that children are being provided with adequate levels of care and treatment.[67] The County Governor is charged with ensuring that the use of force in establishments is kept within legal frameworks. The Rights Regulations safeguard legal protections such as record keeping, individual decision, right to submit complaints and supervision via inspections conducted by the County Governor. Establishments therefore file comprehensive incident reports for every incident in which force was used and the County Governor has to familiarize him/herself with these. The child/young person must also sign the report as well as tick a box if he/she wishes to submit a complaint. The County Governor will process any complaint made by the child, which requires a written response for each complaint. The establishment has to inform the individual of his/her right to submit a complaint and assist any service-user who wishes to submit a complaint.

The County Governor must also monitor that the residential child care establishment is being properly run and may order remedial action or shut down operations where this is not the case. The County Governor must conduct inspections at least twice a year. For establishments with placements pursuant to the behavioural articles, the requirement is four visits a year. The County Governor must ensure that children/young people in the establishment are given information about the inspections, including the dates on which they will take place, and that they are aware that they can contact the County Governor before and after inspection visits too.

Children's relationships with the County Governor

A prerequisite for the County Governor being able to accurately monitor whether the children are receiving proper care and treatment is that the children experience the County Governor as an authority they can turn to if they feel their rights are not being upheld.

All of the children/young people we spoke to in residential child care establishments were familiar with the County Governor. They also knew they could submit complaints about the use of force. Some of the children/young people had submitted complaints, some had not. Several said they had not felt that they could contact the County Governor's office if something was wrong, while one of the boys said he definitely felt that he could contact them if he had a complaint. The children/young people had varying experiences with the County Governor and differing views about whether or not it was an authority that was there for them. Two girls said that they had spoken to the County Governor's office and that it went just fine:

«We talked to them about the things we didn't like and the things we liked.»

Girl, 16

«I tell them stuff. They just write it down and say "hmm" and then I don't hear anything back.»

Girl, 16

In terms of the communication between the County Governor and the children, we found major differences. Many of the children gave feedback that they experienced the County Governor as being there for the adults, not the children. The number of conversations conducted with children during the County Governors' inspection visits to establishments has however increased. In addition, a child-friendly information brochure has recently been created, designed to explain the role of the County Governor.[68] Despite the County Governors getting better at involving children/young people, the Ombudsman still believes there is some way to go before children/young people can feel that the County Governor's office is an authority that is there for them. If they do not do so already, County Governors visiting establishments should provide information about themselves and the function they perform for children.

Children's voices are seldom heard

Article 12 of the CRC stipulates that children have the right to express their views on matters affecting them, and that they should especially be given the opportunity to be heard in every legal or administrative process concerning them. The Committee on the Rights of the Child specifies that this provision, without exception, applies to all relevant procedures that affect the child.[69]

Establishments must take administrative decisions and keep records (incident reports) on the use of force against children. The purpose of keeping such records is so that the County Governor is able to assess the extent to which the establishment is upholding the rights of the child. When a use of force incident report is completed by a personnel member, he/she must read through it together with the child/young person. The child/young person must sign the report, comment on it and, where required, submit a complaint form. Some of the children/young people we spoke to knew what a use of force incident report was, others did not.

Some of the personnel we talked to at the establishments said that going through the incident report with the child was time consuming and challenging. Most children have little interest in going through every page of an incident report and most of the pages are considered irrelevant to the child/young person. The children/young people are not able to relate to everything stated in the incident report and they sign the document without thinking about making a complaint. But we also met some personnel who found the use of force incident report to be a suitable tool; that it ensures that everyone is able to express their views and is instrumental in personnel talking to the child about what happened.

After requesting access to the use of force incident reports and associated complaints, we reviewed this material to get a closer look at the extent to which children/young people were being allowed to present their side of an incident where force was involved. Did the child/young person get his/her views across? Was the child/young person able to understand the language used in the incident report? These are key questions in determining whether Article 12 of the CRC is being upheld. The questions are also relevant in terms of discerning whether or not the child has genuine opportunities to make a complaint.

In the complaints, the child often expresses him/herself very briefly so it can be difficult for the County Governors to determine what the child is complaining about. In some cases, the County Governor will contact the child to get a more detailed version of the story but, as far as we are aware, there are no established procedures for this.

Examples of how complaints may be formulated by children:

«All the adults hold me too tightly.»

«I don't think the adults should put me in an arm lock.»

«Everything is bullshit.»

«...I was held [down] until I started bleeding in three places and it was painful because I was held [down] several times and they crushed my knee really hard.»

The language the children/young people use can result in the County Governor deeming it more expedient to use the establishment's version of what happened as a point of reference. The adults are more capable of expanding on the situation and describing the incident in writing.

So children's and young people's words and complaints seldom reach us.

When the child/young person receives a response to his/her complaint we see that the language used in these responses is often formal and standardized. This can lead to the child/young person feeling that his/her version of events has been rejected. Where the child/young person gets help from an adult to write the complaint, it is a different matter. We found an extremely fitting example of this. A member of personnel had written down a child's description verbatim. The complaint was closely followed up by the County Governor and stood out from the majority of the other responses from the County Governors to the children/young people.

The County Governors don't always make a specific assessment of the subject of the child's complaint. If a child complains that he/she is being held too tightly, in our opinion it is not sufficient simply to make an assessment of whether the restraint was necessary; an assessment of whether or not the child was held too tightly is actually required.

Children's/young people's complaints are seldom upheld

«I can't be bothered complaining.

And it doesn't help anyway.»

Girl, 16

The children/young people we talked to said that complaining was pointless because their complaints were never successful.

Research shows that young people have often exercised their right to submit a complaint but that after a time they stop making complaints because their complaints are seldom/never upheld. The young people's experience is that the supervisory authority has more confidence in an establishment's personnel than in its residents.[70] When children/young people seldom or never have their complaints upheld, the reputation of and faith in the County Governor's office as an authority that is there for children/young people is weakened.

The statistics also reflect the small number complaints from children that are upheld.

In 2014, the County Governors on a national level processed 524 complaints about the use of force in residential child care establishments. Of these, 110 were upheld.

190 complaints were submitted about the use of force in dangerous situations. 42 of these were partially or completely upheld.[71]

Case processing times

Saksbehandlingstiden er en tilleggsfaktor som gjør at barna kan oppleve det som nytteløst å klage. Flere av barna påpekte at det ikke var aktuelt å sende klage til Fylkesmannen fordi det tok så lang tid å behandle klagen. Et par av barna vi har truffet hadde klaget, men sa at de aldri hørte noe etterpå.

The time it takes to process a case is an additional factor that can make children/young people feel that submitting a complaint is pointless. Several children/young people highlighted that submitting a complaint to the County Governor was out of the question because it took such a long time for the complaint to be processed. A couple of the children/young people we met had complained but said they had never heard back about it afterwards.

The County Governors are supposed to process at least 90% of complaints within three months. The routines for processing complaints from children employed by the County Governors vary. One of the County Governors we met during the project processed complaints from children/young people within one or two weeks. The feedback we received from both personnel and children/young people was that the system is an inconvenient one and that the children/young people would prefer to receive a faster response to their complaints.

It is important that County Governors process complaints from children and provide a response quickly in order for children/young people to feel as though they are being taken seriously. If reprehensible conduct is taking place in an establishment, it is essential for an active supervisory authority to intervene quickly in terms of guidance or directives. There may also be practical reasons for complaints to be processed quickly, for example, the child may have moved out of the establishment. Receiving a response to a complaint relating to a previous establishment can feel meaningless. The Ombudsman believes that a case processing time of three months for complaints from children is too long.

Conclusion and recommendations

We have seen that for many children being subjected to physical force can feel frightening and violating. Many of the children likened it to being subjected to violence. Not only was being personally subjected to force difficult, but it was also frightening to witness others being restrained or held down on the ground.

Our access to information has shown that children who are subjected to force often have mental health problems or conditions.

Oftentimes, normal boundary-setting situations escalate to the point where it becomes necessary to use force. We have also seen that young children are being subjected to force.

There are major variations and disparate practices among the establishments, particularly in terms of how they work preventatively to minimise the use of force.

To work effectively with this issue requires expertise and professional confidence, knowledge of the reaction patterns of children/young people, stable working conditions and resources, and good communication with the children/young people.

In recent years, developments have taken place within Child Welfare Services in terms of underpinning the child's right to be heard and creating more opportunities for this right to be recognised. There is however room for improvement in the supervisory system too. The Ombudsman is concerned that the complaints system for children in residential child care is inadequate. Although formally it has been designed so that children/young people can complain about the use of force in incident reports, there are still many factors indicating that the child's right to submit a complaint is not being upheld in practice.

When, on top of this, it takes a long time to process a case and the child's/young person's complaint is seldom upheld, this does not constitute a genuine complaints system that is accessible to children.

The Ombudsman's Recommendations

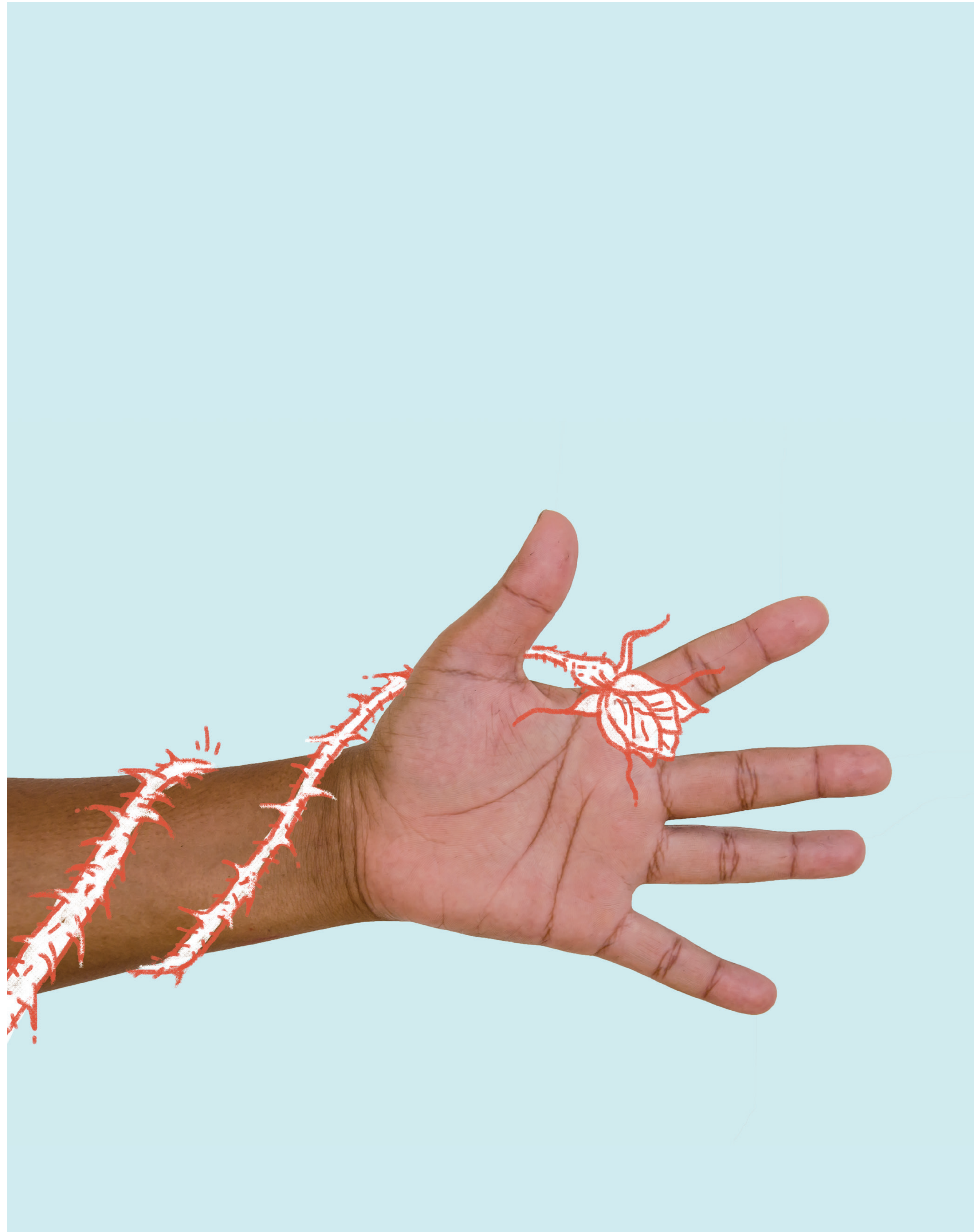
The Ministry of Children, Equality and Social Inclusion must ensure:

- the introduction of requirements for regular guidance and training for personnel at residential child care establishments in order to secure comprehension of the rules in the Rights Regulations
- stricter requirements are set in terms of the professional expertise of personnel in residential child care establishments
- children receive help from personnel when they wish to submit a complaint about the use of force
- the maximum time for processing complaints about the use of force submitted by children to the County Governors is reduced from three months to one month

The Norwegian Board of Health Supervision must:

- establish nationwide supervision to ensure that, as per the Rights Regulations, the right of children/young people living in residential child care establishments to co-create a plan regarding how difficult situations should be managed is being upheld

Children in a residential child care establishment are completely at the mercy of the adults in that establishment to convey their views in a way that the County Governors can understand.



4.
THE RIGHT HELP AT THE RIGHT TIME – LESS FORCE?

The importance of early interveition and coordinated services

In this section we take a closer look at some of the broader and more overarching issues that are important in preventing the use of force against children, the importance of coordination between services, and the services' ability to work preventatively through early intervention. The first issue we will look at is the ability of the services to work preventatively through early intervention. Secondly, we examine the coordination and collaboration between the different services.

«I think going into a foster home is good, but I still need mental health care.»

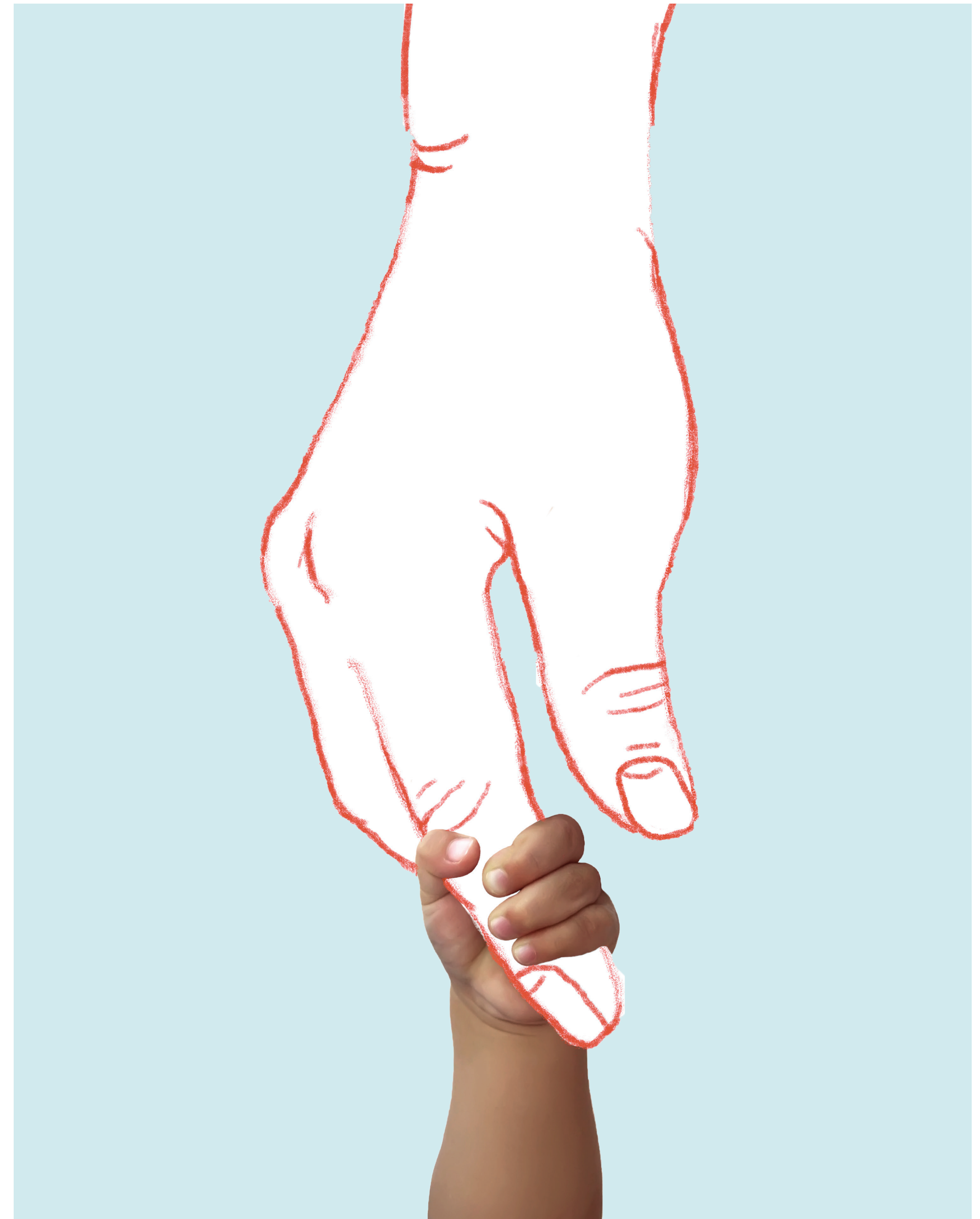
Girl, 14

As described in the chapter on human rights and force, Child Welfare Services and mental health care services are two separate services that are premised on different needs. But this divide is not a given for the individual child in need of help. In our work we have met many children/young people who need help from both services – children in mental health care with experiences from Child Welfare Services and vice versa. Some of these children had been moved several times, from foster homes to residential child care establishments – and back again. In addition to the often blurred lines between relief measures and care measures for children, frequent changes in the type of measures offered can aggravate the problems the child/young person had in the first place.

Through our encounters with children and young people, establishment personnel, professionals and County Governors, we saw clear signs that the fact that children in residential child care establishments increasingly have mental health problems or conditions is a real challenge. We received feedback that far from all municipalities offer the kind of child welfare and healthcare services that are sufficiently focused on preventative efforts. This applies both to children/young people living in at-risk families and children in the process of developing mental health problems. Early intervention in the form of recognizing at-risk children and implementing measures at an early age will reduce the number of young people with severe mental health conditions.[72]

Conclusion and recommendations

During the project, we met several children/young people who needed help from both mental health care services and Child Welfare Services. Unfortunately, the level of cooperation between these two services is inadequate. The Ombudsman is concerned about the serious consequences of children with mental health conditions in the child welfare system not receiving the treatment they need, and we believe this is a breach of the rights of the child. It is our opinion that the legislation must be changed in order to ensure integrated services that prioritise the needs of the child/young person



Links and Endnotes

1 CRC, article 12 [In Norwegian]: http://bit.ly/1vAkyiF

2 Act relating to the Commissioner for Children [In Norwegian] § 3 http://bit.ly/YS5r7D

3 The Ombudsman for Children's Expert Handbook [In Norwegian]: http://bit.ly/1xFdIL9

4 Read more about the UN Committee on the Rights of the Child here [In Norwegian]: http://bit.ly/1LG73aw

5 Definition taken from the study by Backe-Hansen, Christiansen & Havik, NOVA (Norwegian Social Research) paper no. 2/13. Utilsiktet flytting fra fosterhjem. En litteratursammenstilling. [Unplanned moves from foster homes. A review of the literature]

6 Act relating to the Strengthening of the Status of Human Rights in Norwegian Law [The Human Rights Act]

7 The UN Convention on the Rights of Persons with Disabilities (CRPD) also confers rights that are particularly relevant to the use of force, especially within mental health care. There is ongoing discussion about the scope of these regulations. In this report, the Ombudsman chose not to address this discussion but limit itself to more specific regulations. There is however no doubt that the regulations in CRPD are significant in terms of the kinds of force that are deemed legitimate, see also the report by The Equality and Anti-Discrimination Ombudsman: CRPD – Rett til frihet, personlig sikkerhet og likeverdige helsetjenester for personer med psykososiale funksjonsnedsettelser - Innspill til norske myndigheter [CRPD – The right to freedom, personal safety and equal access to health services for people with psychosocial disabilities – input for the Norwegian authorities]

8 Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the ECHR's interpretation of it provides the best understanding of this.

9 The State's margin of appreciation will vary according to the circumstances of the case, for example, the vulnerability of the individual, the level of invasiveness of the action in terms of personal integrity, see also Shtukaturov v. Russia. Other relevant cases are: Storck v. Germany, Glass v. the United Kingdom, The Sunday Times v. the United Kingdom.

10 Storck v. Germany in which the European Court of Human Rights declared the State obligated to conduct monitoring and inspection of mental health care establishments with a view to upholding the individual's right to personal integrity.

11 The UN Committee on the Rights of the Child, Concluding Observations: Norway [In Norwegian]: http://bit.ly/1HsaFvS

12 Patients' and Users' Rights Act of 2 July 1999, no. 63

13 The Mental Health Care Act, 2 July 1999, no. 62

14 NOU 2011: 9 [Official Norwegian Report] Økt selvbestemmelse og rettssikkerhet — Balansegangen mellom selvbestemmelsesrett og omsorgsansvar i psykisk helsevern [Increased self-determination and legal protection – Balancing the right to self-determination and duty of care in mental health care]

15 Patients' and Users' Rights Act, § 4-3

16 Supplementary Report (2009) by the Ombudsman for Children to the UN Committee on the Rights of the Child [In Norwegian] http://bit.ly/1HpXcD1 [In English]: http://barneombudet.no/wp-content/uploads/2013/09/suplementary-report-to-theun_english.pdf

17 The UN Committee on the Rights of the Child, Concluding Observations: Norway [In Norwegian]: http://bit.ly/1HsaFvS

18 Formal correspondence between the Ombudsman for Children and the Ministry of Health and Care Services

19 Mental Health Care Regulations, 16 December 2011

20 The Norwegian Directorate of Health, Patient data: Mental Health Care for Children and Young People, 2014, issued 04/2015, IS-2289 [In Norwegian]

21 See endnote 20

22 The Norwegian Board of Health Supervision (2012) Mytar og anekdotar eller realitetar? Barn med tiltak frå barnevernet og tenester frå psykisk helsevern for barn og unge [In Norwegian] [Myths and anecdotes or reality? Children in Child Welfare Services and Pediatric Mental Health Care]

23 Birkhaug, K. Et al. (2005) En beskrivelse av fem akuttenheter for ungdom i psykisk helsevern i 2001, 2003, 2005 og 2007. [In Norwegian] [A description of five emergency response units for young people in mental health care in 2001, 2003, 2005 and 2007]

24 Administrative decisions on admissions were registered for 465 out of 491 newly referred patients. 45 of these were admitted for compulsory observation and 13 are in compulsory mental health care. The remaining 405 are voluntary admissions according to Patient Data for Mental Health Care for Children and Young People 2014, issued 04/2015, IS-2289, The Norwegian Board of Health Supervision.

25 However, we are aware that some establishments purposefully choose to come to an administrative decision when faced with a situation involving the principle of necessity in order to highlight the situation.

26 Forandringsfabrikken (2014) Psykisk helseProffene. Unge med råd til psykisk helsevern. [In Norwegian] The Change Factory (2014), [The Mental Health Pros. Young people's recommendations to mental healthcare]

27 The Mental Health Care Act and Mental Health Care Regulations with comments, IS 9/2012, The Norwegian Directorate of Health

28 Furre, Astrid og Sonja Heyerdahl (2010) Bruk av tvang i ungdomspsykiatriske akuttavdelinger, Regionsenter for barn og unges psykiske helse [In Norwegian] [The use of force in mental health emergency response units for young people, Regional Centre for Child and Adolescent Mental Health]

29 Forandringsfabrikken (2014) Psykisk helseProffene. Unge med råd til psykisk helsevern [In Norwegian] [The Change Factory (2014) The Mental Health Pros. Young people's recommendations to mental healthcare]

30 Report by The Equality and Anti-Discrimination Ombudsman, CRPD – The right to freedom, personal safety and equal access to health services for people with psychosocial disabilities – input for the Norwegian authorities , provides a description of the debate. Norway has been criticized by UN Human Rights bodies regarding this.

31 The responses from the Supervisory Commissions showed that momentary physical restraint is the measure that is the subject of most administrative decisions. The figures from the Norwegian Patient Registry concurred with this. The Ombudsman's access to use of force incident reports and administrative decisions also showed that the majority of administrative decisions in these establishments concerned momentary restraint.

32 Furre, Astrid and Sonja Heyerdahl (2010) Bruk av tvang i ungdomspsykiatriske akuttavdelinger. Regionsenter for barn og unges psykiske helse. [In Norwegian] [The use of force in mental health emergency response units for young people, Regional Centre for Child and Adolescent Mental Health]

33 The Mental Health Act, § 4-8, second paragraph, litra d., cf. Mental Health Regulations with comments, IS 9/2012

34 The Ombudsman's questionnaire sent to the Supervisory Commissions

35 Furre, Astrid and Sonja Heyerdahl (2010) Bruk av tvang i ungdomspsykiatriske akuttavdelinger. Regionsenter for barn og unges psykiske helse [In Norwegian] [The use of force in mental health emergency response units for young people, Regional Centre for Child and Adolescent Mental Health.]

36 Norvoll, Reidun, Trond Hatling and Karl-Gerhard Hem (2008) Det er nå det begynner! – Hovedrapport fra prosjektet «Brukerorienterte alternativer til tvang i sykehus»(BAT) [In Norwegian] [It starts here! Main report from the project "User-oriented alternatives to using force in hospitals"]

37 Fontene (2015) Haukeland reduced the use of force by 90 % (www.fontene.no)

38 Mental Health Care Regulations

39 15 of the 34 who gave feedback did not respond to the questionnaire because they only monitored establishments for adults in mental health care. We do not know how many of these may have encountered children/young people who were in-patients in mental health care.

40 The Ombudsman's questionnaire sent to Norway's 52 Supervisory Commissions.

41 Information sheet for members of Supervisory Commissions and mental health care personnel (The Norwegian Directorate of Health, IS 1559/2008)

42 See inter alia Opptrappingsplanen for psykisk helse [In Norwegian] http://bit.ly/1Kr3Ew3 [Escalation plan for mental health] and Strategiplanen for barn og unges psykiske helse [In Norwegian] http://bit.ly/1g85wwT [Strategy plan for child and adolescent mental health]

43 Memo from lawyer Tore Roald Riedl to the Norwegian Directorate of Health, dated 6 January 2012. The memo highlighted several failings in the legal protection of children receiving these services. Amongst other things, it was stated that measures that violated personal integrity and had a legal basis in parental consent or the principle of necessity were difficult to find. Neither are there any regulations that ensure that the child is heard. Further, there are no review mechanisms for when children are in disagreement, show opposition or physically resist the intervention. Since there is no documentation in situations where the use of force against children outside the home is implemented, there is no opportunity for authorities/supervisory bodies to gain oversight of the scope of the use of integrity-violating measures outside the in-patient facility.

44 Searches of public mail records failed to locate any response to this request from the Norwegian Directorate of Health.

45 In February 2013, the County Governor of Oslo and Akershus contacted the Norwegian Directorate of Health to obtain an assessment of the validity of the legal bases for the use of force in measures taken outside an establishment to be able to assess operations at Oslo University Hospital. The Norwegian Directorate of Health concluded in its response that the Mental Health Act, § 4-8, does not provide a legal basis for the use of force outside an establishment. In September 2013, Oslo University Hospital requested the Ministry's view of the matter.

46 Syse, Aslak, Tvang og tilsyn i private hjem, Lov og Rett 2002, p. 82 [In Norwegian] [Force and supervision in the home]

47 Child Welfare Act, §§ 4-1, 6-3

48 Forskrift om rettigheter og bruk av tvang under opphold i barneverninstitusjon [Regulations concerning Rights and the Use of Force during stays in Residential Child Care Establishments]

49 The protection of personal integrity is stipulated in § 7.

50 Statistics Norway (2015). Residential Child Care Establishments, 2013. http://www.ssb.no/barneverni. Updated statistics available from October 2015.

51 Figures from County Governors' annual reports. www.fylkesmannen.no.

52 Link to Statistics Norway's statistics on child welfare: http://bit.ly/1dwWWWz

53 Ulset, Gro and Torill Tjelflaat (2012) Tvang i barneverninstitusjoner. Ungdommenes perspektiver. Rapport nr. 20/2012. Barnevernets utviklingssenter i Midt-Norge, NTNU Samfunnsforskning AS. [Force in Child Welfare Institutions. Young People's Perspectives] Report no. 20/2012, The Child Welfare Development Centre – Central Norway, NTNU Social Research AS.

54 See endnote 53

55 See endnote 53

56 County Governor in Oslo and Akershus (2014), Annual Report.

57 Ulset, Gro and Torill Tjelflaat (2012) Tvang i barneverninstitusjoner. Ungdommenes perspektiver. Rapport nr. 20/2012, Barnevernets utviklingssenter i Midt-Norge, NTNU Samfunnsforskning AS. [Force in Child Welfare Institutions. Young people's perspectives] Report no. 20/2012, The Child Welfare Development Centre – Central Norway, NTNU Social Research AS.

58 County Governor in Rogaland (2013), Annual Report

59 Guidelines to Regulations of 15 November 2011 concerning Rights and the Use of Force during stays in Residential Child Care Establishments (Rights Regulations). Directive Q-19/2012 (June 2012). The Royal Ministry for Children, Equality and Social Inclusion.

60 Ulset, Gro and Torill Tjelflaat (2012) Tvang i barneverninstitusjoner. Ungdommenes perspektiver. Rapport nr. 20/2012, Barnevernets utviklingssenter i Midt-Norge, NTNU Samfunnsforskning AS. [Force in Child Welfare Institutions. Young people's perspectives] Report no. 20/2012, The Child Welfare Development Centre – Central Norway, NTNU Social Research AS.

61 BLD. Guidelines to Regulations of 15 November 2011 concerning Rights and the Use of Force during Stays in Residential Child Care Establishments. Directive Q-19/2012 (June 2012)

62 Hjemmen, Bræin and Brynildsen (2015) Child Welfare: More knowledge produces less force

63 See endnote 62

64 Kayed, Nanna et al. (2015) Psykisk helse hos barn og unge i barnevernsinstitusjoner [Mental Health in Children and Young People in Residential Child Care Establishments] p. 45

65 Guidelines to Regulations of 15 November 2011 concerning Rights and the Use of Force during stays in Residential Child Care Establishments. Directive Q-19/2012 (June 2012). The Royal Ministry for Children, Equality and Social Inclusion.

66 Article 25 of the CRC is a separate provision on monitoring the situation for children in alternative care or receiving treatment from the health service.

67 The Norwegian Board of Health Supervision has overall responsibility for monitoring Child Welfare Services. Inspections and processing of complaints are carried out by the County Governor, cf. The Child Welfare Act, § 2-3, first paragraph and § 5-7 third paragraph. Supplementary regulations are stated in the Regulations concerning the Supervision of Children in Residential Child Care Establishments for Care and Treatment. 11 December 2003.

68 The Norwegian Board of Health Supervision in cooperation with the Child Welfare Pros. Vi vil gjerne treffe deg. Info om fylkesmannens tilsyn med barnevernsinstitusjoner [Pleased to meet you! Information on the County Governors' supervision of residential child care homes] http://bit.ly/1HwE5ZK

69 The UN Committee on the Rights of the Child. General Comment no. 12, item 32

70 Ulset, Gro and Torill Tjelflaat (2012) Tvang i barneverninstitusjoner. Ungdommenes perspektiver. Rapport nr. 20/2012, Barnevernets utviklingssenter i Midt-Norge, NTNU Samfunnsforskning AS. [Force in Child Welfare Institutions. Young people's perspectives] Report no. 20/2012, The Child Welfare Development Centre – Central Norway, NTNU Social Research AS.

71 The Norwegian Board of Health Supervision, Annual Report 2014

72 Kvello, Ø. 2007. Utredning av atferdsvansker, omsorgssvikt og mishandling,

BARNEOMBUDET

www.barneombudet.no