

Inappropriate restraint in residential facility
(13HDC01655, 19 June 2015)

Disability service ~ Residential facility ~ Caregiver ~ Intellectual disability ~ Restraint ~ Right 4(1)

A young man resided in a residential care facility due to a mild intellectual disability. A verbal altercation between the man and a caregiver occurred, culminating in the caregiver physically restraining the man. There are various accounts regarding the nature of the restraint, but it is more likely than not that the caregiver “grabbed” the man, which resulted in both parties ending up on the floor for around 10 minutes. Whilst on the floor, the caregiver held the man’s hands and, for at least some of the restraint, positioned one hand on the man’s chest. After the incident, the caregiver and another staff member spoke with the man and checked his condition. The man appeared to be fine for the remainder of the evening (both physically and in terms of his mood/demeanour).

Around two and a half weeks after the incident the facility undertook an internal investigation into what had occurred. Following that investigation, the facility concluded that it had not been proven that a physical assault had occurred, but that the action taken by the caregiver was “probably not” appropriate in terms of the two-man restraint procedure in place.

It was held that the caregiver’s decision to restrain the man, and the method of restraint used, were inappropriate. As a consequence, the caregiver failed to provide services with reasonable care and skill, in breach of Right 4(1).

The facility had adequate documentation and policies in place regarding restraint, and was found to have provided the caregiver with appropriate training in that regard. Accordingly, the facility was not directly or vicariously liable for the caregiver’s breach of the Code. However, the facility’s policies could have been more effective in ensuring that appropriate care was provided to the man. In addition, aspects of the facility’s internal investigation into the incident were inadequate.