

Physical Contact & Physical Intervention In the Management Of Children & Young People

**Policy Framework for Merton's Children,
Schools & Family Services**

Children Schools and Families



April 2015

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Section 1: INTRODUCTION

Context

This policy framework covers a range of interventions from physical contact to physical intervention (including restraint). Guidance is contained regarding physical contact that is considered appropriate to the ages and stages of children and young people's development, and what level of physical intervention is appropriate for individual settings and circumstances.

- 1.1 The purpose of this document is to ensure that all settings within the **Merton Children, Schools & Family (CSF) Department** provide a safe working and living environment for all children, young people, staff and visitors. Settings within the CSF department include:
- Acacia, Lavender and Steers Mead Children's Centres (Early Years Foundation Stage)
 - SMART Centre
 - Children's Social Care (CSC) settings – including the Brightwell Centre
 - SEN & Disability Integrated Service (SENDIS)
 - Youth Service settings
 - Youth Justice Service settings

It is recommended that all Merton maintained schools and other Early Years Foundation Stage (EYFS) settings consider adopting the principles and guidance contained within this policy framework.

- 1.2 Policy and guidance set out in this document provide a framework within which individual staff judgements should be made and specific incidents addressed. The document has been written with the intention of ensuring consistency with legislation and statements of other Merton Departments.
- 1.3 Any staff involved with children and young people need to be aware that their employment imposes on them a general duty of care, that includes maintaining an acceptable level of safety at all times. The physical proximity of staff and young people may necessitate **physical contact** from time to time. Since the conduct of young people can occasionally become dangerous, **physical intervention** (including restraint) may be required which, inevitably, is a high-risk activity.

Written guidance cannot anticipate every situation: the sound judgement of staff at all times therefore remains crucial. It is, however, the intention that the guidance in this document should offer children, young people and staff appropriate support and a level of protection.

The Legal Framework

- 1.4 Merton Council's underlying principle is to promote positive behaviour management. It is recognised that services and their employees have a legal duty to safeguard the health, welfare and safety of all children and young people in their care, and others who may be affected by their actions.

The law recognises circumstances when the use of reasonable physical intervention will not amount to an offence. Examples would include the use of reasonable physical intervention to prevent crime or physical injury to the child or others.

The use of physical intervention in relation to children is a difficult legal area. Inappropriate physical contact or physical interventions can amount to the criminal offences of assault and false imprisonment.

Corporal punishment is prohibited in all services and settings in Merton.

Government legislation and national circulars provide specific guidance on the use of appropriate physical intervention in settings such as schools and social care. These are discussed more fully in Appendix 1.

It should be emphasised that whether an act of physical intervention falls within the law will depend very much on the circumstances of the particular case.

Working Principles

1.5 Merton Council's ambition is for:

- All staff to show respect and dignity to all children and young people
- Staff to be aware of the ages and stages of child development and what physical contact is appropriate in individual circumstances
- Staff to be supported by management in the use of physical contact or physical intervention that is appropriate to the individual setting, or individual circumstances of a child or young person.
- Each establishment to promote an ethos where physical intervention should be only be used in exceptional circumstances
- Physical intervention to be used only as **an act of care, not punishment**, and only as a **last resort, in specific circumstances, when all other reasonable and available strategies have proved ineffective.** .
- Staff to **only use specific methods of physical intervention that have been supported by relevant staff training**
- Only the minimum force of physical intervention to be used that is proportional to the circumstance

Merton Council will support any member of staff who:

(a) Has any physical contact as in the context of Section 2;

OR

(b) **Used any physical intervention, including restraint, as a last resort** and the level of physical force used was related to:

- The seriousness of behaviour
- Its potential consequences
- The size, strength, gender, maturity and physical ability/disability of the child or young person
- The minimum necessary to secure control

Any physical intervention undertaken must be appropriate to the nature of the behaviour/s concerned:

- Personal injury or risk of personal injury to the child, young person or other people
- Serious damage to property (including the young person's own property)
- A criminal offence being committed or action to prevent a criminal offence being committed
- Behaviour prejudicial to maintaining good order and discipline, for example a young person is causing, or at risk of causing damage or injury by 'out of control' behaviour or misuse of objects
- Any physical intervention should only be used when:
 - Persistent attempts to de-escalate the situation prior to the use of physical intervention were made

- In emergency situations, the action taken was consistent with **ALL** of the above points **except (a)** above

1.6 **Any children's service area outlined in 1.1 should adopt the above principles and be explicit in their practice guidelines regarding the role of physical contact and/or physical intervention.** These should be seen in the context of other relevant issues, such as:

- Individual service areas specific behaviour management policies within the context of an equal opportunities policy
- Health and Safety policies including risk assessments (see Section 3/Appendix 4)
- Specific service area behaviour management practices
- Staff/child/young person relationships
- Peer group relationships
- Family based factors
- Curriculum issues
- Early identification of a child or young person at risk

1.7 Each Social Care, educational, early years, youth service and youth justice service setting should annually publish in written form, its behaviour management policy. The policy should be brought to the attention of all staff, governors, young people, parents and carers and particularly specify the establishment's policy on the use of physical interventions.

Where appropriate such policies should also be available for inspection in relation to the Health & Safety at Work Act 1974 and the Management of Health & Safety at Work Regulations 1992. (see Section 4: Roles and Responsibilities/Appendix 1A)

1.8 A principal aim should be for all staff to maintain a safe and secure environment for all children, young people and staff

All staff should have an understanding of external factors that may lead to an escalation of bad behaviour, and be supported by appropriate training to achieve a prompt and safe resolution as a minimum goal. External factors may include:

- Groupings of young people
- Overcrowding
- Non-stimulating environments or stimulus overload
- Availability of attention
- Task difficulty
- A young person's motivation

The professional practice of staff in such situations needs to be clearly understood by all staff, young people and their parents/carers.

1.9 All actions taken must be fully recorded in a standard format which is readily accessible to staff and managers.

Section 2: GUIDELINES FOR GOOD PRACTICE IN PHYSICAL CONTACT

This section gives guidance about the level and type of physical contact appropriate to the context, reflecting the social, emotional, physical and educational needs of a child or young person.

2.1 Physical contact in the work environment will be dependent upon the type of setting. It is appropriate for teachers and other staff to use touch with children or young people in their care in a positive and professional manner. For instance:

- In early years' settings touching young children is inevitable and can give welcome reassurance or comfort to the child
- In residential settings is likely to occur around bedtimes, waking up, meal times, group activities and in individual work
- In schools and community services it is likely to occur in some physical education, drama or music activities
- Specific individual circumstances may arise that require a staff member to comfort a child or young person in distress

2.2 Any form of physical contact should be a conscious, self aware, reasonable and justifiable act. Staff must seek to make their intentions explicit to the child or young person. Examples of acceptable and appropriate responses in Caring, Supportive and Therapeutic Contacts are contained in Appendix 2.

2.3.1 Staff must bear in mind that even perfectly innocent actions can sometimes be misconstrued and must therefore conduct themselves accordingly. The following guiding principles are suggested:

- Staff need to be continually aware of critical issues relating to the use of touch with individual children/young people such as age, gender, disability, race and culture
- Consideration needs to be given to the meaning of touch – affection or physical intervention within different cultural norms
- Particular attention needs to be paid to a child or young person who may have experienced previous abuse or traumatising life experiences such as witnessing abusive interaction, exposure to pornography/violent images or neglect
- Staff should be aware of those young people who seek physical contact in inappropriate circumstances
- Staff need to be mindful of the subtle but vital difference between privacy and secrecy, in particular with regard to the expression of affection or comfort
- Staff will find themselves alone with children and some physical contact may be appropriate at such times. Consideration of issues such as leaving doors open, awareness of body language, personal and professional boundaries must be borne in mind
- Commonly very young children and young people with disabilities may need assistance in private with personal care tasks such as toileting and bathing
- Young people with disabilities may require physical assistance with eating/feeding, or appropriate physical intervention in line with an agreed care plan reflecting good practice
- Likewise health care and other appropriately trained staff may have physical contact in carrying out health care tasks such as the administration of medication (including gastro-intestinal feeding)
- Occasionally within youth service or youth justice settings a young person may carry an offensive weapon. To safeguard staff and other young people in the setting **a body search maybe required as a last resort**, using a wand or arch to avoid unnecessary physical contact. Where possible commissioned security personnel or a police officer would undertake body searches.

Section 3: GUIDELINES FOR GOOD PRACTICE IN PHYSICAL INTERVENTION CONCERNED WITH CONTROL

Positive Behaviour Management

3.1 All staff should adopt and be trained in a positive approach to improving behaviour in order to reward effort and application, and to build self esteem. The setting should work in partnership with those who know the child or young person to help those concerned:

- Find out why the young person behaves as he or she does
- Understands the factors that influence the young person's behaviour
- Identify early warning signs that indicate foreseeable behaviours are developing.

This approach will help ensure that early and preventative intervention is the norm. It should reduce the incidence of extreme behaviours and make sure that the use of physical force is rare.

De-escalation Techniques

3.2 **Physical Intervention should be used as a last resort.** Staff should be able to demonstrate that means other than force have been attempted and proved ineffective or would have been impracticable. Where the behaviour of a child or young person appears to be escalating towards a crisis that may require physical intervention it is important that diversion, de-fusion and negotiation strategies are considered. Individual children's service settings may have specific strategies and methodologies for de-escalation techniques. Staff must be made aware of these on induction.

A range of de-escalation tools to be considered are outlined in Appendix 3.

Escalation of Negative Behaviours

3.3 ***When positive behaviour management strategies are unsuccessful, and negative behaviours continue to escalate***

All staff working within children's service settings have a duty of care to consider intervention when the urgency of the situation does not allow for other methods to be employed. Such instances may include:

(a) Where the actions of children or young people place themselves, other children or young people, staff or a member of the public at risk of physical injury. For example:

- Attacks against a member of staff or another young person
- Self harming
- Fighting (serious incidents only)
- Trying to leave a service setting without permission and such action is judged to put them at risk. This will be specific to individual settings.

(b) Where children or young people engage in behaviour prejudicial to maintaining good order and discipline. For example:

- Causing, or at risk of causing damage or injury by 'out of control' behaviour or misuse of objects (only in educational establishments by teachers, and other persons authorised by the Headteacher)
- In order to prevent a child or young person committing or continuing to commit a criminal offence (including behaving in a way that would be an offence if the young person were not under age of criminal responsibility). For instance:
 - A young person is engaged in committing deliberate damage to property or person

However, physical interventions must be considered to be a rare event. **The use of physical force that is unwarranted, excessive or punitive is not acceptable.** Failure to comply with this principle, when considering or using physical force, should be dealt with under disciplinary procedures.

- 3.4 When using physical interventions, staff must always ensure that **the level and duration** of the physical interventions will **always be the minimum necessary to restore safety**.
- 3.5 It is not the purpose of this document to explain particular handling techniques. However, the handling techniques adopted by the setting must:
- Form part of a clearly agreed and understood policy and accord with the criteria set out in Physical Intervention Methods (see 3.9 below)
 - Have been the subject within the **specific accredited** training of staff involved, including recording in a standard format, outlining any relevant factors that may have caused the behaviour and consequent actions (see Section 6: Training)

Risk Assessment

- 3.6 It is important to consider the scope of any physical intervention undertaken – will the intervention make the situation better or worse for the child or young person. Ideally a risk assessment should be undertaken to determine the level of intervention required within a particular environment. A risk assessment may be undertaken for an individual child or young person, or for a group setting, such as youth clubs. Where there is an established pattern of behavioural issues each setting should have a formal written risk assessment for the individual child or young person.
- 3.7 In the case of an unexpected circumstance it may not be possible to undertake a written assessment. The initial response should be to identify potential harm to persons and to consider control measures to deal with the danger. These include danger to:
- The individual
 - Other people
 - Other staff
 - Self

In all cases each set of circumstances is unique and the written risk assessment will be a continuous process that takes place in relation to changing circumstances. Merton Council emphasises that **physical intervention should not be undertaken unless an authorised member of staff feels confident in the intervention and where practical has carried out a risk assessment**.

Factors to consider when completing a risk assessment are outlined in Appendix 4.

Individual Behaviour Management Plans

- 3.8 If a service setting is aware that a child or young person has an established pattern of behaviour that might require physical interventions, it should plan how to respond. **Individual Behaviour Management Plans** should be agreed with parents, carers, and any staff involved in the support and management of a particular child or young person who behaves in ways that pose risk.

Plans should be formally recorded and set out the action to be taken to:

- Meet the young person's needs
- Encourage the young person to make positive choices and develop self control
- Support the young person in difficult situations
- Safely manage a crisis situation if and when they occur

Plans should include:

- Ways of managing the child or young person (for example proactive strategies to de-escalate a conflict; what holds might be used if necessary)
- Briefing staff/carers (to ensure they know what action they should be taking)
- Ensuring that additional support can be summoned if appropriate
- Consistency across settings (home – school or service setting)
- The need to take medical advice about the safest way to hold a child or young person with specific health needs (particularly in SEN settings) and short break settings
- Notifying parents or carers that care and control have been used

Staff should be made aware of any specific requirements relating to behaviour management plans within individual service settings on induction or whenever updates occur.

Individual Behaviour Management Plans should be reviewed regularly – this will be dependent on the specific regulations pertaining to individual service settings.

Copies of Behaviour Management Plans should be held with the setting's Behaviour Management Policy, as well as in the child or young person's personal file and available daily for staff to use.

It is recognised that the above planning process might not be possible in such depth where staff need to act urgently in self-defence or in an emergency.

Physical Intervention Methods

3.9 Currently in Merton there are a range of accredited physical intervention training programmes used within specific services settings. Only members of staff trained in the specific physical intervention techniques used within their setting should undertake any intervention, unless there is an unforeseen emergency that an untrained member of staff needs to deal with. Should there be any possibility of the scenario recurring untrained staff member(s) should be trained as soon as possible. The manner in which staff are authorised to physically intervene will be dependent upon the regulations pertaining to their service setting (see Appendix 4).

Staff should intervene where appropriate in circumstances outlined above and may be deemed negligent if they fail to do so. Any method of physical interventions employed must use the **minimum force** necessary for the **minimum amount of time**. Examples of **non-acceptable or prohibited physical interventions** are contained in Appendix 5.

Physical Barriers

3.10 **All children's services have a duty of care to their service users that requires reasonable measures be taken to prevent harm.** Therefore, the use of "high handles" that are beyond the reach of a child, the use of locks or other security measures on outside doors to control visitor entry are permissible if the child or young person is supervised by an adult.

It is an offence to lock an adult or a child in a room without a court order (even if they are not aware that they are locked in). However in an emergency situation, when for example the use of a locked room as a temporary measure while seeking assistance, would provide legal justification.

Material and Equipment that Restricts Mobility

3.12 Certain devices are required for therapeutic purposes, such as:

- Buggies, wheelchairs, standing frames (including any supporting harness), or straps used during transportation
- Arm splints or protective garments might be used to prevent self-injury

Such devices should never be provided for the purpose of preventing problem behaviour, although in extreme circumstances they might be used to manage risks as defined in section 3.3.

If a decision to use therapeutic devices to prevent problem behaviour (for example, strapping someone into a wheelchair) is made it must be agreed by a multi-disciplinary team in consultation with service users, their families (and in the case of children, those with parental responsibility) and their advocates, and recorded within an individual's Care Plan/ Positive Handling Plan.

If used, any device should be selected carefully to impose the least restriction of movement required to prevent harm while attempts should continue to be made to achieve the desired outcomes with less restrictive interventions. Such devices should only be used by staff that has received specific training in their usage. This should always be recorded and incorporated with Individual Care Plans or Positive Handling Plans for the child or young person.

Reflection on Physical Interventions

3.13 It is essential to enable the child or young person to understand the experience of being restrained, and assist them to cope better should a similar experience occur in the future. As soon as possible after the child or young person has been calmed and/or received any necessary medical attention, they and any staff members involved in the incidence, should be provided with an opportunity to discuss the physical intervention episode. The key aims of the discussion are:

- To enable the child or young person to understand the link between their needs/feelings and behaviour
- To enable the child or young person to develop better coping strategies for dealing with unmet needs and difficult/painful feelings
- To demonstrate respect for, and a genuine interest in, the needs of the child or young person
- To separate the behaviour from the person
- To strengthen the relationship of the adult to the child or young person
- To acknowledge and understand the impact of the physical intervention/s experienced by the young person

A written record should be kept of the discussion to assist in planning to avoid a repetition of the incident that led to the use of force.

Recording Events and Actions

3.14 Immediately following an incident when physical intervention is used, the member of staff involved should immediately inform their manager or senior member of staff. A written record should be made as soon as possible afterwards.

3.15 Good practice suggests having a standard format for recording incidents in the form of a special "log book". This should be retained in the service setting for monitoring, inspection and reporting purposes, and a copy put in the young person's file. It is the responsibility of individual settings to inform staff members of any specific recording requirements to be made regarding a physical intervention incident.

3.16 The report must also be signed and dated by the manager or senior member of staff. A guideline on the content of a report relating to a physical intervention incident is outlined in Appendix 6.

An individual report form should also be completed and sent to the parents. If the child is being looked after by Social Services or is on the Child Protection Register, a copy of the incident report should also be sent to Social Services.

It is important that settings with Merton's Children, Schools and Families Division complete the Merton Council's Accident/Dangerous Occurrence form as soon as possible after the incident.

Witness Statements

- 3.17 Immediately after the incident has been resolved, the manager or senior member of staff who was not involved in the incident should be verbally informed of what occurred. Where the incident is of a serious nature, and it is likely that further action might follow, statements should be taken from witnesses. A senior member of staff should carry this out **wherever possible after the incident.**
- 3.18 When taking a witness statement from another child or young person, the following points should be considered:
- Avoid the risk of collusion by accurately recording the child or young person's version of events
 - Have a quiet place in which to record the statement
 - The language skills of a young witness; and
 - The use of open questions that are objective and do not lead the young person
- 3.19 If – after the initial reporting of the incident – it is considered that the setting's guidelines for the use of physical interventions have not been followed; the senior manager will need to consider whether or not a referral is necessary in accordance with child protection procedures set out in the London Child Protection Procedures and any child protection procedures relevant to specific service settings.

Management Considerations

- 3.20 Service management should consider any strategic, service or environmental issues relevant to the pattern of physical intervention undertaken by their staff. As discussed in Section 2, in some situations control of a child or young person can be maintained by holding in a manner that does not carry the force of physical interventions. Where this is necessary and ongoing, the need for physical contact should always be planned for and monitored via an individual care or behaviour management plan.
- 3.21 All incidents involving the physical interventions of a child or young person must be discussed as soon as possible with a senior member of staff present at the time. The head of the establishment or service should be involved as soon as practicable thereafter.
- 3.22 **Parents and carers should always be informed** of what has happened to the child or young person and offered an opportunity to discuss this with the head of service.
- 3.23 Consideration should also be given to the possible effects that restraining a child or young person has on a member of staff. Staff should be given time to recover in a quiet place with support from a colleague and may require subsequent counselling. They will also need time to reflect upon their involvement in the incident before they continue their duties.
- 3.25 Members of staff should be advised of their right to contact their Professional Association, Trade Union or colleague before embarking on the reporting procedure. This should not delay proceedings.

- 3.26 The senior management team in the setting needs to ensure appropriate systems for:
- The supervision and support of staff
 - A central record system in the service/school
 - Regular review of work practices and records
 - Monitoring and overview of work practices and records
 - Provision of advice, support and/or training where necessary
 - Any disciplinary measures for staff and the Local Area Designated Officer role

Section 4: ROLES AND RESPONSIBILITIES

Communication

- 4.1 It is very important that every children's service setting, regardless of size or context, establishes a clear and consistent route through which any incident involving physical interventions is recorded and communicated – and to whom. All staff must be aware of individual setting's policies on the use of physical interventions in the context of behaviour management strategies.

Informing Parents and Carers

- 4.2 It is the **responsibility of the head of the establishment/service to inform parents, carers and/or social workers about physical interventions of a young person** as soon as practical after the incident. Individual settings must decide how this should be done and by whom and record this process as part of the policy. Parental permission is not needed but is advisable. If there is a complaint by a parent about an intervention that has taken place, this should be dealt with in accordance with individual setting's complaints procedure.

Training

- 4.3 All settings should provide appropriate training and awareness of their behaviour management strategies and the use of safe methods of physical interventions. (Refer to Appendix 7)

Induction and Monitoring

- 4.4 All new staff should have an explanation of their setting's policy on behaviour management and physical interventions included in their induction programme. Consideration should also be given as to how temporary staff are informed of these policies.

Professional Support

- 4.5 Staff should feel free to discuss their actions with a professional friend if circumstances require and should seek further advice from a Professional Association or trade Union. Initially, the discussion/de-briefing should be with a senior member of staff.

Review

- 4.6 It is strongly recommended that all settings review their policy on behaviour management six months after its introduction – and thereafter on an annual basis. All staff should be asked to contribute to reviews and should be fully informed of the outcome.

Section 5: MANAGING COMPLAINTS

- 5.1 Communicating with parents/carers and young people, together with a clear policy that staff adheres to, should help to minimise complaints. However, any dispute about the use of force by a member of staff might lead to an investigation, either under local disciplinary procedures or by the police or social care departments under Child Protection procedures.

- 5.2 Where disputes cannot be resolved at service level, the complaint must be escalated according to the regulations relevant to individual service areas. Ultimately, it may be necessary to refer the complaint to a disciplinary hearing or to criminal proceedings.

APPENDIX 1

Important Legislation and Regulations

1A General

The European Convention on the Rights of the Child

The UN Convention on the Rights of the Child and the European Convention on Human Rights provide a set of principles and minimum standards against which to test law, policy and practice as it affects children and young people. The European Convention on Human Rights was incorporated into English Law by the Human Rights Act 1998 and includes the prohibition of inhumane or degrading treatment or punishment by any public authority. The administering of any form of corporal punishment in any circumstances at any maintained school has been unlawful since 1987 and at any school since 1999.

United Nations Convention on the Rights of the Child

An international human rights treaty which grants all children and young people a comprehensive set of rights, including the right to express their views and have them taken into account in all matters affecting them (article 12); the right to play, rest and leisure (article 31) and the right to protection from all forms of violence (article 19). Article 1 defines a child for the purposes of the Convention as 'every human being below the age of 18 years'.

The Committee on the Rights of the Child has identified four of the articles as underlying principles that must be considered in examining implementation of all other articles:

- ◆ all the rights must apply to all children without discrimination of any kind
- ◆ the best interests of children must be a primary consideration in all actions concerning children whether undertaken by public or private bodies, social welfare institutions, courts of law, administrative authorities or legislative bodies
- ◆ the right to life and to the optimum possible survival and development
- ◆ the right of children to express their views on all matters of concern to them and to have those views given due weight in accordance with the age and maturity of the child.

The Children Act 1989 (Duty of Care)

The Children Act (section 3(5)) provides that a person who has care of the child but does not have parental responsibility may do "what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare".

It is an offence under Section 1 Children & Young Persons Act 1933 for any person who is responsible for a child to assault, ill-treat, neglect, abandon or expose the child in a manner likely to cause unnecessary suffering or injury to health.

The Human Rights Act 1998

Article 3 – No torture, inhumane or degrading treatment

Article 5 – The right to liberty and personal freedom. The restrainer needs to demonstrate that the risk of intervening is less than the risk of not intervening.

Article 7 - No punishment without law

Article 17 – No one has the rights to destroy or abuse rights

Criminal Law Act 1967

This Act allows any person to use such force as is reasonable in the circumstances to prevent a crime (e.g. physical assault) being committed. Reasonable, minimal force must be a matter of personal judgement. It is permissible:

- ◆ where a person is being assaulted or is in fear of assault (in order to remove that danger)
- ◆ where a person is aware that another individual is in immediate danger of being assaulted
- ◆ when a person is wilfully damaging property

The law requires that force should be used only when every other approach has been tried and that all practical methods to de-escalate the situation, including retreat, have been employed.

The following is a brief summary of the offences that are relevant.

a: *Assault and Battery*

The term “assault” is frequently used to describe both an assault and a battery. Strictly “an assault” is an independent offence. An assault is any act (not an omission to act) by which a person intentionally or recklessly causes another to apprehend immediate and unlawful personal violence. The act must be accompanied by a hostile intent calculated to cause apprehension in the mind of the victim. If there is no hostile intent, there is no assault unless the alleged assailant was reckless as to whether the complainant would fear violence. Where an assault is accompanied by an act by which a person intentionally or recklessly actually applies unlawful force, however, light, that amounts to a battery.

There are various defences (including accident, consent and lawful sport) the most relevant being:

- ◆ *Self defence:* The self-defence must be ‘reasonably necessary’, but it is not purely an objective test.
- ◆ It includes what the accused himself thought was reasonable.
- ◆ *Defence of property:* This justifies the use of reasonable force.
- ◆ *Prevention of crime:* A person may use such force as is necessary to prevent crime.

b: *Actual Bodily Harm*

More serious assaults could result in a conviction for occasioning actual bodily harm unlawfully wounding, or causing grievous bodily harm.

c: *False Imprisonment*

False imprisonment is the unlawful physical interventions of freedom of movement that does not fall within the realms of reasonable parental discipline.

c: *Corporal Punishment*

Any action that constitutes corporal punishment is prohibited in schools, children’s homes and foster placements.

The Mental Health Act Code of Practice

Paragraph 18.11:

Any restraint must be reasonable in the circumstances. It must be the minimum necessary to deal with the harm that needs to be preventable.

The Health and Safety at Work Act 1974

This Act places a general duty on employers and others to protect the health, safety and welfare of all other employees. This duty is wide-ranging and extends to the protection of staff against violent incidents where these are foreseeable.

Section 2 of the Act implies that an employer should consider not only the threat of actual injury but also the potential effects on employees' physical and mental health or welfare.

Section 2 (2)(C) requires that employers provide such information, instruction and training as is necessary to ensure, so far as is reasonable practicable, the health, safety and welfare at work of employees.

Section 2(3) of the Act requires employers to prepare a written health and safety policy statement. This should include the organisation and arrangements for dealing with foreseeable risks of violence to staff.

The Management of Health & Safety at Work Regulations 1992

These Regulations generally make more explicit what employers are required to do to manage health and safety under the Health and Safety at Work Act 1974. Like the Act, they apply to every work activity.

Guidance for restrictive physical interventions: How to provide safe services for people with learning disabilities and autistic spectrum disorder 2002

This guidance was issued jointly by Department of Health and Department of Education and Skills, under section 7 of the LASSL Act 1970. It focuses on the need for provider agencies to have effective policies, procedures and training for staff who work with people who may have behavioural episodes where restrictive physical intervention is necessary for their safety and the safety of others. It promotes the concept of including potential strategies and actions in care plans, to help staff and people who use services deal effectively with such episodes. It emphasises training and in using training organisations who have the expertise and experience to provide for this sector.

APPENDIX 1B

Educational Settings

Responsibility for discipline

Section 61 of the School Standards and Framework Act 1998 requires the governing body of a maintained school to ensure that policies designed to promote good behaviour and discipline on the part of its pupils are pursued at the school.

In particular, they should provide a written statement of general principles to which the Headteacher is to have regard in determining any measures (which may include the making of rules and provisions).

The Headteacher shall determine measures (which may include the making of rules and provisions for enforcing them) to be taken with a view to:

- (a) Promoting, among pupils, self-discipline and proper regard for authority
- (b) Encouraging good behaviour and respect for others on the part of pupils
- (c) Securing that the standard of behaviour of pupils is acceptable and
- (d) Otherwise regulating the conduct of pupils

The standard of behaviour, which is to be regarded as acceptable at the school, shall be determined by the Headteacher, so far as it is not determined by the Governing Body.

The measures should be brought to the attention of all pupils, parents and employees of the school at least annually. Guidance on social inclusion and behaviour is contained in Circular 10/99 and on pupils at risk of exclusion in Improving Behaviour and Attendance (October 2004) has subsequently issued additional guidance. Circular 10/98 contains guidance on physical intervention.

Circular 10/98 – Section 550A of the Education Act 1996

The Use of Reasonable Force to Control or Restrain Pupils

This circular clarifies the addition of Section 550A to the Education Act 1996. It re-states principles derived from common law and statute. It sets out guidance about a school's policy on the use of force to control or restrain pupils and planning for incidents. It also sets out circumstances where Section 550A will allow teachers, and other persons who are authorised by the Headteacher and who have control or charge of pupils, to use such force as is reasonable to prevent a pupil from doing, or continuing to do any of the following:

- Commit a criminal offence
- Injuring themselves or others
- Causing damage to property
- Engaging in any behaviour prejudicial to maintaining order and discipline

Specifically it states that:

“ ...it is important that schools have a policy about the use of force to control or restrain pupils. All members of staff who may have to intervene physically with pupils must clearly understand the options and strategies open to them. They must know what is acceptable and what is not. The Governing Body, parents and pupils also need to know that.

The Headteacher should draw up a policy setting out guidelines about the use of force to control or restrain pupils and discuss these with the staff who may have to apply them and with the Governing Body and the school. When drawing up such a policy Headteachers of LEA maintained schools should

refer to any model policy about holding or restraining pupils that the LEA has developed. Headteachers of the schools may also find it helpful to refer to any such policy and/or seek advice from that professional association. In all cases Headteachers should take account of the DfES's guidance on pupil behaviour and discipline policies.

A statement of the school's policy on this issue should be included with the information the school gives to parents about the school's policy on discipline and standards of behaviour".

Paragraph 13 says in regard to self-defence or an emergency:

"... Section 550A does not cover all the situations in which it might be reasonable for someone to use a degree of force. For example, everyone has the right to defend themselves against an attack provided they do not use a disproportionate degree of force to do so. Similarly, in an emergency, for example, if a pupil were at immediate risk of injury or on the point of inflicting injury on someone else, any member of staff would be entitled to intervene. The purpose of section 550A is to make it clear that teachers, and other authorised staff, are also entitled to intervene in other, less extreme situations".

Abolition of corporal punishment in schools – Section 548 Education Act 1996 (as amended by Section 131, Schools, Standards and Framework Act 1998)

- (1) Corporal punishment given by, or on the authority of, a member of staff to a child
 - (a) For whom education is provided at any school, or
 - (b) For whom education is provided, otherwise than at school, under any arrangements made by a local education authority, or
 - (c) For whom specified nursery education is provided otherwise than at school

cannot be justified in any proceedings on the ground that it was given in pursuance of a right exercisable by the member of staff by virtue of his position as such.

- (2) The above applies to corporal punishment so given to a child at any time, whether at the school or other place at which education is provided for the child, or elsewhere.
- (3) Any reference to giving corporal punishment to a child is to doing anything for the purpose of punishing that child (whether or not there are other reasons for doing it) which, apart from any justification, would constitute a battery.
- (4) However, corporal punishment shall not be taken to be given to a child by virtue of anything done for reasons that include averting:-
 - (a) An immediate danger of personal injury to, or
 - (b) An immediate danger to the property of, any person (including the child himself)

Apprenticeships, Skills, Children and Learning Act 2009

Requirement on all maintained schools and academies to cooperate and form behaviour and attendance partnerships to improve behaviour and tackle persistent absence among pupils

APPENDIX 1C Social Care Settings

Children's Homes regulations, guidance and national minimum standards 2011

Amendments to Behaviour Management, discipline and restraint: Regulation 17 (and relevant Standards) state that staff may now only use techniques that are approved by the home; they may not use techniques they have learnt in other agencies/companies.

In line with recent government policies, Restraint may not be used to force compliance or as a punishment where Significant Harm or serious damage to property are not otherwise likely.

Where Physical Intervention has been used, the child, staff and others involved are now able to call on medical assistance and children must always be given the opportunity to see a Registered Nurse or Medical Practitioner, even if there are no apparent injuries.

Regulation 17 has also been expanded in relation to restraint techniques e.g. there is a clear requirement that on no account may 'neck holds' be used.

Regulation 17 has been amended in relation to the records that must be kept on measures of control, discipline and restraint; this list of matters that must be recorded has been amended e.g. a description of any injury to the child concerned or any other person and any medical treatment administered.

Children's case records: Regulation 28 has been amended (as have the Standards) to delete the requirement that certain records should be kept in hard copy; records can now be kept in electronic format.

Measures of Controlling Children in a Children's Home that are prohibited under Regulation 8(2) Children's Homes Regulations 1991

- (i) *Corporal punishment – Regulation 8(2)(a):* The term "corporal punishment" should be taken to cover any intentional application of force as punishment including slapping, throwing missiles and rough handling. It would also include punching or pushing in the "heat of the moment" in response to violence from young people. The use of "holding" which is a commonly used, and often helpful, experience for a distressed child is not excluded.
- (ii) *Deprivation of Food and Drink – Regulation 8(2)(b):* Deprivation of food and drink should be taken to include the denial of access to the amounts and range of foods and drink normally available to children in the home.
- (iii) *Intentional deprivation of Sleep – Regulation 8(2)(f)*
- (iv) *The use or the withholding of Medication or Medical or Dental Treatment Regulation 8 (2)(e)*
- (v) *Requiring a child to wear Distinctive or Inappropriate Clothing – Regulation 8(2)(d):* Distinctive or inappropriate clothes should be taken to include not only any recognisable punishment uniform or badge, for example, but also clothes which are inappropriate to the time of day and/or the activity being undertaken. This applies also to footwear and hairstyles.
- (vi) *Imposition of Fines – Regulation 8(2)(g):* It is not considered appropriate for those managing homes to impose such sanctions. In cases of wilful damage or of misappropriation of monies or goods belonging to others, however, it would be perfectly proper for the perpetrator to be required to pay for or at least make a contribution towards the costs of repairs or replacement

of misappropriated monies or goods. In any cases no more than a maximum of two thirds of a child's pocket money should be withheld.

- (vii) *The use of accommodation to Physically Restrict the Liberty of any child:* This is totally prohibited in community homes. However, locking external doors and windows at nighttime, in line with normal domestic security, is not excluded. Similarly, refusal of permission to go out (eg "gating" in schools) short of measures that would constitute restriction of liberty is not forbidden.
- (viii) *Intimate Physical Searches – Regulation 8(2)(h):* Intimate physical searches of children are totally unacceptable. Occasionally, and not as a punishment, a search of a child's clothing may be necessary, eg for weapons. If it is suspected that a child has secreted drugs on his person, then the police should be notified.
- (ix) *Restriction or Refusal of Visits/Communications – Regulation 8(2) & (3)(d):* The restriction or refusal of contact as a punishment is not permitted but it is recognised that in some circumstances as part of the management and planning of a care programme some restrictions may have to be placed on contact with certain individuals or on the facility to receive or make visits in order to protect or promote the welfare of the child. Where contact is restricted in accordance with these plans it should be recorded on each occasion in the child's personal records. Regulation 8(3)(b) states that the taking of any action immediately necessary to prevent injury to any person or serious damage to property is not prohibited.

Much of this guidance is concerned to avoid needing to use any physical intervention to manage the behaviour of children, but in relation to the use of physical interventions, Section 5.6 sets out some principles:

- i Staff should have good grounds for believing that immediate action is necessary to prevent a child from significantly injuring himself or others, or causing serious damage to property.
- ii Staff should take steps in advance to avoid the need for physical interventions, for example through dialogue and diversion; and the child should be verbally warned that physical interventions will be used unless he/she desists.
- iii Only the minimum force necessary to prevent injury or damage should be applied.
- iv Every effort should be made to secure the presence of other staff before applying physical interventions. These staff can act as assistants and witnesses.
- v As soon as it is safe, physical interventions should be gradually relaxed to allow the child to regain self-control.
- vi Physical interventions should be an act of care and control, not punishment.
- vii Physical interventions should not be used purely to force compliance with staff instructions when there is no immediate risk to people or property.

Supplementary guidance was published in February 1997 by a letter from the Chief Inspector of Social Services, concerning the "Control of Children in the Public Care: Interpretation of the Children Act 1989" (CI (97) 6).

This letter was issued to Social Services Authorities as a result of concerns about control of children in the public care and particularly in residential homes.

The letter emphasises that the Children Act requires Local Authorities and those who provide care and accommodation on their behalf to do everything in their power to protect children from coming to harm and from harming others. The main messages are:

- Children in care have a variety of needs from the adults responsible for them.
- These needs include clear guidance, influence and where necessary control as well as sympathy and understanding.
- Staff and other adults responsible for children in care have, generally speaking, the same rights and responsibilities as a parent to influence the child in the interests of its welfare, to protect it from had influence and where necessary to protect others from harm.
- It is the professional role of staff to pursue these objectives as fully and purposefully as they can within the framework of the law.
- The law protects all children against the unreasonable use of force, and limits the children who may be deprived of their liberty to those properly placed in secure accommodation. Otherwise it does not disempower staff from pursuing these goals, and in now way does it oblige them to agree that a child's preferences or wishes by doing so would be likely to prejudice its welfare.

Children Act 1989 – Secure Accommodation and the Accompanying Regulations

Section 25 of the Act allows the Local Authority to place a child in secure accommodation for the purpose of restricting his or her liberty if certain statutory criteria are met. A Court Order is required to authorise a placement of more than 72 hours. This is a last resort measure, and should only be used where there is no appropriate alternative.

Within the Community Homes system, the liberty of children may only be restricted in secure accommodation as approved by the Secretary of State.

Secure accommodation is also provided outside the community homes system in specialist residential units.

Section 25 extends beyond children being looked after by Local Authority; it can also apply to children accommodated by health authorities.

APPENDIX 1D

Early Years Settings

Statutory Framework for the Early Years Foundation Stage

Setting the standards for Learning, Development and Care for children from birth to five years of age. The EYFS is given legal force through an Order and Regulations made under the Childcare Act 2006. From September 2008 it is mandatory for all schools and early years providers in Ofsted registered settings attended by young children – that is children from birth to the end of the academic year in which a child has their fifth birthday.

Early years providers includes: maintained schools; non-maintained schools; independent schools; and childcare registered by Ofsted on the Early Years Register. Providers must meet their legal responsibilities to ensure their provision complies with the welfare regulations, as required by Section 40 of the Childcare Act.

Safeguarding and promoting children's welfare: Children's behaviour must be managed effectively and in a manner appropriate for their stage of development and particular individual needs.

Behaviour Management: Providers must:

- Not give corporal punishment to a child for whom they provide early years provision
- Have an effective behaviour management policy which is adhered to by all members of staff
- Physical intervention should only be used to manage a child's behaviour if it is necessary to prevent personal injury to the child, other children or an adult, to prevent serious damage to property, or in what would reasonably be regarded as exceptional circumstances.
- Physical intervention incidences should be recorded and parents informed on the same day
- Have a named practitioner responsible for behaviour management issues (except in childminding settings)
- Named practitioners should be supported to acquire skills to guide other staff and to access expert advice if ordinary methods are not effective with a particular child

APPENDIX 2

EXAMPLES OF CARING, SUPPORTIVE AND THERAPEUTIC CONTACTS

1 Caring Responses

(a) Greetings:

- Handshake, hand on hand, arm on shoulder and spontaneous hug

(b) Personal Care:

- Washing hands/face, brushing/combing hair, cleaning wounds on head/limbs
- Assistance with toileting, clothing, cleaning and general washing and drying for the very young and as appropriate for some young people with special needs **with due respect for personal privacy and dignity**
- Assistance with mobility for some young people as required

2 Supportive Responses

(a) Accident Prevention:

- Holding forearms or elbows e.g. to support balance
- Supporting body, head and limbs for disabled young people to meet individual need
- Support by staff trained in acceptable methods within a specified subject such as gymnastics and swimming
- Adjusting equipment and outer clothing

(b) Skill promotion:

- Correcting hand, finger, arm and body position in the use of instruments, tools and implements Correcting body position in the acquisition of a sporting skill, e.g. holding a racket or performing a headstand in gymnastics
- Preventing inappropriate body movements and facilitating appropriate ones for some young people with special needs
- Physical prompting techniques in modelling behaviour

3 Therapeutic Responses

(a) Comforting Contact:

- Holding hands, hands on shoulders, arms around shoulders
- Sitting on one's lap (as appropriate to the child's age, gender and needs)

(b) Therapeutic Contact:

- Physiotherapy
- Hydrotherapy
- Holding techniques
- Halliwick method (swimming)
- Sherbourne technique (movement)
- Administration of medicine

Non-Acceptable Responses

Avoid

Contact with parts of the body other than shoulders, arms and hands in all but exceptional circumstances, e.g. staff working with physical disabled pupils. Teachers responsible for physical education should refer to 'Safe Practice in Physical Education and School Sport' published by the Association of Physical Education (formerly BAALPE). Another exception would be sitting a young child on one's lap.

Avoid Contact when a young person is in a reactive emotional state unless essential for reasons of safety.

Avoid any contact when alone with a young person unless it is clearly relevant

- (a) When teaching a skill e.g. individual instrumental tuition; or
- (b) The need for dignity of disabled young people e.g. when helping with toileting

Avoid denial of food or drink - it is forbidden

Offer the child or young person food or drink if it is a normal meal or snack time. Do not withdraw food or drink as a sanction.

REMEMBER

The way our behaviour is experienced and interpreted may not match our intentions, however well meaning! Young people should always be helped to understand the purpose of physical contact.

APPENDIX 3

De-escalation Strategies

- **Structuring the Environment**

Where we choose to speak to the child or young person, whether we sit or stand can communicate the nature of the discussion e.g. warm and friendly or cold and business-like and may help the child to modify its own behaviour
- **Planning to ignore**

For some young people not giving attention to minor, harmless attention seeking behaviours can reduce the behaviour. Don't forget that it is equally important to praise appropriate behaviour
- **Prompting**

Gentle reminders to a child of what they need to do to stop doing or to prepare for can help the child to adjust to a change. This can be verbal or sensory input. Be careful to avoid 'nagging' the child
- **Active Listening**

Sometimes listening to what the young person has to say, exploring and acknowledging their feelings through the use of reflective responses, can help a young person to stay in control
- **Backing Away**

This is not the same as backing down; you are not giving in, simply giving the young person time to calm down before you discuss the situation with them. Staying and continuing to challenge someone who is already aroused is likely to exacerbate the situation. Alternatively, allow the young person to back away through offering them a verbal or physical way out.
- **Humour**

Often suggested as a way of taking the heat out of a situation, but care is needed. Humour can be experienced as critical, demeaning and a superficial reaction to real feelings. If this is the case the young person is likely to become more annoyed rather than less. So use humour with great care.
- **Affection**

If a child's behaviour is motivated by fear, anxiety or uncertainty, a big injection of affection, verbal or physical, can help to head off a crisis. Children do not always appreciate the care that is provided for them on a daily basis and need additional affection to understand how much the adults really care for them.
- **Hurdle Help**

Where the child is 'stuck' (e.g. in an activity, thought or action) then providing assistance can help overcome feelings of failure or inadequacy.
- **Non-verbal Interventions including:**
 - Nods or looks to signal when a change of behaviour is needed
 - Proximity control - using an adult's physical presence to help children modify their own behaviour
 - Touch control – a gentle touch on the arm maybe enough for the child to stop
- **Redirecting**

Divert and distract - Try to refocus the child away from what they are doing now, on to something else as a way of avoiding trouble.
- **Summon Assistance**

Send for another appropriately trained member of staff
- **Offer choices**

Reason with the young person and offer appropriate choices
- **Time Out**

Involves restricting the young person's access to all positive reinforcements as part of a behavioural programme

▪ **Withdrawal**

Removing the young person from the situation that causes anxiety or distress to a location where they can be continuously observed and supported until they are ready to resume their usual activities

Whatever strategies you use, staff must take care to **remember**:

- Be aware of the meaning of touch from the child's perspective
- Talking quietly and in a low key manner can reduce the "heat" in a situation
- Reduce the amount of language that you are using when appropriate.
- Consider your body language, avoid threatening body posture and be aware of the non-verbal messages your body is communicating
- Be positive about the child or young person; do not call them names or make derogatory remarks
- Only make promises you can keep
- Do the things that you have promised
- Consider the level of eye contact you make with the child or young person. Too much could be threatening, too little could make it appear that you don't care or you are frightened/uninterested

APPENDIX 4

Risk Assessment Factors

In order that the **physical interventions of a child or young person should calm the situation**, and **not** lead to greater injury or an escalation of violence, the following factors need to be taken into account in assessing the risks involved and in determining the techniques to be employed on any particular situation or specific service setting:

- What is the relationship between the staff member and the child or young person
- How does the child or young person respond to authority
- The age, and relative physiques and known medical conditions of both the adult and the child or young person
- The relative genders of staff and the child or young person
- Their ethnic and cultural background
- The scope to secure the presence of a second adult, available to assist, supervise and become involved in intervention wherever possible – this will depend on the individual physical intervention training programme adopted by the setting, specifying whether single person or two person holds are permitted
- Spectacles, hearing aids, jewellery and clothing being worn by staff, child or young person
- The adult's capacity to act calmly and systematically
- The location of the incident and the potential for the physical intervention to be carried out safely
- A child or young person with a history of violence
- A child or young person who is/or maybe high on alcohol, drugs or solvents
- The presence of other young people who may attempt to intervene in the physical interventions and increase the risk of injury to the staff
- Where the individual handling plan for the young person specifically includes/excludes the use of physical interventions as part of a programme or because of known physical/sexual abuse
- Knowledge of the young person's previous experience of physical interventions and their predicted reactions
- The presence of any weapons

APPENDIX 5

Examples of Non-acceptable or Prohibited Physical Interventions:

Physical interventions must not:

- Involve hitting or kicking the child or young person
- Involve “punitive” acts: i.e. deliberately inflicting pain on the young person (so, for example, cannot involve joint locks, finger holds or twisting limbs).
- Restrict the child or young person’s breathing (so, for example, must not involve throat or neck holds or pressing their face into soft furnishings).
- On no account should the weight of the adult be placed on the chest, neck or head areas of the child or young person; continuous checks should be made to ensure they are breathing adequately.
- Adults should not use another young person in assisting with the physical interventions.

Staff must:

- Avoid intentional touching of the genital area, buttocks or the breasts of a child or young person.
- Avoid the adult putting any weight upon the young person’s spine, chest or abdominal area.
- Avoid taking a child or young people down, especially to the floor.

However, should there be a significant risk of harm to a member of staff, other children or young people, or self harm to the young person being restrained, then taking them down to a prone position may be acceptable. This form of restraint must be pre-determined by the service setting, which should specify what hold is acceptable and the number of staff who can be involved in the restraint.

APPENDIX 6

Example of content for Physical Intervention Incident Reporting

- Name(s) of child or young person/s involved
- The names of staff involved and of all witnesses
- Details of when and where the incident took place (a sketch plan might be helpful)
- Circumstances and significant factors (antecedents) which led to the incident
- Detail of the incident
- The duration and nature of any physical interventions used
- The pupil's response and the outcome of the incident
- Details of the de-escalation and defusing techniques and strategies undertaken
- A description of any injury sustained by the child, young person or staff and subsequent medical attention
- A description of any relevant action taken after the incident
- Details of any damage to property

APPENDIX 7: Behaviour Management & Physical Intervention Training

All children's services settings (see section 1.1) should consider the depth and degree of in-service training required, dependent on patterns of behaviour of the children or young people. In all cases in-service training should promote positive behaviour management.

Appropriate training should be available to all levels of staff, and support staff should be encouraged to take up such opportunities. Where training involves physical contact and/or interventions methods must encourage good practice and complement the working principles of this policy framework document.

Any in-service training on the **use and techniques of physical interventions** must only be given as part of an **accredited training programme**, within the full context of behaviour management. This training should include:

- De-escalation and Defusing Strategies
- The Legal and Professional Context
- Behaviour Management Strategies
- Links between the setting and Merton Council's policy and guidance
- The importance of a thorough Risk Assessment process and Behaviour Management Plans

Ensure that training packages have been quality assured, including trainers being required to refresh their skills on a regular basis. On successful completion of training, staff should be expected to practice their skills and periodically attend updates.

APPENDIX 8

Definitions

NB The standards and regulations about childrens homes have different definitions.

In considering the use of reasonable force to control/restrain young people, it is essential that there is clarity about the terms that are used to describe physical interventions when they occur. For the purposes of this policy the following definitions have been used:

- **Escorting:** Accompanying for protection or guidance. The level of compliance from the young person being escorted and the degree of physical force being used by member(s) of staff will determine whether this act should be considered as a restraint i.e. was the young person being overpowered in order to be escorted?
- **Holding:** To assert authoritatively. The degree of force used in relation to the level of co-operation and compliance being displayed by the young person that determines when holding becomes restraining. The higher the level of force the more likely the action will be deemed restraint. Ultimately it will rest upon whether the young person was overpowered and had no choice but to remain in the hold.
- **Physical Intervention:** The action that is used *against resistance from a young person*
- **Restraint:** Physical control as defined by the application of force with the intention of overpowering the young person to prevent them from harming themselves or others or damaging property.

Since there is no legal definition of what constitutes 'reasonable force', it is not possible to set out comprehensively when it is reasonable to use force, or to describe the degree of force that may be reasonably used in any given case.