Developing safe working practices for the protection of staff and volunteers whose work brings them into contact with children and young people

MAY 2004

Sue Evans
Director of Education, Leisure and Libraries
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Introduction

The Social Services Department, on behalf of the Local Authority has a statutory duty to investigate whenever there is reason to suspect a child is suffering or is likely to suffer significant harm. Schools have an important role in child protection, particularly at the recognition and referral stage.

All referrals from whatever source are investigated by Social Services and Police Child Protection Team and these will take precedence over management organisation or matters of disciplinary action. The Council views all allegations of abuse seriously and any allegation involving a member of staff, at a school for instance will always be investigated thoroughly by the appropriate agency applying the Merton agreed Child Protection procedures; The All London Procedures.

From time to time allegations of abuse are made against staff in schools, especially teachers, whose actions as caring professionals are misinterpreted by parents (sometimes by children) as abuse or assault. Understandably, many teachers and members of the support staff in schools are feeling unsure as to how, generally, they can ensure a proper relationship with individual pupils and especially how they should react to a child’s needs in order to provide a response which is appropriate and also professionally correct.

School staff are especially vulnerable to the possible consequences of their close professional relationships with their pupils, and to malicious and misplaced allegations made by pupils, either deliberately or innocently, arising from a teacher’s normal and proper association with them at school. Teachers need to be vigilant about the conduct of others and prudent about their own conduct so that their relationships with pupils remain, and are seen to remain, entirely proper and professional.

This document replaces the former document ‘A Code of Practice for Staff whose work brings them into contact with children and young people’. This document is designed to assist those in schools to maintain the present high standards in their relationships with pupils. It is specifically intended to help staff minimise the risk of being accused of improper conduct toward the children and young people with whom they come into contact during their work. The document should be read in conjunction with Merton guidelines for The Management of Allegations and Concerns Regarding the Professional Conduct of Staff and The Physical Restraint Guidelines. It should be stressed that any form of abuse of children by staff in Merton Schools is very rare. None-the-less, all staff in schools need to be vigilant about the conduct of others and prudent about their own conduct.
1. General Relationships and Attitudes

1.1 All staff in schools should ensure that their relationships with pupils are appropriate to the age, gender, disability and ethnic origin of the pupils, taking care that their conduct does not give rise to comment or speculation. Attitudes, demeanour and language all require care and thought, particularly when staff of either sex are dealing with adolescent boys and girls.

1.2 Propriety and Behaviour

Staff working with children and young people in education settings should maintain the confidence and respect of their peers, pupils and the public in general. They should also maintain high standards of personal moral conduct when engaged in professional activity. Personal standards and conduct are private matters. However, all staff have a responsibility to maintain public confidence in their ability to safeguard the welfare and best interests of children and young people.

An individual’s behaviour, either in or out of the workplace, should not contravene the employer’s terms and conditions of employment, or be such as to comprise her/his position within the work setting.

This means that adults should not:

- make sexual remarks to a pupil (including e-mail, text messages, phone or letter).
- discuss their own or pupil’s sexual relationships in inappropriate settings or contexts
- make personal comments about young people
- Scapegoat children or encourage other children to do so
- Demean or humiliate pupils by use of language or actions
- Behave in a manner, which would lead any reasonable person to question their suitability to work with children or act as a role model

1.3 Dress and Appearance

A person’s dress and appearance are matters of personal choice and self-expression. However it is necessary and wise for staff to consider the manner of dress and appearance appropriate to their professional role, as opposed to that which may be adopted in their personal life.
Most educational establishments have clear rules and expectations with regard to acceptable dress and appearance, which apply to all pupils. These are designed to ensure that pupils are dressed decently and appropriately for the tasks they undertake. They also serve to encourage some degree of equity. It is also advisable that the appearance and dress of staff are reasonably consistent with these broad principles.

Staff who dress or appear in a manner, which could be considered as inappropriate or offensive could render themselves vulnerable to criticism or allegation.

This means that adults should wear clothing which:

- Promotes a positive and professional image
- Is appropriate to their role
- May not be viewed as offensive, revealing, or sexually provocative
- Does not distract, cause embarrassment or give rise to misunderstanding
- Is absent of any slogans
- May be considered discriminatory

### 1.4 Duty of Care

Teachers and other education staff are accountable for the way in which they exercise authority; manage risk; use resources appropriately; and actively protect pupils from discrimination and avoidable harm.

All staff, whether paid or voluntary, have a duty to keep young people safe and to protect them from physical and emotional harm. This duty is in part exercised through the development of respectful, caring and professional relationships between staff and pupils, and behaviour by staff that demonstrate integrity, maturity and good judgement.

LEAs, schools and parents have legitimate expectations about the nature of professional involvement in the lives of pupils. When individuals accept a role that involves working with children and young people they need to understand and acknowledge the responsibilities and trust inherent in that role.
2. **Physical Contact**

2.1 **Gratuitous physical contact with pupils**

(a) A pupil, parent or observer may misconstrue physical contact. Such contact can include well intentional informal and formal gestures such as putting a hand on the shoulder or arm, which if repeated with an individual pupil could lead to serious questions being raised. Therefore, as a general principle, employees must not make gratuitous physical contact with pupils and it is unwise to attribute touching to their style or as a way of relating to pupils.

(b) Repeated physical contact with a pupil may be unprofessional and may lead to disciplinary procedures or an allegation of physical/sexual abuse.

(c) Overly familiar pupil-contact by a teacher may also lead to a breakdown in discipline.

(d) Any form of physical punishment of pupils is unlawful, as is any form of physical response to misbehaviour unless it is by way of restraint. (See Guidelines for Physical Intervention). A sample Physical Intervention Report Form and related information on restraint can be found at Appendices A, B, C and D. It is particularly important that staff understand this, both to protect their own position and the overall reputation of the school.

2.2 **Where physical contact may be acceptable**

(a) There may be, especially with younger children, occasions where a distressed pupil needs comfort and reassurance, which may include physical comforting. Such reassurance could for example, involve an arm around the shoulder or a comforting hug. Employees should use their discretion in such cases to ensure that what is, and what is seen to be by others present, normal and natural does not become unnecessary contact, particularly with the same pupil over a period of time. Where an employee has a particular concern about the need to provide this type of care and reassurance he/she should seek the advice of the Head.

It is clear that those working with infants and young children have quite a different role to play from those involved with secondary school age or maturing children in primary/secondary/special schools. Some young children may need a great deal of comfort and support to help them deal with day-to-day experiences in school life.
3. Caring for Pupils with Particular Problems

3.1 All children have a right to safety, privacy and dignity when contact of an intimate nature is required (for example assisting with toileting or removing wet/soiled clothing). A care plan should be drawn up and agreed with parents for all children who require intimate care on a regular basis.

Children should be encouraged to act as independently as possible and to undertake as much of their own personal care as is practicable. When assistance is required, staff should ensure that another appropriate adult is in the vicinity and is aware of the task to be undertaken.

Additional vulnerabilities that may arise from a physical disability or learning difficulty should be considered with regard to individual teaching and care plans for each child. As with all arrangements for intimate care needs, agreements between the children, those with parental responsibility, and the organisation must be negotiated, agreed and recorded. In addition, the views and/or emotional responses of children with special needs, regardless of age and ability must be actively sought in regular reviews of these arrangements.

This means that adults should:
- Adhere to the school’s intimate care guidelines
- Make other staff aware of the task being undertaken
- Explain to the child what is happening
- Consult with colleagues where any variation from agreed procedure/care plan is necessary
- Record the justification for any variations to the agreed procedure/care plan and share this information with parents.

3.2 Where attending a child with toileting difficulties, it may be prudent to make a note of the time the teacher left the classroom with an estimate of how long they will be absent. If the teacher is away for a longer time than is estimated, another teacher should check on the situation.

3.3 Timing of absences may seem overly pedantic but if an allegation is made against a teacher there will be positive evidence of a teacher’s movements and throughout the day will be helpful.

3.4 This action should also be read in conjunction with Merton’s Health and Safety Policy.
3.5 First Aid and Administration of Medication

All schools should have trained first aiders/appointed persons. Teachers may volunteer to undertake this task but it is not a condition of employment. Staff should receive appropriate training before administering first aid or medication.

When administering first aid, staff should ensure that another adult is present, or aware of the action being taken, whenever possible. Parents should always be informed when first aid has been administered.

Pupils may need medication during school hours. In circumstances where children need medication regularly, a health care plan should be drawn up to ensure the safety and protection of pupils and staff. With the permission of parents, the children should be encouraged to administer the medication themselves.

If a member of staff is concerned or uncertain about the amount or type of medication being given to a pupil, this should be discussed with the appropriate senior colleague at the earliest opportunity.

This means that adults should:
- adhere to the school’s safety policy
- adhere to the school’s intimate care policy
- make other staff aware of the task being undertaken
- explain to the child what is happening

See DOH/DfES Guidance: First Aid for Schools

4. Private meetings with pupils

4.1 Teacher should be aware of the dangers that may arise from private interviews with individual pupils. It is recognised that there will be occasions when confidential interviews must take place but, where possible, such interviews should be conducted in a room with visual access, or with the door open, or in a room or area which is likely to be frequented by other people.

4.2 It is emphasised that where such conditions cannot apply, employees are strongly advised to ensure that another adult knows that the interview is taking place. The use of 'engaged' signs or lights is not advisable.
4.3 Where possible another pupil or another adult should be present or nearby during the interview.

4.4 Meetings with pupils away from the school premises are not permitted unless the specific approval of the Head has been obtained. Coaching and extra lessons away from school are to be discouraged especially where they are on a one-to-one basis. Such activities should never take place in the home of the teacher.

4.5 In their dealings with pupils at school, staff need to be aware that their actions may be misinterpreted. Acts of favouritism should be guarded against, for instance, giving a pupil an unreasonable amount of private individual attention. Giving a pupil regular lifts home is not a sensible course of action.

Infatuation

4.6 Staff need to be aware that pupils can be strongly attracted to a member of staff and may develop a heterosexual or homosexual infatuation. All situations should be responded to sensitively to maintain the dignity of all concerned. Staff should also be aware that such circumstances always carry a high risk of words or actions being misinterpreted and for allegations to be made against staff. A member of staff who becomes aware that a pupil may have developed an infatuation (on themselves or a colleague), should discuss this at the earliest opportunity with a senior colleague so that appropriate action can be taken where necessary. In this way, steps can be taken to avoid hurt and distress for all concerned.

Staff need to be aware that it is not uncommon for a pupil to develop an infatuation on a member of staff.

This means that adults should:
- report any instances (verbal, written or physical) that suggests a pupil may have developed an infatuation on a member of staff.

5. Reporting Incidents

5.1 Following any incident where a member of staff feels that his/her actions have been, or may be, misconstrued he/she should discuss the matter urgently with the Headteacher. Where it is agreed with the Head, the employee should provide a written report of the incident but should ensure before it is submitted that it is first checked by the member of staff’s trade union or professional association. It is especially important to speak with the Head in cases where a member of staff has been obliged
to restrain a pupil physically and where a complaint has been made by a pupil, parent or other adult.

6. Communicating with Pupils

6.1 Where conversations of a sensitive nature may be appropriate

a) Many teachers have a pastoral responsibility for pupils and in order to fulfil that role effectively there will be occasions where conversations will cover particularly sensitive matters. Teachers must, in these circumstances, use their discretion to ensure that, for example, any probing for details cannot be construed as unjustified intrusion. They will also need to be clear in their dealing with the individual pupil as to the extent to which confidentiality can be guaranteed.

b) Staff will need to be careful not to ask leading questions if a pupil shows signs of making a disclosure about child abuse or evidence of a criminal offence.

c) Teachers and others in school may from time to time be approached by pupils for advice. Pupils may also appear distressed and staff may feel the need to ask if all is well. In such cases a judgement will need to be made as to whether it is appropriate for them to offer counselling and advice or whether to refer the pupil to another member of staff with acknowledged pastoral responsibility for the particular pupil.

d) If the pupil has a problem of a sexual nature, it may be advisable to refer them to the school nurse, the GP, local Family Planning Association, Brook Advisory Clinic or their local hospital for advice on contraception, Aids, pregnancy.

6.2 Confidentiality

Members of staff may have access to confidential information about pupils in order to undertake their every day responsibilities. In some circumstances staff may be given additional highly sensitive or private information. They should never use confidential or personal information about a pupil or his or her family for their own, or others’ advantage (including partners, friends, relatives or other organisations). Information must never be used to intimidate, humiliate, or embarrass the pupil.

Confidential information about a child or young person should never be used casually in conversation. It should only be shared on a need to know
basis. In circumstances where the child’s identity does not need to be disclosed the information should be used anonymously. However there are some circumstances in which a member of staff may be expected to share information about a child, for example when abuse is alleged or suspected. In such cases, individuals have a duty to pass information on without delay, but only to those with designated child protection responsibilities. If a member of staff is in any doubt about whether to share information or keep it confidential he or she should seek guidance from a senior member of staff. The leaflet “What to do if you’re worried a child is being abused” contains further guidance on sharing information to protect children. Copies are available from Department of Health Publications, PO Box 777, London. SE1 6XH and from the Department of Health website at www.doh.gov.uk/safeguardingchildren/index.htm

This means that staff:
- are expected to treat information they receive about children and young people in a discreet and confidential manner.
- need to exert caution when passing information to others about a child/young person
- should always pass any press or legal enquiries to senior management who will refer on to the LEA’s press and legal departments.

6.3 Inappropriate Comments and Discussions with Pupils

a) As with physical contact, comments by staff to pupils either individually or in groups can be misconstrued. As a general principle, therefore, employees must not make unnecessary comments to and/or about pupils which could be construed to have a sexual connotation. It is also unacceptable for staff to introduce or to encourage debate amongst pupils in class, or elsewhere, which could be construed as having a sexual connotation that is unnecessary given the context of the lesson, or the circumstances. As the same time it is recognised that a topic raised by a pupil is best addressed rather than ignored.

b) Systematic use of insensitive, disparaging or sarcastic comments is also unacceptable.

7. Curriculum

7.1 Staff should be aware that curriculum content can sometimes include subject matter which is sexually explicit or of an otherwise sensitive nature. Care should be taken to ensure that curriculum materials cannot be misinterpreted and clearly relate to the learning
outcomes identified for that lesson. Work plans should highlight particular areas of risk and sensitivity.

The curriculum can sometimes include or lead to unplanned discussion about subject matter which is sexually explicit, or of an otherwise sensitive nature. Responding to pupils’ questions can require careful judgement and staff may wish to take guidance in these circumstances.

7.2 When using teaching materials of a particular sensitive nature, all staff need to be aware of the danger that their selection could be misinterpreted and may be criticised after the event.

8. Educational Visits and Extra Curricular Activities

8.1 All staff should be particularly careful when supervising pupils in a residential setting such as a field study trip or other extended visits away from home. Similarly the less formal approach perhaps adopted in extra curricular activities generally might be open to misinterpretation. Although more informal relationships in such circumstances tend to be usual, the standard of behaviour expected of staff will be no different from the behaviour expected within schools.

8.2 Showers and Changing

Young people are entitled to respect and privacy when changing clothes or taking a shower. However, there needs to be a required level of supervision to safeguard young people and satisfy health and safety considerations and to ensure that bullying or teasing does not occur. The supervision will need to be appropriate to the needs and age of the young people concerned.

Staff therefore need to be vigilant about their own behaviour and ensure they follow agreed guidelines. Consequently staff should be mindful of the needs of the pupils.

This means that adults should:
- announce their intention of entering changing rooms
- avoid remaining in changing rooms unless pupil needs require it
- avoid any physical contact when children are in a state of undress
- avoid any visually intrusive behaviour

This means that adults should not:
- change in the same place as children or shower with children
8.3 Transporting children

In certain situations staff or volunteers may be required to transport children. Given the potential risks, a designated member of staff should be appointed to plan and provide oversight of all transporting arrangements and respond to any difficulties that may arise.

Wherever possible and practicable it is advisable that transport is undertaken other than in private vehicles, with at least one adult acting as an escort.

Staff should ensure that their behaviour is safe and that the transport arrangements and the vehicle meet all legal requirements. They should ensure that the vehicle is roadworthy and that the maximum capacity is not exceeded.

This means that adults should not:
- transport children alone, whenever practicable

This means that adults should:
- plan and agree arrangements with all parties in advance, responding sensitively and flexibly to disagreements
- ensure that they are alone with a child for the minimum time possible
- consider travelling in convoy for all or part of the journey
- be aware that the safety and welfare of the child is their responsibility until this is safely passed over to their parent/carer
- report the nature of the journey, the route and expected time of arrival in accordance with agreed procedures
- ensure that their behaviour and all arrangements should ensure vehicle, passenger and driver safety
- take into account any special needs that the child may have

9. Good Practice

9.1 Schools may wish to develop a whole-school policy in this area. Heads of Department in secondary schools for instance may well think it sensible to draw up guidelines for the use of areas such as photographic darkrooms which cover the particular circumstances of their schools.

9.2 Sexual Contact with Young People

Sexual abuse is defined as "forcing or enticing a child or young person to take part in sexual activities, whether or not the child is aware of what is happening. The activities may involve physical contact, including
penetrative or non-penetrative acts. They may include non-contact activities, such as involving children in looking at, or in the production of, pornographic material or watching sexual activities, or encouraging children to behave in sexually inappropriate ways**

Adult behaviour may also involve ‘grooming’ a child. This can involve an adult conferring special attention and favour upon a child with the intent of sexually abusing them at a future point.

Sexual behaviour towards and/or developing a sexual relationship between a member of staff with any young person is inappropriate and illegal. Children and young people are protected by the same laws as adults in relation to unwanted or non-consensual sexual behaviour. They are also protected by certain legal provisions, which relate specifically to children and young people. **In England and Wales it is an offence to have sexual relations with a young person under the age of 16.

The Sexual Offences (Amendment) Act 2000 introduced the offence of Abuse of Trust. It is an offence for any adult (aged over 18) who holds a position of trust and engages in sexual activity with a young person under 18 years of age to whom they have a duty of care.

*Working Together to Safeguard Children – A guide to inter-agency working to safeguard and promote the welfare of children, DoH, HO, DfES 1999

This means that adults should:
- not pursue sexual relationships with children and young people either in or out of school
- avoid any form of communication with a child or young person which could be misinterpreted as sexually suggestive or provocative i.e. verbal comments, letters notes, electronic mail, phone calls, texts, physical contact

***Indecency with Children Act 1960

9.3 Internet Use

Schools should have clear policies about access to and the use of the Internet. Under no circumstances should adults in school access inappropriate images. For DfES guidance you should read the Superhighway Safety Pack at http://safety.ngfl.gov.uk.

Accessing child pornography or indecent images of children on the internet, and making, storing or disseminating such material, is behaviour
that, if proven, will invariably result in the individual being barred from work with children and young people.

In general a person’s private activities, including use of the internet, that does not involve child pornography or other illegal material, will not impinge on his or her suitability to work with children. However, using school or college equipment to access other inappropriate or indecent material, including adult pornography, is likely to give cause for concern particularly if, as a result, pupils might be exposed to inappropriate or indecent material.

This means that adults must;
- follow the school policy on the use of IT equipment.

10.  Assaults on Members of Staff

10.1 Members of staff who are assaulted by pupils should notify their Headteacher immediately and contact their union or professional association as soon as possible to seek advice on any further action.

10.2 The LEA maintains a formal system of reporting and recording incidents of pupil violence against teachers. Teachers are encouraged to report incidents, for in this way a true picture of their nature and frequency can be built up. Reporting forms should be forwarded to Human Resources Manager for the attention of the Principal H.R Officer (schools).

10.3 Further guidance on this area can be found at page 15 of the Physical Interventions Policy: recording events and actions.

11.  Action to be taken by Staff where Child Abuse is Suspected

a) Guidance and instructions on the procedures where child abuse outside the school is suspected are given in the All London Child Protection Procedures and also in the Merton document of Allegations and Concerns Regarding the Professional Conduct of Staff. Within schools this booklet is held by the Headteacher and the designated member of staff for child protection. It is essential however, that all schools have their own policy and procedures for referring cases of abuse/suspected abuse.

b) In the event that an employee suspects that a pupil is being abused by a member of staff in school or elsewhere, a report should be made in strict confidence to the nominated officer or the Headteacher, if this office is not held by the Head. Social Services should immediately be informed by the designated teacher.
Arrangements for investigating the allegation will then be discussed with the Head. No investigation shall commence within the school prior to these arrangements being made.

c) If the Head is suspected of improper conduct the employee concerned should make his/her report directly to the LEA lead officer (Child Protection) within the Education Department 020 8545 3950) or the Director (020 8545 3251).

12. Conclusion

12.1 It would be inappropriate and indeed impossible to lay down hard and fast rules to cover all circumstances in which, those in schools relate to pupils and where opportunities for their conduct to be misconstrued might occur.

12.2 It is acknowledged that there will be differential behaviour by staff in schools towards children and young people appropriate to their age, development and emotional needs.

12.3 From time to time it is advisable for all employees to reappraise their teaching styles, relationships with pupils and their manner and approach to individual pupils, to ensure that they give no grounds for any doubts in the minds of colleagues, pupils or parents.

12.4 In all circumstances professional judgement will need to be exercised. For the vast majority of staff this code of practice will serve to confirm only what has always been their practice. If staff have any doubts about the advice contained in this document they should consult their Head in the first instance.
LIFE SPACE INTERVIEW FORMAT (I ESCAPE)

INCIDENT REPORT – USE OF PHYSICAL INTERVENTIONS

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<th>Date:</th>
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<td>Young Person:</td>
<td>Other young people present:</td>
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<td>Staff involved:</td>
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<td>Place:</td>
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<tr>
<td>Length of time physical interventions used:</td>
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Method used:

BRIEF SUMMARY of what happened before physical interventions was used (record any steps taken to de-escalate the situation)

BRIEF SUMMARY of the behaviours which required the young person to be restrained and the criteria under which they were restrained?

LIFE SPACE INTERVIEW
1 Identify the key discussion points from the interview

2 What actions have been agreed which will strengthen the young person’s self control?

DETAILS OF INJURIES (if any)
Were any young people injured? YES □ NO □
Were any staff injured? YES □ NO □
## ACTIONS TAKEN

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<th>Date Completed</th>
<th>By Whom</th>
<th>Sent to LEA/ Safety Officer</th>
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<td>Centre Incident Form</td>
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<td>FIN 241 (REV 6/96)</td>
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<td>Accident Book B1510</td>
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<td>(Ref Guidance Note F4</td>
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<td>Safety Manual 2nd Ed)</td>
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<td>Social Services/CP</td>
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<td>Staff Debriefed</td>
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### ANY FURTHER ACTION TAKEN

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<th>Recorded by:</th>
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<tr>
<td>Noted by Headteacher or senior member of staff</td>
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YOUNG PERSON’S VIEW OF INCIDENT
To be either written by the young person or dictated by the young person and recorded by the Headteacher or senior member of staff

Signed: (young person)

CONCLUSION:
Written by Headteacher or senior member of staff

Signed:

Date:

FURTHER ACTION
PHYSICAL INTERVENTIONS

APPENDIX B

LIFE SPACE INTERVIEW

A life space interview can be longer or shorter, formal or informal and will vary according to the age, development, ability and disability of the young person plus will depend on their willingness to talk. With younger children the discussion is likely to be shorter. For young people with learning disabilities non-verbal methods of communication may need to be employed. Although co-operation and ability are limiting factors the attempt should be made to help a young person learn and grow. Making the attempt, even if it does not work, communicates that you care enough about the young person to at least try it.

The steps of the life space interview are:

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<th>Step</th>
<th>Description</th>
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<tbody>
<tr>
<td>I</td>
<td>Isolate the child</td>
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<td>E</td>
<td>Explore the young person’s view</td>
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<tr>
<td>S</td>
<td>Share the adult view</td>
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<tr>
<td>C</td>
<td>Connect behaviour to feelings</td>
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<td>A</td>
<td>Alternative behaviours</td>
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different options will be needed when the young person suggests unworkable ideas such as “if you just left me alone it would be all right”. The young person selects what they will do next time. The adult role is to try to assist the selection of the most realistic option but the young person makes the final decision – it’s their plan! The plan will need to be communicated to colleagues. A rehearsal or other preparation may be helpful for the child.

At this stage any consequences of the behaviour should be explored as well as whether the young person is able to return to their group/class and/or whether there are issues that need to be sorted with the group/class before or on return.
IMPORTANT LEGAL INFORMATION

GENERAL

The European Convention on the Rights of the Child

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

The Articles of the Convention

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 which 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”.

APPENDIX C
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.

**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 an 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 which does not fall within the realms of reasonable parental discipline.

**D: Corporal Punishment**

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

**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 set out the requirement on employers in relation to their general duties under the above Act. Further guidance on this can be found in the County’s Health & Safety Manual Section A2.
APPENDIX D

THE LAW AS IT SPECIFICALLY RELATES TO EDUCATIONAL ESTABLISHMENTS

Responsibility for discipline

Section 306 of the Education Act 1996 requires the governing body of a 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. Circular 10/98 has subsequently issued additional guidance.

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, 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 was 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).