

# Touch and the use of restrictive physical intervention when working with children and young people-

## Reducing the Need for Restraint and Restrictive Intervention

Policy and guidance for Surrey staff

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## Contents

<a href="#">Foreword</a>	Page 3
<a href="#">Introduction</a>	Page 4
<a href="#">Restrictive physical intervention policy</a>	Page 5
<a href="#">Agreeing the use of planned restrictive physical intervention</a>	Page 8
<a href="#">Principles underpinning the use of force</a>	Page 8
<a href="#">Duty of care</a>	Page 9
<a href="#">Policies in education settings</a>	Page 9

## Good practice guidance for Surrey staff

<a href="#">Good working practices to reduce the need for RPI</a>	Page 11
<a href="#">Using restrictive physical intervention</a>	Page 12
<a href="#">Legal framework</a>	Page 13
<a href="#">Reasonable Force</a>	Page 15
<a href="#">The use of seclusion</a>	Page 16
<a href="#">Recording and Reporting</a>	Page 17
<a href="#">Staff Training</a>	Page 18
<a href="#">Screening and searching of child or young person for prohibited items</a>	Page 19
<a href="#">Intimate care and toileting in education settings</a>	Page 20
<a href="#">Post-Incident Support</a>	Page 20
<a href="#">Review Procedures</a>	Page 21
<a href="#">Dealing with complaints and allegations</a>	Page 22
<a href="#">References</a>	Page 23
<a href="#">Useful Contacts</a>	Page 24
<a href="#">Appendices</a>	Page 24
a. <a href="#">Model School/Setting Touch Policy</a>	
b. <a href="#">School level restrictive physical intervention policy</a>	
c. <a href="#">An exemplar policy on the use of force by staff to control or restrain children or young persons (primary school).</a>	
d. <a href="#">Model school procedures for the use of restrictive physical interventions by staff</a>	
e. <a href="#">Risk Assessment</a>	
f. <a href="#">Individual child or young person risk assessment</a>	
g. <a href="#">Child or young person Incident report form</a>	
h. <a href="#">Guidance for residential workers</a>	
i. <a href="#">Record of Physical Intervention</a>	
j. <a href="#">ADASS screening tool</a>	
k. <a href="#">Termly Monitoring Report Form</a>	
l. <a href="#">Deprivation of Liberty Safeguards (DOLS) – The legal context</a>	

## Foreword

In order to ensure all children can achieve their potential, Surrey County Council is committed to providing safe, secure environments in which children and young people feel cared for and in which staff feels effectively supported.

All services should promote independence, choice and inclusion and to establish an environment that enables children and young people to have maximum opportunity for personal growth and achieve emotional wellbeing.

Consistency of approach in supporting children and young people to regulate their emotions and to manage their own behaviour is important, both to uphold the child's right to dignity and self-respect, as well as to ensure that staff across a range of agencies feel confident in supporting children and young people effectively. This guidance is issued to ensure that staff in schools, education settings and social care settings adopts consistent practices in the use of [positive behaviour support](#), physical contact and restrictive physical interventions, based upon a common set of principles.

It is important for all parties to understand when, where and how physical contact may be appropriate. Surrey children and young people, and adults working with them, have a right to be treated with respect, care and dignity at all times, including when they are behaving in ways that may be harmful to themselves or others. It is essential for all staff be trained in positive techniques to help a child or young person to manage their own anxieties, thereby reducing the need to use a restrictive physical intervention. If working in a situation where physical intervention may be required, staff will also need the appropriate accredited training.

This guidance is provided to allow staff to act confidently, appropriately and in a safe manner, bringing benefits to Surrey children and young people, their families and all staff who work with them.

## Introduction

Any misconception that physical contact between responsible staff and a child is in some way unlawful should be dispelled. It is not the case that all physical contact should be avoided and in some cases it is entirely necessary. For example, for some children, close contact is important when tending to care needs, or for other children, a gentle hand on shoulder can be comforting when distressed. Nevertheless, it is important that adults only touch children in ways that are appropriate to their professional role and with due regard to what is acceptable to the individual child.

Staff should respond to young people in a way that gives expression to an appropriate level of care whilst also protecting against the physical contact being misinterpreted by the young person. When considering whether physical contact is appropriate in any given situation, the following points may be helpful:

- Staff should be respectful of any individual or cultural sensitivities to touch
- If at any time a child demonstrates verbally or otherwise that he, or she, is not comfortable with physical contact, staff should seek to respect this and respond accordingly
- Physical contact should never be secretive, or conducted in any way that may be considered indecent, or represent a misuse of authority
- A high proportion of children and young people with emotional and behavioural difficulties may have experienced sexual and/or physical abuse. Staff need to ensure that any physical contact is not open to misinterpretation
- Age and maturity should be considered in deciding appropriate physical contact
- Children and young people should be given advice and guidance with regard to socially appropriate/inappropriate situations to seek physical comfort
- Where a member of staff feels that it would be inappropriate to respond to a child or young person who is seeking physical comfort, the reasons should be explained to the child. This avoids unintended feelings of rejection. The child should then be supported in the appropriate way.
- A duty of care to children and young people may require the use of restrictive physical intervention as a last resort to prevent harm to themselves or others. This needs to be used in such a way that is not punitive, is the least restrictive option, is safe, and does not cause pain

This guidance is intended to assist all staff working with children and young people in Surrey to have the confidence to use physical contact where appropriate, so that they can provide the best care to children and young people, while maintaining their own well-being, preventing harm to the child and protecting all concerned from being placed in an unnecessarily vulnerable situation.

## Restrictive physical intervention policy

It must be made very clear that Surrey County Council (SCC) does not advocate the routine use of restrictive physical intervention. All staff working with children should be trained in positive behaviour support techniques, designed to reduce anxiety and challenging behaviour. Restrictive physical interventions are generally used as a response to behaviour that challenges services. Challenging behaviour has been defined as: "[behaviours](#) of such intensity, frequency or duration that the physical [safety](#) of the person or others is placed in serious jeopardy, or behaviour which is likely to seriously limit or deny access to the use of ordinary community facilities".

Restrictive physical interventions involve the use of force to control a person's behaviour, using bodily contact, mechanical devices or changes to the person's environment. This includes both physical restraint and removal to a seclusion or calm room. The use of restrictive physical intervention should only ever be as a last resort following the application of other appropriate strategies. It should only ever be used as an act of care and never as a punitive measure. It should never become routine. All staff working with children should be trained in positive behaviour support techniques, designed to reduce anxiety and challenging behaviour, and to teach alternative functional skills. Of central importance are the human and legal rights of everyone involved, staff and children alike.

Challenging Behaviour should not be seen as something that *belongs to* or is *part of* the child. It is something that happens as part of the interaction between the child, their environment and the behaviour of other people. It often develops as an effective way for a child with a disability to control what is going on around them.

The Challenging Behaviour Foundation's website contains the following quote:

*'Most children without learning disabilities display lots of challenging behaviour during the 'terrible twos,' but usually this doesn't last because most 2-year olds develop a range of communication and social skills which enable them to get what they want and need more easily. Many children with learning disabilities do not develop these skills and are left with the same needs as other children their age but are much less able to get them met.'*

Peter McGill, Tizard Centre, University of Kent

In order to most effectively manage risk and challenging behaviour, the Council expects of all settings:

- to work with children, young people and their families to establish what triggers may cause unsettled behaviour and what strategies will best support the individual to calm as quickly as possible
- to systematically review records of behaviour incidents to identify the function of the behaviour for the child. To use this information to develop Positive Behaviour Support Plans which include ways to

teach the child functional and acceptable alternative ways to get their needs met.

- to systematically record and review the specific strategies and techniques to be used to support children and young people to de-escalate their challenging behaviour, and include these in positive behaviour support plans with individual risk assessments, as appropriate
- to systematically record and monitor any occurrences of restrictive physical intervention, reviewing working practices accordingly
- to have a current local policy and guidelines for the use of restrictive physical intervention which includes provision of adequate supervision and debriefing
- to provide regular staff training in positive behaviour support to significantly reduce the need for restrictive physical intervention
- to work within an ethos of restorative practice

Guidance from the DfE/DoH ([June 2019](#)) on the reduction of use of RPI underpins the principles outlined in this policy. The Core Values and Key Principles within the guidance are:

### **Core Values**

3.3 - National reports and guidelines from professional bodies over the years have identified some overarching core values expected from those supporting children and young people whose behaviour challenges:

- uphold children and young people's rights – children and young people with learning disabilities, autistic spectrum conditions, and mental health difficulties whose behaviour challenges have the same human rights as all children and young people and require additional help to overcome the difficulties their behaviour may present;
- treat children and young people with learning disabilities, autistic spectrum conditions, and mental health difficulties whose behaviour challenges as full and valued members of the community whose views and preferences matter;
- respect and invest in family carers as partners in the development and provision of support for children and young people with learning disabilities, autistic spectrum conditions and mental health difficulties; and
- recognise that all professionals and services have a responsibility to work together to coordinate support children and young people whose behaviour challenges and their families.

3.4 -The following values relate specifically to the use of restraint. They were drawn up with reference to the Independent Restraint Advisory Panel's review of restraint systems used in secure children's homes<sup>15</sup> but they are relevant to all of the settings and services to which this guidance applies:

- every child or young person deserves to be understood and supported as an individual;
- the best interests of children and young people and their safety and welfare should underpin any use of restraint;
- the risk of harm to children, young people and staff should be minimised. The needs and circumstances of individual children and young people, including their age, particular vulnerabilities, learning disability, medical condition or impairments, should be considered and balanced with the needs and circumstances of others. Decisions on whether or not to restrain or intervene with an individual, affect others, including staff; and;
- a decision to restrain a child or young person is taken to assure their safety and dignity and that of all concerned, including other children, young people or adults present.<sup>16</sup>

## **Key Principles**

3.5 - Restraint may be necessary to safeguard the individual and/or others from serious injury or harm, and sometimes it will be the only realistic option, for example to prevent a child from running into a busy road. The following key principles are offered to guide settings and services in developing their policies and practice in the context of the particular legal requirements that apply to them:

- promote a positive and proactive approach to behaviour, including de-escalation techniques appropriate to the child or young person, to minimise the likelihood of or avoid the need to use restraint (see examples in all of the case studies in Annex B);
- use of restraint is based on assessment of risk and to safeguard the individual or others;
- restraint should only be used where it is necessary to prevent risk of serious harm, including injury<sup>17</sup> to the child or young person, other children or young people, to staff, the public or others,<sup>18</sup> if no intervention or a less restrictive intervention were undertaken;
- an intervention is in the best interests of the child or young person balanced against respecting the safety and dignity of all concerned, including other children, young people or adults present;
- restraint is not used to punish or with the intention of inflicting pain, suffering or humiliation;
- techniques used to restrain or restrict liberty of movement are reasonable and proportionate to the circumstances, risk and seriousness of harm; and are applied with the minimum force necessary, for no longer than necessary, by appropriately trained staff;
- use of restraint, reasons for it and consequences of its use, are documented<sup>19</sup>, monitored, open and transparent; and

- when planning support and reviewing any type of plan which references restraint (such as a behaviour support plan), children and young people, and parents, and where appropriate (for example, where the child or parent/carer wants it), advocates should be involved.

3.6 - The nine principles underpinning the NHS England and Local Government Association guidance *Developing support and services for children and young people with a learning disability, autism or both* are also fundamental to ensuring community support for children, and young people with learning disabilities, autistic spectrum conditions, and mental health difficulties who display behaviour that challenges and to ensuring that they have the right to the same opportunities as anyone else to live satisfying and valued lives and to be treated with the same dignity and respect.

### **Agreeing the use of planned restrictive physical intervention**

The level of risk to safety may mean that a planned restrictive physical intervention will be sanctioned in given circumstances. This should be explored by a multidisciplinary meeting which, in addition to professionals, should include family members (or those with parental responsibility) and the voice of the child. The purpose of the intervention and the agreed strategies should be formally recorded in the child's individual plan with an agreed review date. Principles for making this decision are outlined in this document.

### **Principles underpinning the use of force**

Surrey County Council's policy in relation to the use of force is founded upon three underpinning principles:

- the use of force should, wherever possible, be avoided
- there are occasions when the use of force is appropriate
- when force is necessary, it must be used in ways that maintain the safety and dignity of all concerned.

The application of a restrictive physical intervention should be an act of care not of punishment or aggression and should not be used to force compliance with staff instructions when there is no immediate risk to the child or other individuals.

Only the minimum force and least restrictive intervention necessary to prevent injury or to remove the risk of harm should be applied, and if used, this should be accompanied by calmly letting the child/young person know what they need to do to remove the need for restrictive physical intervention. The intervention should be used for the shortest possible time.

The scale and nature of any physical intervention must be proportionate both to the risk presented and to the nature of the harm they might cause or suffer.



## Duty of care

Schools, health and social care services staff owe a duty of care to safeguard from harm all children and young people in their care. Under the Management of Health and Safety at Work Regulations 1992, employers also have a duty of care to employees to ensure that their working environment is safe and where risks are identified, that appropriate guidance, BILD training and support is offered. Risks will include those posed by challenging behaviour.

Failure to exercise that duty of care includes omitting to take any action when there is evidence that significant harm might occur. Such a failure to act could result in allegations of negligence and consequent civil litigation.

Surrey County Council indemnifies its entire staff against claims for alleged negligence providing they are acting within the remit of their employment. As physical contact is considered to be an act of 'taking reasonable care' of a child or young person, staff following this guidance can be reassured about the support their employer would provide. In practice this means that the County Council, not the employee, would meet the cost of damages should a claim for alleged negligence be successful.

## Policies in education settings

Every school needs a policy on the use of physical contact which links to other school policies and is embedded in a whole-school ethos of positive behaviour support.

Having a clear policy is essential for each school, whatever the frequency with which it anticipates using restrictive physical interventions. A school policy known to all relevant staff will help them to:

- apply with greater confidence preventative and restorative strategies
- support colleagues in providing a supportive whole school or setting ethos
- develop their understanding of how and when restrictive physical intervention may be used
- be clear on training requirements
- know how to make a suitable record of an incident when restrictive physical intervention is used

In schools, head teachers and governing bodies and in other settings, the senior management team must establish systems to ensure that all incidents of restrictive physical intervention are logged by the member(s) of staff involved. A suggested reporting form is attached as [Appendix G](#). Where restrictive physical interventions are employed, the senior management team should regularly monitor and review practice and make recommendations to reduce the need for such interventions.

The school's policy on restrictive physical intervention should cross-reference other school policies such as behaviour and discipline, safeguarding, health and safety, special educational needs and disability and intimate personal care

A model school policy is provided with this guidance in [Appendix A](#).

All settings should provide a termly report detailing any restrictive physical interventions to the Education safeguarding team. The format for such reporting is contained within [Appendix K](#).

# **Good practice guidance for Surrey staff**

## **Good working practices to reduce the need for restrictive physical interventions**

The use of restrictive physical interventions will be reduced through effective early planning and early prevention strategies.

**Effective early planning** will include:

- creating a well-planned, calm, orderly and supportive environment
- developing trusting relationships between children and young people and staff
- ensuring that the number of staff deployed and their experience corresponds to the needs of children and young people
- developing staff expertise in working with children and young people who present challenging behaviours including BILD accredited training (BILD Physical Intervention Training Accreditation Scheme (PITAS) in de-escalation and positive touch
- ensuring staff are able to work in a restorative way with young people, enabling the young person to communicate their thoughts and feelings, so they are heard and understood
- hearing and responding to the views of the child or young person so that they can make choices about the way to manage their behaviour eg. some children and young people prefer withdrawal to a quiet area rather than a physical intervention which involves bodily contact.
- setting up and maintaining person-centred positive behaviour support plans, which reflect an understanding of the function of the behaviour for the child, and alternative ways for the child to get their needs met. This may include teaching alternative communication strategies, and giving the child acceptable ways to get out of situations they may find too difficult. These plans need to be responsive to individual needs as they change, and include current information on likely triggers and resulting behaviour
- avoiding or adapting known trigger situations which are likely to provoke challenging or aggressive behaviour
- creating opportunities for children and young people to engage in meaningful activities which include opportunities for choice and a sense of achievement
- carrying out individual risk assessments where there is a likelihood that challenging behaviour may present a risk to self or others

Positive behaviour support plans and individual risk assessments should be person-centred; it is good practice to include and engage with the children and young people, their families and advocates when writing these documents. This enables

children and young people where possible, to express how they could be supported to avoid behaviour incidents, and how they prefer to be managed when they pose a significant risk to themselves or others.

**Early prevention** involves recognising at an early stage the outward signs an individual may display and then implementing the planned strategies to avert any further escalation.

- It is important to communicate calmly with the child/young person, using non-threatening verbal and body language and ensuring the child can see a way out of the situation.
- Strategies might include, for example, going with the staff member to a calm space, so that the staff member can listen to concerns; being joined by a particular member of staff well known to the child; or any of the other strategies names in the individual's plan
- The solution should seek to be a win-win situation

All prevention strategies should be carefully selected and regularly reviewed to ensure that they are impacting positively on the child or young person.

If there is any expectation that despite early planning and prevention strategies a child or young person's behaviour may escalate to the point at which they present a significant risk to themselves or others, a restrictive physical intervention plan may be required. This will require a detailed plan and individual risk assessment which should be discussed and agreed with the individual and their family. Staff should be offered appropriate Local Authority approved BILD accredited training (PITAS).

## Using restrictive physical intervention

Wherever physical force is applied against resistance, it should be regarded as a restrictive physical intervention and recorded and reported as such. In any situation, the least restrictive intervention available should be used, based on the specific needs of an individual and others whose actions may impact upon them. The appropriateness of the physical intervention must always be related to the age, maturity, understanding and capacity of the individual. It should be consistent with their education or placement plan and the role of the service setting. Planned physical intervention strategies should be:

- agreed in advance by a multidisciplinary or school/social care team working in consultation with the child or young person, and those with parental responsibility
- described in writing and incorporated into other documentation which sets out a broader strategy for addressing the child or young person's behavioural or emotional difficulties
- delivered by staff who have been trained in a BILD accredited approach.
- implemented under the supervision of an identified member of staff who

- has undertaken appropriate BILD accredited training (PITAS).
- recorded in writing so that the method of physical intervention and the circumstances when it was employed can be monitored and, if necessary, investigated.

## **Legal framework**

The use of restrictive physical interventions must be consistent with the Human Rights Act (1998) and the United Nations Convention on the Rights of the Child (ratified 1991). These are based on the presumption that every person is entitled to:

- Respect for his or her private life
- The right not to be subjected to inhuman or degrading treatment
- The right to liberty and security
- The right not to be discriminated against in his/her enjoyment of those rights.

It is a criminal offence to use physical force, or to threaten to use force (for example, by raising a hand, or threatening to use a physical intervention), unless the circumstances give rise to a 'lawful excuse' or justification for the use of force. Similarly, it is an offence to lock a child in a room without a court order (even if they are not aware that they are locked in) except in an emergency, for example the use of a locked room as a temporary measure while seeking assistance may provide legal justification.

## **Education and Inspections Act 2006**

For schools, Section 93 of the Education and Inspections Act 2006 enables school staff to use such force as is reasonable in the circumstances to prevent a child or young person from doing, or continuing to do, any of the following:

- committing any offence (or, for a child or young person under the age of criminal responsibility (10 years old); what would be an offence for an older child or young person);
- causing personal injury to, or damage to the property of, any person (including the child or young person himself); or
- prejudicing the maintenance of good order and discipline at the school or among any child or young person receiving education at the school, whether during a teaching session or otherwise.

The staff to which this power applies are defined in section 95 of the Act. They are:

- any teacher who works at the school, and
- any other person whom the head teacher has authorised to have control or charge of children or young persons. This:

- (i) includes support staff whose job normally includes supervising a child or young person such as teaching assistants, learning support assistants, learning mentors and lunchtime supervisors
- (ii) can also include people to whom the head teacher has given temporary authorisation to have control or charge of a child or young person such as paid members of staff whose job does not normally involve supervising children or young persons (for example catering or premises-related staff) and unpaid volunteers (for example, parents accompanying children or young persons on school-organised visits)
- (iii) does not include prefects.

The power may be used where the child or young person (including a child or young person from another school) is on school premises or elsewhere in the lawful control or charge of the staff member (for example on a school visit).

The Act stipulates that the head teacher may empower staff by reference to an individual child or young person or staff member, or a group of children or young persons of a particular description, all children or young persons, or a group of staff of a particular description. There are no legal requirements as regards how staff, children or young persons should be notified of such a decision. SCC recommends that head teachers record this in writing, including in a staff member's contract, and making this a part of the measures that the head teacher sets down in the school's behaviour policy.

Corporal punishment – as defined in section 548 of the Education Act 1996 – is unlawful.

Use of restrictive physical intervention may also give rise to an action in civil law for damages if it results in injury, including psychological trauma, to the person concerned. However, Surrey County Council will support staff that, having been trained in Local Authority approved accredited restrictive physical intervention, follow this policy and act in a reasonable manner. Whether the member of staff decides to use a restrictive physical intervention or not, they must be able to demonstrate that their decision was rational.

### **Deprivation of Liberty**

Under The Children Act 2006, any practice or measure such as 'time out' or seclusion, which prevents a child from leaving a room or building of his or her own free will may be deemed a 'restriction of liberty'. Under this Act, restriction of liberty of children by a local authority is only permissible in very specific circumstances - for example when the child is placed in secure accommodation approved by the Secretary of State or where a court order is in operation.

There may be instances where it is appropriate to restrict a child who may be at risk due to a lack of awareness or danger to a room or a particular area in order to keep him/her safe, e.g. if s/he has a severe learning disability and/or their ability to make safe choices is temporarily impaired by severe anxiety or rage,

resulting in challenging and unsafe behaviour. This should be treated as a Restrictive Physical Intervention with the preventative plans and approaches in place as described in this document. However, it must be ensured that they are cared for under close adult supervision at all times and the incident fully recorded and reported as any other physical intervention would be.

No school or children's home should unnecessarily restrict the liberty of a child.

For the legal context see [Appendix L](#)

If you have any queries about DOLS (Deprivation of Liberty Safeguards) contact Legal services (0208 541 9088).

## **Reasonable force**

There is no absolute legal definition of 'reasonable force' as it is viewed in the context of the individual case. It is judged to mean no more force than is needed in the circumstances.

There are two relevant considerations:

- The use of force can be regarded as reasonable only if the circumstances of the particular incident warrant it; therefore, physical force could not be justified to prevent a child or young people from committing a trivial misdemeanour or in a situation that could clearly be resolved without force
- The degree of force employed must be in proportion to the circumstances of the incident and the seriousness of the risk or behaviour or the consequences it is intended to prevent. Any force used should always be the minimum needed to achieve the desired result.

Whether it is reasonable to use force, and the degree of force that could reasonably be employed, will also depend on the age and understanding of the child or young person. It is also important to recognise that where a restraint might be considered reasonable in one instance it may not be in another. In all instances, the least restrictive option should be used.

## **Who can use reasonable force?**

It is the responsibility of the education or care setting managers to ensure that any staff expected to engage in planned restrictive physical intervention with a child or young person be specifically authorised and trained in Local Authority approved BILD accredited techniques suitable for that child.

All staff, whether trained or not, including temporary or agency staff, may use reasonable force to physically intervene in an emergency or to defend themselves in circumstances where they have a genuine fear of being injured or believe a child or young person or indeed any adult may be at risk. The principles of least restrictive interventions and reasonable force will still apply

here. All staff who may be put in this position should be trained to understand these principles, and positive approaches to behaviour.

An effective risk assessment procedure together with well-planned preventative strategies will help to keep the emergency use of restrictive physical interventions to an absolute minimum. However, staff should be aware that, in an emergency, the use of force may be justified if it is reasonable to use it to prevent injury or serious damage to property and, in schools, to prevent a child or young person engaging in any behaviour prejudicial to the maintenance of good order and discipline in the school or among any of its children or young persons.

A calm and measured approach to a situation is needed and members of staff should never give the impression that they have lost their temper, or are acting out of anger or frustration, or to punish the child or young person.

Even in an emergency, the force used must be reasonable. It should be commensurate with the desired outcome and the specific circumstances in terms of intensity and duration. Before using restrictive physical intervention in an emergency, it should first be considered if physical intervention can be avoided by evacuating other children and staff from the vicinity of the risk. The person concerned should be confident that the possible adverse outcomes associated with the intervention (for example, injury or distress) will be less severe than the adverse consequences that might have occurred without the use of a restrictive physical intervention.

### **The use of seclusion**

The use of seclusion where a child or young person is forced to spend time alone against their will would not normally be seen as appropriate except for short periods of time in extreme situations whilst help is obtained. This is in contrast to time out, where a child or young person would be supervised or accompanied in a neutral manner, and to withdrawal where they are removed from a difficult situation and accompanied while they calm down. It is an offence to lock a child in a room without a court order except in an emergency while seeking assistance. However, in educational settings, it is acceptable for double or high door handles or locking of outside doors to be used for safety and security reasons when pupils are supervised in the same room or area by staff.

Where a child or young person makes a choice to self-seclude, for example to escape from the social pressure of a situation, the Local Authority would require evidence of extensive communication with families or care providers by the setting. This would include outlining and agreeing the conditions of seclusion and a plan for reintegration with peers, based on the child's needs and preferences.

The consultative group associated with the writing of this policy recognises there are occasions when the use of seclusion, where a child or young person may need to spend time on their own for their own safety or the safety of others.



Surrey County Council views such practice should be minimised by the use of other strategies within the policy.

Where the health and safety of a child or young person and/or that of staff is at risk significant reduction in stimulus and freedom of movement is likely to be necessary.

With the safety of the CYP and their human rights in mind any intervention of this nature should be agreed by all relevant parties, an identified plan should be in place specifying individual processes for support. A review of practices should be in place and any intervention of this kind should be time bonded.

## **Recording and reporting**

### **Monitoring and review**

It is very important that every school, service and social service setting, regardless of size or context, establishes a clear and consistent route through which any incident involving restrictive physical intervention is recorded and communicated - and to whom. Examples for recording information can be found in [appendix G](#) and [appendix I](#)

All accident, incident or near miss reports must be recorded. Surrey schools and social care settings can access the SCC on line health and safety event reporting portal (OSHENS) [surreycc.oshens.com](http://surreycc.oshens.com)-. When a predetermined threshold is met the training team will contact the school for training to be offered.

<b>Residential Special Schools</b>	<b>Children's Homes</b>
National Minimum Standards Care Standards Act 2015 Standard (10) - 10.14	Children's Homes Regulations 2015 :19 and 20 Also the Children's Guide to the Regulations 2015

It is recommended that all settings adhere to this procedure. All staff should know to whom they should report incidents of restrictive physical intervention and where this person is located. The setting manager and the parent/carer should be notified as soon as possible

Recording systems should be regularly monitored by setting managers. This monitoring should check that the procedures and systems that have been established are used in practice and are effective. A regular review process should be in place to discuss how any incidents of restrictive physical intervention could be reduced by changes to practice.

Individual plans should be reviewed regularly and additionally when changes in levels of risk or behaviour have occurred. School or setting policies should

be reviewed regularly and updated as necessary.

Surrey County Council, **as part of the CCRAG network** send a self audit to all schools in Surrey and to all “out of county” schools where Surrey children have been placed. This audit titled “Audit of Statutory Duties and Associated Responsibilities” now includes a section on the use of restrictive physical interventions.

If there are any concerns raised that the physical intervention was not required, not undertaken in accordance with the guidelines, or the child or young person was injured as a result of excessive force, or any allegations that the use of force was unlawful, then the Headteacher must be informed immediately. The Headteacher will then contact the Local Authority Designated Officer (LADO) before any action is taken. The [CSPA](#) will then advise on the next steps.

### **Staff training**

It is strongly advised that the issue of challenging behaviour and personal contact in general should be raised at interview and subsequently during induction training.

No member of staff should be expected to engage in planned restrictive physical intervention without sufficient appropriate and current training. This includes temporary and agency staff. Employers and managers are responsible for ensuring that staff receive training, including updates and refresher courses, appropriate to their role and responsibilities within their school or service. There will be particular training needs for staff working closely with children with special educational needs and/or disabilities, or with those who have a history of behaviours which challenge. The staff training and development policy should reference positive behaviour support training, as well as training in the use of appropriate touch and the use of restrictive physical interventions.

SCC requires that training complies with the standards and requirements of the policy, national and local guidelines (including BILD Code of Practice (2014)). The Local Authority, from a best practice point of view, would strongly recommend the use of a BILD accredited RPI training provider. Training is available through the CPI (Crisis Prevention Institute) Training Team at Surrey County Council who can advise on approved models.

It is also recommended that staff working with children with challenging behaviour be trained in restorative practice, particularly those working with children with social, emotional and/ or mental health needs.

The Local Authority recognises if physical skills required exceed the CPI MAPA foundation level training the setting should contact CPI / ATC (Crisis Prevention Institute/ Approved Training Centre) for advanced physical skills around the CYP, which may include Emergency Physical Skills or Emergency Responses.

All staff should familiarise themselves with the "[Guidance for Safe Working Practice for Adults who work with Children and Young People 2016](#)"

### **Screening and searching of children or young persons for prohibited items.**

Teachers can only undertake a search without consent if they have reasonable grounds for suspecting that a child or young person may have in his or her possession a prohibited item.

Schools are not compelled to use these powers - a power is just that, it is not a duty. While it is legally permissible to use force in these circumstances, the DCSF (2014) advise that when a child or young person suspected of carrying a prohibited item is likely to physically resist, school staff are advised to call the Police rather than use force to continue a search. Surrey County Council and the teaching unions support this position.

For staff in schools, reasonable force may also be used in exercising the statutory power, introduced under section 45 of the Violent Crime Reduction Act 2006, to search children or young persons without their consent for prohibited items. This search applies to head teachers and staff authorised by them, where they have reasonable grounds for suspecting that a child or young person has knives or weapons, alcohol, illegal drugs, stolen items, tobacco and cigarette papers, fireworks, pornographic images or articles that have been or could be used to commit an offence or cause harm. Any item banned by the school rules which has been identified in the rules as an item which may be searched for.

The searcher must be the same sex as the child or young person being searched; and there must be a witness (also a staff member) and, if at all possible, they should be the same sex as the child or young person being searched. There is a limited exception to this rule. You can carry out a search of a child or young person of the opposite sex to you and without a witness present, but only where you reasonably believe that there is a risk that serious harm will be caused to a person if you do not conduct the search immediately and where it is not reasonably practicable to summon another member of staff.

More advice can be found in the DfE Guidance [Searching, screening and confiscation 2014](#)

## [Intimate care and toileting in education settings](#)

The local authority provides best practice guidance notes for all staff supporting children and young people who require physical assistance to access all possible aspects of school/home life. The guidance notes are designed to promote a balanced approach to handling tasks and ensure that every opportunity is available for the children and young people. This guidance aims to ensure that settings take a proportionate approach to supporting their children and young people, allowing them to reach their full potential whilst at the same time ensuring employers and employees have a clear understanding of their responsibilities.

Some children and young people in Surrey schools and nurseries will need help and physical support to ensure that they can access every opportunity open to them.

Moving and handling (sometimes known as manual handling) is all about identifying manual techniques, small aids or specialist equipment to help children and young people maximise their contribution to activities they need support to access. After carrying out a comprehensive assessment, bespoke training will ensure that everyone who helps the student is confident and competent and is giving exactly the assistance the student wants and needs. Working closely with other professionals and therapists involved with the children and young people, a risk assessment will detail techniques and the correct use of equipment that has been identified as beneficial to the child and young person. Photos may be used to ensure consistency of approach.

Moving and handling is much more than simply ensuring legal obligations are met in relation to handling tasks, it is about using techniques and equipment to enrich a child and young person's life.

Some children may have intimate care requirements while attending their education setting. All of the children and young people we work with have the right to be safe, to be treated with courtesy, dignity, and respect, and to be able to access all aspects of the education curriculum.

[Surrey County Council guidance for Intimate Care and Toileting 2014](#) provides guidance for staff in early years and school settings.

## [Post-incident support](#)

Incidents requiring force can be very distressing to all concerned, including observers and so support is required to restore well-being and calm. Services should ensure they have procedures in place for providing support to children and staff under such circumstances.

There should be no attempt to apportion blame. The purpose of post incident support is to explore the following themes:

- (i) gathering of facts that led to the incident
- (ii) staff to explore any patterns linked to the incident eg settings,

- staffing and frequency
- (iii) the opportunity to analyse, reflect and learn from the incident, to investigate alternative strategies to minimise risk through discussions with the young person where possible.
  - (iv) Repair relationships with all involved through restorative practice.

BILD accredited training providers, can provide strategies to support the process of debrief. The process should be reflective of all actions taken by staff and young people involved and support emotional and physical de-escalation over a period of time until risk is reduced.

## Review procedures

All settings should have a review process for incidents where a restrictive physical intervention or the use of reasonable force has taken place. The review should include the following:

- Is the function of the behaviour for the child or young person understood?  
– If not, what work is needed to understand this?
- Are there more acceptable ways the child or young person could have achieved the same outcome?
- What could the setting do to support the child or young person to achieve this?
- What steps are taken to ensure that the appropriate restrictive physical intervention was applied?
- Have the incidents needing restrictive physical intervention increased/decreased?
- How are incidents monitored to ensure that the length of time restrictive physical intervention is used is kept to a minimum? Who will be the identified adult to complete the monitoring?
- Are practices reviewed and alternative methods that do not involve restrictive physical intervention explored as a possible outcome in each case? Do we have a plan to reduce interventions?
- What steps are taken to ensure that all staff managing risk behaviour are trained in restrictive physical interventions to ensure minimum pain or distress to all involved?
- Where restrictive physical intervention is being used, are methods in place for checking medical advice? Are all relevant staff aware of individual needs such as children/young people's medical conditions and care plans?
- Are there separate debriefing sessions for staff and young people who have been involved in incidents? Does the review explore antecedents, consequences and alternative courses of action, including restorative approaches?
- Are risk assessment procedures robust, fit for purpose and regularly reviewed?

A regular planned review of the issues detailed above is an essential part of

ongoing risk management.

## Dealing with complaints and allegations

In line with the [Guidance for safer working practice for those working with children and young people in education settings 2015](#) this guidance has been produced to help adults establish the safest possible learning and working environments which safeguard children and reduce the risk of them being falsely accused of improper or unprofessional conduct.

Children and young people and their parents/carers have a right to complain about actions taken by staff. Children and young people and their representatives must have clear information about how to make their views known, how to make a complaint and how to access the services of an advocate.

Clear consistent policy and practice should help to avoid complaints from a child or young people using the service, their parents, other relatives or carers. However, it will not prevent all complaints, nor the possibility that a complaint might result in a disciplinary hearing, a criminal prosecution, or in a civil action. In any of these circumstances, it would be for the disciplinary panel or the court to decide whether the physical contact was reasonable in the circumstances.

If any member of staff at any time thinks that an action may have been misinterpreted, or may lead to a complaint, they need to feel confident to report the situation immediately so that it can be recorded fully, and the manager can assist any debrief with the child and their parents which may be necessary.

If a specific allegation is made the guideline in the [Surrey Safeguarding Children Board procedures](#) must be followed. These procedures should be applied when there is an allegation or concern that any person who works with children, in connection with his/her employment or voluntary activity, has:

- Behaved in a way that has harmed a child, or may have harmed a child;
- Possibly committed a criminal offence against or related to a child;
- Behaved towards a child or children in a way that indicates they may pose a risk of harm to children; or
- For staff for whom the [Keeping Children Safe in Education 2018, September 2018](#) applies - behaved towards a child or children in a way that indicate he or she would pose a risk of harm if they work regularly or closely with children.

All such concerns must be reported to the [CSPA](#) before any action is taken unless there are immediate safeguarding concerns for the child which must be dealt with as per [Surrey Safeguarding Children Board Procedures](#)

Whenever an allegation is made and an investigation undertaken there will be learning points for the organisation. It is important for organisations to act on any recommendations from the investigation. Other complaints should be dealt with under [normal complaints procedures](#)

## **References**

Children Act 1989 and 2006  
Care Standards Act 2000  
Children and Families Act 2014  
Children's Homes Regulations and Guide 2015  
Education and Inspections Act 2006  
Education Act 2002, Section 175  
Education Regulations 2010, para 7, schedule 1  
Management of Health and Safety at Work Regulations 1992  
Working together to safeguard children DfE 2015  
Guidance for safer working practice for adults who work with children, Safer Recruitment Consortium 2015  
Reasonable Use of Force, DfE July 2013  
Behaviour and Discipline in Schools, DfE January 2016  
Code of Practice for Trainers in Physical Interventions, 4th Edition (BILD 2014)  
[Reducing the Need for Restraint and Restrictive Intervention \(June 2019\) - DoH/DfE, June 2019](#)  
Children and Young People with Learning Disabilities, Autistic Spectrum Disorder and Mental Health Difficulties (and superseding documentation following consultation)  
DfES Guidance on the "Use of Restrictive Physical Interventions for Children or young persons with Severe Behavioural Difficulties" 2002  
Surrey County Council, Health, Safety and Welfare Policy and Subordinate Business Health Safety and Welfare Policies.  
Surrey Safeguarding Children Procedures.  
[Keeping Children Safe in Education 2018](#)  
The special educational needs and disability code of practice: 0 to 25 years', Department for Education and Department of Health, 2015;  
[www.gov.uk/government/publications/send-code-of-practice-0-to-25](http://www.gov.uk/government/publications/send-code-of-practice-0-to-25).  
Ofsted guidance for schools:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/693446/Environments\\_where\\_children\\_can\\_flourish.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/693446/Environments_where_children_can_flourish.pdf)

## Useful contacts

Surrey Safeguarding Board

CSPA – Children’s Single Point of Access

Local Authority Designated Officer (LADO)

Surrey RPI Training Team

Education Leads for Vulnerable Learners

DOLs Team

Surrey Legal services

BILD

Consultative group involved in the creation of this document (in addition to ‘useful contacts’ above)

- Children’s Services Management Team
- Education Safeguarding team
- Health and Safety Team Surrey
- Phase Council Heads (Primary, Secondary and Special)
- Union representatives
- RPI training team
- Education & Inclusion Service Managers

## Appendices

- A [Model School/Setting Touch Policy](#)
- B [School level restrictive physical intervention policy](#)
- C [An exemplar policy on the use of force by staff to control or restrain children or young persons \(primary school\).](#)
- D [Model school procedures for the use of restrictive physical interventions by staff](#)
- E [Risk Assessment](#)
- F [Individual child or young person risk assessment](#)
- G [Child or young person Incident report form](#)
- H [Guidance for residential workers](#)
- I [Termly Monitoring Report Form](#)
- J [Adapted ADASS Task Force Screening Tool](#)
- K [Record of Physical Intervention](#)



## **Appendix A – Model School/Setting Touch Policy**

### **Acceptable forms of touch/physical intervention in [insert name] school/setting**

There are many occasions when staff will have cause to have physical contact with children or young persons for a variety of reasons, for example:

- Communication
- First Aid
- to comfort a child or young person in distress (so long as this is appropriate to their age)
- to direct a child or young person (holding hands, hand on shoulder etc)
- for educational skills (PE, Drama etc)
- for life skills (changing for PE, toileting, using cutlery etc)
- in an emergency to increase safety to the child or young person and staff

In an emergency incident staff may take into account the use of reasonable force and their responsibilities under duty of care.

In all situations where physical contact between staff and children or young persons takes place, staff must consider the following:

- the child or young person's age and level of understanding
- the child or young person's individual characteristics and history
- the location where the contact takes place (it should not take place in private without others present)

If a child or young person requires physical support on a regular basis this information will be documented on an individual plan such as a handling plan, toileting plan or behaviour support plan.

[\*Schools may wish to add their own paragraph here, appropriate to their own situation.]

Physical contact is never made as a punishment, or to inflict pain. All forms of corporal punishment are prohibited. Physical contact will not be made with the child or young person's neck, breasts, abdomen, genital area, other sensitive body parts, or to put pressure on joints. It will not become a habit between a member of staff and a particular child or young person.

## **Appendix B –School Level Restrictive Physical Intervention Policy**

### **Context**

Surrey schools and educational establishments are encouraged to use this framework, and to adapt it to their own situation. The Policy is best placed within the context of the school's Touch Policy and referred to within the Behaviour Policy; it will be part of a graduated response, and needs to be agreed in consultation with staff, governors, parents/carers, and the child or young person. It also connects to, and should be consistent with, policies on Health and Safety, Child Protection and safeguarding, Equal Opportunities, and Pastoral Care.

### **Issues for schools to address**

- Which staff other than teachers will be authorised to use Restrictive Physical Intervention (RPI) in your school?
- By what process will staff be selected and authorised to use RPI in your school?
- In what situations would the school consider it appropriate for teachers and other authorised school staff to use RPI?
- What kind of actions would be viewed as using restrictive physical intervention in your school?
- What kind of actions involving use of physical intervention would be viewed as unwarranted, excessive or punitive in your school?
- What course of action will be taken in the event of staff failing to comply with this policy?
- How will the school involve parents and others who know the young person in the process of developing individual behaviour management plans?
- What process is to be used to agree and ratify individual behaviour management plans for use in school?
- How will individual behaviour management plans be recorded?
- What action does the school intend to take to assess and manage the risks presented by children or young persons?
- What actions will the school take to assess techniques and methods for implementing planned use of physical intervention?
- What kinds of unforeseen or emergency situations might staff find themselves in within your school? What techniques will the school acknowledge for use in these situations? How would such incidents be reported?

- Who will provide staff and children or young persons with support after incidents?
- Who will check for injuries, provide first aid and arrange for medical aid?
- Who will report injuries to HSE?
- How are incidents to be reported, recorded and notified?
- How will the school monitor and evaluate the use of restrictive physical intervention?
- How will incident monitoring inform risk assessment and management?
- How will complaints be investigated and by whom?

It is advised that all schools should be familiar with the Surrey Policy on Touch and the use of Restrictive Physical Intervention and associated guidance.

## Appendix C – An exemplar policy on the use of force by staff to control or restrain a child or young person (primary school).

NAME OF SCHOOL:

### **OBJECTIVES.**

This school endeavours to ensure that all children are safe and that all aspects of the every child matters agenda are addressed. The main objective of this policy is to ensure all staff, parents and children or young persons are aware of the procedures and practice that will be carried out to ensure that this is the case at the school. This policy links with the schools behaviour policy, ant-bullying policy and special educational needs policy. It is intended to ensure that it will prevent serious breaches of school discipline and prevent injury to individuals or serious damage to property.

In order to minimise the need to use force or restrain child or young persons at staff will strive to:-

- create a calm environment that minimises the risk of incidents that might require using force and apply school rules consistently and fairly.
- develop an effective relationship between staff and a child or young person that is central to good order.
- ensure all supervision of children is carried out in a consistent manner so children and staff are comfortable within the setting.
- use relevant materials for approaches to teach children or young person's how to manage conflict and strong feelings.
- ensure all staff have appropriate instructions and training to enable them to be effective in their various roles in and out of the classroom.
- ensure that handling plans will be put in place and training given to ensure staff are equipped to deal with individual children or young persons who have been identified.
- Whenever possible, warn a child that force may have to be used before using it.

### **Responsibilities**

It is the head teacher's duty to ensure all staff are aware of their statutory powers to use force and or restrain a child or young person. As part of the induction process into school the head teacher will inform staff if they have the powers to restrain, and

who they can turn to if they are in a situation with a child or young person that may be causing concern.

The head teacher will inform the governors through the heads report those people that have been authorised to use force or restrain a child or young person in school. All staff at school may have the statutory powers to use force to restrain a child or young person or remove them from a classroom. A record of 'authorised' staff will be indicated on the DBS checklist retained in the school office.

### **When and where to use restraint**

The judgement on whether to use force and what force to use should always depend on the circumstances that staff find themselves in. Time in these circumstances is often short with little time for reflection. Nevertheless, staff needs to make the clearest possible judgements. Staff will need to decide the seriousness of the incident and the injury, disorder or damage that could occur if force is not used. The chances of achieving a desired outcome by other means and the risks associated with physical intervention compared with using other strategies. Staff will have been made aware of any significant children or young persons i.e. those on SEND/Child Protection Registers and in any extreme cases where there is a need to engage the police to avoid danger to themselves and others.

If a member of staff decides that the use of force is appropriate and an action of last resort then they should always:-

- advise giving a warning to the child or young person that a physical intervention may have to be used.

- suggest how the child is to be handled ensuring that no form of restraint is

used that could constrict breathing. Appropriate means are passive

physical contact such as standing between children or young persons or blocking a child's path,

leading a child or young person by the hand or arm, ushering a child or young person away by placing a hand in the centre of the back or in more extreme circumstances using appropriate restrictive methods that a member of staff has been trained to perform.

- try to ensure that they do not use force unless or until another responsible

adult is present to support, observe or call for assistance.

### **Examples of situations that particularly call for judgements of this kind include:**

- a child attacks a member of staff or other child

- children are fighting, causing risk or injury to themselves or others
- a child is causing or on the verge of committing deliberate damage to property.
- a child is causing or is at risk of causing injury or damage by rough play or use of an object.
- a child absconds from a class or leaves school at an unauthorised time.
- a child persistently refuses to follow an instruction to leave a classroom.
- a child is behaving in a way that seriously disrupts a lesson, a school event or school visit.

In these examples use of force would be reasonable (and therefore lawful) if it is clear the behaviour is dangerous and the situation could not be resolved in any other way. Account must be taken of the individual needs of the child their understanding of the situation.

### **Recording of incidents**

A record sheet (will be completed by all staff engaged in any incident where handling has taken place even if they did not handle the child. The record sheets will be kept centrally in the school office. Once completed they must be passed to the Head teacher. They must be completed once the situation has been dealt with to ensure accuracy and that it is a true and honest report. The head teacher will inform the parents of the child by phone followed by a letter and if necessary arrange to meet them. The report will then be filed in the child's records in the school office.

All accident, incident or near miss reports must be recorded. Surrey schools can access the SCC on line health and safety event reporting portal [surreycc.oshens.com](http://surreycc.oshens.com)

Following any incidents where force has been appropriate the Head teacher will make arrangements to support the staff and children as these can be upsetting times.

First aid will be administered by a trained first aider and emotional support will be provided as required.

Staff will discuss the situation within 2 days with the Head teacher to see if all Procedures were followed and how we could try to avoid further repercussions,

learning from the experience.

## **Complaints procedures**

The school has a clear complaints procedure and any complaints would be received in the first instance by the Head teacher. If matters were not resolved then the complainant would take the matter to the Governing Body. Parents wishing to make a complaint will be issued with the guidance booklet detailing the procedures from the school.

## **Caring touch**

There may be circumstances when physical contact is appropriate and recovery other than that covered by Section 93 of the Education Inspection Act of 2006 i.e.:-

- contact in PE demonstrating technique or exercises.
- administering first aid.
- congratulating a child or young person or where a child is in distress and needs comforting
- young children and those with SEN may need staff to provide physical prompts or help.

In all these cases teachers must use their own professional judgement when they feel a child or young person needs this kind of support, which should always respect the wishes of the individual

This policy will be monitored by the school and governors and will be reviewed on a regular basis. The Head teacher and staff will review the schools use of force strategy following any incidents and make any relevant changes to the policy.

**THIS POLICY WAS ADOPTED BY THE STAFF AND GOVERNORS**

ON

Policy due to be reviewed



## [Appendix D - Model school procedures for the use of restrictive physical interventions by staff](#)

This procedure supports the application of the Surrey County Council policy and guidance on the use of Touch and Restrictive Physical Intervention

- 1 The person responsible for authorising staff to use restrictive physical intervention as part of a structured and planned intervention within this school is **(insert name)**.
- 2 The person responsible for ensuring that all planned use of restrictive physical intervention is risk assessed is **(insert name)**.
- 3 Copies of all risk assessments are held **(state where)** and are reviewed after every use of force and termly.
- 4 As of **(insert date)**, the people who are authorised to use reasonable force in planned restrictive physical interventions are listed here. No other person should engage in a planned intervention.

### **List individual names**

**Or**

### **Generic job titles**

(Ensure details are reviewed / updated regularly)

- 5 Only those trained in appropriate techniques within the last twelve months may be authorised. The person responsible for ensuring that appropriate training is provided, including regular updates, is **(insert name)**.
- 6 Training records are held **(state where)**.
- 7 Those not involved in risk assessment but whose roles include the supervision of children may use reasonable force in an emergency unplanned intervention where it is necessary to prevent a serious injury from occurring.
- 8 Every use of restrictive physical intervention is to be reported the same day to the Head teacher or the deputy in charge if the Head teacher is off-site. The Head teacher, their deputy or an appropriate senior manager with responsibility for safeguarding, will ensure that a parent of the child who has had force used against them is notified that day. **(The school may want to add the method of doing this)**.
- 9 In addition, the details of each use of physical intervention must be recorded on the Child or young person Incident Report Form that is held **(state where.)** This form can also be found in [Appendix G](#) of this document. The person leading the planned or unplanned intervention must complete this form. The head teacher will review every use of physical intervention.

## Appendix E - Risk assessment

When the use of a restrictive physical intervention is appropriate, it is important that steps are taken to minimise the risk to both staff and children.

Among the main risks to children and young people are that a restrictive physical intervention could:

- be used unnecessarily, that is when other less intrusive methods could achieve the desired outcome
- cause injury, pain, distress or psychological trauma
- become routine, rather than an exceptional method of risk and behaviour management
- increase the risk of abuse
- undermine the dignity of the staff or children and young people or otherwise humiliate or degrade those involved
- create distrust and undermine personal relationships.

The main risks to staff include the following:

- they suffer an injury whilst carrying out a restrictive physical intervention
- as a result of applying a restrictive physical intervention they experience distress or psychological trauma
- the legal justification for the use of a restrictive physical intervention is challenged in the courts (even it were clear that the member of staff acted recklessly, unreasonably or against the policy of the school or authority, the employer would usually be required to justify its actions)
- disciplinary action or a child protection enquiry that does not reach the Courts, but nevertheless contains similar inherent stresses.

The main risks of not intervening appropriately may include:

- children, staff or other people being injured or abused
- staff leaving the profession
- serious damage to property occurring
- the employer being in breach of the duty of care to staff and/or others
- the possibility of litigation arising out of not intervening.

There are three main pieces of health and safety legislation which are relevant to violence at work. These are:

- The Health and Safety at Work etc Act 1974 (HSW Act)

- The Management of Health and Safety at Work Regulations 1999 and successor legislation
- The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR)

### **Regulation 3 requires employers to carry out a risk assessment of the work**

- Employers have a legal duty under this Act to ensure, so far as is reasonably practicable, the health, safety and welfare at work of their employees.
- Employers must notify their enforcing authority in the event of an accident at work to any employee resulting in death, major injury or incapacity for normal work for seven - or more consecutive days. This includes any act of non-consensual physical violence done to a person at work.

Whenever it is foreseeable that a child or young person might require a restrictive physical intervention, a risk assessment should be carried out which identifies the benefits and risks associated with the application of different intervention techniques with the person concerned.

Planning should also be undertaken to see if trigger situations can be avoided and other positive strategies employed to minimise the likelihood of such incidents occurring.

Management teams are advised to assess the frequency and severity of incidents requiring use of force that are likely to occur in their school/establishment. Historical patterns usually provide a good starting point. These assessments will help to inform decisions about staff training.

An individual risk assessment is essential for children or young persons whose special educational needs and/or disabilities (SEND) are associated with:

- communication impairments that make them less responsive to verbal communication;
- physical disabilities and/or sensory impairments;
- conditions that make them fragile, such as haemophilia, brittle bone syndrome or epilepsy; or
- dependence on equipment such as wheelchairs, breathing or feeding tubes.

It is important that all school and service settings develop appropriate documentation and approaches to assessing risk. The assessment tool must be appropriate for use in that setting. A model individual risk assessment form is included with this guidance ([Appendix F](#)).

There are rare occasions when it may be appropriate to act with only minimal assessment of risks – for example, in exceptional circumstances, where there

is an immediate risk of injury, a member of staff may need to take any necessary action that is consistent with the concept of “reasonable force”.

Whilst not an exhaustive list, examples include:

- to prevent a child or young person running off a pavement onto a busy road, or falling into water
- where a child or young person uses tools dangerously or inappropriately
- to prevent a child or young person hitting someone else
- throwing stones (etc...) at a window where there is an immediate risk of injury from broken glass
- misuse of substances (e.g. cleaning fluids, etc...) where there is a likelihood of immediate harm

Whenever possible assistance must be sought;

- when the member of staff believes that he or she may be at risk of injury
- when managing an older or physically larger child or young person
- where there is more than one child or young person
- where a child or young person appears to be under the influence of drugs or alcohol, or who is ill
- where a child or young person appears to have a weapon

Elevated levels of risk are associated with:

- the use of clothing or belts to restrict movement
- holding someone who is lying on the floor or forcing them onto the floor
- any procedure which restricts breathing or impedes the airways
- seclusion, where a child or young person is forced to spend time alone in a room against their will
- extending or flexing the joints or putting pressure on the joints
- pressure on the neck chest abdomen or groin areas.

## Appendix F - Individual child or young person risk assessment

Surrey County Council – child or young person risk assessment

A plan for assessing and managing foreseeable risks for children or young people who are likely to need Restrictive Physical Intervention

**School/Setting:**

**Name of Child:**

**DOB:**

**Class group/setting:**

**Name of teacher/support worker:**

**Name of parents/Carers:**

**Name of Support Service Member/s:**

<b>Identification of Risk</b>	
Describe the foreseeable risk (i.e. what specific behaviours have occurred)	
Is the risk potential or actual (i.e. has this happened before?)	
List who is affected by the risk	

<b>Assessment of risk</b>	
In which situations does the risk occur?	
How likely is it that the risk will arise (i.e has it happened before?)	
If the risk arises, who is likely to be hurt or injured?	
What kinds of injuries are likely to occur?	
How serious are the adverse outcomes?	

**Assessment completed by:**

**Date of review:**

**Signature:**

**Date:**

<b>Agreed plan and risk management strategy</b>		
<b>Focus of measures</b>	<b>Measures to be employed</b>	<b>Level of risk</b>
Proactive interventions to prevent risks		
Early intervention to manage risks		
Reactive interventions to respond to adverse outcomes		

**Agreed by:**  
**Parent/Carer**

**Date:**

**Child (if appropriate)**

**(Class teacher)**

**(Support Service Member/s)**

<b>Communication of plan and risk management strategy</b>		
<b>Plans and strategies shared with</b>	<b>Communication method</b>	<b>Date actioned</b>
Proactive interventions to prevent risks		
Early intervention to manage risks		
Reactive interventions to respond to adverse outcomes		

<b>Staff training issues</b>		
<b>Identified training needs</b>	<b>Training provided to meet needs</b>	<b>Date training complete</b>



<b>Evaluation of plan and risk management strategy</b>		
<b>Measures set out</b>	<b>Effectiveness in supporting the child</b>	<b>Impact on risk</b>
Proactive interventions to prevent risks		
Early interventions to manage risks		
Reactive interventions to respond to adverse outcomes		

**ACTIONS FOR THE FUTURE**

**Plans and strategies evaluated by:**

**Title:**

**Date:**

# Appendix G

## Child or young person Incident Report Form

Schools and other similar establishments are responsible for creating their own incident reports. Such reports can be as extensive or as brief as required. The following basic information must however be recorded as a minimum:

- Name of School/Establishment
- Child or young person's name/Date of Birth
- Staff member name and status
- Incident date/time/duration
- Nature of incident
- Events leading up to incident
- Description of what happened
- Consequences
- Names of those involved
- Names of witnesses
- De-escalation techniques used
- Justification for restrictive physical intervention
- Response and view of child or young person
- Details of any injuries
- Other relevant information
- Signatures of head teacher/manager and report author.

Schools and other similar establishments are free to create their own versions or to use the template provided below

**At the end of each term** the Head teacher should submit data via the s157/175 audit which will then be passed by the Education Safeguarding Team to the school effectiveness team. This will be followed up with the MAPA training team where there are any concerns raised

[Appendix K](#)

# Restrictive Physical Intervention Recording Form

Name of young person..... Date of incident.....

## WHAT DE-ESCALATION TECHNIQUES WERE USED PRIOR TO PHYSICAL CONTROLS:

(tick the appropriate box below)

<b>Defusing</b>	<input type="checkbox"/>	<b>Time out offer</b>	<input type="checkbox"/>
<b>Deflection</b>	<input type="checkbox"/>	<b>Time out directed</b>	<input type="checkbox"/>
<b>Distraction</b>	<input type="checkbox"/>	<b>Changes of task</b>	<input type="checkbox"/>
<b>Appropriate Humour</b>	<input type="checkbox"/>	<b>Choices</b>	<input type="checkbox"/>
<b>Proximity control</b>	<input type="checkbox"/>	<b>Limits</b>	<input type="checkbox"/>
<b>Verbal advice/support</b>	<input type="checkbox"/>	<b>Consequences</b>	<input type="checkbox"/>
<b>Rule reminder</b>	<input type="checkbox"/>	<b>Another member of staff</b>	<input type="checkbox"/>
<b><u>Hurdle help</u></b>	<input type="checkbox"/>	<b>Take up time</b>	<input type="checkbox"/>
<b>Planned ignoring</b>	<input type="checkbox"/>	<b>Other (please state):</b>	<input type="checkbox"/>
	<input type="checkbox"/>		<input type="checkbox"/>

## JUSTIFICATION FOR USE OF RESTRICTIVE PHYSICAL INTERVENTION:

(tick the appropriate box below)

<b>To prevent/interrupt;</b>	<b>A criminal offence</b>	<input type="checkbox"/>
	<b>Injury to pupil/staff/others</b>	<input type="checkbox"/>
	<b>Serious damage to property</b>	<input type="checkbox"/>
	<b>Significant Disruptive behaviour</b>	<input type="checkbox"/>
	<b>Pupil absconding</b>	<input type="checkbox"/>
	<b><u>Other (please state)</u></b>	<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>

**NATURE OF RESTRICTIVE PHYSICAL INTERVENTION USED:**

(Identify level of hold used, estimate of duration and factual staff accounts from each individual involved)

**RESPONSE AND VIEW OF THE YOUNG PERSON:** (this field **must** be completed if possible)

**Name of staff:**

**Date:**

**DETAILS OF ANY RESULTING INJURY:**

(injury to whom and any action taken)

**First Aid Book completed**

**Yes**  **No**

**Date:**

**OSHENS**

**Yes**  **No**

**Date:**

**ANY OTHER RELEVANT FACTUAL INFORMATION:**

<b>NAME OF SENIOR PERSON NOTIFIED:</b>		<b>TIME/DATE</b>	
<b>HEADTEACHER'S COMMENTS:</b>			
<b>SIGNATURE OF HEADTEACHER:</b>		<b>DATE:</b>	
<b>PARENTS INFORMED</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<b>METHOD:</b>	<b>DATE:</b>
<b>EXCLUSION OF YOUNG PERSON</b>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<b>DETAILS:</b>	

# Pupil Significant Incident Form

For all incidents involving unsafe/risk or unacceptable behaviour where a physical intervention using force was not used.

<b>Pupil name:</b>	
<b>Staff name/s:</b>	
<b>Incident date/time/place:</b>	

Reason for intervention (tick boxes as appropriate)	<b>Vandalism</b>	<input type="checkbox"/>		<b>Physical control</b>	<input type="checkbox"/>
	<b>Bullying</b>	<input type="checkbox"/>		<b>Absconding</b>	<input type="checkbox"/>
	<b>Assault</b>	<input type="checkbox"/>		<b>Substance abuse</b>	<input type="checkbox"/>
	<b>Diversion</b>	<input type="checkbox"/>		<b>Non-compliance</b>	<input type="checkbox"/>
	<b>Isolation</b>	<input type="checkbox"/>		<b>Serious disruption</b>	<input type="checkbox"/>
	<b>Time out</b>	<input type="checkbox"/>			<input type="checkbox"/>
		<input type="checkbox"/>			<input type="checkbox"/>

**ANTECEDENTS:** (events leading up to incident)

<b>BEHAVIOUR:</b> (how did the pupil respond, describe what actually happened)
<b>CONSEQUENCES:</b> (how did the staff intervene, how did the child respond, and how was the situation resolved)





# Appendix H

## **Guidance for residential workers**

### **Use of restrictive physical intervention**

The guidance which follows assumes adherence to the principles of the training undertaken Children's Residential Workers in Surrey, and that all reasonable efforts have been made to avert and defuse the situation before any physical intervention is used. Staff members may need to be properly prepared for these situations and be able to demonstrate that any restrictive physical intervention used was reasonable. This must take into account the circumstances in which the decision was made and the age, understanding, needs and ability of the child.

Any misconception that physical contact between responsible staff and a child is in some way unlawful should be dispelled. It is completely appropriate in certain settings, where relationships have been built for affection to be shown between adults and children. Staff need to be very clear in their boundaries around contact and need to ensure it meets a need for the child. In many instances children have a strong mistrust of adults. When this has been overcome and children feel safe and engaged, affection is a normal development of demonstrating trust. Adults need to ensure it is provided with very careful consideration based on the child's history and is clearly understood through checking out with the child how they perceive it. Physical comfort and touch can be needed and appropriate as part of a child's natural development. It can reinforce their value and enable them to build and establish healthy trusting relationships.

Situations where restrictive physical intervention may be appropriate

- At the discretion of the member of staff present as an immediate course of action to prevent injury to the young person or others and to prevent serious damage to property (such as systematically breaking the windows in the house)
- Where individuals are at risk themselves or pose a persistent threat to others or their property, it may be necessary to agree at a review the nature of any restrictions, whether they will be physically enforced, or if extra staff members are required

#### **Remember:**

- Use only as much force as necessary when all other efforts have failed
- Get help if possible to ensure effective and safe intervention
- Record any use of restrictive physical intervention in the 'Record of Restraint Book'
- Ensure the child or young person is spoken to about the reasons that made the use of restrictive physical intervention necessary

Page 50 of 66

- If the child or young person feels unfairly treated listen to their view, record it for management to investigate and offer them access an advocate
- Ensure the members of staff concerned are debriefed following an incident
- Ensure periodic review of the establishment's use of restrictive physical intervention

The home may at times employ restrictive physical intervention as a planned response to an individual child or young person. This would however only be as a result of a risk assessment based upon the known history and the current assessment of the child or young person. Any decision to adopt this approach will be undertaken with all relevant professionals involved in a child or young person's statutory care plan and would be clearly stated in their individual placement plan. Any such planned response is to be subject to vigorous review and ceased as soon as it is agreed that safety may be maintained through alternative responses.

### **Requesting Assistance from the Police**

Any request for Police assistance is only to be made by a senior staff member (unless individual staff members are in fear for life or injury). This decision will only be taken if the assessment of the situation undertaken by the senior worker is that not to do so would place an individual or group at greater risk and the on-call manager must be informed.

The Registered Manager will report 'a serious incident necessitating calling the police to the home' to OFSTED within 24 hours, however, Police intervention does not always meet this threshold.

Where suitable any evidence should be gathered through the use of CCTV

### **Prohibited Methods of Control**

In line with Regulation 17 of the Children's Home Regulations 2001, the following methods of control are prohibited:

- Corporal Punishment – this includes any intentional application of force as a punishment, including slapping, shaking, pushing, rough handling or throwing missiles. This is also prohibited within the context of any violence towards an adult from a young person
- Any punishment relating to the consumption or deprivation of food or drink
- Any restriction (other than one imposed by a court or in accordance with Regulation 15) on:
  - a young person's contact with parents, relatives or friends or visits to the young person by his parents, relatives or friends. A young person's communications with any of the persons listed in Regulation 15(2) "A young person's access to any telephone helpline providing counselling for children/young people"
- Any requirement that a young person wears distinctive or inappropriate

clothing. This includes a badge or clothes that would normally be deemed inappropriate for the time of day or set activity

- The use of or withholding of medication, medical or dental treatment
- The intentional deprivation of sleep
- The imposition of any financial penalty, other than a requirement for the payment of a reasonable sum by way of reparation
- Any intimate physical examination of a young person
- The withholding of any aids or equipment needed by a young person with a special need

### **Debrief**

Children can often feel as though they have been subjected to being overpowered by adults. It is critical work takes place to help restore those relationships and children are enabled as much as possible to understand the decision made by adults to 'hold' them.

Debriefs should occur ideally as soon as possible post incident. In order to gather the facts and perspectives of all those involved it is ideal to have a staff member do this who was not involved in the restraint, however this will not always be possible. It is critical during the post incident debrief, that priority is given to both learning and increasing everyone's awareness

# Appendix I- Record of Physical intervention

<p><b>Record of Physical Intervention</b></p> <p>Name of children's home/setting</p>
---

	<b>Reference No.</b>	
	<b>Notifications to Ofsted</b>	

## Section 1

<b>Name:</b>	
<b>Date of incident: Time:</b>	<b>Where did the incident happen?</b>
Name and job title of staff involved:	Name of witnesses i.e. children, members of the public

## Section 2

<b>Describe the trigger factors to the incident.</b>	
<b>What de-escalation strategies were used?</b>	
Verbal advice and support	Options offered
Distraction	Planned ignoring
Time out offered	Success reminded
Transfer adult	Positive handling
Choices, limits and consequences	Persuasion
Reassurance	Step away
Appropriate humour	Negotiation

**Any other strategies?**

### Section 3

<b>Justification for hold</b>		
If de-escalation was unsuccessful please state the reason for the intervention		
Danger to self		
Prevent severe damage to property		
Danger to others		
Was a choice given to the child before the hold was used?      Yes/No		
If no, explain why		

### Section 4

<b>Description of hold</b>
<b>Holds used</b>
Describe the hold used during the incident. Explain where each person involved was standing and describe how the child was being held. For example; staff AA was sat next to child BB's left side. AA's right hand was cupped around BB's left forearm.
What level of hold was used? Low, medium or high?

Please detail why was this hold used, thinking about the intent of the child, the size of the child and relationships between the staff and child.

How long did the hold last approximately?

### **Section 5**

#### **Medical attention**

All children must be offered medical attention after a hold even if they do not appear to be injured.

Was the child offered medical attention? Yes/No

Did they decline this? Yes/No

If they accepted the examination, what was the outcome?

Has Health and Safety form been completed? Yes/no

Injury suffered by child	Yes/No	Details:
Treatment required	Yes/No	Details:
Injury suffered by staff	Yes/No	Details:
Treatment required	Yes/No	Details:
Injury suffered by others	Yes/No	Details:
Treatment required	Yes/No	Details:

### **Section 6**

What need is being met for the young person by their behaviour?

How can we meet this need safely?

**Section 7**

<b>Issues with environment</b>
List any damage caused during the incident and steps taken to rectify this.

**Section 8**

<b>Follow up</b>
Record here the follow up work done after the incident. Consider the following questions; how did the child feel at the time? The incident must be discussed with them and their views, wishes and opinions heard and recorded. How can we help if this situation arises again? This information is very important to help staff manage behaviour in the future. If age appropriate they could complete this section themselves. Please signpost to a link work session if appropriate.

<b>Young person's signature.....Date.....</b>
Describe the follow up work/support given to the staff involved or witnessing the incident. Link to supervision if necessary.







**Does this form generate any other documentation? Please tick and cross reference using log numbers. If no other paperwork please write “no” against it.**

Regulation 40 (Ofsted notification)\_\_\_\_\_ Complaints Form\_\_\_\_\_

Accident form / body map\_\_\_\_\_ Link work session\_\_\_\_\_

Section 12

**Comments and observations from the registered person on the practice and strategies used by staff to manage this situation include any further action that needs to take place.**

**Signature.....Date.....**  
.....

**Comments and observations of the Reg 44 /Std 20 visitor if relevant..**

**Signature.....Date.....**  
.....

## Appendix J

### Adapted ADASS Task Force Screening Tool.

The criteria should be used as an indicative guide only as it will generally be based on information provided by the managing authority in the application and each case must be judged on its own facts

HIGHER	MEDIUM	LOWER
<ul style="list-style-type: none"> <li>• Continuous 1:1 care during the day and/or night</li> <li>• Sedation/medication used frequently to control behaviour</li> <li>• Physical restraint used regularly – equipment or persons</li> <li>• Restrictions on family/friend contact (or other Article 8 issue)</li> <li>• Objections from relevant person (verbal or physical)</li> <li>• Objections from family/friends</li> <li>• Attempts to leave</li> <li>• Confinement to a particular part of the establishment for considerable period of time</li> <li>• New or unstable placement</li> <li>• Possible challenge to Court of Protection, or Complaint</li> <li>• Already subject to DoL about to expire</li> </ul>	<ul style="list-style-type: none"> <li>• Asking to leave but not consistently</li> <li>• <b>Not making any active attempts to leave</b></li> <li>• <b>Appears to be unsettled some of the time</b></li> <li>• <b>Restraint or medication used infrequently</b></li> <li>• Appears to meet some but not all aspects of the acid test</li> </ul>	<ul style="list-style-type: none"> <li>• Minimal evidence of control and supervision</li> <li>• No specific restraints or restrictions being used e.g. in a care home not objecting, no additional restrictions in place</li> <li>• Have been living in the care home for some time (at least a year)</li> <li>• Settled placement in care home/hospital placement, no evidence of objection etc. but may meet the requirements of the acid test</li> <li>• End of life situations, intensive care situations which may meet the acid test but there will be no benefit to the person from the Safeguards.</li> </ul>



## Appendix L – DOLS - The legal context

*P v Cheshire West and Chester Council and another and P and Q v Surrey County Council UKSC 2012* clarified the 'acid test' for what constitutes a deprivation of liberty. A person is deprived of their liberty for the purposes of Article 5 if they:

- Lack the capacity to consent to their care / treatment arrangements
- Are under continuous supervision and control
- Are not free to leave

All 3 elements must be satisfied.

The Law Society [*Identifying a deprivation of liberty: a practical guide 2015-relating to 16-17 year olds only*] has identified the following liberty restricting measures:

- Decision on where to reside being taken by others;
- Decision on contact with others not being taken by the individual;
- Restrictions on developing sexual relations;
- Doors of the property locked, and/or chained, and/or bolted for security reasons or to prevent the children or young person leaving;
- A member or members of staff accompanying the person to access the community to support and meet their care needs;
- Access to the community being limited by staff availability;
- Mechanical restraint, such as wheelchairs with a lapstrap or specialist harness;
- Varying levels of staffing and frequency of observation of staff
- Provision of "safe spaces" or "chill out" rooms or spaces during the day or night from which the person cannot leave of their own free will;
- Restricted access to personal allowances;
- Searching of the person and/or their belongings;
- Restricting access to personal belongings to prevent harm;
- Medication with a sedative or tranquilising effect;
- Physical restraint/intervention, such as with personal care tasks, breakaway or block techniques, distraction methods, staff withdrawing, physical touches or holds;
- Restricted access to modes of social communication, such as internet, landline or mobile or telephone correspondence
- Positive behavioural reward systems to reward "good" behaviour which might thereby involve restrictions on favoured activities or aspects of the curriculum to improve behaviour;
- Disciplinary penalties for poor behaviour;

- Restricting excessive pursuance of activities;
- Lack of flexibility, in terms of having activities timetabled, set meal times, expected sleep times;
- Managing food intake and access to it;
- Police called to return the person if they go missing;
- Restricted access to parts of the property, such as the kitchen or certain cupboards therein to minimise health and safety risks.

In the case of children in residential care, the general Guidance and Regulations issued in respect of the Children Acts 1989/2006 and The Care Standards Act 2015 and Children's Homes Regulations 2015 address the use of physical action such as restraint and holding

Deprivation of liberty will be lawful if warranted under statute, for example, under:

- [section 25 of the Children Act 1989](#), which provides for the placement of looked-after children in secure accommodation;
- [the Mental Health Act 1983](#);
- [the youth remand provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#); or
- the custodial sentencing provisions of the [Power of Criminal Courts \(Sentencing\) Act 2000](#).

Any child can be sectioned under the Mental Health Act, but it is a very grave step to take. Clearly, other options are preferable. Local authorities are under a duty to consider whether any children in need, or looked-after children, especially those in foster care or in a residential placement, are subject to restrictions amounting to a deprivation of liberty. The [Cheshire West](#) criteria must be rigorously applied to the individual circumstances of each case.

### **Secure accommodation**

The local authority must first consider whether [section 25 of the Children Act \(secure accommodation\)](#) is applicable or appropriate in the circumstances of the individual case. Section 25 allows for the placement of a looked-after child in accommodation provided for the purpose of restricting liberty. This will require an analysis of:

- whether, under the [Children \(Secure Accommodation\) Regulations 1991](#), section 25 does not apply: for example if the child has been detained under the Mental Health Act, remanded to youth detention or given a custodial sentence for certain serious offences.
- whether the intended placement is accommodation provided for the purposes of restricting liberty and, thus, secure accommodation within section 25; and
- whether the test set out in section 25(1)(a) or (b) is met: such orders only apply to children who, without the order, would be likely to injure themselves

or others, or those who have a history of absconding, would be likely to abscond from any other type of accommodation and, if so, would likely suffer significant harm.

Irrespective of the means by which the court authorises the deprivation of a child's liberty, whether under section 25 or what's called the inherent jurisdiction, (a residual jurisdiction to make decisions for people who need it where there is no other framework) the local authority should cease to impose such deprivation as soon as either: (1) the section 25 criteria are no longer met; or (2) the reasons justifying the deprivation of liberty no longer subsist.

### **Children under 16 without care order**

If a child under 16 is *not* under a formal care order, his/her parents can authorise deprivation of liberty in the exercise of parental responsibility, for instance, in a hospital, or NHS facility or day care or with a private foster carer, regardless of the child's personal mental capacity. Logically, notwithstanding that the parents' own consent negates the subjective element – the lack of valid consent – that is an essential part of the definition of deprivation of liberty, the above proposition might need to be reconsidered in light of the [SRK](#) case. This is because of the State's own positive duties to keep purely private arrangements amounting to deprivation of liberty under human rights law – and an apparently benign parent may not *actually* be benign; but there is no known case raising that question at the moment.

### **Accommodated children**

If a child under the age of 16 is accommodated under [section 17](#) or [section 20](#) of the Children Act, the latter explicitly requiring the non-objection of the holder of parental responsibility, then the parent's consent renders the deprivation of liberty not imputable to the State, even if the State is paying for the regime. In those circumstances, the court will not need to make any declaration as to the lawfulness of the child's care regime (even if the child is not free to leave), because the regime has not triggered article 5 'process' protection.

If a child under the age of 16 is under a care order or accommodated under section 20 as a prelude to child protection proceedings, then *notwithstanding* a parent's consent, the inherent jurisdiction must be used for the lawful imposition of the regime in human rights terms.

### **Lack of capacity**

If a child over the age of 16, lacking capacity to consent and not under a care order is deprived of his or her liberty, the commissioners must apply to the Court of Protection for authorisation. This is because the Mental Capacity Act's coverage of 16- and 17-year-olds, even though they remain children, trumps the parents' ability to consent to that which is otherwise not authorised.



Mr Justice Keehan, in [Birmingham City Council v D \[2016\]](#), which concerned a 16-year-old confined in a residential placement, said: *“I have come to the clear conclusion that however close the parents are to their child and however co-operative they are with treating clinicians, the parent of a 16 or 17 year old young person may not consent to their confinement which, absent a valid consent, would amount to a deprivation of that young person’s liberty.”*

### **Care order**

Where a child (regardless of mental capacity) is the subject of an interim care order or a care order, it is extremely unlikely that a parent could validly consent to what would otherwise amount to a deprivation of liberty. In those circumstances, a local authority cannot consent, in sufficiently independent terms, to a deprivation of liberty either – albeit being the holder of parental responsibility – because it is also being the commissioner of the care regime.

As mentioned, section 20 arrangements for accommodating any child with foster carers, for instance, as a prelude to care proceedings, require the parental responsibility holders’ agreement. But the exercise of their parental responsibility rights would have been called into question in that context, so their consent could not be sufficient authorisation to avoid an article 5 issue based on a lack of valid consent. Use of the inherent jurisdiction is then necessary.

### **Section 20 concern**

Mr Justice Keehan’s statement in the [AB](#) case (the forerunner to the *D* case) about *this* group of children needs to be read with real care, however. Having said that where a child is *not* looked after, the exercise of parental responsibility may amount to valid consent to a child’s confinement, he went on to say: *“Where a child is a looked-after child, different considerations may apply, regardless of whether the parents’ consent to the deprivation of liberty.”* More thought is required here because Mr Justice Keehan, in saying that if one is under 16 *and* ‘looked-after’, the Family Court must be applied to for authorisation, has perhaps overlooked that not *all* children accommodated under section 20 should be seen as having parents whose exercise of parental responsibility is ‘suspect’.

All such children count as ‘looked-after’ children, but the scope for section 20 duties does not merely cover those at risk of parental abuse or neglect – it extends to inability to provide suitable accommodation or care. It is unlikely that many ill or disabled children’s residential placements are properly seen as made under section 17 of the Children Act, (that being a mere power), when a duty could be regarded as having been triggered. So child aged under 16 could be placed in a specialist setting, with the agreement of his or her parent, under section 20, and parental responsibility would not have changed or been called into question. The parent’s consent to the explicit details of the care plan involving deprivation of liberty would still be valid.

## **Court of Protection application**

If a child between 16 and 18 is *lacking in capacity* to consent or refuse accommodation under section 20, his/her parental responsibility holder(s) need to consent to the section 20 arrangement for it to be lawful. She/he or they would be (logically) consenting to deprivation of liberty, as parents – although scrutiny is still required by the MCA and that would at least make it a clear case for using the streamlined Re X type of application to the Court of Protection provided for by the new rules of court for an over 16-year-old.

## **Inherent jurisdiction**

For an under 16-year old's deprivation of liberty that *does* require scrutiny from the Court – where there is an interim or full care order – the criteria for the High Court's granting a local authority leave to apply for it to exercise its inherent jurisdiction, as set out in [section 100\(4\) of the Children Act](#), are likely to be met. This states that the court may only grant leave if satisfied that: (a) the result which the authority wishes to achieve could not be achieved by any other order; and (b) there is reasonable cause to believe that if the inherent jurisdiction is not exercised the child is likely to suffer significant harm. Any *unlawful* deprivation of liberty is likely to constitute significant harm.

If a child between 16 and 18 is *not lacking in mental capacity* and is objecting to accommodation under section 20, his/her parents can (logically) give consent to authorise deprivation of liberty, as parents – but whether or not they would be *upheld* in that decision via proceedings in the Family Division of the High Court, is a moot point.

If you have any queries about DOLS contact Legal services (0208 541 9088).