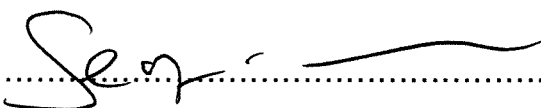


**PERTH AND KINROSS COUNCIL**  
**JOINT NEGOTIATING COMMITTEE FOR TEACHING STAFF**  
**LOCAL AGREEMENT**

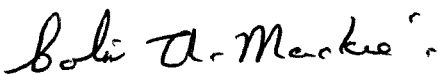
**“Policy on Management of Physical Intervention, Aggression and Violence”**

In terms of the Local Recognition and Procedure Agreement, it is accepted by all signatories acting on behalf of the Council and the recognised unions that this agreement is a binding local agreement effective from 15 January 2003. This supersedes relevant provisions within the National Agreement and constitutes a formal amendment to the terms and conditions of employment for teaching employees within Perth and Kinross Council.

G Waddell, Executive Director (Education & Children’s Services), on behalf of  
Perth and Kinross Council:

.....  


C Mackie (EIS), on behalf of Teachers’ Trade Unions:

.....  


.....  








# PERTH AND KINROSS COUNCIL

EDUCATION AND CHILDREN'S SERVICES COMMITTEE – 15 JANUARY 2003

## POLICY ON MANAGEMENT OF PHYSICAL INTERVENTION, AGGRESSION AND VIOLENCE

REPORT BY THE DIRECTOR OF EDUCATION AND CHILDREN'S SERVICES

### ABSTRACT

This report presents for approval a policy on the Management of Physical Intervention, Aggression and Violence within Education and Children's Services.

### 1 RECOMMENDATIONS

It is recommended that the Committee:

- (i) approves the attached Policy on Management of Aggression and Violence (Appendix 1); and
- (ii) instructs the Director of Education and Children's Services to develop a training strategy to address the training needs highlighted within the policy.

### 2 BACKGROUND

- 2.1 There are two particular drivers which led to this new policy being developed.
  - The amalgamation of Education and Children's Services and the need to align policies and procedures.
  - The need within an integrated policy to recognise the complex nature of the work undertaken by staff in this area, to provide clear guidelines in all areas of physical intervention, aggression and violence, and to promote best practice, as deemed necessary by schools, services and Joint Negotiating Committee.
- 2.2 The draft policy has been developed by a working group involving a cross section of staff from schools, social work, community learning and health and safety and latterly has also included representation from JCC (Teachers) (now JNC).
- 2.3 The objective of the policy is to provide staff with clear guidelines and routes to training in managing aggression and violence in the workplace and increase safety of staff and children who receive services.

### 3 PROPOSALS

The work of the group involved benchmarking with other local authorities and conducting an extensive amount of local and national research which included a survey providing up to date information about levels of use of restraint within all aspects of Education and Children's Services. The main findings were:

- The incidents which involved use of restraint far outnumbered the recorded incidents of violence against staff. The remit of the survey was broader than "violent incidents" but the extent was nevertheless concerning.
- Categories of staff most likely to be involved in incidents were support for learning assistants, senior managers in school and residential staff.
- Incidents were most likely to involve children at P1 – P5 stage and although there were few reports in the survey period of incidents in mainstream secondary schools, formal returns suggest that most likely years for incidents to occur are in S3 and S4.
- It was clear from returns that Special Units, Special Schools and residential units represented the area of greatest risk.
- Some children, on account of their complex needs, will be more prone to displaying aggression.
- The frequency pointed to the need for training in defusing and dealing with challenging behaviour in order to avoid the escalation of incidents.
- The principal cause of staff intervention in schools was the need to protect other children.

- 3.1 The policy takes account of existing management information, survey results and best practice from other authorities.
- 3.2 This draft policy links with other Council policies: Health and Safety Policy and, Child Protection Guidance.
- 3.3 A pack containing all appendices referred to at the back of the policy will be issued to all schools and establishments. The policy attached to this report only contains appendices 2, 3 and 4 since appendices 1, 5, 5a and 6 relate to existing procedures which will be contained within the pack for information.

### 4 TRAINING

It is necessary for all staff authorised to use physical intervention to receive appropriate training.

- Level 1 Training, for **all** authorised staff will use the corporate Council training on "Handling Aggression and Violence", combined with training on the policy itself. This will be completed as part of staff induction and development, and will involve either attendance at a central training course or by an in-house cascade trainer within the workplace.
- Level 2 Training involves more specialist training in de-escalation for those staff identified through risk assessment as requiring this level of training.

Without risk assessments being carried out, it is difficult to provide an accurate figure about how many staff would require Level 2 Training.

From survey findings and formal returns of reported incidents, an estimate of 100 staff would be reasonable.

- Level 3 Training involves specialist training for staff who, through Risk Assessment, have been identified as requiring physical intervention training due to the specific nature of their direct work with children with complex needs. This involves not only thorough initial training but regular update training. From survey and formal returns of reported incidents, it is estimated that approximately 50 staff might be assessed as requiring this level of training.

A 3 year training strategy will be developed to take account of the needs arising from this policy.

## **5 RESOURCE IMPLICATIONS**

The training costs are estimated initially at £45,000 over 3 years to train the existing workforce. Thereafter, ongoing annual costs will be substantially lower in addressing the training required for new starts of approximately £200 per person for the more detailed forms of training.

The initial programme will be both phased and prioritised over 3 years within the Education & Children's Services Training budgets to ensure it can be managed within existing resources.

## **6 STRATEGIC PRIORITIES**

This report takes forward Education & Children's Services Vision, Values & Aims and also promotes social inclusion and delivers lifelong learning for all.

## **7 CONSULTATION**

The Heads of Committee & Administration and Legal Services, the Directors of Finance and Human Resources, all schools and services within Education and Children's Services, Director of Human Resources, Head of Legal Services, Director of Finance, Joint Negotiating Committee have been consulted in the preparation of this report.

## **8 CONCLUSION**

Approval of this policy will ensure that staff have the appropriate knowledge and training to address this area of work, providing a safer working environment for staff and children alike.

GEORGE WADDELL  
DIRECTOR OF EDUCATION AND CHILDREN'S SERVICES

For further information, contact Andy Turnbull, Service Manager, ext 6839

## **BACKGROUND PAPERS**

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.

### **Appendices:**

Appendix 1 – Policy on Management of Physical Intervention, Aggression and Violence

Appendix 2 – Duty of Care

Appendix 3 – Preventative Practice

Appendix 4 – Aggression of Violence – Risk Assessment Flow Chart



# PERTH & KINROSS COUNCIL



## EDUCATION & CHILDREN'S SERVICES

### Policy on

### Management of Physical Intervention, Aggression and Violence

### Final Draft

December 2002



**POLICY ON MANAGEMENT OF PHYSICAL  
INTERVENTION,  
AGGRESSION AND VIOLENCE**

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# 1 INTRODUCTION

This policy, for the integrated Education and Children's Services, incorporates the existing Policy on Workplace Aggression and Violence (Reporting, Recording and Monitoring of Violence and Aggression for Teaching, APT&C and Manual Staff in Schools September 2000) and places it within a wider policy context which includes specific guidance on

- Legal Obligations including Risk Assessment
- Use of Physical Intervention with Children
- Training Needs

The Council has recognised through the Corporate policy (Appendix 1) that there is a growing and genuine concern among staff that the problem of aggressive behaviour towards Council employees is increasing and that all reasonable steps must be taken to identify and minimise the risk of aggression towards Council employees.

Education and Children's Services are in a unique position within the Council as they work with the vast majority of the 30,000 children and young people in Perth & Kinross on a regular basis. Within that number a small percentage will present challenging behaviour which might include aggression and violence. Risks may also occur from direct work with families.

Through implementing this policy the service seeks to demonstrate its support to staff, its commitment to a healthy working environment where service users and staff can feel safe and its objective that staff can feel confident about what is expected of them within this difficult area of work.

## **Definition of Violence and Aggression**

Two definitions are relevant to staff within Education and Children's Services

"Any incident in which an employee of a school is seriously threatened or is assaulted by a pupil, parent, member of the public or any other person in circumstances arising out of the course of his/her employment. It includes physical attack and threatening behaviour, with or without a weapon, and intentional damage to property. It includes physical violence, aggression, verbal abuse, sexual or racial abuse and intentional damage to personal property." (Scottish Executive Education Department)

"Any behaviour by members of the public, clients, pupils or any other persons towards employees of the Council arising out of the course of their employment, whether or not they are on duty and which is perceived by the employee as being deliberately harmful or damaging either psychologically or physically." (Handling Aggression, Perth and Kinross Council)

The contents of both definitions are applicable to all staff irrespective of where they work.

## **2 BACKGROUND**

### **2.1 Legal Position**

The Health & Safety at Work Act 1974 requires all employers, as far as reasonably practicable, to ensure the health, safety and welfare of employees and others.

The Management of Health & Safety at Work Regulations 1992 (amended 1999) require employers to make an assessment of the health and safety risks to which their undertakings give rise for the purpose of ascertaining what measures they have to take to comply with objectives under health and safety legislation.

The common law principle of duty of care must be taken into account where avoidance to act might result in harm to another person. (Appendix 2) With regard to school pupils, the Schools (Safety and Supervision of Pupils) (Scotland) Regulations 1990 echo the common law, namely that "every education authority shall take reasonable care for the safety of pupils when under their charge".

The Human Rights Act 1998 which gives further effect in Scots law to the rights enshrined in the European Convention of Human Rights requires that any action in response to challenging behaviour is 'proportionate, legal and necessary'.

Two principles from the Children (Scotland) Act 1995 are relevant – taking account of children's views, and ensuring that the child's welfare must be the paramount consideration in decisions taken.

The law requires that force should only be used where every other approach to de-escalate has been attempted. However, if the extent of force is deemed to be unreasonable or excessive, a member of staff may leave him or herself open to disciplinary, civil or criminal proceedings. There may be situations where the risk of immediate physical danger is so great that force is the only option.

Recording procedures should be used where physical intervention and restraint has been required (Circular No 5/97: Reporting Incidents of Violence, The Scottish Office 1997). In addition, the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) require the responsible person (normally the employer) to notify and subsequently send a report to the Health and Safety Executive... of fatal and certain non-fatal accidents and certain specified dangerous occurrences in connection with work.

There is no advice specifically relating to the Management of Aggression and Violence in Scotland, although some specific advice relating to physical restraint is contained in Department of Health/Scottish Office Training Pack

“Taking Care, Taking Control” 1996, Module 6. Account is taken of these within the guidelines.

This policy has been drawn up to address these legal obligations.

## **2.2 Related Policy and Guidelines**

This policy does not stand alone but within the context of a range of other policies.

This policy seeks to complement the Corporate Policy for Managing Workplace Aggression and Violence, taking account of the particular circumstances in which staff work within Education and Children’s Services.

It also links with other relevant Council policies which promote best practice

Making a Positive Difference: Promoting and Supporting Inclusive Practice (Perth & Kinross Council 2001)

Making a Positive Difference: Promoting Positive Behaviour in Perth & Kinross (Perth & Kinross Council, Education and Children’s Services 2001)

Health and Safety Policy

Child Protection Guidance

Managing Excursions

## **2.3 Survey Information**

Recorded incidents demonstrate an increase of assaults on staff over a period of years within Education and Children’s Services and survey information confirms that incidents of physical intervention are more numerous than those formally recorded, particularly with children in their early years.

It was clear from school survey returns that greater risks were apparent in the following staff groups

- (i) Support for Learning Assistants in Special Schools and schools with special units.
- (ii) Senior Management Team and Class Teachers in special schools and units.
- (iii) Some early years provision

The principal cause of staff intervention was the need to protect other children.

Within social care

- (i) Residential services, where specialist training is well established, and
- (ii) Resource or social care staff who may work with troubled young people on an individual basis.

## **2.4 Scope of Policy**

This policy applies to all aspects of Education and Children's Services and to work carried out within and outwith formal settings, including foster care.

## **3 PREVENTATIVE PRACTICE**

At all times it is necessary to have positive, preventative measures in place in every establishment. For example:

- It is essential to create an atmosphere which is caring, sensitive and understanding.
- All intervention must be in the best interests of the child or young person, whilst offering protection to staff and other children.
- Consultation and working in collaboration with other agencies, staff, child and parents is essential.
- The school or establishment will retain the responsibility for the outcome of any intervention.
- Where there are concerns about potential challenging behaviour, preventative strategies which diminish the need for physical restraint should be in place. These should be recorded within all planning processes (eg individual education plans, care plans), and should include the use of risk assessments.

The following procedures and policies need to be referred to in relation to advice and best practice.

Health and Safety Policy – in particular, risk assessments

Handling Aggression: A Practical Guide

Making a Positive Difference: Promoting and Supporting Inclusive Practice

Making a Positive Difference: Promoting Positive Behaviour in Perth & Kinross

More information on preventative practice which can be used for training purposes is contained in Appendix 3

## **4 PHYSICAL INTERVENTION**

Physical intervention, in the context of this policy, is where a member of staff who has control or charge of children judges it necessary to intervene, using such force as is reasonable in all the circumstances, to prevent a child from doing, or continuing to do, any of the following:

- Causing an immediate danger of personal injury to any person (including the child concerned).
- Causing an immediate danger to the property of any person (including the child concerned).

The provision applies when the member of staff has lawful control or charge of the child, eg in school, in residential units, on visits or other authorised activity.



#### **4.1 Authorisation for Physical Intervention**

The manager or head of establishment should determine and record all identified staff who will have the control or charge of children, and may use reasonable force if necessary.

#### **4.2 Guidelines for Working with Adults**

In dealing with violence and aggression from adults, reference should be made to the Corporate Council Policy "Handling Aggression", A Practical Guide.

#### **4.3 Guidelines for Physical Intervention with Children**

Physical intervention should only be used

- In the interests of service users
- Using the minimal reasonable force as a non-punitive measure to prevent injury or damage (otherwise it could be classed as assault)
- In ways which maintain the safety of all involved
- When other less intrusive approaches have been tried and found to be unsuccessful, whenever practicable.
- Where there is a genuine perception that there is immediate danger of significant damage to persons or property, including self-harm

A calm and measured approach to the situation should be used at all times. Before intervening physically the member of staff should, wherever practical, tell the child or young person who is presenting challenging behaviour to stop, and what will happen if she or he does not. The member of staff should continue to attempt to communicate with the child throughout the incident, and should make it clear that physical contact or restraint will stop as soon as it ceases to be necessary.

Members of staff should assess whether to intervene in an incident without help (unless it is an emergency), for example, when dealing with an older child or a physically large child or more than one child. In such circumstances staff might more appropriately remove other children that might be at risk. If physical intervention is likely to be necessary, assistance should be summoned to provide a witness to support the evidence of the member of staff to show that no unreasonable force was used. It is recognised that in situations of immediate and significant risk to persons or property, this will not always be possible. Depending on circumstances, it may be appropriate to remove the child to a place where he/she can vent their anger in safety. Until assistance arrives, the member of staff should continue to attempt to defuse the situation orally, and to prevent the incident from escalating.

#### **4.4 Reasonable Use of Physical Intervention**

Physical intervention can take several forms. It might involve staff:

- Physically interposing between children (for example, to stop a fight)
- Blocking a child's path (eg to prevent child running across the road)
- Holding (eg to prevent child banging head on desk)
- Pulling (eg where child is hitting another child and refusing to come away)
- Leading a child by the hand or arm (eg where a child needs taken away from an incident but is unwilling to leave)
- Shepherding a child away by placing a hand in the centre of the back
- Using more restrictive holds (in extreme circumstances) (eg holding child in sitting position to avoid punching and kicking)

In exceptional circumstances, where there is an immediate risk of injury, a member of staff may need to take any necessary and appropriate action which is consistent with the concept of "reasonable force": for example to prevent a young child running off a pavement on to a busy road, or to prevent a child from hitting someone or throwing something.

#### **4.5 Unreasonable Use of Physical Intervention**

Physical intervention should not be used as a means to maintain good order and discipline except where there is a direct risk to people and/or property.

On no account should a child ever be asked to be involved in a physical intervention with another child.

Restraint must not involve deliberately painful or dangerous procedures. It should always be used in such a way as to:

Avoid interference with breathing, blood supply or genital areas  
Avoid holding head, throat or fingers. Where limbs have to be grasped, pressure should not be on or across the joint.

Staff should not act in a way which might be expected to cause injury, for example by:

- Holding a child round the neck or by the collar or any other way which might restrict his ability to breath
- Slapping, punching or kicking the child
- Tripping up a child
- Holding or pulling a child by the hair or ear
- Holding a pupil down in the prone position

Use of any of these techniques will not be regarded as reasonable.

## **5 RISK ASSESSMENT**

The Management of Health and Safety at Work Regulations 1999 require that a suitable and sufficient risk assessment is undertaken, and the Council Policy on Risk Assessment provides the framework which should be used by Education & Children's Services staff. Within each school and establishment, a trained risk assessor will be in place and this person will play a key role with the Head of Establishment in enabling necessary risk assessments to be carried out.

Staff who work with children and families, and children who use services, will be exposed to varying degrees of risk. Where there may be physical intervention involving children and adults, there is a higher level of risk, and the hazards associated with its use should be systematically explored using the risk assessment procedure.

For the protection of staff and service users risk assessments must be used as a normal part of safe working practice, and these risk assessments must be co-ordinated with other strategies designed to address the child's social, emotional or behavioural difficulties. Risk assessments should be easily accessible.

### **5.1 Risk Assessment Flow Chart**

The Risk Assessment Flow Chart describes the process (Appendix 4).

### **5.2 Risk Assessment Database**

A database of risk assessments for Education and Children's Services is available on the Intranet, and a variety of standard risk assessments are available for use or adaptation. Further advice can be sought from the designated Risk Assessment Officer in each school or establishment or through the Physical Resources Section based in Pullar House. If not on the Intranet, risk assessment exemplars are available through Physical Resources.

### **5.3 Risk Assessment and Medical Issues**

Some children may have medical conditions which make them particularly vulnerable to injury. Others may have a history of aggressive or self-harming behaviour. In such cases, medical advice should be sought on the forms of intervention which may be safely used. The child's care plan and Individual Education Plans or Personal Learning Plans should reflect the advice given.

For children with medical conditions, it may be necessary to obtain further specialist medical advice and training regarding physical intervention.

The establishment should make sure that parents/carers are aware that they have a clear responsibility to advise staff of any medical conditions or change in medical status.

Some staff may have medical conditions which could affect their ability to use some physical intervention safely. In such cases Risk Assessments should be carried out and advice taken from the Council Occupational Health Adviser, if required.

## 6 RECORDING AND REPORTING

### 6.1 Recording Incidents of Violence and Aggression

It is vitally important that staff report incidents of aggression and violence towards them and all staff are, therefore, required to complete the relevant form.

The forms to be used within Education and Children's Services are

- Reporting Incidents of Violence and Aggression against Teaching, APT&C and Manual Staff in Schools (Appendix 5) (for staff in schools)
- Aggression/Violence Incident Report Form (for all staff in Education & Children's Services outwith schools) (Appendix 6)

Specific guidance about their use is contained within the forms.

### 6.2 Recording Use of Physical Intervention

It is important for all establishments to keep a written record, in an **Incident Book**, of any occasion where physical intervention has been used, even where a judgement has been made that it is not an incidence of aggression or violence which needs centrally recorded. This action appropriately highlights the seriousness of the occurrence. It also helps prevent any misunderstanding or misrepresentation of an incident, and helps protect staff as well as the establishment.

Immediately following any such incident, the member of staff concerned should tell the head of establishment or a senior member of staff and make the appropriate entry in the book, signed by the member of staff and countersigned by the senior member of staff.

A looseleaf format is desirable so that a separate page can be kept for each child involved. In this way it is easier to share the information with child and parent/carer. The incident book should have the following headings:

Date	Time	Member of Staff	Name of Child (Age/ Stage)	Description of Incident	Outcome	Signatures Staff _____ Head of Establishment _____
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Particular attention needs drawn to any incidents where there may be issues of discrimination in relation to race, gender or disability.

### **6.3 Monitoring**

Education & Children's Services has a responsibility to monitor, analyse and report on collated returns (Appendices 5 & 6) and the Strategic Business Unit in Education & Children's Services will provide reports for management information purposes. In this way, it is possible to oversee patterns and make proposals which will reduce risks. As well as managers, the JNC and professional associations will retain an involvement in reviewing and advising on practice in this area. An annual report will be made available to record incidents and identify necessary action.

### **6.4 Communicating with Parents and Children**

Parents/carers must be informed of incidents of aggression and violence unless by prior arrangement with parents/carers e.g. where the child's condition is known to require an agreed physical intervention. Where this is the case this should be recorded and reviewed through the child's care plan or individual education plan or personal learning plan.

After any incident where physical intervention was necessary, whenever appropriate the contents of the report should be shared with the child or young person concerned and the incident talked through with the aims of achieving resolution and full reconciliation. It may be helpful for another member of staff to act as a third party, supporting/intervening/mediating, as appropriate, between the individuals involved. It is important that, after an incident, the young person is engaged in a reflective experience which allows her/him to modify his/her behaviour while retaining a positive level of self-esteem.

### **6.5 Staff Support**

Following any incident of violence, there must be an opportunity for staff to meet with their line manager, or another senior member of staff to fully debrief as soon as possible after the incident. The intention is to create a supportive system to facilitate learning from the experience, to enhance the development of good practice in dealing with violent episodes, and to consider the need for the review of, or implementation of a risk assessment. The opportunity for further external counselling should be offered if necessary and this can be made available through Human Resources.

### **6.6 Police Involvement**

All members of staff have rights as ordinary citizens to make complaints to the Police following assault, irrespective of other procedures. As Council employees, however, they are also entitled, in appropriate circumstances, to expect the positive support and backing of their employer if the incident occurred at work. That support will include assisting an assaulted member of staff in reporting the matter to the Police on his/her behalf, at the staff member's request. That support will normally come from the line manager.

## **6.7 Criminal Injuries**

Criminal Injuries Compensation may be considered by the Criminal Injuries Compensation Board where compensation is being sought by a victim of assault.

## **7 COMPLAINTS**

It is important that the school or establishment procedures indicate how a child or parent/carer can make a complaint and how it is progressed. It is expected that, in many cases, talking through the incident with the child/or parents/carers may lead to a resolution. This discussion might involve another member of staff or a member of the Senior Management Team.

Advice and support will be made available to employees from the appropriate Council service and/or trade union. Where an incident is being investigated, the investigation process should not be seen in a negative light.

Any formal written complaint from parent/carer, young person or staff member should be sent to the relevant Service Manager, who will instigate the formal complaints procedure. Children, young people or their parents/carers have rights to make complaints to the Police and can consult with the Children's Rights Officer.

## **8 TRAINING**

It is necessary for all staff authorised to use physical intervention to receive appropriate training. Training requirements must be determined through assessment of the different levels of risk encountered by staff. It is the duty of managers in consultation with the Health and Safety section in Education and Children's Services to carry out training needs assessments and determine the level of training required for different levels of staff. Every school and establishment will have at least one member of staff trained as a risk assessor.

Training will fall into three categories:

- 1 Universal: for raising awareness in all staff
- 2 Focussed: de-escalation training where there is greater risk of physical intervention
- 3 Specialist: where physical intervention has a high likelihood of occurring

Level 1 Training is required for all authorised staff. This training will be accessed through attendance at the corporate training on Handling Aggression and Violence, or delivered by identified persons from individual workplaces who will take responsibility for "cascading" the training to all relevant staff groups within their establishment. The Level 1 training involves the generic Council training with an additional component for staff of Education & Children's Services which specifically addresses issues arising from this policy.

Level 2 Training is for staff who, through Risk Assessment, have been identified as needing a higher level of training. This training, including de-escalation, will be delivered by specialist trainers

Level 3 Training is for staff who, through Risk Assessment, have been identified as requiring physical intervention training due to the specific nature of their direct work with children with complex needs. This will be delivered by specialist Training Services.

The survey identified particular groups of staff which might benefit from more specialist forms of training:

- Support for learning assistants in special schools and schools with special units.
- Senior management team and class teachers in special schools and schools with special units.
- Residential services
- Resource workers and social care staff who may work with troubled young people on an individual basis
- Some early years services

In addition, it is recognised that the Inclusion policy will lead to more young people with challenging behaviour being part of mainstream schooling. This may lead to more staff in mainstream schools requiring higher levels of training.

A separate training strategy will take forward the requirements outlined in this policy.





## APPENDICES

- 1 Handling Aggression: A Practical Guide: Perth & Kinross Council
- 2 Duty of Care
- 3 Notes for Training : Preventative Practice
- 4 Risk Assessment Flowchart
- 5 Reporting Incidents of Violence and Aggression against Teaching, APT&C and Manual Staff in Schools
- 5a Policy on Workplace Aggression and Violence Leaflet – September 2000
- 6 Aggression/Violence Incident Report Form



## DUTY OF CARE

- 1 There is confusion as to the legal responsibility which the Education & Children's Services has for children and young persons. Phrases such as "in loco parentis" and "delegated charge" merely add to the confusion when considering the position of individual employees, such as teachers and youth workers etc.

For the avoidance of doubt:

"in loco parentis" is a Latin phrase which means "in the place of the parent" (ie the parent is not there and someone else is – and is acting accordingly)

"delegated charge" is merely another way of saying the same thing

There is no English/Scottish distinction in their application and neither phrase is a technical legal term with a specific legal meaning.

- 2 When addressing legal responsibilities, one must consider the "Duty of Care" which is a specific legal concept.

Each individual member of staff owes a "duty of care" to his or her clients or pupils and an absence of such care implies negligence, which in turn gives rise to liability (both personal liability for the member of staff and the liability on the part of the Council as employer).

In these litigious times, it is unfortunate that the fear of being sued overshadows the work of the many dedicated individuals but this need not be the case. Concern often arises through lack of understanding of the duty of care owed and a failure to grasp the notion that liability arises through **NEGLIGENCE** (ie not doing the job properly). In practical terms, if individuals are doing their job properly (ie professionally and to the best of their ability), they should not have to worry about personal liability.

So, how high a standard of duty of care is owed?

As regards teachers and other Education & Children's Services staff, Walker in his book on Delict states:

*"A school teacher owes a duty to take reasonable care for the safety and health of the children under his charge and must exercise care and forethought, having regard to their age, their inexperience, carelessness, and high spirits and the nature and degree of danger, not to subject them to avoidable risk or harm."*

That duty is, however, limited. Walker continues:

*“The duty is of reasonable care, not of constant, meticulous supervision. It is not part of a school’s or teacher’s duty to foresee every act of stupidity that might take place.”*

When assessing the standard of the duty of care, legal texts refer to “the reasonable man” ie the prudent man of reasonable intelligence and with the common sense to foresee situations reasonably. In the case of teachers/youth workers the standard of care required is compared to that of the reasonable, careful parent.

The standard is not, therefore, that of perfection and it is important that the standard of reasonableness in any situation is not set too high. The reasonable man is not expected to have prophetic foresight or to be a paragon of virtue. When assessing the actions of the individual, there is a very real danger of endowing the “reasonable man” with the vision of a clairvoyant (which he obviously does not possess). The reasonable man can only take precautions against reasonable probabilities.

Although the standard of reasonable care is objective, it is flexible enough to take into account the circumstances of each situation. For example, the standard of care required when handling chemicals would vary from that required when handling water etc.

In practical terms, therefore, if you take into account the client group and their individual abilities, the surroundings, the nature of the task and any potential dangers or hazards before you act, you are applying a reasonable standard of care and would be very unlikely to be held to be negligent.

In assessing situations, individuals will always be required to use their professional judgement and this is inescapable, since no two situations or sets of circumstances are ever the same. This should not create a problem, however, if decisions are based on valid information (or information reasonably assumed to be valid) and sound judgement and with the best interests of the individuals as the paramount concern.

## PREVENTATIVE PRACTICE

Preventative arrangements for staged intervention should be based on analysis of behaviours which are causing concern. This list is by no means exhaustive but the following practices should be considered:-

- Physical environment
  - Arrangement of furniture and equipment
  - Temperature
  - Ventilation
  - Lighting intensity
  - Use and amount of working space
  - Seating arrangements
  - Lines of sight
  - Décor and display in the classroom
  - External noise
- Social environment
  - Child/child interaction
  - Child/teacher/staff member interaction
  - Social groupings
  - Working groupings
- Instructions
  - Lessons starting on time/agreed arrangements start on time
  - Clarity of instructions and anticipated learning outcomes
  - Use of teacher/staff member time
  - Pace of delivery and mode
  - Use of positive reinforcement
  - Use of adult support
  - Use of peers to support teaching/programme
- Materials
  - Availability of sufficient and well-prepared materials
  - Materials reflected different needs
- Learning Factors
  - Appropriate classroom organisation
  - Use of differentiated approaches
  - Use of reinforcement
  - Use of modelling
  - Use of appropriate groupings
  - Associated learning
- Organisational Factors
  - Use of timetable
  - Availability of support

- Home environment (Residential and Fostercare)
  - Carer/child interaction
  - Child/child interaction
  - Social groupings
  - Individual care and learning plan
  - Shared and individual space
  - Sleeping arrangements
  - Other physical factors (see above)

Aggression and Violence – Risk Assessment Flow Chart

