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Dear Director

THE CONTROL OF CHILDREN IN THE PUBLIC CARE: INTERPRETATION OF THE CHILDREN ACT 1989

Introduction and Summary

1. It is now five years since the Children Act 1989 and its associated guidance and Regulations were introduced in England and Wales. Since then a number of concerns have been raised in connection with the control of children in the public care, particularly those living in residential children's homes. The purpose of this letter is to clarify further the Department's guidance on this aspect of the Act with particular reference to the professional role, powers and objectives of staff.

2. The main messages are:

- children in care have a variety of needs from the adults responsible for them;
- these needs include clear guidance, influence and where necessary control as well as sympathy and understanding;
- staff and other adults responsible for children in care have, generally speaking, the same rights and responsibilities as a parent to influence the child in the interests of its welfare, to protect it from bad influences, and where necessary to protect others from harm;
- it is the professional role of staff to pursue these objectives as fully and purposively as they can within the framework of the law;

- the law protects all children against the unreasonable use of force; and limits the children who may be deprived of their liberty to those properly placed in secure accommodation. Otherwise it does not disempower staff from pursuing these goals; and in no way does it oblige them to agree to the child's preferences or wishes where doing so would be likely to prejudice its welfare.

Background

3. The Children Act introduced a framework of law, which with its associated guidance and Regulations, is designed to ensure that those responsible for looking after children away from home act to safeguard and promote their welfare. This includes the responsibility to provide direction and guidance for the child and accordingly the right to control, direct or guide its upbringing in a manner that is consistent with its stage of development and particular circumstances.

4. It is inevitable that many children who come to be looked after by local authorities are amongst the most damaged and vulnerable children in our society. For whatever reasons their families are no longer able to care for them nor provide them with the firm guidance and control that all children need. Local authorities have a statutory responsibility to step in and care for these children. Given the problems faced by the young people and the influence that has on their behaviour it is understandable that local authorities and other social care providers may from time to time experience difficulties in maintaining complete control of the children for whom they have responsibility. The Children Act does require, however, that local authorities and those who provide care and accommodation on their behalf do everything in their power to protect children from coming to harm or harming others.

The authority of local authorities, other providers of children's services and carers to control children looked after wherever they are accommodated

5. When a care order is made the local authority shares parental responsibility with the parents and their legal authority with respect to the care and control of the child is quite explicit. Many children, however, are cared for by local authorities, or other providers on their behalf, by agreement with parents under section 20. This means that the local authority is without the formal legal authority of parental responsibility which is retained by the parents. But, this does not weaken the authority of carers to control children. The Children Act sets out in section 3 the meaning of parental responsibility. It also makes clear in Section 3(5) that those who do not have parental responsibility, but none the less have the day to day care of the child, may do what is reasonable in all the circumstances to safeguard and promote the welfare of that child.

6. It is important that, in coming to an agreement for a local authority to accommodate their child, parents understand that those who have day to day care of the child (residential or foster carers) will be required to exercise control in a manner which promotes the child's welfare and good order. Parents may have wishes in this regard which should be taken into account, but they cannot constrain day to day carers to the extent that they are disabled from controlling the child properly. If parents insist on conditions, which are judged to be inconsistent with the local authority's duties towards the child being looked after, agreement to accommodation under section 20 may be inappropriate. Consideration should then be given as to whether the threshold criteria for a care order can be made out and the child taken into care by means of a court order.

7. Children need to understand, too, that when local authorities are responsible for their daily welfare their carers will be expected to provide them with the safety, clear guidance and firm influence that characterises effective parenting of children. Concerns have been raised that the Children Act may have gone too far in stressing the rights of children at the expense of upholding the rights and responsibilities of parents and professionals in supervising them. Children must be listened to and their wishes and feelings taken into consideration. But this does not mean that local authorities, social workers or carers are constrained to abide by the wishes of the child. The wishes and feelings of children can, and indeed should, be overridden in decisions that affect them if this is necessary to safeguard and promote their welfare and protect others.

Guidance for managers and care staff on the control of children in children's homes

8. Volume 4 of the Children Act 1989 Guidance and Regulations and the Department's Guidance on Permissible Forms of Control for Children in Residential Care (LAC(93)13) remain the primary source of guidance for local authorities and it is vitally important that managers provide staff with regular supervision and training so that they can properly meet the challenges posed by this aspect of their work.

Young People going out against advice or instructions.

9. The guidance in LAC(93)13 is clear that staff can and must intervene immediately to try to prevent young people leaving the children's home when there are grounds for believing that they are putting themselves or others at risk or are likely seriously to damage property. In assessing whether harm is likely staff must take into account all the circumstances, including the child's own background and the reasons why he or she came into care. Staff need to be reminded that, in the day to day care of children, they have the responsibility *and the authority* to interpret 'harm' widely and to anticipate when it is clearly likely to happen. For example, unless the particular circumstances of the case dictated otherwise, it would be reasonable to assume that a young child of 11 or 12 years of age who persists in wanting to leave the home in the evening against the instructions of staff where these instructions are based on a considered and reasonable view of the child's welfare is likely to put himself or herself at risk of harm. The same would be true of young teenagers known to be involved with vice or criminal activity or otherwise likely to come under bad influence or be at risk of harming themselves or others.

10. Persuasion and the patient engagement of children in more structured and disciplined lives is the first line of resort in preventing a child or young person from leaving a residential care unit which is not designated as secure. It has a good record of success and physical coercion should not become habitual. But if necessary staff have the authority to take immediate action to prevent harm occurring even if the harm is expected to happen some time in the predictable future. Existing guidance (LAC(93)13 section 5) is clear that in certain circumstances physical restraint can and should be used. It is also reasonable to bolt a door temporarily to restrict a young person's mobility, or in order to win some time to call for help from other staff. If the particular issue of confrontation persists and the child does not respond either to the physical restraint or the temporary loss of mobility staff will need to consider whether to apply for the child to be cared for in secure accommodation.

Physical Restraint

11. The proper use of physical restraint, which must be reasonable in all the circumstances, requires skill and judgement. Every effort should be made to secure the presence of other staff to ensure that any action taken is both safe and successful. It would be an error of judgment if a member of staff tried to restrain a young person without proper assistance and in so doing caused injury to himself or the young person because the intervention was handled ineptly. Staff who care for children with behavioural difficulties need to be constantly addressing these issues through in house training so that they have a consistent team approach to making sound judgements, and implementing methods of care, control and intervention. Training, too, should help staff develop the skills and techniques to defuse potentially explosive situations thereby reducing the frequency of confrontation.

Recording

12. The guidance should be interpreted as requiring a permanent separate record of incidents involving the use of physical restraint. Although physical restraint cannot be used as a punishment it should be regarded as a disciplinary measure within the meaning of Regulation 8(4) of the Children's Homes Regulations 1991 and hence recorded in this way. The guidance in LAC(93)13 is clear that this information should be used for monitoring; so it follows that records of incidents of physical restraint should be held together to facilitate monitoring trends over time. The means of recording physical restraint for monitoring separately from other disciplinary measures is a matter of administrative convenience only.

13. In homes which accommodate younger children, or those with physical or learning disabilities, there is likely to be almost constant physical contact between staff and children. In these circumstances locally agreed definitions of what amounts to physical restraint will be necessary so that routine holding to guide children or secure their safety are excluded from this requirement.

Conclusion

14. Interpreted correctly by local authorities, managers and carers the Children Act provides a legislative framework to support and protect, guide and direct children who have to live away from home for whatever reason. In discharging their duties towards children in care local authorities, and those who care for children on their behalf, have generally speaking the same rights and responsibilities as a parent to influence and guide children in the interests of their welfare. This letter is intended to reinforce that expectation. Local authorities will be expected to agree the policies and practices pursued in these respects in their own children's homes and in other local authority placements. Where local authorities purchase their child care services from other agencies the contents and expectations of this letter should be reflected in their contracting arrangements and standards of inspection.

Further copies of this letter are available from:

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Yours sincerely

A handwritten signature in black ink, appearing to read 'Robert L', is written in a cursive style.