Outcomes

‘The Protection of Children Quality standard is that children are protected from harm and enabled to keep themselves safe.” (12.1).

“Children must feel safe and be safe. Staff should support children to be aware of and manage their own safety both inside and outside the home to the extent that any good parent would. Staff should help children to understand how to protect themselves, feel protected and be protected from significant harm”. (Guide 9.9)

Background

Over many decades the careful balance of care and control has received copious amounts of guidance. Recent close scrutiny has focused on children going missing and the vulnerability of Children in Care to Child Sexual Exploitation, drug, substance or gang related activity.

Legal Context

The Quality Standards and Guide

Paragraph 9.35 of the Guide is clear that having this protective focus intrinsically involves a wider appreciation of the “general principles for behaviour management in children’s homes which include: treating each child with understanding, dignity, kindness and respect; building, protecting and preserving positive relationships between each child and the adults caring for them; understanding each child’s behaviour to allow their needs, aspirations, experiences and strengths to be recognised and their quality of life to be enhanced; involving children and relevant others wherever practical in behaviour management; supporting each child to balance safety from injury (harm) with making appropriate choices; making sure the child’s rights are upheld.”

In this paragraph we see that whilst children’s homes practice must give Restriction of Liberty its own focus their practice in this area must also make the links to other Quality Standards. Most notably it should link to the quality and purpose of care standard (regulation 6); the positive relationships standard (regulation 11); and the care planning standard (regulation 14), with all being seen as important for any professional judgement at inspection of the leadership and management standard (regulation 13). With wide appreciation including Restriction of Liberty care planning is a core aspect of care for young people, including management of behaviour. This requires that a home is able to evidence their work in the identification of need, assessment, planning, delivery, monitoring, evaluation and reporting.

Identifying a Deprivation of Liberty: A Practical Guide

The Law Society (2015)
http://www.lawsociety.org.uk/support-services/advice/articles/deprivation-of-liberty/

This publication is of assistance in understanding the law relating to Restriction of Liberty as well as Deprivation of Liberty. It is vital that practitioners distinguish the two to identify whether their actions are restricting or depriving a young person of their liberty, and hence take appropriate steps to ensure rights under Article 5 of the European Convention on Human Rights (‘ECHR’). The Supreme Court decided that when an individual lacking capacity was under continuous or complete supervision and control and was not free to leave, they were being deprived of their liberty. This is now commonly called the “acid test.” (see P v Cheshire West and Chester Council and P & Q v Surrey County Council.) This publication does not constitute formal legal advice, which should always be sought where necessary on the facts of difficult cases.
Inspection Judgement Areas

The inspection framework will evaluate Restriction of Liberty in the key judgement of ‘How well children are helped and protected’, this encompasses protection of children and positive relationships. It will also be evaluated under ‘Overall experiences and progress of young people’ through the inspection of quality of care. Impact and effectiveness of care planning and engaging with the wider system (which through notifications Restriction of Liberty requires) is assessed as part of leadership and management.

Research

Touch, Physical Restraint and Therapeutic Containment in Residential Child Care
Laura Steckley British Journal of Social Work (2011) 1–19
http://strathprints.strath.ac.uk/35986/

This is the findings of a large-scale, qualitative study that explored the experiences of physical restraint of children, young people and staff in residential child care in Scotland. The difference between psychological and emotional containment, as in relational care, is explored and explained as different than constraint which a focus solely on restriction can bring. Containment involves carers ‘absorbing’ the experiences of those seeking their care to better understand and respond and therefore helping them to identify verbalise and make manageable uncontrollable feelings. This supports the interconnectedness that underpins the Quality Standards developing a culture within a home where children feel ‘accepted, respected, and understood’. Ward 1995, following Ruch’s idea of holistic containment states homes need to direct their understanding about an individual child and the practice required to meet their needs by making plans for emotional containment (understanding and responding to feelings), organizational containment (planning to meet needs and for particular events, behaviour management and safe handling plan), and epistemological containment (how to think about the theory and practice required).

Children’s Views on Restraint

Reported by the Children’s Rights Director for England (2012)

Children and young people support the need for occasional use, but want it to be used properly and proportionately. The issues considered include: when physical restraint should be used; how serious damage to property need to be to justify restraint; whether restraint should ever hurt; how staff can calm a child before needing to use restraint; how restraint or viewing restraint make a child feel; what types of restraint shouldn’t be allowed; and whether some groups of children should never be restrained.

Useful Tools

Information on restraint and deprivation of liberty is contained in the protection of children section of the Guide from paragraph 9.41.

People Like Us: The report of the review of the safeguards for children living away from home
London: TSO

Cooperation, communication and relationships are the foundations of supportive care. Homes which meet the personal, social, health and educational needs of children are much more likely to be safe places for children than those that do not. Where a young person feels that their care is not being creatively planned on the basis of meeting their needs but to meet other demands to which they must conform this will be communicated in disruptive behaviour. If this continues this may escalate to circumstances where behaviour will need management or intervention.

Holding Safely
Scottish Institute for Residential Child Care (SIRCC) (2008)
http://www.celcis.org/resources/entry/holding_safely_2005

A guide for residential child care practitioners and managers about physically restraining children and young people. This guide was been written to help reduce those occasions when practitioners need to restrain a young person, to prepare them for the times when this is absolutely necessary and to take a step closer to more effectively meeting children and young people’s needs and upholding their rights.

Useful Flowchart
Skills for Care & Skills for Health, (2014 )

Positive Behaviour Support
http://www.bild.org.uk/our-services/journals/ipbs

Useful Organisations

BILD – British Institute for Learning Difficulties – Accreditation Scheme and Code of Practice
http://www.bild.org.uk/our-services/accreditation/

Underpinned by the BILD Code of Practice for minimising the use of restrictive physical interventions: planning, developing and delivering training, Fourth edition, 2014 (see below), the scheme accredits training organisations that deliver behaviour support and management training in conjunction with the use of physical skills or restrictive physical interventions.

Institute for Conflict Management
http://www.conflictmanagement.org/icm/

Practice Issues

Details regarding what is not permissible are detailed in the Regulations and Guide. This practice guide does not have space to reiterate but does underscore the absolute importance that each provider and practitioner has understood the legislation and appreciates the ramifications. At the time of writing it is not known how the precedents arising from inspection will determine practice and a further practice paper may be necessary within a few months collating evidence and experience to date.

It is to be noted that the current legislation does not only see restriction of liberty as the application of physical presence, for example blocking an exit, or of the use of force, in taking hold of a young person, but also includes non-physical, for example, guiding a young person or separation from the group. These must be recorded.

The remainder of this document addresses the orientation and manner of making professional judgements.

Professional judgements based on the individual child’s needs and developmental stage are at the root of allowing a child to take a particular risk or follow a particular course of action or to restrict access to an otherwise shared area of their home. Limits on privacy and access may only be put in place to safeguard each child in the home (regulation 21(c)(i)). Any decisions to limit a child’s access to any area of the home and any modifications to the environment of the home, must only be made where this is intended to safeguard the child’s welfare and must conform to the measures of control, discipline and restraint which may be used in relation to children in the home as included in the behaviour management policy document.

The Guide (9.52) makes it the following statement, “There may be circumstances where a child can be prevented from leaving a home – for example a child who is putting themselves at risk of injury (injury could include physical injury or harm or psychological injury or harm) by leaving the home to carry out gang related activities, use drugs or to meet someone who is sexually exploiting them or intends to do so. Any such measure of restraint must be proportionate and in place for no longer than is necessary to manage the immediate risk”.

In such circumstances the practitioner needs to make a rapid and structured assessment of the immediate and foreseeable risks, taking into account the care planning, risk assessment, and behaviour management/safe handling planning for that individual young person. This is the rigorous proactive assessment that is needed.

Holding safely (see above) sees it can only be ethical and justifiable to violate the child’s right to freedom of movement if the circumstances are exceptional and restraining them is the only practicable way you can secure their welfare. In such circumstances it is the ‘least restrictive options that must be deployed and concludes, ‘If you restrain a child in the least restrictive way necessary to prevent a child from getting hurt, after you have exhausted all other strategies, and you restrain them correctly, it is good practice’.

This leads to some clear pointers for practice when not to restrict liberty when

- You can restore safety in another practicable way;
- You are not in control of yourself;
- You consider it clearly unsafe to do so (for example, the young person has a weapon);
- You know the young person has a medical difficulty that may be made worse by being restrained;
- You consider there are not enough adults to restrain the child safely;
- Even with enough adults you are not confident you can manage to restrain the child safely;
- You are on your own with a young person, unless you assess restraining them to be is the least risky action to take (in very rare circumstances).

In summary PBS understands behavior as communication and is concerned to create responsive environments and build new skills, rather than simply attempting “to stop” a behavior. This requires identifying times and situations, understanding the motivating function and consequences in order to create alternatives to replace the behavior.
Top Tips

A ‘dynamic risk assessment’ is the essential element that a practitioner needs to run through to assess that planning in the here and now, its applicability to the present situation, and to structure decision making for their actions and their recording (see Guide 9.53). A dynamic risk assessment, given the anxious situation, needs to be simple to run through. It will usually include considering the following:

- Who is at risk of harm and what is the nature of the risk?
- Does the situation relate to any known risks in the person’s history?
- How likely is the harm and how serious will it be?
- What are the person’s own feelings and wishes regarding the possible risk?
- Would restraining this young person really be about safety, or is it about my own feelings of powerlessness and frustration?
- Will the consequences of restraining the child be less or more harmful than the behaviour itself?
- What will be the effect on the rest of the group of restraining the child?
- What would the consequence be of not restraining the child?
- Can an alternative course of action be found that has more acceptable degrees of risk?
- Are there enough staff with the right skills to restrain the child safely and effectively?
- What is the least restrictive and most respectful way of restraining the child to prevent harm?
- What is the plan if the young person cannot be restrained appropriately?

The outcome of this rapid assessment should be in line with the child’s care plan unless there are clear reasons based on the risk of harm that justify overriding it.

All decisions should be informed by a rigorous assessment of that individual child’s needs, be properly recorded, reported and be kept under regular review.