

Education Department Policy

Title: Policy on Involvement of the Police in Schools and Youth Centres

Date: May 2016

1. Overview

The previous policy has been reviewed and updated to reflect current needs and organisational arrangements

2. Scope

The policy applies to all schools and youth work settings, and all police personnel in contact with them

3. Responsibilities and distribution

All police, school and Youth Service personnel likely to come into contact with each other should be made aware of this policy and their responsibilities under it. It should be easily accessible to all relevant personnel and should inform all contact between schools and youth work settings, and the police.

4. Policy/Standards

The policy relates to two different scenarios where the need for police involvement may arise: firstly, when a senior manager at the Education Department (ED) administered premises calls the police to deal with an incident or alleged crime involving young persons. Secondly, when police attend and request access to ED premises in relation to the investigation of a crime or other enquiry involving young persons (this includes enquiries concerning a complaint from a third party, parent or young person or missing person enquiries). Such incidents require a planned, structured and consistent response from both services to adhere to and complement other service policies. Throughout any investigation/incident young people will be treated with respect, whilst feeling safe and valued. The guidance contained within this policy is aimed at assisting ED staff when balancing their duty of care towards students and young people with that of citizenship.

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BACKGROUND INFORMATION

1. OVERVIEW

- 1a** These guidelines are intended to achieve co-operative working to enable both services (the Education Department and the States of Jersey Police) to function effectively while safeguarding the rights of young people and parents. The aim of this policy is to foster good relationships and joint working between educational organisations such as schools and youth projects with the police. It is recognised that these organisations need to co-operate to ensure the safety and wellbeing of the young people in the care of the Education Department (ED). This policy is further aimed at promoting dialogue and effective partnerships between the police, schools, youth projects and other ED organisations that are based on co-operation and shared understanding.
- 1b** The following guidelines relate to two different scenarios where the need for police involvement may arise: firstly, when a senior manager at ED administered premises calls the police to deal with an incident or alleged crime involving young persons. Secondly, when police attend and request access to ED premises in relation to the investigation of a crime or other enquiry involving young persons (this includes enquiries concerning a complaint from a third party, parent or young person or missing person enquiries).
- 1c** Such incidents require a planned, structured and consistent response from both services to adhere to and complement other service policies. Throughout any investigation/incident young people will be treated with respect, whilst feeling safe and valued. The guidance contained within this policy is aimed at assisting ED staff when balancing their duty of care towards students and young people with that of citizenship.

1.1 Definitions

Student/young person – a young person under the age of 18.

ED premises – buildings administered by the Education Department, i.e. schools, youth projects (including driveways, car parks and grounds).

NB: Youth projects which may be run at parish sites or non-ED premises will also be considered to be under the remit of ED and subsequently subject to this policy while the youth club/project is in operation.

Senior Manager – head teacher, principal youth officer, deputy headteacher, area youth officer, youth project senior worker.

ED staff – employees of ED and any staff who come under the auspices of ED including volunteers.

Nominated person – a responsible adult, normally a member of staff, who has been nominated by a senior manager.

Police – States of Jersey Police.

1.2 General Principles of Law

1.2a The Criminal Law in Jersey applies to everyone. The only exception is minors below the age of 10 years old who are not held to be criminally responsible for their actions (this is deemed as an irrebuttable presumption in law).

1.2b Between the ages of 10 and 14 years the prosecution has to demonstrate that a young person knows the difference between right and wrong and that the specific action that he/she did was wrong.

1.2c The criminal law is potentially relevant to all persons engaged in school/youth centre activities whether inside, or outside of these premises.

The fact that an offence takes place on school or youth club premises does not in any way detract from the seriousness of the incident.

1.3 Scope of this Policy

1.3a This policy is entirely separate to the ED Child Protection Policy and Guidance which will always take precedence in relation to any child protection concerns.

1.3b This policy applies to ED staff (paid or volunteer) working in schools, youth centres and projects. It should also be used to provide a reference point for the States of Jersey Police.

1.3c This policy may also be applied when police involvement is required whilst on

a visit or excursion. The Off Island Visit Policy covers what steps to take in more detail, as does the Critical Incident Management Plan.

1.4 Responsibilities and Distribution

1.4a This policy should be held and managed by the headteacher, youth project senior youth worker and appropriate ED managers who must ensure that all staff are aware of the policy and its practical application. The police will keep a copy of this policy and make it available to all officers and relevant staff.

1.4b It is recommended that in every school, youth club or project a member of staff is assigned responsibility for the co-ordination and response to this policy. Regular contact/consultation is also encouraged between individual organisations and the Operational Support Unit of the States of Jersey Police. The police inspector in charge of this unit will be the principal contact in relation to all matters appertaining to this policy.

2 WHEN A SENIOR MANAGER AT ED ADMINISTERED PREMISES CALLS THE POLICE TO DEAL WITH AN INCIDENT OR CRIME

2.1 In an Emergency

2.1a In an emergency, the police should be called immediately by dialling 999.

2.1b Please refer to the **ED Critical Incident Management Plan Guidance** for details of how and when to contact the police in an emergency. This policy provides guidance on how to manage emergency situations, the correct individuals and organisations to notify and useful information on post incident responsibilities.

2.2 Incidents (including crimes or anti-social behaviour) not requiring an emergency response.

2.2a Telephone the police on 612612 and explain the full circumstances. The call will be logged and the police will instigate an appropriate response (this could be anything from advice over the telephone, to the recording of a crime or arranging for police attendance).

2.3 For Non-urgent Advice Concerning Policing Issues

2.3a Queries about procedure or policy should be directed to the police. Advice about issues arising is available from members of the Operational Support Unit. Contact can be made via the Police Headquarters switchboard on 612612.

2.4 When to Involve the Police

2.4a If the circumstance of the particular crime/incident raises child protection concerns, then it **must** be dealt with in accordance to the ED Child Protection Policy and Guidance.

2.4b In respect of all other incidents: it is recognised that schools and youth projects act in 'loco parentis' when pupils are at school or involved in school or youth project led activities. Schools and youth projects are encouraged to deal with minor incidents internally using the relevant pastoral and disciplinary policies. Such incidents should be dealt with on an individual basis.

2.4c If however, an incident is deemed serious enough to warrant police investigation, the police should be contacted as soon as possible. All interviews, and particularly those involving a young person suspected of committing the criminal offence, should be stopped immediately.

2.4d

In making this decision staff should endeavour to ensure that a balance is struck between the needs of the young person(s) involved, including any victim(s), the needs of the school/youth project (and its other pupils/members) and those of the wider community. Not reporting a crime and thereby not identifying the offender, if known or suspected, may subsequently prove to be counter-productive. There is a need to weigh up the pros and cons in reporting such young people as some action taken now could stop a young person re-offending or getting involved in more serious criminal behaviour.

2.4e When making a decision as to whether the police should be called to investigate incidents involving violence, staff should refer to the information provided in Appendix 1 (Criminal Offences Related to Violence).

2.5 Procedure for Reporting Incidents to Police

2.5a Any request to the police to undertake an investigation should be made by or with the knowledge of the appropriate senior manager.

2.5b The police will determine if an investigation is appropriate and the extent of the investigation.

2.5c In most circumstances, the police can make these decisions in conjunction with the senior staff member, however, in some urgent and serious cases, or if the case involves an allegation against staff, it may not always be appropriate for the police to explain their strategy.

2.5d It should be stressed that those who exercise authority within ED have a considerable responsibility in these matters.

2.6 Child Protection Enquiries

- 2.6a** Police from the Public Protection Unit in conjunction with staff from the Children's Service may wish to speak to children/young people on ED premises for the purpose of investigating child protection concerns. The police may request that the family of the child/young person is not informed by the school/youth club until later as it may be necessary to hold a strategy meeting following the outcome of any interview. ED staff should cooperate with the police/Children's Service but ensure that it is clear who is going to contact the parents at the appropriate time.
- 2.6b** If such an interview is required, it would not normally be necessary for a member of ED staff to be present unless requested by the police / Children's Service, for example, in the case of a particularly anxious child / young person.

3 GUIDELINES FOR ED STAFF WHEN A POLICE INVESTIGATION IS INSTIGATED ON ED PREMISES

- 3a** The following guidelines have been agreed with States of Jersey Police and apply only to incidents other than child protection concerns. ED staff should always remember that The Child Protection Policy will always take precedence and all staff should be familiar with the associated procedures.
- 3b** There are a number of circumstances when it will be necessary for police to attend at or contact ED premises in the course of investigations into various incidents (including the investigation of criminal offences, missing persons, welfare issues etc).
- 3c** Whenever possible the police should attempt to make suitable appointments to carry out investigations at ED premises, although it should be noted that in some urgent cases, this will not always be feasible, eg the young person's age, vulnerability, offending behaviour etc.
- 3d** When the police attend ED premises in relation to the investigation of a crime or other enquiry they should make initial contact with the senior manager or senior member of staff present on the premises at the time.
- 3e** As a general principle the police should avoid seeking to arrest or interview young people when they are suspects and/or witnesses on ED premises. However there may be some rare occasions, eg when police are in direct pursuit or when investigating serious crimes, when the police will need to speak to young persons on ED premises.
- 3f** In addition, in some exceptional circumstances the police may have to exercise powers of entry and search – the obstruction of which, by any person, could constitute an offence (Police Procedures and Criminal Evidence (Jersey) Law 2003 will apply).
- A young person will not be kept on ED premises at times when they would be entitled to leave, without the knowledge of the parent/guardian. In normal circumstances ED staff should advise parents/guardians as soon as possible. If the police are investigating a serious

matter and notifications of parents could frustrate the investigation it may be necessary to delay notification. In these circumstances advice may be sought from a senior manager or higher ranking police officer.

- A young person will only be arrested on ED premises if the police determine that this is absolutely necessary. This will be a decision for the investigating officer, depending on the circumstances prevailing at the time. (For example an arrest will be required in cases of continued violence to persons or property). In normal circumstances this decision will have been taken by an officer of at least the rank of sergeant.
- If the police officer conducting the investigation believes it is necessary to carry out a search of a young person or their belongings, any such search will be conducted in accordance with the law. (Police Procedures and Criminal Evidence (Jersey) Law 2003 – PPACE).
- In normal circumstances, whenever a search of a young person or their personal property is carried out by the police, provided the young person agrees, a parent, carer or person acting in loco parentis should be present throughout. If the police officer or the young person believe that it is not appropriate for the nominated person to be present, then advice should be sought from a senior manager or higher ranking police officer.
- The nominated person may question the appropriateness of a search with the police officer. In the event of a difference of opinion, advice should be sought from a senior manager or higher ranking officer.
- The nominated person should advise the police officer if they believe that the questioning presents undue stress or difficulty to the young person, or if the young person asks for the opportunity to talk alone with the responsible adult.
- In normal circumstances, police will not interview a young person who is a witness, either in a group or individually, on ED premises, except in the presence of the nominated person.
- In normal circumstances, police will not interview a young person who is suspected of committing an offence on ED premises. Arrangements will be made for interviews to take place at a designated police station. All such interviews will take place according to PPACE legislation.

3g If there is doubt about the application of any of these guidelines, the senior manager or properly appointed deputy should seek the advice of the ED. If advice is not available or if the parent/guardian cannot be contacted, the senior manager or nominated adult should act in the best interest of the young person.

3h Whatever the incident, schools/youth projects may wish to consider reviewing their relevant policies, particularly their response to incidents, curriculum provision, discipline procedures and liaison with local police.

Appendix 1

Criminal Offences Related to Violence

Reporting

In Jersey anyone can make a complaint or report a crime to the police. This is normally done by the 'victim'; however the action of making a complaint can be undertaken by a teacher, parent or anyone else who has knowledge of a specific offence.

Once a complaint has been made, the police will seek to start an investigation and the views and feelings of the 'victim' are significant to this process. As part of the investigation process the police may seek to record a statement of complaint from the 'victim'. Depending on the nature, circumstance and age of the individual involved this will either be recorded as a written statement or captured as a video record. If the complainant is under 17 years of age they will normally be accompanied by an appropriate adult, who in most cases will be a parent or guardian (who is not otherwise involved in the case).

On some occasions the police undertake investigations where the 'victim' does not want to make a formal complaint. In these circumstances the police will consider all available evidence, eg statements from other witnesses, doctor's report, CCTV recordings of the incident, before determining whether to continue the investigation.

It follows therefore that the issue of an individual wishing to 'press charges' is not technically correct. It is for the police to investigate any reported offence and then make a determination on the evidence gathered.

Once an investigation is completed the police (possibly with the assistance of advice from legal advisers) will consider two issues to determine whether someone should be charged with an offence:

1. Whether there is sufficient evidence to support a prosecution
2. Whether a prosecution is in the public interest

From an investigative position it is always important that a complaint is made to the police at the earliest opportunity. ED staff should keep in mind that young people should not be questioned unnecessarily prior to police interviews. Another important factor is that victims of assaults are examined by a forensic medical examiner and their injuries photographed. Any delay in the reporting of an assault could result in important medical evidence being lost. Furthermore, in a serious case that is progressed to court, some inference may be made with regard to the lateness of the complaint.

Appendix 2

Data Protection

A protocol to facilitate and control the exchange of personal information between Departments has been agreed. The signatories are The States of Jersey Police, Probation and After Care Service, Health and Social Services and Education.

The purpose of this protocol is to protect confidentiality but at the same time to facilitate the exchange of information in order to safeguard the welfare of children, young people and vulnerable adults, including victims of domestic violence.

This protocol allows for the exchange of personal/confidential information between agencies where there is concern for the welfare of children/young people and allows for the exchange of information within certain meetings without the necessity for data protection request forms (eg Multi Agency Support Team (MAST) meetings, child protection case conferences).

The police should not request, and the ED should not disclose, confidential information outside these protocols. Wherever possible the police should timetable visits to ED premises in advance, having agreed the purpose of their visit with the senior management of the establishment.

There are exemptions within the Data Protection Law for the police to be given access to personal information provided that this is for either:

1. The prevention/detection of crime; or
2. The apprehension and prosecution of offenders

Proper identification and appropriately signed paperwork must be provided by the police on all occasions before personal information about students/young people is passed on.

The police should make any such request using the data protection form (see attached) which sets out the reason for the request and is signed by both the investigating officer and also a supervisory officer of the rank of inspector or above.

Such data protection requests should be processed by the senior manager or a nominated member of staff. A record of all data protection requests and the information provided should be kept.

For more information on how to manage personal information please refer to the Data Protection Guidance or contact the Head of Governance, telephone 449224.

Appendix 3

Advice to Consider when Dealing with an Incident within ED Premises

Investigating Incidents

When investigating an alleged crime, it is important that the teacher/youth worker should consider whether it may be necessary to contact the police.

A decision whether or not to call the police should only be made by the senior manager present or his/her deputy.

If a decision is made to involve the police, great care should be taken when speaking with the young person and detailed notes made of all events and accounts offered.

The evidence provided by young people, particularly young children, can be considered as less reliable if they have been subject to inappropriate questioning, eg leading questions. It is therefore best practice, if circumstances allow, to avoid questioning altogether. If the circumstances dictate that questioning is needed, then ask only sufficient questions to establish basic facts.

It is accepted that not all incidents will be witnessed by staff and therefore a certain amount of questioning may be necessary to establish sufficient facts to allow a decision to be made about what action should be taken. In all cases, when the decision has been taken to involve the police, they should be notified as soon as possible and further questioning of the young person suspected of committing the criminal offence or witness to an offence, should be stopped immediately.

It is vitally important that staff make a record of questioning of witnesses and suspects as soon as possible. Such records could subsequently be considered to be of evidential value. The original records should always be retained. Police may request such original documents. Even records or notes that are not used for the prosecution should be retained as they may need to be disclosed to the defence.

It is important to stress that it is the original notes of any such interviews that are important, no matter how badly written/spelt etc.

If a teacher/youth worker has questioned a young person suspected of committing an offence about the suspected offence, this conversation may be admitted as evidence in a subsequent prosecution. Police may request a witness statement from the member of staff.

A teacher/worker involved in the investigation of a criminal matter may subsequently be called as a witness and be required to give evidence in a court of law. Notes made at the time would assist in corroborating the staff member's account of the incident.

Confidentiality

Total confidentiality cannot be offered. Young people should be told who else will need to be informed, and why. Please refer to the ED Child Protection Policy for more information.

Reviewing Policies

Following an incident, the school/youth project may wish to review its relevant policies. It is advisable that a post incident review is carried out by the senior manager.

Appendix 4

Advice Concerning Searches and Recovered Items of Property

Police Powers

The police have powers of search, under the Police Procedures and Criminal Evidence (Jersey) Law 2003 (particularly in relation to stolen property, items to be used for the commission of an offence – going equipped and offensive weapons) and the Misuse of Drugs (Jersey) Law 1978 (in relation to illegal substances).

If a search is made by an officer, the officer must be of the same sex as the pupil/young person and the search conducted in accordance with the law.

In normal circumstances, whenever a search of a young person or their personal property is carried out by the police on ED premises, provided the young person agrees, the nominated person should be present throughout. If the police officer or the young person believe that it is not appropriate for the nominated person to be present, then advice should be sought from a senior manager or higher ranking police officer.

Items of Property Recovered Prior to the Arrival of the Police

If a suspect article is recovered by a member of staff prior to the arrival of the police it should be placed in a clear plastic bag or other similar receptacle (wherever possible items of clothing should be placed in a paper bag) – one article per bag and sealed, taking into account health and safety issues.

It is strongly recommended that, when handling items such as drug paraphernalia or weapons, protective gloves are worn to prevent injury and the destruction of possible evidence, such as fingerprints. If the article is bulky or sharp, consideration should be given to using a cardboard box or similar receptacle and sealing it.

Items of property/articles should be stored in a safe or a locked cupboard until handed to police. Such items should be handed to the police as soon as practicable. In certain situations this is necessary to comply with the law.

If a pupil/young person is suspected of being in possession of an illegal article or item of property related to suspected offences a nominated person should remain with the individual until the arrival of the police to ensure the item is not disposed of or otherwise hidden.

It should be remembered that under Jersey law a forced search of a pupil/young person by a member of staff could be interpreted as an assault.

Strip or intimate physical searches must never be conducted by members of staff.

Due consideration should be given to informing the parents and giving them an opportunity to be present.

Appendix 5

Effective Relationship Between Schools/Youth Projects and Community Officer

The school, youth service/project and police relationship is a partnership which aims to steer individuals away from a destructive path: young people make mistakes with consequences and need support not to make them again.

The partnership involves effective communication through:

- Informal and class-based contact between police and students
- Regular multi-agency meetings (MAST, ACT or other)
- A joint response to incidents, whether or not a complaint is made

The school and youth project

- Sees a responsibility to support the police to sustain law and order
- Expects to influence how the police work with young people, in a way that gets results
- Welcomes the police officer as a part of the school and youth project
- Keeps the police informed of incidents dealt with in school and other pertinent information

Appendix 6

Record Keeping

There is a requirement to record actions taken by ED staff, to ensure an accurate account of the events is maintained in the event of any complaint or legal action. An accurate and factual record of each incident should be made by the initial staff member involved and any witnesses. This may be important for the protection of any staff member or witness in any later enquiry or court case. Information recorded should include the nature of the incident, the timings of all calls logged with the police / parents or other agencies. In addition to this detailed chronology, every action taken by ED staff must be documented.

Appendix 7

Parental Contact

In the Youth Service, where a suspected offence has taken place, parents should be contacted. If a student/young person does not wish their parent to be contacted, they should be encouraged to give their consent.

Parents should be contacted in the event of a student/young person being taken to Police Headquarters and detained for questioning. In the event that parents are non-contactable, a designated adult representative from the organisation should be in attendance until the duty child care officer arrives.

Where a young person is 18 years or over and does not have learning difficulties, parents should only be contacted with the consent of the young person.

Appendix 8

Contact with the Media

If there is likely to be media interest in a particular case, headteachers and senior managers should notify the Chief Education Officer or his designate in order to coordinate a consistent response. Staff should avoid giving out any personal information and refer the media to the Senior Management Team at the main department.

If an incident is going to court, it is helpful for ED and the police to agree a strategy in relation to the media.

Appendix 9

Risk of Significant Harm

If there is concern that the pupil/young person is, or other members of that family or other pupils/young people are, at risk of significant harm, referral should be made by schools through the Child Protection Co-ordinator in the Education Support Team (telephone 449477), through the Children's Service (telephone 443500) and, for the Youth Service, through the appropriate Area Youth Officer (telephone 729135/07797763342).

Appendix 10

IN THE MATTER OF THE LAW OF TRESPASS IN JERSEY et al

OPINION

Introduction

1. I am asked to advise on the Jersey law of trespass in respect of suspended pupils on school premises. This advice will, I understand, assist in the development of a policy in the Islands schools on how to proceed with pupils who are suspended but re-enter a school without permission and refuse to leave.
2. By way of background I note you forwarded to the Department a copy of the States of Jersey Education Department's Draft Restraint Policy and Restraint Guidelines.¹
3. In this Opinion, I have outlined (i) the relevant provisions in the Education (Jersey) Law 1999 ("the 1999 Law") (ii) the legal position on trespass in English and Welsh schools (iii) the legal position on trespass in Jersey (iv) the legal remedies that may be considered in respect of suspended pupils refusing to leave a Jersey school premises.

(i) The relevant provisions in the 1999 Law

4. Behaviour and discipline is set out at Articles 33-36 of the 1999 Law.
5. Article 33 provide as follows:

Article 33

Purposes

The purposes of this Part are –

- (a) the promotion of self-discipline and proper regard for authority, the encouragement of good behaviour and respect for others and the property of others and the attainment of acceptable standards of behaviour among pupils;*
and
- (b) the regulation of the conduct of pupils.*

¹ Annexe 1

6. Article 34 provides as follows:

Article 34

Role of the Committee

The committee may issue to any provided school –

- (a) a statement of general principles relating to the purpose of this Part;*
- (b) guidance in respect of any particular matter relating to the provision of this Part.*

7. Article 35 provides as follows:

Article 35

Duty of Headteacher

(1) Every headteacher of a provided school shall determine-

- (a) what is to be regarded as acceptable standards of behaviour in school; and*
- (b) measures including, as required, rules and provisions for enforcement, for the furtherance in the school of the purpose of this Part.*

(1) Every headteacher of a provided school shall, in determining any measures –

- (a) ensure that they are consistent with any statement of general principles issued under paragraph (a) of Article 34; and*
- (b) Have regard to any guidance in respect of particular matter issued under paragraph (b) of Article 34*

(1) Every headteacher of a provided school shall make any measures generally known within the school and amongst the parents and its pupils.

8. Article 36 provides as follows:

Article 36

Suspension and expulsion of pupils

(1) The power to suspend or expel a pupil from a provided school shall only be exercisable by the headteacher

(2) *The headteacher of a provided school may not suspend a pupil for a period of more than 5 days or an aggregate period of more than fifteen days in any school term without agreement in writing from the Director of Education.*

(3) *The headteacher of a provided school may not expel a pupil without having obtained, firstly, the agreement in writing of the Director of Education and, secondly, if the Director of Education so agrees, the agreement in writing of the governing body of the school, if any.*

9. The first point to make is that there is no equivalent of section 547 of the Education Act 1996 (see paragraph 16 below) in the 1999 Law. Secondly, I understand that the draft documents at Annexe 1 will be issued by the Education, Sport and Culture (“ESC”) Committee pursuant to Article 34 of the 1999 Law. Article 35 provides that the headteacher can issue rules and provisions for enforcement of standards of behaviour. I have not seen such rules and provisions but this is not so important because according to Article 35(2) they have to be consistent with the documents issued by the ESC Committee under Article 34.

I understand this Opinion will guide the ESC Committee on how to word their documents on behaviour and discipline issued under Article 34.

(ii) The legal position on trespass in England and Wales

10. There are two forms of trespass. Trespass to the person and trespass to land. Trespass to the person concerns assault, battery and wrongful/false imprisonment and is not relevant for the purpose of this Opinion.

11. Halsbury’s Law defines trespass to land as, *inter alia* :-

*“Every unlawful entry by one person on land in the possession of another is a trespass for which a claim may be brought, **even though no actual damage is done**. A person trespasses upon land if he wrongfully sets foot on... or places or fixes anything on it ...”*

“If a person on the land enters on the land of another under an authority given him by law, and, while there, abuses the authority by an act which amounts to trespass he becomes a trespasser ab initio. And may be sued as if his original entry were unlawful”

12. I initially considered that the English law of nuisance may be relevant to this Opinion. On balance I do not think it is. An action in nuisance can arise even if there is no direct intrusion onto another person’s property. However, while damage is essential part of the

tort of nuisance, it is not a requisite of trespass. The facts I am given suggest that a suspended pupil is on the premises and that he has not necessarily caused any damage. In short, trespass would be the appropriate tort and not nuisance.

13. The Department for Education and skills in the United Kingdom (“DfES”) have issued a missive on trespass and school security.² It provides, *inter alia*, that all schools are not public places to which any member of the public is entitled to access. They are private places, and any person who enters without permission is a trespasser. Trespassers may be asked to leave.
14. The headteacher, in exercising day-to-day management of the school, determines who should have access to the premises. Registered pupils of a school entering the premises during school hours or at other times for the purposes reasonably connected with their status as a pupil are not trespassers. However, they would become trespassers if e.g. excluded, whether permanently or on a fixed term basis from the school, unless arrangements had been made for them to return to school, for example to collect work.
15. In figure 1 of the missive, DfES, have set out that if a trespasser refuses to leave school premises, or causes or permits nuisance or disturbance then a Police officer, or authorised person, can remove the trespasser. Thereafter, the local education authority/school would warn the trespasser by letter. Finally, proceedings can be brought against the trespasser. Figure 1 notes that the maximum fine is £500;³ alternatively the parent of a 16 year old (or younger) may be bound over.
16. If a trespasser refuses to leave school premises, or enters after being required to leave, their behaviour may give rise to a criminal offence under section 547 of the 1996 Act. Section 547 provides that any person present without lawful authority on the school premises, and who causes or permits nuisance or disturbance to the users of such premises, commits an offence. This applies whether or not the users are present at the time. The courts adopt a broad definition of ‘nuisance or disturbance’.⁴ DfES contends this means that anything done by a trespasser will be an offence where it disrupts the routine of school or the duties of its staff.

² Annexe 2

³ Section 547 Education Act 1996 (“the 1996 Act”)

⁴ Glue sniffing in a school playground out of school hours when no staff or pupils were present held to be a nuisance or disturbance (*Sykes v Holmes and Maw* [1985] Crim LR 791). Other examples might be where a trespasser drives a motorbike onto playing fields and disrupts a PE lesson or where a trespasser makes a noise outside a classroom preventing a class from being taught.

17. DfES also suggest other legal remedies (outside of section 547 of the 1996 Act) to control trespassers:-
18. If the trespasser causes a breach of the peace, a police officer may arrest and charge the trespasser. He could face up to 6 month's imprisonment for failure to comply with any 'binding over' order of the court.
19. If the trespasser causes loss or damage, e.g. by disruption of a school activity, the school may take a civil action to seek compensation. The court may require the trespasser pay damages to the school. DfES cautions, however, that such an action in damages is likely to be an expensive and protracted procedure which would only be justifiable where (i) serious loss or damage has resulted; and (ii) the trespasser has the means to pay any damages which may be awarded.
20. If the trespasser causes deliberate or reckless damage the school should report the incident to the police. This may result in the trespasser being charged with an offence of criminal damage. Criminal damage (not endangering life), if tried on indictment⁵ carries a maximum sentence of 10 years' imprisonment.
21. If the trespasser persistently enters the school premises then the local education authority/school can seek an injunction. The effect of this is that the court will order the trespasser not to enter the school premises; and if the trespasser breaches the injunction, the court can impose substantial penalties. DfES cautions that courts will very rarely grant injunctions against young people as they are unlikely to appreciate the consequences of breaching the order and may have limited means to pay any fine ordered by the court.

(iii) The legal position on trespass to land in Jersey

22. The concept of trespass to land is recognised in Jersey law.⁶
23. The next question to ask is how close is the tort of trespass to land in Jersey to the tort of trespass to land in England? In *Arya Holdings Limited v Minorities Finance Limited*,⁷ the Court acknowledged that over the years Jersey had moved ever closer to the English

⁵ i.e. before the Crown Court and not the Magistrates' Court.

⁶ *Luce v Brown* 1991 JLR N-11, *Carter V Nimmo* 1968 JJ 1007 and *Parish of St Helier v Manning* 1982 JJ 183

⁷ (Unreported 93/135)

concept of tort, and that from 1970's onwards the English concept of tort governs Jersey legal thinking.

24. This idea of Jersey tort being akin to English tort was also affirmed in *Jersey F.S.C v A.P. Black (Jersey) Limited* 2002 JLR 443, where the Court of Appeal held that a Jersey tort action was similar to an English tort action that it had three essential elements: (i) a duty owed to the plaintiff by the defendant otherwise than by virtue of a contract or trust (whether pursuant to Jersey common law or statute), (ii) a breach of that duty by the defendant, and (iii) actual or threatened damage caused by and flowing from the breach (assumed in some torts), giving rise to a right of action which the plaintiff could require the court to uphold.
25. Conceptual difficulties would arise if there was a dispute between two neighbouring property owners. In English law this could be classified as trespass to property while in Jersey, the Solicitor General⁸ comments that it “*sits more comfortably as part of that area of law relating to property known as voisinage which deals with reciprocal rights and obligations of neighbouring property owners.*” However, *voisinage* is not relevant for the purposes of this Opinion as the excluded pupil is not a neighbouring property owner.
26. In paragraph 11 above I cited various sections of Halsbury's that define trespass to land. The case of *Parish of St. Helier v Manning* 1982 JJ 183 considered virtually identical⁹ paragraphs in an earlier edition of Halsbury's Laws.¹⁰ The court concluded “**We have no doubt that the...authorities correctly set out the common law in Jersey**” [my emphasis added].
27. In short, it is safe to assume that the position for trespass to land in Jersey law, for the purposes of this Opinion, is as set out in paragraph 11 above.

(iv) The legal remedies that may be considered in respect of excluded pupils refusing to leave the Jersey school premises.

28. I can find no guidance in the 1999 Law but I have no reason to doubt that, in common with England and Wales, a school in Jersey is a private place, and any person who

⁸ The Origin and Development of Jersey Law – An Outline Guide: Stephanie C. Nicolle H.M Solicitor General for Jersey para. 15.25

⁹ The differences between the earlier and later versions of Halsbury's in this matter are immaterial.

¹⁰ See Annexe 3

enters without permission is a trespasser. The following legal remedies are possible against the trespasser.

29. An action in tort can be brought by the ESC Committee against an excluded pupil who has refused to leave school premises under the head of trespass to land. The procedural steps required to take such action can be discussed with the Law Officers' Department when necessary. Comment:- This is a practical step the school can take, but each case must be considered on its merits as there are resource implications for instituting such proceedings.
30. No action can be take under the Education (Jersey) Law, 1999 (or any other Jersey statute for that matter) as we have no equivalent to section 547 of the 1996 Act i.e. if a trespasser refuses to leave school premises, or enters after being required to leave, their behaviour may give rise to a criminal offence. Comment:- the ESC Committee may have to consider sponsoring an amendment to the Education (Jersey) Law 1999 to make provision for the equivalent of section 547 of the 1996 Act.
31. If the trespasser causes loss or damage, e.g. by disruption or a school activity, the school could take civil action to seek compensation under the head of trespass to land. The court may require the trespasser to pay damages to the school. Comment:- My view is that, just as in England, such action would only be justifiable where (i) serious loss has resulted; and (ii) the school can be confident that the trespasser has the means to pay any damages which may be awarded.
32. If the trespasser causes a breach of the peace, a police officer may arrest and charge the trespasser. Breach of the peace is a customary law offence and there is no set penalty. Comment:- Before prosecuting, the Attorney General would consider whether the public interest would be served by such a prosecution. Each case would be judged on its merits and the ultimate decision rest with the AG. The question is whether the public interest would be served in prosecuting cases of breach of the peace in schools.
33. If the trespasser causes damage, the school could report the incident to the police. Certainly if serious, this could result in the trespasser being charged with an offence of malicious damage. Malicious damage is a customary law offence and there is no set penalty. Comment:- the public interest test would again be addressed before a decision is made on any prosecution.

34. If the trespasser persistently enters school premises then the committee can seek an injunction against him. Comment:- DfES cautions that the courts will very rarely grant injunctions against young people as they are unlikely to appreciate the consequences of breaching the order and may have limited means to pay any fine ordered by the court. I take a slightly different view. There is no legal reason why the Jersey court should not make such an order. Whether it would do so or not can only be a matter of speculation.
35. One relevant factor would be the age of the child. I cannot imagine that the court would make an order against a child of primary school age. The more appropriate step would be to seek an injunction against the parents.
36. Secondary school pupils are a different matter. It is conceivable that pupils could behave in a manner that is seriously intimidating, both verbally and physically, towards people, and of causing considerable damage to property. In addition, a secondary school pupil could disrupt the schooling of other school pupils who are entitled to receive their education uninterrupted by the misbehaviour of others.
37. My view is that a teenage child should be quite capable of understanding that they have been ordered by a court to stay away from school. They may not be able to pay a fine, but one of the advantages of an injunction is that it can be expressed so as to empower the police to enforce it.¹¹ This would mean that if a child attended in breach of such an injunction, the school would be able to request the police (or the Viscount) to remove him or her. Without such an injunction the police can only intervene if a crime is committed or appears to be about to be committed (see paragraphs 31 and 32 above).
38. Finally, it is worth underlining that the ESC Committee may contravene the 1999 Law if it does not provide a child within the limits of compulsory schooling with an education. Article 11 of the 1999 Law provide that:-
- “the [ESC] Committee shall ensure that there is available to every child of compulsory school age full-time education appropriate to his age, ability and aptitude.”*
39. The ESC Committee could have an action brought against it by the disgruntled parent of a child who is suspended under Article 36 of the 1999 Law. The parent could argue that

¹¹ Such a power is contained in the Power of Arrests (Injunctions) (Jersey) Law 1998. The injunction would be drafted to attach a power of arrest to it (See Annexe 4 for a copy of the 1998 Law).

the Committee is failing in its duty under Article 11 of the 1999 Law to provide and education for that child. The wording of Article 11 requires the Committee to provide every school age child, disruptive or not, with full time education.

40. The parent could support its argument by citing the United Nations Convention on the Rights of the Child. That Convention has not yet been extended to Jersey, but the Royal Court might regard its principles¹² as relevant as guidelines to the approach which it ought to take.

41. I understand from a conversation with the Special Educational Needs Manager at the States of Jersey Education Department that the unofficial policy is that: (i) if pupils are in the care of their parents – no separate place of education is made available to them during their period of suspension and (ii) if pupils are not in the care of their parents (i.e. 'looked after' children) – education is made available to them during their period of suspension at Aviemore (attached to Haut de la Garenne).

42. In the United Kingdom, Section 13 of the 1996 Act is similar in tone to Article 11 of the 1999 Law. It provides:

“13 General responsibility for education

(1) A local education authority shall (so far as their powers enable them to do so) contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary education and secondary education are available to meet the needs of the population of their area”

43. Section 19(1) of that Act provides:

“19 Exceptional provision of education in pupil referral units or elsewhere

*(1) Each local education authority shall make arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, **by reason** of illness, **exclusion from school** [my emphasis added] or otherwise, may not for **any period** receive suitable education unless such arrangements are made for them”*

¹² Parts of Article 28 of the Convention are particularly relevant:

“1. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:.....

(b) encourage the development of different forms of secondary education...make them available and accessible to every child....

For a full copy of the Convention see: www.unhchr.ch

44. There is no equivalent provision to section 19 in the 1999 Law.

45. In common with the United Nations Convention on the Rights of the Child, the European Convention on Human Rights (“ECHR”) does not have force of law in Jersey. This will change, as far as the ECHR is concerned, when the Human Rights (Jersey) Law 2000 comes into force. When that happens public authorities (which would include States of Jersey schools¹³) will have to act in a manner that is not incompatible with certain ECHR rights. One of those rights is contained at Protocol 1 Article 2 of the ECHR. This provides:

”Article 2

Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”.

46. The expression “any period” at section 19(1) of the 1996 Act is not defined term for the purposes of that Act. However, guidance on this point can be drawn from the case of *Ali v Lord Grey School* [2004] EWCA Civ 382¹⁴. The judgement merits reading in full. The facts concern a pupil excluded from 9th March, 2001 until his enrolment in a new school on 21st January, 2002. During that time the Court held that certain periods of his exclusion were held unlawful.

47. Even when the pupil was excluded lawfully¹⁵, the Court discussed in depth whether the pupil was given sufficient access to education to answer his claim under Protocol 1 Article 2 of the ECHR. We are told that the pupil was given self assessing work in preparation for his SATS exams¹⁶. We are also told that this did not breach his rights under Protocol 1 Article 2 of the ECHR in that he was receiving appropriate education.

¹³ *Ali v Lord Grey School* [2004] EWCA Civ 382 para 36.

¹⁴ Annexe 5 – As far as I can tell the pupil was being provided with schoolwork even during the first 12 days of his exclusion – see paragraph 52

¹⁵ Known as phase 2 in the judgement

¹⁶ paragraph 52 of the judgement

The judgement also says that LEA intervention would be triggered under section 19 of the 1996 Act if the school is not sending work home to the pupil¹⁷.

48. In Jersey, the Special Educational Needs Manager confirmed that the moment the pupil is suspended, the unofficial policy is that he is given school work to do at home. It is the responsibility of the parents to bring the work back. If the offer of work is not taken up it seems likely that there is no breach of Protocol 1 Article 2 of the ECHR.

(v) Summary and Conclusions

- Discipline and behaviour in the States of Jersey Schools is governed by Articles 33 – 36 of the 1999 Law.
- The ESC Committee can issue guidance and general principles on discipline and behaviour under Article 34 of the 1999 Law.
- This Opinion will assist in the wording of that guidance and general principles.
- Trespass to land is defined in Halsbury's laws: *"Unlawful entry by one person on land in possession of another is a trespass for which a claim may be brought even though no actual damage is done."*
- In England, schools are not public places. Pupils of the school can be there legitimately but they are trespassers if they return to school whilst excluded.
- In England, pupils unlawfully on school premises could be subject to criminal sanctions e.g. charged with breach of the peace, criminal damage in certain circumstance.
- In England, civil actions can be taken against a pupil e.g. claiming compensation where he has trespassed and caused damage (damage is serious) or making him subject to an injunction (if he persistently re-enters the school whilst excluded).
- Trespass to land is recognised in Jersey law.
- For the purposes of this Opinion the definition of trespass to land in Jersey is the same as in England.
- It is understood that a school is not a public place in Jersey.

¹⁷ paragraph 55 of the judgement

- An action in trespass in land can be brought by the ESC Committee) against a pupil who has been suspended, returns and refuses to leave school premises.
- The ESC Committee may consider sponsoring an amendment to the 1999 Law to insert the equivalent of s.547 of the 1996 Act.
- For Jersey pupils who persistently return to school while suspended an injunction may be appropriate.
- Criminal sanctions may be appropriate against suspended Jersey pupils in serious cases of breach of the peace or criminal damage of school premises.
- In England, section 19 of the 1996 Act provides that a pupil excluded from school should receive suitable education.
- There is no equivalent of section 19 in 1999 Law.
- The ESC Committee should, nevertheless, ensure that no suspensions/injunction of a pupil contravenes Article 11 of the 1999 Law. In other words, the pupil must still be offered education whilst suspended from school.
- Furthermore, Protocol 1 Article 2 of the ECHR and Article 28 of the UN Convention on the Rights of the Child protect the right to education. Neither convention is in force in Jersey, however, a Jersey Court may be guided by their principles.
- It is essential that if a pupil is suspended (or subject to an injunction while suspended) that school work is provided for him. Following the case of *Ali v Lord Grey School* (2004), providing school work for the child to do at home will probably be sufficient to meet the demands of Protocol 1 Article 2 and Article 11 of the 1999 Law.
- The ESC Committee may consider sponsoring an amendment to the 1999 Law to insert the equivalent of s.19 of the 1996 Act.

Relevant extracts from

Education Department: Data Protection Policies and Procedures

Police Information Requests

Vital interest/ emergency situations: If it is a 'vital interest' situation e.g. missing or vulnerable child, or there is a fire or other emergency situation, the Data Protection Law enables you to share information with other agencies such as the Police with no other condition being met and you should co-operate fully and promptly.

Safeguarding / MASH information: There are protocols in place which enable sharing of safeguarding information with other agencies such as the police, health and social services. Each information request should be considered on a case by case basis however if a professional in one agency has raised concerns about a child, then it may be appropriate to share information. This decision to share information should be made only by the Head teacher / service manager (or person authorised by the Head teacher / service manager to do so). Seek advice from the Department if in doubt.

Investigation of a crime: If the information is being requested in relation to a crime, you can release information to the police (or other enforcement agencies). An article 29 is a formal form for information from the States of Jersey Police and you should ask for this to be completed in order to formalise the request, unless the time taken to do this would prejudice investigations. Note that this provision allows you to release information but does not compel you to release it. Ask the Department for advice if in doubt.

Court Order/ Summons: A court order compels you to release information.

FURTHER INFORMATION AND RELATED DOCUMENTS

The following ED policies and associated legislation may also be of assistance:

Critical incident Management Plan
Child Protection Guidance
Jersey Youth Service Child Protection/Safeguarding Policy
Jersey Youth Service Drug and Alcohol Guidelines
Jersey Youth Service Street-based Youth Work Guidelines
Jersey Youth Service Confidentiality Guidelines
Data Protection: Policies and Procedures for the Education Department
Policy on Dealing with Drug Related Incidents
Police and Criminal Evidence (Jersey) Law 2003

This does not negate the need for regular community based visits by the police in order to maintain good relations.

CHANGE HISTORY

Version	Date Issued	Issued by	Reason for Change
0.1	13.September 2005	Principal Youth Officer	First Draft for review
0.2	01 January 2007	Project Manager	formatting and additions to policy
0.3	02 July 2009	Principal Educational Psychologist	Consultation draft for Primary and Secondary Heads
0.4	May 2014	Head of Inclusion	Change of ownership to Head of Inclusion Remove contributors to previous document Remove sentence from para 2.3a which stated that a message could be left for a police officer
0.5	May 2016	Director – Inclusion & Family Support	Amend name of Department and relevant job titles. Update Appendix 11 in line with current Data Protection Policy. Remove name of Officer referred to in Appendix 10.

ADDITIONAL INFORMATION

Planned review date:	Distribution:	
January 2012		
Associated policies	Name	Reference