



MANAGEMENT CIRCULAR

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Education Services, City Chambers, 40 John Street, Glasgow G1 1JL

August 2018

Management Circular No. 22

To **Heads of all Educational Establishments**

Guidelines on legal issues affecting school pupils and staff

From time to time, legal issues affecting school children and young people arise and Heads of Establishment may feel uncertain as to the most appropriate method of handling the situation. It is, therefore, considered that broad guidelines outlining appropriate procedures in a variety of situations would be welcomed. Of course, it is difficult to cover all eventualities and any Head of Establishment or teacher becoming involved in any of the matters covered below, or in similar matters, should not hesitate to seek guidance from Legal Services in the Chief Executive's Department where a solicitor will assist. The Legal Services section is located in the City Chambers, George Square, Glasgow G2 1DU (phone 0141 287 0220).

Reference should also be made in appropriate circumstances to Management Circular No. 11 (Children's and Young Peoples' Progress Records), Management Circular No. 53 (Data Protection Guidance), Management Circular No. 57 (Children and Young People Welfare and Safety), Management Circular No. 64 (Access to Children's and Young People's Records) and Management Circular No. 92 (which includes information on Parental Rights and Responsibilities).

Heads of Establishment must advise Education Services of the circumstances of any incident which results in their seeking guidance from the Chief Executive Department's Legal and Administration Services section.

1. Police Enquiries

1.1 Identification

A person appearing in uniform or civilian clothes and purporting to be a Police officer should always be asked to produce his/her Police identification card. If police officers are seeking information, they must provide the completed "Crime and Taxation Request Form" which is available on Glasgow Online. It must be signed by appropriately ranked police officers (defined on the form).

1.2 Court warrants and other court papers

- a) Wherever possible, police officers endeavour to avoid serving court papers on a child or young person during school hours. However, where such action is unavoidable police officers may call at a school with a warrant or other papers from a court. The terms of any court warrants, orders, etc. must be complied with. The Head of Establishment may assist if the police agree that this is appropriate. The child's views must be considered too. In such circumstances, only the Head of Establishment or his/her authorised depute should deal with the Police.

- b) The Head of Establishment must immediately contact the parent/carer of the child or young person involved detailing what has taken place. Speed in such cases is of the essence. If contact is made by any other means than through the post then a letter should be sent to the parent/carer by recorded delivery.
- c) Court citation may be served by police officers. The person to whom the citation is addressed must attend court on the date and time specified in the citation. It is an offence not to do so. See section 4 for further information.

1.3 Investigation of incidents not connected with school

- a) In the course of their duties, the Police are required to investigate crime, to establish the identity of the person committing the crime, and to find witnesses. In normal circumstances, the Police interview a child or young person only in the presence of his/her parents/carers and, therefore outwith school hours.
- b) However, there may be special circumstances where, in the interests of justice, it is necessary for the Police to interview a child or young person without delay.
- c) If Police arrive at a school to interview a child or young person who is a suspect or a witness, the Head of Establishment should ask for an opportunity to try to contact the parent/carer. If the Police agree to this, then the Head of Establishment should co-operate with the Police as to the safe custody of the child or young person concerned until the parent/carer arrives.
- d) If circumstances are such that it is not possible to contact the parent/carer, or if the Police insist that the parent/carer is not present, then the interview of the child or young person by the Police should take place in the presence of the Head of Establishment or such other teacher as may be delegated by him/her. If the Police have reasonable grounds to suspect that a child or young person has committed an offence the child has the right to have a solicitor present unless exceptional circumstances exist. Those circumstances would be where they must interview without delay in the interests of:-
 - the investigation or the prevention of crime or
 - the apprehension of offenders

Only an officer with rank of sergeant or above who has not been involved in investigating the offence about which the person is to be interviewed can decide that those circumstances exist.

If any child or young person is interviewed by the Police in school without the presence of the parent/carer, the Head of Establishment should immediately advise the parent/carer concerned following the provisions mentioned in Paragraph 1.2 unless the police state that this would not be appropriate. For example there may be circumstances where the parent is the subject of investigation.

- e) In the case of suspected child abuse the role and response of Education Services are detailed in Management Circular No. 57.
- f) If in doubt regarding any of the above guidelines do not hesitate to contact Legal Services.

1.4 Investigation of incidents directly connected with schools

- a) The general principles regarding the taking of statements set out in Paragraph 1.3 apply.
- b) When incidents directly connected with school are being investigated, it is particularly desirable for the Police to interview a child or young person in the presence of the parent/carer if any member(s) of the teaching staff may have been directly involved in the incident or are witnesses.

2. Parental/ Carer disputes regarding the exercise of parental/carer rights and responsibilities

- 2.1 Heads of Establishment and their staff will probably become aware of cases where there has been a separation of parents/carers.
- 2.2 In any case where a Head of Establishment or teacher has reason to believe that there has been some estrangement between parents/carers and a stranger arrives, purporting to be a parent/carer, demanding to see a child or young person, it should first be ascertained that this person is, in fact, a parent/carer. He/She should be asked to produce some photographic evidence of his/her identity, for example, a driving licence or passport. To establish if the person has parental rights and responsibilities see MC92.
- 2.3 If the Head of Establishment or teacher is satisfied that the person is, in fact, a parent with parental rights and responsibilities (or a person that person with PRRs have confirmed as their representative) or a person who has contact or residence in terms of a court order, the teacher cannot, refuse the parent/carer access to the child, or prevent the parent/carer from removing the child or young person unless the parent/carer is under the influence of drink or drugs (in which case if the person persists, the Police should be called), there has been produced to the school, previously, a court order or bail conditions preventing this particular parent/carer from contacting the child, there is another child protection issue or the school are not satisfied as to the identity/status of the individual. It would be important for a Head of Establishment to advise the relevant members of staff of any background information affecting a child within their care.

3. Requests for Reports and Statements on Children or Young People

- 3.1 Teachers are expected and encouraged to give regular written reports to parents/ carers of the conduct and progress of children or young people. Details of the procedures to be followed with respect to access to children's educational records are contained in Management Circular No. 64.
- 3.2 Apart from the routine reports to, and the request to see children's records from parents/carers mentioned in Paragraph 3.1, teachers are from time to time asked for a statement in relation to a child or young person. Such statements would be requested to prepare for a court action and can result in a citation to attend a court as a witness in a case such as divorce or contested residence/contact. Teachers are usually asked to provide professional views in their capacity as educationalists. If they do not believe that they have the expertise to respond to a question they should state this.
- 3.3 Requests for written reports other than the above normal school reports can be of two types. Firstly, the request can come from a Solicitor acting for one or other of the child's parents. In these cases the Solicitor should provide a mandate signed by their client authorizing the release of specified information in relation to the identified children to that particular solicitor. Please see MC53 and MC64 for further information. If the Solicitor is seeking a statement from a member of staff the staff member should be extremely careful and only provide information for a defined purpose which is most likely to be court proceedings. There is no legal obligation to provide a statement in civil matters. However it should assist parties to prepare their case and contribute to the efficiencies of the court process. If you are cited to attend court you must attend. If In doubt they please seek advice from Legal Services.
- 3.4 The other set of circumstances whereby reports or statements could be requested is when Solicitors acting for some third party other than the parents/guardians are seeking information, probably with a view to subsequent Court action. In these cases no information whatsoever should be given to the Solicitor without first contacting Legal Services.
- 3.5 It is appreciated that requests from Solicitors for statements may cause concern to Heads of Establishment and teaching staff because usually they are not familiar with the law, and Court procedure, in particular. It is emphasised that they should not hesitate to contact Legal Services, Chief Executive Department.

- 3.6 Sometimes courts will appoint a solicitor to produce a “Child Welfare Report”. If you are not familiar with these please contact legal services for further advice. Normally you should assist the person appointed. They still need to produce relevant identification and the court interlocutor (court order).
- 3.7 Courts can grant a “Specification of Documents” which would require you as the “haver” to produce documents in a very short period of time (usually 7 days). Please contact legal services immediately if you receive such a request. We will assist the school when a specification of documents has been received.

4. Citations to attend Court

- 4.1 A teacher may receive a citation to attend an Education Tribunal, a General Teaching Council (GTC) hearing or as a Court witness in a criminal case, a civil case or a case initiated by the Reporter to the Children’s Panel. If further information is required they should not hesitate to contact Legal Services and a Solicitor will endeavour to assist them.
- 4.2 If a teacher is cited to attend as a prosecution witness in a criminal case, the citation will usually be in the name of a Procurator Fiscal and served on the teacher by a Police officer. In these cases no minimum period of notice is required and indeed sometimes only very short notices will be given. If the teacher is required as a defence witness in a criminal case, intimation will probably be sent to the teacher by a Solicitor for the defence and should be aware of the case and the evidence he/she is required to give.
- 4.3 In civil cases, whether in the Court of Session or the Sheriff Court the citation will be served personally by a Sheriff Officer or by post.
- 4.4 Where the citations are served by the Sheriff Officer they can be asked the name and address of the Solicitor who instructed them to serve the citation. Where the citation is by post the Solicitor’s name and address should appear on the backing of the citation. In some cases the Solicitor’s name given will be that of an individual and not of a firm of solicitors which may make it difficult for the teacher to contact the Solicitor. In these cases, Legal Services section, if contacted, will try to assist.
- 4.5 The teacher concerned may either contact the Solicitor direct to find out what is required of him/her and thereafter consult Legal Services section or contact Legal Services section before taking any further action.
- 4.6 In civil cases attendance at the Court specified and at the time specified is mandatory and can only be avoided on medical grounds supported by a medical certificate or in other very exceptional circumstances.
- 4.7 It is possible that a teacher will receive a citation to attend as a witness in civil cases without having had some earlier communication with the Solicitor concerned but it is unlikely because the Solicitor would not know what the teacher is likely to say in evidence (see 3.3).
- 4.8 Where a citation for a civil case is received, with or without prior communication with the Solicitor, the person cited may be able to contact the Solicitor concerned to find out if it is possible to minimize the time spent in the court building. For example the person may be cited to attend on a number of days. The solicitor who cited the witness may be able to be more precise. If they cannot provide specific dates the witness must attend court on the dates stated in the citation. Failure to attend court when cited is an offence.

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