

Counselling children and young people in school contexts in England, Northern Ireland and Wales

Good Practice in Action 002 Legal Resource

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Context

This resource is one of a suite prepared by BACP to enable members to engage with the current BACP *Ethical Framework for the Counselling Professions* in respect of the law relating to children in school contexts in England, Northern Ireland and Wales.

Purpose

The purpose of this resource is to provide information for counsellors, counselling service providers and schools in respect of legal matters relating to counselling in schools in England, Northern Ireland and Wales.

Using the Legal Resources

Our membership agreement with BACP establishes a contractual commitment by members to abide by the *Ethical Framework for the Counselling Professions*, which includes a responsibility for us as members to keep up to date the skills and knowledge relevant to our work. These Legal Resources are solely intended to support good practice by offering general information on principles and policy applicable at the time of publication. They are not intended to be legal advice, and they are not sufficient on their own for resolving specific legal issues or dilemmas arising from work with clients, which are often complex. In these situations, we strongly recommend consulting a suitably qualified practitioner or lawyer.

Specific issues in practice will vary depending on clients, particular models of working, the context of the work and the kind of therapeutic intervention provided. Please be alert for changes that may affect your practice, as organisations and agencies may change their practice and policies. References were up to date at the time of writing but there may be subsequent changes to the law, government departments, websites and web addresses, and it is important for you to keep informed of those that may affect you.

Introduction

Section 175 of the Education Act 2002 places a duty on local authorities in relation to their education functions, the governing bodies of maintained schools and the governing bodies of further education institutions (which include sixth-form colleges) to exercise their functions with a view to safeguarding and promoting the welfare of children who are either pupils at a school or who are students under 18 years of age attending further education institutions. The same duty applies to independent schools (which include academies/free schools) by virtue of regulations made under s.157 of the Act.

Practitioners should always watch for new legislation and guidance as a matter of good practice; but this is even more necessary for all those working with children and young people, because child law is one of the areas of legislation that develops most quickly, and it is likely to change further following the lessons learned from the recent and ongoing series of public trials for historic child abuse.

Please note that the content of this resource is of necessity general in nature and so it cannot constitute legal advice on any specific case because the context of every practice dilemma is different. We would advise any practitioner concerned about a specific case to seek legal advice, which may be available as part of the cover available through their professional insurer.

For ease of cross-reference, this resource follows the structure of other BACP resources and provides hyperlinks to them where this is thought helpful.

Pandemic issues

The Coronavirus COVID-19 pandemic caused many changes to be made in schools, including the delivery of school counselling.

Schools have now resumed normal working, with appropriate safeguards, and many school counsellors have resumed some or all of their face-to-face work with children in schools, with appropriate protective measures in place.

Each school will be doing its best to put in place and maintain the necessary protective measures.

The BACP website has resources for counsellors in the context of face-to-face and remote working, so see this and the government guidance at www.gov.uk for updates.

1 The counselling service

1.1 Contracts, employment and self-employment

Some school counsellors are employees of the school, while others are self-employed and provide a contracted service. For all counsellors working in a school, there should be either a written contract of employment (a contract of service) or a contract for the provision of counselling services as a self-employed counsellor (a contract for services). Either form of contract needs to set out the conditions under which the counsellor is expected to work. Under the UK data protection legislation, the contract should set out the relevant privacy notice, data protection roles, and the practice and procedures for protection of the confidential data applicable to the work involved, see GPiA 105 Legal Resource: *the United Kingdom General Data Protection Regulation (UK-GDPR) legal principles and practice notes for the counselling professions*.

Employment contracts should also contain other details relevant to the employment, for example, pay, leave arrangements, internal complaints and disciplinary procedures, and pension rights.

Counselling contracts (both employment and self-employed) should also include a clear agreement as to the law and guidance with which the counsellor is required to comply.

This might be, for example, *Working Together to Safeguard Children* (DfE, 2018, updated 2022), made under s.7 of the Local Authority Act 1970, which should be followed by schools and local authorities in England and Wales unless they can justify with good reason why they have not done so. (Northern Ireland has its own provisions.)

Children under the age of 18 may enter into contracts for counselling or psychotherapy, subject to the guidance of the House of Lords in the case of *Gillick v. West Norfolk and Wisbech Area Health Authority and Another* [HL 1986], see the box below, and part 2 of this resource.

In the case of *Gillick v. West Norfolk and Wisbech Area Health Authority and Another* [HL 1986], it was established that, the ability of a child or young person under the age of 16 to give legally valid consent to any medical, psychiatric or therapeutic assessment or treatment, or to enter into either a valid therapeutic contract or a legally binding contract for services, will depend upon their mental capacity to make an informed decision, i.e. whether they can fully understand and agree the terms on which therapy is being provided, and the context in which it is offered.

It is presumed in law that adults and children over the age of 16 have the legal power to give or withhold consent in medical and health care matters, provided that they have full mental capacity. This presumption is rebuttable, for example in the case of mental illness. A refusal of necessary medical or psychiatric treatment by young people over the age of 16 but under the age of 18 may be overruled by the High Court.

Contracts also need to make clear the status and storage of the counselling records; for example, they should clarify whether these are regarded as part of the school record or are separately maintained and owned by the counsellor, state where the counselling records will be stored, and describe the security and access arrangements for the counselling records in accordance with the current data protection law. It is vital that, at the outset the counsellor has clarified with the school the status of client records, because confidentiality law and data protection legislation may permit and/or require client access to the school records and/or counselling records, subject to certain legal safeguards.

Practice Note

Safeguards for protection of information where disclosure may constitute a risk to client or others

If a counselling record is regarded as part of the school record, then, under data protection legislation, those with parental responsibility may have a right of access to their child's records if the child is not competent to make his or her own decisions (in the context of the Gillick case), or if a competent child has not expressed his or her wish to have their confidentiality protected.

However, the counsellor needs to be aware of certain specific legal safeguards for information relating to child protection issues and other information that may, if disclosed, cause a risk to the child or others. (For an explanation of this, see part 2 at Para 2.1(f). Also see GPiA 105 Legal Resource: *the United Kingdom General Data Protection Regulation (UK-GDPR) legal principles and practice notes for the counselling professions*, and the data protection law and guidance in 'References and further reading' at the end of this resource).

A child client who is over the age of 16 or who is competent to make their own decisions in the context of the Gillick case may wish to have their confidentiality protected, and so is entitled to know of any limitations on their right to confidentiality, which may be imposed by the law and by the context in which the service is provided. For data protection, see part 4. Contract law is governed by both statute and case law; see Chapter 4 in the third book of BACP's Legal Resource Series, *Essential Law for Counsellors and Psychotherapists* (Mitchels and Bond, 2010).

For law relating to self-employment, see Chapter 8 of the same book and for employment law, see Chapter 9. The book also covers professional standards in Chapter 2. If in any doubt about any form of contract, including a contract of employment or for services, seek legal advice as appropriate.

1.2 Insurance

Insurance providers vary in their terms. Be aware of the terms on which cover is provided and ask questions like:

- What does the policy cover?
- What does it not cover?
- Does it cover you as a counsellor wherever you work?
- If you have changed providers, will the new policy cover complaints made now about events or issues that occurred prior to the change?
- Does an employer's insurance cover you for all accidents, etc.?

Be aware that if a counsellor is a full or part-time employee in a school, the school insurance policy should cover liability for any accident to staff and pupils when on the school premises, and the insurance cover for the school counsellor is worth checking with the school administrator.

Counselling practitioners should also maintain their own insurance policy, which would then provide cover when contracted as an independent self-employed counsellor working in a school. All practitioners should have professional insurance, both for public liability (accidental damage to clients or others) and for professional liability (professional duty of care, negligence etc.). Check what is and what is not covered on the policy. Often, a policy will cover the counsellor in whatever premises they are working; in other words, the insurance 'follows you and covers you' whether working at home or in school.

Working from home: When working full or part-time from home, be aware that many household insurance cover policies will exclude cover for things like theft or accidental damage when working from home, unless this is specifically notified and written into the policy cover. Other insurers have special 'home working' policies to ensure all is adequately covered.

Household policies might be negated if the insurers find out that a claim is made when working from home and they did not know about this and did not agree to it. When working from home, therefore, make sure that your insurer has been informed and has agreed to this (preferably in writing), or make sure to obtain a specific home-working policy. For other general information about insurance, see Chapter 6 of Mitchels and Bond (2010).

Working with students abroad: Note that counselling practitioners working for schools abroad, or working in further education, may find themselves working with students outside the UK, and in this case, practitioners should consult with their professional insurers to ensure that there is appropriate insurance cover for their work. Many insurers will offer cover for remote working with clients abroad, but there may be conditions and/or restrictions imposed on the insurance.

1.3 Information about the counsellor and the service

Counselling is a business activity. All advertising and other information about the counsellor and the service must therefore be truthful and accurate. This is not only ethically required as a professional standard but must conform with the law regarding contract terms and trade descriptions.

False claims concerning qualifications or false information about the service provided, either made deliberately or recklessly, may be punishable by a fine under Trading Standards' legislation. In serious cases (for example falsifying qualifications), not only is a complaint justified but it may also constitute the criminal offence of obtaining pecuniary advantage by deception, which is punishable by imprisonment.

1.4 Terms and conditions of service

Contract law is governed by statutes, subsidiary legislation and case law. For details of contract law, see Chapter 4 of Mitchels and Bond (2008).

A contract is a legally enforceable agreement with terms that may be explicit or implied. It does not have to be in writing, but it helps to have some written or otherwise recorded evidence of what is agreed, for clarity and as an aide memoire if required.

The parties contracting for therapy will include the therapist and the child client or those with parental responsibility for the child. The service provider (such as the school or college) might also be included, or referred to, in the contract if the therapist is an employee of the school or college.

If the therapist is self-employed and working under a contract for the provision of counselling services with the school or college, then the organisation may have its own (or statutory) rules which they wish to apply to the therapist's terms of working with their client.

Clients, schools, colleges and therapists may have different expectations about the limits of confidentiality. Practitioners have a responsibility to discuss and agree the boundaries of confidentiality and their terms of working with their employer/ contracting organisation. The terms on which they provide therapy to clients should match the agreed terms of working with the school or college, and clarify for the client issues such as mutual expectations and limitations on confidentiality.

Some essential contract terms can be clarified by providing the client with a leaflet to read in advance, which sets out the basic terms of the therapy offered, or by careful discussion with new clients at their intake assessment or first session. When relying on verbal contracts reached at the first therapeutic session, young clients may be anxious and not concentrating, so they may be less able to reach a considered agreement with the therapist or they might find it difficult to remember what was agreed.

A young client will need the legal capacity (under statute law and the guidance in the Gillick case) to enter a valid contract for counselling. If they are not of sufficient age or understanding to give their own consent, then counselling needs the consent of those with parental responsibility for the child. They will then be the parties to the contract and will also have access to the counselling records. For further details, see part 2.1 on capacity and consent for therapy contracts, and see part 4 on data protection and case records.

2 Law, ethics, and counselling children and young people

The law in England, Wales and Northern Ireland defines children as all those who are under the age of 18.

The law affecting the rights of children includes: the Children Act 1989 (CA 1989); Children and Young Persons Act 1969; Children and Young Persons Act 2008; Family Law Reform Act 1969; Children and Families Act 2014, in Wales the Social Services and Well-Being (Wales) Act 2014; Children and Social Work Act 2017; the UN Convention on the Rights of the Child (ratified by the UK in 1991); and the Human Rights Act 1998, which incorporates the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols into UK law. This Act continues in operation in the UK following Brexit, and please watch for any relevant new law following the UK's exit from the European Union.

Currently, under s.22(4) of the Human Rights Act 1998, all proceedings brought by a public authority are subject to the ECHR, even where the alleged breach of those rights occurred before the coming into force of the Human Rights Act.

Child law includes statutes and subsidiary legislation (including those Acts, Orders and Rules made by the UK Parliament that are applicable in England, Wales and Northern Ireland, and additional legislation made by the Government in Northern Ireland and by the Welsh Assembly).

Furthermore, there is a body of case law (the common law) comprising the decisions of the courts as they interpret and apply the statutory legislation to issues in individual cases. Case law works on a hierarchical basis – the decisions of the higher courts bind those of the lower courts, which should in general obey the higher courts' rulings on specific legal issues.

In addition to law, there is a body of guidance, some of which is made under statutory powers and therefore carries a limited legal force. An example of this is *Working Together to Safeguard Children* (DfE, 2018, updated 2022) (*Working Together*), made under s.7 of the Local Authority Act 1970, and which should be followed by schools and local authorities in England and Wales (with sanctions for non-compliance).

Please note that *Working Together* requires compliance unless exceptional circumstances arise. In other words, any departure from it would have to be fully justified if the actions were to be challenged in court or elsewhere.

It states that the guidance applies, **in its entirety** to 'all organisations and agencies who have functions relating to children.

Specifically, this guidance applies to all local authorities, clinical commissioning groups, police and other organisations and agencies as set out in Chapter 2.'

It also states clearly that it applies in its entirety to all schools, and to all children under the age of 18, whether living with their families, in state care, or living independently (DfE 2018: paras 3-6).

Northern Ireland

In Northern Ireland, the Independent Counselling Service for Schools (ICSS) provides independent counselling support for schools. It is available for all young people in post-primary schools (www.nidirect.gov.uk).

ICSS is provided under contractual arrangements by organisation(s) that have undergone a public tendering process.

The service is delivered using standards and protocols based on good counselling practice within the organisational context of the school.

ICSS has been accessible to all grant-aided post-primary schools that choose to use it since September 2007. The service was extended to pupils of post-primary age in special schools at the start of 2011.

More information, including the schools' responsibilities and practice standards, is available in the *ICSS Operating Handbook and ICSS Practice Standards*, available at www.nidirect.gov.uk.

Wales

In Wales, school services are regulated by legislation including *The School Standards and Organisation (Wales) Act 2013*.

This provides the statutory guidance for duties and powers regarding the provision of independent counselling services for young people (see the *Statutory Guidance to Welsh Local Authorities on the Provision of Independent Counselling Services* at <https://gov.wales/sites/default/files/publications/2018-03/statutory-guidance-to-welsh-local-authorities-on-the-provision-of-independent-counselling-services.pdf>).

The *School-Based Counselling Operating Toolkit* was developed in 2011 as a joint publication between the Welsh Assembly Government and the British Association for Counselling and Psychotherapy to provide a resource to build upon the National Strategy for School-Based Counselling in Wales. It was revised in June 2020, and the updated version is available on the BACP website. Based on Welsh legislation, it can inform practice across the UK. It includes standards, guidance and exemplar materials for counsellors and counselling services in Wales to enable counselling providers and schools to deliver services that are safe, accessible and of a high quality for the children and young people they serve.

The Social Services and Well-Being (Wales) Act 2014 was designed to improve the wellbeing of people who need care and support in Wales, and carers, as well as transforming social services in Wales. Since then, there has been a raft of subsidiary legislation and codes of practice, designed to implement the provisions and intention of the Act in Wales and in the Isles of Scilly (for a list, see the *School-Based Counselling Operating Toolkit* and www.legislation.gov.uk).

There is also a DVD, *Masks and Mirrors* (also bilingual), which tells the (fictional) stories of four young people and their experiences of school counselling. BACP recommends this as a training tool, an awareness-raising resource to inform about the use and benefits of school counselling. It is available on Vimeo, for details see References.

For Scotland, see Good Practice in Action 026 Legal Resource: *Counselling children and young people in school contexts in Scotland*.

Scotland

For Scotland, see Good Practice in Action 026 Legal Resource: *Counselling children and young people in school contexts in Scotland*.

2.1 Capacity and consent for therapy contracts

For more detail on children and consent, please see GPiA 031 Legal Resource: *Safeguarding children and young people in England and Wales*, and part 11 of GPiA 105 Legal Resource: *the United Kingdom General Data Protection Regulation (UK-GDPR) legal principles and practice notes for the counselling professions*.

A child who has an insufficient level of maturity and understanding to be competent to make their own decisions (see below) will not be able to enter into a therapy contract. Those with parental responsibility for that child will have the authority to make decisions for the child, and so will also have the right to see the child's records, subject to legal safeguards to prevent disclosure causing a risk to the child or others. A child who can make his or her own decisions can decide for themselves whether they want counselling, and can also ask for confidentiality, within the boundaries of the therapy and the context in which it is provided. The concepts of consent, capacity and parental responsibility are explained below.

a) Mental capacity: adults

This touches on the law relating to mental capacity for adults briefly here because parents and carers with parental responsibility may have to take significant decisions for their children, and the mental capacity of those parents or carers to make these decisions may sometimes be in doubt. Also, for young people over the age of 16 years, the practical tests of mental capacity will be very much the same as for an adult, although the law permits the High Court to step in and protect a young person under 18 from decisions that may endanger their life or health.

Mental capacity is a legal concept, according to which a person's ability to make rational, informed decisions is assessed. There is no single, definitive test for mental capacity to consent; however, the assessment of it is based on a set of principles in which it is situation-specific and depends upon the ability of the person to:

- take in and understand information, including the risks and benefits of the decision to be made;
- retain the information long enough to weigh up the factors to make the decision; and
- communicate their wishes.

For adults, law relating to mental capacity is now governed by the Mental Capacity Act 2005, the Mental Health Act 2007 and the Mental Capacity Act 2005 (Appropriate Body) (England) Regulations 2006 S.I. 2006 No. 2810. Relevant publications and websites are listed at the end of this resource.

b) Mental capacity: children and young people under the age of 18

The Children Act 1989 defines a 'child' as 'a person under the age of 18' (s.105). Children and young people under the age of 18 are also collectively referred to in many areas of law (including contract law) as 'minors'. People over the age of 18 are said to have reached the age of 'majority'. Section 1 of the Family Law Reform Act 1969 lowered the former age of majority of 21 to the current age of 18. A minor may make a valid contract for 'necessary' goods and services, including counselling and medical services.

The law on children's capacity to make decisions, and other people making decisions for children, is vitally important for all practitioners who work with children and young people. Whether children can enter into a therapeutic contract will depend upon whether they have the legal capacity to make their own decisions.

Note: A child (or adult's) mental capacity to make any decision is not only situation-specific but may also be affected temporarily or permanently by illness, ability, substance use or abuse, medications, and psychological response to stressful or traumatic life events.

c) Mental capacity: children aged 16–18

Under s.8 of the Family Law Reform Act 1969, at the age of 16, a young person with mental capacity gains the right to give informed consent to medical or dental treatment, which includes psychological treatment and counselling. By implication, examinations or assessments must be included in this.

The consent of the young person is as valid as that of an adult. A young person with mental illness, disability or psychiatric disturbance may also be subject to the Mental Health Act 1983.

If a young person consents to recommended medical or dental treatment, therefore, even if those with parental responsibility for them disagree for any reason, the medical or dental practitioner would be protected from a claim for damages for trespass to the person.

However, if the young person refuses recommended treatment, those with parental responsibility for the young person may give valid consent, which will have the effect of protecting the medical or dental practitioner from claims for damages for trespass to the person. It should be noted that as the age of the young person increases towards 18, their refusal and the reasons for it are important considerations for parents and the court.

In the event of a dispute about consent for essential medical (or psychological) treatment, the issue should be taken before the High Court, either under its inherent jurisdiction or under s.8 of the Children Act 1989 for a specific issue order. In the case of *Re W (A Minor) (Consent to Medical Treatment)* [1993] 1 FLR 1, the Court of Appeal gave consent for the treatment of a girl aged 16 who had anorexia nervosa, despite her refusal.

If parents refuse to allow medical treatment and a child needs it, the High Court can provide the requisite authority under its inherent jurisdiction.

Changes made to s.131 of the Mental Health Act 1983 by s.43 of the Mental Health Act 2007 mean that when a young person aged 16 or 17 has capacity (as defined in the Mental Capacity Act 2005) and does not consent to admission for treatment for mental disorder (whether because they are overwhelmed, they do not want to consent or they refuse to consent), they cannot then be admitted informally on the basis of the consent of a person with parental responsibility (see chapter 36 of the Code of Practice to the Mental Health Act 1983, as amended in 2008).

d) Mental capacity: children under 16 – competence in the context of the Gillick case

Children who are under the age of 16 may also be regarded as competent to make their own decisions.

This principle of law was settled by the House of Lords in the leading case of *Gillick v West Norfolk and Wisbech Area Health Authority and Another* [1986] 1 AC 112.

The rationale of the Gillick case was that a child's ability to make an informed decision may be assessed according to several factors, including:

- the nature and seriousness of the decision to be made
- the child's age
- the child's maturity
- the child's understanding of the circumstances
- the information given to the child to enable him or her to understand the potential benefits and risks of what is proposed and the consequences of consent or refusal.

It will be evident that the capacity of a child to decide is situation-specific and that the child must have an informed understanding of the issues, including the risks and benefits involved and the consequences of refusal.

The ability to help a child make a decision will depend on the provision of age-appropriate information and explanations or answers to their questions. The more serious the decision, the greater the need for the child to possess sufficient maturity and understanding to evaluate his or her situation in its wider context. For this reason, the courts have steadfastly refused to set specific age limits for Gillick competence.

Each case involving a child client must be decided on its own merits. If the child is under 16, it is the task of the therapist, with other professional help if necessary, to talk through the situation with the child client. Together, they will need to explore and discuss the child's circumstances and the therapeutic or other options available, considering the possible outcome of each option open to the child, and then decide whether the child has the capacity to make the necessary decisions, including whether to enter into a therapeutic contract. The same process is necessary in the context of a therapeutic relationship when helping a child to assess whether they will require the therapist to keep confidentiality or make a referral.

Consent for a therapeutic contract can be given for a young child under the age of 16 who is not competent in the context of the Gillick case guidelines by:

- a person with parental responsibility for the child, or
- an order of the High Court/Court of Session.

If therapeutic treatment is considered necessary and the child or those with parental responsibility refuse, or if there is any issue about the competence of a child to make an informed decision, the matter can, if necessary, be referred for expert opinion and/or to the High Court.

The High Court has the power to make an order in the best interests of the child and resolve disputes with a 'specific issue' order made under s.8 of the Children Act 1989.

Where a child is mentally ill or mentally disordered and unable to make a legally valid decision for him or herself, the High Court (in its wardship jurisdiction) may consent on behalf of a person under 18. The High Court may order reasonable force to be used to ensure compliance; see *A Metropolitan Borough Council v DB* [1997] 1 FLR 767, where the court held that a hospital was 'secure' within the meaning of s.25 of the Children Act 1989. The High Court can also use its inherent jurisdiction to overrule the wishes of a young person under the age of 18 years, in order to step in and save or preserve the young person's life, health, or safety.

For further discussion of the law on capacity and consent issues, see Mitchels and Bond (2021) and Chapter 12 of *Child Care and Protection: Law and Practice* (Mahmood and Doughty 2019).

Once a young person reaches 18 years of age, even the High Court cannot overrule their wishes about medical examination, treatment or therapy, unless for any reason the person lacks the mental capacity to make their own valid decision.

In the case of emergency medical or psychiatric treatment, if treatment is judged to be necessary and there is grave risk to the child if emergency treatment is not given, medical practitioners may rely on their own clinical judgment if those in a position to give consent are unavailable.

e) Consent for children under data protection law

For a full description of the data protection rules, please see Part 4. Children may receive counselling as part of a contract, and/or under the lawful basis of consent, for details, see GPiA 105.

Briefly, under the United Kingdom General Data Protection Regulation (UK-GDPR), the Data Protection Act 2018 and its subsidiary legislation, the age of consent for the provision of online services for children in the UK is set at the age of 13 years. Children wishing to access online services below this age must have parental consent.

However, note that there is an exception for counselling services (UK-GDPR recital 38), and so the age limit of 13 in relation to online services does not apply to counselling, and therefore when assessing the capacity and consent of children under the age of 16 in relation to counselling, the usual guidance of the Gillick case applies:

(38) Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child. The consent of the holder of parental responsibility [author note – i.e. in the UK, for a child under the age of 13] should not be necessary in the context of preventive or counselling services offered directly to a child.

(UK-GDPR Recital 38)

For all other services to children, there is a checklist for the consent of the child to the collection and processing of their personal data, for which see Part 4, GPiA 105, and the Information Commissioner's website at www.ico.org.uk.

f) Parental responsibility

People may assume that all parents have the power to make decisions for their children. This is not so. The ability of a parent, or anyone else, to make a decision for their child depends on whether they have 'parental responsibility', which is the legal basis for making decisions about a child, including giving valid consent for therapy. Parental responsibility was a legal concept created by the Children Act 1989 and defined in s.3(1) as 'all the rights, duties, powers, responsibilities and authority which by law the parent of a child has in relation to a child and his property'. There may be new legislation that will further define the concept of parental responsibility, so watch for changes in the law.

More than one person can have parental responsibility for a child at the same time. Parental responsibility cannot be transferred or surrendered, but elements may be delegated; see s.2(9) of the Children Act 1989.

Who has parental responsibility for a child? See Chapter 3 of Mahmood and Doughty (2019); Hershman and McFarlane, and Chapter 6 of Long (2013) for more detail. Here is a brief summary:

Mothers and married fathers: Every mother (whether she is married or not) has parental responsibility for each child born to her; and every father who is married to the child's mother at the time of, or after, the conception of their child, automatically has parental responsibility for their child, which may be shared with others but will cease only on death or adoption.

Unmarried fathers: Unmarried fathers may acquire parental responsibility for their biological child in one of several ways:

- From 1 December 2003, in England and Wales (earlier in Northern Ireland) an unmarried father automatically acquires parental responsibility for his child if, with his consent, he is named as the child's father on a joint registration of the child's birth, which is made with the child's mother.
- This law does not operate retrospectively, but where the father was not named on the original registration, the birth can be re-registered jointly if the law is complied with, and joint parental responsibility will then operate from the date of the re-registration.
- By formal Parental Responsibility Agreement signed by the mother and father, witnessed by an officer at court, then registered. Copies may be obtained for a fee, in a similar way to obtaining a birth certificate (see Parental Responsibility Agreement Regulations SI.1991 1478).
- The court can make an order under s.4(1)(a) of the Children Act 1989 awarding parental responsibility to the father, consistent with the interests of the child.

Parental responsibility can also be acquired by a child's biological father where:

- A residence order is made under s.8 of the Children Act 1989, directing the child to live with the father, and parental responsibility is awarded along with it.
- Appointment as child's guardian is made under s.5 of the Children Act 1989.
- The father marries the child's mother.
- Certain placement or adoption orders are made under the Adoption and Children Act 2002.

Acquisition of parental responsibility by others: Parental responsibility may be acquired by others (including relatives, partners and guardians) in a variety of ways, for example by the appointment of a testamentary guardian, or by marriage to or civil partnership with a parent who has parental responsibility for the child, with the agreement of others who also hold parental responsibility. It may also be acquired by local authorities in care proceedings and by others by means of various court orders. Parental responsibility may then be shared with others who also hold it, and the exercise of parental responsibility may be limited by the court in certain cases.

What if there is no one with parental responsibility for a child?

Some children (for example, a child whose biological father is unknown and whose single mother dies without appointing a guardian) may have nobody with legal parental responsibility for them. Relatives or others wishing to care for the child will then have to apply for parental responsibility under one of the applications listed above or, failing that, the local authority has a responsibility to assume the care of the child and can seek an appropriate order.

There is an additional provision in s.3(5) of the Children Act 1989 that those without parental responsibility may 'do what is reasonable in all the circumstances to safeguard and promote the welfare' of a child in their care. This provision is useful in day-to-day situations, for example allowing a babysitter, neighbour or relative who is temporarily looking after a child to take that child for medical help in an emergency. This provision is unlikely to apply to counselling, unless in an emergency.

g) Confidentiality

A client has the legal and ethical right to confidentiality, both in law and as part of the therapist's duty of care to the client, subject to certain legal limitations. The right to ask for confidentiality will depend on the mental capacity of the child client.

If the child does not have the capacity to make his or her own decisions, then those with parental responsibility will have the right to make decisions, and also the right to see the child's therapy records (but note that there are certain exceptions in the Data Protection Act 2018 allowing the therapist and school to refuse disclosure of counselling records in order to safeguard the health or safety of the child or others, or to safeguard a police or other investigation in the context of child protection).

For details, please see Part 4, GPiA 069 Sharing records with clients/legal professionals/court/other professionals and GPiA 105 *the United Kingdom General Data Protection Regulation (UK-GDPR) legal principles and practice notes for the counselling professions*.

3 Safeguarding and child protection

3.1 Children in need of services

In England, Northern Ireland and Wales, the law imposes a duty to provide resources and services for children who need support or services without which their health or welfare is likely to be impaired, and it sets out the responsibilities and limitations of the provision of services by government and local authorities for 'children in need.'

There is not enough space to explain these provisions in detail here but see Chapter 16 of *Child Care and Protection: Law and Practice* by Mahmood and Doughty (2019); Hershman and McFarlane, and *Working Together to Safeguard Children* (DfE, 2018, updated 2022) for further discussion regarding the law in England and Wales; and see Chapter 8 of Long (2013) for Northern Ireland.

For more information on confidentiality and consent issues for children see Mitchels and Bond (2021), and GPiA 014 *Managing confidentiality*.

One of the services that may be provided for a child in need is counselling/ psychotherapy, which may be deemed appropriate in any context, including school.

If the child does not have the capacity to make his or her own decisions, then those with parental responsibility will have the right to make decisions for the child and also the right to see the child's social care records, as well as their therapy records (with certain exceptions allowing the service provider to maintain secrecy in order to safeguard the health or safety of the child or others, or to safeguard a police or other investigation in the context of child protection).

3.2 Children in need of care and protection

In England, Northern Ireland and Wales, the law imposes a duty of care on the state to safeguard and protect children living in its jurisdiction.

The law operates in different ways in some of these jurisdictions but the basic principles on which child protection operates across jurisdictions are similar.

Again, there is not enough space to explain these provisions in detail here, but see Mahmood and Doughty (2019), Hershman and McFarlane, and *Working Together to Safeguard Children* (DfE, 2018, updated 2022) for further discussion regarding the law in England and Wales; and see Chapter 8 of Long (2013) for Northern Ireland.

Working Together to Safeguard Children (DfE, 2018, updated 2022) is guidance, but it also carries the force of law because it is issued under:

- Section 7 of the Local Authority Social Services Act 1970, which requires local authorities in their social services functions to act under the general guidance of the Secretary of State;
- Section 11(4) of the Children Act 2004, which requires each person or body to which the s.11 duty applies to have regard to any guidance given to them by the Secretary of State; and
- Section 16 of the Children Act 2004, which states that local authorities and each of the statutory partners must, in exercising their functions relating to Local Safeguarding Children Boards, have regard to any guidance given to them by the Secretary of State.

Compliance with the guidance in England and Wales is not optional, and local authority chief executives and directors of children's services are required to follow this statutory guidance as they exercise their social services functions, unless exceptional reasons apply. It should also be read and followed by Local Safeguarding Children Board (LSCB) Chairs and senior managers within organisations who commission and provide services for children and families, including social workers and professionals from health services, adult services, the police, academy trusts, education and the voluntary and community sector, who have contact with children and families.

All relevant professionals should read and comply with this guidance unless exceptional circumstances arise, so that they can respond to individual children's needs appropriately.

School counsellors will therefore be expected to comply with the government guidance operating in their area.

Schools will usually require counsellors to comply with all relevant child protection law and government guidance as part of their contract of employment (or, for self-employed counsellors, their contract for services). Please note that even if there is no specific term in a counsellor's contract, BACP's professional guidelines (e.g. the *Ethical Framework*), expect counsellors to comply with relevant law and government guidance for child protection. It is likely that the law in the UK will be changed in the near future to require all professionals to comply with government guidance on child protection practice and procedures.

The relevant child protection law and guidance in force now in England, Northern Ireland and Wales are listed at the end of this resource.

However, as mentioned above, the law is always developing and so do watch for changes in your area. Good sources of information to keep updated are local authority lawyers, local authority child protection or safeguarding departments, the Child and Family Court Advisory Service (CAFCASS), CAFCASS CYMRU in Wales and the Northern Ireland Guardian Ad Litem Agency (NIGALA).

In schools there is usually a nominated child protection officer (or a person with a similar title) who has the responsibility of receiving information from teachers, counsellors or others in the school who are concerned about a particular child's safety or welfare, and they have the role of deciding whether this is a matter which should be referred to the local authority and/or the police for investigation or action.

Working Together to Safeguard Children (DfE, 2018, updated 2022) states the general duties with which local authorities, NHS, and providers of children's services should comply.

One section applies specifically to schools, colleges and other educational providers:

Schools, colleges and other educational providers

11. The following have duties in relation to safeguarding and promoting the welfare of children:

- governing bodies of maintained schools (including maintained nursery schools), further education colleges and sixth-form colleges
- proprietors of academy schools, free schools, alternative provision academies and non-maintained special schools 40,41. In the case of academies and free school trusts, the proprietor will be the trust itself
- proprietors of independent schools
- management committees of pupil referral units.

12. This guidance applies in its entirety to all schools.

13. Schools, colleges and other educational settings must also have regard to statutory guidance *Keeping Children Safe in Education* (DfE 2022), which provides further guidance as to how they should fulfil their duties in respect of safeguarding and promoting the welfare of children in their care, originally published in 2015, this was last updated in September 2022, for details, see References. See also the government guidance *Safeguarding and remote education during coronavirus (COVID-19)* addressing the issues to be considered in safeguarding the children and young people in schools in the context of remote education strategies and teaching in the context of the present COVID-19 pandemic, for access details, see References. This guidance is still in publication, but the level of its implementation may vary in response to any further COVID outbreaks.

The duties with which schools and colleges should comply are set out in the online document *Keeping Children Safe in Education* (DfE 2015, updated September 2020); s.11 of the Children Act 2004, which places duties on a range of organisations and individuals to ensure that their functions, and any services that they contract out to others, are discharged having regard to the need to safeguard and promote the welfare of children.

Note: that the Children and Social Work Act 2017 and *Working Together* (DfE 2018, updated 2022) envisage the replacement of the Local Safeguarding Boards with new multi-agency local and national Child Safeguarding Practice Review Panels. Watch for legal developments and the implementation of the new provisions.

These organisations should have in place arrangements that reflect the importance of safeguarding and promoting the welfare of children, including:

- a clear line of accountability for the commissioning and/or provision of services designed to safeguard and promote the welfare of children
- a senior board level lead, to take leadership responsibility for the organisation's safeguarding arrangements
- a culture of listening to children and taking account of their wishes and feelings, both in individual decisions and the development of services
- arrangements that set out clearly the processes for sharing information with other professionals and with the Local Safeguarding Children Board (LSCB)

- a designated professional lead (or, for health provider organisations, named professionals) for safeguarding. Their role is to support other professionals in their agencies to recognise the needs of children, including rescue from possible abuse or neglect. Designated professional roles should always be explicitly defined in job descriptions. Professionals should be given sufficient time, funding, supervision and support to fulfil their child welfare and safeguarding responsibilities effectively
- safe recruitment practices for individuals whom the organisation will permit to work regularly with children, including policies on when to obtain a criminal record check
- appropriate supervision and support for staff, including undertaking safeguarding training:
 - employers are responsible for ensuring that their staff are competent to carry out their responsibilities for safeguarding and promoting the welfare of children and creating an environment where staff feel able to raise concerns and feel supported in their safeguarding role
 - staff should be given a mandatory induction, which includes familiarisation with child protection responsibilities and procedures to be followed if anyone has any concerns about a child's safety or welfare
 - all professionals should have regular reviews of their own practice to ensure they improve over time
 - there should be clear policies in line with those from the LSCB for dealing with allegations against people who work with children. An allegation may relate to a person who works with children who has:
 - behaved in a way that has harmed a child, or may have harmed a child;
 - possibly committed a criminal offence against or related to a child; or
 - behaved towards a child or children in a way that indicates they may pose a risk of harm to children.

In addition:

- county level and unitary local authorities should have a Local Authority Designated Officer (LADO) to be involved in the management and oversight of individual cases. The LADO should provide advice and guidance to employers and voluntary organisations, liaising with the police and other agencies and monitoring the progress of cases to ensure that they are dealt with as quickly as possible, consistent with a thorough and fair process;
- any allegation should be reported immediately to a senior manager within the organisation. The LADO should also be informed within one working day of all allegations that come to an employer's attention or that are made directly to the police; and
- if an organisation removes an individual (whether a paid worker or an unpaid volunteer) from work such as looking after children (or would have removed them, had they not left first) because the person poses a risk of harm to children, the organisation must make a referral to the Disclosure and Barring Service (DBS). It is an offence to fail to make a referral without good reason.

3.3 The Disclosure and Barring Service (DBS) and Criminal Records Checks

a) England and Wales

The Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) have merged to become the Disclosure and Barring Service (DBS). The DBS runs lists of people who are barred from work with children and/or vulnerable adults by reason of their history and criminal convictions.

For those working with children or vulnerable adults, the employer or contracting organisation will have a responsibility to run criminal records and other necessary security checks, as appropriate to the practitioner's level of contact with the vulnerable clients. For self-employed therapists, it is also advisable to register with the DBS. This can be done by post or online.

Employers do not have to pay for registration or searches, but they must be legally entitled to carry out the check and must also have the worker's permission.

There is an annual registration fee (and it is free for volunteers). Once registered, you are issued with an ID number and can then log on to the DBS service.

The online account lets you see your certificate online, take your certificate from one employment to another, give employers permission to check the certificate online and see who has checked it. In some circumstances, it also allows you to add or remove a certificate.

A DBS certificate search is colloquially known as a 'DBS check'. See the website www.gov.uk/dbs-update-service for details of the three levels of check available (standard; enhanced; and enhanced with list checks) and to apply for registration.

DBS addresses and contact details are provided at the end of this resource.

b) Northern Ireland

AccessNI is a branch within the Department of Justice, established in April 2008. Its job is to supply certificates that show whether people who want to work in certain types of jobs (for example, with children and/or vulnerable adults) have a criminal record or if other important information is known about them. This enables employers to make safer recruitment decisions.

AccessNI operates within Part V of the Police Act 1997 and issues three types of disclosure: basic, standard and enhanced. Enhanced disclosure can include a check of those barred from working with children or adults.

If you are a Northern Ireland citizen and require an application form or other information about AccessNI, or you are (or work with) an organisation registered with AccessNI and need further information about the application process please visit www.nidirect.gov.uk/accessni.

For information about how the disclosure and barring programme works in Northern Ireland, see www.dojni.gov.uk/accessni.

4 Data protection and school counselling records

For further details of the data protection legislation, please see GPiA 105 Legal Resource: *the United Kingdom General Data Protection Regulation (UK-GDPR) legal principles and practice notes for the counselling professions*.

Personal information (data) should be protected (i.e. treated with respect and confidentiality) and the law affecting the rights of children (defined as children and young persons under the age of 18) includes: the Data Protection Act 2018 and its subsidiary legislation, the United Kingdom General Data Protection Regulation (UK-GDPR); the Children Act 1989 (1989); the UN Convention on the Rights of the Child (ratified by the UK in 1991); and the Human Rights Act 1998 (in force in the UK from 2 October 2000), which incorporates the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols into UK law.

Under s.7(1) of the Human Rights Act 1998, a person who claims that a public authority has acted in a way that contravenes the ECHR may bring proceedings against that authority.

In addition to law, there is a body of guidance, some of which is made under statutory powers and therefore carries a limited legal force. An example of this is *Working Together to Safeguard Children* (DfE, 2018, updated 2022), made under s.7 of the Local Authority Act 1970, and which should be followed by schools and local authorities in England and Wales (with sanctions for non-compliance) unless they can justify with good reason why they did not do so.

The law on children's capacity to make decisions, and other people making decisions for children, is vitally important for all practitioners who work with children and young people. Whether children can enter into a therapeutic contract will depend upon whether they have the legal capacity to make their own decisions. Consent generally, and in relation to adults is covered by UK-GDPR (32-33) and Article 7. There are special provisions for consent in the context of research, see Part 12.

Under the UK-GDPR, Article 8, as applied by the Data Protection Act 2018 (DPA), the offer of 'information society services' to a child, i.e. meaning broadly in our context, 'online services' will require the consent of a person with parental responsibility for all children under the age of 13 years. **Note: there is a specific exception for counselling services.**

In addition, there is a general provision in the UK-GDPR, applicable to protection of data in all forms of services to children:

'Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child.'

The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.' (UK-GDPR (38)).

This concept is reinforced by the ICO in its guidance on data protection in relation to children at www.ico.org.uk.

In therapy, we are not only contracting about data processing, but we are also contracting for the provision of therapy with a child. For children over the age of 16, and for those children under 16 years of age who have the capacity to give consent, therefore, it is assumed that the Gillick criteria will continue to apply and the consent of those with parental responsibility is not required (see GPiA 105, Part 11.1). However, for those children under the age of 16 who do not have the capacity to consent, it is assumed that the normal legal principles of consent for children will apply (i.e. consent via parental responsibility, court orders etc.), (see GPiA 014; GPiA 105 Part 11.1).

The processing of personal data, including sensitive personal data, is protected under this law. The operation of the law relating to data protection in England is administered by the Information Commissioner, and the Information Commissioner's Office (ICO) provides information, advice and support through telephone, email and postal contact with the office, publications and its website at www.ico.org.uk.

Counsellors and psychotherapists working in schools are likely to be contractually bound to comply with the data protection legislation because of the education context of their work, irrespective of their own personal methods of data processing. As a matter of interest, the Information Commissioner's Office (ICO) now seems to assume that most therapists will use some form of digital processing for making appointments, records and other communications with clients, colleagues and employers in the provision of their therapy services.

'Processing' is wider than clinical notes, so communications within a counselling or psychotherapy service (in whatever context it takes place), particularly appointments or other data related to providing and receiving services, could constitute 'sensitive personal data'. Failure to comply with the data protection law is an offence punishable with fines. Counsellors who are uncertain about whether they are a controller or a processor, (or possibly both, if working in two or more different therapy contexts), and want to check their responsibilities under the new law should consult the ICO office for assistance or answer the self-assessment questions on the website at www.ico.org.uk.

Under data protection law, a child with capacity to make their own decisions has a right to see their own records. If the child does not have the capacity to make his or her own decisions, then those with parental responsibility for the child will have the right to make decisions relevant to therapy, and under data protection law, subject to certain exceptions, will also have the right to see the child's therapy records. Note: *there are legal exceptions allowing the therapist, school and others to limit the sharing of personal data in records in order to safeguard the health or safety of the child or others, or to safeguard a police or other investigation in the context of child protection, (see the practice note below).*

Practice Note

Situations where client information may have special protection from disclosure, including response to requests from the data subject

Under the Data Protection Act 2018 there are listed exemptions to the general provisions of Article 15 of the UK-GDPR regarding disclosures. Under these exemptions, data controllers may refuse disclosure of information about the data subject (e.g. including a disclosure to the data subject themselves, or to those with parental responsibility for a child who is a data subject), where the result of that disclosure could cause serious harm to the physical or mental health of the data subject or another individual (e.g. in child protection, medical, social work or educational situations). In this situation, it is best to seek appropriate legal advice and/or the assistance of a suitably qualified person.

As an example, Part 5 of Schedule 3 of the Data Protection Act 2018 applies an exemption relating to maintaining the confidentiality of child abuse data.

Note: some of the exemptions in the Data Protection Act may require the support of a registered healthcare professional or other suitably authorised/qualified person. In order to be ready for any child protection or urgent safeguarding situation, please make yourself aware of the safeguarding policies and procedures in the schools in which you work, with the names of those responsible for implementing the child safeguarding procedures, and those who are suitably qualified to give the necessary authorisations.

5 Special counselling contexts

5.1 Therapy agreements and contracts

A child should have the capacity to consent to make a valid therapy agreement, or the agreement should be made with those who have parental responsibility for the child (see section 2 of this resource).

Therapy contracts and privacy notices should clearly state the conditions with which the counsellor is bound to comply (i.e. to include information about child protection safeguards, record keeping, circles of confidentiality, limitations on confidentiality and data protection requirements, etc.), expressed in terms the child will understand (see sections 3 and 4 of this resource).

5.2 Best legal and ethical practice in making disclosures

The counsellor's duty of care includes a duty of confidentiality to the child client both professionally and in the law of contract and in tort. Therapists cannot ethically and legally promise absolute confidentiality to clients, because, apart from disclosure made with consent, confidentiality is limited by statutory requirements and also by a potential need for discretionary disclosures in the public interest (see GPiA 014; Mitchels and Bond 2021).

Confidentiality may be limited by the right of those with parental responsibility to see counselling records, if the child is not competent to give their own consent (see section 2 of this resource) and it may also be further limited by child protection safeguards, which may impose a duty of disclosure where the counsellor has a serious concern for the welfare and safety of their child client or others (see section 3 of this resource).

Where a disclosure has to be made in the context of a school or college, the mechanism is set out in *Information Sharing: advice for safeguarding practitioners* (DfE, 2015, updated 2018); *Child abuse concerns: guide for practitioners* (DfE 2015); and *Working Together to Safeguard Children* (DfE, 2018, updated 2022). See also the *Multi-Agency Guidance on Female Genital Mutilation*, (DfE 2016).

Wherever possible, disclosures should be made with the consent and co-operation of the child concerned.

However, if there is a serious risk to the child or others, or if the child is not competent to make their own decisions and the consent of those with parental responsibility for the child is required, there are some child protection situations where seeking prior consent from carers or others who may have parental responsibility for the child, might put the child or others at greater risk of significant harm or risk jeopardising a police investigation or social care enquiry (for example, where parents or carers are perpetrators of alleged abuse), and in these circumstances the counsellor should first seek advice from the school or college's appropriate legal or child protection advisor, the police or the children's department of the local authority, and/or consider the issues in supervision or with a suitably qualified and experienced advisor.

About the author

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References and further reading

Note:

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- *The Department for Education* (www.education.gov.uk), formerly Department for Children Schools and Families, publishes policy regarding children's services in England.
- *The Ministry of Justice* (www.justice.gov.uk) publishes policy regarding the courts and tribunals in England and Wales.
- *Northern Ireland Government* publications are available from the Department of Health, Social Services and Public Safety (www.dhsspsni.gov.uk).
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Children and Young Persons Act 2008

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Children and Young Persons Act 1969

Data Protection Act 2018

Education Act 2002

Family Law Act 1986

Family Law Act 1996

Family Law Reform Act 1969

Family Law Reform Act 1987

Freedom of Information Act 2000

United Kingdom General Data Protection Regulation 2018

Human Rights Act 1998

Local Authority Social Services Act 1970

Mental Capacity Act 2005

Mental Health Act 2007

Mental Health Act 1983

Race Relations Act 1976

Rehabilitation of Offenders Act 1974

School Standards and Organisation (Wales) Act 2013

Serious Crimes Act 2007

Sexual Offences Act 1956

Sexual Offences Act 2003.

Statutory instruments

Data Protection (Charges and Information) Regulations 2018 (the 2018 Regulations)

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The Mental Health (Approved Mental Health Professionals) (Approval) England Regulations 2008 SI 2008/1206

Parental Responsibility Agreement Regulations 1991, SI 1991/1478

Parental Responsibility Agreement (Amendment) Regulations 1994, SI 1994/3157.

Conventions and protocols

- UN Convention on the Rights of the Child
- European Convention for the Protection of Human Rights and Fundamental Freedoms
- Protocols made under the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Legal resources

- British and Irish Legal Information Institute (BAILII, www.bailii.org). Publishes all High Court, Court of Appeal and Supreme Court judgments
- Children's Social Care Law in Wales www.healthandcarelearning.wales/resources/childrens-social-care-law-in-wales. Publishes Child Law for Social Workers in Wales in English and Welsh, with regular updates
- Family Law (www.familylaw.co.uk). Access to Jordans Publishing's Family Law Reports
- Family Law Directory (www.justicedirectory.co.uk/directory/family-law)
- Family Law Week (www.familylawweek.co.uk)
- Justis (www.justis.com). Online resource
- UK statute law (www.legislation.gov.uk)
- UK statutory instruments (www.opsi.gov.uk/stat.htm).

Useful contacts

Disclosure and Barring Service (DBS)

England and Wales:

DBS customer services, PO Box 110, Liverpool, L69 3JD; Tel: 0870 90 90 811; Minicom: 0870 90 90 344; Welsh language line: 0870 90 90 223; customerservices@db.s.gsi.gov.uk.

Transgender applications: sensitive@db.s.gsi.gov.uk
www.gov.uk/db.s-update-service.

Welsh language scheme: www.gov.uk/government/organisations/disclosure-and-barring-service/about/welsh-language-scheme.

Northern Ireland: Information on the application process:

www.nidirect.gov.uk/accessni; information on the disclosure and barring programme in Northern Ireland: www.dojni.gov.uk/accessni.

Regional legal contacts

England

For a list of the courts and links to regional courts' contact details, see www.justice.gov.uk/contacts/hmcts/courts.

For **CAFCASS** see www.cafcass.gov.uk National Office, 3rd Floor, 21 Bloomsbury Street, London, WC1B 3HF. Tel: 0300 456 4000; Fax: 0175 323 5249 (*local offices are listed on the website or available from National Office*).

NAGALRO (The Professional Association for Children's Guardians, Family Court Advisers and Independent Social Workers) see www.nagalro.com Nagalro, PO Box 264, Esher, Surrey, KT10 0WA. Tel: 01372 818504; Fax: 01372 818505; nagalro@globalnet.co.uk.

Northern Ireland

See www.courtsni.gov.uk for contact details of all courts, publications, judicial decisions, tribunals and services.

The Northern Ireland Guardian Ad Litem Agency

admin@nigala.hscni.net.

Wales

Children and Family Court Advisory and Support Service (CAFCASS)

Cymru: (<http://new.wales.gov.uk/cafcasscymru>). National Office, Llys y Delyn, 107-111 Cowbridge Road East, Cardiff, CF11 9AG. Tel: 02920 647979; Fax: 02920 398540; Cafcasscymru@Wales.gsi.gov.uk; Email for children and young people: MyVoiceCafcassCymru@Wales.gsi.gov.uk.

EIRE: Republic of Ireland**An Roinn Slainte Dublin**

Republic of Ireland Department of Health, Hawkins House, Hawkins Street, Dublin 2, Ireland. Main switchboard 01 6354000. Dial +353 1 6354000 from outside Ireland.

Ombudsman for Children's Office Dublin

Millennium House, 52-56 Great Strand Street, Dublin 1, Ireland
Complaints free-phone 1800 20 20 40. Otherwise call 01 865 6800.
oco@oco.ie; Fax number: 01 874 7333. www.oco.ie.

Republic of Ireland Guidelines-for-Prosecutors-5th-Edition-eng & Code-of-Ethics-5th-Edition-ENG: (available at: www.dppireland.ie/publications and at www.dppireland.ie/publication-category/guidelines-for-prosecutors (both accessed 27 October 2022). see the Guidance: *Releasing my Counselling Records* at this website.

Mental Health**Good Practice Guidance in Mental Health & Incapacity Law Scotland**

www.mwscot.org.uk/good-practice (accessed 27 October 2022).

Mental Health Practice Guidance Northern Ireland

Mental Health Practice – rcni.com www.rcni.com/mental-health-practice (accessed 27 October 2022).

MIND www.mind.org.uk www.youngminds.org.uk (accessed 27 October 2022).

NICE www.nice.org.uk <https://www.nice.org.uk/guidance> (accessed 27 October 2022).

Royal College of Psychiatrists Publications www.rcpsych.ac.uk (accessed 27 October 2022).