Good Practice in Action 031
Legal Resource

Safeguarding children and young people within the counselling professions in England and Wales

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Legal Resource

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Contents

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 working with children and young people.

Purpose

The purpose of this resource is to provide information for practitioners, counselling service providers and schools in respect of legal matters relating to safeguarding children and young people in England and Wales.

Using the Legal Resources

Legal Resources support good practice by offering general guidance on principles and policy applicable at the time of publication. These resources should be used in conjunction with the current BACP *Ethical Framework for the Counselling Professions*. They are not intended to be sufficient for resolving specific issues or dilemmas arising from work with clients, which are often complex. In these situations we recommend consulting a suitably qualified and experienced lawyer or practitioner. 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 changes to the law, government departments, websites and web addresses.

Introduction

Many of us work with clients who are parents, members of families, and/or children or young people. Safeguarding and child protection are therefore serious concerns for many practitioners.

This resource explains the relevant law, to help practitioners understand their role in safeguarding children and young people, and how to work within the law. Although this resource applies primarily to England and Wales, some provisions for Northern Ireland are mentioned where applicable in the text. The law in Scotland (especially relating to capacity and consent for children) is very different from English law. There are separate Legal Resources on safeguarding children in Scotland, GPiA 053 *Understanding the Children's hearing system in Scotland* and GPiA 052 *Understanding Child Protection in Scotland.*

Local safeguarding arrangements for children are currently led by the local authority, the Integrated Care Board (ICB) and the police. These agencies are expected to work together to ensure that children at risk of harm, and in need of protection are identified and safeguarded in a way appropriate to the child's needs.

There have been criticisms of the standards of child protection in the UK, and in 2022, following the murders in 2020 of Arthur Labinjo-Hughes and Star Hobson, a National review explored why these children were not protected. The report of the *Hudson and Child Safeguarding Review Panel*, was published in June 2022, (for an NSPCC briefing on the report, and to download a copy see: https://learning.nspcc.org.uk/research-resources/2022/national-review-murders-arthur-labinjo-hughes-star-hobson-caspar-briefing).

Also in 2022, the MacAlister Report looked at the changes needed to better protect and support children and young people, for the NSPCC briefing and to download a copy (see: https://learning.nspcc.org.uk/research-resources/2022/independent-review-childrens-social-care-caspar-briefing).

The current law affecting the rights of children (defined as children and young persons under the age of 18) includes: the Children Act 1989 (CA 1989); the UN Convention on the Rights of the Child (ratified by the UK in 1991); the Children Act 2004, 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. Even though the UK has left the European Union, it is currently a participant in the *European Convention on Human Rights* (ECHR, and so (at least until Parliament makes any of its proposed legal changes) the Human Rights Act still applies in UK law.

The law was again reformed by the Children and Social Work Act 2017, which created provisions for local safeguarding partners, child death reviews, personal advisers for care leavers to the age of 25, relationships education in schools (in addition to sex education), and *Social Work England* as the new regulatory body for social workers.

Child law includes statutes and subsidiary legislation (including those acts, orders and rules made by the UK Parliament, the Government in Northern Ireland and the Welsh Assembly).

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

The Children Act 1989 created a legal system and framework for child protection, safeguarding, and child-care, which was designed to operate alongside government guidance concerning its implementation. There followed 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 1 July 2022) (*Working Together*), made under s.7 of the Local Authority Act 1970, and which should be followed by schools, local authorities, and other government bodies in England and Wales (with sanctions for non-compliance) unless they can justify with good reason why they did not do so.

The Children Act 1989 encourages families to stay together. It establishes a duty for local authorities to provide services for children in need and their families, as well as the need for child protection proceedings. Unless the statutory criteria for the making of care or supervision orders are met, an order cannot be made. If the courts are concerned about the welfare of a child, they may order a local authority to investigate the child's circumstances, but the courts have no power of their own volition to order a child into the care of a local authority.

The new safeguarding arrangements in the updated *Working Together* include quality standards in children's care homes, the involvement of health professionals in safeguarding, and Multi-Agency Public Protection Arrangements (MAPPA), including the governing bodies of maintained schools, police, prison and probation services, who should work closely with other relevant agencies to manage the risks posed by violent and sexual offenders within the community.

In addition, *Integrated Care Boards* have replaced clinical commissioning groups as a result of the Health and Care Act 2022.

The Children Act 1989 introduced a new concept of 'parental responsibility' (PR), (see 2 below) in which unmarried fathers may gain PR in relation to their biological children in three ways (see 4.5). It also created ways in which other adults related to the child, such as grandparents or step-parents, may apply for parental responsibility through the courts (see 4.5). The Act also created other court orders with power to govern aspects of a child's life such as contact with others, residence, and the resolution of disputed aspects of childcare through prohibited steps (forbidding actions) and specific issues (permitting actions to take place).

Professional practice issues and the law

The information below is designed to help readers to find required legal topics in this guidance quickly.

Professional practice issue:	**Law, and where to look in this guidance:**
What do the specialist legal terms in safeguarding mean?	**1** Legal definitions relating to children
What orders should I know about in relation to children?	**2** Court process and legal orders in relation to children
What is my child client entitled to under the law?	**3** Rights of the child
How do I know if adults – particularly those with parental responsibility – have capacity to make decisions for their child?	**4.1** Mental capacity: adults and **4.5** Parental responsibility
How do I know whether a client aged 16–18 has capacity to make their own decisions? Can a young person aged 16–18 always make their own decisions?	**4.2** Mental capacity and consent for children under the age of 18
• How do we know when a child under the age of 16 is able to make their own decisions? • What is the effect of the Gillick case? • Are there circumstances where a child under 16 is not able to make their own decisions?	**4.3** Mental capacity and consent for children under the age of 16
What is parental responsibility, who has it, and how is it acquired?	**4.5** Parental responsibility
What is the impact of UK-GDPR on consent for children?	**4.6** UK-GDPR, children and consent
What can I tell a child client about confidentiality, and what should we agree?	**5.1** Contractual agreements with children and young people
When can I share information about child clients?	**5.2** Information sharing, data protection and case records

Professional practice issue:	Law, and where to look in this guidance:
Making disclosures and referrals	**6.1** Referrals and disclosures **10** Disclosure checklist: children and young people **11** Referral checklist: children and young people
How can someone, including carers of children, check if a professional has not been excluded or barred from working with children?	**7.3** Professional regulation
How can someone check that a professional is registered?	**7.3** Professional regulation
How should I think about ethical problems and difficult decisions in safeguarding child clients?	**8** Ethical dilemmas in safeguarding
My child client was abused and has been asked to give evidence in court. The child is worried about aspects of the police investigation and the court process, so how can I find out how to help? Do any rules apply to this kind of work?	**9** CPS Guidance on pre-trial therapy, (see GPiA 128 *Working with the Crown Prosecution Service Pre-trial Therapy Guidance (CPS 2022) in therapy with adult and child witnesses in the criminal courts in England and Wales*).

1 Legal definitions relevant to children

Authorised person: (a) In care and supervision proceedings, and in child assessment orders, this means the NSPCC or its officers, under Sections 31(9) and 43(13) of the CA 1989. A person (other than a local authority) may be authorised by order of the Secretary of State to bring proceedings under s.31 CA 1989 for a care or supervision order, but no other organisation or body has been so authorised

(b) in emergency protection orders, proceedings may be brought by an 'authorised officer' of the local authority, an 'authorised person' (as defined in (a) above), a 'designated' police officer or 'any other person'; see Sections 31(9) and 44 CA 1989.

Authority: The local authority of a geographical area, including county councils, district councils, unitary authorities in England and Wales, Welsh county councils and Welsh county borough councils.

CAFCASS: The Children and Family Court Advisory and Support Service, which is responsible for family court social work services in England, and in Wales, this service is provided by CAFCASS Cymru. In Northern Ireland, this role is fulfilled by the Northern Ireland Guardian Ad Litem Agency (NIGALA). Contact details are at the end of this resource.

Care order: An order made under s.31(1)(a) of the CA 1989, placing a child in the care of a local authority. By s.31(11), this includes an interim care order made under s.38. By s.105, any reference to a child who is in the care of an authority is a reference to a child who is in their care by virtue of a care order.

Child: A person under the age of 18.

Child assessment order: Child assessment order: An order under s.43 CA 1989 to produce the child and to comply with the court's directions relating to the assessment of the child. There are restrictions on keeping the child away from home under this section.

Child arrangements order: An order made under section 8 CA 1989 regulating arrangements about with whom, and when a child is to live, spend time, or otherwise have contact. These orders replaced former residence and contact orders made under section 8 from April 2014.

Child in need: Under s.17 CA 1989, 'a child is taken to be in need if:
(a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority;

(b) his health or development is likely to be significantly impaired or further impaired, without the provision for him of such services; or he is disabled.'

See also Part 3 of the Children and Families Act 2014 relating to children with special needs or disabilities.

Note: Section 17 was repealed in Wales from April 2016 by the *Social Services and Well-being (Wales)* Act 2014.

Child looked after: The term 'child looked after' is defined in s.22(1) CA 1989 and refers to a child who is subject to an interim care order made under s.38 CA 1989 or a full care order made under s.31(1)(a) CA 1989. It also includes a child who is accommodated by the local authority under s.20 of the CA 1989. In Wales, s 20 was repealed by the *Social Services and Well-being (Wales)* Act 2014 and replaced by a separate statutory framework, supplemented by new regulations and guidance.

Child minder: Defined in s.71 of the Care Standards Act 2000 as a person who looks after one or more children under the age of eight, for reward, for a total period(s) exceeding two hours in any one day.

Child of the family: In relation to the parties to a marriage, under s.52 of the Matrimonial Causes Act 1973, this means:
(a) a child of both of those parties, or
(b) any other child, not being a child who is placed with those parties by a local authority or voluntary organisation, who has been treated by both of those parties as a child of their family.

Child protection: By the use of this term in this resource it is intended to include all the legal measures that can be implemented to protect a child from the risk of serious harm, or to stop or prevent the continuation of any serious harm that has already occurred. This is a narrower meaning than the wider term 'safeguarding' (see below).

Children's guardian: A social work practitioner appointed by the court to represent the child's interests in court proceedings. Children's guardians are provided in England by CAFCASS, and in Wales by CAFCASS Cymru. In Northern Ireland they are referred to as 'Guardians Ad Litem', and provided by the Northern Ireland Guardian Ad Litem Agency (NIGALA).

Children's home: Defined in s.1 of the Care Standards Act 2000 as a home that usually provides or is intended to provide care and accommodation wholly or mainly for children. Obviously, the section lists several exceptions, including the homes of parents, relatives or those with parental responsibility for the children in question.

Contact order: Was defined in s.8(1) CA 1989 as 'an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other'. Since April 2014, these orders are now called *Child Arrangement Orders*.

Contact with a child in care: Section 34 of the CA 1989 creates a presumption that a child subject to a care order will have reasonable contact with his/her parents and contains provisions for determination of contact issues by the court.

Development: Defined in s.31(9) CA 1989 as physical, intellectual, emotional, social or behavioural development.

Disabled: Defined in s.17(11) CA 1989 as 'in relation to a child, means a child who is blind, deaf, or dumb or who suffers from mental disorder of any kind or who is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed'.

Education supervision order: An order under s.36(1) CA 1989, putting the child with respect to whom the order is made under the supervision of a designated local education authority.

Emergency protection order: Under s.44 CA 1989, this order is a direction for a child to be produced and authorises the local authority either to remove the child to a safe place or to stop the child from being removed by others from a hospital or other safe place.

Family assistance order: An order made under s.16 CA 1989 appointing a probation officer or an officer of the local authority to advise, assist and (where appropriate) befriend any person named in the order for a period of 12 months or less. Named persons may include parents, guardians, those with whom the child lives, or the child himself.

Family court adviser: A social work practitioner directed by the court to assist it by providing dispute resolution services in s.8 applications and/or reports under s.7 CA 1989.

Family proceedings: These are defined in section 8 (3) and (4) of the CA 1989 as including any proceedings:

(a) under the inherent jurisdiction of the High Court in relation to children, including wardship, but not application for leave under section 100 (3) of the CA 1989.

(b) Proceedings under Parts I, II and III of the CA 1989, and other enactments listed in the statute. Emergency protection orders, child assessment orders and recovery orders are not included.

Guardian: Means a guardian appointed under s.5 of the CA 1989 for the child, but not for the child's estate. A guardian appointed under s.5 has parental responsibility for the child, following the death of either one or both parents. (This role is not the same as that of the 'children's guardian', who is a person appointed by the court to represent the child's interests in court proceedings.)

Harm: Defined in s.31(9) CA 1989, meaning ill treatment or the impairment of health or development. Where the question of whether the harm is significant or not turns on the child's health and development, his or her health or development shall be compared with that which could be reasonably expected of a similar child, s.31(10).

Health: Under s.31 CA 1989, includes physical and mental health.

Hospital: Any health service hospital, and accommodation provided by the local authority and used as a hospital. It does not include special hospitals, which are those for people detained under the Mental Health Act 1983, providing secure hospital accommodation, s.105 CA 1989.

Ill treatment: Defined in s.31(9) CA 1989 and includes sexual abuse and forms of ill treatment that are not physical.

Kinship care: Care for a child by family members or friends of the family. Kinship care may be arranged privately, on a voluntary basis or as part of a care plan in the context of a care order.

Local authority: Under s.52 CA 1989, a council of a county, a metropolitan district, a London borough or the Common Council of the City of London.

In Scotland, it means a local authority under section 12 of the Social Work (Scotland) Act 1968.

Local authority foster carer: Defined in s.22 (C) (12) of the CA 1989 as a person with whom a child has been placed by a local authority under s.22 CA 1989. Local authority foster carers may include a family member, a relative of the child or any other suitable person.

Parent: The natural (birth) mother or father of a child, whether or not they are married to each other at the time of the birth or conception. When the CA 1989 refers to a 'parent', it means the birth parents of a child, therefore including natural fathers who do not have parental responsibility. Where it intends to mean 'a parent with parental responsibility,' it says so specifically.

Parent with parental responsibility: All mothers have parental responsibility (PR) for the children born to them. Fathers also have parental responsibility for their child if they married their child's mother before or after the child's birth. The biological father of a child who is not married to the mother is able to acquire parental responsibility in various ways under the law . This term therefore excludes the natural birth father of a child who has not yet legally acquired parental responsibility for his child. Other persons, for example spouses and civil partners of one of the child's parents may acquire parental responsibility under the law - for a detailed explanation of the law relating to PR, see (Mahmood and Doughty 2019). .

Parental responsibility (PR): Defined in s.3 CA 1989 and includes all the rights, duties, powers, responsibilities and authority that a parent of a child has by law in relation to the child and their property.

Parental responsibility can be acquired by unmarried fathers in respect of their child by registration of the birth with the mother (after 1 December 2003 in England and Wales, earlier in Northern Ireland), by court order or by a parental responsibility agreement under the CA 1989, and by others through child arrangement orders specifying living with, special guardianship orders, or by a local authority under a care order and an emergency protection order.

Parental responsibility can be shared with others. It ceases when the child reaches 18, on adoption, death, or cessation of the care order. -For a detailed explanation of the law relating to PR, see (Mahmood and Doughty 2019).

Parental responsibility agreement: Defined in s.4(1) CA 1989 as an agreement between the father and mother of a child providing for the father to have parental responsibility for the child (a father married to the mother of their child at the time of the birth will automatically have parental responsibility for that child, but a father not so married will not). Format for the agreement is set out in the Parental Responsibility Agreement Regulations 1991, SI 1991/1478, as amended.

Private fostering: See s.66 CA 1989; to 'foster a child privately' means looking after a child under the age of 16 (or if disabled, 18), caring and providing accommodation for him or her; by someone who is not the child's parent, relative, or who has parental responsibility for the child.

Prohibited steps order: Defined in section 8(1) of the CA 1989. Means an order that no step that could be taken by a parent in meeting his/her parental responsibility for a child, and that is of a kind specified in the order, shall be taken by any person without the consent of the court.

Relative: In relation to a child, this means a grandparent, brother, sister, uncle or aunt (whether of the full blood or of the half blood or by affinity) or step-parent, see s.105 CA 1989.

Responsible person: Defined in Sch 3, paragraph 1, CA 1989. In relation to a supervised child, it means:

(a) any person who has parental responsibility for the child; and

(b) any other person with whom the child is living.

Safeguarding: By the use of this term in this resource a wider meaning is intended to include all those actions that will operate to enhance a child's health, development and welfare and prevent the risk of harm. This differs from the way in which some people use the term 'child protection', for which they intend the more specific meaning of legal actions to protect a child at risk of serious harm (see above).

Service: In relation to any provision made under Part III, CA 1989 (local authority support for children and families), this means any facility.

Special educational needs: These arise when there is a learning difficulty that calls for special educational provision to be made. These terms are defined in s.318 of the Education Act 1996.

Special guardian: A special guardianship order confers parental responsibility on the holder of the order, which she or he may exercise alone, excluding the parent. The provisions are found in Sections 14 A-F, CA 1989.

Specific issue order: An order under s.8(1) CA 1989 giving directions for the purpose of determining a specific issue that has arisen, or that may arise, in connection with any aspect of parental responsibility for a child.

Supervision order: An order under s.31(1) (b) CA 1989 and (except where express provision to the contrary is made) includes an interim supervision order made under s.38 CA 1989.

Supervised child/supervisor: In relation to a supervision order or an education supervision order, the terms mean, respectively, the child who is (or is to be) under supervision and the person under whose supervision he is (or is to be) by virtue of the order.

Upbringing: In relation to any child, this includes the care of the child but not his or her maintenance.

Voluntary organisation: Means a body (other than a public or local authority) whose activities are not carried on for profit.

2 Court process and legal orders in relation to children

The principles behind the Children Act 1989 and its guidance are that children are people whose rights are to be respected, not just 'objects of concern', and that children should wherever possible remain with their families, helped wherever necessary by provision of services, provided that their welfare is safeguarded. An atmosphere of negotiation and co-operation between professionals is encouraged. The welfare of the child is paramount, and, in the field of childcare and protection, professionals are expected to work together in a non-adversarial way for the benefit of the child.

The Children Act 1989 created a new unified court system consisting of three tiers: the High Court, the county court and the family proceedings court (FPC), each of which has concurrent jurisdiction and powers. From April 2014, the three tiers were merged into the Family Court. Appeals from the family proceedings court go to the county court or High Court and from the county court and High Court to the Court of Appeal and the Supreme Court. Cases may move up or down the tiers, transfers therefore being easier. The avoidance of delay is one of the underlying principles of the Children Act 1989 (CA 1989). Another important principle in s.1(5) is non-intervention – that is, to make no order unless it is necessary in the interests of the child. The CA 1989, along with its subsidiary rules and subsequent legislation, also created a new system of hearings to enable the courts to take firmer control of the management and timing of cases, admission of evidence and administrative matters.

There is insufficient space here to describe in detail the court orders listed in Table A, but please refer to the definitions in section 1 of this resource and for a brief and affordable authoritative summary of child care and protection law in England and Wales, see *Child Care and Protection (6th Edition)* (Mahmood and Doughty 2019).

The loose-leaf and online encyclopaedias *Children Law and Practice* (Hershman and McFarlane) and Clarke Hall and Morrison on Children (White et al.), are expensive but usually available in libraries, and provide very comprehensive details for lawyers and others of current child law and practice.

Table A Court orders that may be made in relation to the Children Act 1989

* These orders may be brought to an end by court order, variation or discharge, and may be subject to additional provisions. .

Order	Section of the Act	Maximum duration*
Parental responsibility	4	Age 18
Guardianship	5	Age 18
Child Arrangements (Residence) Order	8	Age 18
Child Arrangements (Contact) Order	8	Age 16 (18 in exceptional circumstances)
Prohibited steps	8	Age 16 (18 in exceptional circumstances)
Specific issue	8	Age 16 (18 in exceptional circumstances)
Special guardianship order	14A	Age 18 (or earlier revocation)
Family assistance order	16	12 months
Care order	31	Age 18
Interim care and supervision order	38	Cannot extend beyond maximum duration of proceedings
Supervision order	31	Age 18, one year; may be extended to maximum total of three years
Contact with a child in care	34	For duration of care order
Education supervision order	36	One year; repeatedly extendable for three years; ceases at age 16
Child assessment	43	Seven days
Emergency protection	44	Eight days; extendable for further seven days

2.1 Children in need of services

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

There is not enough space here to explore in detail all the services available for children in need, but see (Mahmood and Doughty, Hershman and McFarlane, White et al.,). Also see *Working Together to Safeguard Children* (DfE, 2018, updated 2020) for further discussion regarding services for children in need in England and Wales; and Chapter 8 of Long (2013) for provisions in Northern Ireland. CAFCASS, CAFCASS Cymru, and the Northern Ireland Guardian Ad Litem agency (NIGALA) may also be able to assist. For information on the services in Scotland, please refer to GPIA 052 *Understanding Child Protection in Scotlan*d; and GPIA 053 *Understanding the children's hearing system in Scotland.*

Services that may be provided for a child in need are counselling and psychotherapy, which may be deemed appropriate in any context, including school. If the child does not have the legal capacity to make his or her own decisions, then those with parental responsibility for that child 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).

2.2 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 Hershman and McFarlane, White et al., *Working Together to Safeguard Children* DfE (2018, updated 2020), (Mahmood and Doughty 2019); and see Chapter 8 of Long (2013) for provisions in Northern Ireland.

Working Together to Safeguard Children (DfE, 2018, updated 1 July 2022) is the main guidance relevant to the jurisdiction of England and Wales, and it carries the force of law because it is issued under the authority of several statutes, including 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. Under the other statutes, schools, NHS and General Practitioners, child-care organisations, police, probation and prison staff working with children and young people, and others should similarly follow those of its provisions relevant to their service. In England and Wales, 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. It is good practice for all relevant professionals, including counselling and psychotherapy practitioners working with children and families to be familiar with this guidance and comply with it unless exceptional circumstances arise, so that they can respond to individual children's needs appropriately. NOTE: watch out for new updates on this, and other relevant government guidance.

Professional guidelines expect practitioners to keep up to date with the law and government guidance and to give consideration to the law which is relevant to their work, (e.g. see the BACP's *Ethical Framework for the Counselling Professions*, Good Practice, points 14f and 46). It is possible that the law in the UK could be changed to require all professionals working with children and families to comply with government guidance on child protection practice and procedures, so it is vital to be vigilant for legal changes.

Good sources of information to keep updated and for legal advice and assistance in safeguarding matters 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). The NSPCC is also willing to provide advice and assistance to enquirers concerned about child safeguarding issues.

Practitioners working with clients in areas where radicalisation may be an issue also need to be aware of the Counter-Terrorism and Security Act 2015 and its additional guidance *Protecting children from radicalisation: the prevent duty* (DfE 2015), available at www.gov.uk. For general information, see www.nspcc.org.

Details and guidance on issues relevant to the prevention of female genital mutilation (FGM) and also the prevention of forced child marriages can be found at www.gov.uk, and please see 10 below for more on FGM. The statutes and resources for help and support for clients and practitioners affected by these issues are listed in these websites, and also at the end of this resource.

3 The rights of the child

The Children Act 1989 (CA 1989) commences with a clear direction in s.1(1) that:

When a court determines any question with respect to:

a. *the upbringing of a child; or*

b. *the administration of a child's property or the application of any income arising from it, the child's welfare shall be the paramount consideration.*

This means that after weighing all the factors, the court's decision will be made in accordance with the child's welfare.

The child's welfare is not always easy to determine, and so, in s.1(3), the CA 1989 sets out a list of criteria known as the 'welfare checklist', primarily intended as an aide memoire, to which the court must have regard when considering an application to vary or discharge a special guardianship order or a contested s.8 order for contact, residence, specific issue or prohibited steps, and magistrates should always refer to the welfare check list when considering their findings of fact and reasons for their decisions. The welfare checklist is not compulsory in other circumstances, but it is always useful for practitioners to consider.

Courts must not make any order unless it considers that doing so would be better for the child than making no order at all.

Reference to the Welfare Checklist helps to ensure and demonstrate that we are complying with the principles of the Act when making decisions or writing reports about children.

3.1 The welfare checklist (cited from the Children Act 1989 Section 1(3)) The use of 'his' derives from the wording of the statute, but applies to other genders where appropriate.

When making decisions, or writing reports about children, it is important to consider:

- The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding).
- His physical, emotional and educational needs.
- The likely effect on him of any change in his circumstances.
- His age, sex, background and any characteristics of his which the court considers relevant.
- Any harm which he is suffering or which he is at risk of suffering.
- How capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs.
- The range of powers available to the court under this Act in the proceedings in question.'

4 Mental capacity and consent for children and young people under the age of 18

Note that the law in Scotland (especially relating to capacity and consent for children) is very different from English law. BACP has published a separate guidance resource on child protection and safeguarding children in Scotland.

A child who has an insufficient level of maturity and understanding to be competent to make their own decisions (see later in this section) 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. A child who can make his or her own decisions can decide for themselves whether they want therapy, 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.

4.1 Mental capacity: adults

I have touched 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 decisions for children 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, the law relating to mental capacity is now governed by the Mental Capacity Act 2005, the Mental Health Act 2007 and their subsidiary legislation. Relevant publications and websites are listed at the end of this resource.

4.2 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's (or adult's) mental capacity to make any particular 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. Care should therefore be taken when assessing capacity, as someone with capacity one day may not have capacity the next (or vice versa). In 4.3 and 4.4. the capacity of children of different ages and abilities is explored.

4.3 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 can impliedly include psychological treatment and other forms of psychotherapy. 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.

Therefore, if a young person consents to recommended medical or dental treatment (even if those with parental responsibility for them disagree for any reason), therefore, 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 in law give valid consent, which will have the effect of protecting the medical or dental practitioner from claims for damages for trespass to the person; but once a young person is over the age of 16 and with mental capacity, their views would be regarded in the same way as those of an adult, so their refusal and the reasons for it are important considerations for parents and for a court.

In the event of a dispute about consent for medical or psychological treatment, the issue may if necessary be taken before the High Court, which can provide the requisite authority (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.

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 a mental disorder (whether because they are overwhelmed, they do not want to consent or they refuse to consent), they cannot then be admitted to hospital or have treatment imposed on the basis of the consent of a person with parental responsibility (see Chapter 19 of the Mental Health Act 1983: Code of Practice, as last amended in 2015).

4.4 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 (often referred to as 'Gillick competence'). 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 a number of 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 make a decision is situation-specific and that, to have capacity, 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 'Gillick competent' 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.

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.

4.5 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 a child of theirs who does not have the capacity to make their own decisions, 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.

For details of the scope of parental responsibility, see Hershman and McFarlane, White et al., *Working Together to Safeguard Children* DfE (2018, updated 1 July 2022), (Mahmood and Doughty 2019: Ch 3).

Who has parental responsibility?

See Hershman and McFarlane, White et al., *Working Together to Safeguard Children* DfE (2018, updated 1 July 2022), (Mahmood and Doughty 2019: Ch 3), and Chapter 6 of Long (2013). Here is a brief summary of the essential points.

Mothers and married fathers: Every mother (whether she is married or not) has parental responsibility for each child born to her; and the biological father of a child who is married to the child's mother at the time of or subsequent to the conception or birth of their child, automatically has parental responsibility for their child, which may be shared with others but will cease only on death or the adoption of the child. The man must be the biological father of the child, and if a DNA test proves otherwise, then, even if married to the mother, he will not automatically have parental responsibility, but could acquire it in other ways. There is an exception in cases where the family has used artificial insemination under the strict conditions in the Human Fertilisation and Embryology Act 2008.

Unmarried biological father of the child: Unmarried fathers may acquire parental responsibility for their biological child in one of several ways, the first three of which can only be removed by order of the court:

- From 1 December 2003, in England and Wales (earlier in Northern Ireland) an unmarried father in most cases automatically acquires parental responsibility for his child if, with the mother's and his consent, he is named as the child's father on the register of births in the UK.

This law does not operate retrospectively, but if a child was born before this date, the birth can be re-registered in mother and father's names provided there is compliance with the Births and Deaths Registration Act 1953.

- 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, as amended.)
- 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 Child Arrangements' Order specifying residence 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 making of a child arrangements' order specifying residence along with parental responsibility; or the appointment of a testamentary guardian; or by marriage to or civil partnership with a parent who has parental responsibility for the child, provided there is an agreement to do so with the others who also hold parental responsibility for the child.

For details see Hershman and McFarlane, White et al., *Working Together to Safeguard Children* DfE (2018, updated 1 July 2022), (Mahmood and Doughty 2019: Ch 3). 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.

4.6 UK-GDPR, children and consent

The provisions in relation to consent for the processing of personal data concerning children and young people under the age of 18 are governed by the UK-GDPR (38). Article 8 of the UK-GDPR and section 9 of the DPA also contain provisions relating to children's consent to the offer of 'information society services' (i.e. online services, but this provision specifically excludes counselling).

Although 'child' for all other purposes is not defined in the Glossary to the UK-GDPR, the ICO adopts the same definition as section 105 of the Children Act 1989, and in the European Convention on the Rights of the Child, i.e. a child or young person under the age of 18.

Under the UK-GDPR, there are specific provisions relating to children and consent for the processing of personal data concerning them.

See UK-GDPR, Article 8, which relates to the offer of 'information society services' to a child. The term 'Information society services' broadly means 'online services' and is defined in the Regulation as:

any service normally provided for remuneration at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, at the individual request of a recipient of the service. (Directive 98/48/EC amending Directive 98/34/EC).

Practice Note

counselling services are specifically excluded from this provision, whether online or not, and so the usual rules for consent, including the guidance in the Gillick case, continue to apply to counselling services.

Article 8

Conditions applicable to child's consent in relation to information society services

1. Where point (a) of Article 6(1) applies, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 16 years old. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child.

Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years. (Note: the provisions of the DPA as set out below).

2. The controller shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.

3. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child. (UK-GDPR Art 8).

Practice Note

Under section 9 of the DPA, the provisions regarding the age of consent set out in Article 8 of the UK-GDPR to the provision of online services to children and young people is set at 13 in the UK.

UK-GDPR and children's consent to data processing for direct counselling or preventive services to children

The UK-GDPR makes a special provision for consent for processing data concerning children receiving 'preventive or counselling services offered directly to a child.'

'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)).

However, if a child is **not** competent within the Gillick guidelines to give his or her own consent, then it is submitted that the usual rules of obtaining lawful consent will apply.

This concept is reinforced by the ICO in its guidance on children https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/children-and-the-gdpr-1-0.pdf, and https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/children-and-the-gdpr.

In therapy, we are not only contracting about data processing, we are also contracting for the provision of therapy with a child.

For children who have the capacity to give consent, therefore, it is assumed that the Gillick criteria will apply and the consent of those with parental responsibility is not required, but for those children under the age of 16 who do not have the capacity to consent, the normal legal principles of consent for children will apply.

Child's right to see their own records

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 usually have the right to make decisions relevant to therapy, and under data protection law will also usually have the right to see the child's therapy records ***BUT note that in this situation there are legal exceptions allowing certain agencies or a health professional to refuse access and maintain secrecy for the child's information, where this is necessary 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 or crime. In these situations, if a counselling professional is in any doubt, advice from a lawyer or other appropriately qualified professional should be sought before a child's data are disclosed to those with parental responsibility.***

Right of those with parental responsibility to access the child's records in respect of a child who does not have Gillick competence. Limits and safeguards to that right

A child's counselling record may in some circumstances be regarded as part of a school, social care, or health record, then, under data protection legislation.

Those with parental responsibility for a child will usually 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 court has given their consent for the child's records to be so shared. However, there are safeguards to this right for safeguarding reasons (see Practice note below).

In private counselling, a child who is competent to make their own decisions under the Gillick guidelines may agree the boundaries of confidentiality with their therapist, but where the child is not competent to make their own decisions in the light of the Gillick case, then those with parental responsibility will be responsible for consent, and also will have a right to ask for access to their child's records. However, there are provisos to this right, for safeguarding reasons (see Practice note below).

Practice Note

Consider – could disclosure of personal data from a child's records lead to any possible risk of harm to the child or others, or possibly jeopardise an investigation?

Counselling practitioners need to be aware of the legal safeguards for protecting information relating to child protection, child abuse, and other issues and other information that may, if disclosed, cause a risk to the child or others, or jeopardise a police or safeguarding investigation.

The legal exceptions allow certain agencies or a registered health care professional to refuse or restrict access for the child's information, where this is necessary 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 or crime. In these situations, advice from a lawyer, legal or other appropriately qualified professional should be sought. before data are disclosed to those with parental responsibility.

A registered health care professional is a person registered with the Health Care and Professions Council (HCPC), and includes the protected titles of: Arts therapist, Biomedical scientist, chiropodist/ podiatrist, clinical scientist, dietician, hearing aid dispenser, occupational therapist, operating department practitioner, orthoptist, paramedic, physiotherapist, practitioner psychologist, prosthetist / orthotist, radiographer, speech and language therapist. (to check an individual's registration, see the HCPC website at www.hcpc-uk.org.

For further details about UK-GDPR, and the rights of children please refer to Part 11 of the GPiA 105 *UK-General Data Protection Regulation (UK-GDPR) legal principles and practice notes for the counselling professions.* (BACP 2018)

5 Confidentiality

Confidentiality is critically important in counselling, psychotherapy, coaching and pastoral care, where clients need to feel able to discuss sensitive thoughts and issues without worrying that their confidences might be communicated to others in ways that could harm them by damaging their reputation or upsetting others.

'To confide in someone is to put your trust in that person. The origins are Latin with con acting as an intensifier of *fidere* – meaning to trust or put one's faith in, and is probably best translated as 'to strongly trust someone.' Confidentiality presupposes trust between two people within a community of at least three people. For example, confidentiality occurs when two people decide to restrict the communication of information, keeping it between themselves in order to prevent it being communicated to a third person or to more people. In a professional relationship, 'confidentiality' means protecting information that could only be disclosed at some cost to another's privacy in order to protect that privacy from being compromised any further.

In her extended consideration of *The Law of Professional – Client Confidentiality: regulating the disclosure of confidential personal information*, Pattenden observes that recent developments in the law have removed the need for a relationship of trust as a prior condition to create legally binding confidentiality.

All that is necessary is that the professional was aware, or a reasonable person in her position would have been aware, that the information is private to the subject of that information.' (Pattenden, 2016; Mitchels and Bond 2021)

The law is developing to provide increasing protection for confidentiality, and this principle applies equally strongly to children. If the child has the capacity to enter into a contract, then confidentiality (and any limitations on this) must form part of the contractual agreement made.

Children may feel concerned or confused about asking for the help of a practitioner, and they may have been persuaded to seek help by carers, parents or other adults. Children are arguably exposed to heightened levels of risk because of their dependence on their practitioner. When a child client confides in a practitioner the risk is that the confidence will be broken and confidential material communicated to others in ways that the child client either does not want or has not agreed to. From the practitioner's point of view the responsibility to protect confidences may compete with other responsibilities to the child client, for example a concern to protect them from preventable self-harm or harm caused by others. Practitioners working with children and young people may experience these dilemmas more acutely because of the heightened vulnerability and dependence of their clients.

A child client has the legal and ethical right to confidentiality, both in law and as part of the practitioner's professional duty of care to them, 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 records (with certain exceptions allowing the practitioner and school 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).

5.1 Contractual agreements with children and young people

There should be clear agreement with the child in age-appropriate terms, about the service to be provided for the child and the terms on which that service is offered. The agreement should make clear the fact that records are kept and for how long.

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 can enter into a therapy or counselling-related services' contract and may wish to have their confidentiality protected. They are 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. Child clients and practitioners may have different expectations about confidentiality. The child needs to understand that confidentiality cannot be absolute, because (depending on the child's age and specific circumstances) the law and data protection legislation may permit and/or require those with parental responsibility and/or others to have access to the child's counselling-related records, medical and school records, see GPiA 002 *Counselling children and young people in school contexts in England, Northern Ireland and Wales*.

For information on the rights of a child under the General Data Protection regulation, please see GPiA 105 Legal Resource: *the UK-General Data Protection Regulation (UK-GDPR) legal principles and practice notes for the counselling professions.* (BACP 2018). A contract is a legally enforceable agreement with terms that may be explicit or implied.

For children, it helps to have some age-appropriate written or otherwise recorded evidence of what is agreed, for clarity and as an aide-memoire if required. The parties contracting will include the practitioner and the child client. The service provider (such as school or college) might be included if the practitioner is an employee.

Some essential contract terms can be clarified by providing a leaflet to read in advance, which sets out the basic terms of the counselling-related service offered, or by careful discussion at the intake assessment or first session. Be careful about reliance on verbal contracts reached at the first therapeutic session: young clients might be anxious or not able to concentrate, so may be less able to reach a considered agreement with the practitioner or may fail to recall what was agreed.

A young client will need the legal capacity (under statute law and the guidance in the Gillick case) to enter into a valid contract for therapy. If they are not of sufficient age or understanding to give their own consent, then therapy needs the consent of those with parental responsibility for the child. The person(s) with parental responsibility will then be the parties to the contract and will also have access to the therapeutic records. For further details, see the section on capacity and consent for counselling-related service contracts earlier in this resource, and the next section on data protection and case records.

5.2 Information sharing, data protection and case records

Personal information (data) should be protected (i.e. treated with respect and confidentiality). The legal issues applicable to the holding of personal data are governed by the *Data Protection Act 2018*, *the UK-General Data Protection Regulation (UK-GDPR)*, and other relevant subsidiary legislation, which apply to all records kept by schools, colleges and further education institutions, however they are held. It also applies to personal data held about clients by counselling practitioners.

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 https://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. Under data protection law, they will also have the right to see the child's therapy records, with certain exceptions specified in the Data Protection Act 2018.

These exceptions allow a health care practitioner, school, health care, or certain organisations and agencies to refuse to disclose a child's records and/or information in order to safeguard and protect the health or safety of the child or others, and/or to safeguard a police or other investigation in the context of child protection. People who may not be allowed to have access to data for these reasons may include those with Parental responsibility for the child.

Practitioners should therefore seek legal and/or other appropriate advice before disclosing information from a child's records in any case where there is any disclosure of abuse, or any element of child protection or safeguarding involved, unless the disclosure is formally requested for safeguarding purposes or criminal investigation by the police, health services, or under a court order. See GPiA 105 Legal Resource: *the UK-General Data Protection Regulation (UK-GDPR) legal principles and practice notes for the counselling professions.* (BACP 2018) for further detail.

6 Managing risk, the therapist's duty of care, and confidentiality

The practitioner's professional duty of care to children and young persons as clients includes a contractual agreement about confidentiality (see 5.1), and also a duty of confidentiality in the law of tort. There is insufficient space here to discuss the law of tort in detail, but this area of law governs our responsibility to others (e.g. duty of care, professional negligence, health and safety issues, etc.). For a more detailed exploration of the law of tort in relation to counselling-related services see Chapter 3 in Mitchels and Bond (2008).

Therapists who work in compliance with the current edition of the guidance *Working Together to Safeguard Children* (DfE 2018, updated 1 July 2022) are operating within recommended safeguarding practice, and confidentiality for a child client may be limited by child protection safeguards, which may impose a duty of disclosure where the therapist has a serious concern for the welfare and safety of their child client or others.

Inter-agency sharing of information is increasing to the extent that it has now become the norm. Practitioners working in the context of social care, healthcare, education and other services may need to share information for the protection of the public or the safety and welfare of a vulnerable client or others, and to enhance the quality of the service provided. Information will usually be shared with the full explicit consent of the client. In other situations, in the absence of client consent, the public interest may require the practitioner to exercise their discretion in disclosing information, for example where there is an imminent risk of serious harm to the client or others. In these situations, the practitioner's discretion to disclose information in the public interest is protected by the courts, in that they will not enforce a client's right to confidentiality (i.e. the courts will not punish the practitioner for disclosure) in cases where the practitioner acted in good faith and the public interest was protected by making the disclosure. See the case of *W v Edgell and others* [1990] 1 All ER 835.

For discussion of ways to approach decision making about confidentiality and disclosure, and for a checklist of factors to consider, see sections 6.1. (referrals) and 8 (ethical dilemmas and decision making), also 10 for a disclosure checklist and 11 for a referral checklist.

6.1 Referrals and disclosures

Therapists have an ethical responsibility to act within their particular range of qualifications and expertise. This might require referral, where we are asked to work with children and young people but lack the expertise or experience to do so. When working with children and families, we can find ourselves out of our depth unless we are trained in this area of work. In such cases, either referral or working under expert guidance may be ethically appropriate; BACP's *Ethical Framework for the Counselling Professions* makes this clear (see Good Practice, point 27).

We may be working with a child client who discloses abuse, or another child protection need. In this situation we have to assess:

- the seriousness of the likely harm
- how imminent the risk is to the child or others
- the effectiveness and impact of disclosure
- whether we are referring with client consent or making a referral without consent in the public interest.

Disclosures and referrals may be necessary in the interests of the child client, or for the protection of other children.

Where a disclosure has to be made in the public interest in the context of therapy, the mechanism is set out in *Information sharing – advice for safeguarding practitioners* (DfE, 2015, updated 2018) and *Working Together to Safeguard Children* (DfE, 2018, updated 1 July 2022).

Practice Note 1

Disclosures... *if there is any issue of abuse, child protection or safeguarding and any risk to the child or others, follow the government guidance regarding appropriate sharing of information with police, social care, or healthcare professionals. Take legal or other appropriate safeguarding advice first before sharing a child's information with anyone else, such as carers or those with parental responsibility.*

Practice Note 2:

UK-GDPR access requests. Those with parental responsibility may ask for information from their child's records under UK-GDPR or the Data Protection Act 2018. Wherever possible, disclosures of any part of a child's records or information about a child client should be made with the consent and co-operation of the child concerned. If the child is not competent to make their own decisions, then the consent of those with parental responsibility for the child may be required... **BUT *please note that there are some child protection situations where seeking prior consent from carers or others 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 the possible perpetrators of alleged abuse). In these circumstances, before contacting those with parental responsibility, and/or before sharing any information with them, the therapist should first seek advice from an appropriate legal or child protection advisor, the police or the children's department of the local authority.***

7 Disclosure and barring services

7.1 England and Wales

The Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged to become the Disclosure and Barring Service (DBS). The DBS runs lists of people who are barred from working with children and young people by reason of their history and criminal convictions. A DBS certificate search is colloquially known as a 'DBS check'. There are three levels of check available (standard; enhanced; and enhanced with list). Employers or contracting organisations have a responsibility to run criminal records and other necessary security checks on practitioners working with children and young people, as appropriate to the practitioner's level of contact with the vulnerable clients. Applications for a DBS check can only be made by post or online by an employer. For a full explanation of how the system works, please refer to the website www.gov.uk/disclosure-barring-service-check/arrangingchecks-as-an-employer. 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 registration is free for volunteers).

DBS runs an updating service, see the website at www.gov.uk/dbs-update-service. Once registered for the updating service, an ID number is issued, allowing the registered person to log on to the DBS service, see the certificate online, and take the certificate from one employment to another. Employers may be given permission to check the certificate online and the registrant may see who has checked it. DBS addresses and contact details are provided at the end of this resource.

7.2 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 job (for example, with children and or children and young people) 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.

7.3 Professional registration

Registration with a professional body should not be confused with being a health care professional registered with the HCPC, but nevertheless, clients may feel greater confidence in a practitioner who is registered with an appropriate professional body. Membership of a professional body provides the public with the knowledge that the practitioner adheres to a code of professional ethics and conduct, with redress in the form of complaints procedures and professional conduct and disciplinary procedures. Some professional memberships provide a further level of confidence for clients, in confirming that the practitioner has also achieved a certain level of qualification and expertise. For example, BACP members registered with the Professional Standards Authority have achieved a certified level of professional competence.

8 Ethical dilemmas in safeguarding

There are many situations in safeguarding that pose ethical dilemmas, including the appropriate management of risk in self-harm, addictions, children in need, and all forms of child abuse.

The biggest problem for practitioners is how to think through these dilemmas, and how to balance law and needs – acting in the best interests of the child, in the context of the law, guidance and public interest in child protection, and according to the needs of the specific child.

It is not possible to address specific case studies here, but it may be helpful to have a disclosure checklist for children and young people that covers issues to consider when thinking through an ethical dilemma (provided in section 10 of this resource) and a referral checklist for children and young people which covers how to make and document an effective referral (provided in section 11).

Practitioners also need to be aware of the Counter-Terrorism and Security Act 2015 and guidance *Protecting Children from radicalisation: the prevent duty* (DfE 2015) and also the Female Genital Mutilation Act 2003 and government guidance on female genital mutilation (DfE 2016, updated 1 August 2022), for more on this, see 10 below. The statutes and resources for help and support for clients and practitioners affected by these issues are listed in these websites, and also at the end of this resource.

Wherever possible, consider the issues in confidence with the help of supervision, discussion with experienced colleagues, and/or taking legal advice. Help and advice can also be obtained in relation to safeguarding children from the NSPCC, Children's Legal Centre, CAFCASS, CAFCASS Cymru, and NIGALA; contact details for all of these are provided at the end of this resource.

9 Child witnesses: Pre-trial therapy for children

The courts understand that for a child who has been the victim of a sexual offence, or of certain other offences, giving evidence about what happened is likely to be accompanied by a high degree of stress. Nevertheless, cases continue to be reported in the press where vulnerable children and young people involved as witnesses in the judicial process have been severely affected or re-traumatised by the police investigation and the court process. Some young people have been so affected by the judicial process that they have become ill, made attempts on their own life or carried out suicide following their provision of evidence in court. This concern led to consideration of the welfare of such child witnesses and a re-examination of the way in which they are treated and the therapeutic and other forms of support they receive during a police investigation and throughout the judicial process. There is also cogent evidence to support the argument that therapeutic and other appropriate support should continue after the court case has finished. As a result of these concerns, in criminal proceedings child witnesses are legally entitled to 'special measures' to help them to give evidence. They are also entitled to other forms of psychological and social support, including pre-trial therapy. On 26 May 2022, the Crown Prosecution Service (CPS) issued new updated guidance for the use of police, CPS and therapists on pre-trial therapy in criminal cases, and it can be found at www.cps.gov.uk/legal-guidance/pre-trial-therapy. This guidance covers both children and adults, and is discussed in detail in a new GPiA 128, *Working with the Crown Prosecution Service Pre-trial Therapy Guidance (2022) with adult and child witnesses in criminal courts in England and Wales.*

10 Female Genital Mutilation: Law and government guidance

The UK law on Female Genital Mutilation (FGM) is in the Female Genital Mutilation Act 2003, and the government guidance on FGM was recently updated, and can be found at *Multi-Agency Guidance on Female Genital Mutilation*.

Department for Education, (2016, updated 1 August 2022), at www.gov.uk/government/publications/female-genital-mutilation-resource-pack/female-genital-mutilation-resource-pack.

[The 2022 update also refers to the first Multi-agency statutory guidance on female genital mutilation published in 2016, then updated in 2018, and 2019, and still available at www.gov.uk/government/publications/multi-agency-statutory-guidance-on-female-genital-mutilation.]

Although the 2022 guidance is aimed at local authorities, it contains information and guidance which is helpful for regulated health and social care professionals, and is useful reading for counselling practitioners in private practice, as the updated version includes a resource pack with case studies, information on awareness raising in local communities, and links to local and national resources for information and support.

Four physical types of FGM are identified are listed and described on the World Health Organisation website at www.who.int/en/news-room/fact-sheets/detail/female-genital-mutilation.

Female Genital Mutilation (FGM) is illegal in the UK. In England, Wales and Northern Ireland, civil and criminal legislation on FGM is contained in the Female Genital Mutilation Act 2003 ("the 2003 Act"). In Scotland, FGM legislation is contained in the Prohibition of Female Genital Mutilation (Scotland) Act 2005. The Female Genital Mutilation Act 2003 was amended by sections 70-75 of the Serious Crime Act 2015.

There is insufficient space to explore the law on this detailed topic here, but briefly, under these statutes a number of criminal offences are created, in relation to performing or assisting FGM in the UK, or to assisting (from the UK) any others outside the UK to perform FGM on a UK resident.

There are also offences created regarding a UK resident performing or assisting acts of FGM carried out abroad, which includes taking a girl abroad for FGM to be carried out on her. There are statutory exceptions for legitimate surgical intervention for healthcare purposes.

Children can be protected from FGM under a *Female Genital Mutilation Protection Orde*r made under the 2003 Act. The guidance states that survivors of FGM are granted the protection of lifelong anonymity, and registered health and social care professionals and teachers have a duty to notify the police where they discover that FGM has been carried out on a girl under 18 years of age during the course of their work.

Reference to safeguarding practice in *Working Together to Safeguard Children* (DfE 2018), and *Working together to safeguard children (Wales)*. is helpful for regulated and private practitioners, and also there is a free NSPCC helpline, available on **0800 028 3550** or email fgm.help@nspcc.org.uk.

Details of other national and local resources are in the government guidance at www.gov.uk/government/publications/female-genital-mutilation-resource-pack/female-genital-mutilation-resource-pack.

There is a risk of various forms of psychological harm for those who have experienced or witnessed FGM, including traumatic stress, and the links in the resource pack are useful for therapists.

Practitioner members of BACP who do not have a role as regulated health or social care professionals, teachers, or working with a local authority, (and therefore may not be under a compulsory duty to report FGM in that role) must nevertheless comply with the BACP *Ethical Framework* (BACP 2018), which requires us to work within the law and pay heed to relevant government guidance. The Female Genital Mutilation Act 2003 in section 3A makes it an offence to fail to protect a girl under the age of 18 from FGM, where the person has (a) parental responsibility for the girl or (b) has 'frequent contact with her.'

It is not clear whether a therapist would be viewed by a court as such a person as described in (b), but section 3A (5) of the Act states that:

It is a defence for the defendant to show that –

(a) at the relevant time, the defendant did not think that there was a significant risk of a genital mutilation offence being committed against the girl, and could not reasonably have been expected to be aware that there was any such risk, or

*(b) the defendant took such steps as he or she could reasonably have been expected to take to protect the girl from being the victim of a genital mutilation offenc*e.

When working with a child client, consideration of safeguarding issues is part of the practitioner's duty of care to their client, and so, as in any other form of risk of serious harm to a child, practitioners may need to consider making a disclosure to safeguard the child, and where necessary, should consult their supervisor, or an appropriate professional, and consider the issues in the Disclosure checklists at 11 and 12 below.

Please see

In exceptional circumstances, the need to safeguard our clients or others from serious harm may require us to override our commitment to making our client's wishes and confidentiality our primary concern. We may need to act in ways that will support any investigations or actions necessary to prevent serious harm to our clients or others. In such circumstances, we will do our best to respect the parts of our client's wishes or confidences that do not need to be overridden in order to prevent serious harm.
Ethical Framework, GP point 10 (BACP 2018)

11 Disclosure checklist: children and young people

Source (Mitchels and Bond 2021).

Part 1

The information: sources, reliability, and consent issues

- Is this information founded on information from a reasonable and/or reliable source?
- What is the likelihood of serious harm in this case?
- Is this serious harm imminent?
- If I refer/disclose this information, what is likely to happen as a consequence?
- If I do not refer, would the likely consequences of non-referral include any serious harm to the client or others?
- If so, are the likely consequences of non-referral preventable?
- What would have to happen to prevent serious harm to my client or others?
- Is there anything I (or anyone else) can do to assist in preventing this harm to my client or others?
- What steps would need to be taken to implement such assistance?
- How could the client be helped to accept assistance/or to support the proposed action?
- Does my client have the mental capacity to give explicit informed

consent (or refusal of consent) at this moment in time?

- If the client does not have mental capacity to make their own decisions, then what are my professional responsibilities to the client and in the public interest?
- If the client has mental capacity to make the decision, but does not consent to my proposed action (e.g. referral to a GP, or to the police, or to social services, etc.),
- Does the public interest justify the intended disclosure or referral?

Part 2

Legal and ethical issues in making a good disclosure. Am I acting within the law?

- Am I acting in the guidelines of my Code of Ethics (e.g. BACP's current *Ethical Framework*)? What would be my professional situation if I go ahead and make the referral without client consent?
- Is this information regulated by the Data Protection Act or the UK-GDPR; (for example, do the records comprise client-identifiable sensitive personal data?)
- Were the notes made by a professional working for a public body in health, education or social care?
- What are the relevant rights of the person concerned under the Human Rights Act 1998?
- If working in the health community, is disclosure compliant with the Caldicott principles and guidance?
- Is there a legitimate requirement to share this information: e.g. statutory duty or a court order?
- What is the purpose of sharing the information? (See Part 1 of the Checklist above)
- If the information concerns a child, young person, or vulnerable adult, is sharing it in their best interests?
- Is the information confidential? If so, do you have consent to share it?
- If consent is refused, or there are good reasons not to seek consent, does the public interest necessitate sharing the information?
- Is the decision and rationale for sharing the information recorded? (See Part 3 below)
- What is the most appropriate way to share this information? (See Part 3 below).

Part 3

Guidance in making a good disclosure

1. Inform the client, **except** iin circumstances where telling the client (or those with parental responsibility):is illegal (tipping off), or

   - is illegal (tipping off), or
   - will cause or increase any risk of harm to the child client or others, or
   - may prejudice a police or inter-agency investigation of a serious crime.

2. Limit the information disclosed to the minimum necessary in order to avert the risk.

3. Select the recipient(s) of the information: disclosure should only be made to a person or agency that is capable of minimising or preventing the harm.

4. Mark written or emailed communication 'Confidential' or 'In confidence.' Oral communications should be preceded by a clear statement that what is being disclosed is confidential.

5. If the therapist is unfamiliar with the practice of the person or agency receiving the information, it is reasonable to ask how the information will be protected or treated in advance of disclosing it.

Practice Note

When making decisions about disclosure and information sharing in relation to children and young people, it may help to reflect and consider these points, preferably in supervision, with a legal advisor, or with other suitably qualified and experienced person:

- Is this a situation where it would be illegal or dangerous to let the child client (or those with parental responsibility for the child) know about the intended disclosure – would telling them put the child, others, or a police or child protection investigation at risk?
- Is there a legal requirement to share this information (e.g. a statutory duty or a court order)?
- What is the purpose of sharing the information?
- If the information concerns a child or young person, is sharing it in the child's best interests, and/or is it intended to protect others?
- Is sharing the information likely to achieve or to help in achieving the necessary protection for the child or others?

- Is the information confidential? If so, is there client or other appropriate consent to share it?
- If the information concerns a child or young person and the appropriate consent is not sought or is refused, are there good reasons to proceed without consent, i.e. does the public interest necessitate sharing the information?
- What is the most appropriate way to share this information?

Information in relation to children and young people should be shared in accordance with the principles set out in *Working Together to Safeguard Children* (DfE, 2018, updated 1 July 2022) (i.e. relevant facts, shared on a need-to- know basis, with the person/people who is/are in the best position to take appropriate action. See also *Information sharing – advice for safeguarding practitioners* (DfE, 2015b).

12 Referral checklist: children and young people

If sharing the information is necessary and appropriate, it is best to make it efficiently – either in writing, or if made verbally, follow it up in writing, and also record:

- the date of providing the information
- to whom the information is given
- the content of the information shared
- the method of disclosure or referral
- whether consent was given (and by whom)
- if the disclosure is made without consent, the reasons why this decision was made.

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References and further reading

Government publications are available from:

- The Stationery Office (TSO), PO Box 29, Norwich NR3 1GN; Tel: 0870 600 5522; Email: customer.services@tso.co.uk; www.tsoshop.co.uk.
- 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 in England and Wales.
- The Northern Ireland Government publications are available from the Department of Health, Social Services and Public Safety (www.dhsspsni.gov.uk).
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- The Welsh Government (www.wales.gov.uk) publishes policy regarding children's services in Wales.

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Additional useful resources

Statutes

Access to Health Records Act 1990

Access to Medical Reports Act 1988

Children Act 2004

Children Act 1989

Children (Leaving Care) Act 2000

Children and Families Act 2014

Children and Social Work Act 2017

Children and Young Persons Act 1933

Children and Young Persons Act 1969

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Disabled Persons (Northern Ireland) Act 1989

Domestic Abuse Act 2021

Education Act 2002

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Family Law Reform Act 1969

Family Law Reform Act 1987

Female Genital Mutilation Act 2003

Health and Care Act 2022

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Human Fertilisation and Embryology Act 1990

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Local Authority Social Services Act 1970

Matrimonial and Family Proceedings Act 1984

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Prohibition of Female Genital Mutilation (Scotland) Act 2005

Protection from Harassment Act 1997

Protection of Children Act 1999

Race Relations Act 1976

Rehabilitation of Offenders Act 1974

School Standards and Organisation (Wales) Act 2013

Serious Crime Act 2007

Serious Crime Act 2015

Sexual Offences Act 1956

Sexual Offences Act 2003

Social Services and Well-being (Wales) Act 2014

UK-General Data Protection Regulation 2018 (UK-GDPR)

Vulnerable Witnesses (Scotland) Act 2004

Welfare Reform (Northern Ireland) Act 2007

Welfare Reform (Northern Ireland) Act 2010

Youth Justice and Criminal Evidence Act 1999.

Statutory instruments

The Adoption Support Agencies (England) (Amendment) Regulations 2010

Care Quality Commission (Registration) Regulations 2009

Community Care Assessment Directions 2004

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

General Data Protection Regulation PDF at: http://data.consilium.europa.eu/doc/document/ST-5419-2016-INIT/en/pdf (accessed 31 May 2019)

Health and Social Care Act 2008 (Regulated Activities) Regulations 2010

Health and Personal Social Services (Northern Ireland) Order 1977

Health Services (Northern Ireland) Order 1972

Mental Capacity Act 2005 (Appropriate Body) (England) Regulations 2006 S.I. 2006 No. 2810

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

Family Procedure Rules 2010, SI 2010/2955

Parental Responsibility Agreement Regulations 1991, SI 1991/1478

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

Practice Directions are attached to the Family Procedure Rules 2010.

Conventions and protocols

UN Convention on the Rights of the Child

European Convention for the Protection of Human Rights and Fundamental

Protocols made under the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Government and Law Society publications

- *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 in England and Wales.
- *The Northern Ireland Government* publications are available from the Department of Health, Social Services and Public Safety (www.dhsspsni.gov.uk).
- *UK Government* publications are available from the Stationery Office (www.tsoshop.co.uk).

- *The Welsh Government* publishes policy regarding children's services in Wales. https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services.

Loose-leaf reference works

Hershman, D., McFarlane, A. (eds) *Children law and practice.* Bristol: Family Law.

Jones, R.M. (ed.) *The encyclopaedia of social services and child care law.* London: Sweet & Maxwell.

White, R., et al. *Clarke Hall and Morrison on children.* London: Butterworths. Available from Lexis Nexis at: www.lexisnexis.co.uk/store/categories/legal/welfare-family-law-books-34/clarke-hall-morrison-on-children-skuuksku9780406996626CHMCMW29585/details (accessed 13 June 2022).

Legal and practice resources

British and Irish Legal Information Institute (www.bailii.org) . Publishes all High Court, Court of Appeal and Supreme Court judgments

Care Council for Wales (www.law.gov.wales). Publishes Child law for social workers in Wales in English and Welsh, with regular updates

Family Law (www.familylaw.co.uk). Access to Jordan Publishing's family law reports

Justis (www.justis.com). Online legal resource

NSPCC https://learning.nspcc.org.uk/research-resources (accessed 13 June 2022)

UK statute law (www.legislation.gov.uk)

UK statutory instruments (www.opsi.gov.uk/stat.htm).

Northern Ireland
Independent counselling support service for schools practice standards. Available at: www.nidirect.gov.uk/independent-counselling-service-for-schools (accessed 13 June 2022).

Contacts

Children's Law Centre (Northern Ireland)
3rd Floor Philip House, 123–137 York Street, Belfast, BT15 1AB
Tel: 028 90245704; Fax: 028 90245679
www.childrenslawcentre.org.uk

Coram Children's Legal Centre
Free legal advice, and access to information and resources.
www.childrenslegalcentre.com
Also see the Migrant Children's Project.

Disclosure and barring services

England and Wales

Disclosure and Barring Service (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
Email: customerservices@dbs.gsi.gov.uk

Transgender applications: sensitive@dbs.gsi.gov.uk
www.gov.uk/government/organisations/disclosure-and-barring-service

Welsh language scheme: www.gov.uk/government/organisations/office-of-the-secretary-of-state-for-wales/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

NSPCC
Weston House, 42 Curtain Road, London EC2A 3NH
Tel: 020 7825 2500
Email: help@nspcc.org.uk
List of regional offices: www.nspcc.org.uk/about-us/contact-us
See also:www.nspcc.org.uk

Legal Contacts

England

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

CAFCASS (Children and Family Court Advisory and Support Service)
National Office, 3rd Floor, 21 Bloomsbury Street, London WC1B 3HF
Tel: 0300 456 4000, Fax: 0175 323 5249
www.cafcass.gov.uk
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)
PO Box 264, Esher, Surrey KT10 0WA
Tel: 01372 818504, Fax: 01372 818505
Email: nagalro@globalnet.co.uk
www.nagalro.com

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
Email: admin@nigala.hscni.net

Wales

Children and Family Court Advisory and Support Service (CAFCASS) Cymru:
Cafcass Cymru, Central Support Team, Sarn Mynach. Llandudno Junction Conwy, Wales, LL31 9RZ. Website https://gov.wales/cafcass-cymru

Republic of Ireland (EIRE)

An Roinn Slainte: 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
Millennium House, 52–56 Great Strand Street, Dublin 1, Ireland
Tel: 01 865 6800; Fax: 01 874 7333
Email: oco@oco.ie
www.oco.ie