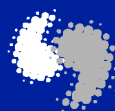


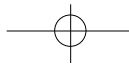
Good practice guidance for **counselling** **in schools**

4th edition

Edited by Susan McGinnis
with Peter Jenkins



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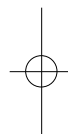
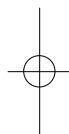
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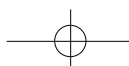
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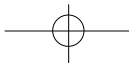
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Preface

The Counselling Children and Young People (CCYP) division of BACP and the BACP Information Office receive many requests each week from practitioners, schools and local authorities all enquiring about areas of practice regarding counselling in schools. This 4th edition of Good Practice Guidance for Counselling in Schools is an attempt to capture the essence of a school counselling service, and to give colleagues accurate and up-to-date information about school counselling in an easily accessible form. The guidance should be read in conjunction with the BACP Ethical Framework for Good Practice in Counselling and Psychotherapy.

Counselling in schools is a specialist activity and a rapidly growing phenomenon. As such all involved need to be aware of the need to ensure that services operate to high standards and are accountable. School counselling services ought to be appropriately developed, monitored and evaluated in order that the children and young people they serve have the best possible experience of counselling.

This document considers many of the practical considerations of a school counselling service: the roles and responsibilities of the counsellor, their relationship with others, required standards of practice, and quality assurance. It also reflects on confidentiality, ethical matters, child protection and the sharing of information; all set against the backdrop of current legislation and government initiatives.

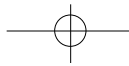
Thanks go to all colleagues who have contributed in some way to the guidance, in particular past and current members of the CCYP Executive Committee.

It is hoped that it provides a clear framework for the development of professional counselling services in schools and contributes to the knowledge base of all involved in this work.

Karen Cromarty
Chair of CCYP

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Counselling in education

Schools, like universities and colleges, are now employing counsellors to help them address the emotional needs that children and young people can have in response to experiences such as family breakdown and reconfiguration, bereavement, loss, family and peer relationship difficulties, anxiety and bullying. Counselling can be an effective source of support for these pupils, enabling them to function better both in and outside of school, enhancing their resilience and giving them resources to manage any future difficulties.

Counsellors provide counselling as part of the pastoral care within the school and represent an immediate, on-site response for those pupils who need the additional expertise that counselling brings to the overall pastoral support system. Counsellors working in schools can also provide training, consultation and support for staff in the way they use counselling skills to support the pupils. The skills of listening and attending in a relationship of trust and respect contribute greatly to good communication within the school community.

Counselling within schools is a fast growing, if still relatively under-resourced, phenomenon, testament to its popularity with teachers, pupils and parents alike. However, there are significant differences between the professional culture of teachers and that of counsellors and psychotherapists; teachers will often need to have regard for the needs of a class, or a cohort of pupils, or the school as a whole, while the therapist's immediate focus may well be more on the distress being experienced by a single child or young person. Teachers work within a particular organisational and legal framework, with specific legal obligations set out by statute and by circulars and guidance from national government. Counsellors and psychotherapists need to be well informed about these obligations. While both teachers and therapists will want to promote the overall wellbeing of the children and young people in their charge, therapists work to a different set of ethical obligations that emphasise the complexity of balancing professional duties, the rights of the child as client and wider social responsibilities.

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Definition of counselling

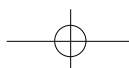
The British Association for Counselling and Psychotherapy makes a clear distinction between counselling skills used by staff in schools and the process of counselling provided by counsellors. This document addresses the role of the professional counsellor as a specialist in schools.

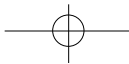
Counselling takes place when a counsellor sees a client in a private and confidential setting to explore a difficulty the client is having, distress they may be experiencing or perhaps their dissatisfaction with life, or loss of a sense of direction and purpose. It is always at the request of the client as no one can properly be 'sent' for counselling.

By listening attentively and patiently, the counsellor can begin to perceive the difficulties from the client's point of view and can help them to see things more clearly, possibly from a different perspective. Counselling is a way of enabling choice or change or of reducing confusion. It does not involve giving advice or directing a client to take a particular course of action. Counsellors do not judge or exploit their clients in any way.

In the counselling sessions the client can explore various aspects of their life and feelings, talking about them freely and openly in a way that is rarely possible with friends or family. Bottled up feelings such as anger, anxiety, grief and embarrassment can become very intense and counselling offers an opportunity to explore them, with the possibility of making them easier to understand. The counsellor will encourage the expression of feelings and as a result of their training will be able to accept and reflect the client's problems without becoming burdened by them.

Acceptance and respect for the client are essentials for a counsellor and, as the relationship develops, so too does trust between the counsellor and client, enabling the client to look at





*many aspects of their life, their relationships and themselves which they may not have considered or been able to face before. The counsellor may help the client to examine in detail the behaviour or situations that are proving troublesome and to find an area where it would be possible to initiate some change as a start. The counsellor may help the client to look at the options open to them and help them to decide the best for them.*¹

Counselling for children and young people

Young people and children experience developmental changes that are unique to each individual. Counselling is a process which assists a client to focus on his or her particular concerns and developmental issues, while simultaneously addressing and exploring specific problems, making choices, coping with crises, working through feelings of inner conflict and improving relationships with others. Counselling enables children and young people to gain a better understanding of themselves and the situations facing them and to develop strategies to cope with change.

Pre-school children who start to display emotional and behavioural difficulties can benefit from an early intervention with counselling and play therapy and by the counsellor facilitating support for the parents or carers. Children in primary schools can also benefit from counselling, particularly with the use of creative play materials, to enable them to communicate their thoughts and feelings effectively. Counselling for young people in secondary schools can provide an opportunity for them to express their thoughts and emotions, gain insight and explore strategies to manage themselves and their relationships more effectively.

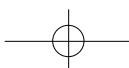
The educational context

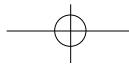
The Department for Education and Skills (DfES)² has stated that counselling is one of the important elements of support to be considered for children and young people with emotional and behavioural difficulties. This is in line with the Government's recognition of the importance of early intervention and preventative strategies as demonstrated by programmes such as 'Early Years'³ and 'Sure Start'⁴.

In Wales, the Welsh Assembly Government (WAG) has promoted the use of counselling as a form of support for all pupils, where appropriate. Counselling has been identified as one of a range of support strategies for pupils and young people within key documents including *Early Entitlement*, *Supporting Children and Families in Wales*⁵ and *Extending Entitlement, making it real*⁶, *The Learning Country*⁷, *Respecting Others*⁸ and *The Foundation Stage*⁹. Within the document *Inclusion and Pupil Support*¹⁰, the Welsh Assembly Government stated, 'There may also be other local sources of support for children and young people, for example counselling services, which teachers need to know about to refer children for support.'

National Curriculum Guidelines

The guidance on inclusion from the DfES¹¹ aims to give access to mainstream education for all children irrespective of physical or emotional disability or any other special educational needs, highlighted by requirements under legislation such as the Special Educational Needs and Disability Act 2001. Schools face a situation where the achievement of positive mental health poses as great a challenge as academic excellence. The DfES has produced guidelines on promoting positive mental health in early years and school settings¹². By offering students an educational opportunity for personal development and growth, school counselling complements and supports the aims of the National Curriculum Guidelines¹³, i.e. that the curriculum should be balanced and broadly based and should promote the spiritual, moral, cultural, mental and physical development of pupils both in school and in society and prepare pupils for the opportunities, responsibilities and experiences of adult life.





OFSTED

The availability of counselling can affect the school as an institution and not just individual pupils. A good school is judged not by its lack of problems but by its ability to deal effectively with those problems that arise.

Counselling services that have been provided in schools inspected by the Office of Standards in Education (OFSTED)¹⁴ have been shown to:

- n complement pastoral care systems
- n support teachers' care of children and young people and their management of those with emotional and behavioural difficulties
- n offer training to teachers in counselling skills and stress management
- n provide consultation, training, support and supervision of strategies to counteract problems such as bullying and truancy
- n influence drug and sex education policies within a confidential framework
- n contribute to the personal and social education curriculum
- n support effective child protection procedures.

The Education Act 1996 and the Special Educational Needs Code of Practice¹⁵

The various Education Acts require schools to have regard for the *Code of Practice on the Identification and Assessment of Special Educational Needs*². This states that counselling should be considered as a useful intervention in helping children and young people who are experiencing emotional and behavioural difficulties.

Section 7.60 in the Code states, in the section on behaviour, emotional and social development:

Children and young people who demonstrate features of emotional and behavioural difficulties, who are withdrawn or isolated, disruptive and disturbing, hyperactive and lack concentration; those with immature social skills; and those presenting challenging behaviours arising from other complex special needs may require help or counselling for some or all of the following:

- n flexible teaching arrangements
- n help with development of social competence and emotional maturity
- n help in adjusting to school expectations and routines
- n help in acquiring the skills of positive interaction with peers and adults
- n specialised behavioural and cognitive approaches
- n re-channelling or re-focusing to diminish repetitive and self-injurious behaviours
- n provision of class and school systems which control or censure negative or difficult behaviours and encourage positive behaviour
- n provision of a safe supportive environment.

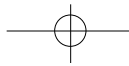
(In Wales, please refer to the Special Educational Needs Code of Practice 2002 (WAG)¹⁶.)

It is estimated that nationally about 20 per cent of the school population will have special educational needs at some time during their school careers.

Most school counsellors would believe they have a vital role to play in responding to the range of problems listed by the *Framework for the Assessment for Children in Need and their Families* (5.53)¹⁷.

Emotional and behavioural difficulties (EBD) may result, for example, from abuse and neglect, physical or mental illness, sensory or physical impairment, or psychological trauma. In some cases, EBD may arise from, or be exacerbated by, circumstances within the school environment. They may also be associated with other learning difficulties.

EBD may become apparent in a wide variety of forms - including withdrawal, depressive or



suicidal attitudes; obsessive preoccupations with eating habits; school phobia; substance misuse; and frustration, anger and threat of actual violence.

A school counsellor can help in supporting the child through EBD, whether the problems are brief or long-term. Counselling can also complement the learning support work identified in the *Special Educational Needs Code of Practice* and could help in the development of an Individual Educational Programme (IEP).

Alternative curriculum and non-mainstream school provision

Children and young people who are receiving support for additional educational needs, either in mainstream school or in non-mainstream school provision, may have developed EBD as a direct or indirect result of their additional need. Counselling can provide essential support for these pupils and can often mean that they are able to function in a mainstream school, thus supporting the move towards inclusion for all pupils. With the introduction of alternative curricula, counsellors have a vital part to play in ensuring that the needs of young people are met and that their views are given adequate consideration. Without this support they may be excluded, moved to a non-mainstream provision or even an out-of-borough placement. Should such a non-mainstream placement occur, children and young people in pupil referral units and special schools can benefit from counselling for the many emotional, physical and psychological factors that led to their being placed in special provision¹⁸.

Drug misuse prevention

The growing problem of drug misuse among young people poses a serious challenge to those who are managing pupils in schools. Responses are required which take account of the individual who misuses drugs as well as the wider school community. The developing understanding and awareness of the need for support and clear boundaries for behaviour are reflected in the DfES guidance on handling drug-related incidents (DfES/0092/2004)¹⁹.

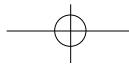
Counselling may be provided by trained counsellors either on school premises or those of external agencies. Counselling rarely focuses on drug issues alone, and can consider more holistic needs, which may underlie or herald drug-related problems. Counselling is only appropriate when a pupil wishes to take advantage of what it offers. It is usually neither constructive nor effective to impose it. (5.4.3)

Guidance has been developed by both the DfES and WAG. The WAG Circular builds on the all Wales strategy document '*Tackling Substance Misuse in Wales: A Partnership Approach*'²⁰. This circular states that in cases of substance misuse schools:

...will need to liaise closely with the social services and/or other service providers and agencies involved. The range of responses applied by the organisation for substance misuse incidents should be consistent with responses for other reasons. Action should not be harsher than that imposed by law. These responses may include:

- n *pupil assistance programmes*
- n *counselling referrals*
- n *in-house counselling*
- n *behaviour contracts*
- n *fixed-term exclusion*
- n *permanent exclusion.*

A counsellor working in a school may be able to assist by offering advice on policy development and on procedures to manage drug-related incidents, as well as providing counselling for the individual(s) concerned. Counselling is specifically identified as a valuable response in these situations.



Peer support projects

Peer support enables young people to use basic counselling skills in the service of their peers. The expertise of counsellors in the training and supervision of young people in peer support projects is invaluable in the success and development of these initiatives in schools. Counsellors may find it useful to refer to the *BACP Ethical Framework for Good Practice in Counselling and Psychotherapy*²¹ in this work.

Child protection and family support

The Children Act 1989¹⁴

A 'child' is defined by the Children Act 1989 as a person under the age of 18 years. This Act sets out the legal framework for public and private law relating to the care of children in England and Wales.

*It shall be the general duty of every local authority to safeguard and promote the welfare of children within their area who are in need by providing a range and level of services appropriate to those children's needs.*¹⁴ (Part 3, Section 17)

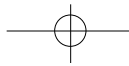
Schools carry an increasing responsibility to address the needs of children and young people in distress as a result of emotional concerns, behavioural problems, social and peer pressure, family tensions, bereavement and normal developmental issues. Where school counselling is available, surveys have shown that the services are well used by young clients and that early intervention can assist future wellbeing and emotional and psychological health.

*The NHS National Service Framework for Health*²² has identified mental health as a high priority and has recognised that services for supporting children's mental health need increased funding and development. The *National Service Framework for Children, Young People and Maternity Services*²³ has also recognised the need for closer links between Child and Adolescent Mental Health Services (CAMHS) and schools. School counsellors provide a cost-effective and readily accessible service for children and young people and are often the first point of contact for children and young people who may eventually be referred to CAMHS services.

The Department of Health *Framework for the Assessment for Children in Need and their Families*¹⁷ gives clear criteria to be considered when a child is being assessed to decide whether they are a 'child in need' or a 'child at risk'. The development of these criteria is based on a broader perspective of the child in the context of their own resources, their family and the environment in which they live. The *Framework* gives very clear guidance about respect for the thoughts and feelings of the child and family. Counsellors working with children and young people regard respect for the client as the central pivot of the counselling relationship. The *Working Together*²⁴ document outlines how all agencies involved in the care of children and young people should be contributing to a thorough understanding of all the factors affecting a child's development.

In Wales, the *National Service Framework for Children, Young People and Maternity Services in Wales (2005)*²⁵ sets out the quality of services that children, young people and their families have a right to receive and emphasises the need for service planners and providers to work in partnership and collaboration to deliver the standards. It aims to bring together all policy development for children and young people in Wales to achieve their potential and live healthy and satisfying lives. One of the key standards within the *Framework* is that:

all children, young people and their parents and carers have access to a range of services that promote health and wellbeing and prevent ill-health. The Framework expects that every school has access to appropriately trained advisers (to be locally determined), including named



health advisers, so that supportive and confidential advice and counselling services are available to all young people.

Local Health Boards, NHS trusts and local authorities are the key agencies in coordinating this provision.

The Children Act 2004

The Children Act 2004 followed on from the Laming Inquiry into the death of Victoria Climbié, where there were multiple failures in child protection systems designed to protect vulnerable children at risk of abuse. The preceding Green Paper, *Every Child Matters*²⁶, was presented as protecting and advancing 'the needs, interests and welfare of children' (2003a: 4), and 'putting children at the heart of policy development and service delivery' (2003a: 75). It has emphasised the need to develop pastoral care for all children, particularly through multi-agency teams based in extended schools. The main themes of the Green Paper were the need to:

- n reorganise and centralise fragmented systems of childcare services
- n reduce professional barriers to interdisciplinary cooperation
- n increase information sharing between professionals in order to target and respond to the needs of children at risk
- n introduce new statutory requirements on local authorities to promote and safeguard the welfare of children.

The newly set up children's services authorities are to establish Local Safeguarding Children's Boards, which will replace the previous (non-statutory) Area Child Protection Committees, which coordinated training for, and communication between, child protection agencies. Under these changes, the former Child Protection Register will be abolished and replaced by extensive arrangements for information sharing between agencies and professionals involved in working with children and families, in the form of databases on children. This will register professionals' involvement with children and identify cases of potential concern.

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Safeguarding children in education

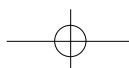
Linked to these changes, the DfES guidance *Safeguarding Children in Education* (DfES/0027/2004)²⁷, sets out a strong child protection policy agenda for Local Education Authorities, Further Education colleges and schools, including independent schools, in England. It supercedes DFEE Circular 10/95: Protecting Children from Harm: The Role of the Education Service. It needs to be read in conjunction with other key documents on child protection, such as:

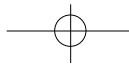
- n DH (1999) *Working Together*²⁴ (see revised consultation draft 2005)
- n DH (2000) Framework for the Assessment of Children in Need²⁸
- n DH (2003) *What To Do If You're Worried A Child Is Being Abused*²⁹

The guidance derives from s.175 Education Act 2002, which set out the statutory duty of the LEA to 'safeguard and promote the welfare of children'. It carries full authority, in that failure to have arrangements in place may lead to action by the Secretary of State. However, it should be noted that the duty to safeguard and promote the welfare of children falls on LEA's, and *not* on individual members of staff as originally publicised. The guidance contains a broad definition of 'safeguarding' i.e. to include all reasonable measures and actions, and is held to relate to a wide range of issues, such as child protection, pupil health and safety, medical needs, bullying and drug use.

The guidance raises a number of key areas for consideration in developing policy and practice guidelines, such as:

- n work experience and child protection
- n staff recruitment and criminal records checks





- n 'abuse of trust' offences by staff, even if not directly teaching the young person
- n a need to record fully any child protection disclosures
- n a need to consider the impact of drug or alcohol abuse or domestic violence by parents on the risk of abuse to young people
- n a need to consider issues of female genital mutilation and forced marriage as child protection issues
- n limits to confidentiality for young people in child protection cases.

This strong child protection agenda, backed by a statutory obligation on the LEA, has certain implications for counsellors working or delivering a service within schools, which will be explored more fully in the following sections.

Employing a counsellor in school

Personal qualities

A school counsellor needs to be aware of, and sensitive to, the different needs and demands that a school community imposes on clients and those who have responsibility for them. The counsellor should have some knowledge of the developmental issues of the client group and experience of working with children and young people. He/she will be approachable and have good listening skills with a manner that encourages a climate for safe and trusting relationships.

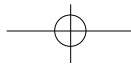
Qualifications

The personality and natural skills of the counsellor should have been reinforced with sound training. Given the vulnerability of the client group within schools, it is imperative that counsellors are qualified in stringent theoretical principles and able to demonstrate a high level of practice skills. They should have obtained, or be aiming for, BACP accreditation, United Kingdom Register of Counsellors (UKRC)³⁰ registration or equivalent.

Qualified counsellors will have completed either a diploma or degree course in counselling. Most universities and colleges offer these, along with some training organisations with specific expertise in this field. Details of these courses are available from the BACP central office and are also advertised in journals such as *Therapy Today* (BACP's monthly professional journal). National Vocational Qualifications (NVQs)³¹ have been introduced to the area of counselling qualifications.

Schools are advised to ensure that counsellors have completed an adequate number of training hours as part of their counselling training. BACP accredited courses have a minimum of 450 hours teaching time. In addition to training, a minimum of 100 hours supervised counselling practice, ideally working with children or young people, is required in applicants for school counselling posts. Counsellors working with children and young people should have additional specialised training in, and/or experience in working with, this age group. Training in play therapy or art therapy is recommended for those working with younger children.

Courses in counselling skills for professionals other than counsellors are usually short certificate courses and are on offer at most universities and colleges. These can be of benefit to people who work with children and young people in a specific role, for example, teachers, social workers, health workers and mentors. The Connexions³² personal advisers, who have a role to support young people between 13 and 19 years of age to access education, can also benefit from counselling skills courses. These skills can increase effective listening and communication but are not recognised as providing professional therapeutic counselling.



Criminal records checks

It is standard practice for counsellors in any setting having unsupervised access to children and young people to have to undergo a criminal record check. This may be organised by the LEA, individual schools or the agency employing the counsellor. Given the heightened sensitivity on this issue, checks are thorough and often time-consuming, and counsellors intending to work in an educational setting should allow time for these to have been completed before starting work. Additionally, all counsellors should be able to provide references as to their suitability for the post.

Trainee counsellors

If counsellors are not yet fully trained they should be working towards completing their qualification and accreditation and should only be engaged when a counselling service is well established in the school. Trainee counsellors should be placed with experienced, salaried counsellors who are able to monitor the trainee's work. Trainee counsellors should not be used in place of qualified counsellors to staff a school counselling service³³. Client contact time should be limited to a few hours per week.

All school counsellors, including trainee counsellors, whether qualified or in training, should be working within a recognised ethical framework such as that of BACP²¹.

Job description

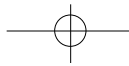
The job description of a counsellor working in a school is often based on a negotiated contract that takes into account the needs of the school, the pupils and the counsellor. The following illustrates the kinds of responsibilities that counsellors might undertake as part of their role in schools:

- n Offer pupils individual and/or group counselling; some services also provide counselling for parents and staff.
- n Develop a robust and widely agreed policy on confidentiality of client material.
- n Liaise with headteachers, governors, parents and, where appropriate, the Local Education Authority, in setting up the service, the working practices, and a suitable appointments system.
- n Provide information on the counselling service, the role of the counsellor and a clear understanding of the contract of confidentiality with clients.
- n Liaise with the pastoral management staff, special needs coordinators, year tutors, class teachers, governors, parents and support agencies.
- n Network with personnel from other agencies with a view to easing referrals and accessing specialist consultants, e.g. Child and Adolescent Mental Health Services.
- n (CAMHS)³⁴, and the Local Safeguarding Children's Board (formerly Area Child Protection Committee), together with agencies from health, social services, education and the voluntary sector.
- n Keep suitable case records on each counselling session in a secure place, in accordance with the Data Protection Act 1998³⁵ described in the section on record-keeping (page 25).
- n Present data to the senior managers and governors of the school on a regular basis showing the number of clients who use the services and the reasons for their referral to counselling, ensuring that clients remain anonymous.
- n Review and evaluate the service.
- n Attend supervision with a suitably qualified supervisor.
- n Devise, and where appropriate deliver, a programme of training to support and develop the counselling service.
- n Develop peer support schemes based on counselling values and listening skills.
- n Provide consultation to staff whose role is to support pupils in emotional distress.

Recruiting counsellors

Counselling posts in schools are normally advertised in some of the following:

Times Educational Supplement, education section of *The Guardian*, BACP's Counselling Jobs Online,



local press and local government online job opportunities. In line with equal opportunities practice, advertising jobs in the publications of ethnic minority groups is recommended.

Expert advice and supervision

Those seeking guidance on employing a counsellor may call BACP's Information Department for advice (0870 443 5252). Queries requiring a more specialised response are referred to subject specialists in the Counselling Children and Young People (CCYP) division of BACP.

Supervision

Counsellor supervision is usually referred to as 'external consultative support' and may be on an individual or group basis. Supervision is a formal arrangement for counsellors to discuss their work regularly with someone who is experienced in counselling and supervision. It is the overseeing of the client's work, its function being to both protect the client and support the counsellor. The main objective of supervision is to ensure that the counsellor maintains ethical competence and confidence in their counselling work with children and young people. The supervision process enables counsellors to think creatively so that they can give the best possible service to the client.

It is essential that counsellors have regular supervision in order to sustain professional counselling standards and to enable the quality of their work with clients within the school setting to be monitored. Suitable local supervisors for school counsellors can be found through BACP or other recognised counselling agencies. BACP keeps a directory of supervisors nationwide that may be accessed via its website (www.bacp.co.uk).

Requirements for supervision are clearly described in BACP's *Ethical Framework*²¹. BACP accreditation criteria currently specify a minimum of one and a half hours' supervision per month. This is relative to caseload and most school counsellors will require considerably more than this. Counselling without supervision is considered to be unethical.

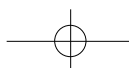
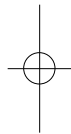
Counsellors will also require separate line management supervision to help with administrative requirements, accountability and the development of the service. This is not the same as counselling supervision and the two fulfil different functions.

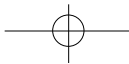
Accountability

The counsellor is ultimately accountable to the young client but the nature of their work in schools also means that the counsellor will be accountable to the organisation employing them and the institution where they work. Where the complex nature of accountability leads or may lead to a conflict of interest, counsellors must be prepared to declare any such conflicts of interest to clients as appropriate.

Contracts should reflect the negotiated agreement as to where the counsellor's accountability should lie. To this end contracts should take account of the counsellor's position in relation to the following:

- n information about the service given to parents, governors, school staff, children and young people
- n parental consent for non-Gillick competent children (see page 18)
- n systems of referral
- n sharing of information
- n liaison with other agencies
- n child protection procedures including the guidance and requirement from the Local Safeguarding Children's Boards





- n clarification of boundaries where counsellors have negotiated other responsibilities within their roles, such as coordinator of a drug misuse prevention programme
- n access to case records (see 'confidentiality', page18).

Terms and conditions of service

The practice of thorough contracting is vital in relation to setting up an effective counselling service within a school setting. Contracting is a concept that usually applies to clarifying the expectations of counsellor and the immediate client. This concept can usefully be extended to include a dialogue with key stakeholders from the host organisation, whether this is an LEA or school, and also those from the organisation that may be providing the counsellors to run the service. Contracting is necessary to set out, negotiate and agree the fundamental aspects of how the counsellor is to work, the ways in which they are accountable, and the policies that are to operate with regard to central issues, such as child protection and confidentiality. This document contains the main elements required for defining such a practice contract between school, counsellor, client (and counselling agency, if appropriate). It is essential that these issues be addressed and resolved in the early stages of setting up the service, rather than left to chance, or last-minute finalising in the context of a crisis or emergency situation. Clear contracting will provide the foundation for a coherent, consistent and effective counselling service, with appropriate boundaries well understood by all parties involved.

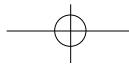
There are different types of contracts for employing school counsellors, giving rise to differences that will affect terms and conditions of service. Counsellors may be employed directly by a school, either as a full employee or on a self-employed sessional basis. In some areas, the Local Education Authority provides a counselling service that is centrally managed and resourced, with counsellors delivering the service to the schools in the authority. In this situation, counsellors may be employed directly by an LEA. A further variation is that in some LEAs counsellors are employed in the Inclusion or Additional Educational Needs Division.

In other areas, authorities link the counselling service to caring agencies such as health, social services and charitable organisations like the National Society for the Prevention of Cruelty to Children (NSPCC). In such cases, the counsellor is considered an employee of those agencies. Counselling can also be provided through an external agency such as a local counselling service or university counselling department. This arrangement may be funded by schools, local education authority, NHS, social services or by a combination of sources.

Salaries for counsellors are generally in line with the pay structure of the organisation that is funding the post and should reflect the professional nature of counselling and the responsibility undertaken. Terms and conditions will include pay, holidays, sickness benefit, pension contributions, supervision, insurance and membership of professional associations or organisations. Increasingly, counsellors are being employed as self-employed sub-contractors. Where this is the case, the contract is of particular importance and counsellors should take legal advice.

Insurance

Due to the sensitive nature of counselling young children and adolescents, counsellors should be fully aware of the risks of litigation arising from, for example, claims of negligence or breaches of confidentiality, and make sure that they have appropriate professional indemnity insurance. Volunteer and employed counsellors in schools and LEAs will normally be covered by the concept of vicarious liability for alleged acts of negligence carried out as part of their duties. However, it may be advisable to take out additional professional indemnity insurance cover, which can provide access to expert legal help and separate legal representation if necessary. The indemnity insurance cover afforded by professional teaching organisations is not sufficient for counsellors and they are strongly recommended to organise personal cover with a company specialising in this type of insurance. The names of suitable companies can be obtained from BACP.



Setting up the service

Types of counselling service

There are various ways headteachers can engage a counsellor to provide counselling in their school. Each structure will have distinct advantages and schools are advised to consider carefully their specific needs before choosing a particular service. The profile of the service is often based on what the headteacher, staff in school, governors and the counsellor consider to be best practice.

Capey³⁶ describes four different types of service:

- n School based counselling, with counsellors employed and managed directly by the school on a part-time or full-time contract.

This option offers the opportunity for the counsellor to become an integral part of the school community. Counterbalancing this, pupils may question the impartiality of the service, particularly where confidentiality is concerned.

- n Local Education Authority counselling service where peripatetic counsellors work in a number of schools and are employed and managed by the central LEA counselling service.

This type of service is one where the counsellor is seen as external to the school, an aspect that pupils may value. Counsellors can also enjoy being part of a counselling team; however, they often do not have the feeling of 'belonging' to a school and travelling can be problematic.

- n External agency counselling service: independent voluntary agencies, university counselling departments and local counselling services employ and manage counsellors and offer schools the opportunity to buy in their services.

Services managed by external counselling agencies are similar to an LEA service, but counsellors may find added benefit in being managed by an organisation that has a particular understanding of the work they are undertaking.

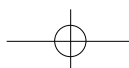
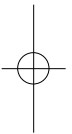
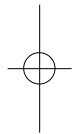
- n Referral counselling services: some services, like youth counselling services, provide drop-in counselling facilities to which schools can refer.

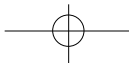
Counselling services that are external to the school enable pupils to have access to counselling where their attendance is truly confidential. However, the service must be available out of school hours, and young people may find it hard to remember appointments or to travel to the referral service.

Information about the counselling service

Information about counselling, and about the service provided, should be readily available and accurately presented in the school prospectus, pastoral care handbooks and information leaflets for students and parents. Many school counsellors also publicise their work by speaking in assemblies, pastoral care staff meetings and parents' evenings.

Printed publicity should be young person-friendly, and written and designed with the requirements of pupils with special needs in mind. A leaflet might contain, for instance, a paragraph that introduces the counsellor by name, a brief description of counselling and the reasons why a young person might want to speak with a counsellor, a section on the confidentiality that can be offered and details of how to make an appointment. Sample leaflets may be obtained through CCYP, the specialist BACP division for counsellors working with children and young people.





Facilities for the counselling sessions

The counsellor should hold the counselling sessions in a dedicated soundproof room where children and young people can feel safe and comfortable, away from the general flow of traffic. Ideally, the room should be furnished in a way that distinguishes it from a classroom or teacher's office. A secure place to keep case records, and access to a confidential telephone line are also required. Appropriate measures should be taken to ensure the safety and security of both counsellor and client (see BACP Ethical Framework²¹ for guidance).

Appointment system

It is the responsibility of the counsellor to make the appointment system as discreet as possible while at the same time acknowledging the limitations imposed by the school environment. Children and young people should be encouraged to take responsibility for their appointments and, where possible, arrange these directly with the counsellor. However, where this is impractical, appointments can be organised by other members of staff (appointment slips in envelopes can be passed on discreetly). Appointments should be rotated through the appointment schedule to ensure as much as possible that the pupil does not miss the same class repeatedly.

School procedures mean that children and young people who attend counselling during lesson time need to have their whereabouts accounted for. This usually means informing the class teacher that the child has a pastoral care appointment by means of a standard permission slip that does not identify the appointment as a counselling appointment.

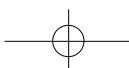
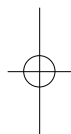
Referrals

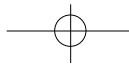
Referrals to the counselling service come from many people, including teachers, parents, outside agencies and peers as well as individual clients who self-refer. Children and young people have the right to refuse or discontinue counselling at any time and it is the responsibility of the counsellor to ensure that their rights of autonomy are respected. Consideration should be given to criteria for referral and assessment and priorities for appointments. It can be helpful for the counsellor to meet with pastoral care staff to establish protocols for referral.

Some of the most common reasons for referrals are family breakdown, anxiety, stress, bereavement, loss, abuse, peer relationship difficulties and bullying. The effect of the emotional upset often manifests as a change in behaviour, expressed in several possible ways. Some young people might become quieter or more withdrawn. Others may act out their feelings in a disruptive way, with an escalation of incidents and resulting in exclusion from school, or become disaffected and 'opt out' by truanting. Setting boundaries regarding unacceptable behaviour is not incompatible with the need to support the same pupil. Counselling can be an early intervention strategy to prevent deterioration in a young person's quality of life; it can increase the child or young person's ability to manage their emotional distress and thus engage more readily with their education.

A counsellor can be very effective working with the pastoral support structure of the school but it is often the 'independent' nature of the service that gives pupils confidence in having counselling with someone who does not play a part in the rest of their school life. It is important to recognise (and stress in any literature on a service) that pupils can only benefit if they want to be involved in the process of counselling. It is not acceptable for pupils to be referred to the counselling service against their wishes.

Counsellors consult with their external supervisor and/or line manager about the nature of referrals and the work being done with the client, ensuring that they always work within the limits of their own competence. Counsellors should be aware of all the relevant local and national support agencies and consider their roles in providing appropriate help for individual clients, making onward referrals where appropriate. Criteria for referral include a lack of





response to the present help being offered, the need for more appropriate help, help needed beyond the expertise of the helper and the client's own request for referral.

Giving advice and information about outside agencies in order to help young clients make informed choices is different from onward referral, where there will be direct contact with the outside agency on behalf of the young client. The latter procedure may involve informing parents; this should be done either by the headteacher or by an appropriate staff member at school. Headteachers cannot give permission for young people to go off-site for an appointment with another agency. This remains the responsibility of the person with parental responsibility.

Parental responsibility

Parental responsibility has been defined by the former Lord Chancellor as, 'the responsibility for caring for and raising the child to a properly developed adult both physically and morally'³⁷ and is generally understood to be the legally recognised authority of a person to make decisions regarding the care and control of a child. Parental responsibility may be held by persons other than the child's biological parents, such as a grandparent, or by a local authority according to a decision of the courts, and may also be acquired by the unmarried father of a child. Where it is unclear which adult holds parental responsibility, this should be clarified by the school as necessary, in order to avoid potential conflict or confusion over issues of parental rights and responsibilities for a given child or young person.

Contact time

It is recommended that counsellors spend no more than 20 hours per week in face-to-face counselling with clients. The length of individual sessions can vary, depending on the style and orientation of the counsellor, the needs of the child or young person and the school's timetabling structure. A session is usually about 40-50 minutes, or the length of a normal class period.

17

Dual roles within the same school

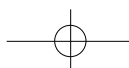
If the counsellor has negotiated another role in the school in addition to the role of counsellor (for example, the counsellor may also be a teacher) contact with clients outside the counselling time may be inevitable. However, careful consideration should be given to the wishes and views of the client about the nature of this contact. The counsellor has a responsibility to explore sensitively with clients, any conflict of interest that may arise, or whether the existence of the counselling relationship may be acknowledged in other settings.

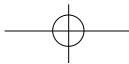
It would generally be the case that a teacher having another role as counsellor would not counsel a pupil that is currently in their class; the nature, purpose and power relations involved in the two roles are very different. This may be particularly acute where the counselling teacher is a pastoral head or member of the senior management team who is expected to perform a disciplinary function.

Evaluation and feedback to school management

Evaluating the school counselling service serves many purposes. It gives all of the stakeholders, including clients, a picture of how the service is working, highlighting both successes and areas in need of improvement. It can have up to three or more components:

n Pupil data such as gender, year group, presenting problem, number of sessions. Counsellors should undertake an ongoing audit of the service to provide feedback to senior management or pastoral staff, detailing numbers of appointments by year groups, gender and presenting problems and taking care to keep the data anonymous. This information may be





used to highlight areas of concern, to influence policies within the school (e.g. when a significant level of bullying is recorded) or to gain support in developing the counselling service. Information relating to individual clients would be a matter for negotiation between the client, counsellor, and school management (see Confidentiality section below).

n Service evaluation assessing pupil satisfaction with the service.

This type of evaluation seeks clients' views on the service they have received, asking questions about how the counselling has helped, and in what way, or, if it wasn't helpful, asking why. It would also include data such as gender, year group, ethnicity, and number of sessions.

n Measuring effectiveness

Besides audit and service evaluation it is useful to assess the effects of counselling through outcome measurement, using standardised questionnaires, semi-structured interview schedules and so on. Interesting areas of research include investigation of links between counselling, well being and educational attainment. Different types of evaluation require different types of measure; all types of evaluation incur costs. BACP's Research Department can advise on all types of evaluation. Samples of service evaluation may be obtained through CCYP.

Complaints procedure

If the school is an organisational member, or the counsellor an individual member, of the BACP, any complaint alleging a breach of professional standards should be carried out in accordance with the procedures outlined by BACP. If neither the school nor the individual counsellor is a member of BACP then a complaint cannot be acted upon by BACP. It is therefore important that there are clear complaints procedures included in any contract or job description for the school, service or organisation. In recruiting counsellors to new posts, employers are strongly advised to ensure candidates have membership of an association like BACP that has an effective, nationally recognised complaints procedure²¹.

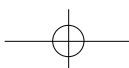
Confidentiality

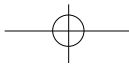
The guarantee of confidentiality is vital in enabling children and young people to express their distress in the counselling session. It is an essential element of the process if the relationship of trust is to develop between the counsellor and the client. While it is increasingly acknowledged that confidentiality is crucial to clients, whatever their age, it cannot be absolute in any counselling relationship. Problems in maintaining confidentiality are very rare where mutual goodwill, trust and respect exist between counsellor and school staff, between parents and school staff, and where pastoral care is aware of, and sensitive to, the rights and responsibilities of all parties involved. It is good practice to ensure that any informal understandings and agreements are set out in clear guidelines, agreed by all parties, in order to minimise later difficulties over their interpretation or their application to actual counselling practice.

Good practice dictates the use of a clear contract to explain to children and young people the boundaries of confidentiality a school counselling service can offer. Children and young people should not be offered levels of confidentiality that cannot be kept²⁸. It is the counsellors' responsibility to explain to pupils clearly and periodically exactly what this means in practice. They should be assured that the best decisions regarding confidentiality would be made in the interest of safeguarding and promoting clients' welfare, preferably with their knowledge and consent. Counsellors should do everything within their means to ensure that this is always the case.

Parents/carers, confidentiality and the Gillick principle

Parents and carers should be included in any publicity about the school counselling service and its overall approach to accepting and making referrals, the nature of support provided and its





policy towards respecting pupil confidentiality. While working in partnership with parents/carers can benefit the counselling relationship, there should be a clearly stated policy of a commitment to protect counselling confidentiality which sets definite limits to parental involvement, decisively underpinned by both ethical and legal factors.

Children and young people are increasingly aware of counselling as a source of support. Pupils are not only referred to the service by adults; they too make requests for counselling. In response to this, the counsellor must consider the young person's capacity to meet the criteria embodied in the Gillick principle if the young person wants to have counselling without their parent(s)' consent or against their parent(s)' wishes. According to Lord Scarman,

*...parental right yields to the child's right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision.*³⁹

Counsellors implementing the Gillick principle need to consider how they can substantiate their assessment of 'understanding and intelligence'. This should be assessed with reference to appropriate theory and practice (see suggested format in Appendix, page 30). This assessment of Gillick competence should also consider the age and developmental stage of the young person, the nature of the problem, their ability to act autonomously, and acceptable precedents within society. Competence in young people can be impaired by circumstances like serious learning difficulties, extreme stress and drug misuse.

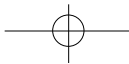
Young people who are considered Gillick-competent can have access to counselling without their parent(s)' permission or against their parent(s)' wishes. This recognises the rights of the young person to confidentiality, as confirmed by recent case law (*Axon v Secretary of State for Health* [2006] EWHC 37 (Admin)).

In secondary schools, where more children are likely to be Gillick-competent, many parents, governors and school staff feel that a young person's use of counselling is in keeping with adolescent development towards independence. These adults will make every effort to ensure that appropriate levels of confidentiality are established and maintained in parallel with the increasing age of the young person.

Parental consent is not required for counselling a child under 16 who is judged as an individual to be Gillick-competent. Whether the headteacher of the school is automatically to be informed of the names of pupils attending for counselling should be clarified as a crucial matter of policy and practice for the school pupil counselling service. It may be decided that the child's right to confidentiality as established by Gillick also extends to the right of privacy of information concerning his or her actual attendance at counselling. This right to pupil confidentiality can be seen to include privacy of any information regarding attendance at counselling, unless there are overriding reasons, such as risk of self-harm, which require that this information is shared directly with senior management. Where information revealing the identity of pupils attending counselling is passed on to the headteacher, disclosing such information clearly only applies to attendance at counselling sessions, and not to the actual *content* of the counselling sessions.

In primary schools, where children are much less likely to be Gillick-competent, there is usually an understanding by the child that, while the majority of the counselling is kept confidential, there may be some sharing of information and liaison with parents and school staff, with the child's knowledge and consent. This is especially so for the counselling situation in school where third parties such as parents and teachers may have access to some of the information about the individual client's situation and their reason for referral. In practice, the school usually seeks parental consent for children of this age group to attend counselling, except in circumstances involving alleged abuse of the child by a parent or guardian.

Counselling children and young people in schools exposes many areas where the law fails to provide unequivocal guidance and there are many ethical dilemmas for school counsellors and their employers. The need to protect children will be a guiding principle, taking into account,



however, their right to privacy and confidentiality as part of any decisions made regarding disclosures. The law regarding confidentiality and young people is ever-changing and counsellors should endeavour to keep up to date with current legislation and case law. Advice is available from many agencies, including lawyers employed by the Local Education Authority, and via agencies such as the Children's Legal Centre⁴⁰. BACP members may discuss any ethical difficulties with the Ethical Helpline team at BACP (0870 443 5227), which is supported by a network of experienced practitioners. Such advice will be informed by an understanding of case law, the Data Protection Act 1998³⁵ and of Article 8 of the Human Rights Act 1998, which affords young people as citizens the right to respect for privacy and the UN Convention on the Rights of the Child of 1989. Useful advice is contained in the BACP publication, *Confidentiality, Counselling and the Law*⁴¹.

Confidentiality in schools

Counselling confidentiality is a key aspect of therapeutic work in providing space for the child to explore difficult issues and make choices for themselves in an atmosphere of privacy and trust. The strict boundaries of counselling confidentiality may be unfamiliar to school staff, who may work much more on the basis of an inclusive, team-based approach towards sharing information, either between themselves or with parents. It may be wrongly assumed by teaching staff that parents have a right, firstly, to give or withhold consent to their child having counselling in school, and secondly, to know of the content of any such counselling. Clearly, these assumptions are in direct conflict with the Gillick principle as outlined above, which affords confidentiality to young people under 16 of 'sufficient understanding'.

Duty of care

Schools and teaching staff have a duty of care in law towards their pupils. The standard against which this is judged in legal cases is the concept of *in loco parentis*, or the standard of care to be expected of 'a careful parent'. This standard does not mean that teaching staff take on full parental responsibility for pupils in their care (the key concept of 'parental responsibility', introduced by the Children Act 1989, replaced earlier notions of 'parental rights' as such). Teaching staff are required only to take 'reasonable care' of pupils.

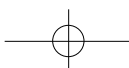
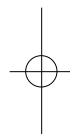
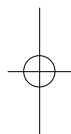
*A person who does not have the parental responsibility for a particular child but has care of the child may do whatever is reasonable in all circumstances of the case for the purpose of safeguarding or promoting the child's welfare.*¹⁴ (3.1,3.5)

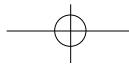
In the past, teaching staff have sometimes assumed that the standard of being *in loco parentis* means that parents have a right to give or withhold permission for their child to receive confidential counselling. This is incorrect, as it conflicts with the firmly established right of a young person under 16 of 'sufficient understanding' to confidential counselling under the Gillick principle, recently confirmed by the Axon case. Access by young people to this right of confidentiality is not limited in law solely to healthcare settings or to medical matters. Furthermore, promoting and maintaining the young person's entitlement to confidentiality could be seen to be consistent with the LEA's statutory duty 'to safeguard and promote the welfare of the child', under s.175 Education Act 2002.

The example of confidential information in the context of drug-related incidents in school illustrates this very clearly. The DfES guidance emphasises the duty of care of school staff, for which the concept of being *in loco parentis* simply provides the relevant legal standard:

School staff have a legal duty of care towards pupils in their care. This is interpreted in case law as the duty to act as a careful parent would. DfES/0092/2004¹⁹, Appendix 3.

The guidance further clarifies the need to maintain confidentiality, even in the context of drug related incidents at school:





In managing drugs schools need to have regard to issues of confidentiality. Teachers cannot and should not promise total confidentiality. The boundaries of confidentiality should be made clear to pupils. If a pupil discloses information which is sensitive, not generally known, and which the pupil asks not to be passed on, the request should be honoured unless this is unavoidable in order for teachers to fulfil their professional responsibilities in relation to:

- n *child protection*
- n *cooperating with a police investigation*
- n *referral to external services*

Every effort should be made to secure the pupil's agreement to the way in which the school intends to use any sensitive information. DfES/0092/2004¹⁹(4.3.)

It is extremely significant that the guidance on handling such a sensitive issue is framed, correctly, without reference either to the assumed right of parents to know, or to the role of the teacher as being *in loco parentis*. The school counselling policy on confidentiality could well benefit from using this kind of model as a template for its design.

A school's confidentiality policy should, therefore, be firmly grounded in law, taking into account child protection guidelines, and should state clearly the rights and responsibilities of all parties involved i.e. young people, parents/carers and schools. It should enshrine and respect children's right to privacy as well as their right to be protected. Implementation of the policy should be handled sensitively and it should be circulated to all staff, parents, governors and students.

Child protection incidents, confidentiality and counselling

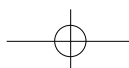
The *Framework for the Assessment for Children in Need and their Families*¹⁷ gives social workers clear criteria on which to base an assessment for deciding if a child is 'in need' or 'at risk of significant harm'. These criteria take into account the resources within the child, the family and the environment in which the child is growing up. This assessment, based on the definitions in the Children Act and backed up by the *Working Together*²⁴ document, will help to activate the most appropriate support for the child or young person.

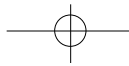
The Welsh Assembly Government has implemented the *Children First*⁴² programme to transform the management and delivery of social services for children in Wales. The programme impacts upon all children in need, including looked after children, children with disabilities and care leavers. It is designed to protect children in care from abuse or neglect and the programme aims to ensure that social care workers and foster carers are appropriately skilled, trained and qualified and to promote the uptake of training at all levels. In addition, the *Extending Entitlement*⁶ strategy envisages that all young people in Wales aged 11-25 have a basic entitlement to counselling services and personal support and advice where and when needed and in appropriate formats with clear ground rules on confidentiality.

It is now accepted that 'children in need' are to be prioritised alongside 'children at risk of significant harm' to enable the necessary early intervention of family support to be implemented as a preventative strategy before the situation deteriorates. This is to redress the balance from the previous trend where 'children at risk of significant harm' in need of urgent child protection became the exclusive criteria to activate support in the form of child protection procedures.

In situations where there is a concern about child abuse, then there is a strong expectation that school staff will report the suspected abuse to the designated person in the school who will, in turn, inform the headteacher and contact the local child protection team. This is clear from the following policy documents:

*Everyone working with children and families should...refer any concerns about child abuse or neglect to social services or the police. If you are responsible for making referrals, know who to contact in police, health, education and social services to express concerns about a child's welfare.*⁴³ (DH, 2005: 4)





...a teacher will need to discuss confidential information with the year head and the headteacher more frequently than with a social worker. Pupils and their parents would expect such discussions to take place within the school, so there will usually be implied consent. But if not (e.g. if you disclose information that a child has asked you to keep a secret) you will have to decide whether the circumstances justify the disclosure.²⁹(DH, 2003, 46)

The need to follow reporting procedures will be strengthened by reference to the LEA's statutory duty to 'safeguard and promote' the welfare of children. However, the guidance from the Department of Health recognises that there may be conflict of duties where a young person making a disclosure of abuse, but not wanting it to be acted upon, is also owed a duty of confidentiality. This is explicitly recognised in the guidance as a problematic issue:

A decision whether to disclose information may be particularly difficult if you think it may damage the trust between you and your patient or client. Wherever possible you should explain the problem, seek agreement and explain the reasons if you decide to act against a parent or child's wishes.⁴³ (DH, 2005: 17)

A duty of confidence may be owed to a child or young person in their own right. A young person aged 16 or over, or a child under 16 who has the capacity to understand and make their own decisions, may give (or refuse) consent to a disclosure. Otherwise a person with parental responsibility should consent on their behalf.²⁹(DH, 2003: 46)

In this situation, the counsellor may be faced with a conflict of duties between maintaining confidentiality and protecting the child or other children potentially at risk. It may be assumed that the need to safeguard children will always take precedence over the child's right to autonomy and to confidentiality. However, if this is the case, then this should be clearly indicated in the confidentiality policy that is made known to all parties in the school.

Counsellors should therefore ensure that they have a clear understanding regarding the procedures for referral to social services. A discussion about these procedures and the school's child protection policy with the teacher who has designated responsibility for child protection issues is essential when a counselling service is introduced into the school.

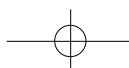
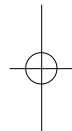
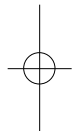
Allegations of suspected or alleged child abuse can be reported to either of the two investigatory agencies – social services or the police - or to the NSPCC. For volunteers and those employed by non-statutory agencies and voluntary organisations, there is no mandatory duty to report child abuse under statute or common law. However, many practitioners adopt protocols in line with Local Safeguarding Children Board procedures.

Counsellors working with young abused clients may be required to give evidence in court about the abuse. They are advised to liaise with the Crown Prosecution Service (CPS). It is good practice to inform the relevant solicitor of the client's wish to start or continue with counselling. The CPS Guidance on Pre-Trial Therapy⁴⁴ recognises that, 'in the best interest of the child', children and young people who express a wish for counselling have a right to access this support. Further information on confidentiality and counselling can be found in the section on page 22

Counselling and sharing information

Working practices and procedures regarding confidentiality for counselling have to be placed within the context of the school environment. Counsellors should recognise the importance of working as part of the pastoral care structure and make every effort to establish protocols for giving general feedback to referrers within that system. This can be done by agreeing with the client what may be shared and can often amount to a simple acknowledgment of the referral, either written or verbal.

There is a long-standing tradition in schools of teachers working together with parents and sharing information in the best interests of the child. While respecting the confidential nature of



the counselling sessions, counsellors in schools are sometimes asked to share information about their young clients:

- n A headteacher may seek a discussion with a counsellor about the client when there are major concerns about the child's welfare. The client should be consulted as to what information can be shared (outside of child protection issues) and may be invited to attend such a discussion.
- n Some peripatetic counsellors ask staff to support clients in the period between counselling appointments and therefore may, with the client's knowledge and permission, share some information.
- n Counsellors working as part of a multi-agency team are sometimes invited to attend case conferences with a view to sharing information. The client needs to be consulted about the conference and their thoughts and feelings need to be taken into account regarding any sharing of information.
- n Counsellors working with children with special educational needs may need to liaise with their parents. This needs to be done in consultation with the child.

A wide range of people can make referrals to the service and there may be situations where the counsellor, at the client's request, will act as an advocate and pass on the views of the young client to other people. Counsellors need to be sensitive to the wishes and interests of other parties as well as to those of the client and exercise careful professional judgment when difficult situations arise. It is likely that these situations will be more common in school than in any other counselling environment.

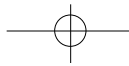
Counsellors should encourage young clients to communicate with their parents/carers whenever possible and offer support to this end where it would benefit the young person's welfare. Whenever it is decided that information is to be shared, children and young people need to be involved, on the principle of supporting their autonomy. The sharing of information should firstly be the responsibility of the young client, with the support of the counsellor, if that is requested.

Child protection and sharing information

In the case of potential child protection concerns, events may develop that could lead to the counsellor considering that a breach of confidentiality is necessary in the interests of the child's safety. This only relates to those occasions when the counsellor has strong grounds for thinking that an individual might be at risk of significant harm from themselves or others. Counsellors should explain the procedures and possible consequence of involvement by other agencies and seek the client's views and consent. Any sharing of information with other agencies, involving a breach of confidentiality, should be kept to a minimum and should be concerned only with the issues at hand. Such a breach of confidentiality should not extend to other areas of the client's present or past life that are not relevant to the situation.

The counsellor needs to consider his/her responsibilities towards the rights of the young client and the level of risk from significant harm. A preliminary consultation with the local social services child protection team can often help in the assessment of the level of risk, where the client's situation is discussed in general terms without specifically naming the child. In the same way, it may also be helpful to consult the Local Education Authority Child Protection Coordinator. This enables the counsellor to gain specialist advice and guidance and helps in considering the level of risk from a more informed perspective, while also maintaining confidentiality until a clear choice has been made as to the best interest of the client. This would be particularly important in deciding whether to break confidentiality without the consent of the client.

Decision-making about sharing confidential information needs to be clearly informed by the *BACP Ethical framework for good practice in counselling and psychotherapy*¹³, as well as by statutory requirements applying within the school. This will require the counsellor to balance the gains to be achieved by promoting the welfare of the child, and by avoiding harm, against



countervailing principles of respecting autonomy and promoting trust in the integrity of the counselling relationship. These are, by their nature, complex ethical and professional decisions to make, for which supervision and consultation with experienced colleagues are essential.

One of the issues to be considered is the likely effect of going against the wishes of the child or young person who is then subsequently unwilling to cooperate with other agencies. This may lead the child to deny all of the information shared by the counsellor regarding the child protection concern and consequently decide to discontinue with the counselling, as an angry response to a breach of confidentiality to which he or she did not agree. It is important to consider this alongside the need to protect other children involved in the same incident or situation who are at risk of significant harm.

If a client is unwilling to give their consent, and the counsellor decides to break confidentiality against their wishes due to the serious level of risk, then they should still inform the client that the information and concerns are to be shared with another agency to help keep them safe. This means that the client can have some power over when, where and with whom the information is shared unless extenuating circumstances dictate otherwise. It is important that the child or young person's safety is paramount in any decisions taken.

When preparing to share information, either to respond to a request or to make a referral to another agency, it may help counsellors, preferably in consultation with a professional colleague, to consider the following issues:

- n What are the views of the client on the sharing of any information?
- n Does the client fully understand the implications of sharing information?
- n Who is requesting the information and what is their relationship to the client?
- n For what purpose is the information required?
- n How relevant to the matter in question is the information held by the counsellor?
- n To what extent do other persons already know this information?
- n What is the likely effect of the sharing of information upon the client?
- n Are there any overriding legal or ethical requirements?

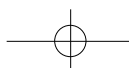
Clients should also be consulted on what information is to be shared and allowed to see any written material that is to be shared with other agencies.

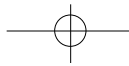
Life saving treatment and suicide

The term 'Gillick competence' should not be taken to mean that a Gillick-competent child could refuse, as well as consent, to treatment. The law does not allow young people under 18 to refuse life-saving treatment⁴⁵. There is growing concern about the increase in suicide attempts among young people and recognition of the need to take such threats seriously. There is also a general view that young people may be acting upon impulse to transitory stress rather than prolonged depression and that suicide can therefore be prevented in those cases if help is provided.

It should be recognised that children and young people who are depressed and in despair about their situation may, at times, express this despair in suicidal thoughts. Counsellors need to consider with the client the level of risk if these thoughts are acted upon and be aware of the possible need for the client to be referred for a mental health assessment. The counsellor will need to consult with his or her supervisor whenever appropriate to think through the situation carefully.

Accordingly, in the case of a young person threatening suicide or similar action, there is a general acceptance of the need for an interventionist strategy even when this involves breaking confidentiality. Counsellors are advised to seek appropriate and immediate medical help for the young person. Those who have parental responsibility for the child should be informed unless there is alleged abuse.





Crime and confidentiality

The duty to maintain confidentiality does not preclude the counsellor from reporting crime to the authorities. However, this is, generally speaking, a common law *right* to report actual or intended crime in the wider public interest, rather than a legal *requirement* to do so. Alternatively, a duty to report crime may be specified in the terms of a contract of employment, for example. Failure to do so would then become a matter for disciplinary proceedings by the education authority, rather than necessarily constituting a breach of the law in itself. There is specific protection under the law for persons passing on information about crime to the authorities, such as to a Youth Offending Team, under the Crime and Disorder Act 1998. There are also certain very specific situations where counsellors are *required* to pass information to the authorities, and *without* revealing this action to the client, in the case of terrorism and drug money laundering.

One problematic area for counsellors relates to unlawful sexual activity by young people. Sexual activity under the age of consent is a criminal offence under the Sexual Offences Act 2003. It is classified as statutory rape for children under 13, for which there is no defence in law. Professional opinion is currently divided on whether there is an over-riding professional duty to report under-age sexual activity as a child protection issue, particularly for those under the age of 13. Some child protection policies require automatic reporting of penetrative sexual activity by under 13 year olds as a matter of potential child abuse. Other agencies, especially those working in the field of sexual health, prefer to adopt a stance of protecting confidentiality and to continue working with the child concerned in order to empower and support the child concerned.

Counselling and case records

Earlier legislation gave pupils over 16 and their parents a qualified right of access to education records. The current situation is complex and dependent upon future decisions of the courts regarding the detailed application of more recent data protection legislation.

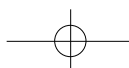
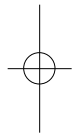
The Data Protection Act (DPA) 1998³⁵ replaced the 1984 Act of the same name, and the Access to Personal Files Act 1987. The Education (School Records) Regulations 1989 (SI1989/1261) have also been revoked. Under the DPA 1998, access to records is widened from computer files to include manual files kept in a systematic fashion, i.e. as 'relevant filing systems'. The position of counselling records within a school counselling service is not directly specified, but can be deduced from the wording of the Act.

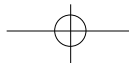
Under Schedule 11, 5.68 of the Act, an 'educational record' refers to any record of information which:

- (a) is processed by or on behalf of the governing body of, or teacher at, any maintained or special school in England or Wales; or education authority or self-governing school in Scotland
- (b) relates to any person who is or was a pupil at the school (including further education in the case of Scotland)
- (c) was supplied by, or on behalf of, an employee, teacher, pupil or parent.

This very broad definition of 'educational record' would include the recordings made by an educational psychologist, for example, where working under contract to a special school not maintained by a LEA (this situation is the closest parallel provided by the Act to that of a counsellor providing a service to schools). The content of an 'educational record' continues to exclude information processed by teachers solely for their own use, however.

According to these criteria, and the clear purpose of the Act in extending the rights of pupils as 'data subjects' to transparent and accessible recording systems, school counselling records would logically be classified as a part of the 'educational record' (the parallel situation here would be with counsellors working in primary care, where counselling records would become part of a 'health record' kept under the overall guidance of a 'health professional' as specifically defined by the Act). Along with social work records, health and educational records





are covered by specific sections of the Data Protection Act 1998, and later guidance in the form of Statutory Instruments.

Access by pupil or parent

Access to education records in the UK is governed by SI 2000 No 414 (see: www.parliament.the-stationery-office.co.uk). Under this guidance, access is potentially available to a child or person with parental authority, with certain exceptions. Access to an 'educational record' (and to a school counselling record if it is thus defined as being part of the 'educational record') may be *denied* where there are concerns about child protection, where access to the record would result in 'serious harm', either physical or mental, to the data subject (i.e. child) or to any other person, or where information may identify third parties, such as other pupils, but this provision does not apply to teachers.

The child as client has a general right of access to records, as a 'data subject' set out by the DPA 1998. Specific access by parents and children to education records in England is set out by separate regulations (SI 2000/297). There is no age limit restricting pupil access to educational records, but where the pupil is incapable of understanding the request, it can be made on their behalf by a parent. While there may be independent requests from parents to gain access to these records, these requests need to be considered in the light of the client's best interests. According to guidance from the Information Commissioner, under data protection law parents have an independent right of access to 'educational records', despite objections by the child.

This could potentially lead to a situation where a parent was seeking to gain access to confidential counselling material held as part of the child's education record, against the child's wishes and, presumably, those of the counsellor. Such a situation could be prevented by use of Schedule 2, Section 4(3) 6(1) of the Data Protection Act 1998, on the grounds that any such processing or disclosure 'is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject' (i.e. the child concerned).

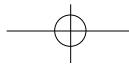
A further challenge to a parent's seeking access to confidential school counselling records may also be possible under Article 8 of the Human Rights Act 1988, on the grounds that responding to the parent(s)' request against the child's wishes may be undermining the child's own right to privacy and confidentiality. Parents do not, however, have a right of access to information that does not form part of the official education record of their child.

A request for access needs to be dealt with within 15 school days, rather than the normal 40 day period allowed for this purpose. A charge of between £10 and £40 can be made, according to the amount of copying required⁴⁶.

Unless specified by regulations such as the above, access to education records elsewhere in the UK is governed by the Data Protection Act 1998.

Counselling process notes

Many counsellors keep personal process notes for the purpose of monitoring the feelings generated by their work, or for discussion during supervision and training. These notes are intended to be a professional aide memoire and many counsellors assume that they belong as of right to the counsellor. However, any permanent part of the counselling records should be considered to constitute part of the child's education record, as described above. It is therefore important that the policies and procedures negotiated by the school or employer and the counsellor regarding care records and counsellor's process notes are clearly thought through. Since counsellor process notes are aides memoires and used for the purpose of supervision they should be kept no longer than necessary before being shredded. The school or employer can insist that such client records form part of the overall 'educational record', and should therefore be kept securely on school premises, with all the associated rights of client access. However, it



does not follow that counselling and process notes would necessarily have to be kept physically within a specific client file accessible to non-counselling staff, such as teachers or managers, as this could seriously compromise client confidentiality. Their overall role as a record would be principally determined by their status as a component part of the child's 'educational record', rather than by their role and purpose as a record of counselling activity as such.

In view of the above, counsellors in schools need to be aware of the general presumption of client access, unless access is to be denied under the grounds of reference to child abuse information, or the likelihood of 'serious harm' occurring. In practice, some counsellors already operate a system of open access to all case records, which is consistent with the spirit of data protection legislation.

Child abuse investigations and pre-trial therapy

An exception to this principle of open access concerns information that may become evidence in a joint investigation by the police and social services into alleged child abuse. Where schools do not have their own official recording sheets, specific arrangements will have to be made. In these circumstances, counsellors need to give consideration to making appropriate case notes. Counsellors and their clients need to be aware that the courts may require such notes at a later date.

In exceptional circumstances involving alleged child abuse, school counsellors may be asked to provide counselling for a child where a criminal prosecution of the alleged abuser(s) has been initiated by the police. School counsellors would not normally find themselves in this position without having made a clear prior agreement with the child and the relevant authorities to work on this agreed contractual basis. In view of concerns by the Crown Prosecution Service (CPS) that such counselling is not seen to contaminate or undermine the child's future evidence in court, it is essential, according to CPS guidelines, that the counsellor

- n works within negotiated boundaries for the focus of the therapy
- n avoids any rehearsal of the child's evidence
- n keeps clear, detailed notes which are potentially available for use in the criminal trial.

Guidance is provided by the Home Office (2001) *Provision of Therapy for Child Witnesses Prior to a Criminal Trial: Practice Guidance*⁴⁶. In practice, school counsellors may find in this situation that meeting the child's need for therapy and the requirement to avoid revisiting the original abuse may well come into conflict.

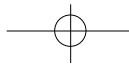
Access to counselling records by the courts

There may be occasions when counsellors are asked to appear in court or to produce their notes. They are not obliged to do so unless they are served a court order. Counselling records, including process notes, may be requested by the courts during hearings about the welfare of children, such as matrimonial proceedings, wardship and adoption hearings.

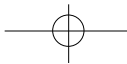
Although sensitive to the counsellor's dilemmas, and given that evidence is often ruled as inadmissible because it is hearsay, courts can nevertheless issue a court order for counsellors to appear in court and reveal information from their records. While clearly needing to comply with any such court order, it is possible to communicate with the court about what would be seen to be in the best interests of the child concerned. Increasingly the courts are giving more attention to the expressed needs and wishes of the child or young person, as evidenced in cases of adoption and parental contact. In this situation, advice from the legal department of the LEA may be helpful in limiting disclosure of confidential counselling material that is not relevant to the court proceedings in hand. Counsellors may also be covered by the terms of their own professional indemnity insurance cover to obtain legal advice, in order to make representations to the court in the appropriate manner to limit disclosure of non-relevant sensitive client information.

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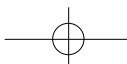
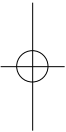


Appendix

Assessing competence to consent by children and young people

The following guidance is based on the Fraser Guidelines and adapted for application to counselling.

Factors to consider	Checklist for questions
Immediate issues	
Child's age: Gillick test:	How <i>old</i> is the child or young person? Does the child or young person <i>understand</i> the counselling or advice? Are they <i>refusing</i> to allow their parents to be informed? Do their best <i>interests</i> require that the advice or counselling be given without parental consent?
Short-term issues	
Nature of contact: Support systems: Nature of the immediate issue or problem: Child protection responsibilities:	Is the contact with the counsellor or therapist controlled entirely by the child or young person? (e.g. emergency phone call, drop-in centre) What support does the child or young person have access to alongside or in the place of counselling or therapy, should contact be broken or withdrawn? What is the degree of risk, if <i>any</i> , posed by the child to him or herself or to others (e.g. drugs, abuse, suicide, arson)? Is the risk significant, immediate or longer term? Is the counsellor or therapist <i>required</i> by their conditions of employment, or agency policy, to report all suspected child abuse to social services?
Longer-term issues	
Stage of cognitive and emotional development:	Does the child or young person <i>understand</i> <ul style="list-style-type: none"> n the nature of the issue or problem? n their own needs and the needs of others? n the risks and benefits of counselling or therapy? Does the child or young person have <ul style="list-style-type: none"> n a sense of their own identity? n a sense of time, past, present and future?
Source: Jenkins, 1997: 216-7 (abbreviated version)	



Useful contacts

Antidote

5th Floor, 45 Beech Street, London EC2Y 8AO;
020 75885151; www.antidote.org.uk
Promotes emotional literacy to enhance learning, wellbeing and community

Association for Child and Adolescent Mental Health (formerly ACCP)

St Saviours House, 39-41 Union Street, London SE1 1SO; 020 7403 7458; 020 7403 7081 (fax); www.acpp.org.uk; accp@accp.co.uk

Association for Professionals in Service for Adolescents (APSA)

1 Arun House, River Way, Uckfield, East Sussex TN22 1SL; 01825 760886; www.apsa-web.info

Brook Advisory Service

165 Grays Inn Road, London WC1X 8UO; 01076 178000; 01078 338182 (fax); www.brook.org.uk

Child Psychotherapy Trust

Star House, 104-108 Grafton Road, London NW5 4BO; 020 7284 1355; 020 7284 2755 (fax); www.childpsychotherapytrust.org.uk

Childline 50 Studd Street, London N1 0QW;
020 7239 1000 (admin); 0800 1111 (helpline); www.childline.org.uk

Kidscape

2 Grosvenor Gardens, London SW1W 0DH;
020 7730 3300; 020 7730 7081 (fax); www.kidscape.org.uk
Teaches children about personal safety including ways of dealing with bullying, becoming lost and approaches by strangers or known adults who wish to abuse them

Mental Health Foundation

20/21 Cornwall Terrace, London NW1 4QL;
020 7535 7400; 020 7535 7474 (fax); www.mentalhealth.org.uk

National Pyramid Trust

84 Uxbridge Road, London W13 8RA; 020 8579 5108 (tel and fax); www.nptrust.org.uk

National Children's Homes (NCH)

See www.nch.org.uk for area offices
NCH Action for Children works with vulnerable children, young people and their families, including young offenders, victims of child sexual abuse and children with disabilities

Newpin

35 Sutherland Square, London SE17 3EE;
020 7358 5900; 020 7701 2660 (fax); www.newpin.org.uk
Aims to prevent cyclical effect of destructive family

behaviour, to prevent child abuse, to raise the self-esteem of parents and promote good practice in caring for children

NSPCC

Weston House, 42 Curtain Road, London, EC2A 3NH; 020 7825 2500; 0808 800 5000
Child Protection Helpline; 020 7825 252542 (fax); www.nspcc.org.uk

Parentline Plus

Unit 520, Highgate Studio, 53-59 Highgate Road NW5 1TL; 020 7284 5500; 0808 800 2222
Helpline; www.parentlineplus.org.uk
A national helpline for parents under stress

The Children's Legal Centre

University of Essex, Wivenhoe Park, Colchester, Essex CO4 3SQ; 01206 872 466; 01206 874 026 (fax); 0845 456 6811 Advice line; www.childrenslegalcentre.com

The Samaritans

www.samaritans.org.uk; 08457909090 Helpline; jo@samaritans.org.uk Email Helpline

The Who Cares Trust

Kemp House, 152-160 City Road, London EC1V 2NP; 020 7251 3117; 020 7251 3123 (fax);
Email: mailbox@thewhocarestrust.org.uk; www.thewhocarestrust.org.uk
For those who have been in care

Trust for the Study of Adolescence

23 New Road, Brighton BN1 1WZ; 01273 693311; 01273 679907 (fax); www.tsa.uk.com
For the advancement of knowledge about adolescence and the promotion of public and professional education with respect to this stage of human development

YoungMinds

48-50 St John Street, London EC1M 4DG;
020 7336 8445; 020 7336 8446 (fax); www.youngminds.org.uk
National charity committed to improving the mental health of all babies, children and young people

Wales

Children's Commissioner for Wales

Oystermouth House, Charter Court, Phoenix Way, Llansamlet, Swansea SA7 9FS; 01792 765600; 01792 765601 (fax) or Penrhos Manor, Oak Drive, Colwyn Bay, Conwy LL29 7YW; 01492 523333; 01492 523336 (fax); post@childcomwales.org.uk; www.childcom.org.uk

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