
Shared Insights

Safeguarding Forum:

The challenges
caused by disordered
eating in education,
health and social
care settings

7 November 2023



Introduction

The session was chaired by

Browne

Legal background – Statutory guidance, consent, capacity and parental responsibility

Vicky Wilson, Senior
Associate, Browne Jacobson

Role of school nurse

There is a recognition that the need for mental health support is increasing the DfE is providing funding to support a training programme for Senior Mental Health leads to support the whole school approach to mental health. Funding should be available by 2025.

Consent and confidentiality

There are three elements to consent:

1. Must have capacity
2. Must be acting voluntarily not under undue influence
3. Must be appropriately informed

This applies to the individual or anyone giving consent on behalf of a child.

The legal position concerning consent and refusal of treatment by those under the age of 18 is different from the

17.

With capacity

Young people are presumed to be capable of consenting to

Legal background – Parental Responsibility and Information Sharing

Vicky Wilson, Senior Associate, Browne Jacobson

a local authority or other authorised person who holds an emergency protection order

Foster parents do not automatically have parental responsibility.

PR can take a number of forms and essentially entitles the individual to have a say in important decisions relating to the child.

As only a person exercising parental responsibility can give valid consent, in the event of any doubt then specific enquiry should be made.

Consent given by one person with parental responsibility is valid, even if another person with parental responsibility withholds consent. However, the courts have stated that a

one person with parental responsibility against the wishes of another.

Where persons with parental responsibility disagree as to

advisable to refer the decision to the courts.

From a safeguarding perspective, the guidance [Working Together to Safeguard Children 2018](#) covers situations involving parental consent where abuse or neglect is suspected. In such instances, practitioners should not

In an emergency, it is justifiable to treat a child who lacks capacity without the consent of a person with parental responsibility, if it is impossible to obtain consent in time and if the treatment is vital to the survival or health of the child.

Information sharing

There is a lot of unpicking that needs to be done before you can answer a simple question like: can I share this piece of information with this person or organisation?

Who is the data controller?

Who is the data subject and how old are they?

What is the data about?

Who is asking for/needs the data?

Why does it need to be shared?

The [seven golden rules to sharing information](#) include the reminder that the Data Protection Act 2018 and human rights law are not barriers to justified information sharing, but instead provide a framework to ensure that personal information about living individuals is shared appropriately.

Health data is special category data under the UK GDPR and so you will need a lawful basis and a lawful condition for processing.

Lawful basis under GDPR could be:

Consent; Contract; Legal obligation; Vital interests; public task; legitimate interests

Conditions for processing under DPA 2018 include:

Health or social care purposes;

Support for individuals with a particular disability or medical condition;

Counselling; and

Safeguarding of children or individuals at risk.

If there is intended to be regular sharing of information, is there an Information Sharing Agreement in place?

Conduct a DPIA (Data Protection Impact Assessment) when using new technologies and the processing is likely to result in a high risk to the rights and freedoms of individuals.

Ed explained that inevitably staff in the healthcare setting will

Risk assessments

Where they should be placed or supervised.

How good is the risk assessment that is undertaken?

Is the risk assessment by a school, a healthcare organisation or a mix of both?

Move away from tick box forms. These can be really good reminders of points to consider but they also need to demonstrate adequate assessment/consideration has been given.

A signed consent form that has not been completed properly is not valid consent.

Be mindful that measures must be justified and be the least restrictive we can be to assist that young person.

Discussion

We discussed a number of topics, including

Practical examples of collaboration (see page 5)

The impact of delays and waiting lists for CAMHS particularly since COVID and the reliance on the education sector to provide support in the interim

The need for training of school nurses to be in a position to have a greater input on mental health support.

The importance of early intervention

How to support children with a medical condition, with regard to their transition to other settings, i.e. the creation of a healthcare plan to ensure that support and care is continuous.

How we can help

This session covered a number of complex legal topics. Our contact details are on the next slide if you would like to discuss a particular issue or case.

We also have resources and training packages that you might be interested in, including:

Complaints Management Support Pack

<https://www.brownejacobson.com/products/complaints->
