Law Society of Scotland

Consultation Response

Scottish Government consultation: Supporting children and young people with healthcare needs in schools – Draft guidance for NHS boards, education authorities and schools

April 2017

Introduction

The Law Society of Scotland (the Society) is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's legal profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective legal profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom governments, parliaments, wider stakeholders and our membership.

The Health and Medical Law Sub-committee welcomes the opportunity to consider and respond to the Scottish Government consultation: Supporting children and young people with healthcare needs in schools. The committee has the following comments to put forward.

Comments and question responses

Q1 - Is the information provided in the introduction clearly set out?

Yes, in our view the information is well set out and, subject to our comments below, is generally clear.

Q2 – Chapter 1 Does this chapter provide sufficient reference to the relevant policy and legislative provisions?

We note that Chapter 1.6, and throughout the guidance, reference is made to the parent/carer. However, we suggest that these terms are vague and not clearly defined within the context of the guidance. We also note that there is no mention of those who may have rights and responsibilities to a child which may have been obtained through, and conferred by, the courts. We suggest that the children this will relate to may be especially vulnerable. Therefore there should perhaps be a requirement for a more focussed approach with increased communication between the school and those deemed to have rights and responsibilities which may have been removed from a child's parents and conferred on others.

We also note that reference is made in Chapter 1 and throughout to the role of a Named Person which is a key part of the *Children and Young People (Scotland) Act 2014*.[1] The 2014 Act formalises what should happen in the 'getting it right for every child' (GIRFEC) approach, which is already in operation in many parts of Scotland. It aims to ensure that health boards and local authorities make a Named Person available to every child and young person. However, these plans have been delayed for a second time as the Scottish Government announced it will bring in new legislation on how and when information on youngsters should be shared in 2018. This needs to be taken into account.

Q3 – Chapter 2 - Are there any areas missing, requiring strengthening, or which are not required and could be removed?

We note that there is no mention of 'Relevant Persons'. Under the 2014 Act the following people are automatically considered to be a Relevant Person:

- Any parent (whether or not they have parental rights or responsibilities)
- Any other person who has parental rights and responsibilities (obtained through the courts).

This means that other people, for example foster carers and kinship carers, can be deemed to be a 'Relevant Person'. The test for being deemed a Relevant Person is that the individual has, or recently has had, significant involvement in the upbringing of the child.[2]

<u>Parental Engagement</u>

As a working collaboration between health and education, we suggest that authorities should be mindful of the effect of parental involvement and potential cost-effectiveness of this. Recent research has suggested and concluded that schools need to place parental engagement at the centre rather than the periphery of all that they do: *'Parental engagement in children's learning makes a difference- it is the most powerful school improvement lever that we have'.*[3]

The evidence produced suggests that levels of achievement can be raised by increased parental engagement. Therefore, it follows that parental engagement with the school could have far reaching beneficial effects to a child's overall health and wellbeing. It would be easier to identify a child who is 'at risk' of having unmet healthcare needs, where there is little or no response from parents to efforts to engage by the school where there are definite opportunities for them to do so.

[1] http://www.legislation.gov.uk/asp/2014/8/pdfs/asp_20140008_en.pdf
[2] http://www.scra.gov.uk/wp-content/uploads/2016/03/Foster-Carers-Relevant-Persons.p
[3] Dr. Janet Goodall Presentation - Using Parental Engagement to Narrow the Gap

Chapter 4 - Are there any areas missing, requiring strengthening, or which are not required and could be removed?

Defibrillators

Sadly children and young people can suffer sudden cardiac arrest, as well as the older population. Medical experts believe many children could be saved if a defibrillator is used within minutes of collapse.[4] However, there is currently no requirement to ensure defibrillators are on school premises.

A recent Freedom of Information (FOI) request shows that only five of the 26 local authorities in Scotland which responded have defibrillators situated in all of their secondary schools.[5] Four Scottish local authorities do not have defibrillators in any secondary schools. Around 3,500 people in Scotland undergo attempted resuscitation for cardiac arrest outside hospital each year, but only five per cent survive to hospital discharge. Medical research has shown that use of a defibrillator within 3-5 minutes of cardiac arrest can increase survival rates to as much as 75%.[6]

The FOI evidenced that out of 88 primary schools in Edinburgh; only one had a defibrillator installed. This can be contrasted with North Ayrshire where 100% of primary schools are equipped with a defibrillator - although it is recognised that Edinburgh has the highest percentage of defibrillators within secondary schools. We use this opportunity to suggest that the Scottish Government consider making defibrillators available in all schools across Scotland.

Anaphylaxis

Anaphylaxis is a severe allergic reaction that is rapid in onset and may result in death. Since it is unpredictable and potentially fatal, prompt recognition and treatment are vital to maximize a positive outcome. We note that the guidance only refers to this once (para 74) although, as we understand, over the last decade the highest increase in rates of hospital admissions has been in in school-aged children. This was noted in the published research paper - *Serious Shortcomings in the Management of Children with Anaphylaxis in Scottish Schools:*

> *"Most schools with children considered to be at risk of anaphylaxis report using personal care plans and having a member of staff trained in the use of, and with access to, adrenaline. The picture is, however, less encouraging in schools without known at risk children, both in relation to*

[4] https://www.yumpu.com/en/document/view/36395335/death-in-children-and-young-people-in-the-uk-part-d-final-3
[5] FOI by the Scottish Liberal Democrats:
[6] http://www.gov.scot/Publications/2015/03/7484/3

staff training and access to adrenaline. The majority of schools with at risk children have poorly developed strategies for preventing food-triggered anaphylaxis reactions. There is a need for detailed national guidelines for all schools, which the Scottish Executive must now ensure are developed and implemented". [7]

We suggest that further consideration should be given to providing greater information on Anaphylaxis within the draft guidance.

Capacity

We note that paragraph 99 provides that '*There should be an assessment of the child's or young person's capability to manage their health needs and carry their medication…*'. However we further note that there is no guidance by whom or how this assessment is to be carried out. This may raise confusion and uncertainty.

[7] Serious Shortcomings in the Management of Children with Anaphylaxis in Scottish Schools: http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.0030326

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