



# Underage Sexual Activity Guidance

The purpose of this briefing is to provide guidance and information. Serious Case Reviews have identified that there is confusion in relation to underage sexual activity, which can leave practitioners struggling to distinguish between sexual abuse, sexual exploitation and/or underage sexual activity. This can prevent victims of abuse being identified and reported. It is essential that workers are curious and inquisitive when they become aware of underage sexual activity as the child may view what's happening as consensual, however this does not mean that they are not being exploited.

Children from the Brooke SCR told us:

*“Know it is really embarrassing to talk about sexual things to adults, especially if the sexual experience has hurt you. We want professionals, including sexual health nurses and GP’s to ask better questions, be more inquisitive and if necessary to examine us when we ask for morning after pills, or seem very young for contraception. We may have hidden bruises and marks, so do not take everything we say at face value. Don’t get so hung up on confidentiality, sometimes you need to share what we have said”*

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### 1. Introduction

Many children will develop healthy and developmentally appropriate interest in sexual relationships whilst they are still young, and some will do this before they reach the age of consent

Cases of underage sexual activity are likely to raise difficult issues for practitioners, and need to be handled with particular sensitivity. The **Sexual Offences Act 2003** sets out the law in relation to all children and young people under the age of 16 (see appendix 2)

This guidance is designed to support/assist practitioners working with children to assess and identify where relationships/activity may be abusive and the young people may be in need of the provision of additional support services and/or protection.

The guidance recognises the balance, which needs to be drawn between young people's access to, confidential sexual health services alongside promoting and safeguarding their welfare.

Practitioners should always be alert to any indicators that a child may be at risk of Child Sexual Exploitation.

The **legal age of consent** is 16 for both females and males. This is the legal age regardless of the gender or sexual orientation of a person and whether the activity is between people of the same or different sex. This means that it is an offence for anyone to have any sexual activity with a person under the age of 16. However, it is important to note that, that the Home Office and CPS guidance is clear there is no intention to criminalise teenagers under the age of 16 where they are of similar age and there is mutual consent. It is also an offence for a person age 18 or over to have sexual contact with a person under the age of 18

if the older person holds a position of trust (for example a teacher or key worker). It makes a separate distinction for children under 13 for whom any sexual activity should be considered at risk of **Significant Harm** and Child Protection Procedures should be followed. (Please note: Wiltshire Police has a Vulnerability Strategy, which states that they will not unnecessarily criminalise young people. This supports Home Office and CPS guidance and also the National Police Children and Young Persons Strategy).

## **2. Assessment Criteria/Risk of Harm Indicators**

Practitioners will come into contact with young people in a variety of settings and will have varying degrees of responsibility for their welfare and sexual health needs. However, all practitioners should be aware of the potential for sexual relationships to be abusive and the need for further action to be taken which may necessitate a referral to Children's Social Care. Where there are urgent concerns about the welfare of a child/young person an immediate referral should be made to Children's Social Care.

Understanding the nature of any particular behaviour and the facts surrounding the actual relationships of those involved is critical to the assessment process. In making these judgments, practitioners should consider the holistic needs of the child/young person and the specific issues outlined below:

- The age and maturity of children or young people; sexual activity at a young age is a strong indicator that there are risks to the welfare of the child (whether boy or girl)
- What is known about the child's living circumstances or background
- Previous child sexual abuse
- Whether the young person is able to understand, and give informed consent to the sexual activity they are involved in e.g. whether the child is Fraser Competent (See appendix 1)
- Under the terms of the Sexual Offences Act 2003 children under the age of 13 years old, are not legally capable of giving consent;
- The nature of the relationship between those involved, with particular weight being given to the child/young person's age and the issues outlined relating to the power imbalance;

- Whether overt aggression, coercion or bribery was involved including the use of substances (e.g. alcohol or drugs), as a disinhibitor;
- Whether the young person's own risk-taking behaviours, for example the use of substances, places them in a position where they are unable to make an informed choice about the activity;
- Any attempts to secure secrecy by the sexual partner beyond what would be considered usual in a teenage relationship;
- Whether the sexual partner is known to the agency as having other concerning relationships;
- Whether the child/young person denies minimizes or accepts the concerns for their welfare;
- Whether methods used to silence, secure secrecy and/or compliance by the sexual partner is consistent with behaviours considered as an act of 'grooming'. Grooming is likely to involve efforts by a sexual predator (usually older than the child or young person) to befriend a child/young person by indulging or coercing her/him, for example with gifts, treats, money, and drugs. An abuser may also seek to develop trusting relationships with the child/ young person's family with a view to developing a relationship with the child or young person. They may also use other media to develop such relationships, e.g. internet, chat rooms etc.

### **3. Power Imbalance**

Understanding the nature of any particular behaviour and the facts surrounding the actual relationship of those involved is critical to the assessment process. Practitioners need to be mindful of the issues relating to power imbalances. They occur through the differences in size, age, material wealth, and/or psychological, social and physical development/ability, where gender, sexuality, race/culture/faith and the levels of sexual knowledge are exploited to exert such power.

Where a child/young person has a learning disability or communication difficulty and cannot easily communicate their wishes and feelings the issue relating to their consent to sexually active behaviour may equally be exploited. There will also be a power imbalance if the young person's sexual partner is in a position of care and trust.

If the child/young person is accompanied by an adult, the practitioner should consider whether the nature of this relationship gives any cause for concern.

#### **4. Disabled Children and Young People**

Disabled children and young people are more likely to be abused than non-disabled children/young people. Their vulnerability to a non-consensual sexual relationship is greatly increased if they are living away from home, have difficulties with communication and language, or are subject to the use/misuse of substances, including medication. In assessing whether a relationship presents a risk of harm to a disabled child/young person, practitioners need to consider the indicators listed in Safeguarding Disabled Children in light of these additional vulnerabilities. Disabled children and young people may be particularly vulnerable to abuse of power (see above).

#### **5. Information Sharing Confidentiality**

Confidentiality is an issue that causes much anxiety for young people. As a result many young people are reluctant to approach carers/ practitioners for the fear of personal information being discussed widely with other practitioners and/or parents without their consent. It is therefore important that all concerned understand the boundaries of confidentiality.

Every practitioner has a duty to **Safeguard and Promote the Welfare of all Children** and young people. It must always be made clear to children and young people as soon as reasonably possible or appropriate and throughout any working relationship, that the duty of confidentiality is not absolute, and that there will be circumstances where the needs of the child or young person, or other children and young people, can only be safeguarded by sharing information with and acquiring information from other agencies. There is therefore a need for all practitioners to balance the child or young person's need for advice and treatment and the right to confidentiality with the need to ensure their safety.

Information sharing between agencies is always permissible if it is to safeguard a child/young person's welfare.

Any practitioner who is concerned about the risks associated with the sexual activity of a child/ young person should in most circumstances, discuss these concerns with the child/ young person first. Consent where appropriate should be obtained from the child/ young person for the information to be shared with their parent/carer (including corporate carer e.g. local authority foster carers, residential

social workers and social workers), particularly where arrangements are being made to respond to pregnancy or sexual health needs. The practitioner should also discuss this with their safeguarding lead and/or line manager.

Where the child/ young person refuse to give consent, practitioners should proactively encourage the child/young person to involve their parent/ carer or to identify another relative who could act in this capacity.

In all circumstances where there is an indication that the child/ young person may be at risk of harm as a result of their sexual activity, practitioners should make appropriate enquiries to determine this. This may include discussion with other members of their own agency or other involved agencies. Consent from children and young people should be sought for this, except where to do so this would:

- Place the child/young person at increased risk;
- Jeopardise any potential Police investigation;
- Place practitioners at risk.

When making these judgments, practitioners may find it helpful to refer to the principles of the **Fraser** guidelines (see appendix 1). Although these are written specifically in relation to Health Advice services, their principles can be applied more widely.

The decision to share information with parents/ carers/ legal guardians will be informed by the nature of the concerns and information exchanged, consultation between relevant agencies and the factors below. Where the young person is withholding their consent, the practitioner will be required to use their professional judgement and consideration should be given to the following additional factors relating to the child/young person:

- Age and maturity;
- Development, understanding and maturity;
- Ability to comprehend the implications and risks to themselves.

The practitioners involved need to be mindful of the family background/circumstances and the issues relating to the parents'/carers'/guardians' ability and commitment to protect the child/young person. The conduct and welfare of children and young people rests heavily with parents/carers/guardian. Practitioners should therefore acknowledge their role and encourage the child/young person, at all points, to share information with their parents/carers/guardian wherever it is safe to do so.

All discussions with the child/young person, parents/carers and other agencies should be recorded, giving clear and informed reasons for the professional decisions made and actions taken or not.

## **6. Open cases to Children's Social Care**

Where a child is already an open case to Children's Social Care, any new safeguarding concerns should be responded to by contacting the Social Worker and following the processes.

## **7. Procedures and Thresholds for Referring to Children's Social Care**

### **Procedure for dealing with Individual Cases Where Abuse is suspected**

Any agency or practitioner who considers a child or young person's sexual activity/relationship, is or is likely to cause them or another child/ young person significant harm, should make an immediate referral to Children's Social Care.

Where practitioners would find it helpful in decision-making, discussions can take place with Children's Social Care without this necessarily constituting a referral. Practitioners may also make contact with Children's Social Care for advice without divulging the name of the young person in question. However, practitioners in all settings should be mindful of their personal and professional responsibility to take action where abuse is suspected.

The following specific guidance should be followed relating to different age groups of children/young people:

### **Children under the Age Of 13**

Children under the age of 13 years are not legally capable of giving their consent to any sexual activity (Sexual Offences Act 2003 See appendix 2) and are clearly more vulnerable by virtue of their age. Under the Sexual Offences Act, penetrative sex (including oral sex) with a child under 13 is rape.

Children under the age of 13 years, must always be referred to Children's Social Care.

Any sexual activity within this age group should be carefully considered within the agency or organisation. This judgment will always include a discussion between the practitioner and their line manager/nominated person for child protection within

their agency. In making this decision, practitioners and their managers should be mindful of the guidance within **Working Together 2015**.

"Where an allegation concerns penetrative or other intimate sexual activity, there would always be reasonable cause to suspect that a child, whether a boy or girl, is suffering or is likely to suffer, significant harm. There should be a presumption that the case will be reported to Children's Social Care".

Where a referral has been made to Children's Social Care and there are grounds to believe an offence has been committed, the referral will always be discussed by Children's Social Care with the Police and a strategy for investigation agreed. Equally if such a referral has come to the Police, they will inform Children's Social Care and agree a strategy for investigation.

All cases involving under 13s should be fully documented including detailed reasons for all decision making.

### **Both Partners/Young People Aged 13, 14 And 15**

Sexual activity with a young person under the age of 16 remains a criminal offence. Where it is consensual and both parties are under the age of 16, there still may be serious consequences for the welfare of these young people.

Young people in this category should be assessed fully against the indicators of abuse. Within this age range, the younger the child/young person, the stronger the presumption that the sexual activity is a matter of concern.

Where there is concern that the young person is suffering or may be at risk of suffering **Significant Harm** then a referral should be made to Children's Social Care.

In all other cases the agency should determine how they will meet the identified needs of both children and young people within the normal limits of their agency's role and responsibility, with the assistance of agency partners as appropriate.

Again, all cases should be carefully documented including where a decision has been made not to share information.

### **Child/Young Person under the Age of 16 and Partner Over 16 Years**

Alongside considerations outlined above, particular attention should be given to the age and identity of the older partner. As a guide, the greater the age difference between partners the higher the concern will be.

Practitioners should carefully consider a referral to Children's Social Care in these situations.



## **Safeguarding Young People 16 And 17 Years**

All young people under the age of 18 fall within the scope of these procedures.

Consensual sexual activity where both parties are over the age of 16, is not a criminal offence. However, there are exceptions:

- Where there are issues relating to Child Sexual Exploitation (under 18);
- Trafficking (any age);
- Sexual activity with a person with a mental disorder (under 18);
- Sexual activity with a family member (be it a child or adult relative);
- And where there are issues regarding the production of indecent images of children under 18.

Young people over the age of 16 but under the age of 18 are deemed unable to give consent to sexual activity with any adult in a position of care/trust or a family member as defined by the Sexual Offences Act 2003.

Where concerns are thought likely to persist beyond the young person's 18th birthday and they are deemed a **Vulnerable Adult**, early discussions should take place with appropriate Adult Care Team to ensure a smooth transition to protection under the local Vulnerable Adult Protection Procedures.

## **8. Children's Social Care Response**

In all cases involving under 13s, where a referral has been made to Children's Social Care, they will discuss the referral with the Police to agree how the matter should proceed. A Strategy Discussion or meeting should take place. All agencies are expected to provide such information as is necessary to ensure full discussion of the concerns can take place. Health practitioners should always be involved in strategy discussions.

For all other cases involving 13 - 15 year olds where a referral has been made, Children's Social Care will check if relevant information, including intelligence, is held by relevant agencies.

Where no information is held by the Police, Children's Social Care will make a decision, based on all available information, whether a referral to the Police is necessary. In this area health practitioners should be seen as particularly useful when making judgements.

Any decision whether or not to refer to the Police should be made in conjunction with the manager/supervisor and the reasons for this fully recorded.

Where, following consideration of all available information, there is reasonable cause to suspect **Significant Harm** to a child/young person has or is likely to occur, a referral and a **Strategy Discussion** will always take place with the Police in order to decide the appropriate course of action.

Depending on the nature of concerns and outcome of discussions, there are a number of possible actions that Social Care and/or Police may decide to pursue:

- a. The reported sexual activity of the young person is not considered to be causing harm. If there are no other concerns that have been identified no further Police or Social Care action is required. The child/young person however will be signposted to an appropriate agency for sexual health and relationship advice and guidance;
- b. Where there are areas of concern further enquiries will be undertaken and an assessment of need **S.17**, or assessment of risk **S.47** will ensue;
- c. Where the information provided and/or further enquiry indicates that the child/young person is suffering or likely to suffer significant harm a single agency (Children's Social Care) or joint Police and Children's Social Care **S.47** investigation will be undertaken and an appropriate plan of intervention will be agreed;
- d. Where the child or young person appears to be a Child in Need a multi-agency meeting will be held to plan to plan and c-ordinate, which agencies should be involved and what support will be provided.

## **9. Police Response**

The Police response to each referral will be determined by the individual circumstances of that case. Decision making should always be made with partner agencies via multi-agency strategy discussions/ meetings and will be informed by this guidance and the child protection procedures.

## Appendix 1

### Fraser Guidelines

It is considered good practice for workers to follow the Fraser guidelines when discussing personal or sexual matters with a child under 16. The Fraser Guidelines give guidance on providing advice and treatment to children under 16 years of age without parental consent providing that:

- The child understands the advice that is being given;
- The child cannot be persuaded to inform or seek support from their parents /carers, and will not allow the worker to inform parents/carers that contraception/protection, e.g. condom advice is being given
- The child is likely to begin or continue to have sexual intercourse without contraception or protection by barrier method
- The child's physical or mental health is likely to suffer unless they receive contraceptive advice or treatment;
- It is in the child's best interest to receive contraceptive advice and treatment.

## Appendix 2

### Sexual Offences Act 2003

Definition of 'consent' to sexual activity

**'A person consents if he or she agrees by choice to the sexual activity and has the freedom and capacity to make choices' Sexual Offences Act 2003**

**CHOICE** The test for choice is whether the child or young person felt able to say 'No'

**FREEDOM** Was the child or young person physically free to get away from the situation or were they being held against their will?

**CAPACITY** Did the child or young person have the maturity to make the right decisions, do they understand the possible consequences of complying? Were they intoxicated at the time so did not have the capacity to choose? The law not

only sets down 16 as the age of consent, it also applies to whether a person has given consent to sexually activity, or was able to give their consent, or whether sexual violence and rape in particular took place. In the context of child sexual exploitation, the term 'consent' refers to whether or not a child understands how they consent, how they withdraw consent and what situation such as intoxication, duress, violence can compromise the child or young person's ability to consent freely to sexual activity.

## **References**

'Sex without Consent, I suppose that is rape'. How young people in England understand sexual consent' Coy M, Kelly L, Elvines F, Garner M & Kanyeredzi, A (2013)

Department of Health, Working together to safeguard children 2015: a guide to inter-agency working to safeguard and promote the welfare of children.

Sexual Offences Act 2003