



SEXUALLY ACTIVE CHILDREN November 2007

1. Introduction

- 1.1 Children and young people under the age of 18 usually have some degree of interest in sex and sexual relationships. The major task for child protection agencies is to ensure that all children and young people are given appropriate protection from sexual abuse, whilst ensuring that they are also able to access advice and treatment about contraception, sexual and reproductive health including abortion.
- 1.2 It is the responsibility of all professionals to accurately assess any risk of significant harm when a child or young person is engaged in sexual activity. These procedures are intended to assist those working with children and young people in responding appropriately to needs and risks
- 1.3 NB. Where there are indications of actual or risk of exploitation to a child/young person, also refer to BSCB procedures on **Child Sexual Exploitation**.

2. Legislation

- 2.1 The minimum age at which young people of either gender can consent to have sexual intercourse is 16 years, regardless of their sexual orientation.
- 2.2 Sexual activity with a child under 16 (or under 18 if the adult is in a position of trust) is an offence. Where it is consensual it may carry a less serious criminal penalty, but may nevertheless have serious consequences for the welfare of the child.
- 2.3 With respect to a child under the age of 13, her/his consent to any sexual activity is irrelevant because the law presumes s/he is incapable of giving consent. Under the Sexual Offences Act 2003, rape or assault by penetration of a child under 13 may attract a sentence of imprisonment for life.
- 2.4 Girls and boys under the age of 16 cannot lawfully (though may in practice) consent to sexual intercourse. Anyone engaging in sexual activity (as defined in the Sexual offences Act 2003) with a child under the age of 16 is committing an offence.
- 2.5 It is also an offence for anyone to have sexual intercourse with a child aged over the age of 16 and under the age of 18, where the adult is in a position of Trust.
- 2.6 Children under 13 years of age are presumed to be incapable of consent to sexual activity and specific offences, including rape, exist for the child victims under this age.
- 2.7 The Sexual Offences Act 2003 makes provision for young people of less than 16 years old, to be offered confidential professional advice on contraception, condoms, pregnancy and abortion.

2.8 In offering such advice, a person is not guilty of aiding, abetting or counselling a sexual offence against a child where s/he is acting for the purpose of:

- Protecting a child from pregnancy or sexually transmitted infection
- Protecting the physical safety of a child
- Promoting a child's emotional well-being by the giving of advice

2.9 This exception, in statute, covers not only health professionals, but also anyone who acts to protect a child e.g. teachers, school nurses, Connexions personal advisers, YOS officers, youth workers, social workers and parents.

3. Confidentiality

3.1 The duty of confidentiality owed to a person under 16 in any setting is the same as that owed to any other person, but the right to confidentiality is not absolute.

3.2 Where there is a serious child protection risk to the health, safety or welfare of a young person or others this outweighs the young person's right to privacy.

3.3 Research and experience have shown repeatedly that keeping children safe from harm requires professionals and others to share information. Such information sharing must be in accordance with legal requirements and professional guidance.

3.4 On each occasion that a young person is seen by an agency, consideration should be given as to whether her/his circumstances have changed or further information has been given which may lead to the need for a referral or re-referral.

3.5 Professionals working with young people have different statutory responsibilities both with regard to advice given to young people and the actions they take when aware of under-age sexual activity. These differences are detailed below:

4. Health Staff

4.1 Doctors and other health professionals should consider the following issues when providing advice or treatment to young people under 16 on contraception, sexual and reproductive health.

4.2 If a request for contraception is made, doctors and other health professionals should establish rapport and give a young person support and time to make an informed choice by discussing:

- The emotional and physical implications of sexual activity, including the risks of pregnancy and sexually transmitted infections
- Whether the relationship is mutually agreed and whether there may be coercion or abuse
- The benefits of informing the GP and the case for discussion with a parent or carer. Any refusal should be respected. In the case of abortion, where the young woman is competent to consent but cannot be persuaded to involve a parent, every effort should be made to help them find another adult to provide support e.g. another family member or specialist young worker
- Any additional counselling or support needs

4.3 **Web Link:** Best practice guidance for doctors and other health professionals on the provision of advice and treatment to young people under 16 on contraception, sexual and reproductive health – DoH gateway reference 3382).

4.4 It is considered good practice to follow the Fraser guidelines when discussing personal or sexual matters with a young person under 16 (Lord Fraser, House of Lords ruling in case of *Victoria Gillick V West Norfolk and Wisbech Health Authority & Department of Health and Social Security* 1985). These hold that sexual health services can be offered without parental consent providing that:

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

5. Education Staff

5.1 Young people need to be able to talk to a trusted adult about sex and relationship issues. Although it is desirable that this person is their parent or carer, this is not always possible. The law allows staff to respect young people's rights to confidentiality when discussing sex and relationship issues and a disclosure of under-age sex is not of itself a reason to break confidentiality.

5.2 Young people should be made aware that confidentiality might be breached if they or another young person is at risk. In these circumstances staff should consult the young person and endeavour to gain their co-operation to a child protection referral, but if that is not possible, they should be advised that their confidentiality would be breached.

6. Police and Children's Social Care Staff

6.1 Whilst police and Children's Social Care staff may provide advice and guidance to a young person involved in under-age sexual activity both agencies have specific responsibilities with regard to criminal activities.

6.2 Children's Social Care staff should inform police of actual and suspected criminal offences at the earliest possible opportunity in order to consider jointly how to proceed in the best interests of the child. Any decisions not to do so must be made at a senior level and recorded on the child's file.

6.3 Recent guidance for Children's Social Care staff indicates that as *Working Together* is issued under s.7 of the Local Authority Social Services Act 1970, a decision not to inform the police where an offence has been committed against a child should only be made where 'exceptional circumstances justify a variation' (LASSL (2004) 21).

6.4 This is likely to be where the sexual relationship is considered consensual and not abusive and may be most relevant in respect of Children in Care where Children's Social Care is also acting as the 'corporate parent' for the child.

6.5 In those circumstances it may be more important that the child receives appropriate advice regarding sexual health and contraception. This may be difficult if the young

person is concerned that the police will be involved. Such a decision should always be made following consultation with line managers and recorded.

- 6.6 The police must formally record contact made by an agency. An incident will be recorded as a crime where, on the balance of probability an offence defined by law has been committed and there is no evidence to the contrary.
- 6.7 The police must investigate all criminal activities even if they may decide there is no need for prosecution.
- 6.8 The priority for the police is the identification and investigation of under age sexual activity where the relationship is abusive, either by being intra-familial in nature, or where there is a significant age/power gap between the parties involved.
- 6.9 Where young people of similar age are involved in consensual sexual activity, or in other sensitive cases, the police role may be confined to the undertaking of information checks only. In such cases police will not become directly involved in the investigation unless enquiries by the police or other agencies indicate the relationship is in fact abusive.
- 6.10 Both police and Children's Social Care staff together may decide that there is no need for prosecution but young people should be advised that their confidentiality cannot be maintained if staff from these agencies are involved.

7. Sharing information with parents & carers

- 7.1 Decisions to share information with parents and carers will be taken using professional judgement, consideration of Fraser guidelines and in consultation with the child protection procedures. Decisions will be based on the child's age, maturity and ability to appreciate what is involved in terms of the implications and risks to themselves. This should be coupled with the parents' and carers' ability and commitment to protect the young person.
- 7.2 Given the responsibility that parents have for the conduct and welfare of their children, professionals should encourage the young person, at all points, to share information with their parents and carers wherever safe to do so.

8. Assessment

- 8.1 All young people, regardless of gender or sexual orientation, who are believed to be engaged in or planning to be engaged in, sexual activity must have their needs for health education, support and/or protection assessed by the agency involved.
- 8.2 Consideration should be given to how the young person can access associated assessments and support.
- 8.3 Where the child is considered to be at risk of significant harm, this assessment must be carried out within the child protection framework.**
- 8.4 In assessing the nature of any particular behaviour, it is essential to look at the facts of the actual relationship between those involved.

8.5 The following non-exhaustive considerations must be taken into account in assessing the extent to which the child (or other children) may be suffering or at risk of suffering harm:

- The age of the child: the younger the child the stronger the presumption must be that sexual activity is a matter of concern
- The level of maturity and understanding of the child and her/his competence to understand and consent to sexual activity
- Power imbalances, including through age and development; size, gender, sexuality, levels of sexual knowledge, race
- Power imbalance where sexual partner is in a position of trust or authority
- Where a young person has a learning or communication difficulty that could hinder their capacity to disclose that they have been abused
- Use of overt aggression, coercion or bribery
- Use of alcohol and/or drugs to facilitate the activity
- If the young person's own behaviour e.g. the use of drugs/alcohol means s/he is unable to make an informed choice
- Any attempts to secure secrecy by the sexual partner beyond what is usual in teenage relationships e.g. his/her identity being a secret and/or communications are heavily dependent upon internet/other IT
- If the sexual partner is known by agencies to have concerning relationships with other young people
- If the young person denies or minimises adult concerns
- Presence of a sexually transmitted infection in a very young person
- If the relationship involves behaviours considered to be 'grooming' in the context of sexual exploitation
- Where sex has been used to gain favours, e.g. cigarettes, clothes, CDs, trainers, alcohol, drugs etc
- Where the young person has a lot of money or other valuable things which cannot be accounted for
- Knowledge about the child's circumstances/background, including any familial child sex offences
- The child's behaviour e.g. withdrawn anxious
- Pregnancy

8.6 NB. Any girl who is pregnant, must be offered specialist assessment, support and guidance.

9. Consultation and Referral

9.1 In most circumstances there will be a process of information sharing and discussion in order to formulate an appropriate plan.

9.2 It is important all decision-making is undertaken with full professional consultation and **never taken by one person alone**. All discussions must be recorded, giving reasons for action taken and who was spoken to.

9.3 Where there are concerns, the agency concerned should check with other agencies, including the police, to establish what is known about sexual partners. The police should normally share the required information without beginning a full investigation.

9.4 Where a serious crime is suspected, advice should be sought from the police at the earliest opportunity to safeguard the child and minimise the risk of any evidence, such as e-mails or pictures, being destroyed prior to an investigation.

10. Young people under the age of 13

10.1 Staff will need to notify and can seek advice from their service's designated child protection lead. All cases involving under 13s must be reported to Children's Social Care and be fully documented.

11. Young people 13 to 15 inclusive

11.1 Sexually active young people in this age group must still have to have their needs assessed and in every case involving a child aged 13 to 15, consideration must be given to a discussion with other agencies and whether a referral should be made to Children's Social Care – depending on the level of risk/need assessed by those working with the young person.

11.2 Cases of concern should be discussed with the nominated child protection lead for the agency and subsequently with other agencies if required.

11.3 Where confidentiality needs to be preserved, initial consultation can occur without identifying the child directly or indirectly.

11.4 Where there is reasonable cause to suspect that significant harm to a child has/might occur, a referral must be made to Children's Social Care and a strategy discussion held.

12. Young people aged 16 & 17

12.1 Although in most cases sexual activity in itself is not an offence over the age of 16, young people under the age of 18 are still offered the protection of child protection procedures.

12.2 Consideration still needs to be given to the following:

- Issues of sexual exploitation through prostitution and abuse of power in circumstances (Refer to BSCB Child Sexual Exploitation Procedures)
- Offences of rape and any other sexual or physical assault
- Sexual activity with a family member
- Young people over the age of 16 and under the age of 18 are not deemed able to give consent if the sexual activity is with an adult in 'position of trust' (Refer to BSCB Procedures for Managing Allegations Against Staff and Volunteers)
- A learning or communication difficulty

13. WEB LINKS

- Sexual Health and Personal Relationships – (2006) YOS Framework Policy
- Sexual Health and personal Relationships –(2006) Framework Policy for Children and Young People who are Looked After
- Best Practice guidance for doctors and other health professionals on the provision of advice and treatment to young people under 16 on contraception, sexual and reproductive e health – (2004) DoH Gateway reference 3382
- BSCB Child Sexual Exploitation procedures (2007)
- BSCB Managing Allegations against Staff and Volunteers (2007)