

UNDERAGE SEXUAL ACTIVITY

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1. DEFINITION

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

Interventions should be aimed at protection of vulnerable children and the provision of information and contraception (where appropriate) for other young people.

Children under the age of 13 are legally deemed incapable of consenting to sexual activity and therefore all incidences of sexual behaviour involving children under 13 should be considered as a potential criminal or child protection matter.

2. RISKS

In assessing the nature of any particular behaviour of children, it is essential to look at the facts of the actual relationship between those involved. Power imbalances are very important and can occur through differences in size, age and development and where gender, sexuality, race and levels of sexual knowledge are used to exert such power. (Of these, age may be a key indicator, e.g. a 15 year old girl and a 25 year old man). There will also be an imbalance of power if the young person's sexual partner is in a position of trust in relation to them e.g. teacher, youth worker, carer etc. (and thereby committing an offence under the **Sexual Offences Act 2003** irrespective of the age of the victim). In the assessment, workers need to include the use of sex for favours e.g. exchanging sex for clothes, CD's, trainers, alcohol, drugs, cigarettes etc.

If the young person has a learning disability, mental health issue, or communication difficulty, they may not be able to communicate easily to someone that they are, or have been abused, or subjected to abusive behaviour. Staff members need to be aware that the Sexual Offences Act 2003 recognises the rights of people with a mental disorder to a full life, including a sexual life. However, there is a duty to protect them from abuse and exploitation. The Act includes 3 new categories of offences to provide additional protection.

YOUNG PEOPLE UNDER THE AGE OF 13

Under the Sexual Offences Act 2003, children under the age of 13 are considered of insufficient age to give consent to sexual activity. The Police must be notified as soon as possible when a criminal offence has been committed or is suspected of having been committed against a child unless there are exceptional reasons not to do so. Where a decision is made not to notify the Police/Children's Social Care a full record must be made by the agency recording the rationale for this decision.

In all cases where the sexually active child is under the age of 13, a referral (see Referrals Procedure) must be made to Children's social care and a full assessment undertaken in consultation with partner agencies, including the Police.

When a girl under 13 is found to be pregnant, a referral to Children's social care and the Police must be made. An Assessment will be undertaken and a Strategy Discussion with the Police and other agencies will take place. At this stage a multi-agency support package should be formulated.

YOUNG PEOPLE BETWEEN 13 AND 16

The Sexual Offences Act 2003 recognises that whilst mutually agreed, non-exploitative sexual activity between teenagers does take place and that often no harm comes from it, the age of consent should still remain at 16. This acknowledges that this group of young people are still vulnerable, even when they do not view themselves as such.

Sexually active young people in this age group will still have to have their needs assessed using this Protocol. Discussion with Children's social care will depend on the level of risk/need assessed by those working with the young person.

This difference in procedure reflects the position that, whilst sexual activity under 16 remains illegal, young people under the age of 13 are not capable to give consent to such sexual activity.

YOUNG PEOPLE BETWEEN 16 AND 18

Although sexual activity in itself is no longer an offence over the age of 16, young people under the age of 18 are still offered protection under the Children Act 1989.

Consideration still needs to be given to issues of sexual exploitation and abuse of power in circumstances outlined above. Young people, of course, can still be subject to offences of rape and assault and the circumstances of an incident may need to be explored with a young person. 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 a position of trust or a family member as defined by the Sexual Offences Act 2003.

3. INDICATORS

In order to determine whether the relationship presents a risk to the young person, the following factors should be considered. This list is not exhaustive and other factors may be needed to be taken into account:

- Whether the young person is competent to understand and consent to the sexual activity they are involved in.
- The nature of the relationship between those involved, particularly if there are age or power imbalances.
- Whether overt aggression, coercion or bribery is involved including misuse of substances/alcohol as a disinhibitor.
- Whether the young person's own behaviour, for example through misuse of substances, including alcohol, 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 by the agency as having other concerning relationships with similar young people.
- If accompanied by an adult, does that relationship give any cause for concern?
- Whether methods used to secure compliance and/or secrecy by the sexual partner are consistent with behaviours considered to be 'grooming'.
- Whether sex has been used to gain favours.
- The young person has a lot of money or other valuable things which cannot be accounted for.

It is considered good practice for workers to follow the Fraser guidelines when discussing personal or sexual matters with a young person under 16. The **Fraser Guidelines** give guidance on providing advice and treatment to

young people under 16 years of age. 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 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

4. PROTECTION AND ACTION TO BE TAKEN

Where In working with young people, it must always be made clear to them that absolute confidentiality cannot be guaranteed, and that there will be some circumstances where the needs of the young person can only be safeguarded by sharing information with others.

In some cases, urgent action may need to be taken to safeguard the welfare of a young person. However, in most circumstances there will need to be a process of information sharing and discussion in order to formulate an appropriate plan. There should be time for reasoned consideration to define the best way forward. Anyone concerned about the sexual activity of a young person should initially discuss this with the person in their agency responsible for child protection. There may then be a need for further consultation with Children's social care for the relevant area. All discussions should be recorded, giving reasons for action taken and who was spoken to.

Where there are concerns that a young person may be at risk of sexual exploitation, a referral should be made to Children's social care in accordance with the Referrals Procedure; where the situation is an emergency, the local police should be contacted immediately.

When a referral is received by Children's social care, consideration will be given to the need for an assessment and a Strategy Discussion/Meeting.

After the Strategy Discussion there may be one of the following responses:

- That the child is not In Need. In which case children's social care will take no further action other than, where appropriate, to provide information and advice or sign-posting to another agency in accordance with Early Health Assessment.
- Not the child is in need but there are no concerns that the child has suffered or is likely to suffer Significant Harm. In which case children's social care, in consultation with other agencies, will determine what services they should provide and whether to continue an Assessment.
- That the child is in need and that there are concerns that the child has suffered, or is likely to suffer, Significant Harm. In which case Children's social care will initiate a Section 47 Enquiry and an Assessment.

Any girl, either under or over the age of 13, who is pregnant, must be offered specialist support and guidance by the relevant services. Such services should also be a part of the assessment of the girl's circumstances.

5. ISSUES

Sexual Grooming: - Section 15 of the Sexual Offences Act 2003 makes it an offence for a person (A) aged 18 or over to meet intentionally, or to travel with the intention of meeting a child under 16 in any part of the world, if he has

met or communicated with that child on at least two earlier occasions, and intends to commit a “relevant offence” against that child either at the time of the meeting or on a subsequent occasion. An offence is not committed if (A) reasonably believes the child to be 16 or over.

The Age of Consent: - The legal age for young people to consent to have sex is still 16, whether they are straight, gay or bisexual. The aim of the law is to protect the rights and interests of young people and make it easier to prosecute people who pressure or force others into having sex they don't want. For the purposes of the under 13 offences, whether the child consented to the relevant risk is irrelevant. A child under 13 does not, under any circumstances, have the legal capacity to consent to any form of sexual activity.

Protecting People with a Mental Illness: - The 2003 sexual offences act has created three new categories of offences to provide additional protection to those with a mental disorder:

- The Act covers offences committed against those who, because of profound mental disorder, lack the capacity to consent to sexual activity.
- The Act covers offences where a person with a mental disorder is induced, threatened or deceived into sexual activity.
- The Act makes it an offence for people providing care, assistance or services to someone in connection with a mental disorder to engage in sexual activity with that person.

Protecting Children from Sexual Exploitation: - The Sexual Offences Act 2003 introduced a number of new offences to deal with those who abuse and exploit children. The offences protect children up to the age of 18 and can attract tough penalties. They include:

- Paying for sexual services of a child.
- Causing or inciting child prostitution
- Arranging or facilitating child prostitution
- Controlling a child prostitute.

These are not the only charges that may be brought against those who use or abuse children through prostitution. Abusers and coercers often physically, sexually and emotionally abuse these children, and may effectively imprison them. If a child is a victim of serious offences, the most serious charge that the evidence will support should always be used.

6. FURTHER INFORMATION

Enabling young people to access contraceptive and sexual health information and advice: Legal and Policy Framework for Social Workers, Residential Social Workers, Foster Carers and other Social Care Practitioners; (Department for Education Teenage Pregnancy Unit)

Best practice guidance for doctors and health professionals on the provision of advice and treatment to young people under 16 on contraception, sexual and reproductive health (Department of Health)