**Working with Sexually Active Children and Young People Under the Age of 18**

**SCOPE OF THIS CHAPTER**

This chapter outlines the key points in relation to working with sexually active under 18 year olds.

**FLOWCHARTS**

Determining Consent when Working with Sexually Active Children & Young People Up To 18 Flowchart in LLR Local Resources

7-Minute Briefing Consenting Sexual Relationships in LLR Local Resources

Referral to the East Midlands Children and Young People Sexual Assault Service Flowchart

**RELATED CHAPTERS**

Allegations Against Persons who Work with Children

Child Exploitation, CSE and Assessment of Risk Outside the Home (Contextual Safeguarding)

Harmful Sexual Behaviour

Online Safety

Sexual Abuse and Child Sexual Abuse in the Family Environment

**RELEVANT GUIDANCE**

Brook Sexual Behaviours Traffic Light Tool (practitioners are only able to use the most up to date screening tool once they have completed the supporting training that is provided by Brook)

Children and Social Work Act (2017)

Keeping Children Safe in Education

Relationships and sex education (RSE) and health education (Gov.uk)

Review of Sexual Abuse in Schools and Colleges (Ofsted)

Young People's DASH Risk Checklist and Guidance (Safelives)

**AMENDMENT**

This chapter has been reviewed and updated throughout in September 2024. It has a new name (previously "Underage Sexual Activity") and a flowchart has been added.

**Contents**

## 1. Introduction

This procedure has been devised with the understanding that most young people under the age of 18 (but predominantly between 16 and up to 18) will have an interest in sex and sexual relationships, and that some may require support and guidance during this phase to ensure any risk of harm is reduced.

It is designed to assist those working with children and young people under the age of 18 to understand legislation and good practice, and to identify where there may be an abusive context to a relationship and when children and young people may need the provision of protection or additional services.

The procedure addresses specific issues that apply to children's sexual maturation. There are specific sections which deal with sexually active children under the age of 13, young people aged 13 to 16 years old and young people aged 16 to 18 years old.

This procedure is based on balancing the rights of the child with the core principle that the welfare of the child or young person is paramount; it emphasises the need for practitioners to work together in identifying and assessing when a child or young person is or has engaged in sexual activity.

## 2. Assessment

All young people, regardless of gender or sexual orientation, who are believed to be and/or have been 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. Please refer to the flowchart "Determining Consent when Working with Sexually Active Children and Young People Under 18" and 7-Minute Briefing Consenting sexual relationships (see LLR Local Resources; Safeguarding Practice Guidance). to aid your assessment.

When a practitioner becomes aware that a young person is likely to be or has been sexually active, an assessment can assist practitioners in their assessment of risk. An assessment should be made of the young person's physical and emotional health, and their education and safeguarding needs. This must include an assessment of their ability to give informed consent. Dependent on the risks identified this may lead to an Early Help Assessment or a safeguarding referral.

A child or young person's ability to consent is impaired if they do not have the freedom, capacity or choice to act, e.g., if they are given alcohol, drugs or if there are learning needs which mean they cannot truly consent.

**No child under the age of 13 is able to consent to any sexual activity (Sexual Offences Act 2003).**

In assessing the nature of any particular behaviour, it is essential to look at the facts of the relationship, and an assessment must also include the partner. Sexual abuse and sexual exploitation of a child or young person involves an imbalance of power or control and/or coercion. Where practitioners are working with a child or young person and they are aware of sexual activity with an adult, they need to refer to the Sexual Abuse procedure and not be distracted by discussion around whether the child appears to have consented.

Power imbalances are very important and can occur through differences in size, age and development (including cognitive 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, for example a 15 year old and a 20 year-old. There is also an imbalance of power if the young person's sexual contact/partner is in a position of trust in relation to them, for example: a teacher, youth worker, carer etc. It is an offence for an adult in a position of trust or authority to engage in sexual activity with a young person (Sexual Offences Act 2003). When it has been identified that a young person is at risk from an adult in position of trust or authority, the Allegations Against Persons who Work with Children procedure should be initiated.

If the young person has a learning need, mental health condition or a communication difficulty, they may not be able to communicate effectively that they are, or have been abused. This requires practitioners to undertake a robust assessment of the young person's communication need. Practitioners should be aware that the Sexual Offences Act 2003 recognises the rights of people with a mental health condition to a full life, including a sexual life. However, practitioners have a duty to protect them from abuse and exploitation.

At an early stage where there are concerns that a child or young person has been involved in sexual activity or they show associated behaviours and further information is needed to clarify risk, relevant checks must be undertaken with other professionals, including Police, Children's Social Care and Health to assist with the risk assessment. While a Referral to Children's Social Care may prevent a young person from engaging or making a further disclosure it is important to safeguard the child or young person from further significant harm.

All decisions made should be carefully documented including where a decision is made not to share information or make a referral. This should include a clear rationale for decisions made.

### 3. Risk Factors

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. A combination of risk factors should heighten concerns:

- Where there has been a disclosure of sexual activity, particularly if non-consensual;
- Whether there is any sexual harassment;
- Whether the young person is competent to understand and consent to the sexual activity they are involved in (see Section 4, Fraser Guidelines);
- Whether the young person is being isolated from family and friends;
- Whether there is a misuse of substances including alcohol which places them in a position where they are unable to make informed choice about sexual activity;
- The nature of the relationship, particularly if there are age or power imbalances or the partner is in a position of trust and/or authority (see Allegations Against Persons who Work with Children procedure);
- Elements of Grooming, Child Sexual Exploitation and Trafficking/Modern Slavery need to be considered (see CSE Risk Assessment Tool and Criminal Exploitation Screening Tool in LLR Local Resources; Risk Assessment/Screening Tools/Toolkits);
- If the following vulnerability factors are also present the risk is increased: history of previous abuse, underlying medical conditions, mental health issues, a learning disability which impairs a person's ability to consent, communication difficulties, low self-esteem and/or an imbalance of power;
- Whether coercion, manipulation or bribery is involved including misuse of substances/alcohol as a dis-inhibitor, or sex has been used to gain favours (for example swapping sex for cigarettes/vapes, clothes, electrical goods, trainers, alcohol, drugs etc.), or the young person has been involved in sexual activity to meet their basic needs for survival, such as a bed for the night / food / clothing;
- Whether overt aggression, such as threats of, or sexual acts used as punishment or retribution;
- Whether there is any genital injury to self or other;
- Whether the young person is displaying sexually aggressive/exploitive behaviour;
- Female Genital Mutilation, including tattooing and branding;
- Sexual degradation / humiliation of self or others;

- Any attempts to secure secrecy by the sexual contact/partner beyond what would be considered usual in a teenage relationship;
- Distributing naked or sexually provocative images of self and others;
- Arranging to meet with an online acquaintance in secret;
- If accompanied by an adult, does that relationship give any cause for concern? Is the adult inhibiting / encouraging / colluding / encouraging secrecy or grooming the young person?
- Is the sexual contact/partner known by the agency as having other concerning relationships with other young people? Is the sexual contact/partner or young person known for any previous sexual offence?
- Does the behaviour of the sexual contact/partner raise concerns that they may be grooming the young person?
- Sexual contact with animals;
- Sexual activity with family, including wider family networks (see Child Sexual Abuse in the Family Environment procedure);
- Displays a pre-occupation with sex which interferes with daily functioning, uses developmentally inappropriate sexually explicit language;
- Demonstrates unacceptable and concerning attitudes and values towards sexual relations;
- Reports of domestic abuse or violence within the sexual contact/relationship;
- Use of drugs to prolong and/or enhance sexual activity i.e., “CHEM” sex;
- Group sex;
- Whether or not the young person is attempting to or exposing their body and/or genitals. Being forced to expose themselves to others;
- Masturbating in public and/or on social media / webcam;
- Accessing and/or being shown pornography;
- Taking and sending naked or sexually provocative images of self or others and sexting;
- Seeking adult social networking sites and accessing web based relationships;
- Uncharacteristic and risk related behaviour, e.g., sudden and/or provocative changes in dress, withdrawal from friends, mixing with new or older people, having more or less money than usual, going missing;
- The young person may deny or minimise and/or does not accept concerns;

- The presence of a sexually transmitted infection (STI) and/or repeated STI or requests for repeat pregnancy tests and/or a confirmed pregnancy;
- The history of the young person, frequency of contact with services and any factors that may make them vulnerable.

In circumstances where there is a difference of professional opinion, see the Resolving Practitioner Disagreements and Escalation of Concerns procedure.

**4. Fraser Guidelines**

Fraser Guidelines on providing advice and treatment

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 specific guidance on providing advice and treatment to young people under 16 years of age. These hold what 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, for example, 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.

Fraser Competence

Fraser Competence describes a child's capacity to give consent in more general terms and could relate to their competence to permit the sharing of confidential information. Each child and young person is an individual and their "Fraser Competence" would depend on factors including their age, development and capacity to demonstrate an understanding of the issue under discussion and the concept of informed consent. Fraser Competence should be reassessed at every contact.

A young person of 16 and up to aged 18, or a child under 16 who has capacity to understand and make their own decisions, may give (or refuse) consent to sharing information. Practitioners should be mindful of their responsibilities to safeguard the child when considering the views of younger children or those where there are concerns about their capacity.

Practitioners need to take account of the views of a "Fraser Competent" young person when considering the need to share confidential information with colleagues.

Where it appears that a child may be suffering or likely to suffer significant harm and/or that there is a public safety issue, information should be shared on a need to know basis. If you are unsure about information sharing, please discuss the case with your line manager or the safeguarding lead in your organisation. The refusal of a child to consent to the sharing of such information should not prevent the information being shared where professional judgement has identified that there may be or is a likelihood of significant harm to the child or other person. The reasons for doing this should be shared with the child wherever possible.

**5. Process**

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

This discussion with the young person may prove useful as a means of emphasising the seriousness of some situations.

On each occasion that a young person is seen by an agency, consideration should be given as to whether their circumstances have changed or further information has been given which may lead to the need for referral or re-referral to Children's Social Care (see Referrals procedure).

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 (see Information Sharing procedure).

Anyone concerned about the sexual activity of a young person, or in cases where a practitioner has concerns that a relationship is likely to cause significant harm to a child or young person, they should, where possible, discuss the case with a line manager or safeguarding lead in their organisation. All discussions should be recorded, giving reasons for action taken and who was spoken to.

Any case which raises a concern under the criteria in Section 3, Risk Factors that the young person is being sexually abused or is at risk of sexual abuse, or a disclosure is made, or that there are any other serious, complex or child protection concerns, should be referred to Children's Social Care (see Referrals procedure).

If there are concerns that the child or young person may be at risk of abuse through sexual exploitation, trafficking / modern slavery, a referral to Children's Social Care must be made without delay (see Child Exploitation, CSE and Assessment of Risk Outside the Home [Contextual Safeguarding] procedure).

When a referral is received by Children's Social Care and the evidence demonstrates that there is reasonable cause to suspect that a child is or is likely to suffer significant harm, a Strategy Discussion/Meeting should be undertaken, informed by the assessment undertaken using this procedure and, in the majority of cases, may be largely for the purposes of consultation and information sharing but will always inform robust decision making and planning responses.

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 signposting to another agency;
- That 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.

**6. Legal Advice for Professionals**

The Sexual Offences Act 2003 does make provision for young people, of any age, to be offered confidential professional advice on contraception, condoms, pregnancy and abortion.

The Act states that 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.

This exception, in statute, covers not only health practitioners, but anyone who acts to protect a child, for example, teachers, school nurses, personal advisers, youth workers, social workers and parents.

**7. Continuing Support**

During this process agencies must continue to offer services and support to the young person. Any young woman or girl who is pregnant must be offered specialist support and guidance by the relevant services (see Pre-Birth and Post Birth Planning procedure). Any child/young person who is subject to Child Sexual Exploitation (CSE) or Female Genital Mutilation (FGM) may require continued support. These services will also be a part of the assessment of the young person's circumstances.

**8. Children under the Age of 13**

A child under 13 is not legally capable of consenting to sexual activity. Any offence under the Sexual Offences Act 2003 involving a child under 13 is very serious and should be taken to indicate a likelihood of significant harm to the child.

Cases of children under 13 should always be discussed with a safeguarding lead within the organisation. Where the allegation concerns penetrative sex, or if other intimate sexual activity occurs with another person either on or offline, there would always be reasonable cause to suspect that a child, whether girl or boy, is suffering or is likely to suffer significant harm.

- The case must be reported to Children's Social Care and Police and a Strategy Discussion/Meeting held. This should involve Children's Social Care, Police, Health and relevant agencies, to determine the child's welfare and, if required, plan rapid action;

- Appropriate actions must be taken to preserve any evidence and support disclosure;

- Appropriate actions must be taken to prevent Sexually Transmitted Infections (STIs) and pregnancy;

- Risk of Child Sexual Exploitation must be considered (see CSE Risk Assessment Tool in LLR Local Resources; Risk Assessment/Screening Tools/Toolkits);

- The risk of significant harm posed when children under the age of 13 are exposed to other forms of non-penetrative sexual activity. The concern is not about age appropriate exploratory activity but about exposure to inappropriate material or activities;

- There should be particular concern about exposure to technologies/social media (for example: abuse via the internet, mobile devices) and concerns about grooming and using these means for sexual exploitation.

In circumstances where a child under 13 requests or is in need of emergency contraception from a service out of normal office hours, the worker should ensure that:

- Arrangements are made for emergency contraception to be given to the young person (within 72 hours) by a health professional/pharmacist;

- A referral in all cases is made to Children's Social Care, including Out of Hours Service (see Referrals Procedure).

Following a disclosure of pregnancy, a Strategy Discussion/Meeting with the Police, Health and/or other agencies will need to be undertaken. At this stage an assessment of the mother and unborn baby should be commenced to identify their needs and plan for appropriate services (see Pre-Birth and Post Birth Planning procedure). Separate Social Workers for the mother and the unborn baby should be considered, particularly if the mother is subject to a Child Protection Plan or is Looked After.

**9. Young People Aged 13 to 16**

Sexual activity with a child under 16 is an offence. However, where the young person has capacity to give informed consent it may be less serious than if the child were under 13.

Consideration should be given in every case of sexual activity involving a child aged 13 to 16 as to whether there should be a discussion with other agencies and whether a referral should be made to Children's Social Care (see Referrals procedure). Within this age range, the younger the child, the stronger the presumption must be that sexual activity will be a matter of concern.

Cases of concern should be discussed with the safeguarding lead within your organisation and a referral made to Children's Social Care, if required. Where confidentiality needs to be preserved, a discussion can still take place as long as it does not identify the child (directly or indirectly). Where there is reasonable cause to suspect that significant harm to a child has occurred or might occur, a Strategy Discussion/Meeting should be held to discuss appropriate next steps. Again, all cases should be carefully documented including where a decision is taken not to share information.

Where an agency involved knows that a young person of 13 or over is sexually active but the practitioner's assessment does not raise concerns that the young person's sexual relationship is abusive, then that agency should continue to make arrangements for the young person to receive confidential advice and support from appropriate sexual health and other services.

**10. Young People Aged 16 up to 18**

Although sexual activity in itself is not an offence for young people of 16 and over, young people under the age of 18 are still offered the protection of the Safeguarding Children Procedures under the Children Acts 1989/2004.

Sexual activity involving a 16 up to 18 year old, though unlikely to involve a criminal offence, may still involve harm or the likelihood of harm. Practitioners should still bear in mind the considerations and processes outlined in this guidance in assessing that risk and should share information as appropriate.

Consideration still needs to be given to issues of sexual exploitation and the abuse of power in circumstances outlined above (see Child Exploitation, CSE and Assessment of Risk Outside the Home [Contextual Safeguarding] procedure).

Young people can be subject to sexual offences such as rape and assault. In such circumstances practitioners should discuss the case with their line manager or designated lead for child protection and consider the need to make a referral to the Police and/or Children's Social Care.

**11. Information Sharing and Confidentiality**

The Sexual Offences Act 2003 does not affect the duty of care and confidentiality of Health and Social Care practitioners to children and young people 13 up to 16 years old. Government guidance for Health and Social Care practitioners is that, although the age of consent remains at 16, it is not intended that the law should be used to prosecute mutually agreed teenage sexual activity between two young people of similar age, unless it involves abuse or exploitation. If a decision is made to share information without the child/young person's consent, the decision and the reasons for doing so should be clearly recorded.

Young people place great importance in confidentiality and may be concerned that their right to a confidential service is being removed. This guidance does not change the existing principle of confidentiality; however, confidentiality has never been absolute and suitable support should be given to the young person.

Information sharing is vital to safeguarding and promoting the welfare of children and practitioners should always explain to young people when they first access the

service how and why information may be shared and, in some services, this would be at every contact.

Sharing Information with Parents and Carers

Given the responsibility that parents have for the conduct and welfare of their children, practitioners should encourage the young person, at all points, to share information with their parents and carers wherever safe to do so. Practitioners may share information with agencies if the child consents or if there is a public interest of sufficient force such as where there is a clear likelihood of significant harm to the child or other children.

Decisions about sharing information can be difficult and should not be taken by one practitioner in isolation. As with the decision to refer a child to Children's Social Care, the decision about information sharing could be discussed with the safeguarding lead within the agency. The decision will rest on whether there is a likelihood of significant harm. Advice can be sought, without divulging the name of the child, from Children's Social Care.

Parents may request services and opportunities to work in partnership with practitioners to address concerns they have about the sexual activity of their own child. They may be anxious about the suitability of their child's relationship and, in some cases, this may involve sexual exploitation and/or the misuse of drugs and alcohol. In such circumstances, these procedures should be followed and suitable legal information provided as appropriate.

The provision of confidential contraceptive services is an established principle. While practitioners should always encourage young people to tell their parents that they are having sex, the practitioner will not themselves pass this information to parents. However, practitioners may share information with other agencies if the child consents or if there is a public interest, such as where there is a clear likelihood of significant harm to the child or other children.

In some circumstances it may be necessary for Children's Social Care to undertake an assessment that will involve discussions with the parents of a young person who has sought contraceptive advice. Decisions to share confidential information with parents will be taken using professional judgement, consideration of Fraser Guidelines and in consultation with these procedures. The views of the child/young person about how, when and who may be involved in sharing the information with their parents should be considered carefully.

**12. Education**

In accordance with the Children and Social Work Act 2017 (see chapter 4), all primary and secondary schools have a statutory duty to offer Relationships and Sex Education (RSE). Briefly RSE includes:

- Safety in forming and maintaining relationships;
- The characteristics of healthy relationships; and
- How relationships may affect physical health, mental health and well-being.

Levels of Sexual Harassment and Abuse in Education Settings

The Review of Sexual Abuse in Schools and Colleges (Ofsted) identified substantial levels of sexual harassment and online sexual abuse for both girls (90%) and boys (nearly 50%). Nevertheless, in a number of schools this went unreported as a result of the school's 'culture'. A part of this appeared to be that children felt they would not be listened to or be believed; they would be ostracised by peers; and because, once it was discussed, (the children) feared the process would be out of their control. Also, that staff were generally not aware and did not countenance that this could happen at their school.

Keeping Children Safe in Education highlights that "Sexual violence and sexual harassment can occur between two children of any age and sex from primary to secondary stage and into colleges. It can also occur online. It can also occur through a group of children sexually assaulting or sexually harassing a single child or group of children. […] Sexual violence and sexual harassment exist on a continuum and may overlap; they can occur online and face to face (both physically and verbally) and are never acceptable". It notes that all staff working with children are advised to maintain an attitude of "it could happen here" and to understand that, as a result of a pupil's reluctance to refer themselves, they should act on third-party information.

## 13. Additional Resources

Stop it Now! – Stop it Now! UK and Ireland is a child sexual abuse prevention campaign helping adults play their part in prevention by providing sound information, educating members of the public, training those who work with children and families and running a free confidential helpline.

Parents Protect – An information and resources website that aims to raise awareness about child sexual abuse, answer questions and give adults the information advice, support and facts that they need to help protect children.

NSPCC PANTS – talking PANTS, parents and carers have a simple way to talk to children about staying safe from sexual abuse. It sets out some simple rules to remember, for example they should tell a trusted adult about their worries. There are also accessible versions of the guide for children and parents with learning disabilities or autism, and for keeping deaf children safe.

Barnardo's – information regarding different areas of keeping children safe. The Child Sexual Exploitation section is intended for use by everyone who has questions in relation to CSE.

## 14. Appendix 1: Determining Consent when Working with Sexually Active Children and Young People Under 18

Click here to view the Determining Consent when Working with Sexually Active Children and Young People Under 18 Flowchart (see LLR Local Resources; Safeguarding Practice Guidance).