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Stoke-on-Trent
Safeguarding Children Board

GUIDANCE FOR CHILDREN WHO MAY BE PARTICULARLY VULNERABLE

SAFEGUARDING SEXUALLY ACTIVE YOUNG PEOPLE

Section F 010

Version 2

Date December 2009
Cases of underage sexual activity that present cause for concern are likely to raise difficult issues and should be handled particularly sensitively.

Paragraph 5.23, Working Together 2006

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 risk of significant harm to the child.

Paragraph 5.24, Working Together 2006

Sexual activity with a child under 16 is also an offence. Where it is consensual it may be less serious than if the child were under 13, but may nevertheless have serious consequences for the welfare of the young person.

Paragraph 5.26, Working Together 2006
01 Introduction

1.1. It is recognised that sexual exploration and experimentation are a normal part of childhood development and as such this protocol recognises that some children do engage in age-appropriate behaviours as part of natural childhood sexual development.

1.2. This protocol is designed to assist those working with children and young people to identify where these relationships may be abusive, and the children and young people may need the provision of protection or additional services.

1.3. It is based on the core principle that the welfare of the child or young person is paramount and emphasizes the need for professionals to work together in accurately assessing the risk of significant harm when a child or young person is engaged in sexual activity.

02 Background

2.1 This guidance is designed to assist those working with children and young people to identify when relationships may be abusive and the children and young people may need the provision of protection or additional services. It acknowledges the dilemmas faced by professionals in respecting the human rights of young people, whilst at the same time ensuring that any cases of children and young people in need of protection are identified.

2.2 Professionals must always be aware of the importance of culture, ethnicity and religion in working with sexually active young people and their families. There will be different attitudes in different religions and cultures which must always be considered. This is of particular importance when working with young people where sexual activity outside marriage may be seen as bringing dishonour on the family. It is also important to be alert to the possibility of young women who may have experienced a forced marriage.

2.3 This guidance applies to both young women and young men, regardless of sexual orientation. It is important to be alert to a potentially abusive situation for both young men and young women. It may be more difficult for a young man to acknowledge that he may have been sexually abused.

2.4 Government guidance, legislation and the Bichard Report

This Protocol is based on the guidance issued in Working Together to Safeguard Children 2006, paragraph 5.25.

“Cases involving under-13’s should always be discussed with a nominated child protection lead in the organisation. Under the Sexual Offences Act penetrative sex with a child under 13 is classed as rape. Where the allegation concerns penetrative sex, or other intimate sexual activity occurs, there would always be reasonable cause to suspect that a child whether girl or boy, 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 and that a strategy discussion will be held in accordance with the guidance set out in paragraph 5.54. This should involve children’s social care, police and relevant agencies, to discuss appropriate next steps with the professional. All cases involving under - 13s should be fully documented, including giving detailed reasons where a decision is taken not to share information.”

And takes account of:

- The guidance provided to sexual health services that a confidential service should be available to young people under the age of 16;
- The legal position that sexual activity under the age of 16 is illegal;
- The recommendation in the Bichard Report that all suspected criminal activities should be reported to the police.

**Bichard Inquiry – Recommendation 12**

“The government should reaffirm the guidance in ‘Working Together to Safeguard Children’ so that the Police are 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.”

03 **Principles**

3.1. The following is a guide to key principles that should underpin and guide work with children/young people who display sexually harmful behaviour:

- The needs of children/young people who display sexually harmful behaviour should be considered separately from the needs of their victims. The consequences for the victim should be considered just as seriously as when the abuse is perpetrated by an adult.

- A holistic child-centered assessment should be completed for each child / young person and a multi-agency response coordinated to address the needs of the individual and any risk factors.

- The reason why young people sexually harm is multi-faceted and needs to be explored further. **In some cases child protection enquiries under section 47 (Children Act 1989) will be required.**

- Effective inter-agency information-sharing is central to these arrangements.
04 Recognising Risk

4.1 Curiosity and an interest in sex are normal for adolescents who will experiment to a greater or lesser extent. It would be inappropriate for normal sexual experimentation to be considered criminal. However, early sexual activity can expose young people to danger.

4.2 This guidance seeks to protect:

• those whose maturity and understanding is at variance with their sexual development and behaviour;

• those who have been forced or co-erced and have been, or are at risk of being, sexually abused.

4.3 Professionals will seek to:

• Encourage young people to delay sexual activity.

• Discourage young people from engaging in full sexual activity when they lack the maturity to appreciate the risks and consequences;

• Ensure that young people engaged in sexual relationships are doing so safely and with a knowledge of the risks;

• Ensure that young people are not being abused and forced or co-erced into sexual activity.

4.4 Many young people will be reluctant to discuss the fact that they are sexually active, as they will be aware that they are below the legal age of consent. It will therefore be necessary to tread a fine line between ensuring the young person is not a victim of abuse and deterring them from obtaining advice and medical support.

4.5 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.

4.6 If the young person has a learning disability, mental disorder or other communication difficulty, they may not be able to communicate easily to someone that they are or have been abused, OR are or have been subject to abusive behaviour. Staff 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.
05 Abuse Through Sexual Exploitation

5.1. If there are concerns that the child or young person may be at risk of abuse through sexual exploitation (prostitution or pornography, including creating/exchanging images, grooming, etc through the internet), a referral to Children & Young People’s Department Vulnerable Children and Corporate Parenting Division and to the Police must be made.

06 Fraser Guidelines

6.1. 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 being given.
- The young person cannot be convinced to involve parents/carers or allow the medical practitioner to do so on their behalf.
- It is likely that the young person will begin or continue having intercourse with or without treatment/contraception.
- Unless he or she receives treatment/contraception their physical or mental health (or both) is likely to suffer.
- The young person’s best interests require contraceptive advice, treatment or supplies to be given without parental consent.

07 Disabled Children and Young People


7.2. Disabled children and young people are more likely to be abused than non-disabled children; and they are especially at risk when they are living away from home. They may be particularly vulnerable to coercion due to physical dependency or because a learning disability or a communication difficulty means that it is not easy for them to communicate their wishes to another person. This increases the risk that a sexual relationship may not be consensual.

7.3. A child or young person with moderate learning difficulties could be vulnerable to harm from a sexual relationship developed through inclusive activities. This may be in mainstream schools, education colleges, leisure centres and other places where children and young people meet where supervision is at a
minimum. Staff need to be alert to the different capabilities of the children and young people they supervise, and assess risk of harm accordingly.

7.4. Where professionals in children’s services have concerns that a relationship may present a risk of harm to an older disabled young person, they should begin work with the Council’s adult protection staff at an early point in order for there to be a smooth transition from protection under the Children Act 1989 to protection for the young person, from their 18th birthday onwards, under the local Protection of Vulnerable Adult Procedures. (Click on link)

http://ms-server-152/adultservices/trix_adult_services/chapters/contents.htm#anchor_p10

08 Assessment

8.1 Assessing young people’s needs

When a professional becomes aware that a young person is, or is likely to be, sexually active, an assessment should be made of the young person’s physical and emotional health, education and safeguarding needs in the context of the sexual relationship. The assessment should be based on the three dimensions of the Common Assessment Framework Procedure. The assessment should be undertaken by a professional with relevant expertise, within their agency.

8.2 Power Imbalances

Sexual abuse and exploitation of a child or young person involves an imbalance of power. The assessment should seek to identify possible power imbalances within a relationship. These can result from differences in size, age, material wealth and/or psychological, social and physical development. In addition gender, sexuality, race and levels of sexual knowledge can be used to exert power.

Whilst a large age differential could be a key indicator e.g. a 15-year-old girl and a 20-year-old man, practitioners should be aware that a 14 or 15 year old boy, supported by a group of his peers, is able to exert very real pressure over a girl of the same age or older. There will also be instances when the sexual predator is a woman or girl and the victim is a boy.

Where a power imbalance results in coercion, manipulation and/or bribery and seduction, these pressures can be applied to a young person by one or two individuals, or through peer pressure (i.e. group bullying). Professionals assessing the nature of a child or young person’s relationship need to be aware of the possibility that either or both of these situations can exist for the child or a young person – and conduct an holistic assessment of the young person’s needs.
There will be an imbalance of power and the child or young person will not be deemed able to give consent if the sexual partner is in a position of trust or is a family member as defined by the Sexual Offences Act 2003; and/or any pre-existing legislation.

09 Action in Relation to under 13 year olds

9.1 Penetrative sex with a child under 13 years is classed as rape. Where there is any allegation of penetrative sex or other intimate activity, there would always be reasonable cause to suspect that a child is likely to be suffering, or be at risk of suffering, significant harm. There is a presumption that the case will be reported to Children & Young People’s Services Department Vulnerable Children and Corporate Parenting Division and that a Strategy Meeting will take place. Professionals should discuss the case with their nominated child protection lead (keeping a record), and refer to Children & Young People’s Services Department Vulnerable Children and Corporate Parenting Division.

9.2 Where there is a risk of immediate harm to a young person or evidence of a serious crime being committed, Children & Young People’s Services Department Vulnerable Children and Corporate Parenting Division and the Police will take immediate protective action.

9.3 The Strategy Discussion held under section 47 will involve representatives from Children & Young People’s Services Department Vulnerable Children and Corporate Parenting Division, the Police and other agencies as appropriate to discuss appropriate next steps with the professional. This discussion is important, as the information shared by agencies may indicate concerns about either party in the relationship or their families. It will help to build a fuller picture and may identify particular concerns which one agency alone would not be able to do. It will also ensure that the incident is recorded and available for reference should there be any future concerns regarding one of the parties. Future child protection concerns may go undetected if this information is not shared.

9.4 If the Strategy Meeting consider the child to be at risk of significant harm, further enquiries will take place.

9.5 If the Strategy Meeting considers the child is not at risk of significant harm, consideration will be given to further assessment and support, and / or signposting to the sexual health service.

10 Action in relation to 13, 14, and 15 year olds

10.1 Within this age range, there are relatively large numbers of young people engaged in sexual activity. Where it is consensual it may be less serious than if the child were under 13, but may still have serious consequences for the welfare of the young person. Young people of this age can still be vulnerable
and some of them may be in abusive relationships. It is therefore important that professionals who become aware of young people in this age group in sexual relationships make an assessment of the nature of the relationship.

10.2 An assessment should take place of the young person’s competency to give consent and of the nature of the relationship. In doing this, the following considerations should be taken into account:

- The age of the child – sexual activity at a young age is a very strong indicator that there are risks to the welfare of the child (whether boy or girl) and, possibly others;

- The level of maturity and understanding of the child;

- What is known about the child’s living circumstances or background and family that may give rise to concern, particularly familial child sex offences;

- Power imbalances, e.g. age imbalance – in particular where there is a significant age difference; or learning difficulty / disability in one partner;

- Overt aggression;

- Coercion or bribery, e.g. use of sex for favours, exchanging sex for clothes, DVD’s, alcohol, cigarettes, drugs, or large amounts of money or other valuables which cannot be accounted for;

- Behaviour of the child, or changes in behaviour that cause concern e.g. withdrawn or anxious;

- Young people who have become isolated from their peer group;

- The misuse of substances as a disinhibitor affecting the ability to make informed decisions;

- Whether the child’s own behaviour, because of the misuse of substances, places him or her at risk of harm so that he or she is unable to make an informed choice about any activity;

- Whether any attempts to secure secrecy have been made by the sexual partner, beyond what would be considered usual in a teenage relationship;

- Whether the child denies, minimizes or accepts concerns;

- Whether the methods used are consistent with grooming; and

- Whether the sexual partner/s is/are known by one of the agencies.

10.3 The outcome of the assessment, the decisions reached and the evidence on which they are based should be recorded.
10.4 Where the professional is concerned about the nature of the relationship, they must discuss with their nominated safeguarding manager. If the concerns are upheld, then a child protection referral should be made to Children & Young People’s Services Department Vulnerable Children and Corporate Parenting Division in accordance with Referrals procedure (see Section C01). If the concerns are not upheld, the discussion and reasons for the decisions reached must be recorded and kept under review by the professional in contact with the young person.

10.5 In any situation of uncertainty, where a professional is unsure of the course of action to take they must consult with their nominated safeguarding manager or with Children’s Social Care.

11 Safeguarding young people 16 and 17 years

11.1 Consensual Sexual activity is not an offence over the age of 16, nevertheless 16 and 17 year old young people are still vulnerable to harm through an abusive sexual relationship. Practitioners providing services for 16 and 17 year old young people need to assess and address their safety and wellbeing in line with the local safeguarding procedures.

11.2 Consideration still needs to be given to issues of sexual exploitation through prostitution and abuse of power. Young people 16 and 17 years old 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; and/or any pre-existing legislation.

12 Pregnant Teenagers

12.1 Any girl, either under or over the age of 13, who is pregnant, should be offered specialist support and guidance by the relevant services. The need for, and nature of, services will also be a part of the assessment of the young person’s circumstances.

13 Breach of Trust

13.1 Under the Sexual Offences Act 2003 it is a serious offence for a sexual relationship to take place between a young person under the age of 18 and an adult who is in a position of trust in a variety of settings, including youth clubs, schools and colleges, where a young person, who is legally able to give consent, may be in a sexual relationship with a lecturer or teacher.

13.2 These situations must always be referred to Children & Young People’s Services Department Vulnerable Children and Corporate Parenting Division. The procedures for dealing with allegations against a member of staff will then be followed. (see Section D01 LADO procedure)
14 Sharing information with parents and carers

14.1. Whether it is appropriate to share information with parents and carers should always be considered as part of the assessment and based on what is in the child’s / young person’s best interests. Where a strategy meeting is held it will be part of the multi-agency decision making process. Decisions will be based on the child’s age, maturity and ability to appreciate the risks to themselves, as well as the parents/carer’s ability to protect the young person.

15 Health Professionals

15.1. Health professionals have specific duties with regard to sexually active young people. They have a duty of care and confidentiality to all patients, including under 18 year olds and they must provide appropriate medical advice and treatment. Neither Working Together to Safeguard Children 2006 or the Sexual Offences Act 2003 affects that duty of care. It is important that this group of young people is provided with appropriate medical advice and treatment. However, the duty of confidentiality is not absolute. The welfare of the young person is paramount and when a health professional believes that a child is at risk of significant harm, the duty of protection outweighs the duty of confidentiality.

16 Criminal Investigation

16.1 It is an offence for any young person to engage in a sexual relationship under the age of 16. Nevertheless, in the majority of cases, it will not be in the best interest of the young person for criminal proceedings to be instigated against them.

16.2 The decision as to whether or not to proceed with criminal action against a young person who has been referred to the Police will be made by the Crown Prosecution Service acting upon the advice of the Police. The best interests of the young person concerned will be one factor in informing this decision.

16.3 All agencies hold responsibilities under the Crime and Disorder Act 1998 to assist with the prosecution of criminal actions in their local area. In some cases, the Police may hold information about a young person or an adult involved with a young person and this may be critical in achieving the protection of a young person. When the Police service is advised of a likely criminal offence, it will record the information it receives but will investigate according to whether or not the individual circumstances of the case warrant it. The Police will liaise with Children & Young People’s Services Department Vulnerable Children and Corporate Parenting Division about an investigation, unless the urgency to act to protect an individual or secure arrests precludes them from so doing.
17 **References**

- Sexual Offences Act 2003
- Working Together to Safeguard Children 2006
- 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 (DoH 2004)

**For further information:**