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Section 4J (Staffordshire) Section F10 (Stoke-on-Trent)

GUIDANCE FOR PROFESSIONALS WORKING WITH SEXUALLY ACTIVE CHILDREN AND YOUNG PEOPLE UNDER THE AGE OF 18 IN STAFFORDSHIRE AND STOKE-ON-TRENT

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STAFFORDSHIRE AND STOKE-ON-TRENT SAFEGUARDING CHILDREN BOARDS' PROTOCOL WORKING WITH SEXUALLY ACTIVE YOUNG PEOPLE

This guidance refers to linked policies which may be relevant. Please see procedures on Staffordshire Safeguarding Children Board Website

www.staffsscb.staffordshire.gov.uk/Professionals/Procedures/Procedures.aspx

or Stoke-on-Trent Safeguarding Children Board Website

www.safeguardingchildren.stoke.gov.uk

The main policies, procedures or guidance linked to this area of work are:

- Children and Young People who Display Sexualised Behaviour and Harmful Sexual Behaviour
- Safeguarding Children from Sexual Exploitation
- Forced Marriage Guidance
- Children with a Disability
- Allegations of Abuse made against a person who works with Children

These procedures will be highlighted in bold in the text of this document when professionals need to be particularly alert to possible concerns.

Introduction

1. This guidance has been devised with the understanding that most young people under the age of 16 will have an interest in sex and sexual relationships. It is recognised that sexual exploration and experimentation are a normal part of childhood development.
2. This guidance 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 and/or additional services are identified.
3. It is based on the core principle that the welfare of the child or young person is paramount, and emphasises 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.
4. All agencies, which have contact with children and young people, should use this guidance to develop and implement local guidance for their own staff.
5. Professionals must always be aware of the importance of culture, ethnicity and religion in working with sexually active children and young people and their families. There will be varying attitudes in different religions and cultures which must always be considered. This is of particular importance when working with young people where sexual activity may be seen as bringing dishonour on the

family. It is also important to be alert to the possibility of young men or women who may be fearful of, or have experienced, a **forced marriage or honour based abuse** - see SSCB or Stoke-on-Trent SCB procedures – link in appendix 2.

6. This guidance applies to children and young people regardless of gender or sexual orientation and considers issues up to the age of 18 years of age. It is important to be alert to a potentially abusive situation and professionals must be mindful that it may be more difficult for a young male to acknowledge that he may have been sexually abused or exploited.
7. The guidance is based on current legislation including the Sexual Offences Act 2003, 'Working together to safeguard children 2015', and the Department of Health 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.

Assessment

8. All young people, regardless of gender or sexual orientation, who are believed to be engaged in, or planning to be engaged in, sexual activity are entitled to have their needs for health, education, support and/or protection assessed. Professionals working with young people in these situations must ensure that appropriate assessments are completed and referrals made to appropriate services.
9. Many young people will be reluctant to discuss the fact that they are sexually active if they are below the legal age of consent (16 years). Conversations with the young person will be dependent upon a number of things but above all assumptions must not be made (i.e. that they are fully aware of what they're doing including the associated risks) nor should it prevent the young person from seeking appropriate advice and/ or medical assistance, where necessary. It is vital to sign post any young person or child to appropriate services whether abuse has occurred or not.
10. 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.
11. If the young person has a disability, mental health difficulty or disorder and communication difficulty, they may not be able to easily inform someone that they are being or have been abused, or subject to abusive behaviour. The Sexual Offences Act 2003 recognises the rights of people with a mental health difficulty or disorder to a full life, including a sexual life. However there is a duty to protect them from abuse and exploitation (see also SSCB or Stoke-on-Trent SCB guidance on '**children with a disability**' - link in appendix 2).

12. During the assessment, the agency/professional must consider whether the child/young person is competent to make informed decisions about being in a sexual relationship. Health Care Professionals are expected to follow Fraser Guidelines (appendix 1) which gives guidance on providing confidential contraceptive advice and treatment to young people under 16 years of age. Gillick competence is more appropriate for non health multi agency professionals. School staff should always involve a school nurse or appropriate colleague in working with a young person under the age of 16 years who is known to be engaged in sexual activity.
13. **Under the Sexual Offences Act 2003, children under the age of 13 are considered of insufficient age to give 'consent' to sexual activity.** Therefore under the law they cannot be deemed competent to give 'informed' consent (see below for procedural advice)
14. The agency working with the child/young person must consider whether there is a need to share information with parents and/or other agencies. In making this decision they must consider not only the child/young person's competency but whether there are any particular risk factors.

Recognising and Assessing Risk

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 need to be taken into account.

- The age, level of maturity and understanding of the child – sexual activity at a young age is a very strong indicator that there are risks to the welfare of the child and possibly others. Very young children who are exhibiting highly sexualised behaviour may themselves have been subject to abuse. Therefore sexualised behaviour or activity could indicate that the child has suffered, is suffering, or is likely to suffer, significant harm and a referral under child protection procedures may be warranted. Professionals should also consider the children who display **Harmful Sexual Behaviour procedure** – see SSCB or Stoke-on-Trent SCB procedures – link in appendix 2.
- Knowledge of the child's family, history and current circumstances may give rise to concern, particularly familial child sex offences or children who have been within the looked after system.
- Power imbalances are very important in assessing risks. These can occur through differences in, age (e.g. 15 year old in relationship with 25 year old) and development (e.g. a young person with a learning difficulty) and where gender, sexuality, race and levels of sexual knowledge are used to exert power. Professionals should consider whether there are any indications that the child may be being sexually exploited – see SSCB or Stoke-on-Trent SCB procedures – link in appendix 2 **Safeguarding Children and Young People from Sexual Exploitation.**

- Overt aggression within the relationship (consider whether there are issues about safeguarding children who display **harmful sexual behaviour** – see safeguarding board website links in appendix 2).
- Coercion or bribery e.g. exchanging sex for favours, clothes, mobile phones, valuables, drugs, money, alcohol or access to social events (see SSCB/ Stoke-on-Trent SCB procedure '**Safeguarding Children and Young People from Sexual Exploitation** – appendix 2).
- Large amounts of money or other valuables held by the child that cannot be accounted for (consider SSCB procedure for **Safeguarding Children and Young People from Sexual Exploitation** – see above).
- Change in behaviour of the child causing concern e.g. withdrawn or anxious.
- 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 and/or give valid consent about the sexual activity.
- Young people who have become isolated from their peer group.
- Attempts by the sexual partner to secure secrecy which are unusual and go beyond that which would be considered normal in a teenage relationship (consider whether there may be **sexual exploitation** or **harmful sexual behaviour** – see SSCB or Stoke-on-Trent SCB procedures – links in appendix 2).
- Denying or minimising concerns.
- Consideration of trafficking offences and whether referral is required through the National Referral Mechanism.

National Referral Mechanism (NRM) works to the international definition of Human Trafficking known as the Palermo Protocol; this is the protocol used to determine if a person has been the victim of Human Trafficking.

The ACT (what is done) the recruitment, transportation, transfer, harbouring or receipt of persons.

The MEANS (how it is done) By means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

The PURPOSE (why it is done) For the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

- Are there concerns that the situation described to you is consistent with methods of 'grooming' - (consider whether there may be **sexual exploitation** or **harmful sexual behaviour** – see SSCB or Stoke-on-Trent SCB procedures – link in appendix 2).
- Whether the sexual partner is known as having concerning relationships with others.
- Whether the sexual partner is in a position of trust with the young person (e.g. teacher, sports coach, youth worker) (refer immediately to procedures for **dealing with allegations against persons in a position of trust** and LADO procedures – see links to Staffordshire and Stoke-on-Trent Safeguarding Children Boards' procedures appendix 2).

Process

When 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. This discussion with the young person may prove useful as a means of emphasising the gravity of some situations. The Sexual Offences Act 2003: considers the following in relation to the issue of consent

- 1) *choice* – a deliberate decision;
- 2) *Capacity* to consent. E.g. is the person old enough, are they intoxicated by alcohol or affected by drugs?
- 3) whether a person makes their choice *freely*, without manipulation, exploitation or duress

In all cases, the law is clear that it is the responsibility of the person *seeking* consent to ensure that the other person agrees by choice and has the freedom and capacity to make that choice.

When child is under 13 years of age:

- When there is any reasonable concern that a child under the age of 13 years is involved in sexual activity, the professional receiving this information must keep accurate records and speak to the identified children's safeguarding lead within their organisation. There is **always** a presumption that the case will be referred to **the children's social care services** in the area where the child lives (see contact details for Stoke-on-Trent/Staffordshire appendix 2) under section 47 (Children act 1989) procedures. However, best practice guidance recommends joint working in the case of looked after children with the placing authority, This should always be considered in cases where children are placed in Stoke-on-Trent/Staffordshire from outside of the area.
- If a subsequent strategy meeting/discussion considers the child is not at risk of significant harm, consideration will be given to further assessment and support from appropriate services in the case of no section 47 requirements.

When young person is 13, 14 and 15 years old

- “Sexual activity with a child under 16 years is also an offence. Where it is consensual it may be approached differently than if the child were aged under 13 years but may, nevertheless, have serious consequences for the welfare of the young person” - *Working together to safeguard children 2015*,
- The Sexual Offences Act 2003 reinforces 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. The law is not intended to prosecute mutually agreed teenage sexual activity between two young people of a similar age, unless it involves abuse or exploitation. This acknowledges that this group of young people are still vulnerable, even when they do not view themselves as such.
- 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 further referral to children’s social care (see section 15 - Recognising and Assessing risks).
- *“In deciding whether there is a need to share information professionals should consider their legal obligations, including whether they have a duty of confidentiality to the child. Where there is such a duty, the professional may lawfully share information if the child consents or if there is a public interest of sufficient force (e.g. likelihood of significant harm). This must be judged by the professional on the facts of each case” – Working together to safeguard children 2015.*
- Any decisions on whether or not to share information must be properly documented.
- 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 may want to initially discuss this with the Identified Safeguarding Lead in their organisation/agency responsible for child protection. There may also be a need for further consultation with Staffordshire’s First Response Team ,the child’s existing Social Worker, or Stoke-on-Trent SRT Team (see contact details appendix 2).
- If you have concerns that the young person may be at risk of sexual exploitation refer to the procedures on the SSCB or Stoke-on-Trent SCB websites (see appendix 2) and make a referral to First Response, Stoke-on-Trent SRT, or the social care team in the local authority where the child lives, as appropriate. If the situation is an emergency, the local police must be contacted immediately.

- In many cases it will not be in the best interests of the young person for criminal or civil proceeding to be instigated. However, this decision should only be reached as a result of a strategy discussion. The strategy discussion should clearly record who will be responsible for informing the young person about the outcome of the enquiries. Consideration should also be given to whether and how parents/carers should be informed of the enquiries.
- The outcome of a children's safeguarding referral will be formally fed back to the referring agency.
- Where there are reasonable grounds to think that a girl under the age of 18 years may be concealing a pregnancy, professionals should refer to the procedures on SSCB or Stoke-on-Trent SCB in regard to '**concealed pregnancy and birth**' - see SSCB or Stoke-on-Trent SCB procedures – links in appendix 2.

Young People between 17 - 18

- Although sexual activity in itself is not a criminal offence over the age of 16, young people under the age of 18 are still deemed to be children and offered protection under the Children Act 1989.
- Consideration still needs to be given to issues of sexual exploitation, harmful sexual behaviour and abuse of power.
- If there are disclosures or allegations that a young person who is over the age of 16 and under the age of 18 is involved in sexual activity, or being incited into a sexual relationship, with a person in a position of trust, or a family member (as defined by the Sexual Offences Act 2003) the adult is likely to be committing a criminal offence irrespective of the possibility that the young person may have given consent. The matter must be reported to children's social care and police so that an investigation can be undertaken.

Sharing Information with Parents and Carers

- Decisions to share information with parents and carers will be taken using professional judgement, consideration of Fraser guidelines and in consultation with Safeguarding Children Board Inter Agency Procedures. Decisions will be based on the child's age, level of maturity and understanding of the child' as previously used in the first point under recognising and assessing risk section. This should be coupled with the parents' and carers' ability and commitment to protect the young person. 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.

References

- 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 July 2004)

- Working together to safeguard children 2015.
- Staffordshire Safeguarding Children Boards' (SSCB) Inter-agency Procedures for Safeguarding Children and Promoting their welfare.
- Stoke on Trent Safeguarding Children Board Inter-agency Procedures for Safeguarding Children and Promoting their welfare.
- BASHH Guidance.
- Introductory Guide to Sexual Offences Act 2003 Definitive Guideline.

Further Information Available From

Sexual Offences Act 2003: www.legislation.gov.uk/ukpga/2003/42/part/1

Brook - www.brook.org.uk

Sex Education Forum - www.sexeducationforum.org.uk

Department of Health - www.dh.gov.uk

www.bma.org.uk/ethics

Appendix 1

Fraser Guidelines (for Health care professionals only).

A child under 13 years is not legally capable of consenting to sexual activity even though they may be considered Gillick competent in other respects. Under the Sexual Offences Act 2003 any sexual activity with a child under 13 years is a serious offence.

However, in assessing whether other young people under the age of consent (16 years) are able to make informed decisions about a mutually consensual sexual relationship the Fraser Guidelines should be used for guidance.

Gillick Competence

- The ability to understand that there is a choice and that choices have consequences.
- The ability to weigh the information and arrive at a decision.
- A willingness to make a choice (including the choice that someone else should make the decision)
- Have an understanding of the nature and purpose of the proposed intervention
- Have an understanding of the proposed intervention's risks and side effects
- Have an understanding of the alternatives to the proposed intervention, and the risks attached to them
- Have freedom from undue pressure.

Fraser Guidelines

- Young person understands the professional's advice
- You cannot persuade the young person to inform his or her parents or to allow the professional to inform the parents that s/he is seeking contraceptive advice
- The young person is very likely to begin or continue having intercourse with or without contraceptive treatment
- Unless s/he receives contraceptive advice or treatment, the young person's physical or mental health or both are likely to suffer.
- The young person's best interests require the doctor/health professional to give contraceptive advice, treatment or both without parental consent.

A record needs to be kept to say that the young person meets the criteria laid down in the Fraser Guidelines (House of Lords 1985)

Appendix 2

Contact details

Child living in Stoke-on-Trent Local Authority:

Stoke-on-Trent Safeguarding and Referral Team (SRT) **01782 235100**

Emergency Duty Team for out of hours child protection referrals **01782 234234 or 235885**

Safeguarding Education Development Officer **01782 235897**

Locality Social Workers Stoke-on-Trent (for advice and support about child welfare concerns in that area)

North – Mobile 07827 281639

Mobile 07826 891800

South – Mobile 07771 508475

Mobile 07775 411077

Stoke-on-Trent Safeguarding Children Board Procedures:

www.safeguardingchildren.stoke.gov.uk

Grange Park Sexual Assault Referral Centre

<https://www.staffordshireandstokeontrent.nhs.uk/Services/GrangePark.htm>

Cobridge Community Health Centre

Church Terrace

Cobridge

Stoke-on-Trent

ST6 2JN

Telephone: **0300 7900 166**

Email: **sarc@ssotp.nhs.uk**

Child living in Staffordshire Local Authority

First Response Team

Tel. 0800 1313 126

Emergency Duty Team (outside office hours) – 0845 6042886

Fax 01785 854223

E-mail - firstr@staffordshire.gov.uk

Staffordshire Safeguarding Children Board:

www.staffsscb.org.uk

Staffordshire Police – Staffordshire and Stoke-on-Trent

If not an emergency, tel. 101 and ask for M.A.S.H. (Multi Agency Safeguarding Hub).

In case of emergency, ring 999