

PROCEDURES AND GUIDANCE

Allegations of harm arising from under-age sexual activity

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ALLEGATIONS OF HARM ARISING FROM UNDER-AGE SEXUAL ACTIVITY

1. INTRODUCTION

The changes in legislation brought about by the Sexual Offences Act 2003, together with the new statutory duty to Safeguard and Promote Children's Welfare introduced in the Children Act 2004, require a new approach to the assessment and management of sexual offences involving children and young people.

In addition to this, recommendations made by Sir Michael Bichard, as a result of his Inquiry, advocate a model of assessment for exercising professional judgement when responding to information which indicates that children and young people are engaged in sexual activity.

This protocol does not substitute, but complements LSCB Child Protection Guidelines and Procedures and should be read in conjunction with that document.

1.1 SEXUAL OFFENCES ACT 2003

The Sexual Offences Act differentiates between certain types of offence in the context of a victim's age and his or her ability to give consent. In law, a **child under 13 is no longer deemed capable of consenting to sexual acts**. An act of sexual intercourse therefore with a child under 13 years old is **always an offence of rape** (section 5 of the Sexual Offences Act 2003). A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

The Act also clarifies the offence of Abuse of Position of Trust (section 21 of the Sexual Offences Act 2003). This offence applies to sexual activity by someone in a position of trust with any child under 18, and is designed to protect young people up to the age of 18, who are considered to be vulnerable to abuse and exploitation from persons that hold a position of trust or authority in relation to them.

DEFINITIONS:

For the purpose of this guidance the key age groups identified are:

- Children under 13;
- Young people aged between 13 and 15;
- Young people over the age of consent and up to the age of 18.
- Young people over the age of consent and up to 18 years may still suffer sexual harm through exploitation by predatory adults or through a sexual partner who is abusing a position of trust.

1.2 THE CHILDREN ACT 2004

Section 11 of the Children Act 2004 places a new statutory duty on agencies to Safeguard and Promote the Welfare of Children. This duty not only applies to the agencies themselves, but also to any service that they commission.

1.3 THE BICHARD INQUIRY RECOMMENDATIONS

The Bichard Inquiry Report identifies the concern that:

"The issue of underage sex may not be taken sufficiently seriously by the Police or by Children's Social Care generally."

Bichard goes on to reaffirm the guidance set out in *Working Together to Safeguard Children* and *What to do if You're Worried a Child is being Abused* - where it is clearly prescribed that:

"...The Police should be notified as soon as possible where a criminal offence has been committed or is suspected of having been committed against a child."

To ensure nationally that procedures and practice are effective in safeguarding children and young people involved in underage sexual activity, Bichard reinforces interagency accountability. His report highlights the need for good communication between the Police, Children's Social Care and other agencies, emphasising that decisions made should be based on clearly understood criteria. Further to this the DfES reinforces the requirement that decision-making is clearly recorded with accountable decision-makers identified. (LASSL (2004)21).

Whilst recognising the need to protect children and young people from sexual harm, Bichard was reluctant to recommend imposing procedures that would remove the capacity for local discretion to be exercised or would lead to the referral of cases involving consensual acts between two young people "either side of the age of consent."

1.4 WORKING TOGETHER TO SAFEGUARD CHILDREN 2006

Working Together to Safeguard Children (2006) gives the following guidance:

Under 13's

5.24 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.

5.25 Cases involving under 13s 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 a 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. 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 detailed reasons where a decision is taken not to share information.

Under 16's

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. Consideration should be given in every case of sexual activity involving a child aged 13-15 as to whether there should be a discussion with other agencies and whether a referral should be made to Children's Social Care. The professional should make this assessment using the considerations below. 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 nominated Child Protection Lead and subsequently with other agencies 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, there would be a presumption that the case is reported to Children's Social Care and a Strategy Discussion 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."

CANNOT FIND THIS INFORMATION IN WORKING TOGETHER 2015

2. ASSESSMENT CRITERIA:

The considerations in the following checklist should be taken into account when assessing the extent to which a child/or other children may be suffering or at risk of harm and therefore the need to hold a Strategy Meeting in order to share information.

- 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;
- Behaviour of the child i.e. withdrawn/anxious
- The level of maturity and understanding of the child i.e. whether the young person is competent to understand and consent to the sexual activity they are involved in;
- What is known about the child's living circumstances or background;
- Familial child sex offences
- Age imbalance, in particular where there is a significant age difference;
- Overt aggression or power imbalance, in cases where there is abuse of a position of trust a referral will always be made
- Coercion or bribery including the use of sex for favours i.e. exchanging sex for clothes, CDs, trainers, alcohol, cigarettes etc. This could also manifest itself in a young person having large amounts of money, jewellery or other valuables that cannot be accounted for
- The misuse of substances as a disinhibitor
- Whether the child's own behaviour, because of the misuse of substances places him/her at risk of harm resulting in an inability 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, minimises or accepts concerns;
- Whether the methods used are consistent with grooming and/or an accompanying adult gives professional cause for concern
- Whether the sexual partner/s is known by one of the agencies

2.1 DISABLED CHILDREN & YOUNG PEOPLE

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. In assessing whether a relationship presents a risk of harm to a disabled child or young person, professionals need to consider the indicators described in this protocol.

3. REFERRAL PROCESS

3.1 CHILDREN UNDER 13 YEARS OF AGE

The Sexual Offences Act 2003 states that **a child under the age of 13 cannot consent in law to sexual activity**. Therefore where it is known that a child under 13 is engaging in sexual activity, a serious criminal offence has been committed and must be reported to children's Social Care.

In all cases where the sexually active young person is under the age of 13, a full assessment must be undertaken. Each case must be assessed individually and a referral to Children's Social Care must be made. In order for this to be meaningful, the young person will need to be identified, as will their sexual partner if details are known.

A decision not to refer, can only be considered following a case discussion with the Designated Lead for Child Protection within the professional's employing authority. Teenage Pregnancy Coordinators and G.P's may have discretion, however for East Riding Safeguarding Children's Partnership partner agencies the decision must always be to make a referral for children **less than 13 years** of age. When a referral is not made, the professional and agency concerned is fully accountable for the decision and a good standard of record keeping must be made, including the reasons for not making a referral.

When a girl under 13 is found to be pregnant, a referral to Children's Social Care must be made and they will hold a Strategy Discussion with the Police and/or other agencies. At this stage a multi agency support package should be formulated.

3.2 CHILDREN AND YOUNG PEOPLE AGED 13 AND UP TO 16 YEARS OF AGE

If one or more of the above factors identified in sections 2 applies, then the allegations or referral must be referred to Children's Social Care and an interagency Strategy Meeting will take place to decide on further enquiries.

3.3 YOUNG PEOPLE AGED BETWEEN 16 AND 18 YEARS OF AGE

Where there is an allegation of an abusive relationship involving a young person in this age group the information should be assessed using the factors in section 2 of this protocol.

N.B: Where there are concerns that child/young person may be at risk of sexual exploitation through prostitution, a referral will always be made to Children's Social Care.

3.4 ABUSE OF A POSITION OF TRUST

In all cases where it appears that there is an abuse of position of trust, a referral must be made either to Children's Social Care or the Police in the first instance and an interagency Strategy Meeting will take place.

N.B: Where the alleged perpetrator is a professional working with children or an approved carer for a 'Looked After' child, the case must always be subject to joint consultation or referral.

3.5 RECORDING AND DECISION-MAKING

All agencies must ensure that decisions are recorded, signed and dated and identify the accountable decision-makers.

If having analysed the information it is considered that one or more factors in sections 2 and 6 apply and, in your professional judgement, a decision has been taken *not* to refer to Children's Social Care or the Police, a clear record of the decision must be made, signed and dated, the reasons for the decision and the accountable decision-makers.

An example of when a decision *not* to share information may apply would be where the two young people concerned are both over 13 years old, are close in age, (for instance 15 and 16 years old) and are in a consensual relationship. It should never, however, be assumed that young people cannot be abused by other young people.

3.6 ACCOUNTABILITY

The guidance and procedures prescribed by the DfES and the LSCB must be complied with by any accountable body named in the Children Act 2004 or any service commissioned by them, (Section 11 CA 2004). All other agencies therefore should be aware that decisions made by them *not to refer for joint consultation with the Police*, could be in breach of legislation and decisions not to refer will be subject to inspection by CSCI.

"The integrated Children's System should record those cases where a decision is taken not to refer to the Police ... and the Commission for Social Care Inspection should, as part of any ...inspection, review whether decisions not to inform the Police have been properly taken."

(LASSL (2004) 21)

3.7 INFORMATION SHARING AND CONSENT

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. This discussion can be a useful way of emphasising the seriousness of the situation.

In cases of underage sexual activity where the information received indicates that the young person may have been a willing party, the decision to share information may be contentious. In such cases the young person may appear unwilling to make a complaint, indicating that the sexual activity was consensual and as such was not abusive. Professionals will still need to assess this in accordance with this guidance.

The DFES circular LASSL (2004) 21 states that the Working Together guidance and Children Act 1989 principles should always be applied, ensuring that the child's welfare is paramount.

The significance of harm should be assessed and the criteria as to whether or not significant harm has occurred and/or an offence has been committed under the Sexual Offences Act 2003 should be determined.

Regardless of consent being given by the subject to share the information, the DfES guidance is clear that:

"The law permits the disclosure of confidential information necessary to safeguard a child or children in the public interest: that is the public interest in child protection may override the public interest in maintaining confidentiality."

3.8 CONSULTATION/INFORMATION SHARING WITH THE POLICE

Where a decision has been taken by any agency to seek information from the Police to inform a risk assessment, the information request will be dealt with under Humberside Police's Recording Guidance (Section17-information sharing), as with any other child welfare concern.

This sharing of information to inform a risk assessment will not automatically trigger a criminal investigation, even when it is clear that a crime has been committed and is recorded as such by the Police.

The main restrictions on disclosure of information are:

- Common Law Duty of Confidence;
- Human Rights Act 1998;
- Data Protection Act 1998
- Other statutory provisions may also be relevant.

but in general, the law will not prevent you from sharing information with other practitioners if:

- those likely to be affected consent; or
- the public interest in safeguarding the child's welfare overrides the need to keep the information confidential; or
- disclosure is required under a court order or other legal obligation.

Any professional who has concerns about a child but are unclear whether they should make a referral, can seek advice from Children's Social Care or the Police.

4. CHILDREN'S SOCIAL CARE AND POLICE RESPONSE TO REFERRALS

Where a referral or information concerning an alleged sexual offence against a child/young person is received by Children's Social Care or the Police a Strategy Meeting involving the referring agency will be held and the usual procedures for responding to concerns about children/young people will be followed.

5. SUMMARY OF KEY POINTS

- Children under 13 cannot by law give consent and therefore sexual acts with children under the age of consent will always constitute an offence and must be referred to Children's Social Care and/or Police.
- Sexual activity between teenagers will often be consensual but even where a child or young person may appear to be a willing party; such activity may constitute a criminal offence and be indicative of sexual exploitation or child sexual abuse.
- The abuse of a Position of Trust can occur with any child/young person up to 18 years of age. Such instances must always be referred to Police or Children's Social Care.
- All referrals of underage sexual activity should be assessed to establish if they should be subject to Child Protection Referrals.

- In cases where the child/young person is over 13 years old, initial checks should be undertaken with key agencies. As a rule this will include joint consultation with the Police under Section 17, CA 1989.
- Initial checks will inform the decision as to whether or not a Section 47 investigation should be undertaken.
- In cases where a child is under 13 years of age joint consultation with the Police will automatically take place under Section 47, CA 1989.
- **Professional discretion and judgment may be exercised on completion of the checklist.**
- **Where it appears that a criminal offence may have been committed the joint consultation process should always be followed, except in those circumstances where it is clearly inappropriate to do so.**
- A clear record must be made of the decision, the reasons for the decision and who the accountable decision makers were. The record must be signed and dated.

REFERENCES:

- The Children Act 1989
- The Bichard Inquiry Report, TSO 2004
- What To Do If You're Worried A Child is Being Abused, DFES 2003/4
- Sexual Offences Act 2003
- DfES LASSL circular (2004)21
- The Children Act 2004
- Working Together to Safeguard Children 2015

THIS PROTOCOL APPLIES TO ALL AGENCIES ACROSS
THE HUMBERSIDE POLICE AUTHORITY AREA