

CHAPTER 34: Sexually Active Young People

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1. Introduction

All young people have a right to confidential advice from professionals about sexual health/sexually transmitted diseases, contraception and relationships.

The purpose of these procedures is to clarify the process/responsibilities of practitioners with regards to assessing the risks and identify cause for concern in under age sexually active young people.

2. Law

The minimum age at which young people of either gender or whatever sexual orientation can consent to have **lawful** sexual intercourse, is sixteen years of age.

With respect to a child under the age of 13, her/his actual consent to any sexual activity is irrelevant because **the law presumes s/he is incapable of informed consent**. Under the Sexual Offences Act 2003, rape or assault by penetration of a child under thirteen may attract a sentence of imprisonment for life.

The Sexual Offences act 2003 makes provision for young people of less than sixteen years old, to be offered confidential professional advice on contraception, condoms, pregnancy and abortion.

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

The exception, in statute, covers not only health professionals, but also anyone who acts to protect a child, for example teachers, school nurses, education welfare officers, YOT officers, youth workers, social workers and parents.

3. Assessment

All young people, regardless of gender, or sexual orientation, who are believed to be 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. This assessment must be carried out in accordance with information and guidance set out in

- These inter agency procedures.
- 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.
- Department for Education and skills 2005 Guidance for youth support workers - enabling young people to access contraceptive and sexual health services.
- Department for Education and Skills Legal and Policy framework for social workers, residential social workers, foster carers and other local social care practitioners - enabling young people to access contraceptive and sexual health information and advice.

In assessing the nature of any particular behaviour, it is essential to look at the facts of the actual relationship between those involved.

The following non exhaustive considerations must be taken into account in assessing the extent to which the child (or other children) may be suffering or at risk of harm:

- The age of the child: the younger the child the stronger the presumption must be that sexual activity is a matter of concern.
- The level of maturity and understanding of the child and her/his competence to understand and consent to sexual activity
- Power imbalances, including through age and development: size, gender, sexuality, levels of sexual knowledge, learning ability e.g. a 15 year old girl and a 25 year old man.
- Power imbalance where sexual partner in position of trust or authority, e.g., teacher, youth worker, carer, etc
- Where a young person has a learning disability or communication difficulty that could hinder their capacity to disclose that they have been abused. 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.
- Use of overt aggression, coercion or bribery
- Use of alcohol and/or drugs were to facilitate the activity
- If the young person's own behaviour e.g. the use of drugs, means s/he is unable to make an informed choice
- Any attempts to secure secrecy by the sexual partner beyond what is usual in teenage relationships e.g. his/her identity being a secret
- If the sexual partner is known by agencies to have concerning relationships with other young people
- If the young person denies or minimises adult concerns
- Presence of a sexually transmitted infection in a very young person
- If the relationship involves behaviours considered to be 'grooming' in the context of sexual exploitation
- Where sex has been used to gain favours, e.g. cigarettes, clothes, CDs, trainers, alcohol, drugs etc
- Where the young person has a lot of money or other valuable things which cannot be accounted for
- Knowledge about the child's circumstances/background, including any familial child sex offences
- The child's behaviour e.g. withdrawn, anxious.

It is considered good practice for workers to follow the Fraser Guidelines when discussing personal or sexual matters with a young person under 16 years. The Fraser Guidelines give guidance on providing advice and treatment to young people under 16 years of age. These hold that sexual health services can be offered without parental consent providing that:

- The young person understands the advice that is being given

- The young person cannot be persuaded to inform or seek support from their parents, and will not allow the worker to inform the parents that contraceptive/protection eg condom advice, is being given
- The young person's physical or mental health is likely to suffer unless they receive contraceptive advice or treatment
- It is in the young person's best interest to receive contraceptive/safe-sex advice and treatment without parental consent

4. Process

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 safeguarding by sharing information with others.

This discussion with the young person may prove useful as a means of emphasising the gravity 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.

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

It is important that all decision-making is undertaken with full professional consultation, never by one person alone (agency procedures must include guidance on how this is to be undertaken within their own organisation).

If you have concerns that the young person may be at risk of sexual exploitation through prostitution, please refer to Milton Keynes Children's Social Care Referral and Assessment Team by completion of a Multi-Agency Referral Form (MARF). If the situation is an emergency, the local Police should be contacted immediately.

When a referral is received by Milton Keynes Children's Social Care, an enquiry to the Child Protection Administrators to establish whether a child is subject to a **Child Protection Plan** will be made, followed by a **Strategy Discussion** with partner agencies, including Police. This discussion should be informed by the assessment undertaken using these procedures and, in the majority of cases, may be largely for the purposes of consultation and information sharing.

In many cases, it will not be in the best interests of the young person for criminal or civil proceedings to be instigated. However, Police and Children's Services and other agencies may hold vital information that will assist in any clear assessment of risk.

Following any referral to Milton Keynes Children's Social Care and after a strategy discussion with the Police and/or any other agencies there may be one of the following responses:

- No further action deemed necessary
- An **Initial Assessment** undertaken which may identify the young person as a **Child in Need** and additional services provided
- An Initial Assessment undertaken which may identify the young person as a child at risk of **Significant Harm** and in need of child protection intervention

The outcome of the referral will be formally fed back to the referring agency.

During this process agencies must continue to offer the service and support to the young person.

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

5. Young People under the Age of 13 Years

Under the Sexual Offences Act 2003, children under the age of 13 years are considered of insufficient age to give consent to sexual activity.

Cases involving under-13s should always be discussed with a nominated child protection lead in the organisation. Under the Sexual Offences Act 2003, 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 5.56 Working Together 2010. 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.

A decision not to refer can only be made following a case discussion with the designated lead for child protection within the professional's employing authority. 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.

6. Young People between 13 and 16 Years

Sexual activity with a child under 16 years of age is also an offence. Where it is consensual it may be less serious than if the child were under 13 years, but may nevertheless have serious consequences for the welfare of the young person. Consideration should always be given in every case of sexual activity involving a child aged between 13 and 16 years.

Further guidance is provided by 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, reproductive and sexual health. Working Together to Safeguard Children 2010 (5.28) states "...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.

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

7. Young People Age 16-17 Years

Sexual activity involving 16 or 17 year olds, though unlikely to involve an offence, may still involve harm or the risk of

harm. Professionals should still bear in mind the considerations and processes outlined in this guidance in assessing the risk and should share information as appropriate. It is an offence for a person to have a sexual relationship with a 16 or 17 year old if they hold a position of trust or authority in relation to them.

8. Sharing Information with Parents and Carers

Decisions to share information with parents and carers will be taken using professional judgement, consideration of whether the young person is **Fraser Competent**, and in consultation with these Child Protection Procedures. Decisions will be based on the child's age, maturity and ability to appreciate what is involved in terms of the implications and risks to themselves. 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.

This protocol is written on the understanding that those working with this vulnerable group of young people will naturally want to do as much as they can to provide a safe, accessible and confidential service whilst remaining aware of their duty of care to safeguard them and promote their well-being.

End

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