

Guidance for
**Professionals
Working with
Sexually Active
Young People**

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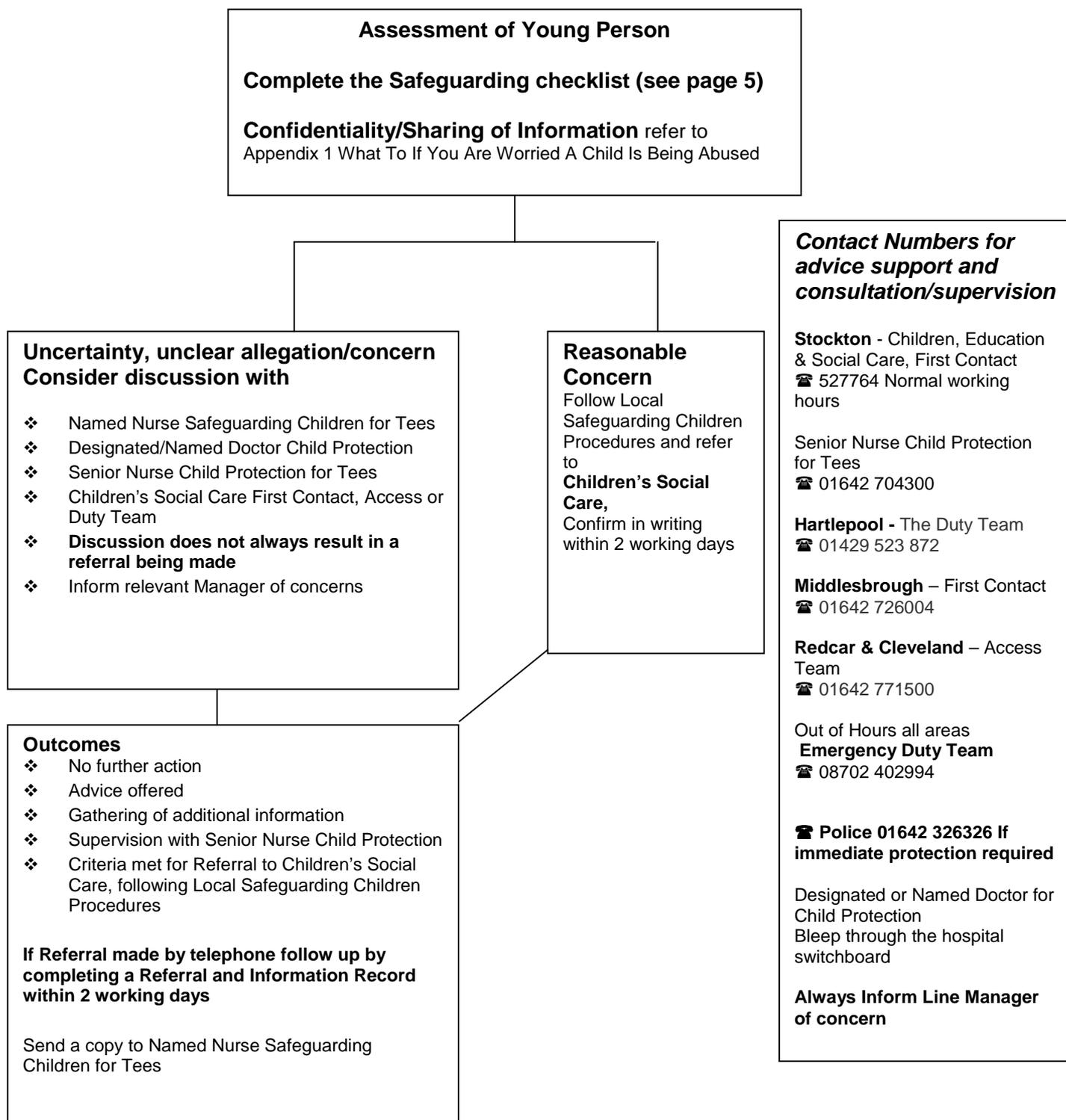
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WHAT TO DO IF YOU'RE WORRIED A CHILD IS BEING ABUSED.

Suggested Pathway for Handling Potential Child Abuse Cases for Professionals who provide advice and treatment to young people under 16 years of age on contraception, sexual and reproductive health



Contemporaneous notes to be made of your concerns, discussions and telephone calls

INTRODUCTION

Most children and young people under the age of 18 will have a healthy interest in sex and sexual relationships at some point in their teens. For the vast majority of young people, this sexual activity will be normal and not be considered abusive or exploitive in nature.

For a small proportion of young people, there may be an element of abuse attached to sexual activity or sexual relationships, which would lead to the need for additional services to help support or protect a young person.

In addition, Bichard made two recommendations about the handling of sexual offences against children:

- Recommendation 12:
The Government should reaffirm the guidance in 'Working Together to Safeguard Children 2006' 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.
- Recommendation 13
Advises of the need for national guidance around the decision as to whether or not to notify the police.

CONFIDENTIALITY

Young people have a right to confidentiality of personal information unless it compromises the rights and safety of others or themselves.

This is an issue that causes a great deal of anxiety for young people and professionals alike. It is essential that every party fully understand the rights of the young person regarding sharing personal information.

There may be times when confidentiality has to be breached to ensure that the young person receives the protection, treatment and support they need. In such circumstances the young person needs to know why the information is being shared, and should be supported in the process.

The House of Lords in the case of Gillick vs. West Norfolk and Wisbech Area Health Authority set down the current legal framework in 1985. This determines that young people under the age of 16 could consent to medical treatment if they have sufficient maturity and judgement to enable them to fully understand what is proposed.

The overriding principle, however, is that confidentiality should be respected unless it is apparent or suspected that there are child protection issues, i.e. that a young person is at risk of significant harm. In such circumstances, then child protection procedures should be followed.

SEXUAL OFFENCES ACT

This guidance takes account of the Home Office Guidance on the Sexual Offences Act, which states that:

'Although the age of consent remains 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.'

The Sexual Offences Act 2003 does not affect the ability of Health Professionals and others working with young people to provide confidential advice or treatment on contraception, sexual and reproductive health to young people under 16.

The Act states that, a person is not guilty of aiding or abetting or counselling a sexual offence against a child when they are acting for the purpose of:

- Protecting a child from pregnancy or sexually transmitted disease
- Protecting the physical safety of a child
- Promoting the child's emotional well being by the giving of advice

In all cases, the person must not be causing or encouraging the commission of an offence or a child's participation in it. Nor must the person be acting for the purpose of obtaining sexual gratification. This exception in statute, covers not only health professionals, but also anyone who acts to protect a child, for example teachers, Connexions, Personal Advisors, youth workers, social care practitioners and parents.

In order to implement this guidance, Professionals need to be aware of what is considered as 'Sexual Activity'. The meaning of 'Sexual' is very wide within the Sexual Offences Act 2003. Working Together to Safeguard Children (HM Government, 2006) identifies that sexual activity should concern penetrative sex or other intimate sexual activity. The guidance will consider this as the definition of 'Sexual Activity'.

Sir Michael Bichard gives some circumstances where young peoples sexual activity may not have to be disclosed to the police.

'This seems likely to include cases where there is a sexual relationship which is considered to be consensual and not abusive'.

Additional guidance is given in *'Enabling young people to access contraceptive and sexual health information and advice: Legal and policy framework for social workers, residential social workers, foster carers and other social care practitioners'* (2004)

'Although the age of consent remains at 16, it is not intended that the law should be used to prosecute mutually aged teenage sexual activity between 2 people of a similar age, unless it involves abuse or exploitation. It is therefore expected that local policies and protocols will reflect the need for social care practitioners to use their discretion in weighing up the circumstances of each individual case to determine whether a formal notification to the police is necessary'.

ASSESSMENT

All young people regardless of gender, 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 professionals involved.

In assessing the nature of any particular behaviour, it is essential to look at the facts of the actual relationship between those involved. Power imbalances are very important and can occur through differences in size, age and 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 e.g. a 15 year old girl and a 25 year old man). There may also be an imbalance of power if the young person's sexual partner is in a position of trust in relation to them, e.g. teacher, youth worker, carer etc. In assessment workers need to include the use of sex for favours, e.g. exchanging sex for clothes, CDs, trainers, alcohol, drugs, cigarettes etc.

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. The Sexual Offences Act recognises the rights of people with a mental disorder to a full life, including a sexual life. However there is a duty to protect from abuse and exploitation.

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:

- Whether the young person is competent to understand and consent to the sexual activity they are involved in
- The nature of the relationship between those involved, particularly if there are age or power imbalances as outlined above
- The ability to consent; Whether both young people truly understand the activity they are involved in and are able to give informed consent. Compliance is not the same as consent
- Whether overt aggression, coercion, or bribery was involved including the use of substances / alcohol as a disinhibitor
- Whether the young persons own behaviour, for example through the misuse of substances including alcohol, places them in a position where they are unable to make an informed choice about the activity
- Each partners perception of the activity: if the young person perceives the activity as abusive, it should be considered as such
- What is known about the young persons living circumstances or background, e.g. living away from home, access to an appropriate adult carer
- Any attempts to secure secrecy by the sexual partner beyond what would be considered usual in a teenage relationship.
- Whether the sexual partner is known by the agency as having other concerning relationships with similar young people
- Whether if accompanied by an adult that relationship gives any cause for concern
- Whether the young person denies, minimises or accepts concerns
- Whether methods used to secure compliance and / or secrecy by the sexual partner are consistent with behaviours considered to be 'grooming'
- Whether sex has been used to gain favours (e.g. swap sex for cigarettes clothes, CDs, trainers, alcohol, drugs etc).
- Whether the young person has a lot of money or valuable things which cannot be accounted for

It is good practice for workers to follow 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 less than 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 persuaded to inform or seek support from their parents and will not allow the worker to inform the parents that contraception / protection, e.g. condom advice, is being given.
- The young person is likely to begin or continue to have sexual intercourse without contraception or protection by barrier method
- The young persons physical or mental health is likely to suffer unless they receive contraceptive advice or treatment
- It is in the young persons best interest to receive contraceptive / safe sex advice and treatment without parental consent

Refer to and complete Safeguarding Checklist and Fraser Guidelines Proforma – example below.

Safeguarding Checklist

To be completed each time a young person accesses the C Card Scheme/presents for a pregnancy test/participates in an information, advice and support session

Young Person's Name/Initials:	D.O.B:	Age:	C Card No:							
Date:										
Partner's age:										
Confidentiality discussed (please tick)										
Fraser Guidelines followed and completed on registration form/ticked off on client record sheet? (please tick)										
Professional's opinion about relationship:		Y	N	Y	N	Y	N	Y	N	
Does it appear to be mutually agreed?										
Are there any signs of:										
• Coercion										
• Abuse										
• Familial sexual abuse										
• Sexual exploitation										
• Sexually active at aged 12 or under										
• Pregnancy conceived at age 12 or under										
• Substance misuse										
If you have ticked yes to any of the above please give further details here: (i.e. what are you concerned about, why and how concerned are you?)										
Is there a safeguarding concern? (if yes, please complete 'CONCERN ONLY' section below:										
Complete following section in case of CONCERN ONLY (see safeguarding flowchart):		Y	N	Y	N	Y	N	Y	N	
Advice sought from Child Protection Lead in your agency/Line Manager / First Contact										
Reason for this action documented										
Discussed with young person										
Referral to First Contact/ Emergency Duty Team										
Reasons for disclosure documented										
Discussed with young person										
Signature of Worker										
Print Name										

Young Person's name: _____

**UNDER 16 YEAR OLDS CONTRACEPTION/ADVICE
1st Visit**

Date _____

Is there parental consent? **YES** **NO**

If no, consider the following Department of Health Guidelines (1986):

- (i) The young person can understand the advice and has sufficient maturity to understand what is involved in terms of the moral, social and emotional implications.
- (ii) The young person cannot be persuaded to inform parents, nor to allow the Doctor to inform them that contraception has been sought.
- (iii) The young person will be very likely to begin or to continue having sexual intercourse with or without contraception treatment.
- (iv) Without contraceptive advice or treatment the young person's physical or mental health, or both, are likely to suffer.
- (v) The young person's best interests require the Doctor to give contraceptive advice, treatment or both without parental consent.

Are you satisfied that these guidelines are being met? **YES** **NO**

Method/Advice given:

Patient agreed to contact with G.P. **YES** **NO**

Letter to G.P. **YES** **NO**

Worker's Signature _____

ACTIONS TO BE TAKEN

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 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 consideration should be given as to whether their circumstances have changed or further information is given which may lead to the need for referral to either Children's Social Care (First Contact), the police and / or another agency.

Following such a referral and/or assessment consideration needs to be given as to whether or not it is perceived that a criminal offence has been committed and therefore that the police should be notified.

Working Together to Safeguard Children (2010) states that:

(WT 2.1.30) The police must be notified as soon as possible by local authority children's social care whenever a case referred to them involves a criminal offence committed, or suspected of having been committed, against a child. Other agencies should also consider sharing such information (see [paragraphs 5.20](#) WT 2010 onwards). This does not mean that in all such cases a full investigation is required, or that there will necessarily be any further police involvement. It is important, however, that the police retain the opportunity to be informed and consulted, to ensure all relevant information can be taken into account before a final decision is made.

This is further reinforced in paragraphs:

(WT 5.17) Whenever local authority children's social care has a case referred to it which constitutes, or may constitute, a criminal offence against a child it should always discuss the case with the police at the earliest opportunity.

and goes on to make clear that

(WT 5.19) Sharing of information in cases of concern about children's welfare will enable professionals to consider jointly how to proceed in the best interests of the child and to safeguard children more generally (see [paragraph 5.3](#)).

(WT 5.20) In dealing with alleged offences involving a child victim the police should normally work in partnership with children's social care and/or other agencies. In circumstances where it is suspected that the child may have been conceived as the result of an incestuous relationship or interfamilial abuse, consideration should be given to the use of DNA testing and the role of genetics and geneticists. Whilst the responsibility to instigate a criminal investigation rests with the police they should consider the views expressed by other agencies. There will be less serious cases where, after discussion, it is agreed that the best interests of the child are served by a children's social care led intervention rather than a full police investigation

In some cases urgent action may need to be taken to safeguard the welfare of the young person. In most circumstances however, there will need to be an assessment of need undertaken carried out in accordance with the [Framework for the Assessment of Children in Need and their Families](#) (DOH 2000)

If you have concerns that the young person may be at risk of sexual exploitation through prostitution, a referral should be made to Children's Social Care. If the situation is an emergency, the local Police should be contacted immediately.

YOUNG PEOPLE AGED UNDER 13

Working Together to Safeguard Children (2010) states:

(WT 5.26) A child under 13 years is not legally capable of consenting to sexual activity. Any offence under the Sexual Offences Act 2003 involving a child aged under 13 years is very serious and should be taken to indicate that the child is suffering, or is likely to suffer, significant harm.

(WT 5.27) Cases involving children aged under 13 years 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 years old 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 WT. This should involve children's social care, police, health and other relevant agencies in discussing 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. These decisions should be exceptional and only made with the documented approval of a senior manager.

Any professional who becomes aware of a child under 13 involved in sexual activity should therefore:

- Discuss with the nominated child protection lead / line manager / named professional in the relevant organisation to consider fully issues surrounding consent and confidentiality
- Inform the young person of intention to discuss information with Child Protection if possible
- Make a referral to the Children's Social Care
- Record fully information given and action taken
- Children's Social Care should take a Child in Need of Protection Referral and pass to the appropriate Social Care Team who will arrange a strategy discussion as outlined in module 6.
- In the rare event following the sharing of information with other agencies, that a child in Need of Protection referral is not taken, detailed reasons should be recorded outlining why the decision not to proceed as a Child in Need of Protection was made.

YOUNG PEOPLE BETWEEN 13 AND 16

Working Together to Safeguard Children (2010) states

(5.28) Sexual activity with a child aged under 16 years is also an offence. Where it is consensual it may be less serious than if the child were aged under 13 years 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 is likely to occur, there should 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.

Consideration should be therefore given in every case of sexual activity involving 13 – 15 as to whether discussion with other agencies and whether a referral should be made to Children's Social Care. Cases of concern should be discussed with the nominated child protection lead and subsequently with other agencies as required. Children's Social Care is a Confidential Service.

(WT 5.29) The considerations in the following checklist should be taken into account when assessing the extent to which a child (or other children) is suffering, or is likely to suffer, significant harm and therefore whether a strategy discussion should be held 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;
- the level of maturity and understanding of the child;
- what is known about the child's living circumstances or background;
- age imbalance, in particular where there is a significant age difference;
- overt aggression or power imbalance;
- coercion or bribery;
- familial child sex offences;
- behaviour of the child i.e. withdrawn, anxious;
- 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 suffering harm so that he/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, minimises or accepts concerns;
- whether the methods used are consistent with grooming; and

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

Children will usually be accompanied by parents or other adults involved in their case, and you can usually tell if a child agrees to information being shared by their behaviour. Occasionally, children who lack the capacity to consent will share information with you on the understanding that their parents are not informed. You should usually try to persuade the child to involve a parent in such circumstances. If they refuse and you consider it is necessary in the child's best interest for the information to be shared (for example, to enable a parent to make an important decision, or to provide proper care for the child), you can disclose information to parents or appropriate authorities. You should record your discussions and reasons for sharing information.

Where there is a reasonable cause to suspect that significant harm to a child has occurred / might occur the case should be reported to:

- Stockton-on-Tees - The First Contact Team on 01642 527764 or email firstcontact@stockton.gov.uk.
- Hartlepool – The Duty Team on 01429 523 872
- Middlesbrough – The First Contact Team on 01642 726004
- Redcar & Cleveland – The Access Team on **01642 771500**

In cases of concern when sufficient information is known about the sexual partner the agency concerned should check with other agencies, including the police to establish whatever information is known about that person. The Police should normally share the required information without beginning a full investigation if the agency making the check requests this.

Any decision not to share information must be fully recorded detailing the reasons for the decisions.

YOUNG PEOPLE OVER 16 AND UNDER 18

Although sexual activity in itself is not an offence over the age of 16, vulnerable young people under the age of 18 are still offered support or protection under the Children Act 1989. Young people over the age of 16 and under the age of 18 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.

Consideration still needs to be given to issues of sexual exploitation and abuse of power in circumstances outlined above. Young people can be subject to offences of rape and assault, and the circumstances of an incident may need to be explored with a young person.

INFORMATION ADVICE AND GUIDANCE

Home Office guidance on the Sexual Offences Act 2003 states that:

"Young people, including those under 13, will continue to have the right to confidential advice on contraception, condoms, pregnancy and abortion"

(Working within the Sexual Offences Act: Home Office May 2004, p.5)

In order to implement this guidance, a professional who has completed their own agency's assessment with a young person can offer an Information, Advice and Guidance session where necessary. They may decide to consult with other agencies prior to delivering this.

If a worker is giving advice and guidance, and a person under 13 discloses that they are sexually active, then the worker must follow the Procedure outlined above (YOUNG PEOPLE AGED UNDER 13).

PREGNANCY

When a pregnancy is conceived at age 12 or less the girl should be the subject of an immediate referral to Children's Social Care via First Contact / Access or Duty Team.

Any girl, either under or over 13, who is pregnant, should be offered specialist support and guidance by the relevant services. These services will also be part of the assessment of the girls' circumstances.

SHARING INFORMATION WITH PARENTS

Children will usually be accompanied by parents or other adults involved in their care, and you can usually tell if a child agrees to information being shared by their behaviour. Occasionally children who lack the capacity to consent will share information with you on the understanding that their parents are not informed. You should try to persuade a child to involve a parent in such circumstances. If they refuse and you consider it necessary in the child's best interests for the information to be shared (for example, to enable a parent to make an important decision, or to provide proper care for the child), you can disclose information to parents or appropriate authorities. You should record your discussions and reasons for sharing the information.

SEXUALLY TRANSMITTED INFECTIONS ARISING FROM SEXUAL ABUSE

If a child or young person is found to have an infection regarded as sexually transmitted in the adult population and the age of the child suggests this could have been contracted through non-consensual activity, a referral **must** be made to a Consultant Paediatrician with expertise in this field for further assessment. In the majority of cases a referral to Children Education and Social Care via First Contact will also be required.

Guidance above relating to under age sexual activity should be followed.

APPENDIX

THE SEXUAL OFFENCES ACT 2003

Sexual Grooming

Section 15 of the Sexual Offences Act 2003 makes it an offence for a person aged 18 or over to meet intentionally, or to travel with the intention of meeting a child under 16 in any part of the world, if he has met or communicated with that child on at least two earlier occasions, and intends to commit a “relevant offence” against that child either at the time of the meeting or on a subsequent occasion. An offence is not committed if he reasonably believes the child to be 16 or over.

The section is intended to cover situations where an adult establishes contact with a child through for example, meetings, conversations or communications on the Internet and gains the child’s trust and confidence so that he can arrange to meet the child for the purpose of committing a “relevant offence” against the child.

The course of conduct prior to the meeting that triggers the offence may have an explicitly sexual content, such as entering into conversations with the child about sexual acts he wants to engage him/her in when they meet, or sending images of adult pornography. However, the prior meetings or communication need not have an explicitly sexual content and could for example simply be giving swimming lessons or meeting him/her incidentally through a friend.

The offence will be complete either when, following the earlier communications, an adult meets the child or travels to meet the child with the intent to commit a relevant offence against the child. The intended offence does not have to take place.

The evidence of intent to commit an offence may be drawn from the communications between the adult and the child before the meeting or may be drawn from other circumstances, for example if the adult travels to the meeting with ropes, condoms and lubricants.

Subsection (2) (a) provides that previous meetings or communications with the child can have taken place in or across any part of the world. This would cover for example emailing the child from abroad, speaking on the telephone abroad, or meeting the child abroad. The travel to the meeting itself must at least partly take place in England or Wales or Northern Ireland.

The Age of Consent

The legal age for young people to consent to have sex is still 16, whether they are straight, gay or bisexual. The aim of the law is to protect the rights and interests of young people, and make it easier to prosecute people who pressure or force others into having sex they don’t want.

For the purposes of the under 13 offences, whether the child consented to the relevant risk is irrelevant. A child under 13 does not, under any circumstances, have the legal capacity to consent to any form of sexual activity.

Children And Families: Safer From Sexual Crime – (The Sexual Offences Act 2003)

Although the age of consent remains 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. Young people, including those under 13, will continue to have the right to confidential advice on contraception, condoms, pregnancy and abortion.

PROTECTING PEOPLE WITH A MENTAL DISORDER

The Sexual Offences act 2003 has created three new categories of offences to provide additional protection with a mental disorder.

- ◆ The Act covers offences committed against those who, because of a profound mental disorder, lack the capacity to consent to sexual activity.
- ◆ The Act covers offences where a person with a mental disorder is induced, threatened or deceived into sexual activity.
- ◆ The Act makes it an offence for people providing care, assistance or services to someone in connection with a mental disorder to engage in sexual activity with that person.

BICHARD INQUIRY - Recommendation Number 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”.

WORKING TOGETHER TO SAFEGUARD CHILDREN (2010)

(WT 5.19) Whenever local authority children’s social care has a case referred to it which constitutes, or may constitute, a criminal offence against a child it should always discuss the case with the police at the earliest opportunity.

(WT 5.22) In dealing with alleged offences involving a child victim the police should normally work in partnership with children’s social care and/or other agencies. In circumstances where it is suspected that the child may have been conceived as the result of an incestuous relationship or interfamilial abuse, consideration should be given to the use of DNA testing and the role of genetics and geneticists. Whilst the responsibility to instigate a criminal investigation rests with the police they should consider the views expressed by other agencies. There will be less serious cases where, after discussion, it is agreed that the best interests of the child are served by a children’s social care led intervention rather than a full police investigation.

(WT 2.130) The police must be notified as soon as possible by local authority children’s social care whenever a case referred to them involves a criminal offence committed, or suspected of having been committed, against a child. Other agencies should also consider sharing such information (see [paragraphs 5.20](#) WT onwards). This does not mean that in all such cases a full investigation is required, or that there will necessarily be any further police involvement. It is important, however, that the police retain the opportunity to be informed and consulted, to ensure all relevant information can be taken into account before a final decision is made.

ADDITIONAL REFERENCES

- ◆ **Enabling young people to access contraceptive and sexual health information and advice: Legal and Policy Framework for Social Workers, Residential Social Workers, Foster Carers and other Social Care Practitioners.**
(Department for Education and Skills Teenage Pregnancy Unit 2004).
- ◆ **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)
- ◆ **What to do if you are worried a child is being abused Children's Services Guidance 2006.**
(Joint publication from the Department of Health, Home Office, Office of the Deputy Prime Minister, Lord Chancellor, Department of Education and Skills).
- ◆ **Guidance on offences against children.**
(Home Office Circular 16/2005)

FURTHER INFORMATION

The following websites may provide staff with additional resources that they would find useful

Home Office - <http://www.homeoffice.gov.uk/>

Sex Education Unit - www.ncb.org.uk/sef

Department for Education - www.education.gov.uk

Department of Health - www.dh.gov.uk