



# WORKING WITH CHILDREN & YOUNG PEOPLE WHO ARE SEXUALLY ACTIVE

## Multi-Agency Practice Guide

August 2019

### DOCUMENT CONTROL

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## 1. Purpose

- 1.1 On a National and Local level it has been recognised that sexual activity between young people is not always a child protection matter and that supportive approaches can often be more effective in meeting young people's wellbeing needs. The aim of the guidance is to support practitioners to meet the needs of children and young people in an appropriate manner, whilst recognising their individual needs.
- 1.2 The intention of this guidance is to give information and direction on the assessment, decision making processes and the co-ordination of a multi-agency response to the complex needs of this group of young people, ensuring that their rights are respected and wellbeing needs met whilst allowing for sensitivity of approach in ensuring that they are protected from harm and exploitation.
- 1.3 This guidance has been developed for all practitioners working with children and young people, but paying particular attention to those working with young people aged 13 – 15 years.
- 1.4 This guidance includes information relevant for practitioners working with young people who have physical and learning disabilities. Young people with disabilities have the same rights as all other young people; however, this group of young people are also identified to be at greater risk of abuse due to an increased vulnerability. They may be particularly vulnerable to coercion or find it difficult to communicate their needs; there may also be concerns in terms of their capacity to consent.
- 1.5 This guidance is intended to complement the National Guidance ["Underage Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns"](#).

## 2. Context

- 2.1 This guidance recognises that different agencies and professionals have different roles and responsibilities in relation to supporting young people who are sexually active.
- 2.2 It is recognised that engaging in sexual intercourse and oral sex before the age of 16 years is illegal; however the Sexual Offences (Scotland) Act 2009 makes provisions for "older children" i.e. those aged 13 – 15 years which states that they may have a limited capacity to consent "and It is expected that, as with the great majority of other offences committed by children, such offences would normally be dealt with by the Children's Reporter, rather than through prosecution in the criminal courts, in line with the Lord Advocate's Guidelines on the reporting of offences committed by children."<sup>1</sup> It is therefore recognized that young people in this age group require more appropriate intervention than simply reporting sexual activity for criminal prosecution. More detailed information is available in appendix 1.
- 2.3 While the law is clear that sexual intercourse between young people under 16 is unlawful it is acknowledged that the reality is that increasing numbers of young people are engaging in sexual

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<sup>1</sup> Guidance on the Sexual Offences (Scotland) Act 2009, Scottish Government, 2010

activity. Research indicates that almost 30% of young men and 26% of young women reporting having had sexual intercourse before their 16<sup>th</sup> birthday.

- 2.4 Some young people may not recognise that they are in an abuse or exploitative relationship. Child sexual exploitation (CSE) is a form of child sexual abuse in which a person(s), of any age takes advantage of a power imbalance to force or entice a child into engaging in sexual activity in return for something received by the child and/or those perpetrating or facilitating the abuse. As with other forms of child sexual abuse, the presence of perceived consent does not undermine the abusive nature of the act. Further information and local guidance on CSE can be found at <http://www.girfec-aberdeenshire.org/practitioners/guidance/child-sexual-exploitation/>.
- 2.5 For a number of different reasons children may be exposed to sexual imagery from an early age through the media and popular culture. This can result in young people being given confusing and often distorted messages about relationships and gender roles. ([Appendix 2](#))
- 2.6 Research indicates that young people struggle with sexual health and relationship issues and are wary of seeking advice or help because they fear the consequences of sharing such information with an adult. All young people who are sexually active will need support which is sensitive to their individual circumstances and is proportionate and appropriate to their needs. Young People need to know where they can seek help and support and that this support will be consistent. Inconsistency of approach to issues relating to sexual activity between young people causes confusion and conflict for young people and those practitioners caring for them and also for society as a whole.

### 3. Definitions

#### 3.1 Definition of a Child

- 3.1.1 The UN Convention on the Rights of the Child (UNCRC) defines children as “all persons less than 18 years of age, unless the legal majority in a country is lower”. This recognises that young people have rights, and that according to their evolving capacities they can progressively exercise these rights to promote their own health and development.

Practitioners should adhere to the following principles:

- **The Right to Voice their Opinions:** Practitioners have a duty to ensure that all young people are listened to and enabled to freely express their views on all matters that affect them
- **The Right to be Protected from Harm:** Practitioners have a duty to ensure that all young people are protected from all forms of violence, abuse, neglect and exploitation
- **The Right to Access Information and Services:** Practitioners have a duty to ensure that all young people are provided with accurate and age appropriate information on how to protect their own health and wellbeing and practice healthy lifestyles and behaviours
- **The Right to Confidentiality:** Young people have the same right to confidentiality as adults; that personal and private information should not be shared without consent, except in certain exceptional circumstances where there is the potential of significant harm to themselves or others. Practitioners should explain that **where possible** any breach of confidentiality will be discussed with the young person first.

3.1.2 Scotland uses a variety of common and statutory laws to determine the age of majority for young people.

- Under common law a child is defined as someone below the age of 16 years
- Under statutory law a child is defined as someone below the age of either 16 or 18 years, depending on the specific Act
- The Sexual Offences (Scotland) Act 2009 makes a distinction between a “Young Child” (aged 12 or under) and an “Older Child” (Aged 13 – 15)

The *Children and Young People (Scotland) Act (2014)* provides for young people up to age 18, and beyond in certain circumstances. The *Children (Scotland) Act 1995* and the *Sexual Offences (Scotland) Act 2009* both determine a child as being a person below the age of 16 years; therefore this guidance will reflect this. However, as both statutory documents also have provisions for young people aged 16 and 17 years; this guidance will also address their needs and any specific needs for protective services.

The *Children (Scotland) Act 1995* and the *Sexual Offences (Scotland) Act 2009* both determine a child as being a person below the age of 16 years; therefore this guidance will reflect this. However, as both statutory documents also have provisions for young people aged 16 and 17 years; this guidance will also address their needs and any specific needs for protective services.

## **3.2 Definition of Consent and the Age of Consent (including the issue of confidentiality)**

3.2.1 The *Sexual Offences (Scotland) Act 2009* states “‘Consent’ means free agreement”.<sup>2</sup> The legislation has retained the age of consent for sexual activity to be 16 years of age for all sexual relationships regardless of gender.

3.2.2 The *Sexual Offences (Scotland) Act 2009* in its distinction between young and older children has recognised that an “older child” may have some limited capacity to consent as free agreement.

3.2.3 The *Age of Legal Capacity (Scotland) Act 1991* addresses the concept of competency to give consent and is mainly used to address issues such consent to medical treatment and intervention. This legislation states “*A person under the age of 16 years shall have legal capacity to consent on his own behalf to any surgical, medical or dental procedure or treatment where, in the opinion of a qualified medical practitioner attending him, he is capable of understanding the nature and possible consequences of the procedure or treatment.*”<sup>3</sup>

3.2.4 In order to comply with the *General Data Protection Regulations and the Data Protection Act 2018*, the following should be borne in mind when considering sharing information:

- With statutory agencies, consideration must be given to seeking views of parent/guardian of child(ren) under 12 years of age and seeking views of those over 12 years of age. This could be recorded accordingly. It should be noted that exemptions can apply as per GDPR.

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<sup>2</sup> Sexual Offences (Scotland) Act 2009

<sup>3</sup> Age of Legal Capacity (Scotland) Act 1991 Part 2, Section 4

- With Third Sector organisations, explicit consent MUST be sought from parent/guardian of child(ren) under 12 years of age and directly from those over 12 years of age and recorded accordingly.

(Further information can be found in the *Data Protection Act 2018*)

[The Pan-Grampian Practitioner's Guide to Information Sharing, Confidentiality and Consent and Flowchart](#)) is a helpful reference.

3.2.5 Where the sexual activity is clearly a Child Protection concern (i.e. a young person is aged 12 or under or there is risk of Significant Harm) then Child Protection Procedures should be initiated.

### 3.3 Definition of Sexual Activity

3.3.1 It can be difficult for practitioners to determine the nature of sexual activity, thus it is important to be aware of the impact of the sexual activity and to comprehensively assess its nature to determine if the activity is classified as harmful.

The Aberdeenshire CPC [Working with Children and Young People Displaying Harmful Sexual Behaviour: Multi-Agency Practice Guide](#) defines healthy sexual behaviours and harmful sexual behaviours.

- **Healthy Sexual Behaviours:** refers to those behaviours which are within the range of behaviours appropriate to the child or young person's age and stage of development. Recognising there are sometimes differences between the child/young person's stage of development and their chronological age.
- **Harmful Sexual Behaviours:** refers to those behaviours which are not within the range of appropriate behaviours, i.e. demanding inappropriate touch with known/unknown others<sup>4</sup>

### 3.4 The Offence of engaging while an older child in consensual sexual conduct with another older child – Specific Conditions

3.4.1 *The Sexual Offences (Scotland) Act 2009*, provides that section 37 makes the distinction that two 'older children' have a limited capacity to consent to sexual activity, however, any activity which involves actual sexual intercourse or oral sex remains unlawful.

- Whilst the law is clear that sexual intercourse between 'older children' is unlawful it is acknowledged the reality is that an increasing number of young people are engaging in sexual activity.
- When dealing with reports of apparent consensual sexual activity, professionals must be sensitive to the possibility of sexual abuse as a result of exploitation (CSE) or as a result of coercion or peer pressure, and must always consider the need to share information on a multi-agency basis or to initiate child protection procedures.
- Further work will be carried out with the 'older children' to establish if both were consenting parties. If it is found that both were consenting parties and there are no additional concerns, no report will be submitted
- A 'young child' cannot consent to any form of sexual activity.

### 3.4.2 Proximity of Age (Defence)

In addition to accounting for young people engaging in sexual conduct with one another, there is also an additional aspect of the Act which allows for maximum 2 year proximity of age as a possible defence, if one of the parties has attained the age of 16 years. This allows for some leniency and helps to ensure that young people aged 16 and 17 are not disproportionately penalised for normal sexual activity.

## 4. Practice Principles

### 4.1 Responsibilities

All practitioners and agencies have a responsibility to:

- Promote, safeguard and support the wellbeing of young people, and ensure that their welfare is of paramount consideration in decision-making
- Ensure children and young people are given information and access to services which enables them to safeguard their health
- Appropriately risk assess information about the nature and circumstances of any sexual activity that comes to their attention
- Signpost young people to specialist advice agencies where this is necessary to ensure that they get the right guidance and support

### 4.2 Getting it Right for Every Child (GIRFEC)

GIRFEC is the [national policy approach](#) in Scotland aimed at improving outcomes, and safeguarding, supporting and promoting the wellbeing of children and young people.

The GIRFEC approach ensures all children and young people are provided with a range of services, and that proportionate support is put in place to respond to assessed wellbeing need. This staged approach makes sure services in Aberdeenshire work in partnership with each other, and in partnership with young people, parents and carers, to offer the right help, at the right time, from the right people. Every child and young person in Scotland will have a Named Person in Universal Services, available to support them and their family, up to age 18.

Assessment will clearly identify any affected wellbeing indicators, and gathers and analyses information to identify strengths/needs/risks using the National Practice Model (My World Triangle/Resilience Matrix).

Wellbeing concerns for a young person can be addressed through support coordinated on either a single or multi-agency basis. A Child's Plan will clearly outline what action will be taken by the child/young person, their family, and by professionals, to address those wellbeing needs identified through assessment. A Lead Professional will coordinate/review a Child's Plan, to make sure support continues to address wellbeing needs.

Aberdeenshire's [GIRFEC Guidance and Toolkit](#) can be found on the GIRFEC Website.

## 5. Agency Roles and Responsibilities

It is recognised that agencies and professionals have different roles and responsibilities when supporting young people who are sexually active. This section of the guidance seeks to explain these roles and responsibilities. For further information on the generic roles and responsibilities of agencies with relation to child protection please see the [National Guidance for Child Protection in Scotland 2014](#).

Practitioners should not give advice, provide services or make assessments that they are not competent to carry out. It may be more appropriate to signpost the young person to another service or agency for further assessment of need/risk or to ask another agency for assistance in carrying out an the assessment of the young person's circumstances.

### 5.1 All Agencies

#### 5.1.1 Children Aged 12 and Under

Where **any** agency or professional becomes aware of a child aged 12 or under engaging in sexual activity, regardless of the circumstances, they **must** treat this as a child protection concern and immediately share concerns with the appropriate agency, for example, Social Work and/or the Police.

The National Guidance on Underage Sexual Activity (2010) states: *“When a practitioner becomes aware that a younger child (i.e. under the age of 13) is sexually active or is likely to become sexually active, **this should be automatically shared as a child protection concern**”*<sup>5</sup>

#### 5.1.2 Positions of Trust

The Sexual Offences (Scotland) Act 2009 consolidates a number of statutory and common law sources on positions of trust into 1 legislative framework. Part 5 of the legislation states the offence of **Sexual Abuse of Trust**. The Act states in section 42:

*“If a person (“A”) who has attained the age of 18 years—*

*(a) Intentionally engages in a sexual activity with or directed towards another person (“B”) who is under 18, and*

*(b) is in a position of trust in relation to B, then A commits an offence, to be known as the offence of sexual abuse of trust”*

It is important to note that whilst the age of consent is 16 years of age, the abuse of position of trust is applicable to young people up to the age of **18 years**. Therefore all agencies must treat an abuse of a position of trust as a child protection concern, if the offence was committed prior to the young person attaining the age of 18 years.

Section 46 of the Act allows for abuse of trust to be taken beyond the age of 18 years where the person involved is identified as mentally disordered. It should be noted that there is a cross over with the Adult Protection Legislation, for further information on Adult Protection please see Appendix 5.

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<sup>5</sup> National Guidelines on Underage Sexual Activity, Scottish Government, 2010

For further information on Positions of Trust see [Appendix 3](#).

### 5.1.3 Protection for Professionals Providing Advice and Guidance

It is a priority to ensure the safety and wellbeing of the young person and to either complete or initiate an initial assessment of need through local GIRFEC processes or to seek advice from social work as to how best to support the young person.

It should be noted that information sharing can take place without necessarily disclosing the nature of the young person's sexual relationship and this is most often the best course of action for professionals in order to assess the needs and risks to the child whilst maintaining confidentiality.

Section 51 of the Sexual Offences (Scotland) Act 2009 allows for protection for agencies and professionals providing sexual health advice to young people

*"A person ("X") is not guilty of inciting, or being involved in and part in, an offence if, as regards another person ("Y"), X acts—*

*(a) For the purpose of—*

*(i) Protecting Y from sexually transmitted infection,*

*(ii) Protecting the physical safety of Y,*

*(iii) Preventing Y from becoming pregnant, or*

*(iv) Promoting Y's emotional well-being by the giving of advice, and*

*(b) Not for the purpose of—*

*(i) Obtaining sexual gratification,*

*(ii) Humiliating, distressing or alarming Y, or*

*(iii) Causing or encouraging the activity constituting the offence or Y's participation in it".<sup>6</sup>*

The law also allows professionals to respect young people's rights to confidentiality when discussing sex and relationship issues and a disclosure of underage sex is not of itself a reason to break confidentiality.

## PROFESSIONAL RESPONSIBILITIES

### 5.2 The Role of the Police

Whilst it is recognised that sexual intercourse and oral sex between young people under the age of 16 years is illegal, it has also been recognised that a child protection or criminal investigation may not be the most appropriate method of supporting young people who need advice and guidance or those who are vulnerable.

Information sharing is essential to ensure the best possible decisions are made and the police are an important part of this process. Where a practitioner is making an assessment of risk for a young person it must be recognised that the police may hold valuable information,

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<sup>6</sup> Sexual Offences (Scotland) Act 2009

therefore practitioners must be prepared to involve the police to gather information for the assessment.

When the police become aware of underage sexual activity they will consider how to proceed based on the best interests of the young person and the nature of the sexual activity. This will involve information sharing with other agencies and will either lead to a criminal investigation or alternatively the police will refer the case to a more appropriate agency. It should be noted that even where an investigation has taken place this will not necessarily lead to a criminal prosecution.

Police officers should refer to appropriate guidance, including the Child Protection - Under Age Sexual Activity, Standard Operating Procedure, The National Guidance for Child Protection in Scotland 2014 and their own line management when deciding how to proceed when concerns are shared, Chapter 16 of the Book of Regulations also provides guidance and advice which will help police officers.

### 5.3 The Role of Social Work Services

Social Work Services have a duty under the Children (Scotland) Act 1995:

*“A local authority shall—*

- (a) Safeguard and promote the welfare of children in their area who are in need; and*
- (b) so far as is consistent with that duty, promote the upbringing of such children by their families,*

*by providing a range and level of services appropriate to the children’s needs.”<sup>7</sup>*

And:

*“Where information is received by a local authority which suggests that compulsory measures of supervision may be necessary in respect of a child, they shall—*

- (a) Cause inquiries to be made into the case unless they are satisfied that such inquiries are unnecessary; and*
- (b) If it appears to them after such inquiries, or after being satisfied that such inquiries are unnecessary, that such measures may be required in respect of the child, give to the Principal Reporter such information about the child as they have been able to discover.”<sup>8</sup>*

Social Workers have the lead role in child protection investigation and inquiry, however, it has been recognised that underage sexual activity is not always a child protection matter. When social workers become aware of underage sexual activity their first priority is to ensure the safety and wellbeing of the young person, and complete an initial assessment of their needs, including providing them with information on where they can seek advice and guidance of a medical nature where required. **At no stage should any Child Protection action prevent the young person accessing (or continuing to access) relevant advice and services concerning contraception, condoms, pregnancy and abortion.**

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<sup>7</sup> Children (Scotland) Act 1995 Section 22

<sup>8</sup> Children (Scotland) Act 1995 Section 53

It is important to share information when there is recognition of underage sexual activity, but this should be done in conjunction with agreement from the child or young person. Where information is shared without agreement from the young person there must be clear child protection concerns and this should be explained to the young person.

Social Workers can, as part of their assessment, seek information from the police without breaching the confidentiality of the young person. The practitioner should contact the police asking if there is any information that they need to be aware of for the purposes of an assessment of the needs of the young person. This allows for the situation to be approached sensitively, without necessarily gaining police involvement.

#### **5.4 The Role of Health Services**

It is considered good practice for Doctors and other Health Professionals to consider the following issues when providing advice or treatment to young people under 16 on contraception, sexual and reproductive health.

Where made aware of underage sexual activity (or the possibility of underage sexual activity), Doctors and other Health Professionals should give a young person support and time to make an informed choice by discussing:

- The emotional and physical implications of sexual activity, including the risks of pregnancy and sexually transmitted infections
- Whether the relationship is mutually agreed and whether there may be coercion or abuse
- The benefits of discussion with a parent or carer, however any refusal should be respected.
- The competency of the young person to understand and consent to the offer of sexual health advice and or support.
- In the cases of abortion, where the young woman is competent to consent but cannot be persuaded to involve a parent, every effort should be made to help them find another adult to provide support, for example another family member or Specialist Youth Worker.
- Any additional counselling or support needs

If the health professional is concerned about the young person or their relationship but does not feel that child protection intervention is in the best interests of the young person then further advice can be sought. This can be done through the Specialist Child Protection team based at Royal Aberdeen Children's Hospital, the Specialist Nurse for Child Protection in Aberdeenshire the local Social work team or colleagues in Police Scotland.

Any instance where information about the young person is shared (either with or without consent) must be documented giving clear rationale for the information sharing and also recording the views of the young person.

#### **5.5 The Role of Education Staff (Incl. Community Learning and Development)**

It is acknowledged that young people need to be able to talk to a trusted adult about sex and relationship issues and although it is desirable that this person is their parent or carer, this is

not always possible. Often it is a trusted teacher or youth worker that will be chosen as a confidant.

Young people should be made aware that confidentiality might be breached if they or another young person is believed to be at risk. In these circumstances staff should consult the young person and endeavour to gain their co-operation to sharing information with the relevant agencies. If that is not possible they should be advised that their confidentiality will be breached. All occasions where information has been shared, either with or without consent must be documented.

## **5.7 The Role of the Legal Services**

### **5.7.1 The Procurator Fiscal**

*“Under the authority of the Lord Advocate the Crown Office and the Procurator Fiscal Service provide the sole public prosecution service in Scotland.....A key objective of the department is to ensure, in the public interest, that all crimes made known to the Procurator Fiscal are investigated and that effective and consistent use is made of the range of prosecution options, alternatives to prosecution and provisions for the confiscation of proceeds of crime”<sup>9</sup>*

The Procurator Fiscal recognises the UN Convention on the rights of the child, article 3 of which provides that in all actions concerning children the best interests of the child shall be the primary consideration, this applies not only to crimes against children but also crimes committed by children.

When a criminal investigation of underage sexual activity comes to the attention of the Procurator Fiscal Service the decision to prosecute will be based on whether or not prosecution is in the best interests of the young person, whether or not prosecution is in the public interest and also seeks to take considerations of alternative options available to the service to avoid unnecessary prosecution.

Professionals should note that even if a criminal investigation is conducted this may not necessarily lead to prosecution of the young people involved.

### **5.7.2 The Scottish Children’s Reporter Administration (SCRA)**

*“The Prosecutor retains a discretion to refer to the Children’s Reporter cases involving children where such action is considered to meet the public interest”<sup>10</sup>*

Any case involving young people which the prosecution feels is not in the public interest to prosecute can be referred to the Children’s Reporter for their attention, this includes instances of underage sexual activity.

If the Reporter is asked by the Procurator Fiscal to deal with the case, the first consideration is whether or not there is sufficient evidence to prove the allegation: if there is not, no further

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<sup>9</sup> Crown Office and Procurator Fiscal Service: Prosecution Code

<sup>10</sup> Crown Office and Procurator Fiscal Service: Prosecution Code

action will be taken. If there appears to be sufficient evidence, the Reporter will request information on the young person's circumstances from relevant agencies such as social work and school. When the information is received, the Reporter will assess whether the young person is likely to be in need of compulsory measures of supervision and if so, refer them to a Children's Hearing. The Reporter may decide that an alternative option such as working with the local authority on a voluntary basis is in the best interests of the young person. In all instances, the welfare of the young person is the paramount consideration.

## 6. Assessing Risks and Need

- 6.1 When a practitioner becomes aware that a younger child (i.e. under the age of 13) is sexually active or is likely to become sexually active, **they should be automatically shared as a child protection concern**. Where practitioners are aware that a young person (i.e. 13 or over) is sexually active or is likely to become sexually active, they should undertake an assessment in line with the GIRFEC National Practice Model to ensure that any strengths/needs/risk are identified, and that the appropriate response is provided. The practitioner has a responsibility to ensure that the young person's health and emotional needs are addressed and assess whether the sexual activity is of an abusive or exploitative nature. At the same time, such risk assessment must take full account of the issues of confidentiality and information sharing set out previously. Further information is available <http://www.girfec-aberdeenshire.org/practitioners/guidance/child-sexual-exploitation/>
- 6.2 In order to ensure that young people who are sexually active receive the most appropriate support it is important to ensure that an assessment of their needs, including any identification of any risk, is completed. The GIRFEC National Practice Model provides a number of tools to assist practitioners in undertaking an assessment. Ensuring all information about the young person is gathered and analysed is vital to ensure decisions are made according to the individual needs of the young person.
- 6.3 Aberdeenshire have adopted the [National Risk Framework to Support the Assessment of Children and Young People](#). This set of practice tools aims to support and assist practitioners at all levels, in every agency, to be able to approach the task of risk identification, assessment, analysis and management with more confidence and competence. It seeks to provide tools that, if used, support methodical and systematic approaches to not only better understanding risk and its presentation with children and families, but also enhance interventions and potential outcomes.
- 6.4 The professional starting this process must ensure that the young person's health and emotional needs are addressed and seek information where required to assess if the sexual activity is of an abusive or exploitative nature. This assessment process will require sensitive handling and the use of professional judgement and so professionals should seek support and information where required or necessary. As previously stated, it is recognised that instances of underage sexual activity do not always require a child protection response, and the assessment of the need and risk is an important part of the decision making process. The Aberdeenshire GIRFEC Toolkit is available on the Aberdeenshire GIRFEC Website <http://www.girfecaberdeenshire.org/practitioners/girfec-approach-toolkit/>

- 6.5 This initial assessment should involve a professional and the young person discussing the issue and the professional gathering information in order to determine if there are child protection concerns that will be necessary to share with the relevant authorities.

Factors which will be included in this initial assessment of risk should include:

- The age of the young person. As previously stated in 5.1 any instance of underage sexual activity involving a child aged 12 or under must be treated as a child protection concern and the information shared with the relevant authority as a matter of priority.
- The professional must include in their assessment, not just the chronological age of the young person but also the emotional age and maturity, including any vulnerability which results from a physical or learning disability.
- The personal circumstances of the young person. Professionals must take into account any previous history of abuse and the personal circumstances of the young person when completing their assessment. Previous history of abuse, if the young person is Looked After (under a supervision order of the Children's Hearings (Scotland) Act 2011) or any history of risk taking behaviour can add to the vulnerability of the young person and as such may have a detrimental impact on their ability to make informed decisions.
- The circumstances of the activity. The professional should seek to determine if there are any concerning factors which would suggest that the young person was under external influence, for example the impact of drugs, alcohol or peer pressure on the young person's ability to make informed decisions.
- The relationship: is there a power imbalance in the relationship; are there any signs of manipulation, bribery, threats or aggression, or isolation from social supports evident? Is the relationship established or is it a new relationship? Has the young person's behaviour changed due to the relationship? How did the young person meet their partner?
- The other person involved: is there a difference in age between the 2 parties involved? Are there differences in size, development, and intelligence or material wealth? Is the other person in a position of trust. It should be noted that if the other person is in a position of trust then this is an automatic child protection concern, even if the young person is 16 or 17 years of age. For further information on positions of trust see [Appendix 3](#).
- The initial assessment will determine the next course of action.

6.6 If there are Child Protection Concerns:

- Where appropriate, speak to the young person prior to sharing your concerns
- Share the concern
- Participate in the Initial Referral Discussion (IRD) process when required
- Support the young person through the child protection process

Aberdeenshire's Initial Referral Discussion Guidance can be accessed at - <http://www.girfec-aberdeenshire.org/practitioners/guidance/>

6.7 Depending on the outcome of the initial assessment, there are several courses of action that can be taken -

**i.** If the initial assessment suggests that the practitioner is dealing with mutually-agreed teenage sexual behaviour and/or relationship in which there are no concerns of abuse or exploitation, the practitioner should, if qualified, provide practical assistance and advice as required. Other practitioners, such as youth workers, must signpost young people to appropriate services, such as school nurses.

**ii.** If the practitioner does not assess the sexual behaviour and/or relationship to be abusive or exploitative but has some concerns about the young person's behaviour e.g. their ability to assess risk, their use of alcohol, the environment in which they seek sexual contacts etc, then either the practitioner should address these matters directly with the young person or, with their permission, share the information with an appropriate person or agency. It may be agreed that due to a number of concerns about the person's vulnerability, the young person may benefit from an integrated assessment of their needs so that agencies, in conjunction with the young person, can best identify what supports and services would benefit them. In such circumstances, a lead agency is identified to lead the process and all agencies would be involved in contributing to this. (ref "Getting it Right for Every Child").

**iii.** If the practitioner, using the indicators set out in 5.9 has relevant concerns about the young person's behaviour or about the nature of the sexual behaviour and/or relationship, they should seek guidance from a line manager in accordance with their own agency guidelines. Further action will then be considered. Advice can be sought from Social Work Services to assist in this decision making.

**iv.** If the practitioner has definite concerns that the young person has experienced, or may experience, significant harm, but it is believed that the young person is not at immediate risk, they should share this information with the named person, detailing those who are involved, the nature of concerns etc. In those circumstances where it is appropriate to speak with the young person prior to the information being shared, every reasonable effort should be made to seek their agreement in sharing the information. If agreement is not reached, the practitioner should still share the information and inform the young person that this will be the course of action and explain why.

**v.** As previously stated, if the child is, or is believed to be, sexually active and is 12 years or under, the matter should automatically be passed to Social Work Services and/or the police. If the young person is currently 13 or over but sexual activity took place when they were 12 years or under, this information must be shared with Social Work Services and/or the Police.

**vi.** Similarly, if the 'other person' is in a position of trust in relation to the young person (the matter should automatically be discussed with Social Work Services and/or the Police.

**vii.** If the young person is perceived to be at immediate risk, then concerns must be shared without delay with Police and/or Social Work Services.

**6.8** In all of the above situations the practitioner, in line with their own agency procedures, should make a written record of events, ensuring as much detail as possible and including the reasons behind their action.

- 6.9 On each occasion that a practitioner has contact with a child or young person or receives information about them, consideration should be given as to whether their circumstances have changed.
- 6.10 In addition, each agency should set in place monitoring procedures to ensure that practice is consistent and appropriate.
- 6.11 If it is assessed that the pregnancy is the result of mutually-agreed teenage sexual behaviour and/or relationship in which there are no concerns of abuse or exploitation, the matter should not be considered to be a child protection matter: the emphasis should be on ensuring that the young woman's health, educational, social and emotional needs are appropriately assessed and support is offered.
- 6.12 Sharing Information

As stated previously, it is recognised that underage sexual activity is not always a matter for the child protection authorities, however, it must be recognised that young people engaging in underage sexual activity will require some form of intervention to ensure that they are kept safe from harm and have their needs met.

Whilst this intervention may take place on a single agency basis it is more likely that a multiagency response will be more appropriate in order to ensure that the needs of both parties are being met in a cohesive and complementary way, this will require sharing information, which will need to be considered in line with the rights of the young people involved.

Professionals are required to ensure that young people are informed from the outset that confidentiality is not absolute, and that where circumstances arise where information needs to be shared, the professional will make every reasonable attempt to discuss the process with the young person prior to any information being shared.

The Practitioners Guide to Information Sharing, Confidentiality and Consent can be accessed at <http://www.girfec-aberdeenshire.org/practitioners/guidance/>.

## **7. The Importance of Multi-Agency Assessment and Joint Working**

The GIRFEC principles provide a framework within which to meet the needs of young people where child protection procedures are not the most appropriate method of intervention. GIRFEC is reliant on good multi-agency working and joint assessment of young people's needs. For young people, GIRFEC means:

- They will feel confident about the help they are getting
- They understand what is happening and why
- They have been listened to carefully and their wishes have been heard and understood
- They are appropriately involved in discussions and decisions that affect them
- They can rely on appropriate help being available as soon as possible
- They will have experienced a more streamlined and co-ordinated response from practitioners.

Where professionals are aware that a young person is engaging in sexual activity, which is not identified as Child Protection but still needs some element of intervention then they should be liaising with other professionals as is necessary to ensure that the needs of the young person are being met. This allows for the young person to receive the right level of intervention and support with consistency of approach, co-ordinated planning and reduction in duplication.

## 8. Specific Circumstances:

### 8.1 Young People with Disabilities (including Learning Disabilities)

It is recognised that young people with disabilities have the same rights to information and advice about sex as their counterparts who do not have a disability; young people who have disabilities are also entitled to the same level of confidentiality as all young people. However, professionals have a tendency to treat young people with disabilities, and in particular learning disabilities, differently when it comes to the subject of underage sexual activity.

Everyone has sexual needs, feelings and drives, and the same principles of working with young people who are sexually active are applicable to working with young people who have disabilities who are sexually active. There are a number of myths regarding young people with disabilities, and in particular, learning disabilities:

*“People with a learning disability remain forever childlike and “innocent”, whatever their actual age. We do not associate sexual expression with childhood, by extension we do not see it as appropriate for people labelled as having a learning disability to express themselves sexually.*

*People with a learning disability have very strong sexual drives and appetites, but very poor self-control, so that they are a danger both to themselves and to other members of society.”<sup>11</sup>*

Neither of these myths is particularly helpful in supporting young people with disabilities who are sexually active.

Young people with disabilities, including learning disabilities do have additional vulnerabilities that other young people do not have.

- They may have communication difficulties which affect their ability to disclose to professionals that someone is abusing them
- Young people with physical disabilities may have intimate care needs which may be being met by a number of people, thus increasing their vulnerability
- Young people with learning disabilities may have difficulty recognising acceptable boundaries of behaviour, thus increasing their vulnerability
- Young people with learning disabilities may lack the capacity to give informed consent to sexual activity

### Responses to Sexual Activity in Young People with Disabilities

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<sup>11</sup> Sex and Learning Disabilities, The Outsider Trust. [www.outsiders.org.uk](http://www.outsiders.org.uk)

Due to the identified vulnerabilities above, sexually active young people who have disabilities must be given additional consideration, but this does not mean that a child protection response is the most appropriate. The same principles of assessment apply when working with a young person with a disability who is sexually active, and the guidance above should be adapted to take account of any additional vulnerability that may be present in the young person.

Additionally, accurate sex education and information is important to ensure that young people with disabilities are able to protect themselves from exploitation. The leaflet “Sex and Learning Disabilities” from The Outsiders Trust states:

*“Ignorance is definitely not bliss. Not knowing how to behave or the consequences of sexual activity, not knowing the difference between public and private behaviour, not knowing you 'own' your body and can say "no" to touches you do not like, leaves people with a learning disability very vulnerable to getting into trouble, to abuse or exploitation. Proper sex education is therefore a particularly important factor in helping people protect themselves from abuse”<sup>12</sup>*

For further information on young people with disabilities and sexual activity please Appendix 4 and the links given in the references section.

## 8.2 Young People Aged 16 -18 Years

The National Guidance, Underage Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns, addresses the needs of young people aged between 16 and 18 years by stating:

*“Over the age of 16, sexual activity is legal. However, the activity may not have been consensual or the young person might have vulnerabilities and related needs. Furthermore, the Sexual Offences (Scotland) Act 2009 states that young people under the age of 18 could be subject to a 'sexual abuse of trust' – for example, if the young person has had sexual relations with a teacher, hospital staff or a residential care unit worker who has caring responsibilities for the child or for children in the institution in which the child is being cared for or taught and is over the age of 18”<sup>13</sup>*

In addition *“it is also worth noting that in cases where young people are involved in prostitution or pornography, Section 9 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 provides that it is an offence for a person to pay for the sexual services (e.g. prostitution) provided by a child under the age of 18, and sections 10-12 provide that it is an offence to cause, incite, control, arrange or facilitate the provision by a child under the age of 18 of sexual services, or their involvement in the making of pornography”<sup>14</sup>*

The challenge for professionals is to ensure that the needs of the young person are met and that young people between the age of 16 and 18 years do not fall through the gap when they

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<sup>12</sup> Sex and Learning Disabilities, The Outsider Trust, [www.outsiders.org.uk](http://www.outsiders.org.uk)

<sup>13</sup> The National Guidance, Underage Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns, Scottish Government 2010

<sup>14</sup> The National Guidance, Underage Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns, Scottish Government 2010

do in fact need some support and guidance and protection just because they are legally of the age of consent.

## 9. Good Practice - Recording of Information

The National Guidance, Underage Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns states:

*“In **all** circumstances, the practitioner should make a record of events and decisions, in line with their own agency procedures. The record should contain all essential detail and the reasons behind their action”<sup>15</sup>*

The professional should record key relevant information in the young person’s chronology. This will allow for information to be collated according to date, using an agreed format, and enables analysis during the assessment process to be completed. For further information on chronologies, please refer to your own Service’s Chronology guidance. The [Care Inspectorate Practice Guide to Chronologies](#) can be accessed on the GIRFEC Toolkit Section of the Aberdeenshire [GIRFEC Website](#).

Any decisions should be recorded in the young person’s chronology and if required in agency records, this includes decisions about sharing information and whether or not to involve the child protection authorities and the professional justification (based on assessment) for making that decision.

## 10. In summary

Working with young people who are sexually active is a challenging role, and not one which should be taken lightly or for granted. Young people need access to accurate, informative and appropriate advice and guidance, but are often reluctant to do so due to fear of the consequences of asking for help.

This guidance compliments National Guidance and Policy and seeks to ensure that the needs of young people are met in an appropriate, proportionate and timely manner, respecting their rights to confidentiality whilst also ensuring that they are safe from exploitation and activity which could cause them harm.

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<sup>15</sup> The National Guidance, Underage Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns, Scottish Government 2010

## Appendix 1

### Sexual Health Information

The national strategy for sexual health “Respect and Responsibility – Strategy and Action Plan for Improving Sexual Health states “*Sexual health in Scotland is poor, sexually transmitted infections, such as Chlamydia, are widespread and increasing, while teenage conceptions are amongst the highest in Western Europe*”<sup>16</sup>

The national target for teenage pregnancy reduction:

- Reduce by 20% the pregnancy rate (per 1,000 population) of under 16 year olds from 8.5 in 1995 to 6.8 in 2010.<sup>17</sup>

Key Findings from National Documents:

- There continues to be a strong association between deprivation and rates of teenage pregnancy: the most deprived groups have approximately ten times the rate of delivery as the least deprived (67.3 per 1,000 and 7.2 per 1,000) and nearly twice the rate of abortion (29.4 per 1,000 and 16.6 per 1,000)<sup>18</sup>
- The age at which the majority have their first heterosexual sexual intercourse is 16. Almost 30% of young men and 26% of young women report having had intercourse before their 16<sup>th</sup> birthday. (Brook Advisory Service, 2007)
- In 2009, as seen in previous years, more new acute STIs were in men, with the number of diagnoses of syphilis, gonorrhoea, genital warts, NSGI (non-specific genital infection), nonchlamydial, HIV and other STIs being higher in men than women. The number of diagnoses of Chlamydia, genital herpes and trichomoniasis was greater in women.<sup>19</sup>
- Almost a quarter of all acute STI diagnoses are in those aged less than 20<sup>20</sup>

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<sup>16</sup> Respect and Responsibility – Strategy and Action Plan for Improving Sexual Health, Scottish Executive 2005

<sup>17</sup> ISD Scotland, <http://www.isdscotland.org/teenpregs>, NHS Scotland, 2008

<sup>18</sup> Scotland’s Sexual Health Information, NHS Scotland, 2010

<sup>19</sup> ISD Scotland, <http://www.isdscotland.org/isd/4907.html>, NHS Scotland 2009

<sup>20</sup> ISD Scotland, <http://www.isdscotland.org/isd/4907.html>, NHS Scotland 2009

## Appendix 2

### The Sexualisation of Young People

In 2010, as part of a wider Home Office review into violence against women, a literature review entitled “The Sexualisation of Young People” was published. Written by Dr Linda Papadopoulos the scope of the review encompassed the sexualisation of all young people, including the issues of hyper-sexualisation and objectification in girls and hyper-masculinisation in boys.

This review states:

*“The world is saturated by more images today than at any other time in our modern history. Behind each of these images lies a message about expectations, values and ideals. Women are revered – and rewarded – for their physical attributes and both girls and boys are under pressure to emulate polarised gender stereotypes from a younger and younger age”.*<sup>21</sup>

Some of the key findings of this review stated:

- “Young [people] have a natural, healthy interest in their sexuality. But when their developing sexuality is moulded to fit adult sexual stereotypes, this can compromise that healthy developmental process..... Young people are not only being exposed to an increasing number of hyper-sexualised images; they are also being sold the idea that girls should look ‘hot’, regardless of their age. As such, they are facing pressures that children in the past simply didn’t have to face”.<sup>22</sup>
- “There is broad agreement among researchers and experts in health and welfare that sexualising children prematurely places them at risk of a variety of harms, ranging from body image disturbances to being victims of abuse and sexual violence”.<sup>23</sup>

The review also suggests that the sexualisation of young people also leads to other abusive behaviours such as violence towards young women, eating disorders, exposure to grooming practices and in particular exploitation through social networking, and the pre-conception in young people that to be attractive you have to conform to the media ideals. All of these can impact on a young person’s decision making process when it comes to underage sexual activity and should be taken account of in the assessment process.

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<sup>21</sup> The Sexualisation of Young People, Dr Linda Papadopoulos, 2010

<sup>22</sup> The Sexualisation of Young People, Dr Linda Papadopoulos, 2010, Page 31

<sup>23</sup> The Sexualisation of Young People, Dr Linda Papadopoulos, 2010, Page 74

## **Appendix 3**

### **Legislation**

#### **Age of Legal Capacity.**

The Age of Legal Capacity (Scotland) Act 1991 is the primary legislation relating to "competency".

Legal Capacity means having the ability to understand the meaning and consequence of decisions and being able to make a true choice.

The Act states that for a child under 16 the consent of parents is not required where in the opinion of the medical practitioner the child is capable of understanding the nature and consequences of the procedure. Where the child does not have such understanding the consent of a person with parental responsibilities and rights is required.

If a young person is capable of giving consent, then their decision to refuse treatment cannot be overridden by the person with parental responsibilities and rights.

#### **How to ascertain if the young person is capable of giving informed consent or refusal?**

This is determined by a medical practitioner considering:

- Whether the young person is able to take in the information and retain it long enough to weigh up the options;
- Whether the young person believes and understands the information;
- Whether the young person is able to make a free and informed choice.

#### **Sexual Offences (Scotland) Act 2009**

The Sexual Offences (Scotland) Act 2009 brings into statutory legislation a range of offences which have previously been held in a number of different statutory and common law sources. These offences are divided into a number of sections and in relation to children and young people distinguish between young children and older children.

The Offences which relate to older children are found in part 4, sections 28 to 37 of the Act and are as follows:

- Having intercourse with an older child
- Engaging in penetrative sexual activity with or towards an older child
- Engaging in sexual activity with or towards an older child
- Causing an older child to participate in a sexual activity
- Causing an older child to be present during a sexual activity □ Causing an older child to look at a sexual image
- Communicating indecently with an older child etc.
- Sexual exposure to an older child

- Voyeurism towards an older child
- Older children engaging in sexual conduct with each other

The Act also details the revised definitions of positions of trust which are as follows:

Section 43 provides that a person (A) is in a position of trust in relation to another person (B), who is a child under the age of 18, when one of five conditions is fulfilled, the five conditions are:

- the child is detained by virtue of an order of court or under an enactment in an institution and A looks after children under the age of 18 in that institution (it is not a requirement that A looks after the child in question)
- the child is resident in a home or other place in which accommodation is provided by a local authority under section 26(1) of the Children (Scotland) Act 1995 and A looks after children under the age of 18 in that institution
- the child is accommodated and cared for in a hospital, accommodation provided by an independent health care service, accommodation provided by a care home service, a residential establishment or accommodation provided by a school care accommodation service or a secure accommodation service and A looks children under the age of 18 in that place
- The fourth condition is that the child is receiving education at a school and A looks after children under the age of 18 in that school, or the child is receiving education at a further or higher education institution and A looks after the child in question in that institution
- that A is a member of the same household as the child and has
  - any parental responsibilities or parental rights in respect of the child, or
  - fulfils any such responsibilities or exercises such rights under arrangements with a person who has such responsibilities or rights, or
  - had any such responsibilities or rights in the past but no longer has them, or
  - treats the child as a child of A's family

The Act allows for a definition of when a person “looks after a child” to include: “he or she regularly cares for, teaches, trains, supervises or is in sole charge of the child”

The Act also makes a distinction between a school and a further education institution as follows:

“There is a distinction between a school, in which anyone who looks after children under the age of 18 is considered to be in a position of trust in relation to all children in that institution, and a further or higher education, where a relationship of trust is considered to exist only where A looks after the child in question. This distinction was made in view of the larger scale and more diverse nature of higher education institutions. Whereas a teacher in a school can clearly be seen to be in a position of trust in relation to all pupils at that school, it is not clear that a lecturer in a medical faculty at a university can be said to be in a ‘position of trust’ in relation to a 17 year old student in a law or science faculty with whom he or she may have no professional contact”.

Full details of the Act, including guidance, can be found on the Scottish Government Website, [www.scotland.gov.uk](http://www.scotland.gov.uk)

## Children (Scotland) Act 1995

This is the main piece of legislation allowing for Local Authorities (delegated to Social Work Services) to investigate and take action where it is identified that a child may be at risk or in need of compulsory measures of care.

Section 22 of the Act states

A local authority shall—

- (a) Safeguard and promote the welfare of children in their area who are in need; and
- (b) so far as is consistent with that duty, promote the upbringing of such children by their families,

by providing a range and level of services appropriate to the children's needs

Section 53 states: Provision of information to the Principal Reporter

1. Where information is received by a local authority which suggests that compulsory measures of supervision may be necessary in respect of a child, they shall—
  - (a) cause inquiries to be made into the case unless they are satisfied that such inquiries are unnecessary; and
  - (b) if it appears to them after such inquiries, or after being satisfied that such inquiries are unnecessary, that such measures may be required in respect of the child, give to the Principal Reporter such information about the child as they have been able to discover.
2. A person, other than a local authority, who has reasonable cause to believe that compulsory measures of supervision may be necessary in respect of a child—
  - (a) shall, if he is a constable, give to the Principal Reporter such information about the child as he has been able to discover;
  - (b) in any other case, may give the Principal Reporter that information.
3. A constable shall make any report required to be made under paragraph (b) of section 17(1) of the Police (Scotland) Act 1967 (duty to make reports in relation to commission of offences) in relation to a child to the Principal Reporter as well as to the appropriate prosecutor.
4. Where an application has been made to the sheriff—
  - (a) by the Principal Reporter in accordance with a direction given by a children's hearing under section 65(7) or (9) of this Act; or
  - (b) by any person entitled to make an application under section 85 of this Act, the Principal Reporter may request any prosecutor to supply him with any evidence lawfully obtained in the course of, and held by the prosecutor in connection with, the investigation of a crime or suspected crime, being evidence which may assist the sheriff in determining the application; and, subject to subsection (5) below, it shall be the duty of the prosecutor to comply with such a request.

5. A prosecutor may refuse to comply with a request issued under subsection (4) above where he reasonably believes that it is necessary to retain the evidence for the purposes of any proceedings in respect of a crime, whether the proceedings have been commenced or are to be commenced by him.
6. The Lord Advocate may direct that in any specified case or class of cases any evidence lawfully obtained in the course of an investigation of a crime or suspected crime shall be supplied, without the need for a request under subsection (4) above, to the Principal Reporter

## **The Children and Young People (Scotland) Act 2014**

The Children's & Young People (Scotland) Act 2014 is the most significant piece of legislation affecting children and young people since **The Children (Scotland) Act 1995**.

It covers a range of areas, including:

- Rights of children and young people
- Wellbeing and Getting It Right For Every Child (GIRFEC)
- Early learning and childcare
- Extended entitlements of looked After and care experienced children and young people

It also builds upon and strengthens existing legislation that affects children and young people.

The new legislation places a number of requirements and duties on both services and professionals who work with children and young people. It also places a greater emphasis on the role of children's rights within the decision making process. The legislation embeds certain key elements of the GIRFEC approach:

**Part 4** Named Person (available to every child and young person from birth to age 18)

**Part 5** Child's Plan (coordinates support and overseen by a Lead Professional)

**Part 18** Wellbeing Assessment to holistically assess a child or young person's circumstances (using the National Practice Model – My World Triangle, Resilience/Vulnerability Matrix, Wellbeing Indicators)

## Appendix 4

### Sex and Learning Disabilities – Leaflet from The Outsiders Trust ([www.outsiders.gov.uk](http://www.outsiders.gov.uk))

In recent years, major changes have taken place in the way we think about people with a learning disability, and in our approaches to their needs and those of their families. We now recognise that adults with a learning disability should be acknowledged as real adults whose individual requirements met without undue segregation.

One aspect of adulthood which most of us take for granted, is the right to be sexually active. There are two contradictory myths which contribute to people with a learning disability not being included in this right:

***People with a learning disability remain forever childlike and "innocent", whatever their actual age We do not associate sexual expression with childhood, by extension we do not see it as appropriate for people labelled as having a learning disability to express themselves sexually.***

***People with a learning disability have very strong sexual drives and appetites, but very poor self-control, so that they are a danger both to themselves and to other members of society.***

Neither of these ideas are helpful to people with a learning disability or to their parents and caregivers.

All human beings are sexual beings. Sexuality is not an optional extra. Everyone has sexual needs, feelings and drives. The question here is: How can we help people with learning disabilities channel their needs, feelings and drives to get pleasure and enjoyment from their close personal relationships, and provide them with protection from other encounters which are exploitative?

Learning about sexuality is a lifelong and often haphazard process. Babies learn from birth onwards about the bodily pleasure of being warm, being cuddled, being tickled and interacted with. We learn from watching the ways in which our parents show affection to each other; we learn from spoken and unspoken messages about private parts; also from films, advertisements and soap operas on TV.

Sadly, it is often the case that youngsters with learning disabilities only get a very negative form of sex education - "Don't do that, it's not nice", "Stop touching yourself down there, that's bad!"

Not giving them any positive formal or sensible sex education does not mean that they don't pick up many enticing ideas - but they need more sex education than most young people, in order to protect them from people who seek them out in order to exploit their ingenuity.

Ignorance is definitely not bliss. Not knowing how to behave or the consequences of sexual activity, not knowing the difference between public and private behaviour, not knowing you 'own' your body and can say "no" to touches you do not like, leaves people with a learning disability very vulnerable to getting into trouble, to abuse or exploitation. Proper sex education is therefore a particularly important factor in helping people protect themselves from abuse.

Children with a learning disability grow up. Although puberty may be slightly delayed for those with profound or multiple disabilities, they go through the same process as any other child. Voices start to break, body hair starts to grow, girls begin their periods, boys start to have wet dreams, mood swings become more extreme. All that is the biological process of puberty which cannot be stopped, even if sometimes parents would want it to! However, adolescence is a social process whereby the youngster develops a personal understanding of his or her adult social and sexual identity.

Frequently we deny that period of adolescence and then adult status to people with a learning disability. We cannot stop their physical maturity, but often with the best of intentions, we stop or curtail their socio-sexual development. The result is a person who is physically an adult, but who has the social status of a child.

What is the alternative, given that people we are concerned with do have varying degrees of difficulty in learning and in understanding?

- Broadly-based sex education at all levels
- Access to counselling where necessary (for individuals and their families or carers)
- Social skills training about appropriate behaviour
- Consistency of response between home/residential unit and school/college/day centre
- Social opportunities to enable people to make and maintain friendships and relationships
- Education and practical help to protect vulnerable people from sexual exploitation by strangers on public transport and when out and about
- Environments in which people with a learning disability are treated with dignity and respect.

Sex education, in the context of social education and health education, is increasingly being provided in ~ schools, on special needs courses in FE colleges, and in Day Centres. Youngsters and adults with a learning disability can gain a great deal of individual and social satisfaction from close personal and sexual relationships and in this they are no different from anyone else. They may, however, need specific counselling on issues relating to communication, contraception or parenting.

Care should be taken to ensure that there is liaison between home and educational or work settings. Inconsistent responses only serve to confuse and make learning about appropriate behaviour more difficult. For example, open **Masturbation** is a frequent source of worry to parents or staff. **Masturbation** is an extremely common human behaviour and is not harmful - in fact it can help to relieve the tensions which spring from sexual feelings. But persistent **Masturbation** in public will get the individual into trouble. Careful and consistent teaching and training is needed to make it quite clear that this is an activity which should take place in private.

Surveys have shown that people with a learning disability tend to lead very restricted lives, only going out socially with members of their own family, or attending clubs where they mix only with those from the same Day Centre. Those who venture out into the big wide world face rejection and exploitation. If this is true for the person or people with a learning disability that you know, try to consider how their social and leisure opportunities could be safely extended.

Groups and clubs are at last starting up. **People First** is a network of groups around the country run by and for people with learning disabilities, providing opportunities to socialise, train and campaign. There is a new craze of nightclubs run by and for people with learning disabilities in London - for more details call **020 7359 7443** (Mondays). **SNAC** is a network of clubs providing all kinds of activities on **01268 583 181**.

To sum up, the vast majority of individuals with a learning disability develop normally as sexual beings. They may need more help to understand the bodily and emotional changes that occur as they grow up, but if we deny them the right to be sexual and to make and break relationships their lives are much poorer. Difficulties can occur when this happens and help should be sought from a qualified source. More expertise and literature aimed at people with learning disabilities is required and we are currently working on gathering this together.

## Sex and Your Child with a Disability – Leaflet from The Outsiders Trust ([www.outsiders.org.uk](http://www.outsiders.org.uk))

All children need to learn about their own bodies and how they work. They also need to learn about the rules of the society they live in, so that they know what is expected of them and what is acceptable and unacceptable. Learning about the sex organs is obviously part of the first point; appropriate behaviour and ways of relating to others is part of the second. Children with disabilities need to learn these things just as their brothers and sisters do.

Disability does not rule out sexual feelings, sexual needs or usually, sexual capabilities. (However some disabilities do affect sexual performance and where this applies the youngster needs to be prepared for this and to learn about alternative sexual activities). All young people need to be prepared for changes in their bodies that take place at puberty, for the changes which will take place in their feelings and for the different expectations of behaviour that they will meet.

Parents sometimes feel that they should not give their disabled son or daughter information about sex, but to attempt to deny young people sexual knowledge is fruitless and irresponsible:-

1. Sexuality is **not** an optional extra. **Everyone**, from the most severely handicapped to the most capable among us has sexual needs, feelings and drives. To attempt to deny this in people with disabilities by withholding sex education is to do them a major dis-service and is ultimately an attempt to deny their prospective adulthood.
2. Not giving any formal or planned sex education does not, in any case, mean that no learning takes place. Learning about sexuality is a life-long and often haphazard process. Babies learn from birth onwards about the bodily pleasure of being warm, being cuddled, being tickled and interacted with. We learn from watching the ways in which our parents show affection to each other; we learn from spoken and unspoken messages about private parts; also from films, advertisements, and soap operas on TV. Sadly, it is often the case that youngsters with disabilities only get a very negative form of sex education - "Don't do that, it's not nice", "Stop touching yourself down there, that is bad!"
3. Ignorance is not bliss. Not understanding the changes and developments of your body can be very frightening and bewildering. Not knowing how to behave or the consequences of sexual activity, not knowing the difference between public and private behaviour, not knowing you 'own' your body and can say "no" to touches you do not like, leaves youngsters with disabilities very vulnerable to getting into trouble, to abuse or exploitation. Proper sex education is therefore a particularly important factor in helping people protect themselves from abuse.

Children with a disability grow up. Although puberty may be slightly delayed for some, or be early for others, they go through exactly the same process as any other child. Voices start to break, body hair starts to grow, girls begin their periods, boys start to have wet dreams, mood swings become more extreme. All that is the biological process of puberty which cannot be stopped, even if sometimes parents would want it to! However, adolescence is a social process whereby the youngster develops a personal understanding of his or her adult social and sexual identity.

Frequently we deny that period of adolescence and then adult status to people with a disability. We cannot stop their physical maturity, but often with the best of intentions, we stop or curtail their socio-sexual development. The result is a person who is physically an adult, but who has the social status of a child. Adults with a disability rightly resent this.

Children explore their own bodies and learn that handling some parts gives a particularly pleasant feeling. **Masturbation** is a very common human behaviour and is certainly not harmful. Every child, however, has to learn that **Masturbation** in public is not acceptable and some children may need

particular teaching and guidance to ensure that this private activity is confined to a private place. This means, of course, that privacy must be available.

As puberty approaches you need to prepare yourselves and your son or daughter for a more adult status in the family and outside it. You should assume that your son/daughter will have as independent an adult life as possible, and that this will almost certainly include sexual desires and sexual behaviour. A young man or woman with a disability will have just as much need for friendship, romance and the exploration of his or her sexuality and adult role as any other young person of a similar age.

The child with a disability needs what all children need: access to sex education, privacy for private activities and a social life with children or young people of a similar age. In addition young people with particular disabilities which affect the functioning of their lower bodies or urino-genital systems may need particular help and specialist information on ways in which they can take part in sexual activities.

You may wish to talk to a teacher at your child's school about their sex education programme. If you feel that you need help, support or more specific information contact SPOD where we will be pleased to provide or arrange for the advice/assistance you need

## **Appendix 5**

### **Adult Protection Links**

Young people between the ages of 16 and 18 years of age may also be protected by the Adult Protection Legislation, this encompasses a number of statutory acts including

- The Adults with Incapacity (Scotland) Act 2000,
- Mental Health (Care and Treatment) (Scotland) Act 2003,
- Adult Support and Protection (Scotland) Act 2007

Each local authority area has a responsibility to develop procedures to protect vulnerable adults, the Aberdeenshire Policy can be found at the following link:

<https://aberdeenshire.gov.uk/social-care-and-health/community-care/protection-and-support/adult-protection-and-support/>

<https://www.aberdeenshire.gov.uk/social-care-and-health/community-care/community-care-policies-and-strategies/aberdeenshire-adult-protection-committee/>

## Appendix 6

### Reference Documents

#### Legislation

- Sexual Offences (Scotland) Act 2009  
[http://www.oqps.gov.uk/legislation/acts/acts2009/pdf/asp\\_20090009\\_en.pdf](http://www.oqps.gov.uk/legislation/acts/acts2009/pdf/asp_20090009_en.pdf)  
<http://www.legislation.gov.uk/asp/2009/9/contents>
- Sexual Offences (Scotland) Act 2009 – Explanatory Notes  
[http://www.oqps.gov.uk/legislation/acts/acts2009/en/aspen\\_20090009\\_en\\_1.htm](http://www.oqps.gov.uk/legislation/acts/acts2009/en/aspen_20090009_en_1.htm)
- Guidance on the Sexual Offences (Scotland) Act 2009  
<http://www.scotland.gov.uk/Resource/Doc/254429/0105624.pdf>
- Children (Scotland) Act 1995  
[http://www.oqps.gov.uk/legislation/uk/acts/acts1995/ukpga\\_19950036\\_en\\_1](http://www.oqps.gov.uk/legislation/uk/acts/acts1995/ukpga_19950036_en_1)
- Age of Legal Capacity (Scotland) Act 1991  
<http://www.legislation.gov.uk/ukpga/1991/50/contents>
- Data Protection Act 2018  
<https://www.gov.uk/government/collections/data-protection-act-2018>  
<http://www.legislation.gov.uk/ukpga/1998/29/contents>

#### Policy & Guidance

- Scottish Government National Guidance: Underage Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns (2010)  
<http://www.scotland.gov.uk/Publications/2010/12/02143509/0>
- Respect and Responsibility: Strategy and Action Plan for Improving Sexual Health. Scottish Government 2005  
<http://www.scotland.gov.uk/Resource/Doc/35596/0012575.pdf>
- Getting It Right for every Child

<http://www.scotland.gov.uk/Topics/People/Young-People/childrenservices>

- Crown Office and Procurator Fiscal Service, Book of Regulations Chapter 16 – Children (2008)

<http://www.copfs.gov.uk/publications/2008/05/borchapter16>

- Crown Office and Procurator Fiscal Service, Prosecution Code (2005)

<http://www.copfs.gov.uk/Publications/2001/05/prosecutioncode>

### **Sex and Young People with Disabilities**

- The Sexual Health Needs of Young People with Learning Disabilities, Briefing Paper. WISH (Wellbeing in Sexual Health) NHS Scotland (2008)

<http://www.healthscotland.com/uploads/documents/6140-RegainingTheFocusLD.pdf>

- Talking about Sex and Relationships: The Views of Young People with Learning Disabilities. CHANGE 2010

<http://www.changepeople.co.uk/uploaded/Lets%20talk%20about%20sex%20and%20relationships%20-%20final%20report.pdf>

### **Sexual Health and Young People**

- FPA Factsheets
  - Sexually Transmitted Infections (2010)
  - Teenage Pregnancy (2010)
  - Teenagers: Sexual Health and Behaviour (2009)
  - Sexual Behaviour (2009)

<http://www.fpa.org.uk/professionals>

- Alcohol and Teenage Sexual Activity, ChildLine Case Notes, NSPCC 2006

[http://www.nspcc.org.uk/Inform/informhub\\_wda49931.html](http://www.nspcc.org.uk/Inform/informhub_wda49931.html)

- Sexualisation of Young People Review, Linda Papadopoulos, 2010

<http://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/documents/Sexualisation-of-young-people.html>

- Scotland's Sexual Health Information (SSHI) report (last updated December 2010)

<http://www.isdscotland.org/isd/4904.html>