

Underage Sexual Activity

Definition

Many young people will develop a healthy and developmentally appropriate interest in sexual relationships whilst they are still children and some will do this before they reach the age of consent.

Interventions should be aimed at protection of vulnerable children and the provision of information and contraception (where appropriate) for other young people.

Children under the age of 13 are legally deemed incapable of consenting to sexual activity and therefore all incidences of sexual behaviour involving children under 13 should be considered as a potential criminal or child protection matter.

Risks

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 will also be an imbalance of power if the young person's sexual partner is in a position of trust in relation to them and this is documented in our guidance on positions of trust (thereby committing an offence under the [Sexual Offences Act 2003](#) irrespective of the age of the victim).

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, or subjected to abusive behaviour. Cadet Leaders need to be aware that the Sexual Offences Act 2003 recognises the rights of people with a mental disorder to a full life, including a sexual life. However, there is a duty to protect them from abuse and exploitation. The Act includes 3 new categories of offences to provide additional protection.

Young People Under the Age of 13

Under the Sexual Offences Act 2003, children under the age of 13 are considered of insufficient age to give consent to sexual activity. The Police must be notified as soon as possible when a criminal offence has been committed or is suspected of having been committed against a child. In all cases where the sexually active child is under the age of 13, a referral must be made following the Force and National Safeguarding Policy and process. This is also the case when a girl under 13 is found to be pregnant.

Young People Between 13 and 16

The Sexual Offences Act 2003 recognises that whilst mutually agreed, non-exploitative sexual activity between teenagers does take place and that often no harm comes from it, the age of consent should still remain at 16. This acknowledges that this group of young people are still vulnerable, even when they do not view themselves as such.

Sexually active young people in this age group will still have to have their needs assessed using this Protocol. Discussion with your Force Safeguarding Lead for Cadets should take place to determine the level of risk/need assessed by those working with the young person.

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

Young People Between 16 and 18

Although sexual activity in itself is no longer an offence over the age of 16, young people under the age of 18 are still offered protection under the Children Act 1989.

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

Indicators

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 be needed 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;
- Whether overt aggression, coercion or bribery was involved including misuse of substances/alcohol as a disinhibitor;
- Whether the young person's own behaviour, for example through misuse of substances, including alcohol, places them in a position where they are unable to make an informed choice about the activity;
- 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;
- If accompanied by an adult, does that relationship give 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;
- The young person has a lot of money or other valuable things which cannot be accounted for.

It is considered good practice for workers to follow the [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 under 16 years of age. These hold that sexual health services can be offered without parental consent providing that:

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

Protection and Action 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.

In some cases urgent action may need to be taken to safeguard the welfare of a young person. However, in most circumstances there will need to be a process of information sharing and discussion in order to formulate an appropriate plan. There should be time for reasoned consideration to define the best way forward. Anyone concerned about the sexual activity of a young person should initially discuss this with the Unit and or Force Safeguarding lead. There may then be a need for a referral to be made following the Force and National Safeguarding Policy and process. All discussions should be recorded, giving reasons for action taken and who was spoken to.

Issues

Sharing information with parents and carers: - Decisions to share information with parents and carers will be taken using the professional judgement of the unit or force safeguarding lead and consideration of Fraser guidelines. Decisions will be based on the child's age, maturity and ability to appreciate what is involved in terms of the implications and risks to themselves. This should be coupled with the parents' and carers' ability and commitment to protect the young person. Given the responsibility that parents have for the conduct and welfare of their children, professionals should encourage the young person, at all points, to share information with their parents and carers wherever safe to do so.

Further Information

<https://www.brook.org.uk/>