



Perth and Kinross

Child Protection Guidance for working with 'under age' Young People who are Sexually Active

The Guidelines are agreed by Perth & Kinross Child Protection Committee as an interim document and will be amended in light of National Guidance when available.

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1 Introduction

There are increasing numbers of young people who are engaging in sexual activity before the age of 16 against a background of acknowledged poor sexual health in the UK which also has the highest rate of teenage pregnancy in Europe.

For young people it is a time of significant physical and emotional development, testing out their own individuality and sexuality. It is also a time of great vulnerability to coercive and abusive sexual activity.

The growing use of alcohol by young people adds further to the complexities and the current Scottish Law Commission on Rape and other Sexual Offences (2008) particularly is seeking to address the issue of freely given and informed 'consent'.

Perth and Kinross CPC (Child Protection Committee) including representatives from the Police, Health, Social Work Services, Education and the Voluntary Sector, have developed this guidance to help professionals from all agencies undertake individual assessments of young people's circumstances to help them provide an appropriate response to 'underage sex'. Any response must support the promotion of healthy sexual relationships, but also ensure that young people are protected from abuse.

2 Context

In 2005, Scotland's first national sexual health and relationships strategy, *Respect and Responsibility, Strategy and Action for Improving Sexual Health*, was launched. A range of actions were set out in *Respect and Responsibility* to enhance sexual health promotion, education and service provision.

A **Tayside Sexual Health Strategy Group** was established in 2006 to plan a local response to *Respect and Responsibility* which resulted in a set of actions to be delivered in Dundee, Perth and Kinross and Angus. In order to take forward action within Perth and Kinross an Implementation Group was established. Although delayed, one of the key actions of this group is to develop a Perth and Kinross policy for Sexual Health and Wellbeing. This is now to be taken forward by Health Improvement Services, with partners across Perth and Kinross.

Within **Education Services** a draft 'Sexual Health' policy for Schools and Partners has been developed. A consultation exercise will be undertaken with Head Teachers and all Partners regarding this policy in the near future. This will be taken forward within the framework for the 'Curriculum for Excellence' – 'Sexual Health, Relationships and Parenthood'.

In the meantime, it is important to note that there are a set of statements related to *Confidentiality* in Section 5 and *Support for Pupils* in Section 6 of the draft policy for Sexual Health and Wellbeing. These statements will be cross referred to the document '*Child Protection Guidance for Working with 'under age' Young People who are Sexually Active*' in order to ensure that all those working in the school setting have the fullest guidance possible to protect and keep children and young people safe from harm.

In the context of Catholic education, the curriculum emphasis is upon positive relationships, emotional health and maturity, enshrined within the national programme 'Called to Love' produced by the Scottish Catholic Education Service. Here also the identification of vulnerable children and their protection remains of paramount importance.

For **Youth and Community** staff this Child Protection guidance should be read in conjunction with Perth and Kinross Council *Sexual Health and Relationship* guidelines for Community Learning and Development staff.

3 Purpose of Guidance

There is a clear need for a guidance to address underage sexual activity for those who are working closely with young people, and those whose responsibility is for the protection of vulnerable young people. This guidance applies to professionals who work with young people male, female or transgender, regardless of their sexual orientation, who are engaged in sexual activity.

This guidance identifies the different roles and responsibilities of agencies and to ensure that any young person who has been subjected to an abusive and unlawful sexual activity is protected.

This guidance will have the status of 'interim guidance' whilst national guidance is being developed.

4 Vulnerable Adults

Some young people over age 16 for whom sexual activity is lawful may also require an assessment based on this guidance where there are particular vulnerabilities. For example a young person with physical or learning disabilities or one who is subject to discrimination and disadvantaged, may also be particularly vulnerable.

The Children Scotland (Act) 1995 and the Protection of Vulnerable Groups (Scotland) Act 2007 give a power to offer protected adult status.

It should also be noted that sexual activity with a young person under the age of 18, **by a person in a position of trust is unlawful.** (Sexual Offences) (Amendment) Act 2000

5 Underpinning Principles

For all children and young people, their welfare and 'best interest' is the paramount consideration.

Children and young people all have a right to be protected from all forms of violence, abuse, neglect and exploitation including sexual exploitation.

Children and Young People have the right to express their views freely, and professionals have a duty to listen and take account of these and create an environment in which young people can express their views.

All young people have a right to access services, a right to confidentiality and protection of their data, and this is the same confidentiality as adults. Information should not be shared without consent except in exceptional circumstances, These exceptional circumstances would relate to where there is potential for, or actual abuse. The age of Legal Capacity Act 1991 enables young people to make decisions about medical intervention. Further guidance can be found in Perth and Kinross '*Interagency Information Sharing Protocol for staff working with Children and Families in need, or at Risk*'.

Young people should always be encouraged to involve their parents in decision making to ensure that, wherever possible they receive helpful support and advice and guidance from their family.

All young people who are, or who are planning to be, sexually active have a right to access information and services to meet their immediate health needs, such as, education, emotional support, contraception/protection. For those professionals in settings where such provision can be offered, reference should be made to the aforementioned Age of Legal Capacity (Scotland) Act (1991). Other professionals, at a minimum, have a responsibility to either signpost or refer a young person, with their permission, to appropriate local services.

6 The Fraser Guidelines

These arose from a legal judgement in which Lord Fraser offered a set of criteria (subsequent to the 'Gillick' case) which must apply where medical practitioners are offering contraceptive services to young people under the age of 16, without parental consent or knowledge. They have been adopted by many agencies offering sexual health services as a guideline for best practice, and are as follows:-

1. The young person understands the advice given
2. the young person cannot be convinced to involve parents/ carers or allow the medical practitioner to do so on their behalf
3. it is likely that the young person will continue to have intercourse with or without treatment/contraception
4. unless the young person receives treatment/contraception their physical or mental health is likely to suffer
5. The young person's best interests require contraceptive advice, treatment or supplies to be given without parental consent
6. Where a professional is not in a position to meet the young person's immediate health needs, it is within the law, without parental consent or even knowledge, to provide information, to make an appointment or to accompany a young person to an agency which is able to meet their immediate health needs.

Professionals working within Perth and Kinross Catholic schools should seek advice from the designated Child Protection Officer if required.

Even when these criteria apply, and treatment/ contraception is being provided without parental knowledge, consideration should always be given to whether child protection measures are required.

7 The legal Framework

A person under the age of 16 is treated by the law of Scotland as a child. The criminal law has created and developed a number of offences which exist to protect children from indecency and sexual activity. However, it is appreciated that dilemmas arise where sexual activity has taken place consensually between two young people. A legal response which undermines responsibility for supporting young people's sexual health, may be unhelpful to that young person, similarly a unilateral decision not to respond without the availability of all information could also overlook abusive circumstances.

The law is as follows:-

The Criminal Law Consolidation (Scotland) Act 1995. This is being amended by the Sexual Offences Amendment.

- Any person who has unlawful sexual intercourse with any girl under the age of 13 years shall be liable on conviction on indictment to imprisonment for life.
- Any person who attempts to have unlawful sexual intercourse with any girl under the age of 13 years shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years or on summary conviction for a term not exceeding three months.
- Without prejudice to Sections 1 and 4 of the Act; any person who has, or attempts to have, unlawful sexual intercourse with any girl over the age of 13 and under the age of 16 years shall be liable to conviction on indictment to imprisonment for a term not exceeding ten years or on summary conviction for a term not exceeding three months.
- At common law it is RAPE for a male person to have sexual intercourse with a girl under 12 years of age, even if she is willing, or with a female who is incapable through mental abnormality of giving proper consent. Also the common law offences of rape, sexual assault and lewd and libidinous practices apply to girls under 16 when there is no consent .
- Section 3 of the Sexual Offences (Amendment) Act 2000 states: it is an offence for a person aged over 18 who is in a position of trust (further defined) to have sexual intercourse with a person under that age or to engage in any other sexual activity with or directed towards such a person.
- Sodomy is the relevant common law crime for all non-consensual anal intercourse between males irrespective of the age of the victim.
Rape /sexual offences act may bring in the offence of male rape.

- A non-consensual homosexual act with another male is a crime of indecent assault, regardless of age.
- Males aged under 16 who engage in 'consensual' homosexual 'act' (defined as gross indecency) where the other male is over age 16 are also protected by the **Criminal Law Consolidation (Scotland) Act 1995**, Section 13 (5).
- Males under the age of 16 engaging in a **consensual** homosexual act , where both are under the age of 16 are also liable under section 16.

N.B There is currently no statutory offence of a consensual homosexual act between girls.

8 Making an Assessment

- 8.1 When a professional becomes aware that a young person is sexually active or is likely to become sexually active, the professional has a duty of care to ensure that the young person's health and emotional needs are addressed **and** to assess whether the sexual activity is of an abusive or exploitative nature.
- 8.2 It is essential to look at the facts of the actual relationship between those involved and to take into account the wider needs of the young person. Crucial elements of this assessment relate to issues of consent, the ages of those involved, the circumstances of the sexual activity and the vulnerability of the young person involved.
- 8.3 It is recognised that information about sexual behaviour involving a young person can come from a variety of sources e.g. rumour, directly from the young person, from a third party or from direct observation. The source and the nature of the information will determine the timing and who is best placed to seek clarification from the young person. In addition, the skills, confidence and the level of responsibility of the professional involved and their knowledge of the young person will determine who is best placed to speak with the young person.
- 8.4 Any professional with concerns should discuss these with their line manager at an early stage and prior to a referral to the police or social work services.
- 8.5 Depending on the source, the clarity and the immediate seriousness of the information, where the initial information is clearly indicating that child protection measures may be required, it may be appropriate to speak immediately with the Police or Social Work Services prior to speaking with the young person. This is a matter for professional judgement and If required, advice can be sought by contacting Children and Families Social Work Services.
- 8.6 For all other situations (i.e. where the need for child protection measures is not immediately apparent), professionals are required to make an initial assessment of the information before them. There is an expectation that the professional will explore with the young person the circumstances of the sexual activity. The young person's views should always be sought and listened to.

8.7 Any information given directly to the police will automatically result in a child concern report being made.

9 Framework for the assessment of whether there is a need to refer under-age sexual activity under the Child Protection Procedures

The following framework is given as assessment guidance to help determine whether there is a need to refer a young person for under age unlawful sexual activity and child protection measures.

9.1 Any instance of sexual activity involving children under the age of 13 **must be reported to the police /social work service for immediate discussion**

9.2 Further assessment of the nature of the sexual activity should be based on consideration of the factors listed below. Sufficient information should be obtained and recorded to enable a properly informed judgement to be made. This will also assist should a decision be called into question at a later date.

9.3 Consideration should be given to the following

- Characteristics of the young person:
 - age, development & level of maturity
 - level of emotional development
 - vulnerability
 - self-esteem and self-image
 - isolation
 - cognitive capacity
 - knowledge and level of understanding appropriate/inappropriate sexual knowledge
 - Pre-existing sexualised behaviour
- **Social factors:**
 - parenting
 - family background
 - previous contact with social work services, health services involvement with Police
- **Characteristics of the partner:**
 - age difference
 - how they met
 - level of sexual knowledge
 - potential for exploitation
 - known to agencies/the police
- **Consent issues:**
 - how was consent given

- does the young person understand he/she has a choice
 - was consent expressly sought
 - does the young person understand that not saying no is not the same as consenting
 - is it active consent or just passive acceptance
 - was it freely given or was the young person coerced/bribed/even assaulted
 - did the young person have control/understand
 - was it a sufficiently informed consent i.e. with knowledge of possible consequences
 - were alcohol or drugs involved
- **Context of the sexual activity:**
 - ongoing relationship
 - is it a one-off or on-going risk taking activity
 - Influence of social group/peer-group pressure
 - was consideration given to contraception/sexual health issues

10 The Initial Referral Discussion (IRD)

If a professional has continuing concerns for the safety of a young person, they must discuss this with their line manager and refer to the police or social work services so that a formal Initial Referral Discussion can take place.

In these circumstances the professional must make clear to the young person the nature of their concerns and reasons for referring on this concern. They should also work to empower the young person to be a part of this decision.

The Initial Referral Discussion process will consider all available information from a range of sources to agree what action should be taken to ensure the welfare of the young person whether this be child protection measures or further advice and guidance to the young person. Decisions taken should be recorded in agency records.

11 Wider Issues

There may be instances where the sexual activity between two young people, including those under 16, becomes known in the wider peer group, particularly within schools. This aspect will need to be managed sensitively and confidentially, with support being given to the young people.