

## **NATIONAL GUIDANCE**

# **Under-age Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns**

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### **INTRODUCTION**

#### **Context**

1. The Scottish Government's National Child Protection Guidance and the *Getting it right for every child* (GIRFEC) approach provides a national framework for agencies and practitioners at local level to draw up and agree on their ways of working to promote the welfare and safety of children and young people. However, there are specific circumstances in which children and young people may be at risk of significant harm as a result of under-age sexual activity. As such, this guidance looks at how protocols can be developed to ensure the early identification and support for such children and young people and help ensure that in cases where there may not be a child protection issue, their needs are still met appropriately.

2. This guidance should, therefore, be read with reference to the National Child Protection Guidance, which provides more detailed information on issues such as roles and responsibilities, information sharing, risk assessment and responding to child protection concerns. The National Guidance also contains information on how practitioners can find out more about the issues and risk factors associated with child protection. The approach taken to these issues in relation to under-age sexual activity should be no different to other circumstances where practitioners are working to meet the needs of children and young people.

#### **Under-age sexual activity and child protection**

3. When anyone working with children and young people becomes aware of situations where under-age sexual activity has taken place, they have a duty to consider the impact that this has had on them and whether this behaviour is indicative of a wider child protection concern. Child protection concerns arise in those circumstances when there is a strong likelihood or risk of significant harm to a child, arising from abuse or neglect. The concept of 'significant harm' is a complex matter and subject to professional judgement based on a multi-agency assessment of the circumstances of the child and young person and their family. It can result from a specific incidence of abuse or neglect, a series of incidents or an accumulation of concerns over a period of time. The National Child Protection Guidance provides more detail about the nature of child protection, significant harm and child abuse and neglect.

4. To act effectively, practitioners should make a judgement about what information is needed to make this assessment, based on the principles of GIRFEC, and who is best placed to carry it out in full. This might mean them collecting and sharing information from within their service or from other agencies, or passing on information to the service best placed to assess their needs. However, in any situation, an initial assessment of risk has to be made by the practitioner to ensure

that the correct processes and people are involved so that the needs of the child and young person are effectively met.

5. Of course, different individual agencies and professionals have different roles and responsibilities in relation to protecting the well-being of the individual involved in under-age sexual activity. For example, some may give direct support, while others may simply facilitate access to support from another appropriate agency. However, regardless of what agency the child and young person comes into contact with, there should be a consistent approach to assessing individual cases and agreeing an appropriate response.

### **What the guidance does**

6. This guidance focuses on how agencies and practitioners should respond when they become aware of under-age sexual activity and they are considering whether there are concerns about the child and young person. It aims to assist services, agencies and practitioners in their decision-making processes by:

- setting out **principles** upon which practice should be based;
- providing **criteria** to assist practitioners in making high quality assessments of the needs of, and risks to, the individual child and young person they are in contact with and whether information should be disclosed to other agencies; and
- providing advice as to what **action** could be taken on the basis of their assessment.

### **What the guidance does not do**

7. The guidance does not outline what processes should be put in place at a local level. Local areas need, on an inter-agency basis, to develop their own protocols outlining how this guidance will be put into practice.

### **Who does it apply to?**

8. This guidance applies to all practitioners who work with, and have a duty of care towards, children and young people. This includes: social workers; nurses, GPs and other health professionals; police officers; teachers; voluntary sector workers; residential workers; youth workers; and any practitioner who might work with a young person who is engaged or planning to be engaged in sexual activity with another person.

9. The child and young person could be under the age of 16, which is the current legal age of consent; or could be under the age of 18 and be vulnerable in some way, therefore, requiring a response from child or adult protection services. A 'child' can be defined differently in different legal contexts and these are discussed in detail in the National Child Protection Guidance. However, as the sections on information-sharing below make clear, **different responses may be required depending on the age of the child and young person**. If the under-age sexual activity involves children under the age of 13, the concerns **must** be passed on in accordance with local child protection procedures. Where it involves children who are 13 or over, a

range of issues should be considered before a decision is taken, as the guidance discusses in greater detail. Consequently, while this guidance refers to children and young people overall, a distinction is made at different parts of the guidance between:

- a 'younger child', who is defined in this guidance as meaning someone aged under 13; and
- a 'young person', who is defined here as someone aged 13 or over and under 18 (but with a particular focus on those aged between 13 and 15 with respect to under-age sexual activity).

10. Clearly, the different roles and responsibilities of each profession and service will mean that the support each is able to give in situations of under-age sexual activity will differ accordingly. Indeed, advice should not be given, services provided or assessments made unless staff are appropriately qualified and trained. Further, it is important that professionals are aware of the relevant applicable local services and protocols in order to give advice. A young person should be signposted to other services as appropriate, and concerns should be shared with a manager as appropriate.

11. However, what is important is that children and young people are offered a consistent, joined-up approach from every service with whom they come into contact. In this sense, this guidance is applicable to all and must be read in the context of local policy and procedure.

### **Key points for consideration**

*Engaging in sexual activity under the age of 16 is illegal*

12. The [Sexual Offences \(Scotland\) Act 2009](#) maintains the age of consent at 16 and provides that any sexual activity between an adult and a child and young person constitutes a criminal offence. Sexual intercourse and oral sex between children and young people under the age of 16 also remains unlawful. A short summary of the main provisions of the Act can be found on the [Scottish Government website](#).

*A young person's sexual experiences can have a big impact on future relationships*

13. The Scottish Government's strategy for sexual health – [Respect and Responsibility: Strategy and Action Plan for Improving Sexual Health](#) – places particular emphasis on respectful relationships and encouraging young people to delay engaging in sexual activity. The first sexual experiences of young people play a significant part in their future ability to form solid, trusting relationships throughout their lives. While such sexual experiences can be positive, conversely, they can have a harmful effect on a young person's mental and physical health and development. It is important that young people are mature and ready before they engage in sexual activity.

*Is not all under-age sexual activity a cause for concern?*

14. Almost 30% of young men and 26% of young women report having had intercourse before their 16<sup>th</sup> birthday.<sup>2</sup> It is now well established that many young people are engaging in a range of under-age sexual activity and that this can be part of typical adolescent exploratory behaviour.

15. This guidance seeks to strike a balance between assuring the freedom of young people to make decisions about their own lives, and protecting them from activity which could give rise to immediate harm and/or longer term adverse consequences to one or both of them. The law continues to make clear that society does not encourage sexual intercourse in young people under 16, as it can be a cause of concern for their welfare. It does not follow that every case has child protection concerns and it is important to ensure that a proportionate response is made and that only appropriate cases are brought to the attention of social work and the police.

16. However, even if there are no child protection concerns, the young person may still have worries or be in need of support in relation to their sexual development and relationships, which will require to be addressed either on a single agency or multi-agency basis.

*Information-sharing is critical where there is a child protection concern*

17. Practitioners may be concerned that disclosing information about under-age sexual activity may be breaching the confidentiality rights of the child and young person in question, or equally, that the child and young person may not be forthcoming with information if they feel that it is going to be shared with others. However, it is important to remember that if there is a child protection concern of any kind, information about the child and young person must be shared. Equally, it will usually be essential that further information is sought or shared in order to make a sound assessment of whether there is a child protection concern in the first place. The National Child Protection Guidance sets out the circumstances and procedures that should be followed.

*The role of the police*

18. Information-sharing with all relevant agencies is essential to ensure the best possible decisions and the police are often an important part of this process. When the police are made aware of cases of under-age sexual activity – either directly or through information from another agency – they will consider how to proceed based on the best interests of the child and young person and the nature of the sexual activity, for example, the age of the individual or whether there is information that coercion has taken place. It is down to local discretion whether police decide to pursue an investigation or alternatively to pass information on to the most appropriate partner to progress. Even where an investigation may take place, the police are not obliged to refer every case for prosecution. The information below provides more detail about this process.

19. When a case is reported to the police, they will decide whether there are sufficient grounds to investigate any suspected criminal offence as per their local

policies and procedures. Police officers should refer to appropriate guidance in deciding how to proceed with respect to investigations.

20. If an investigation has been undertaken, once complete, the police will decide whether:

- there are no further grounds for investigation or referral, retained for information;
- the case should be dealt with through continuation of the child protection measures already underway;
- the case should be reported to the Children's Reporter; and/or
- the case should be reported to the Procurator Fiscal.

21. This decision will be made **on the basis of local policies and procedures**, and it is advisable that practitioners familiarise themselves with their local police forces to gain awareness of their local practice and procedure. Chapter 16 of the [Book of Regulations](#) also provides advice for the Police on when a case should be referred to the Children's Reporter or Procurator Fiscal Service. It makes clear that only the most serious offences committed by children should be reported to the Procurator Fiscal (as well as what constitutes serious offences).

22. If a case has been reported to the Procurator Fiscal, the Procurator Fiscal will decide, in the public interest, on a case-by-case basis, what action to take, including criminal prosecution. The Procurator Fiscal will take account of the seriousness of the offence, the age and any vulnerability of the victim of the offence, any relationship between the victim and the person accused and the age and personal circumstances of the accused person. These considerations are more fully detailed in the Crown Office and Procurator Fiscal Service [Prosecution Code](#).

23. Through every stage of police processes, in line with the GIRFEC approach, the assessment of risk and need should be revisited, in the context of local child protection procedures, to ensure the needs of the child and young person are being met.

*What about young people aged between 16 and 18?*

24. 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>3</sup>

25. 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.

26. It is essential that those between 16 and 18 do not fall through the gaps in local services and that the key priority at all stages is to ensure that the young person is provided with support and protection if there is a concern. These circumstances should be taken into account to ensure that the young person gets the support required, either from child or adult protection services.

## **PRINCIPLES**

27. As clearly set out in the National Child Protection Guidance, sharing appropriate information is an essential component of child protection activity. To secure the best outcomes for children and young people, practitioners need to understand when it is appropriate to seek or share information, how much information to share and what to do with that information. Practitioners also need to consider with whom information can, and should, be sought and/or shared – this applies not only between different agencies but also within agencies. At the same time, children, young people and their families have the right to know when information about them is shared, and where possible, their consent should be sought. However, where there are concerns about the risk of harm to a child and young person, consent is not required prior to information being shared.

### **UN Convention on the Rights of the Child**

28. The principles and values underlying this guidance reflect the principles set out by the UN Convention on the Rights of the Child (UNCRC). The Scottish Government is committed to [supporting and promoting children's rights in Scotland](#) and the principles set out in the [UNCRC](#). Practitioners and agencies should bear in mind these principles and values when working with children and young people. Some of the key principles to be aware of are set out below.

*The best interests of the child are paramount (Article 3)*

29. The founding principle of legislation relating to children and young people clearly states that the child's welfare or 'best interests' is the paramount consideration.

*Children and young people should be able to voice their opinions (Article 12)*

30. Practitioners should ensure that all children and young people are given a genuine chance to express their views freely on all matters that affect them and to have these views taken into account. To safely and properly exercise this right, practitioners need to listen and to create an environment based on trust, information sharing and sound guidance that is conducive to children and young people's participation.

*Children and young people should be able to access information (Article 17)*

31. Practitioners should ensure that all children and young people are provided with, and not denied, accurate and age-appropriate information on how to protect their sexual health and well-being and practice healthy sexual behaviour.

*Children and young people should be protected from harm (Article 19)*

32. Practitioners have an obligation to ensure that all children and young people are protected from all forms of violence, abuse, neglect and exploitation. Under-age sexual activity may not necessarily be a child protection issue but there may still be concerns that result in a young person requiring support.

*Children and young people should be protected from sexual abuse (Article 34)*

33. Practitioners have an obligation to ensure that all children and young people are protected from sexual abuse.

*Children and young people have a right to special support (Article 39)*

34. If a young person has been hurt or badly treated they have the right to special support to help them recover and professionals should take this into account when planning an appropriate response to their needs.

### **Getting it right for every child (GIRFEC)**

35. GIRFEC should underpin all practice with children and young people. GIRFEC's principles and values are set out at **Annex A**, but essentially GIRFEC:

- places children's and young people's needs first;
- ensures that they are listened to and involved in decisions that affect them; and
- ensures that they get the co-ordinated help required for their well-being, health and development.

More information about how GIRFEC should relate to child protection practices and procedures is set out in the National Guidance on Child Protection.

### **Children and young people have rights to confidentiality**

36. Children and young people have the same right to confidentiality as adults i.e. that personal and private information should not be shared without consent. Child protection concerns relate to the risk of *significant harm* – however, in order to assess this, it is important that relevant practitioners can share information on wider risk of harm. Specifically, where there is simply a risk of *harm*, or where there are wider crime prevention or public safety implications or such action would prejudice any subsequent investigation, information may be shared without consent. The National Child Protection Guidance sets out the issues and circumstances relating to 'significant harm' and 'harm' in greater detail.



37. In the context of under-age sexual activity, if there is a concern of a risk of harm as a result of sexual behaviour and/or relationships, this always overrides the professional requirement to keep confidentiality. In these circumstances, practitioners have a duty to act to make sure that the child and young person is protected. As already stated, where under-age sexual activity relates to those under 13, information must be shared in accordance with local child protection procedures.

38. Professionals are required to ensure that children and young people are informed from the outset that confidentiality is not absolute, but that every reasonable attempt will be made to discuss with them beforehand if information needs to be shared. Prior to disclosing information, attempts should be made to gain consent to passing on information. However, in individual cases it may not always be appropriate to seek consent where there is justification to share without it – for example, if not disclosing information might result in harm coming to the individual in question or compromise a subsequent police investigation.

39. It is also crucial that children and young people should be advised in advance of them potentially disclosing information they want kept confidential, how their personal information may be shared within the team or agency they have contact with and what the limits to that sharing might be. It is essential that agencies have a worked-through confidentiality policy which addresses this issue.

### **Children and young people should have their information rights respected**

40. The needs of each child and young person are the primary consideration when professionals decide upon the relevant and proportionate sharing of information. All decisions and reasons for them should be recorded appropriately. Agencies should actively manage and support the sharing of information, recognising that confidentiality does not prevent information sharing where there is the risk of significant harm to the young person or others. **Practitioners should take account of each child's, young person's or other relevant individual's views when deciding when to share information without their consent** and should provide reasons and explain to them when they have shared information without consent.

41. All practitioners recording information or releasing information to other parties and persons have legal and professional duties to ensure that the information recorded is accurate, relevant and sufficient for its purpose and that any disclosure is lawful – either through the consent of the young person concerned or where there is the potential of harm to themselves or others which outweigh lack of consent. The National Child Protection Guidance provides further information on this issue.

### **Children and young people have the right to consent to, or refuse, health interventions**

42. Scots law presumes that people aged 16 and over have the capacity to consent to their own medical treatment. For those under 16, there is no presumption of capacity but the provisions of the [Age of Legal Capacity \(Scotland\) Act 1991](#), specifically section 2(4), will apply.<sup>4</sup> It should be noted that capacity is not an all-or-nothing concept and will be judged in terms of the specific treatment proposed, both the procedure itself and the possible consequences of having it. Capacity will be a

matter of clinical judgment which, as indicated in the *Good Practice Guide on Consent for Health Professionals in NHS Scotland*, will depend on several things, including: the age of the child and young person; their maturity; and the risks associated with the procedure or treatment. But fundamentally, the medical practitioner will be testing whether (in their opinion) the young person understands the information relevant to the decision (so sufficient information on procedure and consequences has to be provided to allow them to make an informed choice) and whether that information is retained.

### **Parents and carers have the right to be involved in an appropriate way**

43. Practitioners should encourage children and young people to share information with their parents or carers where it is safe to do so. This is in recognition of the responsibilities, rights and duties of parents to direct and guide their children in the exercise of their rights, consistent with their evolving capacities.

44. At the same time, sexual health services have long recognised that assurances of confidentiality for children and young people are essential if they are to be encouraged to seek their help and advice. Consequently, while sexual health practitioners are encouraged to help individuals to speak to their parents and involve them in their decision-making, ultimately, the practitioners are not required to inform the parents or carers at any stage of giving them advice or treatment and must take heed of the information rights set out above.

45. Where a practitioner is not in a position to meet the individual's immediate health needs, having due regard to consent issues, it is within the law, without parental consent or even knowledge, to provide information, make an appointment or accompany the individual to an agency which is able to meet their immediate needs.

46. Specifically in relation to child protection matters, the decision to share information with parents or carers should be based on professional judgement using the foregoing principles and agency guidelines. In this context, education authorities have particular duties towards pupils, first and foremost.

### **ASSESSING RISKS AND NEEDS**

47. When a practitioner becomes aware that a younger child (ie. 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 (ie. 13 or over) is sexually active or is likely to become sexually active, they should undertake an assessment of risks and needs in line with the [GIRFEC practice model](#) to ensure that the appropriate response is provided. The practitioner has a duty of care 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.

48. The assessment process may not always be straightforward and will require sensitive handling and the use of professional judgment. Practitioners should seek support and information in line with their local procedures. This might mean seeking

advice or assistance from a colleague or line manager. Where appropriate, practitioners should advise the young person of their intentions to speak with a colleague. In the context of child protection concerns, in order to make a full assessment, it may sometimes be appropriate to consult and share information with other agencies including the social work and police.

49. Practitioners should also bear in mind that there may be opportunities to discuss concerns relating to under-age sexual activity on an informal, 'hypothetical' basis - whether for general advice on procedures and processes, or to ascertain whether information they hold should be shared on a wider basis. These types of discussion can help increase knowledge and skills base, and help promote the development of inter-agency relations and understanding.

### **Assessment of risk**

50. Assessment of risk can be separated into three stages:

- **Stage 1:** Gathering information
- **Stage 2:** Analysis of information and understanding the impact on the young person (including potential impact) and what is required to reduce risks
- **Stage 3:** Management of risk and intervention (child protection plan, or alternative support if no child protection concerns)

Further information on the risk assessment process can be found in the National Child Protection Guidance. However, it may be helpful to consider the following in the circumstances of under-age sexual activity.

#### *Who should do the risk assessment?*

51. Regardless of where information about under-age sexual activity has come from – for example, directly from the young person, a third party or direct observation – it is important that the practitioner who takes forward further information gathering, analysis and assessment is the person with the best skills set and professional competencies for the role. This may be a different person on a case-by-case basis, but every service or agency should have a process in place for allocating roles and responsibilities in these circumstances. Deciding which practitioner should take the lead will depend on a number of factors, including timing, skills, confidence and level of responsibility and knowledge of the young person.

#### *What factors should be taken into account in making an assessment?*

52. All cases should be looked at individually, on their own facts and circumstances. In making assessments, practitioners should take into account the following.

- **The age of the young person.** As noted, any sexual activity involving younger children should be automatically treated as a child protection concern. Consensual sexual activity is not unlawful when both parties are aged 16 or over, but there may also be particularly vulnerable young people between the ages of 16-17 who may be placing themselves at risk or who are at risk.

- **Particular vulnerabilities** of those groups of young people more likely to experience discrimination or disadvantage within society such as young people with disabilities, young women, young gay men and women, those affected by poverty, those experiencing homelessness, looked-after children and young people, those living away from home and survivors of sexual abuse, as these individuals may be particularly vulnerable to sexual abuse or exploitation.
- **Relevant legislation and policies** (see **Annex C** for details).

53. A list of indicators can be found at **Annex B** of the guidance. It is a non-exhaustive list of some of the typical factors that may indicate a child protection concern and help practitioners determine risk and need. It is not intended to be used as a checklist but forms the basis of a risk assessment: depending on the specific situation, not all of the areas identified will require exploration.

54. 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 and informed choice;
- the ages of those involved;
- the relationship;
- the circumstances of the sexual activity; and
- the vulnerability of the young person involved.

55. The presence of one or more factors will raise different levels of concern depending on the young person's individual circumstances. For some young people it will be the *combination* of certain factors which may suggest that further intervention is required. There are some contextual factors – e.g. consumption of drugs and/or alcohol that would affect ability to give consent, manipulation, bribery, threats, aggression and/or coercion – that will require an immediate, multi-agency response including involvement of the police. The presence of other factors may flag that there should be further exploration of this area.

56. Practitioners need to be aware that should information come to their attention about past sexual behaviour and/or relationships involving young people, the same consideration should be given as to whether this was abusive or exploitative and appropriate action should be taken. It may be the case that the young person in question is no longer at risk of harm; however, this information may have implications for other children and young people.

57. Practitioners need to be aware that some young people may not identify abusive behaviour as such. A range of factors – including embarrassment, coercion and the desire to protect others – may prevent such identification and can increase the vulnerability of these young people.

## DEVELOPMENT OF LOCAL PROTOCOLS

58. As stated above, local areas should develop protocols to underpin the material within this guidance. The protocols should:

- reflect the principles and criteria outlined in this guidance;
- ensure that clear processes are in place at local level to ensure that appropriate action to meet the needs of the child and young person;
- link into local handling relating to data protection, information sharing, confidentiality, recording of decision-making;
- link with other local protocols on related matters such as provision of sexual health services, protection of vulnerable persons, sexual exploitation and child trafficking;
- include a list of local resources (leaflets etc.) and services (voluntary organisations etc.); and
- incorporate monitoring procedures to ensure that practice is consistent and appropriate.

### Range of responses

59. The protocol should include courses of actions that may be followed and routes through local processes. A flow chart may be helpful. Depending on the outcome of the assessment process, there are several courses of action that could be taken. However, in all situations the consideration of the five GIRFEC questions should form the basis of the response:

- What is getting in the way of this child's or young person's well-being?
- Do I have all the information I need to help this child and young person?
- What can I now do to help this child and young person?
- What can my agency do to help this child and young person?
- What additional help, if any, may be needed from others?

60. The level of response will depend on how practitioners assess the level of risk to the young person, based on the matrix provided at **Annex B**. The response, and level of information shared, will be different depending on whether there is a child protection concern or whether there are other concerns for the well-being of the young person. **However, the overriding principle should be that the confidentiality rights of children and young people should be respected unless there is a child protection concern.**

61. The following are given as examples but this should be developed on a local basis.

#### *Automatic sharing of concerns*

62. There are certain circumstances in which practitioners should **automatically** share child protection concerns:

- if the child is, or is believed to be, sexually active and is under 13;
- if the young person is currently 13 or over but sexual activity took place when they were 12 or under;
- if there is evidence or indication that the young person is involved in pornography or prostitution;
- if the 'other person' is in a position of trust in relation to the young person; and
- if the young person is perceived to be at immediate risk.

In these circumstances, the practitioner should:

- where appropriate, speak with the child and young person prior to passing on the child protection concern – every reasonable effort should be made to seek their agreement;
- share the child protection concern in line with their local child protection procedures, detailing those who are involved, the nature of the concerns etc; and
- if agreement is not reached, the professional should share the child protection concern and inform the child and young person that this will be the course of action.

*If the young person is not at risk of harm*

63. If the practitioner has assessed that the sexual behaviour is consensual teenage sexual activity where there are no concerns of abuse or exploitation, the practitioner should:

- uphold the confidentiality rights of the young person; and
- provide practical assistance and advice as required. Practitioners not qualified to provide this should signpost young people to the appropriate local services (e.g. sexual health services).

64. If the practitioner has assessed that the sexual behaviour is not abusive or exploitative, but that there remain concerns about the young person's behaviour e.g. their ability to assess risk, their use of drugs/alcohol, the environment in which they seek sexual contacts etc, then the practitioner should:

- uphold the confidentiality rights of the young person; and
- provide practical assistance and advice as required within their own agency or, with their permission, refer them to the appropriate clinical or support services, including forensic or sexual health services.

In both these scenarios, a single-agency decision-making process is normally appropriate.

*If there are concerns that the young person might be at risk of harm*

65. If the practitioner is concerned that the young person's behaviour, or the nature of the sexual behaviour and/or relationship, *could* indicate that the young person is at risk of harm, the practitioner should:

- seek guidance from a line-manager in accordance with their agency's guidelines and decide if further action is required;
- inform the young person about the need speak to other practitioners, where required, and seek their consent if possible;
- share appropriate information with other practitioners about the young person;
- if required, seek advice from other services and agencies to assist in this decision-making; and
- share information with the police if there are concerns about the young person's sexual partner.

*If the practitioner is aware that the young person is at risk of harm*

66. If the practitioner is aware that the young person has experienced, or is experiencing, harm as a result of their sexual activity or behaviour, the practitioner should:

- where appropriate, speak with the child and young person prior to passing on the child protection concern – every reasonable effort should be made to seek their agreement;
- share the child protection concern in line with their local child protection procedures, detailing those who are involved, the nature of the concerns etc; and
- if agreement is not reached, the professional should share the child protection concern and inform the child and young person that this will be the course of action.

### **Recording information**

67. 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.

68. On each occasion that a practitioner has contact with a young person or receives information about them, consideration should be given as to whether their circumstances have changed and a different response needed.

69. Further guidance on the recording and analysis of information is provided in the National Child Protection Guidance.

## ANNEX A: GETTING IT RIGHT FOR EVERY CHILD: PRINCIPLES AND VALUES

For all professions, there are legal powers and duties, professional protocols, quality standards and a range of professional guidance. *Getting it right for every child* is relevant to a wide range of professionals and there are some underpinning principles within the approach that have broad application **across relevant agencies**. These principles are described here as values.

Values inform or influence choices and action across a wide range of role and context. Successful evolution in culture, systems and practices across diverse agencies may depend partly upon on a shared philosophy and value base. The summary below is intended to be both practical and relevant to professionals with a part to play in ensuring that each child is: safe; healthy; active; nurtured; achieving; respected; responsible; and included.

- **Promoting the well-being of individual children and young people:** this is based on understanding how children and young people develop in their families and communities and addressing their needs at the earliest possible time.
- **Keeping children and young people safe:** emotional and physical safety is fundamental and is wider than child protection.
- **Putting the child and the young person at the centre:** children and young people should have their views listened to and they should be involved in decisions that affect them.
- **Taking a whole child approach:** recognising that what is going on in one part of a child's and young person's life can affect many other areas of his or her life.
- **Building on strengths and promoting resilience:** using a child's and young person's existing networks and support where possible.
- **Promoting opportunities and valuing diversity:** children and young people should feel valued in all circumstances and practitioners should create opportunities to celebrate diversity.
- **Providing additional help that is appropriate, proportionate and timely:** providing help as early as possible and considering short and long-term needs.
- **Supporting informed choice:** supporting children, young people and families in understanding what help is possible and what their choices may be.
- **Working in partnership with families:** supporting, wherever possible, those who know the child and young person well, know what they need, what works well for them and what may not be helpful.
- **Respecting confidentiality and sharing information:** seeking agreement to share information that is relevant and proportionate while safeguarding children's and young people's right to confidentiality.
- **Promoting the same values across all working relationships:** recognising respect, patience, honesty, reliability, resilience and integrity are qualities valued by children, young people, their families and colleagues.



- **Making the most of bringing together each worker's expertise:** respecting the contribution of others and co-operating with them, recognising that sharing responsibility does not mean acting beyond a worker's competence or responsibilities.
- **Co-ordinating help:** recognising that children, young people and their families need practitioners to work together, when appropriate, to provide the best possible help.
- **Building a competent workforce to promote children and young people's well-being:** committed to continuing individual learning and development and improvement of inter-professional practice.

## **ANNEX B: INDICATORS OF POTENTIAL RISKS**

If a professional feels that there are concerns around the young person's sexual behaviour, the indicators set out below can help the practitioners decide on the appropriate response and whether information needs to be shared. What follows is a non-exhaustive list of some of the typical factors that may indicate a child protection concern and help practitioners determine risk and need. It is not intended to be used as a checklist but forms the basis of a risk assessment: depending on the specific situation, not all of the areas identified will require exploration.

### **The child and young person**

Is the child under the age of 13 or did the sexual activity take place when the young person was under 13?

Did the young person understand the sexual behaviour they were involved in?

Did the young person agree to the sexual behaviour at the time?

Did the young person's own behaviour – e.g. use of alcohol or other substances – place them in a position where their ability to make an informed choice about the sexual activity was compromised?

Was the young person able to give informed consent? (e.g. mental health issues, learning disability or any other condition that would heighten the young person's vulnerability)

### **The relationship**

Was there a coercing power or any other relevant imbalance present in the relationship? (e.g. differences in size, age, material wealth and/or psychological, social, intellectual and physical development – in addition, gender, race and levels of sexual knowledge can be used to exert power.) It should not automatically be assumed that power imbalances do not exist for two young people similar in age or of the same sex.

Were manipulation, bribery, threats, aggression and/or coercion, involved? (e.g. was the young person isolated from their peer group or was the young person given alcohol or other substances as a dis-inhibitor etc.)

### **The other person**

Did the other person use 'grooming' methods to gain the trust and friendship of the young person? (e.g. by indulging or coercing the young person with gifts, treats, money etc; by befriending the young person's family; by developing a relationship with the young person via the internet.)

Did the other person attempt to secure secrecy beyond what would be considered usual in teenage sexual activity?

Was the other person known by the practitioner to be or have been involved in concerning behaviour towards other children and young people?

Was the other person in a position of trust?<sup>5</sup>

### **Other factors**

Was the young person, male or female, frequenting places used for prostitution?

Is there evidence of the young person being involved in prostitution or the making of pornography?

Was the young man frequenting places where men have sex with men in circumstances where additional dangers, e.g. physical assault, might arise?

Were there other concerning factors in the young person's life which may increase their vulnerability? (e.g. homelessness.)

Did the young person deny, minimise or accept the concerns held by practitioners?

## **ANNEX C: RELEVANT POLICY DOCUMENTS AND LEGISLATION**

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

[Summary of Legislation](#)

[Part 4 – Children](#)

[Part 5 – Abuse of position of trust](#)

### **Age of Legal Capacity (Scotland) Act 1991**

**Part 2.4:** 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.

### **National Guidance on Child Protection (to be consulted on in summer)**

#### **Getting it right for every child**

[Overview of approach](#)

[Evaluation of early implementation phases](#)

[GIRFEC practice model](#)

### **UN Convention on the Rights of the Child**

### **Crown Office and Procurator Fiscal Service**

[Prosecution Code](#)

[Book of Regulations: Chapter 16 – Children](#)

### **General Medical Council Confidentiality Guidance 2009**

[0-18 years guidance: Child Protection](#)

[0-18 years guidance: Sexual Activity](#)

### **Nursing and Midwifery Council Code of Practice 2009**

### **Respect and Responsibility, Strategy and Action Plan for Improving Sexual Health**



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