Sexual Health and Relationships Guidance

To be read in conjunction with the Sexual Health and Relationships Policy

Owner/s:	Director of Children Young People and Families
Author/s:	Deputy Director, Children and Youth
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1. Introduction

1.1 This guidance accompanies the Sexual Health and Relationships policy. Most young people under the age of 18 will have an interest in sex and sexual relationships. It provides child protection guidance to cover circumstances where these relationships may be abusive, and where deaf children and young people may need protection or additional services.

1.2 Our core principle is that the welfare of the child or young person is paramount. This guidance is written on the understanding that those working with deaf children and young people will naturally want to do as much as they can to provide a safe, accessible and confidential service, whilst remaining aware of their duty of care to safeguard them and promote their well-being.

1.3 NDCS will seek to take all reasonable steps to assess whether there is risk of significant harm when a child or young person is engaged in sexual activity and refer to the relevant agencies when it thinks this is the case.

2. Assessment of risk

2.1 When young people under the age of 16 seek advice on sexual health matters they often want the matter to remain confidential. Without assurances of confidentiality, they may become reluctant to seek advice and in so doing place themselves and their health and welfare at risk. However, there is a need to balance this with the duty to ensure they are safe from abuse and exploitation.

2.2 It is therefore important to use reasonable judgement to appraise the young person's understanding and competence to ensure they are not at risk of abuse or sexual exploitation. This can be done by the member of staff or the volunteer receiving the request for advice; although where there is a concern or an element of doubt they should consult the NDCS's designated manager for child protection or child protection advisor.

2.3 In judging the nature of any particular behaviour, it is essential to look at the facts of the actual relationship between those involved. This might require a level of judgement that may not be possible through a single contact with a member of staff or volunteer.

2.4 The decision making process must consider the relationship between the member of staff or volunteer and the young person, and seek to build trust as far as possible. The amount of information that will be forthcoming will vary from one setting to another, and will be affected by whether the member of staff or volunteer has any prior knowledge of the young person. Thus, at one-off events a member of staff or volunteer will probably only gain some of the answers to the questions or prompts that the guidance in the next paragraph proposes. As a result, the threshold for discussions with the NDCS designated manager or child protection advisor, children's social care, or the police, is likely to be lower when the opportunity for further discussions between practitioner and young person is less likely.

2.5 To judge risk it is essential to look at the facts of the actual relationship between those involved to determine whether the relationship presents a risk to the young person. The following factors should be considered:

a) Whether the young person is competent to understand and consent to the sexual activity he/she is involved in
b) The nature of the relationship between those involved; particularly if there are age or power imbalances
c) Whether overt aggression, coercion or bribery was involved including misuse of substances/alcohol as a dis-inhibitor
d) Whether the young person's own behaviour, for example through misuse of substances, including alcohol, places him/her in a position where he/she is unable to make an informed choice about the activity
e) Any attempts to secure secrecy by the sexual partner beyond what would be considered usual in a teenage relationship
f) If accompanied by an adult, does that relationship give any cause for concern?
g) Whether the young person denies, minimises or accepts concerns
h) Whether methods used to secure compliance and/or secrecy by the sexual partner are consistent with behaviours considered to be grooming (definition below)
i) Whether sex has been used to gain favours (for example, swap sex for cigarettes, clothes, CDs, trainers, alcohol, drugs, etc.)
j) The young person has a lot of money or other valuable things, which cannot be accounted for

2.6 It is helpful for NDCS staff and volunteers to have knowledge of the Fraser guidelines [1] when discussing personal or sexual matters with a young person under 16.

3. Process

3.1 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 or other young people can only be safeguarded by sharing information with others. This discussion with the young person may prove useful as a means of emphasising the gravity of some situations. *Any member of staff or volunteer concerned about the sexual activity of a young person must discuss this with NDCS's designated manager for child protection or the child protection advisor.* Staff should also consult the NDCS child protection policy and procedures when considering any action.

Young people under 13

3.2 Under the *Sexual Offences Act* 2003, children under the age of 13 are considered of insufficient age to give consent to any form of sexual activity; therefore penetrative sex with a child under the age of 13 is classed as rape.

[1] See full guidance in Appendix B

3.3 In all cases where the sexually active young person is under the age of 13 there must be a discussion with the NDCS's designated manager for child protection. There should be a presumption that a referral will be made to children's services social care.

3.4 Where a referral is not made, NDCS is accountable for the decision and a good standard of record keeping must be maintained, including the reasons for not making a referral to children's services.

3.5 When a girl under 13 is found to be pregnant, a referral to children's social care must be made. When a referral is made to children's social care they will hold a strategy discussion with the police and/or other agencies and a multi-agency support package should be formulated.

3.6 In cases of concern where sufficient information is known about the sexual partner/s NDCS should give this information when referring to children's social care who will check with the police and other agencies as appropriate.

Young people between 13 and 15

3.7 Sexually active young people in this age group should have their needs judged to establish whether they are at risk of harm. Notifying the NDCS designated manager for child protection or the child protection advisor is mandatory and record-keeping is essential. Given the vulnerability of deaf young people, the limited training and experience of staff and volunteers and possibly a limited knowledge of the young person's situation, it is anticipated that advice from the designated manager for child protection or the child protection advisor will be sought in most cases.

3.8 Where, following assessment, the designated manager or the child protection advisor feels there is concern about possible harm, abuse or exploitation the matter will be referred to children's social care.

3.9 Within this age range, the younger the child and/or the greater the age difference, the stronger the presumption must be that sexual activity will be a matter of concern.

Young people between 16 and 18

3.10 Young people under the age of 18 are still classed as children under the *Children Act* 1989, except in Scotland where they are considered adults at 16, though they may still be dealt with under child protection procedures. Although in England and Wales and Northern Ireland sexual activity in itself is not an offence over the age of 16, young people under the age of 18 are still offered the protection of the child protection procedures.

3.11 Where young people aged under 18 are believed to have been at risk of that outlined in section 2.0 a)-j) a referral must be made to children's social care.

3.12 Where a person aged 18 or over is in a position of trust with a young person under 18, it is an offence for that person to engage in sexual activity with or in the presence of that child, or to cause or incite that child to engage in or watch sexual activity. As much information as possible needs to be shared with the lead person to support an accurate assessment.

3.13 In many cases it will not be in the best interests of the young person for criminal or civil proceedings to be instigated, particularly for those aged 13-16 years. However, police, social care and other agencies may hold vital information that will assist in any clear assessment of risk. All discussions should be recorded, giving reasons for action taken and who was spoken to.

3.14 Any concerns that the young person may be at risk of sexual exploitation need to be referred to the child protection agencies by NDCS's lead person.

3.15 Following any referral to the child protection agencies there may be one of these responses:

a) No further action deemed necessary.
b) An initial assessment undertaken, which may identify the young person as 'a child in need' and the requirements of additional services provided.
c) An initial assessment undertaken, which may identify the young person as a child at risk of significant harm and a child protection enquiry will then be undertaken.

Sharing information with parents and carer

3.16 The NDCS designated manager for child protection or child protection advisor will decide whether to share information with parents and carers. They will consider the Fraser guidelines 2and consult with other agencies following a risk assessment. The decision will be based on the child's age, maturity and ability to appreciate implications and risks to themselves, and will 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 to share the information with their parents and carers wherever safe to do so.

4. Consent

4.1 The following advice is taken from A Framework for Sexual Health Improvement DoH 2013:

Consent, confidentiality and safeguarding

4.2 All professionals working with children and young people should be aware of the law on consent. The *Sexual Offences Act* 2003 provides that the age of consent is 16, and that sexual activity involving children under 16 is unlawful. The age of consent also reflects the fact that children aged under 16 are vulnerable to exploitation and abuse. Most people wait until they are 16 or older

[2] See Fraser guidelines in Appendix B

before they have sex, and young people report that the legal framework helps them to resist pressure to have sex at an earlier age.

4.3 The 2003 Act is designed to protect children – both boys and girls – not to punish them where it is wholly inappropriate. *Guidance from the Crown Prosecution Service* states that young people who are of a similar age should not be prosecuted or issued with a reprimand or final warning where sexual activity was mutually agreed and non-exploitative. However, the law says that children under 13 are particularly vulnerable, so to protect younger children any sexual activity with a child aged 12 or under will be subject to the maximum penalties – whatever the age of the perpetrator. It was established in 1986 that health professionals can provide confidential medical advice, treatment and examination, including emergency contraception and abortion, to young people aged under 16.

4.4 Health professionals have a duty to assess the young person's competence to discuss issues around consent, and in particular to encourage them to talk to their parents. For the minority of young people aged under 16 who are sexually active, it is important that they have confidence to attend sexual health services and have early access to professional advice, support and treatment to prevent pregnancy and STIs. In addition, all sexual health service providers must be aware of child protection and safeguarding issues and take very seriously the possibility of abuse and/or exploitation. Advice and guidance on child protection is available in *Working Together to Safeguard Children 2006* and *What to do if you're Worried a Child is Being Abused 2006*.

5. Additional information

Definitions

Sexual abuse

5.1 Sexual abuse involves forcing or enticing a child or young person to take part in sexual activities, not necessarily involving a high level of violence, whether or not the child is aware of what is happening. The activities may involve physical contact, including assault by penetration (for example, rape or oral sex) or non-penetrative acts such as masturbation, kissing, rubbing and touching outside of clothing. They may also include non-contact activities, such as involving children in looking at, or in the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse (including via the internet). Sexual abuse is not solely perpetrated by adult males. Sexual abuse can be perpetrated by both adult men and women, and by other children. (*Working Together*, 2010).

Sexual Exploitation

5.2 Sexual exploitation of children and young people under 18 involves exploitative situations, contexts and relationships where young people (or a third person or persons) receive 'something' (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of them performing, and/or another or others performing on them, sexual activities. Child sexual

exploitation can occur through the use of technology without the child's immediate recognition; for example being persuaded to post sexual images on the Internet/mobile phones without immediate payment or gain. In all cases, those exploiting the child/young person have power over them by virtue of their age, gender, intellect, physical strength and/or economic or other resources. Violence, coercion and intimidation are common, involvement in exploitative relationships being characterised in the main by the child or young person's limited availability of choice resulting from their social/economic and/or emotional vulnerability. *(DCSF Guidance Safeguarding Children and Young People from Sexual Exploitation, 2009)*

Sexual grooming

5.3 Section 15 of the *Sexual Offences Act 2003* makes it an offence for a person (A) aged 18 or over to meet intentionally, or to travel with the intention of meeting a child under 16 in any part of the world, if s/he has met or communicated with that child on at least two earlier occasions, and intends to commit a "relevant offence" against that child; either at the time of the meeting or on a subsequent occasion. An offence is not committed if (A) reasonably believes the child to be 16 or over. The section is intended to cover situations where an adult (A) establishes contact with a child through, for example, meetings, conversations or communications on the internet and gains the child's trust and confidence so that s/he can arrange to meet the child for the purpose of committing a "relevant offence" against the child.

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

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

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

5.7 Subsection (2)(a) provides that (A's) previous meetings or communications with the child can have taken place in or across any part of the world. This would cover for example (A) e-mailing the child from abroad, (A) and the child speaking on the telephone abroad, or (A) meeting the child abroad. The travel to the meeting itself must at least partly take place in the UK.

5.8 *Working Together 2013* does not give any detail about working with underage sexual activity. There are some additional documents which offer some guidance:

Safeguarding children and young people from sexual exploitation - Home Office Circular 16/2005 Guidance on offences against children

The following is useful advice:

a) Cases of underage sexual activity which present cause for concern are likely to raise difficult issues and should be handled particularly sensitively. This includes situations where girls aged under 16 years present at a termination or pregnancy clinic.

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

c) Cases involving children aged under 13 years should always be discussed with a nominated child protection lead in the organisation. Under *the Sexual Offences Act*, penetrative sex with a child under 13 years old is classed as rape. Where the allegation concerns penetrative sex, or other intimate sexual activity occurs, there would always be reasonable cause to suspect that a child, whether girl or boy, is suffering, or is likely to suffer, significant harm. There should be a presumption that the case will be reported to children's social care and that a strategy discussion will be held. This should involve children's social care, police, health and other relevant agencies in discussing appropriate next steps with the professional. All cases involving under 13s should be fully documented including detailed reasons where a decision is taken not to share information. These decisions should be exceptional and only made with the documented approval of a senior manager.

d) Sexual activity with a child aged under 16 years is also an offence. Where it is consensual it may be less serious than if the child were aged under 13 years but may, nevertheless, have serious consequences for the welfare of the young person. Consideration should be given in every case of sexual activity involving a child aged 13–15 as to whether there should be a discussion with other agencies and whether a referral should be made to children's social care. The professional should make this assessment using the considerations below. Within this age range the younger the child the stronger the presumption must be that sexual activity will be a matter of concern. Cases of concern should be discussed with the nominated child protection lead and subsequently with other agencies if required. Where confidentiality needs to be preserved a discussion can still take place as long as it does not identify the child (directly or indirectly). Where there is reasonable cause to suspect that significant harm to a child has occurred, or is likely to occur, there should be a presumption that the case is reported to children's social care and a strategy discussion should be held to discuss appropriate next steps. Again, all cases should be carefully documented including where a decision is taken not to share information.

5.9 In March 2013 the *Department of Health* produced *A Framework for Sexual Health Improvement* in England. The priorities as they specifically refer to young people are reproduced at Appendix C.

5.10 Further information is available at **NHS Choices**:

http://www.nhs.uk/Livewell/Sexualhealthtopics/Pages/Sexual-health-hub.aspx

Appendix A

The legal contexts for NDCS policy in England and Wales, further information:

a) **Sections 5-8** Cover offences committed against children under 13. For the purposes of these offences, whether the child ostensibly consented to the act is irrelevant as is the defendant's belief as to the child's age.
b) **Sections 9-12** cover offences against children under 16 committed by adults.
c) The fact that a child gives ostensible consent to such sexual activity is not relevant as sexual activity involving a person under the age of 16 is unlawful regardless of such consent. Where there is no ostensible consent, the conduct will fall under the (non child-specific) non-consensual offences in sections 1-4 of the Act, which include rape.
d) **Section 13** Covers child sex offences committed by children or young persons: this offence covers any of the offences covered by sections 9 to 12 where they are committed by someone under 18.
e) **Section 14** provides an offence of arranging or facilitating commission of a child sex offence. The offence being arranged or facilitated may take place anywhere in the world for the purposes of this offence.
f) **Section 15** provides an offence of meeting a child following sexual grooming. The original version of section 15 made it an offence for a person aged 18 or over to meet intentionally, or to travel with the intention of meeting, a child under the age of 16 in any part of the world, if s/he has met or communicated with that child on at least two prior occasions, and intends to commit a "relevant offence" against that child either at the time of the meeting or on a subsequent occasion. Section 72 of the *Criminal Justice and Immigration Act* 2008 extended the offence to where the person arranges to meet the child in any part of the world or where the child travels with the intention of meeting the defendant in any part of the world. This addition strengthens the offence of meeting a child following sexual grooming.
g) **Sections 16-19** cover sexual offences against children under 18 where the offender has abused a position of trust. Roles which constitute a position of trust are set out in section 21. Positions of trust include, for example, employment in a residential home or detention centre or in an educational establishment.
h) **Sections 25-26** provide offences for engaging in or inciting sexual activity with a child family member.
i) **Sections 47-50** provide a set of offences specifically dealing with the exploitation of children through prostitution and pornography which provide protection for all children up to the age of 18.
j) **Sections 57-59** provide the offences relating to the trafficking of people into, outside and within the UK for the purposes of certain sexual offences.
k) Section 33A of the *Sexual Offences Act* 1956 makes it an offence to keep a brothel used for prostitution. The maximum penalty upon conviction was raised to seven years imprisonment under the *Sexual Offences Act* 2003.
l) Section 1 of the *Protection of Children Act* 1978 makes it an offence to take, make, distribute or show indecent photographs or pseudo-photographs of children.
m) Section 160 of the *Criminal Justice Act* 1988 makes it an offence to possess indecent photographs or pseudo-photographs of children.
n) The *Sexual Offences Act* 2003 extended the meaning of 'child' for the purposes of these two provisions to children aged under 18 (rather than 16).

Appendix B

Fraser Guidelines

The so-called *Fraser Guidelines* (some people refer to assessing whether the young person is Gillick competent) state that all the following requirements should be fulfilled:

a) the young person will understand the professional's advice
b) the young person cannot be persuaded to inform their parents
c) the young person is likely to begin, or to continue having, sexual intercourse with or without contraceptive treatment
d) unless the young person receives contraceptive treatment, their physical or mental health, or both, are likely to suffer
e) the young person's best interests require them to receive contraceptive advice or treatment with or without parental consent

Where a young person is not considered to be Gillick competent, staff with *in locum parentis* responsibility will be expected to make decisions where appropriate, otherwise parents/carers will be sought to make decisions.

Notes: Although these criteria specifically refer to contraception, the principles are deemed to apply to other treatments, including abortion.

The Fraser guidelines referred specifically to doctors but it is considered to apply to other health professionals, including nurses. It may also be interpreted as covering youth workers and health promotion workers who may be giving contraceptive advice and condoms to young people under 16, but this has not been tested in court.

Appendix C

The following are extracts from **A Framework for Sexual Health Improvement DoH 2013** which particularly refer to young people and to vulnerable groups:

AMBITION: Build knowledge and resilience among young people

a) All children and young people receive good-quality sex and relationship education at home, at school and in the community.
b) All children and young people know how to ask for help, and are able to access confidential advice and support about wellbeing, relationships and sexual health.
c) All children and young people understand consent, sexual consent and issues around abusive relationships.
d) Young people have the confidence and emotional resilience to understand the benefits of loving, healthy relationships and delaying sex.

AMBITION: Improve sexual health outcomes for young adults

a) All young people are able to make informed and responsible decisions, understand issues around consent and the benefits of stable relationships, and are aware of the risks of unprotected sex.
b) Prevention is prioritised.
c) All young people have rapid and easy access to appropriate sexual and reproductive health services.
d) All young people's sexual-health needs – whatever their sexuality – are comprehensively met.

Vulnerable groups

Sexual and domestic violence and sexual exploitation and abuse can be issues for men, women and children. More than one-third (38%) of all rapes recorded by the police in England and Wales in 2010/11 were committed against children under 16 years of age, and 49% of gay and bisexual men have experienced at least one incident of domestic abuse from a family member or partner since the age of 16. Service providers should be alert to these issues and be able to provide support and make onward referral for victims including to the police, social services and specialist health and third sector services. Evidence shows that such violence can severely affect the mental and sexual and reproductive health of victims. Although routine enquiry about domestic violence in pregnancy has been undertaken for a number of years in antenatal settings, there has been less focus on screening in women having an abortion. Studies show an association between domestic violence and termination (and repeat termination) of pregnancy.