



Best practice protocol in responding to concern where children are engaged in under age sexual activity

INTRODUCTION

Child Protection and Under Age Sexual Activity

This protocol 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

The protocol 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 in or planning to be engaged in sexual activity with another person and **should be considered in conjunction with the Scottish Government National Guidance Document**.

The level of response will depend on how practitioners assess the level of risk to the young person based on the matrix provided in **Appendix A**. The response and level of information shared will differ depending on whether there is a child protection concern or whether there are other concerns for the well being of a young person.

The relevant sections of The Sexual Offences (Scotland) Act 2009 were enacted on 1st December 2010. This was preceded by the Lord Advocate's advice to the Police on 23rd November 2010 and followed the publication of the Scottish Government's National Guidance on Child Protection and Under Age Sexual Activity on 3rd December 2010.

Under the new Act:

It remains a criminal offence to be involved in any sexual act with someone who does not give free agreement. The definition of free agreement has been set out for example free agreement cannot be given if the young person is:

- Too drunk to understand what is happening
- Under any sort of unreasonable pressure

The onus would be on the accused person to prove they believed free agreement was give

It is a criminal offence for anyone to have any sexual contact (sexual intercourse, sexual touching, kissing etc) with anyone under the age of 13 whether the young person agrees or not, on the basis that anyone under 13 lacks the capacity to give valid consent to any sexual act.

It is a criminal offence for anyone who is 16 or older to have any sexual contact with someone aged 13, 14, or 15. It is also a criminal offence for both girls and boys aged 13, 14 or 15 to have consensual sex with anyone else aged 13, 14, or 15. This applies whether they are the initiating partner or the consenting partner. This criminal offence for consensual sex between people who are both aged 13, 14 or 15 applies solely to penetration of the mouth, vagina or anus with the penis or to touching the penis, vagina or anus with the mouth. People in this age group participating in other consensual acts are **not** committing offences

Sexual Activity during teenage years is part of the normal spectrum of adolescent development, it is important that young people aged 13,14 and 15 who are involved in consensual relationships and those who are being abused are dealt with appropriately in a way that minimises harm. **In all cases the best interests of the young person is the most important consideration.**

A criminal investigation will not normally be required where :

- Both parties are aged 13, 14 or 15 AND
- The sexual act or acts have clearly been fully consensual

A police investigation will always take place if either party is:

- Under the age of 13
- Either party has **not** given free agreement to any sexual act

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

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

In these circumstances the practitioner should:

- Where appropriate speak with the child or young person prior to passing on the child protection concern making every reasonable effort to seek their agreement
- Share the child protection concern in line with their local child protection procedures
- If agreement is not reached the professional should share the child protection concern and inform the child/young person of this course of action

Position of Trust (Part 5 Sexual Offences (Scotland) Act 2009

It is a criminal offence for anyone in a position of trust in relation to someone under 18 to have any sexual contact with that person. It is a child protection issue if anyone aged 16 or 17 is involved in any sexual act (kissing, sexual touching, oral, anal or vaginal sex) with anyone who is in a position of trust in relation to them. It is also a criminal offence for the person who is in the position of trust. This could be a teacher, sport coach, children's residential worker, a driving instructor etc. The person in the position of trust has to be in a position of trust for that young person, in the case of teachers the member of staff would have to be teaching in school the young person attends or coming into contact with them in their professional capacity in some other way. The same principle applies to young people aged 16 and 17 in residential settings.

Where a young person is aged 16 or 17 and lacks capacity to give consent through disability or ill-health any sexual contact would be regarded as requiring a Child Protection response. The person having sex with them would also be committing a criminal offence.

The situation is exactly the same when someone is 18 or over and lacks capacity to give consent to sex with the exception that their protection would be dealt with through guidance for Adult Support and Protection

If the young person is not at risk of harm

If the practitioner assesses that the sexualised 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 do this should sign post young people to the appropriate local services (e.g sexual health services)

If the practitioner has assessed the sexual behaviour is not abusive or exploitative, but concerns remain 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, the practitioner should:

- Uphold the confidentiality rights of the young person
- Provide practical assistance as required within the agency or, with permission, refer the young person to the appropriate clinical or support services, including forensic or sexual health services.

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

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

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 guidance and decide if further action is required
- Inform the young person about the need to speak to other practitioners and seek their consent if possible
- Share information appropriately with other practitioners about the young person
- If required seek advice from other services and agencies to assist in this decision making
- Share information with police if there are concerns about the young person's sexual partner

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

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

- Where appropriate, speak with the child or young person prior to passing on child protection concern every reasonable effort should be made to seek their agreement
- Share the child protection concern in line with agency child protection procedures, detailing those involved and the nature of the concerns
- If agreement is not reached, the professional should share the child protection concern and inform the child and young person this will be the course of action.

Recording the Information

- In **all** circumstances the practitioner should make a record of events and decisions, the record should contain all essential detail and reasons for action.
- All new information from the young person should be considered to re-assess if their circumstances have changed and a different response is needed.

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 substance – 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?

Other factors

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

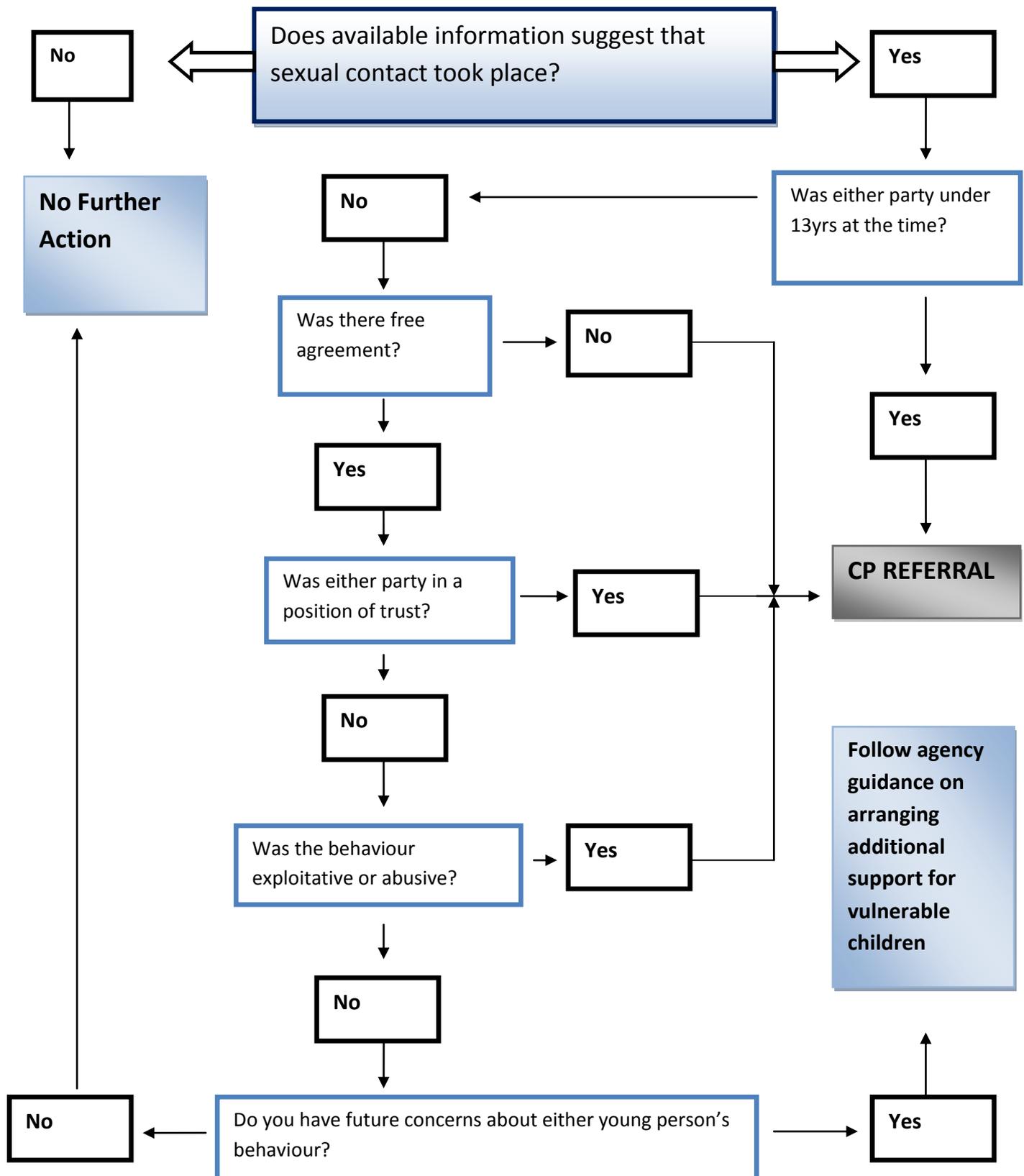
Is there any evidence of the young person being involved in prostitution or the making of pornography?

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?

Responding to concern where children have engaged in under-age sexual activity



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 (Published December 2010.)

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