

# SEXUALLY ACTIVE YOUNG PEOPLE GUIDANCE FOR UNDER 16 YEAR OLDS

## The Background

Sexual activity under the age of 16 is considered illegal.

The National Survey of Sexual Attitudes and Lifestyles (Natsal) 2000 reported that on average 30% of males and females had had their first heterosexual experience at younger than 16 years of age.<sup>1</sup> In addition some studies have shown a high number of young people expressed regret in relation to their first sexual experience.<sup>2</sup>

There is no legal obligation for a person (either in a professional or a personal capacity) to report a young person who is having “underage sex”. Illegal does not necessarily mean abusive. The law is there to protect a young person in an abusive situation. Children are more vulnerable than adults and must be protected from exploitation. Young people may not be able to measure the trustworthiness of the people they embark on sexual relationships with.

When we work with young people we assume a certain level of responsibility for them and for their well being. This is supported by *The Children (Scotland) Act 1995* which states that all healthcare workers (HCW) have a statutory responsibility to protect a child and inform relevant authorities e.g. social work if a young person is being harmed or is at risk of harm (from sexual, physical or emotional abuse).

A policy for appropriately supporting sexually active young people is therefore required so that we can identify and distinguish between young people who are accessing sexual health services, who are having consensual sex and those vulnerable young people coerced into having sex, those being exploited and those who have been sexually assaulted.

## The Client's Rights

- The client can independently seek, consent to and refuse medical treatment provided the doctor or nurse feels the client is competent.
- Competence, as described in the Age of Legal Capacity (Scotland) Act 1991, sections 2 (4), also covers client confidentiality. It is an assessment by a qualified medical practitioner of whether the client understands the nature and possible consequences of the advice and/or treatment, including contraception and termination of pregnancy.
- It is preferable for young people to have parental support and the value of this should be discussed, although establishing a trusting relationship will do more to promote sexual health than refusing to see a young person without parental involvement.
- Breach of confidentiality may only be considered under the strict circumstances laid out in the code of confidentiality.

## **The Parent's Rights**

- Parents have a right of custody until a child is 16, but this right can only be exercised if it promotes the child's interests
- There is no law requiring parental consent before advice is given to a young person

## **The duties of the Health Care Worker**

- To give the young person the knowledge and skills to be responsible for their own sexual health.
- To positively promote that young person's sense of worth and self-esteem their health and development so that they are able to make informed decisions.
- To facilitate harm minimization through education, provision of emergency and regular contraception, pregnancy advice, and the testing and treatment of sexually transmitted infections.
- To establish trust between the client and the HCW to ensure the best care. The HCW is in a privileged position to talk about sex and sexuality, relationships and other relevant issues where there may be the opportunity for harm reduction (for example eating disorders, deliberate self-harm and drug and alcohol abuse).

## **Confidentiality**

The Venereal Disease Act 1917 states that the identity of those attending genitourinary services should be kept confidential.

The confidentiality that is owed to a person less than 16 years of age is equal to that of an older person. The decision to breach confidentiality depends on an assessment of current or potential harm, and not on the person's actual age.

If a service is not seen to be confidential then it is likely that some young people will not access the service, may lie about their age and may not disclose sexual activity or abuse.

Health professionals must consider however what information may require to be shared within their own and/ or with other agencies to ensure that a pattern of injuries or a disclosure of potential risk is not being missed.

Under common law a doctor has a wider duty to disclose information if a crime has been or is likely to be committed. Confidentiality must be balanced against society's interests in protecting vulnerable people from harm.

The health care worker must be prepared to justify his/her decision to breach confidentiality to the patient, to his/her colleagues and to their relevant professional association.

Concern may be raised in a situation where the young person:

- Shows signs of physical, emotional/mental or sexual abuse, or there are indications that the young person may be at risk of significant harm if they were to return to a particular situation
- Self-harming is threatening suicide or is threatening harm to another person

If it is felt that is in the young person's best interests to breach confidentiality then every effort should be made first to gain the consent of the person concerned.

With specific regards to written information, young people (aged 12-16 years of age) under The Data Protection Act 1998 can have access to their personal health records. This Act also states that parents are not permitted to see a child's health record unless the child has given consent or the child is deemed too young to understand how to make a request.

For young people who wish to complain about a "breach in their confidentiality" the Scottish Child Law Centre (0131 667 6333) can provide relevant advice and information.

### **Consenting to Medical Treatment**

The Age of Legal Capacity (Scotland) Act 1991 states that a person under the age of 16 has the right to consent to treatment if in the opinion of a qualified medical practitioner he/she is capable of understanding the nature and possible consequences, benefits and risks of the procedure or treatment.

#### **Fraser Guidelines**

The Fraser guidelines are a set of criteria, which are often used to assess whether a young person can be provided with confidential contraceptive services without parental consent. They arose from a case in the early 1980s and apply to England only but are commonly used as guidance in Scotland.<sup>3</sup>

They state that a professional would be justified in giving treatment without parental knowledge, provided he/she is satisfied:

- That the young person can understand the advice, and has sufficient maturity to understand what is involved in terms of the moral, social and emotional implications
- That he/she cannot be persuaded of the value in informing their parent that contraceptive advice is being sought
- That the young person is likely to begin/ continue having sex with or without contraception
- That without treatment the young person's physical/ mental health is likely to suffer
- That the young person's best interests require contraceptive advice, treatment, or both without parental consent

The client needs to demonstrate that he/she is competent to give consent.

The client's decision should be made freely and without pressure.

#### **Condom Provision**

Condoms are easily accessible to all through vending machines, chemists and supermarkets. There are no laws restricting vendors from selling condoms to those under the age of 16.

There is no evidence to suggest that supplying condoms encourages sexual activity. Putting up unnecessary barriers will not help a young person access condoms.

Distribution of condoms should be in line with the Fraser guidelines, and "Fraser competency" should always be assessed and documented with the client's name and date of birth.

Condom distribution can be used as a positive opportunity to discuss and offer safe sexual health advice, in addition to discussing more reliable forms of contraception, and will also allow the opportunity to assess if there are any concerns of abuse. Those under 13 years of age should be always be seen by a health care professional.

No one should be expected to be able to use a condom safely without practice and condoms should not be issued for the first time without offering a condom demonstration, in addition to supplying information about emergency contraception.

### **When a young person under 16 attends for sexual health advice:**

Be alert to the possibility of abuse and neglect.

Ensure accurate documentation of the consultation. The specially designed proforma for those under 16 should be used (the under 16 recording form)

The following points should always be considered:

- The intellectual age of the patient eg those with learning difficulties whose actual age may not reflect their maturity.
- The approximate age of the partner – a partner more than 3 years older than a person under the age of 16 should raise concern.
- The nature of the relationship, and any obvious power imbalance.
- The nature of the sexual activity. For example: masturbation in a young couple may be seen as appropriate for their “stage of relationship” whereas high risk inappropriate sexual behaviour would not.
- The duration of sexual activity. For example, a sexual relationship ongoing since the age of 10 is clearly an issue of concern.
- The possibility sexually exploitation and prostitution.
- The possibility that other young people may also be at risk.

After obtaining all the relevant history and information you should be able to make an informed judgment about the young person:

#### **Is this young person making a mature, competent and sensible choice about their sexual health and care?**

If you are unsure about their competency to consent, you should ask a senior colleague for their opinion. Work as part of a multidisciplinary team. The young person's name or details that may identify him/ her need not be mentioned. A difficult situation can be respectfully discussed with one or more professionals within a defined team if it is in the best interests of that young person, and it is with their knowledge.

If you are not satisfied that the young person is competent to give consent to treatment, and/or it is not in their best interests, then the reasons should be clearly explained to the young person. If there are no child abuse concerns the young person should be given relevant advice and information and further encouraged to involve their parent/ guardian. A further appointment can be made to either continue support or to reassess the situation.

## **Specific situations**

### **Young people less than 13 years of age:**

A girl of 12 years or under is unable to give consent to sexual intercourse in legal terms. All these individuals must be seen/discussed with a senior member of medical staff at the time that they attend if possible (there is always a consultant on call for advice during clinic time).

If a doctor is unavailable (for example in peripheral clinics) then relevant advice should be given inline with Fraser competency guidelines and every effort should be made to get adequate contact details such as a mobile phone number to allow further contact. This may not always be possible. These individuals should then be discussed at the earliest opportunity with a senior member of medical staff.

### **Risk Assessment**

- Ascertain age of young person and partner. If more than 3 years age gap this is an area of concern.
- Ascertain if the sexual partner is related to individual.
- Take accurate, medical and social history.
- Observe for signs of physical abuse, e.g., bruises, burns, fractures.
- Look out for signs of emotional abuse, e.g., self mutilation, previous overdose, eating disorder, drugs or alcohol abuse, low self-esteem.
- Ascertain during history taking if young person is receiving gifts from partner, e.g. clothes, jewellery, money.
- Ascertain dependency on partner e.g., Do they have family/ friends they can confide in?
- Do they feel physically isolated?
- Do they feel in control of their life? Do they accept blame and feel guilty and at fault?
- Are they being coerced into having sex with someone else?

### **What should I do if I am concerned that a young person is “at risk”?**

See “Child Protection” protocol available in staff base at all clinics

## **Appendix 1 - Laws Relating to Sexual Offences in Young People**

### **Heterosexual Sex**

#### Criminal Law (consolidation) (Scotland) Act 1995:

##### Where the female is younger than 12 years of age

A female aged 12 years or younger is considered incapable of giving consent to sexual intercourse. Intercourse with a female under the age of 12 is rape whether or not she “consents”. There is no defence to this crime. The maximal penalty is life imprisonment.

##### Where the female is aged 12 years

She is considered incapable of giving consent. The crime is unlawful sexual intercourse.

##### Where the female is aged 13, 14 and 15 years of age

The crime is unlawful sexual intercourse. Possible defence if i) The male believed that she was his wife, or ii) he had no previous similar convictions, was aged under 24 years of age and believed that she was aged 16 years or over.

A sexual act short of intercourse where the female is aged 13, 14 or 15 years, the offence is “lewd, indecent or libidinous practice or behaviour”.

##### Where the male is younger than 14 years of age

If the female involved is older than 16 years of age, she can be charged with indecent assault.

### **Same Sex**

The Sexual Offences (amendment) Act 2000 reduced the age of consent to 16 years for homosexual intercourse between 2 consenting males. There is no such legislation relating to women.

#### *References*

*Wellings K et al. Sexual behaviour in Britain: early heterosexual experience. The Lancet 2001; 358: 1843-1850*

*Wight D et al. Extent of regretted sexual intercourse among young teenagers in Scotland: a cross sectional survey. BMJ 2000; 320: 1243-4*

*Gillick v West Norfolk and Wisbech AHA (1986) AC 112, (1985) 3 WLR 830, (1985) 3 All ER 402, HL*

*BMA Publication: Consent Toolkit*

*Confidentiality – People under 16. Guidance issued by BMA, GMC, HEA, Brook, FPA, RCGP “It’s everyone’s job to make sure that I’m alright”. Scottish Executive 2002*

*Child Protection Guidance for Health Professionals. Child Protection Committee Glasgow (published leaflet)*