



**North Ayrshire  
Inter Agency  
Protocol**

**Working with  
Young People who  
are Sexually  
Active**



Care Protection Commitment to North Ayrshire's Children



It is now well established that increasing numbers of young people are engaging in a range of sexual activity before the age of 16 years. The reasons behind this behaviour vary considerably. For some young people this will be a mutually agreed activity: for others it may be the response to peer group pressure or the result of abuse or exploitation. Young people who are sexually active will therefore present with differing needs. Consequently, services and professionals need to be better equipped to recognise and respond to these differing needs.

This Protocol provides a framework for those who work with, and have a duty of care towards children and young people, to identify, assess and respond to young people if and when they become sexually active. Professionals working with young people and/or their families have a duty of care to ensure that a young person's health, emotional and protection needs are considered in the context of their individual circumstances.

This Protocol provides guiding principals and criteria to assist in making quality assessments and developing appropriate responses. It is intended that professionals from all agencies will find this helpful in improving our services for young people.

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## Section 1 The need for a Protocol

Review in North-East  
Lincolnshire (2004)

- 1.1 The need for a protocol relating to the under age sexual activity of young people in North Ayrshire arose through discussions with partner agencies who work with young people and who had identified the need for a more clearly defined method of addressing the various sexual behaviours these young people displayed.
- 1.2 It had been identified that there is a lack of clarity amongst professionals about how they can and should respond to those young people who are sexually active under the age of sixteen. This lack of clarity led to a concern that the present situation is:
- Discouraging young people from seeking appropriate sexual health information and advice
  - Not assisting professionals to offer appropriate advice and support
  - Not helping professionals to identify and appropriately support those young people who are the subject of sexually abusive behaviour and/or relationships. In view of this, agencies have not been able to identify perpetrators who serially offend against young people, a fact highlighted in the findings of the Bichard Inquiry (2004) and the related Serious Case

- 1.3 In June 2008, the Sexual Offences (Scotland) Bill was published. This Bill aims to replace the current complex mix of common law and statute with a clear legal framework that more accurately reflects the values of modern society. The Bill repeals the common law offences of rape, sodomy and clandestine injury to women and replaces these with an extended range of new statutory offences relating to sexual conduct. **Under the new legislation, males and females will enjoy equal protection in law.** The Bill is currently progressing through parliament and this protocol was revised in November 2008 to take account of the main changes proposed in the new legislation.
- 1.4 This protocol therefore is an attempt to seek a solution to the concerns outlined and agree a joint approach by all agencies who work with young people.

## Section 2 Purpose of the Protocol

- 2.1 This protocol is an attempt to devise a systematic approach that can be used by those who work with, and have a duty of care towards children and young people, in both the statutory and voluntary sectors, who work with young people who are sexually active under the age of 16 years. It will therefore provide the basis for a more co-ordinated approach and strategic response to the sexual health needs of young

people in North Ayrshire whilst ensuring that vulnerable young people are afforded the protection they deserve.

2.2 It has been designed to be used by all staff across all sectors so that young people are assured of a consistent approach, no matter what service they come into contact with. It is anticipated that, as a result of this consistency, over time, young people will be more likely to feel confident about seeking help when they need it.

2.3 The key aim of this Protocol is to provide clarity. Given the nature of the subject, it cannot provide definitive answers to all situations that may arise. What it aims to do is assist professionals in their decision – making process. It seeks to do this by:

- Setting out guiding principles upon which practice should be based.
- Providing criteria to assist professionals to make quality assessments of the needs of the individual young person with whom they are in contact,
- Providing guidance for professionals as to what they can / should do on the basis of their assessment.

2.4 It is recognised that some professionals may feel uncomfortable dealing with sexual health issues. In addition, as a result of this Protocol, some professionals may require to change their existing practice. All

professionals have a duty of care to:

- a) Ensure that young people are given information and access to services that enables them to safeguard their health, and,
- b) appropriately assess information about the nature and circumstances of any sexual activity that comes to their attention.
- c) Ensure young people are listened to, understood and respected.

2.5 Whilst this Protocol is applicable to all those who work with young people within North Ayrshire, it recognises the different roles and responsibilities that each professional brings to the situation. Staff should not give advice, make assessments or provide services that they are not competent to provide. Should staff have any doubts on these matters, they should refer to a more senior person within their organisation. It may be appropriate in some circumstances to signpost the young person to another service or agency.

2.6 Whilst it is recognised that certain sexual activity is unlawful it is not the role of the professionals covered by this Protocol to encourage the prosecution of two young people of a similar age engaged in mutually agreed teenage sexual activity , unless it involves abuse or exploitation.

2.7 Additionally, there are some situations involving consensual sexual activity between young people that do not constitute a

criminal offence but may raise concern about one or both young people. This protocol aims to provide guidance in such situations.

### **Section 3 To whom does the Protocol apply?**

- 3.1 This Protocol applies to all staff who work with young people, male and female, regardless of their sexual orientation, under the age of 16 years, who are engaged in, or planning to engage in, sexual activity with another person.
- 3.2 It should be noted that there is a distinction between those who are 12 years and under (young children) and those who are between the ages of 13 – 15 years (older children). This age distinction has been made on the basis of existing practice and legislation.
- 3.3 Whilst it is acknowledged that consensual sexual activity in itself is not unlawful when both parties are over the age of 16, this Protocol may be used to help professionals make assessments of a small group of particularly vulnerable young people between the ages of 16 – 17 years who may be placing themselves at risk or who are at risk. The Children's (Scotland) Act, 1995, offers young people additional protections up to the age of 18 years, as do existing Child Protection Procedures. It should be noted that sexual activity with a young person under the age of 18 years by a person in a position of trust is unlawful. (1)

3.4 This Protocol is applicable to all staff who work with young people with disabilities. Whilst they may have particular individual needs which a professional may have to consider, young people with disabilities have the same rights as everyone else in this age group to information, confidentiality, services, etc. It should be noted that this group of young people may be at greater risk of abuse than their non-disabled peers, especially when they are living away from home. They may be particularly vulnerable to coercion due to physical dependency or because a learning or sensory disability impairs their ability to communicate.

3.5 Further, it should be noted that other groups of young people who experience discrimination and / or disadvantage within society, e.g. young women, young gay men, lesbians, transsexuals, those affected by poverty, those living away from home, etc. may be particularly vulnerable to sexual abuse or exploitation.

(1) For the definition of a "position of trust" please refer to Appendix 2

## **Section 4 Principles upon which the Protocol is based**

- 4.1 In devising this document, close attention has been paid to relevant legislation, to Scottish Government and local guidance, and to the Committee on the UN Convention on the Rights of the Child.
- 4.2 Since 1991, the UK has been a signatory to the UN Convention on the Rights of the Child, thus state bodies are obliged to ensure that young people enjoy the highest attainable standard of health, develop in a well-balanced manner, are adequately prepared to enter adulthood and play a constructive role in their families, their communities and society at large. This Protocol therefore recognises that young people are rights holders and, according to their evolving capacities, they can progressively exercise their rights to promote health and development. As a consequence, professionals should adhere to the following principles:

### **1. Welfare of the Child**

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

### **2. To have their views taken into consideration**

Professionals have a duty to ensure that all children and young

people are given a genuine opportunity to express their views freely on all matters that affect them. To safely and properly exercise this right, all professionals need to listen and create an environment based on trust, information sharing and sound guidance, that is conducive to children and young people's participation.

### **3. To be protected from harm**

Professionals have an obligation to ensure that all children and young people are protected from all forms of violence, abuse, neglect and exploitation.

### **4. To access information and services**

Professionals have a duty to ensure that all children and young people are provided with, and not denied, accurate and age appropriate information on how to protect their health and well-being and practice healthy behaviours.

### **5. To expect confidentiality**

It is well documented that one of the main obstacles deterring young people from seeking both early sexual health and pregnancy advice is the fear about confidentiality. Both legal judgements and professional codes of conduct recognise that without assurances around confidentiality, young people may be reluctant to give professionals the information they need in order that they provide good and appropriate care.

It is important to state that 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, except in certain exceptional circumstances. The exceptional circumstances are where there is the potential of significant harm to the child or young person or others.

If there is a reasonable concern that a child or young person may be at risk of significant harm as a result of sexual behaviour and / or relationships (see Section 5), this always overrides the professional requirement to maintain confidentiality. In these circumstances, all professionals have a duty to act to make sure that the child or young person is protected from harm.

Professionals need 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 confidentiality needs to be departed from. Prior to breaching confidentiality, attempts should be made to gain the child or young person's consent to passing on information.

It is also crucial that children and young people should be advised of how their personal information may be shared within the agency with whom they have contact.

*(see Appendix 1)*

## **6. To have their information rights respected**

Alongside the legal and professional obligations of confidentiality, there are strict rules under the Data Protection Act, 1998, as to what professionals are allowed to do with personal information regarding children and young people. It is also important to note that, for data protection purposes, the critical age is 12, i.e. a child or young person aged 12 years or above is presumed to have sufficient mental capacity to be able to exercise their rights and make decisions regarding their own information. (2). This specifically includes matters such as the results of pregnancy or STI tests, as well as information supplied by the young person to the professional (or to which the professional has access).

Both the Council and the Health Board have detailed guidance and procedures relating to data protection issues, and it is equally important to follow these when working with children or young people in a sensitive area such as this. The data protection rules underpin many of the points above, and create a framework within which professionals can determine whether they may disclose information to another person or not, and spell out what the child or young person themselves have to be told about how their information will be used, and by whom. For inter-agency work, professionals should also consult the Information Sharing Protocol recently devised in relation to the Integrated

Assessment Framework, which addresses many of these issues in more detail.

All professionals 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 due to the presence of concern factors which outweigh lack of consent.

*(2) Data Protection Act, 1998, Section 66*

## **7. To consent to health interventions**

In Scot's law, a child under the age of 16 years has the legal capacity to make a decision on a health intervention provided they are in fact capable of understanding its nature and possible consequences. *(3)* This is a matter of clinical judgement and will depend on the age, maturity of the young person, the complexity of the proposed intervention, its likely outcome and the risks associated with it. This rule applies to all health interventions, including assessment, treatment and counselling.

Every effort should be made to encourage the child or young person to involve their parents. However, intervention can take place if the child or young person is opposed to this involvement and is deemed to be competent.

If there is a difference of opinion between a young person and their parent, where the young person has the capacity to make an informed choice, the young person's decision must be respected and given effect to, even if it differs from the parent's or the professional's view.

## **8. Involving Parents**

Professionals should encourage children and young people to share information with their parents 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.

Specifically in relation to child protection matters, the decision to share information with parents should be based on professional judgement using the foregoing principles and agency guidelines. However, information should not be shared with parents of young people aged 16 – 18 years against their wishes. This is due to the fact that the only parental responsibility that parents have towards young people aged 16 – 18 years, is that of guidance. Guidance is only advice and if the young person does not wish to take advice from his / her parent, then confidentiality should be maintained.

*(3) Age of Legal Capacity (Scotland) Act, 1991, Section 2(4)*

## Section 5 Making Assessments

### When a child or young person is, or is likely to become, sexually active.

- 5.1 When a professional becomes aware that a young person is sexually active, or is likely to become sexually active, the professional has a duty of care to ensure that the young person's health and emotional needs are addressed **and** to assess whether the sexual activity is of an abusive or exploitative nature. (*Vulnerable Children and Young People – Good Practice Guidance: North Ayrshire Child Protection Committee*) It is recognised that this process may not always be straightforward and so it will require sensitive handling and the use of professional judgement.
- 5.2 All young people who are, or who are planning to be, sexually active, have a right to access information and services to meet their immediate health needs, in terms of education, emotional support, contraception / protection, etc. For those professionals in settings where such provision can be offered, reference should be made to the aforementioned Age of Legal Capacity (Scotland) Act, 1991. Other professionals, at a minimum, have a responsibility to either signpost or refer the young person, with their permission, to appropriate services.
- 5.3 Where a professional is not in a position to meet the young person's immediate health needs, having due regard to Section 4.2 (8) of this Protocol, it is within the law, without parental consent or even knowledge, to provide information, to make an appointment or to accompany a young person to an agency which is able to meet their immediate health needs.
- 5.4 When a professional becomes aware that a young person is, or is likely to become, sexually active, the professional has a responsibility to make an initial assessment as to whether the sexual behaviour and / or relationship may be abusive or not. It is essential to consider the dynamics 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 the issue of consent, the ages of those involved, the circumstances of the sexual activity and the vulnerability of the young person involved.
- 5.5 It is recommended that staff use the *Getting It Right For Every Child* practice model for assessing risk and needs. A template for this risk assessment is contained within *Vulnerable Children and Young People: Good Practice Guidance* and this can be downloaded from the professionals page on website: [www.childprotectionnorthayrshire.info](http://www.childprotectionnorthayrshire.info)
- 5.6 It is recognised that information about sexual behaviour involving a young person can come from a variety of sources, e.g. rumour, directly from the young person,

from a third party or from direct observation. The source and the nature of the information will determine the timing and who is best placed to seek clarification from the young person, In addition, the skills, confidence, and the level of responsibility of the professional involved, and their knowledge of the young person will determine who is best placed to speak with the young person.

- 5.7** Depending on the source, the clarity, and the immediate seriousness of the information, it may or may not be appropriate to speak directly with the young person at this initial stage. These are matters for professional judgement. If the initial information is indicating that Child Protection measures may be required, contact should immediately be made with Social Services without speaking to the young person. If required, advice can be sought by contacting Social Services. See Section 7.
- 5.8 For all other situations, (i.e. where the need for Child Protection measures is not immediately apparent), professionals are required to make an initial assessment of the information before them. There is an expectation that the professional will explore, with the young person, the circumstances of the sexual activity. The young person's views should always be sought and taken into consideration. Again staff are directed to the needs and risk assessment model used in North Ayrshire which can be sourced as per 5.5.

- 5.9 It is acknowledged that personal relations are sometimes ambiguous and open to interpretation. However, there are two particular circumstances, which offer no ambiguity and would require an **automatic** referral to Social Services. These are:

I Where the child is 12 years of age or under. The new Sexual Offences (Scotland) Act defines this age group as "young children" and sets out specific offences against this age group.

II Where the other person is in a position of trust in relation to the young person. It should be noted that the legislation is applicable to young people up to the age of 18 years. (For the legal definitions of "position of trust", please refer to Appendix 2). The new Sexual Offences (Scotland) Bill makes it an offence of "abuse of position of trust" for a person in a position of trust (over a child or a vulnerable adult) to engage in sexual activity with that child or person.

- 5.10 With respect to all other circumstances, what follows is a list of factors to help professionals make an assessment, i.e. a determination of "need" and "risk". It is not intended to be used as a checklist: depending on the presenting situation, not all of the following will require exploration. Factors for consideration include:

I Whether the young person understood the sexual behaviour they were involved in.

II Whether the young person agreed to the sexual behaviour at the time. The new Sexual Offences (Scotland) Bill provides a definition of consent as “free agreement” and supplements this with a non-exhaustive list of factors in which free agreement, and therefore, consent, is not present. See Appendix 4

III Whether the young person’s own behaviour, e.g. use of alcohol or other substances, placed them in a position where their ability to make an informed choice about the sexual activity was compromised.

IV The nature of the relationship between those involved and whether a power balance exists, e.g. difference in size, age, material wealth, and / or psychological, social 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.

V Whether manipulation, bribery, threats, aggression and / or coercion, were involved. e.g. the young person is being isolated from their peer group; the young person was given alcohol or other substances as a disinhibitor, etc.

VI Whether the other person has used “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. This includes meeting a child following certain preliminary contact. (For information on the prevention of sexual offences, please refer to appendix 3).

VII Whether the young person has attempted to secure secrecy beyond what would be considered usual in teenage sexual activity.

VIII Whether the other person is known by the agency to be, or have been, involved in concerning behaviour towards children and young people.

IX Whether a young person, male or female, is frequenting places that are used for prostitution.

X Whether a young man is frequenting places where men have sex with men and circumstances of additional dangers, e.g. physical assault, might arise.

XI Whether there are other concerning factors in the young person’s life which may increase their vulnerability or place them “at risk”, e.g. homelessness.

XII Whether the young person denies, minimises or accepts the concerns held by professionals.

5.11 The presence of one or more factor/s will raise different levels of concern depending on the young person’s individual circumstances. For some young people, it will be a combination of

factors, which may suggest that further intervention is required.

- 5.12 Professionals need to be aware that should information come to their attention about past sexual behaviour and / or relationships involving children or 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 child or young person in question is no longer at risk of harm; however, this information may have implications for other children or young people.
- 5.13 In line with their own agency procedures, professionals can seek the advice of a colleague or line manager to assist them in the assessment process. Where appropriate, professionals should advise the young person of their intentions to speak with a colleague.
- 5.14 Professionals need to be aware that some young people may not identify abusive behaviour as such.

## **Section 6 Possible courses of action**

- 6.1 Depending on the outcome of the assessment process, there are several courses of action that can be taken:

I If the assessment is that the professional is dealing with mutually agreed teenage sexual behaviour and / or relationship in which there are no concerns of

abuse or exploitation, the professional should, if qualified to so do, provide practical assistance and advice as required. Other professionals must signpost young people to appropriate services.

II If the professional does not assess the sexual behaviour and / or relationship to be abusive or exploitative but has some concerns about the young person's behaviour, e.g. their ability to assess risk, their use of alcohol, the environment in which they seek sexual contacts, etc. then either the professional should address these matters directly with the young person or, with their permission, refer them to an appropriate person or agency.

III If the professional, using the indicators set out in 5.10, has more heightened concerns about the young person's behaviour or about the nature of the sexual behaviour and / or relationship, they should seek guidance from a line manager in accordance with their own agency guidelines and decide if any further action is required. Advice can be sought from Social Services to assist in this decision making.

IV If the professional has definite concerns that the young person has experienced, or may experience, significant harm, but the young person is not at immediate risk, they should make a referral to Social Services, detailing those who are involved, the nature of concerns, etc. In those circumstances where it is appropriate to speak with the young person prior to the referral

being made, every reasonable effort should be made to seek their agreement to the referral. If agreement is not reached, the professional should make the referral and inform the young person that this will be the course of action.

V As stated at 5.9, if the child is, or is believed to be, sexually active and is 12 years or under, the matter should automatically be referred to Social Services. If the young person is currently 13 or over, but the sexual activity took place when they were 12 years or under, a referral to Social Services should also be made.

VI Similarly, as stated in 5.9. if the "other person" is in a position of trust in relation to the young person, (please refer to appendix 2), the matter should automatically be referred to Social Services.

VII If the young person is perceived to be at immediate risk, a referral must be made to Social Services. If the situation takes place out-with office hours, Standby Social Services should be contacted.

6.2 In all of the above situations, the professional, in line with their own agency procedures, should make a written record of events, ensuring as much detail as possible and including the reasons for their actions.

6.3 On each occasion that a professional has contact with a child or young person, or receives information about them,

consideration should be given as to whether their circumstances have changed.

6.4 In addition, each agency should set in place monitoring procedures to ensure that practice is consistent and appropriate.

6.5 Pregnancy in young women under the age of 16 should be dealt with using the same criteria set out in 5.9 and 5.10. If it is assessed that the pregnancy is the result of mutually agreed teenage sexual behaviour and / or relationship in which there are no concerns of abuse or exploitation, the matter should not be considered to be a child protection matter; the emphasis should be on ensuring that the young woman's health, educational, social and emotional needs are appropriately assessed and continuing support is offered.

## **Section 7 Possible courses of action once a referral has been made to Social Services.**

7.1 When Social Services receive a referral, consideration needs to be given as to the best course of action to meet the young person's needs. There is a number of possible responses that can be provided and several of these are noted below. The response should be based on what is the most appropriate to meet the young person's needs, taking into account the young person's own views.

7.2 In some instances, once Social Services checks have been made,

- it may be decided that the referring agency will continue to offer support to the young person, and no further Social Services involvement is required.
- 7.3 Where checks are made and the decision is that no formal proceedings are required, Social Services may offer a voluntary service to the young person and their family if the young person is assessed as being a "child in need"
- 7.4 It may be agreed that due to a number of concerns about the young person's needs and their vulnerability, the young person may benefit from a full Integrated Assessment of their needs so that agencies can best identify what supports and services would benefit them. In such instances, a lead agency is identified to compile the assessment and all agencies would be involved in contributing to this.
- 7.5 Some referrals may trigger concerns about the potential risks the young person is placing themselves in due to their own behaviour. (Vulnerable Children and Young People: Good Practice Guidance, North Ayrshire Child Protection Committee, February 2008)
- 7.6 Where the young person is believed to be, or is likely to be, at risk of significant harm, Social Services have a duty to investigate the matter in line with existing Child Protection Procedures. As part of Social Service's procedural requirements, the Police will be notified and consideration given to the need for a joint investigation.
- 7.7 Where there is a need for further clarification of the concerns and possible risks to a young person, Social Services may convene a Child Protection Case Discussion to assess existing information, to decide how to gather further information (if required), and to decide how to proceed. Following the investigation of the referral, Social Services may call a Child Protection Conference to consider whether the young person's name should be placed on the Child Protection Register.
- 7.8 Where there are concerns that the young person may be in need of compulsory measures of supervision, further investigations should be carried out, and, unless it is then clear that no compulsory measures of supervision are required, the matter must be referred to the Reporter to the Children's Hearing.

## Appendix 1

### 1 Who can consent to the sharing of personal information

- a For the purposes of guidance, individuals are presumed (subject to b below), to have the full mental capacity to make decisions in their own right from the age of 12 years. Children under the age of 12 may be deemed to have capacity depending on their level of understanding and maturity.
- b Children 12 – 15 years are presumed to have a sufficient level of understanding of the nature of consent and its consequences. Staff should be clear that they believe the young person has the capacity to consent. Where they do not believe this is the case, staff should seek consent from the parent or person with legal authority to act on behalf of the young person.
- c Parental rights and responsibilities largely cease when the young person is 16 years of age. The exception to this is a parent's responsibility to continue to provide guidance to their child from age 16 – 18. So practitioners should seek to keep parents / guardians involved in issues affecting their children, but only to the extent that this is compatible with the rights and autonomous choices of the young person.
- d If we disclose any information about a young person, who has the requisite mental capacity, to their parent or guardian without that young person's consent, we

require to justify this in the same way as any other disclosure of information without consent.

- e For young people over the age of 16, we should seek consent from the individual themselves, in line with the rights of other adults.
- f In circumstances where there may be a question about an adult's capacity to give consent to sharing personal information, we should consider their understanding of the issues. If we believe that the person is not able to do this, we should make reference to other relevant persons and the context around the need to share information (See *g*)
- g If an individual cannot give consent to share information at the point where consent is required, the practitioner should ask 3 basic questions:
  - Does the person, (including children aged 12 – 15) understand the nature of consent and its consequences?
  - Is there a legitimate need to share?
  - Will failure to share mean that the person will be at risk or that appropriate care will not be provided? In this case the practitioner should discuss sharing without the individual's consent with a relevant person, (depending on the person's family and social circumstances) e.g. a parent, carer, "named person", GP or the practitioner's line manager.

In the case of a child or children, consent may rest with the parent if the child or children under 12 years of age are “not deemed to have capacity”. In such cases, we will need to consider the parent’s capacity to understand the nature and consequences of consent being withheld. Serious concerns about the child or children’s welfare (see below) would override parental withholding of consent.

Where an adult or child is deemed not to have capacity, the practitioner should record in the individual’s Case File:

- Why the decision was made.
- Who was involved.
- The purpose of sharing information
- What information is to be shared, with whom, and the date?

We should inform the service user and/or their carer of the decision. We need to inform the recipient of the information of the basis on which the decision to share was made.

Serious concerns about the child’s / children’s welfare override parental withholding of consent (see below)

### **Sharing information without seeking consent, or disregarding a refusal to share information about a vulnerable child or adult (in appropriate circumstances)**

In cases of abuse or risk of harm to a child or vulnerable adult, consultation about sharing should not apply. E.g. in the case of a 5 year old child who may be at risk of abuse by a parent, or is suffering lack of care, the parent’s consent is not a determining factor.

When Child Protection concerns arise, any requirement to obtain a child / young person’s consent should also be discounted in normal circumstances. E.g. if a 13 year old child “who is deemed to have capacity”, tells a practitioner about information which merits Child Protection Procedures being applied, the issue of consent is not relevant.

Equally, if it is believed the child has been abused, or is at risk of abuse or serious harm, or that other children may be at risk, the withholding of consent by the child should not prevent a decision to share information. The issue may require sensitive and supportive handling but consent to allow sharing should not be a barrier.

The decision to share information without an individual’s consent is a difficult one and can pose challenges for staff. This may apply in relation to circumstances which may arise when staff have a primary involvement with one member of the family or extended family, but concerns arise about the safety of another family member, e.g. a child, because of that individual adult’s behaviour.

In such circumstances, practitioners must make an assessment of the risk of significant harm which the child may face and whether this risk is greater than the risk of any breach of privacy which sharing information about the individual may pose.

In all circumstances, the legal test contained in the Children’s (Scotland) Act, 1995 – **“the welfare of the child is paramount”** should apply.

## How to Seek, Obtain and Record Consent (In appropriate circumstances)

When it is appropriate for us to seek consent, we need to make sure that consent is given on an informed basis by explaining:

- The purpose for which it is to be shared
- What information is to be shared
- With whom it is to be shared

We need to obtain the consent of the service user to share their individual information when seeing them for the first time or at the point when we decide that another partner agency's services / input is required.

The leaflet, "Information Sharing" and the consent form should be explained, completed and left with the individual for future reference, but should **never** be used as the sole means of explaining and obtaining informed consent. We must obtain this by means of good verbal communication between the service user and the member of staff who wishes to share their information with another agency.

Although we may have obtained written consent, verbal permission to share is acceptable in practice in certain circumstances. We should follow this up by obtaining written consent or we should advise the individual in writing that their verbal consent has been recorded as given.

We should record in the individual's case notes

- What information is being shared

- With whom the information is being shared
- That consent has been given

## Appendix 2

### **Section 4 of the Sexual Offences (Amendment) Act, 2000: meaning of a “position of trust”**

4. – (1) For the purposes of section 3 above, a person aged 18 or over, (“A”) is in a position of trust in relation to a person under that age (“B”) if any of the four conditions set out below, or any condition specified in an order made by the Secretary of State by statutory instrument is fulfilled.

(2) The first condition is that A looks after persons under 18 who are detained in an institution by virtue of an order of a court or under an enactment, and B is so detained in that institution.

(3) The second condition is that A looks after persons under 18 who are resident in a home or other place in which:

(a) Accommodation and maintenance are provided by an authority under section 23(2) of the Children Act, 1998 or Article 27(2) of the Children (Northern Ireland) Order, 1995.

(b) Accommodation is provided by a voluntary organisation under section 59(1) of that Act, or Article 75(1) of that Order: or,

(c) Accommodation is provided by an authority under section 26(1) of the Children’s (Scotland) Act, 1995. and B is resident, and so provided with accommodation and maintenance, or accommodation, in that place.

(4) The third condition is that A looks after persons under 18 who are accommodated and cared for in an institution which is:

(a) Hospital

(b) a residential care home, nursing home, mental nursing home or private hospital.

(C) A community home, voluntary home, children’s home or residential establishment, or

(d) A home provided under section 82(5) of the Children Act, 1989, and B is accommodated and cared for in that institution.

(5) The fourth condition is that A looks after persons under 18 who are receiving full time education at an educational institution, and B is receiving such education at that institution.

## Appendix 3

### Section 1 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act, 2005.

#### Meeting a child following certain preliminary contact

(1) A person ("A") commits an offence if-

(a) having met or communicated with another person ("B") on at least one earlier occasion,  
(i) intentionally meets B;  
(ii) travels, in any part of the world, with the intention of meeting B in any part of the world, or  
(iii) makes arrangements, in any part of the world, with the intention of meeting B in any part of the world, for B to travel in any part of the world;

(b) at the time, A intends to engage in unlawful sexual activity involving B or in the presence of B-

(i) during or after the meeting; and  
(ii) in any part of the world;

(c) B is-

(i) aged under 16; or  
(ii) a constable;

(d) A does not reasonably believe that B is 16 or over; and

(e) at least one of the following is the case-

(i) the meeting or communication on an earlier occasion referred to in paragraph (a) (i) has a relevant Scottish connection;  
(ii) (or, if there is more than one, one of them) has a relevant Scottish connection;  
(iii) the meeting referred to in sub-paragraph (i) of that paragraph or, as the case may be, the travelling referred to in sub-paragraph (ii) of that paragraph or

the making of arrangements referred to in sub-paragraph (iii) of that paragraph, has a relevant Scottish connection;  
(iii) A is a British citizen or resident in the United Kingdom.

(2) In subsection (1) above-

(a) the reference to A's having met or communicated with B is a reference to A's having met B in any part of the world or having communicated with B by any means from or in any part of the world (and irrespective of where B is in the world); and

(b) meeting or travelling or making of arrangements has a relevant Scottish connection if it, or any part of it, takes place in Scotland; and a communication has such a connection if it is made from or to or takes place in Scotland.

(3) For the purpose of subsection (1)(b) above, it is not necessary to allege or prove that A intended to engage in a specific activity.

(4) A person guilty of an offence under this section is liable-

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;  
(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or a fine or both.

## Appendix 4

### Section 77 and 78 of Sexual Offences (Scotland) Bill as introduced on 17<sup>th</sup> June 2008.

*Please note this Bill is currently progressing through parliament and at time of writing has not yet become an Act.*

#### 77 "Consent"

For the purposes of this Part, a person consents if he agrees by choice, and has the freedom and capacity to make that choice.

#### 78 Presumptions about the absence of consent

(1) If in proceedings for an offence to which this section applies it is proved that the defendant did the relevant act, that any of the circumstances specified in subsection (3) existed, and that the defendant knew that those circumstances existed –

(a) the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether the complainant consented, and

(b) the defendant is to be taken not to have believed that the complainant consented unless the defendant proves that he did believe it.

(2) Nothing said or done in the course of cross-examination of the complainant is to be taken to be sufficient to raise an issue for the purposes of subsection (1)(a), unless it amounts to an admission that the complainant consented.

(3) The circumstances referred to in subsection (1) are that –

(a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against him

(b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;

(c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;

(d) the complainant was asleep or otherwise unconscious at the time of the relevant act;

(e) because of the complainant's physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented.



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