

Child Sexual Exploitation Definition and Practitioner Briefing Paper



Introduction

This paper outlines the new national definition of child sexual exploitation (CSE) for Scotland and some key contextual considerations that should inform all professionals' and agencies' interpretations of their child protection responsibilities in relation to this form of abuse. Readers should note that the term 'child' is used to refer to anyone under the age of 18 years.

What is CSE?

Child sexual exploitation is a form of child sexual abuse in which a person(s), of any age takes advantage of a power imbalance to force or entice a child into engaging in sexual activity **in return for something** received by the child and/or those perpetrating or facilitating the abuse.¹ As with other forms of child sexual abuse, the presence of perceived consent does not undermine the abusive nature of the act.

As noted in the definition above, CSE is a form of child sexual abuse. Child sexual abuse encompasses 'any act that involves the child in any activity for the sexual gratification of another'.² CSE clearly falls within this, and like any other form of sexual abuse can include both contact and non-contact sexual activity, in person or via virtual means.

Also like other forms of sexual abuse, CSE:

- Is typified by some form of power imbalance in favour of those perpetrating the abuse;³
- Can involve coerced and/or enticement based methods of compliance;
- Can still be abuse even if it is claimed the child consented or assented – where the age of the child means they cannot legally give consent or the circumstances mean that agreement is not freely given.⁴

The key factor that distinguishes cases of CSE from other forms of sexual abuse is the additional requirement for some form of exchange; the fact that the child and/or someone else receive something in return for the sexual activity:

- Where the gain is on the part of the child, this can take the form of tangible or intangible rewards (for example: money, drugs, alcohol, status, protection or perceived receipt of love or affection). Fear of what might happen if they do not comply can also be a significant influencing factor; in such situations the 'gain' for the child could be prevention of something negative, for example a child who engages in sexual activity in order to avoid harm to other friends or family.

1 The intended interpretation of 'power imbalance' and 'return', with regard to their use in the definition, is outlined below.

2 Sexual abuse is any act that involves the child in any activity for the sexual gratification of another person, whether or not it is claimed that the child either consented or assented. Sexual abuse involves forcing or enticing a child to take part in sexual activities, whether or not the child is aware of what is happening. The activities may involve physical contact, including penetrative or non-penetrative acts. They may include non-contact activities, such as involving children in looking at, or in the production of, pornographic material or in watching sexual activities, using sexual language towards a child or encouraging children to behave in sexually inappropriate ways (National Guidance for Child Protection in Scotland 2014).

3 This power differential can take many forms. It could be due to characteristics such as age, gender or disability (as covered by the Equality Act 2010). It could relate to status or social standing (position in a gang or professional position of authority, for example), intellect, physical strength, economic inequality or power yielded through indebtedness or threats of harm. It is not necessary for the victim to recognise the power imbalance for it to constitute CSE – if a victim has been abused online by an adult who they believe to be another young person, for example, the power imbalance of age still exists even if they are not aware of it.

4 Circumstances where free agreement to sexual conduct cannot be given include: where someone is 'incapable' because of the effects of alcohol or other substances; where there is violence or threats of violence against themselves or other or where they have been deceived as to the nature or purpose of the conduct (section 13 of the Sexual Offences (Scotland) Act 2009).

- Where the gain is solely on the part of the perpetrator/facilitator, it must be something more than sexual gratification to fall within the sub-category of CSE. This could be money, other financial advantage (reduced cost drugs/alcohol or discharge of a debt for example), status or power.

While few would dispute the abusive nature of the situation where it is the perpetrator who is organising or benefitting from the sexual exploitation of a child, experience shows that we can struggle to identify the abuse when the child is the one receiving something from the exchange. This is particularly true where they are the one initiating the exchange. However it is critical to remember that the receipt of something does not negate the abusive nature of the act. In fact it may be this need for something that creates the vulnerability to abuse in the first place.

Just because a child receives something they need or desire does not mean they are not being abused. Taking advantage of this need or desire – and the limited alternative options the child may have to meet these – and making them think they are in control because the child is getting something in return can be part of the abusive process.

Like other cases of child sexual abuse, cases of CSE can potentially involve the commission of a range of sexual and other offences (as outlined in Appendix 1). CSE refers, not to the specific offence, but to the context within which this offending occurs.

It is important to remember that CSE, although predominantly experienced by those in their adolescent years, is not a catch-all category for all forms of violence and abuse in adolescence. Cases that do not involve the concept of exchange, for example, will not fall within the definition even where sexually exploitative behaviours (such as pressure or manipulation) are present and significant harm is being experienced. Similarly, a 15 year old boy pressuring his 14 year old girl/boyfriend into having sexual intercourse in order to remain in the relationship (though an issue that requires a response) would not be defined as CSE if there is no significant power differential within the relationship. Nor would a one-off incident of sexual assault, where the victim has no prior or subsequent contact with the perpetrator and the only gain involved is the sexual gratification of the perpetrator, though this would also obviously require a response.

It is therefore critical that CSE is not viewed in isolation from the more inclusive concept of sexual abuse and other relevant concepts such as trafficking, going missing and gendered violence that offer alternative means of responding to these and other issues that fall outside the definition of CSE.

All forms of vulnerability and victimisation in childhood should be identified and responded to, in line with GIRFEC principles, irrespective of how they are defined or categorised.

What does CSE look like in practice?

CSE can take many different forms. It can include both contact and non-contact sexual activities and occur online or in person, or a combination of both. The following illustrative examples, although all very different in nature and potentially involving the commission of different sexual or other offences, could all fall under the definition of CSE:

1. A 21 year old male persuading his 17 year old 'girlfriend' to have sex with his friends to pay off his drug debt;
2. A 44 year old female posing as a 17 year old female online and persuading a 12 year old male to send her a sexual image, and then threatening to telling his parents if he didn't continue to send more explicit images;
3. A 14 year old male giving a 17 year old male oral sex because the older male has threatened to tell his parents he is gay if he doesn't do this;

4. A 14 year old female being told she has to have sex with a 16 year old gang member and his two friends if she wants the protection of the gang;
5. A 13 year old female offering and giving an adult male taxi driver sexual intercourse in return for the taxi fare home;
6. A mother letting other adults abuse her 8 year old child in return for money;
7. A group of men bringing two 17 year old females to a hotel in another town and charging others to have sex with them;
8. Three 15 year old females being taken to party houses and given 'free' alcohol and drugs, then told they have to 'pay' for them by having sex with six adult males;
9. A 15 year old female who views a 21 year old male as her 'boyfriend' and engages in sexual activity with him, as he has said he will end the relationship with her if she doesn't;
10. A 15 year old female bringing two other 15 year old females to a party (where they are sexually assaulted) in order to prevent her from being sexually assaulted again.⁵

These examples are by no means exhaustive; other forms of CSE currently exist and new forms continue to develop. Nor are they mutually exclusive – some children will experience abuse through a range of these scenarios, either simultaneously or in succession. Some may also concurrently be both a victim and perpetrator, as is the case in the final scenario above.⁶

Who does CSE affect?

Any child under the age of 18 can experience CSE. While younger children can also experience CSE, this form of abuse is most frequently documented amongst those of a post-primary age, with the average age at which concerns are first identified being 12-15 years of age.

Most identified cases of CSE relate to young females. Young males also experience CSE, although their abuse can more often be overlooked. The same identification challenges can be observed in relation to black and minority ethnic children, disabled children and those who identify as lesbian, gay, bisexual, transgender or intersex.

CSE can, and does, affect children from all walks of life, with no obvious pre-identified vulnerabilities. It is therefore critical that we are mindful of risk across the general youth population and do not assume that any child is immune from this form of abuse. There are however particular experiences that can heighten vulnerability and may require proactive targeted preventative work. These include:

- A history of abuse, neglect and/or disadvantage;
- Being looked after, or formerly looked after;
- Disrupted family life, including family breakdown, domestic abuse and/or parenting difficulties;
- Disengagement from education and isolation from other support mechanisms;
- Going missing from home or care environments;
- Drug or alcohol misuse;
- Poverty or homelessness;
- Poor health and wellbeing, social isolation, bullying or low self-esteem;
- Having a disability.⁷

5 Adapted from examples in SBNI 2014 Professional Definition and Guidance (www.safeguardingni.org)

6 Although the risk these children pose to other children must be addressed, good practice guidelines stipulate that this be approached through the lens of recognising the behaviours were influenced by the concurrent victimhood of the child.

7 Adapted from National Guidance for Child Protection in Scotland 2014

Who is perpetrating CSE?

CSE can be perpetrated by males or females,⁸ from any ethnicity, operating as individuals, informal networks or organised groups. Whilst most of our focus has tended to be on adults abusing children through CSE, we are increasingly learning about peer on peer forms of CSE and the risk that children can face within their own social settings. Within this, we are also observing an overlap between the traditionally distinct roles of ‘victim’ and ‘perpetrator’.

Although there are known cases of family members or carers perpetrating CSE (as in example 6 above) in most cases of CSE, risk is primarily located outside of the home environment. This requires a conceptual and procedural shift away from managing risk within the family home, to managing risk within the wider community and/or the virtual world. Unless there is evidence to indicate otherwise, it also requires a re-conceptualisation of parents/carers as partners in the safeguarding process as opposed to a source of risk in and of themselves.

Recognising the abusive nature of CSE

As a result of the complexity of the transactional nature of CSE, and the often conflicting feelings this engenders in victims receiving something in return for the abuse, children are often reluctant to disclose experiences of CSE due to misplaced feelings of loyalty or shame. Many may not even identify what they are experiencing as something that requires support or intervention, believing that they are in control or in a healthy consensual relationship.

This can also be true of professionals who can similarly misinterpret such experiences as consensual and fail to recognise the exploitation involved. However, the fact that all such scenarios are typified by a power imbalance in favour of those perpetrating the abuse and/or some form of vulnerability or limited availability of choice on the part of the child clearly delineates/distinguishes the experiences as abusive.

Just because a child does not see themselves as a victim, doesn't mean that they aren't. This is not about policing adolescent sexuality or creating victimhood where it does not exist, but about recognising that there are circumstances in which older children require protection despite their increasing age and capacity. Our statutory responsibility to protect children from abusive situations extends to all under 18s, irrespective of whether or not they recognise the need for intervention.

Adolescents, even those who can legally consent to have sex, can be victims of abuse where their experience of sexual activity occurs in situations characterised by exchange, a power differential and/or an absence of freely given, informed consent. This includes sixteen and seventeen year olds, whose potential vulnerability is recognised in a series of offences applicable to this older age group within the Sexual Offences legislation (see Appendix 1).⁹ The Sexual Offences (Scotland) Act 2009 also includes a range of sexual offences that can be used to protect young people after they turn 18 where sexual activity is non-consensual, through force or incapacity for example. This is critical – as is the issue of transition to adult services – given the frequency with which vulnerability and exposure to harm can continue into adulthood.¹⁰

⁸ Although evidence indicates most perpetrators are males, cases of female perpetrators are also being identified within research and practice and it is vital that we are alert to the possibility of both.

⁹ The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 and the Sexual Offences (Scotland) Act 2009

¹⁰ Adult Support and Protection (Scotland) Act (2007).

Identifying CSE

We know that children rarely report experiences of CSE; although many may try to indirectly alert us to the presence of harm through their actions or behaviours. Most concerns are identified by professionals, friends or family or by proactive investigation on the part of authorities, as opposed to direct self-disclosure on the part of the victim. Given this, it is critical that professionals are aware of the potential indicators of CSE and responsive to the onset of these in a child's life.

Potential indicators of CSE can include:

- Acquisition of money, clothes, mobile phone etc. without plausible explanation;
- Drugs/alcohol misuse;
- Isolation from peers/social networks;
- Exclusion or unexplained absences from school, college or work;
- Leaving home/care without permission;
- Persistently going missing or returning late;
- Receiving lots of texts/phone calls prior to leaving;
- Agitated/stressed prior to leaving home/care;
- Returning distraught/dishevelled or under the influence of substances;
- Unplanned pregnancy; requesting the morning after pill – or other sexual health needs – upon return;
- Inappropriate sexualised behaviour for age; children under 13 years asking for sexual health advice;
- Physical symptoms or infections e.g. bruising, bite marks, sexually transmitted infections;
- Evidence of/ suspicion of physical or sexual assault; disclosure of assault followed by withdrawal of an allegation;
- Relationships with controlling individuals;
- Multiple callers (unknown adults/peers);
- Frequenting areas known for adult prostitution;
- Peers abused through sexual exploitation;
- Concerning use of the internet or other social media;
- Increasing secretiveness around behaviours;
- Change in personal hygiene (greater attention or less);
- Self-harm and other expressions of despair.¹¹

Whilst these indicators can be usefully used to identify potential cases of CSE, it is important to note that their presence does not necessarily mean that CSE is occurring. More importantly, nor does their absence, mean that it is not. A willingness to exercise professional curiosity and engage with children (and their wider support networks) is therefore critical to our potential to identify CSE.

¹¹ Adapted from National Guidance on Child Protection in Scotland 2014.

Understanding the complexity and impact of CSE

The abuse and degradation that children experience in cases of CSE can be immensely damaging to the child, both in the short term and the long term. Yet, in spite of this, some will continue to maintain links with their abusers despite professional and family attempts to protect them.

The reasons for this can be highly complex and multi-faceted and time must be taken to understand the particular factors at play in each individual case. Amongst other things, these could include:

- prior negative life experiences and consequent unmet emotional needs;
- limited ability to identify risk;
- the manipulative and calculated means used by some abusers to entrap and entice;
- fear of retribution or punishment – for self or others;
- shame and feelings of complicity;
- fear of being judged or not being believed; and
- the fact that the negatives are generally tied up with some positives – there can be a sense of gain or some degree enjoyment or gratification (e.g. access to drugs or alcohol; perceived receipt of love or affection), alongside the degradation and abuse.

A pattern of continued contact with the abuser must not be taken to indicate an absence of harm, but rather understood in light of the child's vulnerabilities and the complex power dynamic of the abusive relationship (such as that observable in situations of domestic abuse).

Just because a child does not recognise the abusive nature of their situation, does not mean that they are not being abused. Many children may not see the exploitative nature of their experience until months or years later, when they are extricated from the situation and able to reflect on the manipulation and power imbalance at play. Professionals therefore need to be supported to identify vulnerability in the midst of challenging behaviour and frequent resistance to, or even apparent disregard for, professional support on the part of the child.

We must always exercise professional curiosity and view the presenting scenario through a child protection lens – though a 13 year old may talk about their 35 year old 'boyfriend', the irrefutable reality is that of victim and abuser and our language and actions must reflect this. Responses to children will vary considerably based on whether we perceive – and speak about them – as victims or willing participants in an activity.

Care must however be taken not to simply dismiss children's perspectives on events in our attempts to help them begin to understand the abusive nature of their experiences, as this can consolidate harm and vulnerability. In line with GIRFEC principles, it is imperative that this work is undertaken in partnership with children, in a safe environment and at a pace that is appropriate for them – this frequently means the provision of long term support. It is also imperative that such work is holistic, addressing the vulnerability and risk factors that contributed to the abuse in the first place rather than simply closing down avenues of contact.

Legislative context of CSE in Scotland

As noted earlier, whilst CSE is not a specific criminal offence in itself, there is range of criminal and civil options that can be used to disrupt and prosecute this form of abuse (see Appendix 1). Pertinent principles from these include:¹²

- The legal age of consent to sexual activity is 16;
- If the child is under 13, under no circumstances can they be argued to have consented to sexual activity, nor is there any defence of believing the child was of an older age;¹³
- It is an offence to intentionally cause a child under 16 to engage in sexual activity, even if you do not actually engage in sexual activity with them yourself;¹⁴
- It is an offence for a person to have a sexual relationship with a child under 18 if they hold a position of trust or authority in relation to them;¹⁵
- The offence of paying for the sexual services of a child applies to all under 18s;¹⁶
- Non-consensual sex is rape, whatever the age;
- If the victim is incapable because of the effect of drink or drugs, or the victim, or his or her family has been subjected to violence or the threat of it, they cannot be considered to have given consent (defined as “free agreement”¹⁷) and, therefore, offences may have been committed;
- Recruiting or moving a person for the purposes of exploitation (by them or others) constitutes an offence of human trafficking – this includes movement within Scotland as well as movement outside of Scotland;¹⁸
- The potential to place restrictions on (potential) perpetrators’ behaviour through use of civil orders such as sexual offences prevention orders, risk of sexual harm orders, trafficking and exploitation prevention orders or trafficking and exploitation risk orders.¹⁹

A shared responsibility

No one agency can, or should, address the multi-faceted challenge of preventing and responding to CSE in isolation. As highlighted in the 2016 CSE Action Plan update:

‘Preventing and tackling sexual exploitation requires a co-ordinated multi-agency response. Universal and specialist services have important roles to play....Children and young people need information to help them build resilience and make safe choices. Parents and carers need information about how to talk to their children and how to recognise the signs that their child may be at risk. Practitioners must be equipped with the knowledge and skills to recognise sexual exploitation and respond appropriately. This must be accompanied by work to detect, disrupt and prosecute perpetrators and reduce re-offending’²⁰

12 Adapted from SBNI CSE Definition and Guidance 2014.

13 Section 27 of the Sexual Offences (Scotland) Act 2009.

14 Sections 21 and 31 of the Sexual Offences (Scotland) Act 2009.

15 Section 42 of the Sexual Offences (Scotland) Act 2009.

16 Section 8 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.

17 Sections 12 and 13 of the Sexual Offences (Scotland) Act 2009.

18 Section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015.

19 For information on SOPOs see sections 104 to 113 of the Sexual Offences Act 2003 (as amended) and for RSHOs see sections 2 to 8 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. See Part 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 for trafficking and exploitation prevention orders and trafficking and exploitation risk orders (to be commenced).

20 National Action Plan to Prevent and Tackle CSE Update 2016

Although the police and children's services will lead in investigating and responding to CSE, they cannot effectively fulfil this role without the co-operation of other professionals and agencies. Both research and practice evidence show that an effective response to the issue requires acceptance of a shared responsibility across statutory bodies, and a commitment to working collaboratively with the voluntary/community sector – and wider society – to protect children from this form of abuse, support recovery where required and ensure a healthy transition into adulthood, and prosecute those responsible for the abuse.

For further information on CSE please see: **Scotland's National Action Plan to Prevent and Tackle Child Sexual Exploitation Update (March 2016)**

If you have any concerns about CSE (including concerns that cannot be substantiated) please follow these referral guidelines: **Part 3, The National Guidance for Child Protection in Scotland 2014**. Do not wait for a disclosure from the child or the accumulation of 'hard evidence' prior to making a referral.

Appendix 1: The Legal Framework

Criminal Offences

The Sexual Offences (Scotland) Act 2009, the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 and the Human Trafficking and Exploitation (Scotland) Act 2015 together provide for a number of sexual and other offences that can be used to prosecute cases of CSE. These are categorised by the age of the victim and include:

Under 13

Offences against younger children: Including the commission of a rape or other sexual assault; causing a child to be present or participate in a sexual activity; indecent communication; sexual exposure and voyeurism. Belief that the child was of an older age is irrelevant and cannot be used as a defence.²¹

Under 16

Offences against older children (13 to 15 years of age):²² Largely mirrors the content of offences against younger children (including penetration of vagina, anus or mouth by penis or other object; causing a child to be present or participate in a sexual activity; indecent communication, sexual exposure and voyeurism) but age defence is justifiable in certain circumstances.²³

Offence of older children (13 to 15 years) engaging in sexual conduct with each other: Includes sexual penetration of vagina, anus or mouth by penis and touching of vagina, anus or penis by mouth.²⁴

Offence of meeting a child following certain preliminary contact (any child under 16): Essentially an offence of “grooming”. Covers an individual travelling (in UK or abroad) to engage in unlawful sexual activity with, or in the presence, of a child; following prior contact or communication.²⁵

Under 18

Offence of sexual abuse of trust: covers situations of sexual activity by an individual in a position of trust such as a teacher or care home worker.²⁶

Offences related to indecent photographs (including films) of children: offences cover the taking, distribution, publication and possession of indecent images of children under the age of 18 in certain circumstances.²⁷

21 Sections 18 to 27 of the Sexual Offences (Scotland) Act 2009.

22 Perpetrated by individuals aged 16 or over

23 Sections 28 to 36 and 39 of the Sexual Offences (Scotland) Act 2009.

24 Section 37 of the Sexual Offences (Scotland) Act 2009.

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

26 Section 42 of the Sexual Offences (Scotland) Act 2009.

27 Sections 52 and 52A of the Civic Government (Scotland) Act 1982 (as amended).

Offences relating to the sexual services of children and child pornography: Includes the offences of paying for the sexual services of a child (paying or promising payment; defined as any financial advantage); causing, inciting, arranging or facilitating the provision by a child of sexual services or controlling a child providing sexual services or involved in pornography anywhere in the world.²⁸

Not age specific

Offence of human trafficking: This offence is committed if a person arranges or facilitates the recruitment, transportation, harbouring or transfer of control of a person for the purposes of exploitation by themselves or others during or after this.^[1] This includes movement within Scotland as well as outside of Scotland. The offence covers both adults and children, with perpetration against a child noted to be an aggravating factor that, if proven, could result in a more serious conviction and potentially a lengthier sentence.

Civil Orders

The law also provides for a number of civil remedies that can be used to impose prohibitions on individuals involved in perpetrating CSE including Sexual Offences Prevention Orders (SOPOs – available post-conviction of an offence) and Risk of Sexual Harm Orders (RSHOs – that do not require a prior conviction).²⁹ SOPOs and RSHOs will be replaced in Scotland by Sexual Harm Prevention Orders and Sexual Risk Orders when Chapters 3, 4 and 6 of Part 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 are brought into force by commencement regulations made by Scottish Ministers.

There are also civil orders provided for in the Human Trafficking and Exploitation (Scotland) Act 2015 – trafficking and exploitation prevention orders and trafficking and exploitation risk orders – which, when the provisions are brought into force, can be imposed on people who have committed or pose a risk of committing various trafficking and exploitation offences.³⁰ These orders could therefore potentially be used in the context of trafficking for the purposes of CSE.

28 Sections 9 to 14A of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.

^[1] Section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015 specifies that this offence is committed if a person takes a “relevant action” and does so with a view to another person (including a child) being exploited. “Relevant action” is defined as the recruitment, transportation or transfer, harbouring or receiving or the exchange or transfer of control over another person and includes the arrangement or facilitation of any of those actions. A person takes a relevant action with a view to another person being exploited only if (a) the person intends to exploit the other person (in any part of the world) during or after the relevant action or (b) is the person knows or ought to know the other person is likely to be exploited (in any part of the world) during or after the relevant action.

29 For SOPOs see sections 104 to 113 of the Sexual Offences Act 2003 (as amended) and for RSHOs see sections 2 to 8 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.

30 See Part 4 of the 2015 Act – still to be commenced.



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