



Staffordshire & Stoke-on-Trent Safeguarding Children Boards Briefing note for Practitioners and Managers January 2017

Learning from Local Reviews- Child Sexual Exploitation & Consent

This briefing has been produced to help professionals to be aware of the lessons to be learnt from a recent child sexual exploitation learning process; it is aimed at all frontline practitioners working with children and their families.

What is child sexual exploitation?

Child sexual exploitation (CSE) is a type of sexual abuse in which a person exploits, coerces and/or manipulates a child or young person into engaging in some form of sexual activity and facing significant risks to their physical, emotional and psychological health and wellbeing. A common feature of CSE is that the child or young person believes they are in a consensual relationship and do not recognise the coercive nature of this or see themselves as a victim of exploitation. Any child or young person under the age of eighteen, male or female, can be a victim of CSE, including those who can legally consent to sex.

The abuse most frequently upon those of a post-primary school age and can be perpetrated by adults or peers on an individual or group basis and also be from within or from outside a child or young person's family. The gain for those perpetrating or facilitating the abuse can include financial benefit, status or control. Involvement in exploitative relationships is characterised by the child's or young person's limited availability of choice resulting from their social, economic or emotional vulnerability.

CSE can take place in person, or using technology through mobile phones and on-line and involve both contact and non-contact sexual activities, including the production and distribution of sexual images or exposure to such images. Although CSE is not a specific criminal offence in itself, different manifestations of CSE incorporate different criminal sexual and other offences.

CSE and Consent

What is consent?

Consent is agreeing by **choice** and having the **freedom and capacity** to make that choice¹. Consent for any sexual activity is therefore a voluntary positive agreement between participants to engage in this activity.

Consent shouldn't be presumed in the absence of clear positive agreement and must be clear and unambiguous. Professionals should remember that alcohol and drugs render a person incapable of giving valid consent. There can be a number of factors that impact on a young person's ability to provide informed consent to engage in sexual activity and sometimes young people don't say no as they are afraid of the consequences.

What is the age of consent for sex?

In England and Wales the age of consent to engage in any form of contact sexual activity is 16 for both men and women. The age of consent is the same regardless of the gender identity or sexual orientation of a person; and whether the activity is between people of the same or different sex. Differing ages of consent in a person's country of origin, or cultural practices does not override his legislation.

It is an offence for anyone to engage in sexual activity with a person under the age of 16. However, Home Office guidance is clear that there is no intention to prosecute teenagers under the age of 16 where both mutually agree and where they are of a similar age. It is also an offence for a person aged 18 or over to engage in sexual activity with a person under the age of 18 if the older person holds a position of trust (for example a teacher or social worker) as such sexual activity is an abuse of the position of trust.

The fact that a young person is 16 or 17 years old and has reached the legal age of consent should not be taken to mean that they are no longer at risk of sexual exploitation. These young people are defined as children under the [Children Act 1989](#) and [2004](#), and they can still suffer significant harm as a result of sexual exploitation. Their right to support and protection from harm should not, therefore, be ignored or downgraded by services because they are over the age of 16, or are no longer in mainstream education.

[The Sexual Offences Act 2003](#) provides specific legal protection for **children aged 13 and under; they cannot legally give their consent to engage in any form of sexual activity**; perpetrators face a maximum sentence of life imprisonment for rape, assault by penetration, and causing or inciting a child to engage in sexual activity.

¹ Sexual Offences Order 2008; Northern Ireland).

Gillick competency and Fraser guidelines:

When we are trying to decide whether a child is mature enough to make decisions people often talk about whether a child is 'Gillick competent' or whether they meet the 'Fraser guidelines'. The Gillick competency and Fraser guidelines are aimed at helping us all to balance children's rights and wishes with our responsibility to keep children safe from harm.

The Fraser guidelines refer to those set out by Lord Fraser in his judgment of the Gillick case in the House of Lords (1985; related to contraception) Lord Fraser said:

"...whether or not a child is capable of giving the necessary consent will depend on the child's maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed, so the consent, if given, can be properly and fairly described as true consent..."

Lord Scarman's following comments in his judgment of the Gillick case are often referred to as the test of "Gillick competency":

"...it is not enough that she should understand the nature of the advice which is being given: she must also have a sufficient maturity to understand what is involved."

National and local learning

National serious case reviews highlight that confusion around young people's rights and their capacity to consent to sexual activity means both young people and professionals often wrongly view exploitative relationships as consensual. This means that sexual exploitation often goes unidentified, and young people can be reluctant to engage with services. This national learning is reflected within our local experiences of child sexual exploitation.

The learning from these reviews highlights that professionals need to be aware of the warning signs of potential sexual exploitation and consider the child protection implications of underage sexual activity.

Practitioners need to persevere to engage with young people and make sure the services provided are on-going and child centred. The focus should be on ensuring young people's safety, protection and wellbeing, rather than just on managing their challenging or risk taking behaviour.

Investigating sexual activity with claimed consent

When the police are investigating a case where a child claims to be consenting to sex, the police and children's social care should liaise to ensure that all relevant information is shared and a decision is made about any risk of harm and how to proceed in the best interests of the child. For example, where it is clear that a child over 13 is engaged in consensual sexual activity with another child of a similar age, this may include determining the degree to which the police need to become involved.

A child's right to respect for a private and family life and the claim by the child to be consenting to sex do not affect the duties on agencies to consider the possibility that a child may be suffering harm; and to take appropriate action to protect the child and any other children at risk of harm.

Key facts practitioners need to remember in practice:

- The fact that young people are engaged in what they view as consensual sexual activity does not mean that they are not being exploited.
- Victims of sexual exploitation may be coerced into sexual activity with the perpetrators or they may feel unable to say no.
- Some young people may not recognise they are being sexually exploited, instead believing they are behaving as they wish.
- 16 and 17 year olds are often incorrectly viewed as being more in control of their own choices and so less vulnerable to exploitation.
- Sexual activity between young people of the same age is often perceived as being consensual, but exploitation may still be occurring.
- **A child cannot consent to their own abuse.** Firstly, the law sets down 16 as the age of consent to any form of contact sexual activity. Secondly, any child under 18 cannot consent to being trafficked for the purposes of exploitation. Thirdly, regardless of age a person's ability to give may be affected by a range of other issues including influence of drugs, threats of violence, grooming, a power imbalance between victim and perpetrators. This is why a 16- or 17-year-old can be sexually exploited even though they are old enough to consent to sexual activity.
- Professionals working with children need to consider how to balance children's rights and wishes with their responsibility to keep children safe from harm.
- Underage sexual activity should always be seen as a possible indicator of child sexual exploitation
- Sexual activity with a child under 13 is a criminal offence and should always result in a child protection referral.

Know your local inter-agency policies and procedures:

To access further information and the Joint Staffordshire and Stoke-on-Trent Local Safeguarding Children Board Procedure, please go to either of the following websites:

Staffordshire SCB:

www.staffsscb.org.uk/Child-sexual-exploitation

www.staffsscb.org.uk/Professionals/Procedures/ Go to Section 4

Stoke-on-Trent SCB:

www.safeguardingchildren.stoke.gov.uk/professionals/child-sexual-exploitation

The following information can be used by practitioners as a guide to help them to discuss consent with children and young people; it includes child focussed websites and resource links:

Information for children and young people on consent and sex

What is Consent?

Consent means giving permission for something to happen or agreeing to do something, fully understanding what it is and being comfortable with that decision. It doesn't matter what your gender identity is, if you're planning to do anything sexual then both of you must give consent.

Consent has to be given freely and no one can be made to consent to something. It's not consent if someone does something because they feel like they have to. You can also never assume that someone is giving consent – you have to be sure.

Consent is an essential part of healthy relationships and it's really important to know what it is and the [many ways to spot it](#). Both you and the person you're with always need to consent before sex or any intimate activity.

If you want to do something sexual with your partner, the responsibility lies with you to check for consent, not with your partner to say 'no' if they don't want to.

Signs to Spot

Consent is an essential part of a healthy relationship, as it's crucial to respect the other person's wishes. It's important to know how to recognise consent because you need to have it for everything sexual that you do together.

You need to take responsibility for seeking consent from your partner every time, as people can change their mind at any point, even during sex. Just because someone consented to something once, it still means you have to ask again as they could feel differently from last time. Also, consent to engage in one sort of sexual activity does not mean consent to everything.

Talk to the other person and check if they're happy.

Good communication is a really important part of a healthy relationship. You can read more about sex and relationships on the [Rise Above](#) site.

Body language

They may tell you verbally that they do or do not consent to sex or they may show you through their body language. Someone cannot assume another person is giving consent. Remember they don't have to actually say the word 'no' and that they can communicate through body language just as much as speech.

If your partner seems tense, they may be nervous or frightened and are probably trying to hide how they feel.

They may stop kissing you, or not want to be touched or hugged.

These could be signs of non-consent, so don't ignore them – check with the other person.

Being pressured to give consent

If somebody agrees to sexual activity because they've been pestered, intimidated, or faced physical or emotional threats, they have not given consent. Consent needs to be given freely.

Signs of being pressured to give consent can include:

- Being made to feel stupid or bad for saying 'no'
- Being made to feel you have to.
- Someone might try to pressure you by calling you frigid or say 'if you loved me you would . . .'
- Being encouraged to drink lots of alcohol or take drugs to make you more likely to have sex
- Making someone feel bad for changing their mind
- Someone might try to pressure you into something to 'prove' you are not lesbian, gay, bi, or transgender.

Someone has to have capacity to give consent – what does this mean?

People have to be able to freely give their consent. So if someone's unconscious, drunk or asleep, they cannot freely give consent. Someone may have consented to sex whilst awake, but if they then pass out or fall asleep before you're finished, you have to stop. You can't assume they want to carry on.

Further information on consent can be found at:

- <http://thrivebradford.org.uk/sex-and-sexuality/consent-and-being-ready.html>
- <http://www.bbc.co.uk/programmes/articles/4hPrqzTRSBvzHkTckNYNZ5/age-of-consent>

Consequences

Pressuring someone to give consent

Pressuring someone into sex or sexual activity is either 'rape' or 'sexual assault', depending on who is involved and what happens. The consequences of both rape and sexual assault can be very serious for everyone involved.

Legal consequences can include a prison sentence with a criminal record and sex offender registration.

Being pressured to give consent

Consent is defined in law as *"an agreement made by someone with the freedom and ability to decide something"*. Under the law, it is the person seeking consent who is responsible for ensuring that these conditions are met.

Sex without consent is rape or sexual abuse. Also, if you are a man forcing someone to perform oral sex on you, this is still rape. What's more, forcing someone into anal sex when they don't want to, even if that person has consented to vaginal sex, is still rape.

In the UK, people must be over 16 to legally consent to sex and they must be able to make informed decisions for themselves.

Quick facts about consent and sex for young people

- Consent in simple terms means choosing for something to happen. The [legal definition](#) says a person gives consent when they **'agree by choice, and have the freedom and capacity to make that choice'**.
- For example, someone does not have the capacity to give consent if they are unconscious, asleep and / or under the influence of alcohol or drugs. They do not have the freedom to consent if they are forced or influenced into engaging in sexual activity.

- If someone doesn't give consent this could be sexual assault or rape. Consent needs to be given for any sexual activity or sexual touching, not just full sex.
- You should never assume consent has been given – you should get consent before anything happens.
- Remember – you should never feel forced or pressured into giving consent - it is absolutely your right to say no. And you have every right to change your mind about giving consent.
- If you're under 16, you cannot consent. If you have sex with someone over 16, they risk prosecution. [See more in our factfile on Age of Consent.](#)

Further supporting information and educational video clips for children and young people can be accessed at:

<http://knowaboutcse.co.uk/spot-the-signs/>

Sources and other useful information:

1. [LGA - www.local.gov.uk/documents/Tackling CSE 2015](http://www.local.gov.uk/documents/Tackling_CSE_2015)
2. NHS Choices – CSE What is consent:
https://www.youtube.com/watch?v=46wg_QZLEyM
3. <http://www.fpa.org.uk/factsheets/law-on-sex#age-consent>
4. <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-exploitation/>
5. University of Bedfordshire- Contextualising 'consent' in Child Sexual Exploitation- secure.toolkitfiles.co.uk/JP_Consent_in_CSE.pdf
6. Police-<http://www.app.college.police.uk/app-content/major-investigation-and-public-protection/child-sexual-exploitation/#consent>
7. Staffordshire and Stoke-on-Trent – 'Think you Know' CSE Campaign: <http://knowaboutcse.co.uk/>