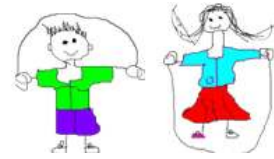




*Working Together
to Safeguard Children*



Bedfordshire Local Safeguarding Children Board

Protocol

Safeguarding Sexually Active Children and Young People

Date agreed: 19th March 2007
Review By: 19th March 2008
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1. Introduction

- 1.1. This Protocol is designed to help professionals identify where children and young people's sexual relationships may be abusive to them and take appropriate protective action. It is based on the core principle that the welfare of the child is paramount and emphasises the need to accurately assess to what extent there may be a risk of significant harm when a child or young person engages in sexually activity.
- 1.2. This protocol includes, at Appendix 1, a risk assessment tool to help practitioners decide when to involve Children's Social Care and when a situation requires criminal investigation by the Police.
- 1.3. Working Together to Safeguard Children 2006 (DfES, 2006) provides statutory guidance under the Children Act 2004 for the children's workforce including guidance on how to achieve the correct balance between protecting children and young people from sexual harm, providing them with confidential sexual health services, and preventing and investigating serious crime (Chapter 5).
- 1.4. To achieve the correct balance between these sometimes conflicting priorities, this protocol provides a framework outlining the nature and level of assessment, and the level of confidentiality, which should be provided when working with children and young people up to 18 in various circumstances. This protocol is consistent with statutory and professional guidance including:
 - Working Together to Safeguard Children 2006
 - The Bichard Inquiry Report (HM Government, 2004)
 - Best Practice Guidance for Doctors and other Health Professionals on the Provision of Advice and Treatment of Young People under 16 on Contraceptive, Sexual and Reproductive Health (Department of Health, 2004)
 - Enabling Young People to Access Contraceptive and Sexual Health Information and Advice: Legal and Policy Framework for Social Workers, Residential Social Workers, Foster Carers and other Social Care Practitioners (DfES Teenage Pregnancy Unit, 2004)
 - Bedfordshire LSCB Inter-Agency Procedures 2006
 - Crown Prosecution Service, Legal Guidance, 2006 (www.cps.gov.uk/legal/index.html)
 - Guidance on Investigating Child Abuse and Safeguarding Children (CENTREX, 2005)

2. Application

- 2.1. This protocol was endorsed by Bedfordshire LSCB on 20th March 2007 and applies to safeguarding children practitioners throughout Bedfordshire **when providing sexual health services or advice** to children and young people. This protocol supplements Bedfordshire's LSCB Inter-Agency Procedures 2006 and should be applied in all relevant situations, including those covered by other protocols (for example, the LSCB protocol on forced marriage).
- 2.2. Whilst useful to practitioners in a variety of situations, this protocol is primarily designed to assist practitioners assessing the risk to children who seek professional advice in relation to their sexual activity or wish to access a sexual health service.
- 2.3. This protocol is entirely consistent with Bedfordshire's LSCB Inter-Agency Procedures 2006; where there are safeguarding concerns about a child, the processes in the Inter-Agency Procedures must always be followed.
- 2.4. This protocol will be reviewed annually.

3. Responsibilities

- 3.1. When a professional is working with a child or young person who is (or is believed to be) sexually active, an assessment should be made of the young person's physical and emotional health in the context of the sexual relationship. The assessment must include consideration of the risk factors listed at 6.1 of this protocol. The assessment should be based on the three dimensions of the Framework for Assessing the Needs of children and their Families (DH/DfES 2000) or the Common Assessment Framework (www.everychildmatters.gov.uk).
- 3.2. The assessment should be conducted by a professional with relevant skills and knowledge and supervised by a manager or professional colleague with relevant expertise; for example, the agency's designated safeguarding children professional. The assessment may be conducted as part of an 'initial' or 'core' assessment by Children's Social Care, as part of a 'Common Assessment' under the Common Assessment Framework, or as part of an agency specific assessment. Children's Social Care will provide advice and support in relation to the appropriate method of assessment.
- 3.3. The assessment will indicate whether there is a need to request information from another practitioner or agency (to inform the assessment) and/or make a referral to another practitioner or agency. There is a clear distinction between requesting information and making a referral to another practitioner or agency; only where a referral is made will the receiving practitioner or agency be under an obligation to make enquiries and decide on an appropriate course of action.
- 3.4. There are two stages to the assessment. The first is undertaking the assessment, a process that may well involve requesting information from sources other than the young person. The most likely sources of information are agencies that hold relevant information about the young person and/or the sexual partner(s). Key agencies are Children's Social Care and Police. For assessments in a health setting, general practitioners will also hold relevant

information. The second stage is completing the assessment and deciding on next steps.

- 3.5. The outcome of the completed assessment will be a decision whether to make a referral to another practitioner or agency as potentially;
- a child who may have additional needs (to be identified through a common assessment)
 - a child in need (as defined by the Children Act 1989, section 17)
 - a child in need of protection due to a risk of significant harm (as defined by the Children Act 1989, section 47).
- 3.6. The assessment, including the outcome, decisions and reasons, must be clearly recorded in the agency file by both the practitioner undertaking the assessment and the relevant supervisor.

4. Legal Context

- 4.1. Sexual activity with a child or young person may well be unlawful. It will always be unlawful where at least one of the parties to the activity is under 16. It will also be unlawful where a person is under 18 and the activity involves a person in a position of trust or some form of payment is involved (in money or in kind). It will also be unlawful where a person, irrespective of age, does not freely consent to the activity.
- 4.2. Sexual activity is only lawful where the parties to the activity have reached their 16th birthday and freely consent to the activity. The fact that sexual activity is unlawful does not, in itself, require a referral to Police or Children's Social Care. However, practitioners have a duty to safeguard children and promote their welfare under the Children Act 2004, section 11. Decisions not to make referrals must be consistent with this duty which takes precedence over any duty of confidence.
- 4.3. Whenever other agencies, or the LA in its other roles, encounter concerns about a child's welfare which constitute, or may constitute, a criminal offence against a child, they must always consider sharing that information with local authority children's social care or the police in order to protect the child or other children from the risk of significant harm. If a decision is taken not to share information, the reasons must be recorded. (Working Together 2006, 5.18)
- 4.4. The wording in the preceding paragraph assumes that 'sharing information' amounts to a referral. However, at paragraph 5.21, Working Together clearly envisages situations where information is shared as a prelude to deciding whether to make a referral. '... Practitioners will be justified in sharing some confidential information in order to make decisions on sharing further information or taking action – the information shared should be proportionate.' (Working Together 2006, 5.21)
- 4.5. Whenever LA children's social care have a case referred to them which constitutes, or may constitute, a criminal offence against a child, they should always discuss the case with the police at the earliest opportunity. (Working Together 2006, 5.17)
- 4.6. In dealing with alleged offences involving a child victim, the police should normally work in partnership with children's social care and/or other agencies.

Whilst the responsibility to instigate a criminal investigation rests with the police, they should consider the views expressed by other agencies. There will be less serious cases where, after discussion, it is agreed that the best interests of the child are served by a children's social care led intervention rather than a full police investigation. (Working Together 2006, 5.20)

- 4.7. See Appendix 4 for legal and procedural guidance provided to Crown Prosecutors.
- 4.8. In cases of concern, when sufficient information is known about the sexual partner/s the agency concerned should check with other agencies, including the police, to establish what information is known about that person/s. The police should normally share the required information without beginning a full investigation if the agency making the check requests this. (Working Together 2006, 5.28)
- 4.9. It is worth noting here that practitioners providing sexual health advice to children and young people are protected against prosecution from concerns that, in so doing, they aid, abet or counsel the commission of a sexual offence, provided such advice is intended to promote their health and well-being (section 73 of the 2003 Sexual Offences Act).

5. Risk Factors

- 5.1. The considerations in the following checklist should be taken into account when assessing the extent to which a child (or other children) may be suffering or at risk of harm, and therefore the need to hold a strategy discussion in order to share information:
 - the age of the child. Sexual activity at a young age is a very strong indicator that there are risks to the welfare of the child (whether boy or girl) and, possibly, others;
 - the level of maturity and understanding of the child;
 - what is known about the child's living circumstances or background;
 - age imbalance, in particular where there is a significant age difference;
 - overt aggression or power imbalance;
 - coercion or bribery;
 - familial child sex offences;
 - behaviour of the child i.e. withdrawn, anxious;
 - the misuse of substances as a disinhibitor;
 - whether the child's own behaviour, because of the misuse of substances, places him/her at risk of harm so that he/she is unable to make an informed choice about any activity;
 - whether any attempts to secure secrecy have been made by the sexual partner, beyond what would be considered usual in a teenage relationship;
 - whether the child denies, minimises or accepts concerns;
 - whether the methods used are consistent with grooming; and
 - whether the sexual partner/s is known by one of the agencies (Working Together 2006, 5.27).
- 5.2. **Power Imbalance.** Sexual abuse and exploitation of a child or young person involves an imbalance of power. The assessment should seek to identify power imbalances within a relationship. These can result from differences in size, age, material wealth and/or psychological, emotional, social and physical

development. In addition gender, sexuality, race and levels of sexual knowledge can be used to exert power.

- 5.3. Whilst a large age differential could be a key indicator (e.g. a 15-year-old girl and a 20-year-old man), practitioners should be aware that 14 or 15 year old boys are often able to exert very real pressure over girls of the same age or older. There will also be instances when the sexual predator is female and the victim is male.
- 5.4. Where a power imbalance results in coercion, manipulation and/or bribery and seduction, these pressures can be applied to a young person by one or two individuals, or through peer pressure. Professionals assessing the nature of a child or young person's relationship need to be aware of the possibility that either or both these situations can exist and conduct an holistic assessment of the young person's needs.
- 5.5. There will be an imbalance of power and the child or young person will not be deemed able to give consent if the sexual partner is in a position of trust.

6. Assessing Children and Young People

- 6.1. The process of assessment must be undertaken in a consistent and comprehensive manner by practitioners who have the relevant knowledge and skills. Such practitioners would include those trained to undertake assessments using the Common Assessment Framework (www.everychildmatters.gov.uk) and the Framework for Assessing the Needs of children and their Families (DH/DfES 2000). Health practitioners will have received training in assessing children's competence according to the 'Fraser' ruling (Gillick v West Norfolk and Wisbech AHA [1986] AC 112, [1985] 3 WLR 830, [1985] 3 All ER 402, HL).
- 6.2. The risk assessment tool at Appendix 1, based on the criteria outlined above, may be used to help practitioners come to objective, informed conclusions as to the level of risk and the need for any further action.
- 6.3. All assessments must be undertaken in an environment that is open, forthright, and as confidential as possible.
- 6.4. Practitioners will need to develop strategies to sensitively explain to children and young people the limits of confidentiality, the purpose of the assessment and possible outcomes. This explanation should take place at the outset in a manner which is reassuring but which makes no assurances or guarantees that information provided will remain confidential in all circumstances.
- 6.5. It must be clarified, from the outset, that the assessing practitioner may request information from other practitioners or agencies to inform the assessment which is designed to identify children and young people who may need protection from significant harm.
- 6.6. Children and young people must be assured that requests for information are not referrals and that information sharing is a confidential process between the practitioner requesting the information and the agency(s) providing it. Referrals will only take place where children or young people agree, or assessing practitioners consider this is necessary to protect them (or others) from significant harm.

- 6.7. Children and young people must be assured that requests for information from the police will not be recorded as allegations of crime and that allegations of crime will only be made to the police where children or young people agree, or professionals consider this is necessary to protect them (or others) from significant harm.
- 6.8. Sometimes assessments will take place over a period of time and a number of meetings may be necessary to develop trusting relationships with children and young people. Whilst this is normal and understandable, practitioners must guard against any tendency to delay completing assessments where information already provided clearly indicates a referral may be necessary.
- 6.9. Assessors should also consider the likelihood of significant harm to other children, whether or not they are members of the same family, and, if necessary, take appropriate protective action in line with Bedfordshire's LSCB Inter-Agency Procedures 2006.
- 6.10. It will be good practice for supervisors to de-brief meetings practitioners have with sexually active children and young people and satisfy themselves that all necessary action is being taken. Agency files should be noted accordingly.
- 6.11. Where children and young people do not provide sufficient information to enable requests for information from other agencies, particularly the police, assessments should still be completed. However, practitioners must be aware that a street name or alias can be effectively searched. Some agencies, particularly the police, may provide critical information in relation to people not clearly identifiable from the names provided.

7. Assessing Children under 13

- 7.1. A child under 13 is not legally capable of consenting to sexual activity. Any offence under the Sexual Offences Act 2003 involving a child under 13 is very serious and should be taken to indicate a risk of significant harm to the child. (Working Together 2006, 5.23)
- 7.2. Cases involving under 13s should always be discussed with a nominated child protection lead in the organisation. Under the Sexual Offences Act, penetrative sex with a child under 13 is classed as rape. Where the allegation concerns penetrative sex, or other intimate sexual activity occurs, there would always be reasonable cause to suspect that a child, whether girl or boy, is suffering or is likely to suffer significant harm. There should be a presumption that the case will be reported to children's social care and that a strategy discussion will be held This should involve children's social care, police and relevant agencies, to discuss appropriate next steps with the professional. All cases involving under 13s should be fully documented including detailed reasons where a decision is taken not to share information. (Working Together 2006, 5.24)
- 7.3. The preceding paragraph makes clear that penetrative or intimate sexual activity with a child under 13 will always require a referral to Children's Social Care and Police. This is because such activity will always amount to a serious criminal offence and be likely to cause significant harm.

8. Requesting Additional Information

- 8.1. All requests for information held by another agency must be made in writing. A template request is provided at Appendix 3. Where the assessor is able to conclude that a child or young person is at risk of harm before seeking additional information, an immediate referral should be made to children's social care. All referrals must be confirmed in writing within 48 hours.
- 8.2. Bedfordshire police has agreed, for the purposes of assessment under this protocol, to respond to requests for information on sexual partner(s) without recording the request for information as an allegation of crime. The detail of information provided will be in accordance with the Crime and disorder Act, 1998 section 115, which allows information to be shared to prevent and detect crime. Such requests will be recorded as 'police intelligence' to enable repeat requests to be identified as this information will be important to identify people who may be / have been sexually active with a number of children or young people. The police position is set out at Appendix 2.
- 8.3. Where the information provided is such that the police believe that a child might be at risk of significant harm, the police will request that a referral be made in accordance with the Bedfordshire LSCB Inter-Agency Procedures. The request, and the resultant decision, must be clearly recorded on the assessing agency's file. In all circumstances the assessing agency will retain ownership of the decision to refer as an outcome of the assessment.
- 8.4. Children's Social Care has agreed, for the purposes of assessment under this protocol, to respond to requests for information on sexual partner(s) by recording the request as a contact, not a referral.
- 8.5. Where information held is sufficiently worrying, Children's Social Care will request that a referral is made under the Bedfordshire LSCB Inter-Agency Procedures. The request, and the resultant decision, must be clearly recorded on the assessing agency's file. In all circumstances the assessing agency will retain ownership of the decision to refer as an outcome of the assessment.

9. Performance

- 9.1. Performance against this protocol will be monitored by agencies and LSCB. This may involve auditing case files and interviewing practitioners and supervisors involved in the assessment, information sharing and referral processes.

Appendix 1: Risk Assessment Matrix

Indicator of Risk or Harm	Considerations for Assessment	Level of Concern
Is the child/young person competent to understand, and consent to, the sexual activity they are involved in.	Competence is relative to the seriousness of the situation. The less a child or young person is able to appreciate the risks involved in their sexual relationship the less s/he is likely to be able to protect her/himself.	
Is the child under 13 years old. Children under 13 years old are considered of insufficient age to give consent to sexual activity (Sexual Offences Act 2003).	All cases of children under the age of 13 years believed to be or have been engaged in penetrative or intimate sexual activity must be referred to Children's Social Care and the Police as a potential case of rape (rape is penetration of any orifice by a male penis) or serious sexual assault.	
Are the living circumstances of the child or young person secure and supportive. Are they attending school, are they living with their parents, are they or their siblings receiving services from Children's Social Care or another care agency.	Children and young people whose home/social/school circumstances are not robust are likely to have lower self-esteem and less resilience and are therefore more vulnerable to coercion. They are less likely to be able to resist forceful or seductive sexual advances.	
Is the relationship between those involved equal and consensual or are there power imbalances. Does the child or young person have any disability (learning, physical, sensory, emotional, mental health) or difficulty in communicating. Is the sexual partner adult or is there a significant age differential.	These can result from differences in size, age, material wealth and/or psychological, social and physical development. In addition gender, sexuality, race and levels of sexual knowledge can be used to exert power. Whilst a large age differential could be a key indicator, there can also be bullying present where the children and young people are in a similar age relationship. There will also be instances when the sexual predator is female and the victim male. Disabled children and young people are more vulnerable to abuse than able children. A child or young person is considered unable to give consent if the sexual partner is in a position of trust or is a family member (Sexual Offences Act 2003).	
Is coercion or seduction/bribery involved; including use of alcohol or other substances as a disinhibitor.	A child or young person may not see the activities of another as aggressive, coercive or seductive. Similarly they may be unaware and reluctant to recognise that drugs and alcohol are offered to facilitate sex or sexual exploitation.	

Indicator of Risk or Harm	Considerations for Assessment	Level of Concern
Does the child/young person's own behaviour, for example through misuse of alcohol or other substances, place him/her in a position where he/she is unable to make an informed choice about the activity.	<p>Anyone who takes advantage of a child or young person's temporary disinhibition or incapacity for sexual purposes, whether by accident or design, does so without consent. The sexual activity is always unlawful.</p> <p>Children and young people who regularly abuse alcohol or other substances are likely to need protection irrespective of their views.</p>	
Has the sexual partner made attempts to secure secrecy beyond what would be considered usual in a teenage relationship.	If unsure, practitioners should seek advice about what would be considered a usual degree of secrecy in a teenage relationship, if they are unsure.	
Are the methods used to secure a child or young person's compliance and trust and/or secrecy by the sexual partner consistent with grooming for sexual exploitation.	<p>Adults and young people who are paedophiles are extremely adept at presenting themselves as benevolent (gifts, help, money) and trustworthy (friend of the family or responsible older friend).</p> <p>Adults and young people who are pimps may develop the relationship with the young person first, including by offering them money or drugs, before coercing them into prostitution.</p> <p>Children and young people who begin taking illegal substances are likely to need protection irrespective of their views.</p>	
Are the sexual partners known by one of the agencies as having or having had, other concerning relationships with children/young people.	<p>Checks should be made with the Police and Children's Social Care (see Appendix 3 for process).</p> <p>A decision not to request additional information should be exceptional, supported by a manager, and recorded with clear reasons.</p>	
Does the child/young person deny, minimise or accept the concerns held by professionals.	Protecting a child or young person from harm depends on a practitioner scrupulously assessing the child or young person's actual situation. Care should be taken to ensure that the situation presented by the child or young person is not accepted at face value in order to maintain confidentiality, or to avoid the need to involve other agencies.	

Risk Assessment Scoring

1. The indicators above should be assessed using professional judgement and individually rated as **HIGH, MEDIUM** or **LOW** risk.
2. A single occurrence of **HIGH** would be sufficient to generate a referral to Police and Children's Social Care.
3. Two or more occurrences of **MEDIUM** would be sufficient to generate a referral to Police and Children's Social Care.

4. Assessments of risk below these thresholds may also be referred to the Police and Children's Social Care.
 5. Confidentiality is never absolute and competent professionals will be able to articulate the need for information from the police in a manner that does not undermine the integrity of the agency.
 6. Decisions not to refer to the Police and Children's Social Services must be made within the agency's supervision arrangements and at first line manager level or above.
-

Assessor: (signature) (printed name).

Date:

Supervisor: (signature) (printed name).

Date:

Appendix 2

Police Information Request/Referral Process

Principles

- The need to safeguard and promote the welfare of children and young people is paramount;
- Children and young people have a right to protection, and a right to access the criminal justice system;
- Positive outcomes for children and young people are maximised when agencies work together and co-ordinate their activity.

Requests for Police Information

In cases where an agency requests information from the police for the purposes of a risk assessment, the police will:

1. Receive the information
2. Search relevant indices and pass the results to legitimate enquirers
3. The fact of the request and details provided will be recorded for intelligence purposes only. Such requests will not be treated as allegations of crime referrals.
4. Depending on the result, the enquirer may then make a subsequent referral.

Referrals to Police

In cases where an agency contacts the Police with an allegation of crime or potential crime, the Police will:

1. Receive the information and create allegation of crime report
2. Pass to the relevant investigating unit
3. Assess the need for emergency action to protect a child or young person
4. Research information held internally
5. Make a referral to the local Children's Social Care Department according to Bedfordshire LSCB Inter-Agency Procedures 2006 (the original referrer should already have contacted Children's Social Services).
6. Share relevant information and participate in an initial strategy discussion with Children's Social Care, Consultant Paediatrician and the referring professional.
7. Conclude the investigation and decide, in consultation with the Crown prosecution Service, an appropriate criminal justice disposal, taking into account the wishes of the victim, the public interest, and the views of relevant professionals who are working with the child or young person.

Appendix 3

Template Information Request Form

To: Agency

From: Name of Practitioner and Assessing Agency

I am conducting an assessment on a child or young person under the Bedfordshire LSCB 'Protocol for Safeguarding Sexually Active Children and Young People'.

I am contacting you to find out whether you have any information about the following people that may be relevant to my assessment.

I am particularly concerned to know whether you have information that would indicate that any of these people would constitute a significant risk to children or young people in the context of a sexual relationship.

Person A: (some or all of – name, street name, alias, age/DoB, address).

Person B: (some or all of – name, street name, alias, age/DoB, address).

Person C: (some or all of – name, street name, alias, age/DoB, address).

Continue as necessary

Please could you let me know whether you have information in one or more of the following categories:

- 1. One or more of these people may pose a significant risk to children and Young people in the context of a sexual relationship. A referral should be made to enable the sharing of relevant information. Consent will not be required.***
- 2. One or more of these people may be particularly vulnerable to sexual exploitation. A referral should be made. Consent will be required from subject(s) before relevant information can be shared.***
- 3. One or more of these people may have additional needs. Consideration should be given to arranging an assessment using the Common Assessment Framework. Consent will be required from subject(s) before relevant information can be shared.***
- 4. No relevant¹ information is held on any of these people on the information provided.***

¹ Information that would indicate that any of these people would constitute a significant risk to children or young people in the context of a sexual relationship.

Appendix 4

Code for Crown Prosecutors - Considerations

The public interest requires the prosecution of an offence of unlawful sexual intercourse with a girl under 13 unless exceptional circumstances exist.

You may exercise considerable discretion in relation to offences under Section 6 of the 2003 Sexual Offences Act.

The age of the defendant will be highly relevant. Even if the defendant is over 24, a prosecution may not be in the public interest if he had reasonable cause for believing that the girl was over 16.

The following factors will also be relevant:

- the relevant ages of the parties;
- the emotional maturity of the girl and whether she entered into a sexual relationship willingly;
- the relationship between the parties and whether there was an existence of a duty of care or breach of trust **<refer to Sexual Offences - Abuse of Trust, elsewhere in this guidance>**.

In summary, a man who is considerably older than the girl is likely to be prosecuted, especially if he owed her a duty of care; whereas it may not be necessary to prosecute a young man with whom the girl has been having a consensual relationship.
