



CHUMS

**Mental Health &
Emotional
Wellbeing Service**

Underage Sex Policy

Implementation Date: December 2013

Reviewed: January 2023

Next Review Date: January 2026

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Background

Many children and young people have a healthy interest in relationships and sexual behaviours which develops in age-appropriate stages. Their interest in sexual behaviour may be active before they reach the age of consent. The age of consent to sexual activity in the UK is 16 years, regardless of sexuality. There is no law regarding confidentiality and talking about sex and relationships.

Age of Consent

The Sexual Offences Act (2003) states that any sexual activity involving a child under the age of 16 is unlawful.

Children under the age of 13 are legally deemed incapable of consenting to sexual activity. All disclosures of sexual activity involving children under 13 are disclosures of illegal activity and a child protection issue. Safeguarding procedures should be followed immediately including a child protection referral to social care. In an emergency situation, local police should be contacted.

For children between the ages of 13 and 16, underage sexual activity is still an offence. However, it is possible that a young person in this age group may engage in mutually-agreed, non-exploitative sexual activity with a same age (within 2 years) peer and not be harmed by this. A number of factors should be considered (see below) to assess the risk of harm in this situation.

Children between the ages of 16 and 18, are above the age of consent, and may engage in consensual sexual activity by law. Young people below the age of 18 years are legally classified as children, therefore any risk and safeguarding concerns for these young People should be followed up in accordance with the Children's Act and Working Together to Safeguard Children.

Sexual Grooming

It is an offence, as outlined in the Sexual Offences Act (2003), for an adult (person aged over 18) to meet, or travel with the intention of meeting, a child under 16 with the intention to commit a relevant offence against the child either at that time or on a subsequent meeting. In addition, as stated in the Serious Crime Act (2015), it is an offence for an adult to communicate with a child for the purpose of obtaining sexual gratification, where the communication is sexual or if it is intended to elicit from the child a communication which is sexual. An offence is not committed in either circumstance if the adult reasonably believes the child to be 16 or over.

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Child Sexual Exploitation

Child Sexual Exploitation can affect any child under the age of 18 years. Child Sexual Exploitation is an offence under the Sexual Offences Act 2003. In the 2017 Child Sexual Exploitation definition and guide (DfE), it is defined as:

‘Child sexual exploitation is a form of child sexual abuse. It occurs where an individual or group takes advantage of an imbalance of power to coerce, manipulate or deceive a child or young person under the age of 18 into sexual activity (a) in exchange for something the victim needs or wants, and/or (b) for the financial advantage or increased status of the perpetrator or facilitator. The victim may have been sexually exploited even if the sexual activity appears consensual. Child sexual exploitation does not always involve physical contact; it can also occur through the use of technology’.

Indecent Photographs, Videos, Images

Taking, making, sharing and possessing indecent images, videos and pseudo-photographs of people under 18 is illegal. (A pseudo-photograph is an image made by computer-graphics or otherwise which appears to be a photograph).

Sharing Information

Children and Young People are entitled to confidentiality as CHUMS Service Users (in accordance with the CHUMS Confidentiality and Disclosure Policy) unless it is deemed in their best interests for information to be shared, due to risk or safeguarding concerns. Effort should be made to obtain the young person’s consent before passing on personal information and to engage them in collaborative sharing of information where possible. Children and young people who have or intend to engage in sexual activity will be encouraged and supported to share information with parents/carers activity wherever it is safe to do so.

Decisions to share information with parents and carers will be guided by professional judgement, Fraser guidelines and in accordance with the Information Sharing Advice for Safeguarding Practitioners (DfE). Decisions will be based on the child's age, maturity and understanding of the risks and consequences of sexual activity and sexual relationships. It is important to bear in mind that in some cases, sharing information to the parent/caregivers of a child who has disclosed sexual activity may place the child at risk of further harm. Decisions will therefore also be informed by our understanding of the parent/cares’ ability and commitment to protect the young

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person. The best interests of the young person are paramount on every occasion. Where an offence has been committed, the best interest of the public should also be taken into consideration.

Fraser guidelines

The Fraser guidelines apply for healthcare professionals working with children aged under 16 years. Healthcare professionals can provide advice and treatment on sexual health for children and young people under the age of 16 without their parents'/carer's knowledge or consent, under certain conditions listed below. In the first instance, a child or young person would be encouraged to tell their parents/carers about any sexual activity they have or intend to engage in. If they are reluctant to do so, this would be explored in a non-judgemental discussion and if appropriate a plan would be agreed with the child to help them inform their parent/carer or for the practitioner to talk to the parent/carer on the child's behalf with their agreement. If the child or young person still wanted to proceed without their parents' or carers' knowledge or consent, the Fraser guidelines would apply in the following circumstances:

- the young person cannot be persuaded to inform their parents or carers that they are seeking this advice or treatment (or to allow the practitioner to inform their parents or carers).
- the young person understands the advice being given.
- the young person's physical or mental health or both are likely to suffer unless they receive the advice or treatment.
- it is in the young person's best interests to receive the advice, treatment or both without their parents' or carers' consent.
- the young person is very likely to continue having sex with or without contraceptive treatment.

What do I do if a young person under the age of 16 discloses they are sexually active?

Under the age of 13

It is always necessary to discuss cases of sexual activity involving young people under 13 with the Safeguarding Lead. Any sexual activity involving a young person under 13 is illegal and on all occasions a child protection referral will be made. Information sharing and working in partnership with the young person's parent/carer should always be encouraged where appropriate and safe for the child to do so.

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Between 13-16 years

Although sexual activity under the age of 16 is an offence, where it is consensual and non-exploitative, it may be less harmful than if the child is under 13. There are a number of factors you should ascertain in a sensitive way to assess whether the young person is at risk of harm:

- Age of the young person – sexual activity at a young age is a strong indicator there are risks to the welfare of the young person
- The level of maturity of the young person and their understanding to give informed consent – compliance is not consent
- What is known about the young person's background/home circumstances?
- Age imbalance – particularly where there is a significant age difference (more than 2 years) i.e. a 14 year old having sex with an 18 year old (this should always be discussed with the Safeguarding lead)
- Are they being coerced/bribed?
- Familial child sex offences – is the young person related in such a way that the relationship is illegal?
- Does the young person appear anxious/withdrawn/distressed?
- Have any attempts to secure secrecy been made by the sexual partner?
- Does the young person perceive the activity as abusive? If so it should be treated as such
- Is there any evidence of grooming in person or by the internet?
- Is the young person at risk of child sexual exploitation (CSE)?
- When a young person with a disability is involved extra care should be taken to ensure they are not being exploited, this includes learning, physical and mental health difficulties/disabilities.
- If the young person has a communication difficulty you need to ensure their wishes and feelings are being understood and they understand their activity

Where sexual activity has been disclosed by a young person they should be encouraged to let their parent/carer know. There will need to be a process of information sharing and discussion in order to formulate an appropriate response, with a manager, clinical supervisor and/or Safeguarding Lead. Any concerns should be raised immediately with the Safeguarding Lead. There may then be a need for further consultation with Children's Social Care for the relevant area. All discussions should be recorded in a timely fashion, giving reasons for action taken and who was informed.

Young People Between 16 and 18

Disclosures of sexual activity involving young people in this age range should be considered with awareness of potential issues of sexual offences ie sexual assault or

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rape, sexual exploitation and abuse. The questions outlined above will still be relevant to ascertain that the young person is not at risk of harm or abuse. Consider:

- Was the activity forced/coerced/bribed?
- Was there power imbalance in age or position of trust?
- Are there issues of capacity or understanding?
- Was the young person incapacitated through drink or drugs?
- Familial child sex offences – is the young person related in such a way that the relationship is illegal?
- Is there any evidence of grooming in person or by the internet?
- Does the young person perceive the activity as abusive?

Any concerns of sexual offence, child sexual abuse or child sexual exploitation should be raised with the Safeguarding Lead and a child protection referral made. Where the situation is an emergency, the local Police should be contacted immediately.

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Governance Committee Authorisation

Signature*

Name Print Dee Hogman

Position/Role: Chair of Governance Committee/Head of Quality

Date: January 2023

Date of review: January 2026

*Authorised signatory must be the chair (or deputising chair) of Governance Committee