

Company Name:

Policy No: 04-3715	Authorised:	Date:
CHILD SAFEGUARDING UNDER-AGE SEXUAL ACTIVITY		

4.5 sexual communication with a child.

B: AGE-RELATED RISKS & LEGAL STATUS (*Sexual Offences Act 2003*):

1. In assessing the nature of any particular behaviour, it is essential to address the actual relationship between those involved. Power imbalances are very important and can occur through differences in size, age and development and where gender, sexuality, race and levels of sexual knowledge are used to exert such power. Of these, age can be a key indicator, e.g. a 15 year old girl and a 25 year old man. There will also be an imbalance of power if the young person's sexual partner is in a position of trust in relation to them e.g. teacher, youth worker, carer etc. In the assessment workers will need to include the use of sex for favours e.g. exchanging sex for clothes, CDs, trainers, alcohol, drugs, cigarettes etc.
2. If the young person has a learning disability, mental disorder or other communication difficulty, they may not be able to communicate easily to someone that they are, or have been abused, or subjected to abusive behaviour. Staff members need to be aware that the *Sexual Offences Act 2003* recognises the rights of people with a mental disorder to a full life, including a sexual life. However, there is a duty to protect them from abuse and exploitation. *The Act includes 3 new categories of offences to provide additional protection:*

2.1 Young People Under the Age of 13:

- 2.1.1 Under the *Sexual Offences Act 2003*, children under the age of 13 are considered of insufficient age to give consent to sexual activity. The Police must be notified as soon as possible when a criminal offence has been committed or is suspected of having been committed against a child unless there are exceptional reasons not to do so.
- 2.1.2 In all cases where the sexually active child is under the age of 13, a referral must be made to Children's Social Care and a full assessment undertaken in consultation with partner agencies, including the Police. When a girl under 13 is found to be pregnant, a multi-agency support package will need to be developed.

2.2 Young People Between 13 and 16:

- 2.2.1 The *Sexual Offences Act 2003* recognises that whilst mutually agreed, non-exploitative sexual activity between teenagers does take place and that often no harm comes from it, the age of consent should still remain at 16. This acknowledges that this group of young people is still vulnerable, even when they do not view themselves as such.
- 2.2.2 Sexually active young people in this age group will still have to have their needs assessed using this Protocol. Discussion with Children's Social Care will depend on the level of risk / need assessed by those working with the young person.
- 2.2.3 This difference in procedure reflects the position that, whilst sexual activity under 16 remains illegal, young people under the age of 13 are not capable to give consent to such sexual activity.

2.3 Young People Between 16 and 18:

- 2.3.1 Although sexual activity in itself is no longer an offence over the age of 16, young people under the age of 18 are still offered protection under the *Children Act 1989*.
- 2.3.2 Consideration still needs to be given to issues of sexual exploitation and abuse of power in circumstances outlined above. Young people can still be subject to offences of rape and assault and the circumstances of an incident may need to be explored with a young person. Young people over the age of 16 and under the age of 18 are not deemed able to give consent if the sexual activity is with an adult in a position of trust or a family member as defined by the *Sexual Offences Act 2003*.