



Orkney Inter-agency Protocol on Under-age Sexual Activity

Working Together to Protect Children in Orkney

(Updated - May 2014)

Contents

1. Introduction.....	3
2. The National and Local Context.....	4
3. The Initial Response.....	6
4. Indicators of Potential Risk of Harm.....	7
5. A Flow Chart for Action.....	8
6. Appropriate Responses to the Assessment Process.....	9

1. Introduction

This is an Inter-Agency Protocol for all agencies in Orkney who are responsible for dealing with concerns about young people who are, or alleged to be, engaging in sexual activity before the age of 16.

This protocol focuses on how practitioners and agencies in Orkney should respond when they become aware of under-age sexual activity and are concerned about a young person. The protocol aims to assist practitioners in their decision-making by setting out the principles upon which their practice should be based; by providing criteria to assist their assessment and the action that can be taken on the basis of their assessment.

This protocol applies to all practitioners who work with, and have a duty of care, towards children and young people. This includes: social workers; nurses, GPs and other health professionals; police officers; teachers; voluntary sector workers; residential workers; youth workers; and any practitioner who might work with a young person under 16 who is engaged or planning to become engaged in sexual activity with another person.

Practitioners working with young people must recognise the rights, needs and aspirations of lesbian, gay, bisexual and transgender young people (LGBT). There is often a perception that a young person's LGBT identity in and by itself may constitute a child protection concern. This perception is wrong and any concern about underage sexual activity between same sex, bisexual or transgender young people should be assessed in the light of this protocol, whilst recognising the potential discrimination that LGBT young people may experience.

2. The National and Local Context

This Protocol should be read and applied alongside the Orkney GIRFEC Guide (2012), the National Guidance for Child Protection in Scotland (2014) and the current Orkney Inter-Agency Core Child Protection Guidance (2011).

The GIRFEC approach supports the principle that all children have the right to be protected from significant harm and to grow up safely. Every school aged young person in Orkney will have a Named Person within Education and should have a named Lead Professional, if two or more agencies are working together to provide support for the young person. The Lead Professional will be responsible for co-ordinating the assessment and the support required.

The National Guidance on Under-age Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns (2010) covers legal issues and advice for practitioners on how they can strike a balance between assuring the freedom of young people to make decisions, along with the duty to protect young people from activities which can lead to harm and longer-term negative outcomes.

The law does not encourage sexual intercourse in young people under 16. The Sexual Offences (Scotland) Act 2009 is clear that the age of consent for both young men and young women remains in the UK as 16 years of age. This does not mean that every situation requires a child protection response, although a proportionate and appropriate response is always required. If there are no child protection concerns, there may still be concerns that need to be addressed either on a single agency or multi-agency basis.

The National Guidance specifies when child protection measures must be instigated, these are:

- If the child is, or is believed to be, sexually active and is 12 or under.
- If the young person is currently 13 or over, but sexual activity took place when he/she was 12 or under.
- Where the "other person" involved is in a position of trust in relation to the young person.
- If there is any evidence that the young person is under 18 and is involved in prostitution, sexual exploitation, the making and distributing of child abuse images or pornography.
- If the child or young person is at immediate risk of harm.

The Sexual Offences (Scotland) Act 2009 introduced significant changes to the law regarding sexual offences, such as it:

- Has defined the concept of consent as being as a "free agreement";
- Has introduced new offences;
- Is not gender specific;
- Introduced offences designed to offer greater protection to young people sexually harmed by someone who holds a position of trust and those people who, through mental health problems and/or learning disabilities, may not have the capacity to give full consent.

Young people under the age of 18 can be subject to 'sexual abuse of trust'. For example, if a young person becomes involved in sexual activity with a teacher, hospital staff member or a residential care worker, who has 'duty of care' for the young person, and that person is over the age of 18, this should be dealt with as a child protection issue.

If the above automatic referral criteria is not met but there are concerns that the child or young person may be at risk of harm, then an assessment of need and risk should be completed (see flow chart in section 5).

3. The Initial Response

When a practitioner becomes aware that a young person is sexually active or is likely to become sexually active, they should undertake an assessment, so that an appropriate response can be provided. The practitioner has a duty of care to ensure that the young person's health and emotional needs are being addressed and to assess whether the sexual activity is of an abusive or exploitative nature. This process may not always be straightforward, so it will require sensitive handling, the use of professional wisdom and careful judgement.

The appropriate response will depend upon the outcome of the assessment process and the level of negative risk identified. There are several courses of action that can be taken and in all situations consideration should be given to the following GIRFEC principles:

- What is getting in the way of this child's or young person's well-being?
- Do I have all the information I need to help this child or young person?
- What can I now do to help this child or young person?
- What can my agency do to help this child or young person?
- What additional help might be needed from others?

The response, and level of information shared, will vary depending on whether there is a specific child protection concern or whether the concerns are focused on the well-being of the young person.

The right to confidentiality for young people should be respected unless there is a concern that the young person could be at risk of harm.

4. Indicators of Potential Risk of Harm

If a practitioner is concerned about a young person's sexual activity the following points should be considered:

- Is the young person under the age of 13 or did the sexual activity take place when the young person was under 13?
- Does the young person have a clear understanding of the type of sexual activity they were involved in?
- Did the young person consent to the sexual activity at the time?
- Did the young person's own behaviour, e.g. use of alcohol or other substances, place them in a position where their ability to make an informed choice about the sexual activity was compromised?
- Was the young person able to give informed consent? (e.g. mental health issues, learning disability or any other condition that could heighten the young person's vulnerability).
- Was there coercion or any other imbalance of power in the relationship? (e.g. differences in size, age, intellectual or physical development, in addition was gender, race and sexual knowledge used to exert power). It should not automatically be assumed that power imbalances do not exist for two young people who are of a similar age.
- Were manipulation, bribery, threats or aggression involved? (e.g. was the young person isolated from their peer group or given alcohol or other substances as a disinhibitor?).
- Did the other person use 'grooming' methods to gain the trust and friendship of the young person? (e.g. by indulging the young person with gifts, treats, money; by befriending the young person's family; by developing a relationship with the young person via the internet).
- Did the other person attempt to secure secrecy beyond what would be considered usual in teenage sexual activity?
- Does this other person have a known history of becoming involved in concerning behaviour towards children or young people?
- Was the other person in a position of trust?

5. A Flow Chart for Action

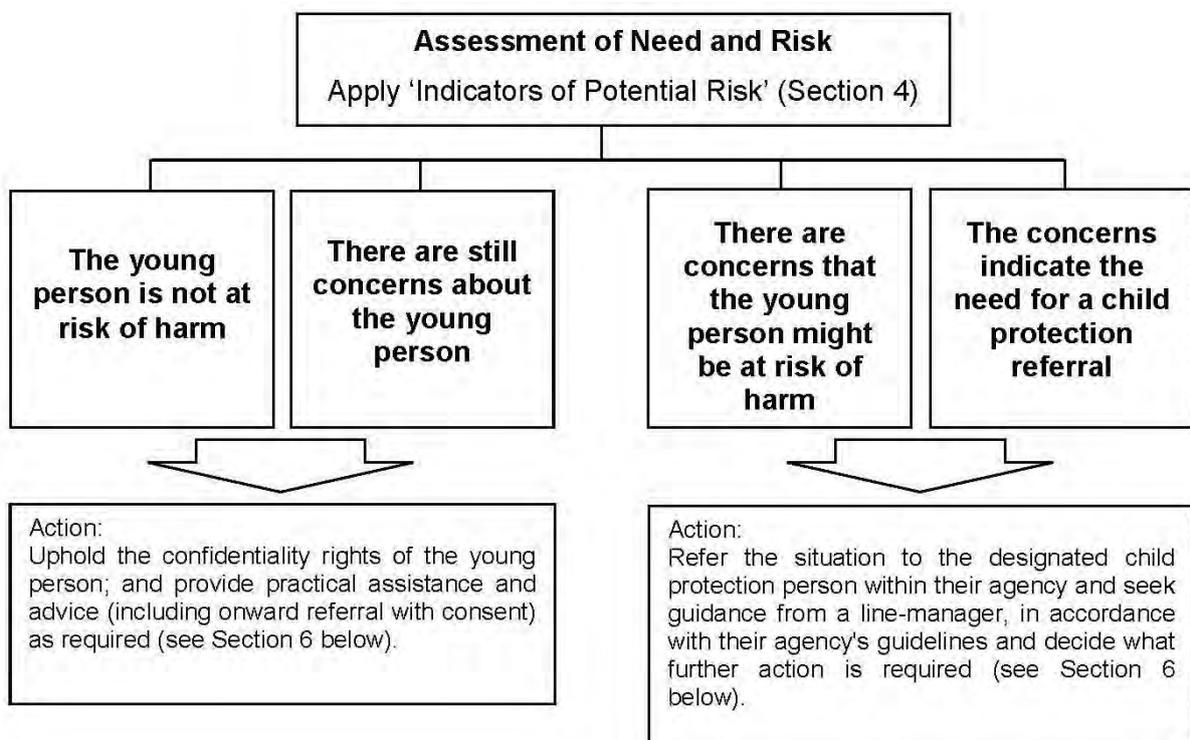
When a practitioner becomes aware that a young person is sexually active, or is likely to become sexually active, child protection measures must be instigated if:

The child is, or is believed to be, sexually active and is 12 or under.

The young person is currently 13 or over but the sexual activity took place when they were 12 or under.

The "other person" involved is in a position of trust in relation to the young person.

If the above criteria are not met but there are concerns that the child or young person may be at risk of harm, then an assessment of need and risk should be completed.



6. Appropriate Responses to the Assessment Process

If the young person is not at risk of harm.

If the assessment is that the sexual behaviour was consensual teenage sexual activity, where there are no concerns of abuse or exploitation, the practitioner(s) should:

- Uphold the confidentiality rights of the young person; and.
- Provide practical assistance and advice as required.

Practitioners not qualified to provide appropriate advice should advise the young people to make contact with the appropriate local services to access an appropriate sexual health advice, protocol and services.

If there are still concerns about the young person.

If the assessment is that the sexual behaviour is not abusive or exploitative, but that there are concerns about the young person's behaviour or their ability to assess risk, or their use of drugs and alcohol, then the confidentiality rights of the young person should be upheld and assistance and advice should be offered. If the young person agrees a referral can be made to an appropriate service.

If there are concerns that the young person might be at risk of harm.

If there is a concern that the young person's behaviour, or the nature of the sexual behaviour and/or relationships, indicates that the young person is at risk of harm, the practitioner should:

- Refer the situation to the designated child protection person within their agency and seek advice from a line-manager, in accordance with their agency's guidelines and decide what further action is required.
- Inform the young person about the need speak to other professionals, where required, and seek their consent if possible.
- Share appropriate information with other professionals about the young person and the concerns;
- If required, seek advice from other services and agencies to assist in this decision-making.

If there are clear concerns that the young person is at risk of harm.

If a practitioner is aware that a young person has experienced, or is experiencing, harm as a result of their sexual activity or behaviour, the practitioner should:

- Where appropriate, speak with the child or young person prior to passing on the child protection concern, make every reasonable effort should to seek their agreement.
- Share the child protection concern in line with local child protection guidance, detailing those who are involved and the nature of the concerns.
- If agreement is not reached, the professional will share the child protection concern and inform the child or young person of this course of action.

Recording information

In all circumstances, the practitioner should make a record of events and decisions, in line with their own agency procedures. The record should contain all essential detail and the reasons behind their action. On each occasion that a practitioner has contact with a young person or receives information about them, consideration should be given as to whether their circumstances have changed and a different response needed.

For further reading please see:

- The National Guidance on Under-age Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns (2010).
- The National Guidance for Child Protection in Scotland (2014).
- The Orkney Inter-Agency Core Child Protection Guidance (2011).
- The Orkney GIRFEC Guide (2012).

Note:

This Inter-Agency Protocol has been written on behalf of the Orkney Child Protection Committee, with support from Hannah Casey, Health Improvement Officer (Sexual health and young people), Health Promotion Department, NHS Orkney.