

Policy/Procedure Name:		<b>S A F E : Sexuality And Further Education</b>	
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For Information to:		All Treloar Trust Staff	
Approval requested to upload on the Treloar Website:		Yes <input type="checkbox"/> (tick if requested)	
Who is carrying out EIA?	Equality and Diversity Officer & Head of Safeguarding	Date of EIA?	26 <sup>th</sup> June 2020
Have we shown due regard for the 9 protected characteristics within the policy/procedure?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Are all opportunities to promote equality taken within the policy/procedure?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Refer Policy/Procedure to EDI Co-ordinator for further assessment		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

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## **Aims of the policy**

The SAFE (Sexuality and Further Education) policy is a relationship and sexuality policy document for staff to ensure School and College students are safely able to engage in positive relationships which may include legal sexual activity if they choose.

### **Ensuring rights are upheld**

Treloar's aims to create an environment which is informed, open and supportive because students may well experience extreme prejudice elsewhere. Treloar's does not allow any form of comment about any student's sexuality which may be judged sexist, offensive or insensitive.

### **Ensuring competence**

Students need to understand their responsibility towards themselves and others in sexual matters. They need to be educated about appropriate sexual behaviour, including activities which might be morally, socially or legally unacceptable.

### **Safe from ignorance**

Students need to receive education and support in socio-sexual behaviour if they are to achieve desirable norms of self-confidence. Awareness of their own and others' sexuality necessarily includes education in safer sex.

### **Ensuring safety**

Students need to be informed about sexual exploitation, to be made aware of situations in which they would be exploiting or being exploited and to know how to avoid such situations. Treloar's seeks to protect students from such exploitation.

# Policy/Procedure Details

## School and College

Previous versions of this policy referred only to the College. This now includes school students to remove potential discrimination whereby College students 16 and over were assisted by the policy, but School students of the same age were not. Furthermore, School students may be part of 52 week provision and therefore have no practical way of exploring sexual relationships if sexual activity is not permitted on school premises. While most mainstream boarding schools have a strict policy of forbidding sexual activity on the premises, these students do not have the care and supervision needs of many of Treloar's students and are not prevented from exploring such relationship. Such comparisons are therefore not relevant.

Developing independence in School as well as College involves learning a sense of responsibility as well as maximising choice and control over one's life. It is important that students are aware of where, when and how sexual activity is appropriate. This will differ in different circumstances; what is acceptable behaviour in the privacy of one's bedroom may not be in a public area; what may be acceptable in social situation such as a disco, is not in the classroom. Nothing in this policy overrides the need for acceptable behaviour and for the need for staff to make a judgement within the guideline in this and other policies about what is or is not acceptable behaviour, and what could constitute a safeguarding concern.

## Relationships and sexuality

Helping students towards self-fulfilment is not just ancillary to educational aims but an integral feature of the Treloar Trust's aims.

To exclude from this task support in intimate relationships would be to deny to students over 16 and with appropriate understanding the same opportunities as other young people. Treloar's therefore stresses the importance of students with physical and/or learning disabilities being offered access to appropriate information on sexuality and human relationships. Further, sex and sexuality are highly emotive topics, especially where provision is being considered for potentially vulnerable groups of people; strong feelings and conflicting views are likely to arise. This is however no reason for Treloar's to pretend that sex can be a taboo subject, best ignored until a crisis occurs.

Experience, as well as the complex personal, legal and ethical issues involved, requires a clear policy. Our aim is that staff feel supported and confident. Staff need to be trained in this area of their work and the Procedures and Guidelines underpinning this policy should assist in this process.

The fundamental premise of the SAFE policy is that the rights of students over sixteen and with appropriate mental capacity are recognised as being no different to those of any other young person of the same age:

- Students have the right to be treated with respect and dignity as individuals.

- Students may wish to have opportunities for loving and being loved and to be helped to achieve fulfilling relationships; these will range from platonic friendships to partnerships which include a mutually agreed sexual element.
- Students have a right to receive input from staff which will help them to develop a positive self-image.
- Everyone has the right to represent their own moral, cultural and religious beliefs but nobody has the right to impose these beliefs on anyone else.
- Students have the right of access to information about contraception, information about fertility and safer sex, parenthood and genetic counselling, within the limits of their own, ethical beliefs.
- Students have the right of access to information (allowed by the law) which enables them to understand their own sexuality and to form adult relationships (within the law) of their own choice.
- Students have the right to expect confidentiality of intimate personal information unless there is in the Trust's view a significant risk of harm to themselves or others or it is required to be disclosed by law; in such circumstances the reasons will be recorded and the individual informed.
- Students have the right to form and develop personal relationships and to learn from such experiences; it is Treloar Trust policy to help them so learn.
- Students have the right to seek further advice or follow the complaints procedure should they wish to do so..
- Students and staff equally need protection from abuse and exploitation: both have the right to say no.

### Definition of sexual activity

Human sexuality has many different forms and the ways that people express are many. It is not possible to provide a definition that covers every situation and judgment must always be exercised. If in doubt discuss with your manager, a member of staff who is SAFE trained or the Head of Safeguarding.

In general, sexual activity is defined as that which would normally take place in private, e.g., cuddling may be acceptable in public, but any touching of genitals, whether under or over clothing, is not. This does not mean that non-sexual intimacy, such as kissing, is acceptable in all circumstances. Students are expected to behaviour appropriate to the setting and circumstances.

Other activity will be a precursor to sexual activity. Staff need to be aware that intimate relationships between students of different ages or mental capacity even if not sexual at this point, may be inappropriate. Staff must also be aware of activity whereby an older, more powerful or more able person might be grooming a student for later abusive activity. Such matters should be reported to the Head of Safeguarding

## Procedures and Guidelines

These guidelines are intended as reference points for staff to clarify the statements of needs and rights.

### **1. Legal issues**

The main law governing the SAFE Policy and guidelines is the Sexual Offences Act 2003. Under this Act the legal age for people of any gender to consent to have sex is 16 years whether they are straight, lesbian, gay or bisexual.

The Sexual Offences Act 2003 replaced older legislation, for example by defining rape and consent and introducing a new series of laws to protect children under 16 and vulnerable adults from sexual abuse. However, the law is not intended to prosecute mutually agreed teenage sexual activity between two young people of a similar age, unless it involves abuse or exploitation.

Specific laws protect children under 13, who cannot legally give their consent to any form of sexual activity. There is a maximum sentence of life imprisonment for rape, assault by penetration, and causing or inciting a child to engage in sexual activity. There is no defence of mistaken belief about the age of the child, as there is in cases involving 13-15 year olds.

Sexual activity with adults without capacity is always illegal, as they can never legally give their consent. There should always be a referral made to Social Services or the police in these circumstances.

People with physical disabilities, sensory impairment or learning difficulties are bound by and protected by the same civil and criminal law as other people. In the case of any student over sixteen whose wishes or actions fall within the scope of this policy, their mental capacity will need to be considered. A mental capacity assessment may be necessary for a student with learning difficulties to consider whether he or she is able to give consent to sexual activity. This assessment should be carried out according to the Mental Capacity Act Code of Practice and will involve those medical, nursing, residential and OT staff who know the student; the Head of Safeguarding must be consulted.

All sexual activity must be consensual. It is assessed that a student does not have capacity to consent any sexual activity that does take place would, by definition, be without consent and therefore illegal.

The Sexual Offences Act 2003 also specifies that where a person older than 18 is in a specified "position of trust" it is an offence for them to have any sexual activity with a person under 18.

**See Appendix A below for further information**

### **2 Staff Training**

It will be the responsibility of all relevant line managers to ensure that all staff are acquainted with this policy and are given an opportunity to discuss its implications and application. Staff should be given the opportunity to discuss any concerns about the interpretation of the SAFE policy during supervision with the manager. In-service training will be provided for staff to enable them to examine their personal attitudes and value.

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It shall be the role of relevant line managers to ensure that staff are given adequate and appropriate support and that legal information and other guidelines are available, to enable people to achieve the Trust's policy.

### **3 Respect and Dignity**

All situations should be treated with sensitivity and care, respecting both the responsibilities and rights of students and the values of staff. Physical touching can be an important part of demonstrating care for the students: it should be used in the knowledge that each student will have unique views and needs on this matter.

### **4 Staff and Student relationships - Boundaries**

Staff must be aware that their work role always puts them in a position of power over a student. Even if favouritism or special attention towards a student seems a positive move, it raises the possibility of withdrawing that attention and encouraging the student to become emotionally vulnerable or dependent.

Staff should ask themselves the following if they believe their normal professional relationship is being tested:

- Whose need is this meeting: mine or the students?
- Am I prepared to do this openly or not? If not, why not?
- Will this action leave me/my team/The Trust open to reasonable criticism? If it will, is there anything I can do to safeguard against this?
- What role does the student see me in? Is the student able to see me in more than one role and will this action cause confusion to the student in this area?
- Will this action lead other students to see this student as my favourite?
- If a student objected to this, would/could the student make these feelings known?
- Am I responsible for this student if we meet off duty?
- Will this action undermine the work of other professional staff?
- Am I prepared to record this or have it recorded?

From time to time staff may develop strong attachments to students and *vice versa*. If this occurs it is important to discuss this with a manager. This will enable a plan to be put in place to safeguard the member of staff and the student. Staff must never become involved in an intimate relationship with students. Any breach of this guidance will be regarded as a serious disciplinary matter.

### **5 Own Beliefs and Cultural Awareness**

There is a Trust responsibility to staff and students to provide guidance for those who work here and to encourage the development of consistent working practices. Staff have the right not to provide advice and guidance to students in this area, although they must refer the matter to a nominated member of staff. Even if not providing guidance or assistance, staff must support the policy.

Inequality and discrimination are unacceptable at Treloar's. This includes cultural discrimination. People hold differing religious and cultural values concerning sexual behaviour and these must be supported as long as the rights of others are not impeded. Nothing in the policy implies that any member of staff should promote or assist with any illegal practice.



## **6 Education and Self Image**

Students have the right of access to education and support in relationship building and socio-sexual behaviour to help promote greater social confidence and opportunities for meeting people. This also includes the right to be given information on the responsibilities and realistic expectations of personal relationships. This can be done by tutors in a structured way or informally on the house. All students may attend a variety of workshops with internal and external speakers throughout the year.

Students have a right to knowledge about sexuality which includes learning to communicate about sexuality and to develop the appropriate language and/or communications skills to do so.

Students may approach staff regarding a practical issue e.g. help with accessing a condom machine. They may need only practical help to access the machine and this can be given in the same way a student may need help to access any type of vending machine. The request may also be a way of the student asking to talk about relationships and sex. If staff feel this is the case they can respond as they feel able or refer the student to colleagues, for example house staff, OT, Counsellor, Health Centre and nd members of the Safe team.

## **7 Privacy**

The Trust has a responsibility to provide secure privacy for students. This could be either their bedroom or another room. This will include respect for students wishing to close their bedroom door. Students are allowed to visit students' friends on other houses and units and may shut their doors. Only if staff are concerned about the safety of a student may they interrupt. Students will need to be informed when visits are not allowed. Students will need to negotiate if they share a bedroom with another student.

Staff members should not enter students' rooms without knocking. If a student is disturbed during sexual activity, an apology should be offered and an incident report must be raised. The incident report will not be forwarded unless other staff need to know.

## **8 Limits of Confidentiality**

Students have the right to expect confidentiality of personal information. However, students should be made aware that not everything they say to staff can necessarily be kept strictly confidential and confidentiality may need to be broken in certain circumstances. There are occasions when information needs to be shared to protect the interest of students and/or staff. See information sharing and safeguarding policies for more details.

## **9 Safer Sex Issues -**

### **9a Contraception**

GP Service will advise on all contraceptive methods and issues, and can provide free condoms. Health centre team will signpost support. All students can attend the local Contraception and Sexual Health Services (Solent Sexual Health Service) if they prefer for the same service. Where to access Condoms and Pregnancy tests can be sign posted through the Health Centre or the local Contraception and Sexual Health Services. Information is also available on the houses. Emergency

contraception is available at all times, with confidential support and advice, from the GP or Pharmacist..

The alleviation of staff or parents' anxieties (e.g. as a prophylactic to prevent pregnancy) is not a reason for the introduction of contraception. The instruction and support for couples needing contraception will be crucial to the maintenance of an effective method.

In a rare number of cases, the possibility of sterilisation or vasectomy may be raised. This should be referred to the student's GP who will liaise with the appropriate authorities.

### **9b Pregnancy**

A pregnant student is entitled to make the same choices as any pregnant women. She can continue with the pregnancy and keep the baby, continue with the pregnancy and have the baby adopted, or end the pregnancy by having an abortion. Abortion should not be used as a means of contraception. Once a pregnancy is confirmed a specialist counsellor should be available to work with the student and carers and advice sought from an appropriate medical practitioner. If the student has severe learning difficulties it will be important to give consideration to the appointment of an independent advocate to facilitate decision-making and ensure that the student is aware as far as possible of the process and possible implications. The student's her family's religious and moral beliefs must be given due consideration. The student should make the final decision, subject only to the operation of the law. If she wishes to continue with the pregnancy Trust staff would need to involve not only the student's parents but also the local authority social care service. If an assessment of the student's ability to make a decision under the Mental Capacity Act is necessary, this will be regarded as a major decision and the matter referred immediately to the students' home local authority and Hampshire County Council children (if under 18) or adults social care.

Staff must always consider whether the pregnancy is the result of abuse, particular if the student has learning disabilities. If there is any doubt the matter must be referred to the Head of Safeguarding without delay.

### **9c Sexually Transmitted Infections**

It is important that the students are appropriately informed about how to protect themselves from sexually transmitted diseases. This information is available through the Health Centre, House staff, Safe team and their tutor.

Treloar's has guidance for working with people who are HIV positive or who have hepatitis.

## **10 Information and Choice:**

### **10a Physical affection and "petting"**

The sexual exploration of other people's bodies with their consent is a normal part of development but an activity constrained by social and cultural values. Students should not be more or less constrained than anyone else.

## **10b Sexual Intimacy**

Students have the right to engage in sexual relationships as long as they are consenting, aged at least 16, use a private space and act within the law. From time to time staff may be required to offer more specific help and support relating to sexual relationships. This could be in the form of physical help to facilitate students or advice about sexual positions. Any decisions to assist the couple to be together should be agreed with the Residential Manager. Again, advice and support from staff should be offered on the basis of the policy outline and could mean utilising a specialist counsellor. Staff have the right not to advise students but should remain impartial and refer to a nominated member of staff if necessary.

A group of staff will be selected to assist students with their sexual needs in accordance with this policy and they will receive specific training for this purpose.

Sex, including non-penetrative sex such as student to student masturbation and oral sex, should be seen as normal expressions of sexual desire and acceptable if part of a consensual relationship and in private.

## **10c Sexual pleasure, including masturbation**

Some students may need guidance to learn to masturbate. Any decision to support a student with any aspect of masturbation should be done in consultation with student, discussed with relevant staff, and documented sensitively in advance of any support being given. Decisions on such guidance must be with the agreement of the student.

Some of our students will be unable to masturbate themselves and may seek assistance from staff. It is reasonable for staff to advise a student how to do it, help a student into the necessary position or supply information on necessary aids. Staff may need to seek specialist advice for students who are unable to masturbate themselves. Under no circumstances may staff masturbate a student.

Masturbation should be seen as a normal activity, but one that must take place in private, e.g. a student's own bedroom, or their bathroom or toilet. It would not be considered appropriate to do so in a public or shared space (for example a bathroom in the school or college building).

## **10d Sexual Orientation**

Many students may experience extreme prejudice outside Treloar's and so it is particularly important to create an environment free of prejudice within the organisation.

If staff become aware that a student identifies as lesbian, gay or bisexual (or indeed any other sexual orientation of their own choosing) this must be respected and the student given support in dealing with their feelings. Carers should respect and support the decision of any student who wish to enter onto a relationship, whether the partner is of the same sex or not.

Staff will need to be aware that a student may need support in dealing with questions from their peers questions, bearing in mind that the student is likely to be sensitive to teasing, judgmental comments or discrimination.

## **10e Trans and intersex issues**

Carers should also respect that some students may need support in relation to their transsexual, transgender or intersex identity. It is essential that staff recognise the student's decision and respond appropriately in all aspects of daily living, for example, use of chosen personal name, or

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provision of intimate care by residential staff. Additional support is likely to be required in the form of contacting specialist or professional agencies.

## **11. Protection from Abuse**

Some students may be vulnerable to sexual exploitation. Staff should be alert to relationships that appear to be coercive or otherwise non-consensual. Such sexual activity is likely to constitute a criminal offence and safeguarding procedures must be followed.

Sexual activity under the age of 16 is not legal. If members of staff become aware that a student under the age of 16 is engaged in sexual activity away from the campus, they must report this to the Head of Safeguarding and their line manager. The Head of Safeguarding will liaise with colleagues and decide if safeguarding action is necessary. HSCB child protection procedures give school discretion with reporting to the local authority and not all sexual activity involving under 16-year-olds is considered abuse. Any sexual activity that involves a student who may be unable to give informed consent (regardless of age) must be reported to the Head of Safeguarding. Any sexual activity where it is suspected that clear consent has not been obtained or coercion applied, must be reported to the Head of Safeguarding immediately.

## 11a. Assessing Consent or Abuse

Most sexual activity takes place with the consent of both partners and is not abusive. The following is a guide to help staff and students understand when the relationship is consensual and when it might be abusive, If in doubt always consult a manager.

It is important to note that sexual activity is an 'exempted' decision under the Mental Capacity Act 2005, and that if someone does not have capacity to consent on their own behalf it is not lawful to make a best interests decision on their behalf.

### Factors that could indicate abuse/ exploitation/lack of consent

- One partner is much more dominating than the other.
- One partner fears physical violence from the other.
- If one partner is always penetrated by the other and does not know why.
- A partner being unaware of/uninterested in how their partner becomes sexually aroused and who only engages in vaginal/anal penetration.
- That two people were unknown to each other prior to the sexual contact.
- A person describing sex as something that is 'done to them'.
- A person believing that sex is meant to hurt them.
- Noted difference in cognitive ability
- One partner has severe learning and communication difficulties or finds it hard to make choices and express their wishes.
- Sex occurs when one person has recently started at Treloar's and so is particularly vulnerable.
- Several people name the same individual as doing sexual things they do not like.
- A person having a known history of sexually abusing others
- One partner fears the other will end the relationship if they do not have sex.

### Factors that could indicate consent/mutuality

- Both partners seem to like each other.
- Both partners seek each other out for company and their relationship is not limited to sexual contact.
- Both partners speak positively about each other.
- Both partners want to go off to private/secluded places.
- With less able people, their facial expressions and body language are positive and welcoming of the sexual contact.
- A partner showing that they think about his partner's sexual pleasure.
- Intimate contact that continues beyond one partner's orgasm.
- A woman experiencing sexual pleasure.
- Both partners undressing to a similar extent.

Clearly it is easier to see factors which suggest abuse rather than factors which suggest consent. This places a special responsibility on staff to actively look for signs of consent and mutuality from each partner.

The age of the student is not the only indicator of maturity and their ability to manage an intimate relationship. Staff should discuss any concerns with their line manager or the Head of Safeguarding

### **11b Harassment**

If staff are approached by a student who reports they are being abused, e.g. sexually harassed by another person, then the staff response should be the same as that for any other unwanted student behaviour and refer to the Head of Safeguarding for advice. Harassment can take many forms.

If a staff member is concerned about what seems to be an unequal relationship but the student says they are happy with the relationship, the temptation may be to interfere. Before taking any action staff will need to discuss with colleagues if a different interpretation can be made. Action needs to be directed by the student unless safeguarding issues are involved.

The Trust has a duty to take such steps as are reasonable to protect students who may be vulnerable to exploitation. Where individuals can give meaningful consent to activities, then their wishes must be respected. Staff need to be alert to the possibility of abuse and should refer to safeguarding procedures and seek advice from the Head of Safeguarding.

A student who is assessed as unable to give consent to sexual activity is especially protected in law. Any concern should be discussed with managers, the GP and the Head of Safeguarding.

If staff have any concerns that a sexual assault has taken place they must refer to safeguarding procedures and contact the Head of Safeguarding without delay

### **11c Friends and Partners Visiting the Treloar campus**

A student may wish to invite a friend who is not also a Treloar student into their bedroom. Any visitors would need to be 'signed in' in the normal way, and show due regard for the wishes and safety of other students.

## **12. Parental Involvement**

Parents, whilst having no legal rights over their adult children, will invariably feel concern and a responsibility to protect, guide, care for, advise their son or daughter. Their contribution can be of great benefit to their son or daughter.

Parents may need help in coming to terms with their son's or daughter's sexuality. Staff need to be aware of this and offer support to parents as appropriate through the Residential Manager or Deputy.

## **13. Risk Taking**

Students have often been highly protected and consequently denied the opportunity to make decisions or learn about the consequences of their actions - good or bad. Opportunities should be available for students to take part in the full range of personal and social activities, provided that appropriate counselling, medical advice and support are available. With due regard for confidentiality, staff may wish to confer with colleagues to assess the degree of participation in such activities which is realistic for each individual student.

## **14. Pornography**

An interest in sexual literature may be seen as a normal part of growing up and exploring one's sexuality. Students should be helped to understand that explicit material can give a distorted picture of sexuality and may degrade the dignity of people. Where students wish to have such material they should be advised that it must not be shown to students under eighteen and should be read or viewed in private. Materials which are illegal are not permitted within the Trust premises, and should always be reported to the Head of Safeguarding.

Staff have the right not to assist students to access pornography but should remain impartial and refer to another staff member if necessary.

All should be aware that whilst students can consent to sexual relationships at 16, the relevant age in relation to indecent images is 18. It is a crime to make, possess, take distribute or show anyone an indecent image of anyone under 18 years of age. This would include students taking images of themselves. The Head of Safeguarding should be contacted immediately in this case.

### **14a Commercial Arrangements - Prostitution**

Very occasionally, older students may wish to visit commercial sex workers. Visiting a commercial sex worker is not in itself an illegal activity and therefore staff may facilitate such a visit but only with prior agreement from the Principal who would give due regard the student's safety, mental capacity, expectations of the visit, sexual health, and accessibility of the premises being visited. Legal advice should always be sought in each case before any assistance is offered.

Facilitation is limited to giving advice on safe sexually matters, ensure contraception is available and transporting the student to relevant premises. Staff must not make direct contact with the sex worker as this could be construed as criminal activity.

No sex worker may come onto Treloar's premises.

## **15. Further Advice and Complaints**

Students may choose to seek information and advice from a range of sources. (See Appendix B).

Students and staff may discuss any concerns with whichever member of staff they feel comfortable.

## 16. Implications of Policy/Procedure

### Training Requirements

- All care staff will receive an introduction to the policy. Extended training will be available to staff who wish to advise and assist students.

### Communication Requirements

How will the Policy/procedure be communicated:	HODs Sharepoint
Who will ensure the above communication is carried out:	Head of Safeguarding, Managers, SAFE team
Do the changes made to this policy/procedure affect any other policies/procedures? If yes, has this been communicated to the policy/procedure author/owner	No

### Monitoring and Review

The policy will be monitored by the Head of Residential Services, Head of College and Head of Safeguarding

### Links to other related policies, procedures or documents (internal)

- Safeguarding Policy and procedures
- School Sex and Relationships Education (SRE) policy
- Mental Capacity assessment procedure
- Student Complaints procedure

### Further sources of information (external)

Crown Prosecution Service Factsheet

[http://www.cps.gov.uk/news/fact\\_sheets/sexual\\_offences/](http://www.cps.gov.uk/news/fact_sheets/sexual_offences/)

- LSCB Child Protection Procedures
- Hants Adult Safeguarding Policy
- Relationships Education, Relationships and Sex Education (RSE) and Health Education – statutory guidance

### Revision History

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Listed below is a brief audit trail, detailing amendments made to this policy procedure in last 4 years

Page/para No.	Brief description of the change(s)	Change made by	Date
All	Reduction in detail of policy to aid accessibility	Head of Safeguarding	Dec 13
Para 14a	Introduces requirement to seem legal advice		Dec 13
Page 2	Explanatory note extending policy to relevant school students	Head of Safeguarding	April 2016
Page 4	Definition of sexual activity and note of acceptability of non sexual intimate activity	Head of Safeguarding	April 2016
Page 10	Additional note on abuse	Head of Safeguarding	April 2016
Throughout	General updates throughout the document	Head of Safeguarding	May 2020
Page 9	Review of content to check will FFP Changes to section 9a on Contraception	Head of Safeguarding	August 2022

#### IMPORTANT NOTES:

It is essential for those with designated responsibilities to familiarise themselves with the sources of information, referred to above.

Policy documents describe mandatory minimum standards and will be subject to audit and review. Line managers are required to ensure suitable and sufficient arrangements are in place to meet policy requirements, including the provision of information and instruction to staff.

## **Appendix A – Sex and the law**

### **What are sexual offences?**

Sex offences are crimes that are covered by the Sexual Offences Act 2003.

The first part of the Act covers sexual offences. The second part covers offenders with an emphasis on the protection of vulnerable individuals.

It gives a comprehensive list of sex offences to protect individuals from abuse and exploitation, and is designed to be fair and non-discriminatory.

### **Rape and consent**

Rape includes penetration of the mouth as well as penetration of the vagina or anus by the penis.

The new measures of consent are designed to redress the balance in favour of victims without prejudicing the defendant's right to a fair trial, to help juries reach just and fair decisions on this difficult area of criminal law:

- Consent is defined by law as: a person consents if he or she agrees by choice to the sexual activity and has the freedom and capacity to make that choice.
- All the circumstances at the time of the offence will be looked at in deciding whether the defendant is reasonable in believing the complainant consented.
- People will be considered most unlikely to have agreed to sexual activity if they were subject to threats or fear of serious harm, unconscious, drugged, abducted, or were unable to communicate because of a physical disability.

### **Child sex abuse**

Those accused of child rape can no longer argue that the child consented. Any sexual intercourse with a child under 13 will be treated as rape. Other non-consensual offences against children under 13 are sexual assault by penetration, sexual assault, and causing or inciting a child to engage in sexual activity.

There are new offences of sexual activity with a child under 16. These cover a range of behaviour, involving both physical and non-physical contact. As children and young persons commit sexual crimes on other children, these offences apply also to persons under 18.

### **Prosecutions of persons under the age of 18**

The age of consent is 16. Because children can and do abuse and exploit other children, the Act makes it an offence for children under 16 to engage in sexual activity, to protect children who are victims.

However, children of the same or similar age are highly unlikely to be prosecuted for engaging in sexual activity, where the activity is mutually agreed and there is no abuse or exploitation.

The Crown Prosecution Service has issued guidance to prosecutors, which sets out the criteria they should consider when deciding whether or not it is in the public interest to bring a prosecution. LSCB child protection procedures must be followed.

### **How does the law affect those who advise children?**

A person does not commit an offence of aiding or abetting a child sex offence if they give advice to children in order to:

- protect them from sexually transmitted infection,
- protect their physical safety,
- prevent them from becoming pregnant, or
- promote their emotional well-being.

This means that parents, doctors, other health professionals, in fact anyone can provide sexual health advice to children as long as their only motivation in doing so is the protection of the child. However, people who cause or encourage the child to engage in the activity, or 'advise' children for their own sexual gratification, will be liable to prosecution.

### **What about abusive parents and carers?**

Child sex offences cover not only assaults by blood relatives but also foster and adoptive parents and live-in partners.

To protect vulnerable 16 and 17 year olds, the offences of 'abuse of a position of trust' prohibits sexual contact between staff (including volunteers) and children under 18 in schools, colleges and residential care.

### **Sexual offences involving the Internet, and 'grooming'**

To combat increasing sexual approaches to children on-line, there is a new offence of meeting a child following sexual grooming. This makes it a crime to befriend a child on the Internet or by other means and meet or intend to meet the child with the intention of abusing them. The maximum sentence is 10 years imprisonment. A new civil preventative order, the Risk of Sexual Harm Order, may be imposed which will prohibit adults from engaging in inappropriate behaviour such as sexual conversations with children on-line.

### **How are convicted sex offenders monitored?**

Convicted sex offenders have to:

- report each year to their local police regardless of whether their circumstances have changed
- inform the police if they change their name or address within three days (previously fourteen days)
- disclose if they spend seven days or more away from home
- supply their national insurance number

Failure to report is a criminal offence that carries a prison term of up to five years. Other preventative measures include:

- Sex Offender Preventative Orders can be imposed on anyone convicted of a serious violent offence if there is evidence that they pose a risk of causing serious sexual harm.
- "Sex tourists" convicted of sex crimes abroad may have to comply with the notification requirements.
- Courts in certain circumstances, can prohibit those convicted of a sexual offence against a child under 16 from travelling abroad.
- Police can apply for a Risk of Sexual Harm Order against any person thought to pose a risk to children under 16.

#### **Other Offences in the 2003 Sexual Offences Act**

- trafficking persons for the purposes of sexual exploitation;
- child abuse through prostitution and pornography. These include:
  - buying sexual services of a child,
  - causing, encouraging, arranging or facilitating child prostitution or pornography, and
  - controlling any of the activities of a child involved in prostitution or pornography;
- sexual abuse of vulnerable persons with a mental disorder. These include situations where:
  - they are unable to refuse because of a lack of understanding,
  - they are offered inducements, threatened or deceived, and
  - there is a breach of a relationship of care, by a care worker;
- voyeurism, that criminalises those who watch for sexual gratification people engaged in a private act without their consent;
- exposure, where a man or woman exposes their genitalia with intent to cause alarm or distress;
- preparatory offences, such as:
  - drugging a person with intent to engage in sexual activity with that person;
  - committing any offence with intent to commit a sexual offence; and
  - trespassing on any premises with intent to commit a sexual offence;
- engaging in sexual activity in a public lavatory.