

# **SHROPSHIRE AND TELFORD & WREKIN** **LOCAL SAFEGUARDING CHILDREN BOARDS**

## **PROTOCOL**

### **WORKING WITH SEXUALLY ACTIVE YOUNG PEOPLE UNDER THE AGE OF 18**

- 1.1 This protocol has been drafted in the recognition that most young people under the age 18 will have a healthy interest in sex and sexual relationships. It is designed to assist those working with young people to identify where these relationships may be inappropriate and/or abusive and where the young people or others may need the provision of protection or additional services.
- 1.2 All young people, of either gender, who are believed to be engaged in, or planning to be engaged in, sexual activity should have their needs for health education, advice and support and/or protection assessed by the agency involved. It is suggested that this may be effectively achieved through the Common Assessment Framework. This is contained in the IRT/ISA Toolkit.
- 1.3 This assessment should be carried out in accordance with the guidance in *Working Together* and the *Framework of Assessment* and with due regard to the factors identified below in this protocol.
- 1.4 In assessing the nature of any particular behaviour, it is essential to look at the circumstances of the actual relationship between those involved. Power imbalances are very important and can occur through differences in size, age and development and gender, sexuality, race and levels of sexual knowledge. These may be used to exert such power within the relationship and result in exploitation.
- 1.5 If the young person has a learning disability or communication difficulty and cannot easily understand the situation or be able to make a “real choice” or to inform or intimate to someone that they have been abused, then the behaviour may well have been abusive. There will be an imbalance of power if the young person’s sexual partner is in a position of trust in relation to them, as detailed in the Sexual Offences Act 2003. The Act describes a *Position of Trust* as one in which a person is “involved in caring for, training, supervising or being in sole charge of a (young) person”. (Section 21 SO Act 2003).
- 1.6 Factors to Consider**  
In order to determine whether the relationship presents a risk to the young person, the following factors must be considered:
- whether the young person is competent to understand, and consent to, the sexual activity they are involved in

- the nature of the relationship between those involved, particularly if there are age or power imbalances as outlined above
  - whether overt aggression, coercion or bribery was involved including the misuse of substances as a disinhibitor
  - whether the young person's own behaviour, for example through misusing substances, places them in a position where they are unable to make an informed choice about the activity
  - any attempts to secure secrecy by the sexual partner beyond what would be considered usual in a teenage relationship
  - whether the sexual partner is known by the agency as having other relationships with similar young people that have caused concern because of their nature. In such cases Social services will always link with the Police to collate information to ensure that regular "perpetrators" are recorded and recognised. It may then be pursued through the Multi Agency Public Protection Arrangements (MAPPA).
  - whether the young person denies, minimises or accepts concerns
  - whether methods used to secure compliance and/or secrecy by the sexual partner are consistent with behaviours considered to be 'grooming' for the purpose of sexual exploitation and abuse
- 1.7 If, at this stage, you have concerns that the young person may be at risk of sexual exploitation through prostitution, please refer to the Local Safeguarding Children Board's Protocol for dealing with Sexual Exploitation. Advice can also be sought on a "no names basis" from the Social Services' Helpdesk or the Police Family Protection Unit. (See appendix 4 for contact details).

## **2. Process**

- 2.1 In working with a young person, it must always be made clear to them at first contact that absolute confidentiality cannot be guaranteed. There will be some circumstances where the young person can only be safeguarded by sharing information with others. Whenever it is consistent with ensuring the safety of the young person their consent should be obtained.
- 2.2 On each occasion that a young person is seen, consideration should be given as to whether their circumstances have changed or further information is gained that may lead to heightened concerns that may require a referral or re-referral.
- 2.3 In some cases urgent action may need to be taken to safeguard the welfare of a young person. However, in most circumstances there will need to be a process of information sharing and discussion in order to formulate an appropriate plan.

2.4 Anyone concerned about the sexual activity of a young person should initially discuss this with the person or section in his or her agency responsible for child protection. There may then be need for further consultation with a member of the Social Services Helpdesk. Advice can be given on a no names basis but that discussion may then lead to a decision that a referral is appropriate.

2.5 All discussions should be recorded, giving reasons for any action taken and a record of those involved to support the professional decisions made. It is important that all decision-making is undertaken with full professional consultation and never by one person alone.

2.6 Following any referral to Social Services (as outlined in section 4 of the Shropshire and Telford & Wrekin Local Safeguarding Children Board) (available on the respective Internet and Intranet sites) there will be one of these responses:

- the facts will be noted and no further action considered necessary
- an initial assessment will be undertaken which may identify the young person as a being a child in need and additional services provided.
- an initial assessment undertaken which may identify the young person as a child at risk of significant harm and in need of child protection intervention. A Strategy Meeting will have identified whether to include the Police in this investigation, and if so, in what manner. The Referring Agency, and other agencies, will usually be involved in this Strategy discussion or meeting

2.7 Wherever possible, appropriate support should be offered to the young person and agencies should continue to offer the services identified as necessary.

### **3. Young people aged 12 and under**

3.1 In **all cases** where the sexually active young person is under the age of 13, there must be a formal referral to the Social Services Helpdesk who will make an enquiry of the Child Protection Register and will consult with partner agencies, including the Police (See referral Process in Appendix 1). This discussion should be informed by the assessment undertaken using the DfES Guidance LASSL (2004) 21 (See attachment 1) and that detailed above in this Protocol. The young person will need to be identified, as will their sexual partner where their details are known.

3.2 Police and Social Services may hold vital information that will assist in any clear assessment of risk. Consideration will need to be given as to the advisability of instigating criminal or civil proceedings in respect of both parties.

3.3 Supporting a victim in making a complaint to the Police should be the subject of professional judgement, taking advice as and when appropriate.

3.4 Under the Sexual Offences Act 2003 any young person under 13 is not deemed competent to give informed consent to any sexual activity. It is expected that consideration will be given to a prosecution in the majority of cases where a person is sexually active with a child under the age of 13.

3.5 Action to be taken when a girl under 13 is found to be pregnant will be informed by the in-house protocols of Social Services and the Police, but again, such girls should **always** be the subject of a discussion with Social Services.

#### **4. Young people aged between 13 and 16 years**

4.1 The Sexual Offences Act 2003 reinforces that, whilst mutually agreed, non-exploitative sexual activity between teenagers does take place; the legal age still remains at 16. This acknowledges that young people of this age are still vulnerable, even when they do not view themselves as such.

4.2 The needs of sexually active young people in this age group will require assessment using this protocol (see paragraph 1.6). Should this assessment raise concerns, details of the circumstances must be referred to the Social Services Helpdesk who will check what information is known concerning the couple and will liaise with the Police Family Protection Unit.

4.3 It is not expected that totally consensual sexual activity between young people of similar age in an even-balanced relationship and where there are no other concerns, will lead to a formal investigation or to prosecution. It is clearly not the Police's intention to investigate and prosecute all allegations of under age sexual activity.

4.4 If there are concerns then a referral will be necessary as outlined in Appendix 1 of this protocol.

4.5 The same considerations as to making a criminal complaint will apply as previously stated, e.g. a significant age difference, the abuse of power in the relationship etc.

4.6 This difference in procedure reflects the position that, whilst sexual activity under 16 remains illegal even where consensual, young people under the age of 13 are deemed in law unable to give consent to any sexual activity.

#### **5. Young people aged 16 and 17 years**

5.1 Although sexual activity in itself is not an offence over the age of 16, young people under the age of 18 are still offered the protection of the Children Act 1989 as outlined in the Child Protection Procedures (see paragraph 2.6) and the Sex Offences Act 2003.

5.2 Consideration needs to be given to issues of sexual exploitation through prostitution and the abuse of power in circumstances outlined in paragraph 1.6. Young people, of course, can be subject to offences of rape and assault and the circumstances of an incident will need to be explored with a young person.

5.3 Young people aged 16 and 17 are not deemed in law 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 (See paragraph 1.5).

5.4 It is important that the vulnerability of young people of this age is considered as well as their age.

## **6. Pregnant Teenagers**

6.1 Any girl, either under or over the age of 13, who is pregnant, should be offered specialist support and guidance by the relevant services. The need for, and nature of, services will also be a part of the assessment of the young person's circumstances.

## **7. Sharing information with parents**

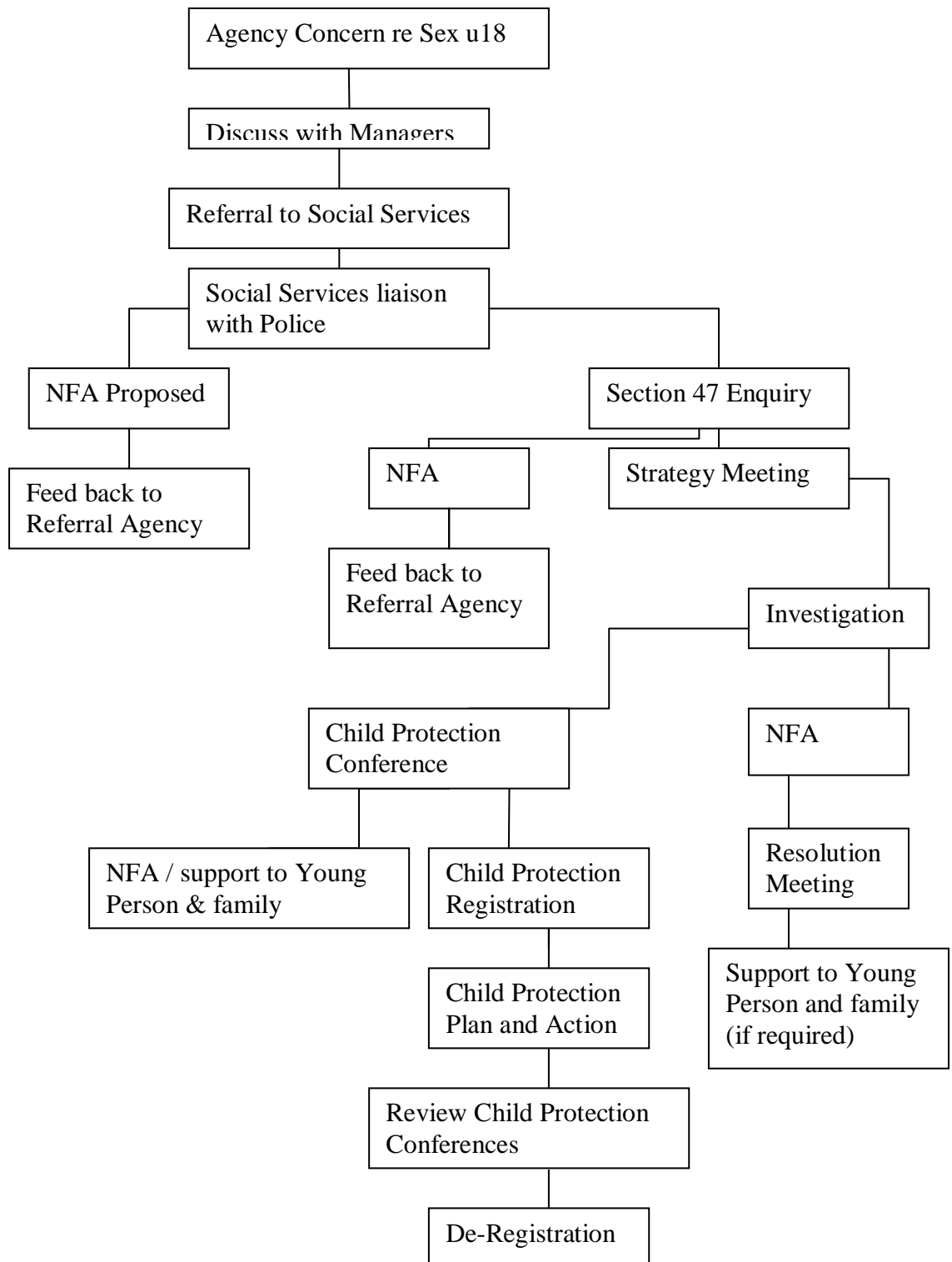
7.1 Decisions to share information with parents will be taken using professional judgement and in consultation with the Child Protection Professionals involved. Decisions will be based on the child's age, maturity and ability to appreciate what is involved in terms of the implications and risks to themselves. It is important that the young person's consent is sought and obtained where this is consistent with their safety and welfare.

7.2 This should be coupled with the parents' ability and commitment to protect the young person. Given the responsibility that parents have for the conduct and welfare of their children, professionals should encourage the young person, at all points, to share information with their parents wherever it is safe to do so.

7.3 This protocol is written on the understanding that those working with this vulnerable group of young people will, naturally, want to do as much as they can to provide a safe, accessible and confidential service whilst remaining aware of their duty of care to safeguard them and promote their well being in accordance with the Children Act 1989.

## APPENDIX 1

### Referral Process



## APPENDIX 2

# Department for Education and Skills

## LOCAL AUTHORITY SOCIAL SERVICES LETTER LASSL (2004)21

To: The Director of Social Services

August 2004

### Handling allegations of sexual offences against children

#### 1. SUMMARY

1.1 This LASSL draws your attention to Recommendations 12 and 13 of the Bichard Inquiry, which are about the handling of allegations of sexual offences against children.

1.2 It reminds you of the guidance set out in 'Working Together to Safeguard Children' on this subject, and in the guidance to all social care practitioners on enabling young people to access contraceptive and sexual health information and advice issued alongside this letter, and explains that further guidance will be issued in due course.

#### 2. BACKGROUND

2.1 Following Ian Huntley's conviction in December 2003 for the murders of Jessica Chapman and Holly Wells, the Home Secretary, David Blunkett, asked Sir Michael Bichard to conduct an independent inquiry into child protection measures, record keeping, vetting and information sharing in Humberside Police and Cambridgeshire Constabulary. The report of the inquiry was published on 14<sup>th</sup> June 2004. All his recommendations have been accepted by the Government.

2.2 Sir Michael's two recommendations about the handling of allegations of sexual offences against children are:

##### **Recommendation Number 12**

*"The Government should reaffirm the guidance in 'Working Together to Safeguard Children' so that the police are 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."*

##### **Recommendation Number 13**

*"National guidance should be produced to inform the decision as to whether or not to notify the police. This guidance could usefully draw upon the criteria included in a local protocol being developed by Sheffield Social Services and brought to the attention of the inquiry."*

*The decision would therefore take account of:*

- *Age or power imbalances;*
- *Overt aggression;*
- *Coercion or bribery;*
- *The misuse of substances as a disinhibitor;*
- *Whether the child's own behaviour, because of the misuse of substances, places him/her at risk 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 sexual partner is known by one of the agencies (which presupposes that checks will be made with the police);*
- *Whether the child denies, minimises or accepts concerns; and*
- *Whether the methods used are consistent with grooming.*

2.3 Paragraph 3.61 of *Working Together to Safeguard Children (1999)*, a guide to interagency working to safeguard and promote the welfare of children, states that:

*"The police should be notified as soon as possible where a criminal offence has been committed, or is suspected of having been committed against a child. This does not mean that in all such cases a criminal investigation will be required, or that there will necessarily be any further police involvement. It is important, however that the police retain the opportunity to be informed and consulted, to ensure all relevant information can be taken into account before a final decision is made."*

2.4 This is reinforced in paragraph 5.8, which says:

*"Whenever the Social Services department (or the NSPCC if relevant) encounters or has a case referred to it which constitutes, or may constitute a criminal offence against a child, it should always inform the police at the earliest opportunity."*

and goes on to make clear that:

*“This will enable both agencies to consider jointly how to proceed in the best interests of the child. In dealing with alleged offences involving a child victim, the police should normally work in partnership with social services and/or child welfare agencies. There will be cases where, after discussion, it is agreed that the best interests of the child are served by Social Services-led intervention rather than a full police investigation.”*

2.5 *Working Together to Safeguard Children* is issued under section 7 of the Local Authority Social Services Act 1970, which means that local authorities must follow it except where exceptional circumstances justify a variation. Sir Michael Bichard refers (in paragraph 4.50 of his report) to circumstances where social services might not pass on information about young people’s sexual activity to the police, saying:

*“This seems likely to include cases where there is a sexual relationship which is considered to be consensual and not abusive.”*

2.6 There is evidence that young people having under-age sex are the group least likely to use contraception and therefore the group at most risk of unwanted pregnancy and sexually transmitted infections. A key reason for this is that they have concerns that disclosure of mutually agreed sexual activity will lead to a referral to social services or the police. A strategy of formal referral to the police of every case of sexual activity of under 16 year olds is therefore likely to have a negative effect on young people seeking support.

2.7 The guidance to social care practitioners on enabling young people to access contraceptive and sexual health information and advice, *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* (2004), published alongside this letter, says:

*“Although the age of consent remains at 16, it is not intended that the law should be used to prosecute mutually agreed teenage sexual activity between two young people of a similar age, unless it involves abuse or exploitation. However, the younger the person, the greater the concern about abuse or exploitation.*

*It is therefore expected that local policies and protocols will reflect the need for social care practitioners to use their discretion in weighing up the circumstances of each individual case to determine whether a formal notification to the police is necessary.”*

2.8 It goes on to make clear that practitioners should discuss cases of concern informally with the police, before deciding whether or not to make a formal referral. This will be important in assessing whether or not a relationship is abusive, and whether or not one or other partner is known to another agency because of concerns about a previous relationship.

2.9 *What To Do If You're Worried A Child Is Being Abused* makes clear that following a referral, social workers and their managers should decide on the next course of action within one working day, and record this decision on the Referral and Information Record. Further action may include undertaking an initial assessment, referral to other agencies, provision of advice or information, or no further action. Information recorded should therefore include the decision whether or not to discuss with the police, and whether or not to make an onward referral, to the police or another agency. In addition, a decision to discuss with or refer to the police may be taken at other points in time, as information may become available during an assessment or whilst working with a child or family, and this should also be recorded.

2.10 Sir Michael also makes a recommendation that “*the Integrated Children’s System should record those cases where a decision is taken **not** to refer to the police*”, and that the Commission for Social Care Inspection should, as part of any Social Services’ inspection, review whether decisions not to inform the police have been properly taken.

2.11 The confidentiality section in paragraphs 7.32 to 7.33 of ‘Working Together’ states that:

*“Personal information about children and families held by professionals and agencies is subject to a legal duty of confidence, and should not normally be disclosed without the consent of the subject. However, the law permits the disclosure of confidential information necessary to safeguard a child or children in the public interest: that is, the public interest in child protection may override the public interest in maintaining confidentiality.”*

2.12 This is reiterated in the guidance recently issued by the Department of Health to health professionals about the provision of advice and treatment to young people under 16 on contraception, sexual and reproductive health (Department of Health. *Best practice guidance for doctors and other health professionals on the provision of advice and treatment to young people under 16 on contraception, sexual and reproductive health* (2004)).

2.13 The Government intends to consult on further guidance on handling allegations of sexual offences against children as part of the forthcoming guidance under the Children Bill on Local Safeguarding Children Boards.

### 3. ACTION

#### 3.1 Authorities are asked to take the following action:

- In response to Recommendation 12 from the Bichard Inquiry Report, remind staff of the guidance in *Working Together To Safeguard Children* (1999), and set out in the guidance to social care practitioners issued alongside this letter about handling allegations of sexual offences to young people aged under 16 (which is set out in this letter); and
- Note that further guidance on this issue will be included in the guidance on Local Safeguarding Children Boards to be issued under the Children Bill.