



Under-16s and confidentiality

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At FPA, we are aware that in some cases professionals have confused genuine child protection concerns with the confidentiality which is owed to young people accessing sexual health services. FPA shares the aim to identify and protect young people who are at risk. However, we believe that protecting young people's confidentiality is also essential to their welfare. FPA is committed to the principle that under-16s – including those under 13 – should be able to get confidential sexual health advice and treatment, and we believe that professionals working with young people must protect their right to confidentiality in all but the most exceptional cases. As current guidance from the Department of Health in England states, confidentiality should only be breached when “there is a risk to the health, safety or welfare of a young person or others which is so serious as to outweigh the young person's right to privacy”¹, when agreed child protection protocols should be followed (emphasis added).

Both the law and professional guidance are clear that young people, including those under 13, are entitled to confidentiality when accessing sexual health services. Where young people are using sexual health services, it is crucial that professionals do not confuse child protection issues with the normal sexual development of young people. Rather, FPA believes that professionals must be supported in making an expert judgement in each individual case based on their knowledge, skills and expertise as well as the facts of the case, but recognising that the younger the patient, the greater will be the concerns to ensure that the sexual activity is not abusive or coercive. This position is supported by professional bodies including the British Medical Association and the Royal College of Nursing.

Evidence shows that young people worry a great deal about the confidentiality of sexual health services, and this is one of the main reasons why they fail to seek professional advice. If young people are denied access to confidential services, this will close off their opportunity to discuss sexual health and gain advice from trained health professionals, as well as making them more vulnerable to unwanted pregnancies and sexually transmitted infections. In addition, ensuring confidentiality means that those who are at risk or who are being exploited can start to disclose these issues to a trusted professional who, with time, can help them to deal with the situation.

Further information:

Both the Sexual Offences Act 2003² and the Department of Health 'Best practice guidance for doctors and other health professionals on providing advice and treatment to young people under 16 on contraceptive, sexual and reproductive health'³, make clear that young people under the age of 16 are entitled to confidential advice and treatment when accessing sexual health services. Specifically, the Department of Health guidance confirms that "The Sexual Offences Act 2003 does not affect the duty of care and confidentiality of health professionals to young people under 16"⁴.

Furthermore, when the Sexual Offences Act came into force on 1 May 2004, the Home Office published an explanatory leaflet for professionals which states that "Although the age of consent remains at 16, 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. *Young people, including those under 13, will continue to have the right to confidential advice on contraception, condoms, pregnancy and abortion*"⁵.

The guidance to social care practitioners on enabling young people to access contraceptive and sexual health information and advice further reinforces that local discretion must be allowed in assessing cases of under-16 sexual activity. It states: "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"⁶ (emphasis added). This was highlighted in a letter to local authorities in August 2004⁷.

Following the implementation of the Sexual Offences (Northern Ireland) Order in February 2009 a similar situation now exists in Northern Ireland. The Sexual Offences Order brought the legislation on sexual offences in Northern Ireland into line with the law in England and Wales, including lowering the age of consent to 16. Guidance produced by the Northern Ireland Office about the Sexual Offences Order states that "the law is not intended to criminalise mutually agreed activity between two young people of a similar age or understanding, unless it involves abuse, exploitation or harm"⁸. It goes on to confirm that "young people will still have the right to access confidential advice on contraception, condoms and pregnancy, even if they are under 16"⁹. However, services and professionals in Northern Ireland still have a mandatory duty to report all sexual activity involving young people under the age of 13.

The Sexual Offences (Scotland) Act 2009, which came into operation in December 2010, brought much of the legislation relating to young people's sexual activity into line with the rest of the UK. It also included a specific clause which made it clear that consensual sexual activity between two young people between the ages of 13 and 15 would be an offence. The Scottish Government

issued guidance¹⁰ for professionals on their responsibilities under the law which stated: 'The law continues to make clear that society does not encourage sexual intercourse in young people under 16, as it can be a cause of concern for their welfare. It does not follow that every case has child protection concerns and it is important to ensure that a proportionate response is made and that only appropriate cases are brought to the attention of social work and the police.' Young people in Scotland continue to have a right to access sexual health services.

¹ Department of Health, *Best practice guidance for doctors and other health professionals on providing advice and treatment to young people under 16 on contraceptive, sexual and reproductive health* (London: DH, 2004)

² *The Sexual Offences Act 2003* (London: TSO, 2003)

³ *Op cit* no 1

⁴ *Ibid*

⁵ Home Office, *Working within the Sexual Offences Act 2003* (London: Home Office, 2004)

⁶ Teenage Pregnancy Unit, *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*, (London: TPU, 2004)

⁷ Department for Education and Skills, *Local Authority Social Services Letter: LASSL (2004) 21*, (London: DfES, August 2004)

⁸ Northern Ireland Office, *Safer from sexual crime: protecting children and young people* (London: NIO, 2009)

⁹ *Ibid*

¹⁰ Scottish Government, *National Guidance – Under-age sexual activity: Meeting the needs of children and young people and identifying child protection concerns* (Edinburgh: Scottish Government, 2010)