

# City of York Safeguarding Children Board

## Interagency procedure for children who sexually harm

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## GUIDANCE

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### Principles

- The purpose of all intervention is the protection of children. Many young people who sexually abuse others have themselves been harmed and this should always be considered

- Sexual abuse by children is as harmful to victims as sexual abuse by adults
- Early identification and intervention are essential in the prevention of future sexual harm
- Children who sexually harm other children should be held responsible for their behaviour whilst also being considered to be children in need of services.
- Where possible parents/carers need to be involved in supporting children in dealing with this behaviour
- Children who sexually harm should be held accountable for their behaviour
- A multi-disciplinary/agency approach is the most effective way of addressing concerns regarding a child's sexually harmful behaviour

## **Recognition of sexually harmful behaviours**

All sexual contact with a child under the age of 16 is a criminal offence, irrespective of the age of both children. However, it is recognised that children will have an interest in sex and sexual relationships and many will engage in sexual activity (for further information please refer to the CYSCB's guidance on *Sexually active young people*).

Defining what behaviour is appropriate and what is harmful can be difficult. Most definitions acknowledge that abuse is bound up with concepts of consent, power and exploitation and define sexual abuse as meaning that force or coercion has been used upon another child to ensure participation. When considering the question of the consent the following may be useful:

*'Consent is based on choice. Consent is active not passive. Consent is possible only when there is equal power. Forcing someone to give in is not consent. Going along with something because of wanting to fit in with the group is not consent... If you can't say 'no' comfortably then 'yes' has no meaning. If you are unwilling to accept 'no' then 'yes' has no meaning,' (Adams et al, 1984).*

Professionals must decide in each case whether or not sexual behaviour exhibited by the child should be categorised as abusive or not. It will be helpful to consider the following factors:

- The relative chronological and developmental age of the children (the greater the difference the more likely the behaviour should be defined as abusive)
- A differential in power or authority (relating to the age, physical or intellectual vulnerability of the victim)

- The actual behaviour (both physical and verbal factors must be considered)
- Whether the behaviour could be described as age appropriate or involves inappropriate sexual knowledge or motivation
- Physical aggression, bullying, coercion, threats or bribery
- The victim's experience and perception of the behaviour
- Attempts to ensure secrecy

When there is concern or an allegation of a child having been sexually abused or being likely to sexually abuse another child, a referral must be made to Children's Social Care, or where there is concern about a child's immediate safety, the Police.

## **PROCEDURE**

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### **Principles**

Three key principles should guide work with children who sexually harm:

- there should be a coordinated multi-agency approach including youth justice (where appropriate), children's social care, education including educational psychology) and health (including CAMHS) agencies and the police
- the needs of children who sexually harm should be considered separately from the needs of their victims; and
- a multi-agency assessment should be carried out in each case, appreciating that these children may have considerable unmet developmental needs, as well as specific needs arising from their behaviour

### **Referral**

All cases relating to a child exhibiting sexually harmful behaviour must be referred to Children's Social Care (CSC).

### **Strategy meeting**

On receipt of a referral, a strategy meeting should take place, within 48 hours.

Agency involvement in the strategy meeting will depend on the individual circumstances. However, all strategy meetings must be chaired by Children's Social Care with the Police present although involvement by other relevant agencies must always be considered.

Additional membership of the strategy meeting may include:

- Schools, nursery or Further Education providers
- Youth Offending Team
- Health personnel
- CYC Press Office
- CYC legal advisor
- 3<sup>rd</sup> Sector organisation
- Any other person who may have relevant information or expertise

The overall purpose of a strategy meeting is to ensure a coordinated interagency response to dealing with children who sexually harm and their victims and the free exchange of information.

The specific areas that a strategy meeting must always ensure are:

- As far as reasonably possible, that the facts are established and a judgement made (using the balance of probability) as to whether the alleged event occurred. This will be achieved by ensuring interagency cooperation with:
  - A criminal investigation *or where the police are unable to proceed*
  - Civil enquiries undertaken under either s47 or s17 of the Children Act 1989
- The risk posed by the alleged perpetrator is assessed in relation to:
  - The victim
  - Any siblings or other children related children
  - The community
- The risk is assessed towards the alleged perpetrator in respect of:
  - Being a victim of abuse
  - Being a suspect
- The protection and welfare needs are evaluated in respect of:
  - The victim
  - Alleged perpetrator

- Others
  - The effective management of the case including any potential media interest

Strategy meetings should always be recorded and the minutes attached to the child's records on the Children's Social Care database.

The strategy meeting process must continue until such time that all actions and recommendations are completed and until it is assessed that the risk, along with the welfare needs of the victim and offender, can be managed without requiring further meetings.

## **The investigation**

Where a child is over the age of criminal responsibility and is alleged to have committed an offence, the first interview must be undertaken by the police. Where the child is under the age of criminal responsibility, or where they are assessed that their intellectual capacity renders them as unable to understand the consequences of their behaviour, the strategy meeting will decide the most appropriate course of action in relation to any investigation.

It is the responsibility of the Police to decide whether an allegation or concern amounts to a criminal offence. However, when deciding to prosecute a young person, the Police and the Crown Prosecution Service should seek advice from relevant child care professionals (see CPS guidance – appendix 1) <sup>1</sup>

The Police must always be sensitive to the possibility that the alleged perpetrator may also be a victim. When a child discloses that they are a victim of abuse or neglect, this information must be immediately referred to Children's Social Care. In such cases a child protection conference must be convened (see CYSCB procedure for dealing with child protection conferences).

Where it is suspected that a child's sexually harmful behaviour has been directed or initiated by another person, advice must always be sought by the police and CPS from Children's Social Care as to the potential impact of an investigation on the child and whether a prosecution is in the child's interest.

Where the Police and CPS decide a prosecution is not possible or where the alleged

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<sup>1</sup> *'Although a reprimand or final warning may provide an acceptable alternative in some cases, in reaching any decision, the police and the CPS will have to take into account fully the view of other agencies involved in the case, in particular the Social Services. The consequences for the victim of the decision whether or not to prosecute, and any views expressed by the victim or the victims family should also be taken into account'. (CPS 2010)*

perpetrator is found not guilty, the strategy meeting must consider what further enquiries should be undertaken in order to establish the facts, on the balance of probability.

## **Assessments**

Children who are involved in the process, either as a victim or an alleged perpetrator, should be considered as children in need and their needs assessed by Children's Social Care. The type of assessment required will be dependant on the circumstances of the case.

Consideration should always be given to assessing the risk posed by the alleged perpetrator to siblings.

The outcome of any assessment must be shared with the strategy meeting in order to ensure any recommendations are followed.

## **Criminal Proceedings**

Following the outcome of criminal proceedings, the Police and the YOT must inform Children's Social Care of the outcome. A decision will then be made as to whether the strategy meeting should be reconvened.

Where a child is convicted of a sexual offence, there may be a requirement for registration on the sex offender's register. In these circumstances, the YOT report, strategy meeting minutes and any Children's Social Care assessment and recommendations will be considered at the MAPPAs.

## **Children re-entering the community**

Children who are re-entering the community following a custodial sentence or time in secure accommodation due to sexually harmful behaviours must also be referred to the AAEIS and require a multi-agency response.

Where a child has been convicted of a sexual offence, the MAPPAs must be invoked. Where a child has been released from secure accommodation a strategy meeting should be held which should follow the same considerations outlined in the section *strategy meetings*.

## **Crown Prosecution Service Guidance**

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### **Sexual Offences and Child Abuse by Young Offenders**

This guidance expands on, and should be read in conjunction with other specific sections elsewhere in Legal Guidance, such as [Sexual Offences](#). Also note the Notification requirements. Any decision to prosecute or not to prosecute should be free of discrimination on the grounds of sexual orientation and gender.

If an allegation of any sexual abuse committed by a youth offender has been fully investigated and there is sufficient evidence to justify instituting proceedings, the balance of the public interest must always be carefully considered before any prosecution is commenced. Positive action may need to be taken at an early stage of offending of this type. Although a reprimand or final warning may provide an acceptable alternative in some cases, in reaching any decision, the police and the CPS will have to take into account fully the view of other agencies involved in the case, in particular the Social Services. The consequences for the victim of the decision whether or not to prosecute, and any views expressed by the victim or the victims family should also be taken into account.

In child abuse cases, it will be important to have the views of the Social Services on file if at all possible, as well as any background or history of similar conduct, information about the relationship between the two and the effect a prosecution might have on the victim.

Any case referred to the CPS for advice, or in which a prosecution does proceed, must be dealt with as quickly as possible to minimise the delay before the case comes to court.

Irrespective of whether the evidence is sufficient to found a criminal prosecution, The Social Services will consider taking civil action, such as care proceedings, to protect the child. The police and the CPS may well be asked to disclose evidence to assist in this process. Great care should be taken to follow the guidance set out in the section on disclosure to third parties

### **Rape and other offences against children under 13 (sections 5 to 8 Sexual Offences Act 2003)**

A mistaken belief that the child under 13 was 16 or over and consented to intercourse is not a defence to an allegation of rape of a child under 13, assault of a child under 13 by penetration, sexual assault of a child under 13 or causing or inciting a child under 13 to engage in sexual activity contrary to Sections 5 to 8 Sexual Offences Act 2003 respectively.

When reviewing a case, in which a youth under 18 is alleged to have committed an offence

contrary to sections 5 to 8, careful regard should be paid to the following factors:

- the relative ages of both parties;
- the existence of and nature of any relationship;
- the sexual and emotional maturity of both parties and any emotional or physical effects as a result of the conduct;
- whether the child under 13 in fact freely consented (even though in law this is not a defence) or a genuine mistake as to her age was in fact made;
- whether any element of seduction, breach of any duty of responsibility to the girl or other exploitation is disclosed by the evidence.

If the sexual act or activity was in fact genuinely consensual and the youth and the child under 13 concerned are fairly close in age and development, a prosecution contrary to sections 5 to 8 is unlikely to be appropriate. Action falling short of prosecution may be appropriate. In such cases, the parents and/or welfare agencies may be able to deal with the situation informally.

However, if a very young child has been seduced by a youth, or a baby-sitter in a position of responsibility has taken advantage of a child under 13 in his/her care; prosecution is likely to be in the public interest. Where a child under 13 has not given ostensible consent to the activity, then a prosecution contrary to sections 5 to 8 is likely to be the appropriate course of action.

It will be important to have the views of the Social Services on file if at all possible, as well as any background or history of similar conduct, information about the relationship between the two and the effect a prosecution might have on the victim.

Rape of a child under 13 (section 5), assault of a child under 13 by penetration (section 6) and causing or inciting a child under 13 to engage in sexual activity that involves penetration (section 8) are indictable only offences with a maximum sentence of life imprisonment. The offences of sexual assault of a child under 13 (section 7), causing or inciting a child under 13 to engage in sexual activity where there has been no penetration (section 8) are punishable on indictment with imprisonment for a term not exceeding 14 years. They are all grave crimes for the purposes of section 24 Magistrates Courts Act 1980 and s.91 Powers of Criminal Courts (Sentencing) Act 2000.

### **Child sex offences committed by children or young persons**

Section 13 of the 2003 Act makes it an offence for a youth under 18 to have sexual activity with a child under 16, cause or incite a child under 16 to engage in sexual activity, engage in



sexual activity in the presence of a child under or cause a child under 16 to watch a sexual act. These offences are punishable on indictment with imprisonment for a term not exceeding 5 years. They are grave crimes for the purposes of section 24 Magistrates Courts Act 1980 and section 91 Powers of Criminal Courts (Sentencing) Act 2000. Section 13 (2) (a) purports to restrict the maximum penalty on summary conviction to a maximum of 6 months imprisonment, although this should be read in the light of section 101 (2) Powers of Criminal Courts (Sentencing) Act 2000 to allow a Detention and Training Order of up to 24 months.

An offence is not committed if the child is over 13 but is under 16 and the youth has a reasonable belief that the child is 16 or over.

It should be noted that where both parties to sexual activity are under 16, then they may both have committed a criminal offence. However, the overriding purpose of the legislation is to protect children and it was not Parliament's intention to punish children unnecessarily or for the criminal law to intervene where it was wholly inappropriate. Consensual sexual activity between, for example, a 14 or 15 year-old and a teenage partner would not normally require criminal proceedings in the absence of aggravating features. The relevant considerations include:

- the respective ages of the parties;
- the existence and nature of any relationship
- their level of maturity;
- whether any duty of care existed;
- whether there was a serious element of exploitation.