



**Working with sexually active Under 18's**

**Based on the PAN Greater Manchester Protocol**

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**Pan Greater Manchester Protocol for working with sexually active young people under the age of 18**

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

### **1. INTRODUCTION AND BACKGROUND.**

The recommendations from the Bichard Inquiry required a co-ordinated and child centred approach from agencies working in childcare fields including sexual health and criminal justice.

- 1.2 Recommendations 12<sup>1</sup> and 13 specifically require Local Safeguarding Children's Boards (LSCB) to provide clear guidance for handling allegations of sexual offences against children to support workers in making decisions about when to notify the Police and Social Care agencies.
- 1.3 Government guidance is already available to provide guidance to staff on information sharing across agencies. This includes, '*Working Together to Safeguard Children*' (2006) and '*what to do if you're worried a child is being abused*' (2003), plus "Children and Families: safer from sexual crime", the Sexual Offences Act 2003 and Gateway reference 3382 DoH practice advice for health in relation to < 16 sexual activity. This protocol is written in accordance with current guidance. (Refer to appendix 'B' for details of legislative drivers).
- 1.4 This protocol has been devised with the understanding that most young people under the age of 18 will have a healthy interest in sex and sexual relationships. It is designed to assist those working with young people to identify where those relationships may be abusive and the young people may need the provision of protection and additional services. The primary concern of anyone working with sexually active young people under the age of 18 years must be to safeguard and promote the welfare of the child. It requires a collaborative approach between child welfare and criminal justice agencies which ensures that no one agency will embark upon a course of action that has implications for others without appropriate consultation. Where there are child protection concerns, these will over-ride the requirement for agency confidentiality and allow information to be shared across agencies.
- 1.5 This guidance is also 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.
- 1.6 Young people, regardless of gender, who are believed to be engaged in, or planning to be engaged in, sexual activity should always have their needs for health education, support and/or protection assessed by the agency involved.
- 1.7 The Sexual Offences Act aims to protect the safety and rights of young people and to make it easier to prosecute people who pressure or force others into having sex they do not consent to. Although the age of consent remains at 16, it is not intended that the law should be used to prosecute mutually agreed

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<sup>1</sup> The police must be 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 12 Bichard Report).

teenage sexual activity between two young people of similar age, except where it involves abuse or exploitation. The Act still allows young people under 16 the right to confidential advice on contraception, condoms, pregnancy and abortion.

- 1.8 This guidance acknowledges that all cases need to be considered on an individual basis due to the complex balancing of issues such as chronological and developmental age, power and knowledge; in doing so this guidance should be used in conjunction with the Wigan Safeguarding Children Board (WSCB) child protection procedures.

## **2. PROCESS FOR ALL CHILDREN AND YOUNG PEOPLE UNDER THE AGE OF 18**

- 2.1 In working with young people, it must always be made clear to them at the earliest appropriate point, that absolute confidentiality cannot be guaranteed, and that there will be some circumstances where the needs of the young person can only be safeguarded by sharing information with others. This discussion with the young person may prove useful as a means of emphasising the gravity of some situations.  
For guidance on information sharing and confidentiality, please refer to *Information Sharing: Practitioners Guide* (HM Government 2006), accessible at: [www.everychildmatters.gov.uk](http://www.everychildmatters.gov.uk) and your own agency guidance.
- 2.2 It is important that workers are aware that young people under the age of 18 may be seeking help and advice from services where they may be subject to sexual exploitation, and /or may have been trafficked. In such cases young people are always likely to suffer significant harm and appropriate action in line with WSCB child protection procedures must be taken.
- 2.3 On **each** occasion that a young person is seen, an assessment of risk / need must be done and consideration given as to whether their circumstances have changed or further information is given which will inform the appropriate action required. (Refer to appendix 'C' for assessment checklist)
- 2.4 Anyone concerned about the sexual activity of a young person must discuss this concern with their line manager or nominated/designated person in their organisation with responsibility for Safeguarding/Child Protection.
- 2.5 All discussions should be recorded. It is important that all decision-making is undertaken following consultation with managers and where appropriate, external agencies and never by one person alone.
- 2.6 'Whenever any agency encounters concerns about a child's welfare which constitutes, or may constitute, a criminal offence against a child, they must always consider sharing that information with children's social care or the police in order to protect the child or other children from the risk of significant harm. If a decision is taken not to share information, the reasons must be recorded'. (WTSC para 5.18).

### **3 ASSESSMENT OF RISK / NEED.** (*Refer to Appendix 'C' for risk assessment template*)

- 3.1 In assessing the nature of any particular behaviour, it is essential to look at the facts of the actual relationship between those involved. Power imbalances are highly significant and can occur through differences in size, age and development and where gender, sexuality, race and levels of sexual knowledge are used to exert such power. There may also be an imbalance of power if the young person's sexual partner is in a position of trust or authority in relation to them, indeed this is legislated for. It is also important to recognise that cultural and language differences may have an impact on the information that a young person is willing or able to provide.
- 3.2 If the young person has learning disabilities or other communication difficulty and cannot easily communicate to someone that they have been abused, they may be vulnerable to exploitation. People with learning disabilities have the same rights and responsibilities as everyone else, but may need help with various parts of their lives. Some people may need help to understand their rights and responsibilities regarding social and personal relationships. Capacity to consent can only be assessed on an individual basis.
- 3.3 In order to determine whether the relationship presents a risk to the young person, the following factors should be considered. The list is not exhaustive and other factors may need to be taken into account:
- Whether the young person is competent to understand, and consent to, the sexual activity they are involved in;
  - The age of the child.
    - Children under 13 years are legally unable to give their consent to sexual activity
    - Sexual activity at a young age is a very strong indicator that there are risks to the welfare of the child (whether male or female);
  - Whether the young person has a learning disability or other communication difficulty, which may make them more vulnerable to exploitation and abuse;
  - What is known about the child's living circumstances or background and the child/young person's emotional presentation, i.e. are they attending school, are they withdrawn, anxious, whether they or their siblings are receiving services from Children's Services or another Social Care Agency;
  - History or previous concern regarding familial child sex offences;
  - The nature of the relationship between those involved, particularly if there are issues of power imbalances as outlined above;
  - Whether the parents/carers have failed to adequately protect the young person by encouraging inappropriate sexual relationships;
  - Whether overt aggression, coercion or bribery was involved including misuse of substances as a dis-inhibitor;
  - Whether the young person's own behaviour, for example through misuse of substances, places them in a position where they are unable to make an informed choice about the activity. Note: such behaviour may render a usually assertive young person temporarily vulnerable to exploitation;
  - Whether sex has been used to gain favours (e.g. swap sex for cigarettes, clothes, CD's, trainers alcohol, drugs etc); reference to child exploitation procedures.
  - The young person has a lot of money or other valuable things that cannot be accounted for;

- 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 concerning relationships with similar young people. Is there a pattern emerging?
  - 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' as per sexual exploitation. The young person stating their agreement to the relationship should not be sufficient information to rule out grooming.
  - Whether a young person is taking steps to ensure the relationship is conducted safely and recognises potential concerns
  - Any history of the young person going missing from home should also be considered.
- 3.4 If at this stage, you have concerns that the young person may be at risk of sexual exploitation it **must** be discussed with the Independent Reviewing Team (refer to appendix 'D', useful contact numbers), with reference to the relevant procedure in the WSCB child protection procedures in order to decide the most appropriate action to take. All discussions held and actions taken must be recorded in the young person's record.
- 3.5 If the young person is not thought to be at risk of sexual exploitation, consideration should be given to assessing their health education needs in relation to their ongoing sexual health needs and relationships. It is considered good practice for workers to follow the Fraser Guidelines when discussing personal or sexual matters with a person under 16 years. (Refer to appendix 'B').
- 3.6 When a sexually active child / young person is not referred to the police or other services, on any occasion they are seen, consideration should be given as to whether the circumstances have changed or further information is available which may lead to an increase in concerns, and require a referral.

#### **4 PROCESS WHERE A CHILD / YOUNG PERSON IS ASSESSED TO BE AT RISK OF SIGNIFICANT HARM.**

- 4.1 In some exceptional cases immediate urgent action may need to be taken to safeguard the welfare of a young person, (see section below, para 4.2 'significant harm'). However, in most circumstances there will need to be a process of information sharing and discussion in order to formulate an appropriate plan. There should be time for reasoned consideration to define the best way forward.
- 4.2 Where there is reasonable cause to suspect that significant harm to a child has occurred or might occur, the case **must** be reported to the Children in Need Duty Team (refer to appendix 'D', useful contact numbers), in accordance with WSCB child protection procedures and timescales. A record of all discussions must be made, regardless of what action is taken, and should include an explanation as to the reasons for the decision, who is responsible for carrying out any actions agreed during the discussion and who was spoken to.

- 4.3 It is important that all decision-making is undertaken with full worker consultation, never by one person alone. Any referral to the Children in Need Duty team must always be followed up in writing with 48 hours using the multi-agency referral form.
- 4.4 In accordance with Government guidance in 'Working Together' (2006) and local procedures, when Children's Social Care receives a referral, a strategy discussion with partner agencies including the police will be held. This discussion should be informed by the assessment undertaken using this guidance and, in the majority of cases, may be largely for the purposes of consultation and information sharing. Wherever possible, the person referring the young person should be included in the strategy discussion to ensure that the assessment information is included.
- 4.5 In the vast majority of cases, it will not be in the best interests of the young person for criminal or civil proceedings to be instigated. However, **the Police, Children's Social Care and other agencies may hold vital information that will assist in any clear assessment of risk.**
- 4.6 Following a referral to the Children in Need Duty team and after the strategy discussion there may be the following responses:
- No further action deemed necessary
  - An initial assessment undertaken which may identify the young person as 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

The outcome of the referral will be formally fed back to the referring agency.

- 4.7 During this process, appropriate support should be offered and agencies should continue to offer the services provided.
- 4.8 **Any girl, either under or over the age of 13, who is pregnant, must be offered specialist support and guidance by the relevant services. These services will also be a part of the assessment of the girl's circumstances.**
- 4.9 If, following this protocol, there were information that a young person has sexually abused others, or is displaying sexually harmful behaviour, then it would be necessary to refer to the AIM procedures for assessment and treatment (<http://www.wigansafeguardingchildrenboard.co.uk>).

## **5 PROCESS FOR A CHILD UNDER THE AGE OF 13 YEARS.**

- 5.1 'A child under 13 is not legally capable of consenting to sexual activity. Any offence under the Sexual Offences Act 2003 involving a child under 13 is very serious and should be taken to indicate a risk of significant harm to the child.
- 5.2 Cases involving under 13s should always be discussed with a nominated child protection lead in the organization. Under the Sexual Offences Act, penetrative sex with a child under 13 is classed as rape. Where the allegation concerns penetrative sex, or other intimate sexual activity occurs, there would always be reasonable cause to suspect that a child, whether girl or boy, is suffering or is likely to suffer significant harm.

- 5.3 There should be a **presumption** that the case will be reported to children's social care and that a strategy discussion will be held in accordance with the guidance set out in paragraph 5.54 below. This should involve children's social care, police and relevant agencies, to discuss appropriate next steps with the worker. All cases involving under 13s should be fully documented including detailed reasons where a decision is taken not to share information'. (Working Together to Safeguard Children 2006).
- 5.4 In **all** cases where a young person under 13 is judged to be **sexually active**, all agencies have a primary responsibility to safeguard the child. All agencies:
- Will undertake a 'single agency' assessment – in the context of the sexual relationship using the issues covered in the list of risk factors (Para 3.3)
  - Will seek advice from the agency designated child protection lead. (Discussions can also take place with social workers preserving the anonymity of the child, but workers would need to identify themselves).
  - **Must** make a presumption that a referral to Children in Need Duty Team is required, identifying the young person and their partner if details are known. (Refer to appendix 'D' useful contact numbers).
  - Where a decision is taken not to refer a child under 13 to social care, all agencies must have completed the risk assessment (refer to appendix 'C'), have discussed and agreed this decision with the agency designated child protection lead, and recorded the reasons for this decision. The line manager must sign this. It is important to remember that your information about the child is likely to be incomplete, particularly if it is solely dependent upon what the child has told you, and you may be missing significant information about the experience of the child if you decide not to consult with other agencies.
  - **Must** make a presumption of referring any girl who is under 13 and is found to be pregnant, to Children in Need Duty Team
  - Will encourage young people to attend sexual health services for confidential advice and information.

## **6 PROCESS FOR YOUNG PEOPLE BETWEEN 13-16 YEARS.**

- 6.1 The Sexual Offences Act 2003 reinforces that, whilst mutually agreed, non-exploitative sexual activity between teenagers does take place and that often no harm comes of it, the age of consent should still remain at 16. This acknowledges that this group of young people can still be vulnerable, even when they do not view themselves as such.
- 6.2 Sexually active young people in this age group will still have to have their needs assessed using this guidance. Discussion with Children's Social Care will depend on the level of risk/need assessed by those working with the young person. In reaching a decision it is important to recognise that significant information may be held by other agencies that would impact on the degree of risk / need a young person may be considered to be at.
- 6.3 This difference in procedure reflects the position that, whilst sexual activity under 16 remains illegal, only young people under the age of 13 are deemed unable to consent to such sexual activity. For children between 13 and 16 years the child's own views on their best interests are also a factor, which should be given a weight dependent on their maturity and understanding. In laying down

this principle in May 2005, the Court of Appeal said, 'in the case of an articulate teenager there is no place for professional paternalism'.

- 6.4 In all cases where a young person between 13 – 16 years is judged to be sexually active, all agencies:
- Will undertake a 'single agency' assessment – in the context of the sexual relationship using the issues covered in the list of risk factors (Para 3.3)
  - Where the risk assessment indicated there are concerns which may lead to a referral to another agency, workers should seek advice from the agency child protection lead as soon as practical
  - May seek further advice through the Independent Reviewing Team when they assess that there may be child protection concerns
  - Will make a referral to Children in Need Duty Team where there are child protection concerns and will include the risk / need assessment
  - Will refer a girl who is pregnant to the Children in Need Duty Team where there are child protection concerns and / or this is necessary for specialist support and guidance
  - Will encourage young people to attend sexual health services for confidential advice and information.

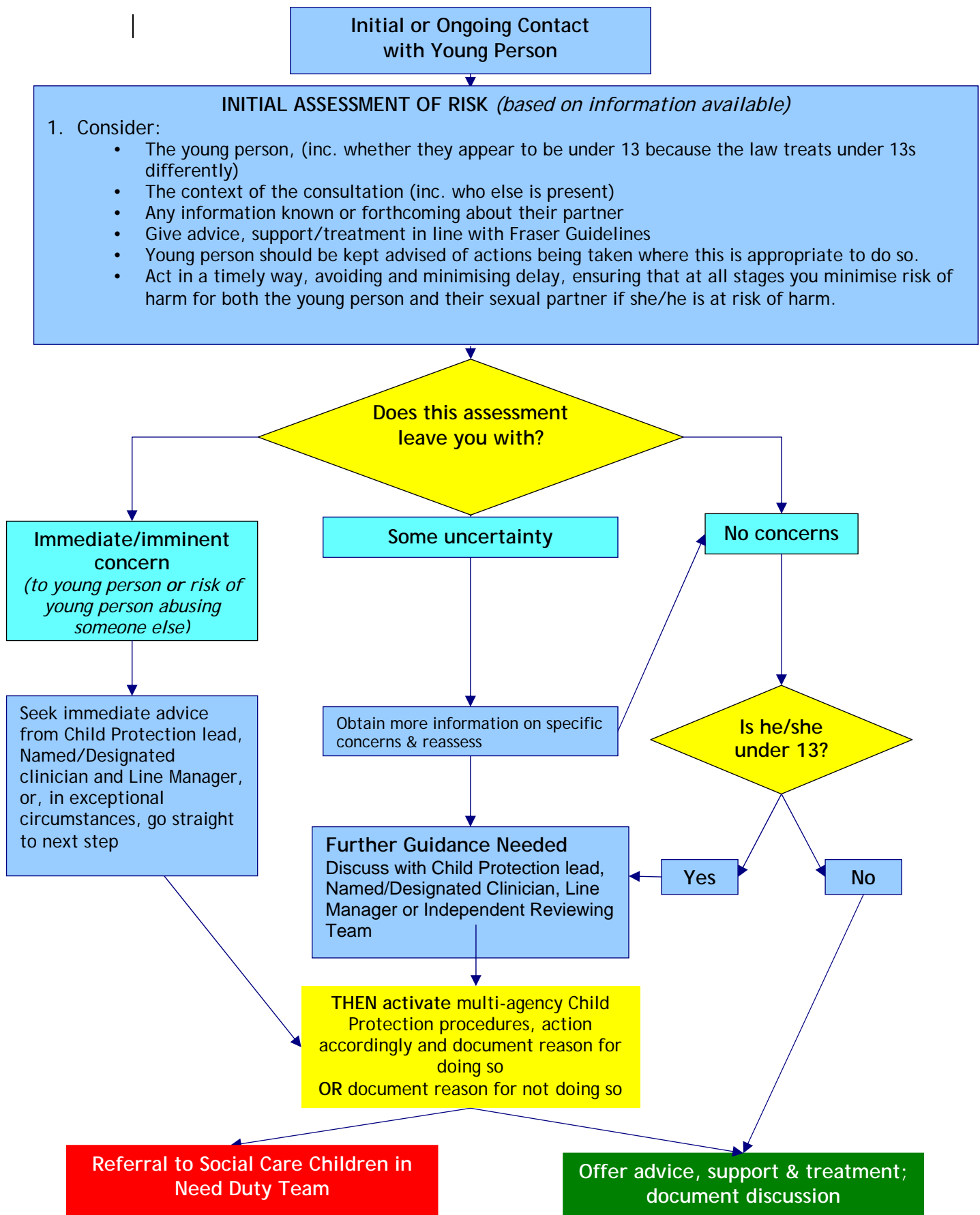
## **7 PROCESS FOR YOUNG PEOPLE AGED BETWEEN 16 – 18 YEARS.**

- 7.1 Sexual activity involving a 16 or 17 year old, though unlikely to involve an offence, may still involve harm or the risk of harm and young people up to the age of 18 are still offered the protection of child protection procedures through the Children Act 1989. Consideration still needs to be given to issues of sexual exploitation through prostitution and the abuse of power in circumstances outlined above in assessing risk, with information being shared as appropriate. Young people, of course, can still be subject to offences of rape and assault and the circumstances of an incident may need to be explored with a young person. It is an offence for a person to have a sexual relationship with a 16 or 17 year old if they hold a position of trust or authority in relation to them.
- 7.2 Procedures as for 13 – 16 year olds should be implemented, recognising that the risk assessment will take into account the issues of consent.

## **8 SHARING INFORMATION WITH PARENT AND CARERS.**

- 8.1 Decisions to share information with parents will be taken using worker judgement, consideration of Fraser guidelines (refer to appendix B), and in consultation with WSCB child protection procedures and guidance. Decisions will be based on the child's age, maturity and ability to appreciate what is involved in terms of the implications and risks themselves. 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, workers should encourage the young person, at all points, to share information with their parents where ever safe to do so.

**Flow Chart for Professionals Working with Sexually Active under 18's**



**Legislative Background:**

**Sexual Offences Act 2003**

The aim of the legislation is to provide an effective legal framework governing sexual offences, taking into account technological advances and trends in offending. Changes include a new offence of grooming. This could include developing a relationship through the Internet in order to abuse (e.g. meeting or travelling to meet a child after communicating with them on at least two occasions); befriending a young person by indulging/ coercing him/ her with gifts, treats, money, or drugs; developing a trusting relationship with the child's family). Also new offences of facilitating a child sex offence; offences relating to the abuse of trust; offences against those with mental disabilities and familial sex offences.

Under 13's cannot consent to sexual activity by law. It only has to be proved that sexual activity took place for an offence to have been committed.

Between 13 –16 years, children and young people are legally incapable of giving consent. However the issue may be debated according to the circumstances of the case.

From 16 years and over, a young person can give valid consent to any sexual activity. Young people 16 and 17 are not deemed to be able to give consent if the activity is with an adult in a position of trust or a family member as defined by the Sexual Offences Act, 2003.

Young people still have a right to confidential advice on contraception, condoms, pregnancy and abortion, even if they are under 16.

Although the age of consent remains at 16, the law is not intended to prosecute mutually agreed teenage sexual activity between young people of a similar age, unless it involves abuse or exploitation.

There is no minimum age to rape. If two 12 years olds 'consensually' experiment with penetrative sex, with nothing to suggest exploitation, the perpetrator commits an offence of rape.

**Criminal Justice Act 2003**

This greatly increases the protection afforded to victims, and the new regulations are capable of permitting evidence to be introduced as hearsay evidence where the victim is in fear, subject to certain important safeguards.

**Fraser Guidelines.**

The Fraser guidelines give guidance on providing advice and treatment to young people under 16 years of age. These hold that sexual health services can be offered without parental consent providing that: -

- The young person understands the advice that is being given
- The young person cannot be persuaded to inform or seek support from their parents, and will not allow the worker to inform the parents that contraceptive/protection e.g. condom advice is being given
- The young person is likely to begin or continue having intercourse with or without contraception or protection by a barrier method
- The young person's physical or mental health are likely to suffer unless they receive contraceptive advice or treatment
- It is in the young person's best interest to receive contraceptive/safe sex advice and treatment without parental consent.

*(The Fraser Guidelines, also known as the Gillick Competency test. In 1980's the House of Lords ruled that young people under 16, who are fully able to understand what is proposed, and its implications, are competent to consent to medical treatment regardless of age).*

**Risk / Needs Assessment Guide.**

In order to determine whether the relationship presents a risk to the young person, the following factors should be considered. The list is not exhaustive and other factors may need to be taken into account:

<b><u>Factor</u></b>
Is the young person competent to understand, and consent to, the sexual activity they are involved in?
<p>What is the age of the child?</p> <ul style="list-style-type: none"> <li>• Children under 13 years are legally unable to give consent to sexual activity.</li> <li>• Sexual activity at a young age is a very strong indicator that there are risks to the welfare of the child, whether male or female.</li> </ul>
Does the young person have a learning disability or other communication difficulty, which may make them more vulnerable to exploitation and abuse?
What is known about the child's living circumstances or background and the child/young person's emotional presentation, i.e. are they attending school, are they withdrawn, anxious, whether they or their siblings are receiving services from Children's Services or another Social Care Agency.
Known history or previous concern regarding familial child sex offences
What is the nature of the relationship between those involved, particularly if there are issues of power imbalances?
Have the parents/carers failed to adequately protect the young person by encouraging inappropriate sexual relationships?
Has overt aggression, coercion or bribery was involved including misuse of substances as a dis-inhibitor?
Has the young person's own behaviour, for example through misuse of substances, placed them in a position where they are unable to make an informed choice about the activity? Note: such behaviour may render a usually assertive young person temporarily vulnerable to exploitation.
Has sex been used to gain favours? (e.g. swap sex for cigarettes, clothes, CD's, trainers alcohol, drugs etc)
Does the young person have a lot of money or other valuable things that cannot be accounted for?
Have there been any attempts to secure secrecy by the sexual partner beyond what would be considered usual in a teenage relationship?

Is the sexual partner known by the agency as having other concerning relationships with similar young people? Is there a pattern emerging?
Does the young person denies, minimises or accepts concerns?
Are methods used to secure compliance and/or secrecy by the sexual partner consistent with behaviours considered to be 'grooming' as per sexual exploitation? The young person stating their agreement to the relationship should not be sufficient information to rule out grooming.
Has the young person taken steps to ensure the relationship is conducted safely and recognises potential concerns?
Is there any history of the young person going missing from home to be considered?

## Appendix 'D'

### Useful Contact Numbers.

<b><u>Children's Social Care:</u></b>	<b><u>Tel Number:</u></b>
Wigan CYPS Children in Need Duty Team	01942 828300
Wigan CYPS Out-of-hours	01942 828777
Independent Reviewing Team	01942 705942
<b><u>Police:</u></b>	<b><u>Tel Number:</u></b>
GMP	0161 872 5050
Public Protection Investigation Unit (PPIU – CPU).	0161 856 7952
<b><u>Health:</u></b>	<b><u>Tel Number:</u></b>
Young People's Advisory Service St. Mary's Sexual Assault Referral Centre	0161 276 6515
Designated and Named Nurse for Child Protection	01942 481161

**References**

- HM Government (2006) *Working Together to Safeguard Children*, accessed on [www.everychildmatters.gov.uk](http://www.everychildmatters.gov.uk)
- HM Government (2006) *Information Sharing: Practitioner's Guide*, accessed on [www.everychildmatters.gov.uk](http://www.everychildmatters.gov.uk)
- Sexual Offences Act 2003.

**Additional references:**

- *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*, (Department for Education and Skills Teenage pregnancy Unit 2004).
- *Best practice guidance for doctors and health professionals on the provision of advice and treatment to young people under 16 on contraception, sexual and reproductive health*. (Department of Health 2004).
- *What to do if you're worried a child is being abused* (HM Government 2003).
- *Handling Allegations of sexual offences against children (Local authority Social Services Letter LASSL (21<sup>st</sup> August 2004))*.
- *Guidance on offences against children* (Home office Circular 16/2005).