Sexual Health and the Law – What every worker needs to know

1. Fraser Guidelines 1985

The Fraser Guidelines were created as a response of the Gillick case. This legal matter came about when a health departmental circular advising doctors on the contraception for under-sixteen's was issued in the early 1980s. The circular stated that the prescription of contraception was a matter for the doctor's discretion, and that they could be prescribed to under-sixteen’s without parental consent. The matter was litigated because an activist, Victoria Gillick, ran an active campaign against the policy. Mrs. Gillick, a mother of ten, sought a declaration that prescribing contraception was illegal because the doctor would commit an offence of encouraging sex with a minor, and that it would be treatment without consent as consent vested in the parent.

Lord Fraser ruled that contraception could be prescribed, as long as the young person satisfied a list of criteria that meant that it was in their best interests to have the contraception, without parental knowledge or consent. All the guidelines must apply.

Furthermore, Lord Scarman ruled that a child could consent to any medical procedure without parental consent as long as the child fully understood the implications of it. Gillick competence is now a term used in medical law to decide whether a child (16 years or younger) is able to consent to his or her own medical treatment (not just sexual health treatment), without the need for parental permission or knowledge.

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<th>FRASER GUIDELINES 1985</th>
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<tr>
<td>Can you give contraceptive and sexual health advice and information to under 16 year olds without parental consent?</td>
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<td>Are you satisfied that:</td>
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<td>- The young person can understand the advice and has sufficient maturity to understand what is involved in terms of moral, social and emotional implications?</td>
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<td>- You can’t persuade the young person to inform their parents, nor allow you to inform their parents that contraceptive advice is being sought?</td>
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<td>- The young person would be very likely to begin or to continue having sexual intercourse with or without contraceptive treatment?</td>
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<td>- Without contraceptive treatment, the young person’s physical or mental health or both would be likely to suffer?</td>
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<td>- The young person’s best interests require the professional to give advice without parental consent?</td>
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2. **Sexual Offences Act 2003**

This was a major piece of legislation that revised and extended legislation on offences that were sexual in nature. Concern was expressed that tightening the law on sex with minors may restrict the services supplied by sexual health services. What follows is a briefing issued by the Teenage Pregnancy Unit which informed service providers that their work would be unaffected by the legislation.

**Sexual Offences Act 2003: key messages**

The Sexual Offences Act 2003 received Royal Assent on Thursday 20 November and became law in May 2004.

**Does the Sexual Offences Act 2003 allow health professionals and others working with young people to provide confidential sexual health advice and treatment?**

Yes. Government has committed to ensure the Act will not prevent the provision of confidential advice and treatment to young people under 16. In light of concerns that were raised about the implications of the Act for those who provide sexual health care and advice to young people, an exception has been introduced, in statute, to make it clear that a person does not commit an offence if he acts for the purpose of:

(a) protecting the child from sexually transmitted infection, or  
(b) protecting the physical safety of the child, or  
(c) preventing the child from becoming pregnant, or  
(d) promoting the child's emotional well-being by the giving of advice

as long as he does not act for the purpose of causing or encouraging the activity constituting an offence or the child's participation in it. Nor does it apply if the person is acting for the purpose of obtaining sexual gratification.

The exception covers not only health professionals, but also anyone who acts to protect a child, for example teachers, Connexions Personal Advisers, teenage magazine advice columnists, parents, other relatives and friends. This is a significant step forward from the current position of the Gillick which is case law which only related to health professionals.

Those providing contraceptive treatment to under 16s without parental consent will continue to assess competence on a case by case basis and work within the Fraser Guidelines.

**Can young people under 16 continue to seek contraceptive or sexual health advice in confidence?**

Yes. The Act does not change the fact that young people under 16 have the same right to confidentiality as adults. Confidentiality can only be breached in exceptional circumstances where the health, safety or welfare of the young person or others would otherwise be at grave risk. The decision whether to breach confidentiality depends on the degree of current or likely harm, not solely on the age of the patient.
Does the Sexual Offences Act 2003 make it illegal for teenagers to engage in normal sexual activity?

The purpose behind the offences in the Act is to enable the prosecution of abusive and exploitative sexual activity. To achieve this, the Act includes a number of offences that criminalise sexual activity between under 18s and under 16s. However, this will not lead to the prosecution of mutually agreed sexual activity within normal adolescent behaviour, where there is no evidence of exploitation.

Guidance issued by the Director of Public Prosecutions to custody officers under the provisions in the Criminal Justice Bill will provide that the decision whether children under 18 should be charged with sex offences will be reserved for Crown Prosecutors, rather than the police. A charge will only be brought if it is in the public interest to do so. Revised Crown Prosecution Service guidance will make this clear.

3. **Bichard 2004**

This followed the murders in August 2002 of two ten-year-old girls Holly Wells and Jessica Chapman, in Soham, Cambridgeshire. The convicted killer was a local school caretaker, Ian Huntley. Ian Huntley had previously had 9 allegations of sexual offences against him: 4 rapes, 3 of sex with 15 year-olds, 1 of sex with a 13 year-old, 1 indecent assault of an 11 year-old.

Social Services were aware of 5 of these, some were not known to the police. The Bichard Inquiry recommended that police are informed as soon as possible of any offence suspected of being committed against a child, unless there are exceptional circumstances.

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<td>Should you tell the police/ social services?</td>
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**Do any of the following apply:**

- Age or power imbalances?
- Overt aggression?
- Coercion or bribery?
- The misuse of substances or a disinhibitor?
- Does the child’s own behaviour, because of the misuse of substances, place him/her at risk so that he/she is unable to make an informed choice about any activity?
- Has any attempt to secure secrecy been made by the sexual partner, beyond what would be considered usual in a teenage relationship?
- Is the sexual partner know by one of the agencies, e.g. police?
4. **South West Regional Child Protection Procedures 2007**

The following is an extract from the above document and is a summary of the action to be taken with young people of different ages. They should always be used together with ‘The Fraser Guidelines’ that help assess the young person’s competence and understanding of the situation.

**August 2007  Protocol on dealing with sexually active young people**

*South West Shared procedures partners are: Bath and NE Somerset, Bristol City, Devon, Gloucestershire, North Somerset, Plymouth, Somerset, South Gloucestershire, Swindon, Torbay, Wiltshire*

**(i) Young People Under the Age of 13**

In law (Sexual Offences Act 2003), children under 13 are deemed to be unable to give informed consent to sexual activity, so professionals working with such children need to ensure that they have taken all reasonable steps to protect the child’s welfare and prevent them from harm, and that they have operated within guidance issued by their organisation.

In all cases where the sexually active young person is under the age of 13, a full assessment must be undertaken. Advice or guidance should be obtained from the organisation’s Child Protection lead, the Designated/Named clinician, or line manager.

Although each case must be assessed individually, any sexual offence involving a child under 13 is very serious and should be taken to indicate a risk of significant harm and in most cases this will lead to a referral to the Children’s Social Care in line with Local Safeguarding Children’s Board (LSCB) child protection procedures. A strategy discussion with the police and other agencies will be held. In order for this to be meaningful, the young person will need to be identified, as will their sexual partner if details are known.

All actions taken by the professional **MUST BE RECORDED** and the rationale for these actions clearly given.

A decision not to refer can only be made following a case discussion with the nominated lead for child protection within the professional's employing organisation. When a referral is not made, the professional and agency concerned is fully accountable for the decision and a good standard of record keeping must be made, including the reasons for not making a referral.

When a girl under 13 is found to be pregnant, whether or not she intends to proceed with the pregnancy, a referral to the Children’s Social Care must be made following LSCB child protection procedures and a **strategy discussion** with the police and
other agencies will be held. At this stage a multi-agency support package should be formulated.

(ii) Young People between 13 and 16 years old

This difference in procedure reflects the position that, whilst sexual activity under 16 remains illegal, young people under the age of 13 are not competent to give consent to such sexual activity.

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 from it, the age of consent is 16. This acknowledges that this group of young people is still vulnerable, even when they do not view themselves as such.

Sexually active young people in this age group will still have to have their needs assessed using this protocol. Discussion with children’s Social Care will depend on the level of risk/need assessed by those working with the young person.

Within this age range the presumption will be that the younger the child or the wider the age gap the stronger the presumption that sexual activity is a matter of concern.

Cases of concern will be discussed with the agency’s nominated child protection lead and subsequently with other agencies. Where there is reasonable cause to suspect that significant harm to the child has, or might occur the case will be referred to Children’s Social Care under LSCB procedures and a strategy meeting to include the referrer, will be held to discuss the next steps.

All cases will be carefully documented including where a decision is taken not to share information.

(iii) Young people between 17 and 18 years old

Although sexual activity in itself is not an offence over the age of 16, young people under the age of 18 are still entitled to protection under the Children Act 1989.

Consideration should be given to issues of sexual exploitation through prostitution and abuse of power in circumstances outlined above. 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.

Young people over the age of 16 and under the age of 18 are not deemed able to give consent if the sexual activity is with an adult in a position of trust or a family member as defined by Section 27 of the Sexual Offences Act 2003.

Where the practitioner believes that a young person is suffering or at risk of significant harm, referral to Children’s Social Care, under LSCB child protection procedures, should be made.
5 Agency guidelines and policies

Every agency should have an accepted approach to supporting the sexual health of the young people it works with. Below are agency guidelines of some sectors of the children’s workforce.

GPs and other health professionals
Best Practice Guidance 2004 Doctors and Health Professionals: Supports confidential services for under 16s (including those under 13 years) and affirms Fraser guidelines. These guidelines primarily give advice to health professionals regarding the provision of contraception, but the principles also apply to other treatments including abortion. The professional codes of doctors, nurses and other health professionals, state that confidentiality may only be broken in situations when the health, safety or welfare of the patient, or others, would otherwise be at grave risk. The decision on whether to break confidentiality depends on the degree of current or likely harm, not solely on the age of the patient.

Teachers
Teachers in secondary schools may discuss general issues relating to contraception and sexual health if they arise as part of teaching on any subject. They may also provide information about local services unless the school's sex education policy states otherwise.
Teachers may give individual pupils information about an appropriate health professional or clinic, even if the pupil has been withdrawn from sex education lessons by their parents.
Teachers are not health professionals and so should not give individual advice on which method of contraception to use.
Teachers are not bound by law to break the confidence of under 16s who ask for information or advice on contraception or other sexual health issues.
Schools should have a child protection policy that clearly explains the situations in which a teacher may have to disclose information told to them in confidence. In individual cases, teachers should act within the school's agreed policy. Parents and pupils should be made aware of the school's policy and the limits on confidentiality.

Health Professionals in schools
Health professionals, such as nurses, invited into schools to contribute to sex and relationship education programmes must follow the sex education policy of the individual school. Outside the education context, the health professional can work according to their relevant professional code of conduct.
School nurses working as part of the sex education programme must follow the sex education policy of the school. If an individual pupil asks for contraceptive advice in a one-to-one situation nurses are allowed to give such advice and/or treatment in confidence, providing the Fraser Guidelines are followed.

Those working with Children in Care
See Bath and North East Somerset Sexual Health Policy and Practice Guidelines; ‘Children and young people need a balance of simple, accessible information, the chance to learn social and personal skills and the opportunity to think through and talk about moral issues and dilemmas’. Care workers may give information about contraception, sexual health and details of appropriate professionals and clinics to the young people they are in contact with, unless they are prevented from doing so by the
policies of their employers. As they are not health professionals, they should not give individual advice on which method of contraception to use.

Care workers should respect the confidentiality of young people, including those under the age of 16. They have a professional responsibility to listen to young people's concerns and to support them. If the young person insists that their parents must not be informed, Care workers should respect confidentiality unless there are exceptional circumstances, such as cases of suspected sexual abuse or exploitation.

Youth workers

Youth workers can give young people, including those under 16, information about contraception and sexual health and details of where to find local services. There is no law that prevents appropriately trained youth workers giving condoms to young people. When given for contraception, rather than as part of an education/information session, it is good practice for the youth worker to follow the Fraser Guidelines. The organisations employing youth workers, however, may have policies that prevent them from distributing condoms. The law also enables youth workers to respect the confidentiality of young people, including those under 16, unless there are exceptional circumstances that cause a worker to suspect that someone is at risk of serious harm. Local policies on confidentiality may vary and youth workers will be obliged by their contracts of employment to follow these guidelines.

Youth workers in schools should follow the policies of the school in which they are working.

Child Protection Contacts:

» If you have a concern about a child or young person, please call:
» **Bath Locality Team** (for children who live in the central Bath area) **01225 396312**
» **North East Somerset Locality Team** (for children who live outside central Bath) **01225 396313**
» If outside of office hours please call the **Emergency Duty Team** on **01454 615165**
» If a child or young person is in **immediate danger then please dial 999** and ask for police assistance.