



# Fife

# Underage Sexual

# Activity

# Multiagency Protocol

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## The National Context

### Underage sexual activity and child protection

National Guidance on the Sexual Offences (Scotland) Act 2009 and Child Protection<sup>1,2</sup> requires that Local Child Protection Committees should have protocols for staff that:

- set out guiding principles on practice;
- ensure practitioners are familiar with the criteria set out in the Scottish Government guidance, *Under-age Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns*; and
- provide guidance for practitioners as to what they can/should do on the basis of their assessment.

It is recognised that a significant proportion of young people engage in a range of sexual activity before the age of 16. The reasons behind this behaviour vary considerably. In some cases, the activity will be wholly consensual; in others it will happen in response to peer pressure or as the result of abuse or exploitation. Young people who are sexually active will, therefore, have differing needs, and therefore services and practitioners must provide a range of responses.

The guidance provided by the Scottish Government covers the legal issues and advises practitioners how they can strike a balance between assuring the freedom of young people to make decisions and protecting them from activity which could give rise to immediate harm and/or longer-term adverse consequences. This is in line with the principles of the UN Convention on the Rights of the Child (UNCRC).

The law is clear that society does not encourage sexual intercourse in children or young people under 16. *However, it does not follow that every case presents child protection concerns and it is important that a proportionate response is made.* If there are no child protection concerns, there may still be wellbeing needs to be addressed either on a single agency or multi-agency basis.

However, National Guidance<sup>1,2</sup> in line with the law specifies that child protection measures must be instigated for example:

- if the child is, or is believed to be, sexually active and is 12 or under;
- if the young person is currently 13 or over but sexual activity took place when they were 12 or under; and
- where the "other person" involved is in a position of trust in relation to the young person.
- if there is evidence or indication that the young person is involved in pornography or prostitution;
- if the 'other person' is in a position of trust in relation to the young person; and

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<sup>1</sup> National Guidance Underage Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns. Scottish Government 2010 - <http://www.gov.scot/Publications/2010/12/02143509/0>

<sup>2</sup> National guidance for Child Protection in Scotland 2021 - [National Guidance for Child Protection in Scotland 2021 \(www.gov.scot\)](http://www.gov.scot/Publications/2021/02/02143509/0)

- if the young person is perceived to be at immediate risk.

When a practitioner becomes aware that a young person under the age of 16 is sexually active or is likely to become sexually active, they should undertake an assessment of risks and needs using this protocol so that the appropriate response can be provided. The practitioner has a duty of care to ensure that the young person's overall wellbeing needs are addressed, in particular their health and emotional needs, and to assess whether the sexual activity is of an abusive or exploitative nature. This process may not always be straightforward, so it will require sensitive handling and the use of professional judgement.

Practitioners should take account of the potential for the child to be a victim of, or at risk of, child sexual exploitation (CSE)<sup>3</sup> .

The sexual exploitation of children and young people is an often hidden form of child sexual abuse, with distinctive elements of exploitation and exchange. In practice, the sexual exploitation of children and young people **under 18 years** might involve young people being coerced, manipulated, forced or deceived into performing and/or others performing on them, sexual activities in exchange for receiving some form of material goods or other entity (for example, food, accommodation, drugs, alcohol, cigarettes, gifts, affection). Sexual exploitation can occur through the use of technology and without the child's immediate recognition.

In all cases high quality recording and documentation should be undertaken according to individual agency requirements.

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<sup>3</sup> [Child sexual abuse and child sexual and criminal exploitation - Child protection - gov.scot \(www.gov.scot\)](http://www.gov.scot)

## Range of Responses

Depending on the outcome of the assessment process, there are several courses of action that could be taken. However, in all situations the consideration of the five GIRFEC questions should form the basis of the response for all professionals involved:

What is getting in the way of this child's or young person's well-being?
Do I have all the information I need to help this child and young person?
What can I now do to help this child and young person?
What can <u>my agency</u> do to help this child and young person?
What additional help, if any, may be needed from others?

The level of response will depend on how practitioners assess the level of risk to the child or young person. National guidance provides indicators of potential risks, [Appendix 1](#). The response, and level of information shared, will be different depending on whether there is a child protection concern or whether there are other concerns for the well-being of the young person, see [Appendix 2: flow chart](#).

**The overriding principle should be that the rights to confidentiality of children and young people should be respected unless there is a child protection or wellbeing concern.**

The Information Commissioner has also issued guidance in relation to Data Protection that:

*“Where a practitioner believes, in their professional opinion, that there is risk to a child or young person that may lead to harm, proportionate sharing of information is unlikely to constitute a breach of the Act in such circumstances.*

*It is very important that the practitioner uses all available information before they decide whether or not to share. Experience, professional instinct and other available information will all help with the decision-making process as will anonymised discussions with colleagues about the case. If there is any doubt about the wellbeing of the child and the decision is to share, the Data Protection Act should not be viewed as a barrier to proportionate sharing<sup>4</sup>.”*

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<sup>4</sup> Data Protection Act: [Data protection: The Data Protection Act - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

## **Young people aged between 16 & 18**

Sexual activity within this age range is within the law when it is considered to be consensual and non-exploitative. However, there are circumstances when other vulnerabilities or reasons may require action to be taken.

Up to age 18 a wellbeing concern should be assessed using the 5 GIRFEC questions and any actions taken as needed. If appropriate the named person may be informed in order to monitor wellbeing over time.

### **For example:**

**Position of trust. Sexual abuse of trust is illegal up to age 18:** this when a worker regularly cares for, teaches, trains, supervises, or is in sole charge of the person<sup>5</sup>

**Child or adult protection proceedings** may be required particularly if the circumstances are identified as being exploitative or the young person is unable to give informed consent due to, for example, alcohol or drug use; mental health issues; learning disabilities.  
See [Appendix 2: Flowchart](#)

**It is illegal for a young person under the age of 18 years to be involved in prostitution or pornography.** Note that as some exposure to pornography, particularly online is widespread in young people, this may mean involvement beyond a level of curiosity which might be expected.

**Young people aged 16 or 17 who display sexually problematic behaviour** could be referred to the Social Work Young People's Team or Youth Offender Team.

**Those aged 16 or 17 who are looked after** are dealt with under child protection if involved in non-consensual sex.

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<sup>5</sup> Sexual Offences (Scotland) Act 2009 - <http://www.legislation.gov.uk/asp/2009/9/part/5>

## Fife Protocol

The Fife Protocol produced under the auspices of the Fife Child Protection Committee will put in place local multi-agency arrangements for responding to concerns regarding the sexual activity of children or young people under the age of 18 years which are consistent with the principles of National guidance and take proper account of relevant legislation.

### **The Purpose of this Protocol is to ensure that local practice**

Is consistent with National Guidance <sup>6,7</sup> and legislation.
Takes account of the principles of GIRFEC and Children & Young People (Scotland) Act 2014.
Takes account of local CSE guidance currently being developed.
Is attentive to the issues of confidentiality and information-sharing.
Gives consideration to the particular wellbeing needs and circumstances of the children and young people concerned.
Supports all practitioners in their assessment and response to such cases.
Allows for, and encourages, appropriate, proportionate and consistent decision-making in such circumstances.
Allows for early identification and provision of support to those young people who require it.
Ensures that clear processes are in place at local level to meet the child protection and wellbeing needs of the child or young person and that there is a clear route to achieving the necessary agency interventions.

### **The Fife Protocol provides**

Indicators of potential risks ( <a href="#">Appendix 1</a> )
Flow chart ( <a href="#">Appendix 2</a> ) for <ul style="list-style-type: none"><li>– Automatic sharing of concerns.</li><li>– Young person who might be at risk of harm.</li><li>– Young person not known to be at risk of harm.</li></ul>
Health & Wellbeing needs and a list of local resources and services available to young people who are sexually active ( <a href="#">Appendix 3</a> )

This Protocol was compiled by Police Scotland, NHS Fife, Fife Council, with reference to National Guidance from the Scottish Government.

<sup>6</sup> National Guidance Underage Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns. Scottish Government 2010 - <http://www.gov.scot/Publications/2010/12/02143509/0>

<sup>7</sup> National guidance for Child Protection in Scotland 2021 - [National Guidance for Child Protection in Scotland 2021 \(www.gov.scot\)](http://www.gov.scot/Publications/2021/02/02143509/0)

## Appendix 1: Indicators of potential risks

If a professional identifies that there are concerns around the child or young person's sexual behaviour, the indicators set out below can help practitioners decide on the appropriate response and whether information needs to be shared.

What follows is a list of examples of areas of risk and vulnerabilities which practitioners should consider in determining a child protection or wellbeing concern. It is not intended to be used as a checklist nor is it an exhaustive list. This should be used to support an overall wellbeing assessment incorporating the wellbeing indicators.

<b>It is good practice to explore the following...</b>
Discuss the reasons for having sex, the relationship they are in and their maturity: does the child/young person really want to have a sexual relationship (regret, peer pressure).
Inform that it's okay not to have sex regardless of whether they have already had sex.
Inform child/young person about sex and the law.

### **The child and young person**

Is the child under the age of 13, or did the sexual activity take place when the young person was under 13?
Did the child/young person understand the sexual behaviour they were involved in?
Did the child/young person agree to the sexual behaviour at the time?
Was the child/young person able to give informed consent? (e.g. under the influence of drugs and/or alcohol)
Was the child/young person particularly vulnerable? (e.g. mental health issues, learning disability, or any other condition that would heighten the young person's vulnerability, Looked After/Care experienced, homelessness)

### **The relationship**

Was there a coercing power or any other relevant imbalance present in the relationship? (e.g. differences in size, age, material wealth, psychological, social, intellectual and physical development, gender, race, levels of sexual knowledge) It should not automatically be assumed that power imbalances do not exist for two young people similar in age or of the same sex.
Were manipulation, bribery, threats, aggression and / or coercion, involved? (e.g. was the young person isolated from their peer group or was the child/young person given alcohol or other substances as a dis-inhibitor etc.)



### **The other person**

Was the other person in a position of trust?
Did the other person use 'grooming' methods to gain the trust and friendship of the young person? (e.g. by indulging or coercing the young person with gifts, treats, money etc; by befriending the child/young person's family; by developing a relationship with the child/young person via the internet.)
Did the other person attempt to secure secrecy beyond what would be considered usual in teenage sexual activity?
Was the other person known by the practitioner to be or have been involved in concerning behaviour towards other children and young people?

### **Other factors**

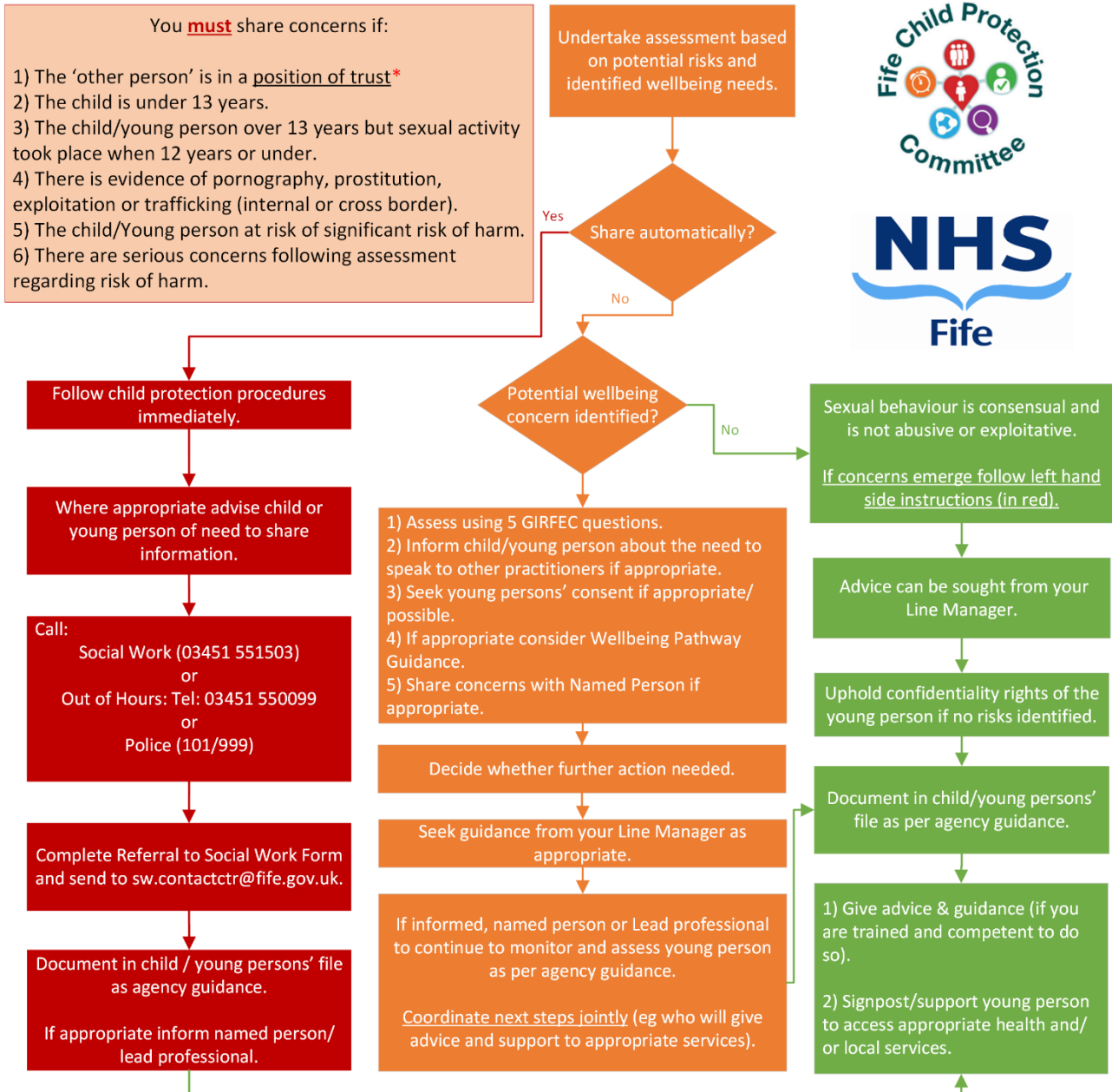
Was the child/young person, frequenting places used for prostitution?
Is there evidence of the child/young person being involved in sexual exploitation or the making of pornography?
Is the child/young person frequenting 'party' houses where there may be older adults using alcohol/drugs or have an unusual interest in teenagers?
Is there evidence of the child/young person being moved to/assisted to travel to other geographical area to take part in sexual activity? (either within the local area, Scotland, the UK or abroad i.e. trafficking)
Did the child/young person deny, minimise or accept the concerns held by practitioners?

## Appendix 2: Underage Sexual Activity Flowchart

# Underage Sexual Activity Flowchart

Fife Multiagency protocol - updated August 2023

If there are concerns that a child may be at risk of significant harm then existing Child Protection processes should always be followed.



\*"Position of trust" is a legal term that refers to certain roles and settings where an adult has regular and direct contact with children.

It's against the law for someone in a position of trust to engage in sexual activity with a child in their care, even if that child is over the age of consent (16 or over).

## Appendix 3: Health and Wellbeing Needs

In **all** cases ongoing wellbeing needs of young person must be considered.

The child/young person should be encouraged to discuss sexual activity with parents/carers, but confidentiality respected, unless wellbeing or child protection concern, flow chart, [Appendix 2](#). Practical assistance and advice may be provided, and with permission referral to appropriate clinical and/or support services.

The following should be discussed if you have the appropriate knowledge/skills, are trained and competent. If this is not the case, you should consider signposting to other agencies where appropriate (e.g. Hub drop-in.)

- Discuss the reasons for having sex, the relationship they are in and their maturity: does the child/young person really want to have a sexual relationship (regret, peer pressure).
- Reliable use of contraception and/or protection from sexually transmitted infections.
- Inform that it's okay not to have sex regardless of whether they have had sex.
- Inform young person about sex and the law.

### **In addition, in the event of a possible pregnancy:**

Emergency contraception: If unprotected sex has been within 5 days suggest urgent referral to community pharmacy, Sexual Health Fife or GP to discuss Emergency Hormonal Contraception.

If unprotected sex more than 5 days ago, Hubs provide pregnancy testing and advice.

If pregnancy confirmed, refer to midwife/Sexual Health Fife/GP. It is very important that early health/antenatal advice is sought.

## Appendix 4: Fife/National Services

### Fife Sexual Health Services

Sexual Health NHS Fife	Sexual health professional advice line: 01592 647164. Patients can self-refer or be referred using Sexual health Professionals Referral Form accessed via the website. Fife Postal Condom Scheme is a free and confidential service. If you live in Fife and are over the age of 13 you can receive condoms direct by post to your home. The scheme is accessed via the website. <a href="https://www.nhsfife.org/services/all-services/sexual-health/">https://www.nhsfife.org/services/all-services/sexual-health/</a>
Pharmacies	Most pharmacies supply Emergency Hormonal Contraception (EHC or morning after pill) which can be effective up to 5 days after unprotected intercourse. The Sexual Health Service or the GP are alternatives.
GPs	GPs can advise on or prescribe contraception including emergency contraception, testing and treatment for sexually transmitted infections.
Get Rubbered	Condoms can be obtained free from a number of venues or agencies in Fife including Hubs. See Sexual Health Fife website.

### Useful Services

LGBT Youth	<a href="http://www.lgbtyouth.org.uk">www.lgbtyouth.org.uk</a> , 0131 555 3940 / 0141 552 7425
Penumbra (Mental Health)	<a href="http://www.penumbra.org.uk">www.penumbra.org.uk</a> , 0131 475 2380
Clued up (Drugs, Alcohol)	<a href="http://www.cluedupdrugs.org.uk">www.cluedupdrugs.org.uk</a> , 01592 858248
DAPL (Drugs, Alcohol)	<a href="http://www.dapl.net">www.dapl.net</a> , 01333 422277
Barnardos	<a href="http://www.barnardos.org.uk">www.barnardos.org.uk</a> , 01592 651482
Children First	<a href="http://www.children1st.org.uk">www.children1st.org.uk</a> , 0131 446 2300
Childline	<a href="http://www.childline.org.uk">www.childline.org.uk</a> , 0800 1111
Healthy Respect	<a href="http://www.healthyrespect.co.uk">www.healthyrespect.co.uk</a> Website for young people about sexual health and relationships developed by NHS Lothian.

### Further support for staff

Fife Child Protection Committee – [www.fife.gov.uk/childprotection](http://www.fife.gov.uk/childprotection)

Fife Health Improvement Training [Health promotion training | NHS Fife](#)