

Edinburgh and Lothians Multi-Agency Under-Age Sexual Activity Guidance



East Lothian and Midlothian
Public Protection Committee



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1. Introduction

This guidance applies to everyone working with children and young people and emphasises that protecting children means supporting them as they learn about healthy, respectful, consensual and safe relationships, both off and online, in order to prevent abuse and exploitation. This involves striking a balance between the freedom and rights of young people to make decisions and access support, while also protecting them from activity that could give rise to immediate harm and/or longer-term adverse consequences.

The law is clear that sexual intercourse in young people under 16 is illegal whether a person is straight, lesbian, gay, bisexual or transgender. However, it does not follow that every case presents a child protection concern.

When anyone working with children and young people becomes aware of situations where under-age sexual activity has taken place, they have a duty to consider whether the circumstances were abusive or indicative of a wider child protection concern.

Child protection concerns arise in those circumstances when there is actual or a risk of significant harm¹ to a child, arising from abuse or neglect, which can include coercion or exploitation. It is important that professionals respond proportionately, and child protection referrals are only made to Social Work and the Police where the child is at risk of significant harm.

This guidance is to support practitioners to be confident and competent in responding to underage sexual activity (on and off-line). Ensuring the safety and wellbeing of children is paramount, alongside providing practical assistance, advice and signposting to appropriate support and clinical services where appropriate. It should be used alongside the Edinburgh and the Lothians Multi-Agency Child Protection Procedures. (The same document is available through the following links: [East and Midlothian](#), [Edinburgh](#), [West Lothian](#)).

¹ As defined in the Edinburgh and Lothians Multi-Agency Child Protection Procedures

2. Definitions

Young child is under the age of 13 years.²

Older child is 13 – 15 years of age.³

16 and 17-year-olds are defined as children by the United Nations Convention on the Rights of the Child (UNCRC) and are also covered by this guidance.

Sex specifically refers to penetrative oral, vaginal or anal intercourse.

Sexual activity refers to anything from kissing to sexual touching as well as penetrative oral, vaginal and anal intercourse (sex) in any context or environment, including online activity.

3. Guiding Principles

[United Nations Convention on the Rights of the Child](#)

[Getting it Right for Every Child \(GIRFEC\)](#)

[Trauma Informed Practice](#)

[Cognisant of Diversity and Inclusion](#)

4. Information Sharing and Confidentiality

Children and young people have the same right to confidentiality as adults i.e. that personal and private information should not be shared without consent unless there is a compelling reason to do so.

Information may be shared without consent where a situation is assessed as a child protection concern.

Professionals are required to ensure that children and young people know from the outset that confidentiality is not absolute; however, reasonable attempts should be made to discuss the issue and the limits of confidentiality with them before information is shared.

² As defined by Sexual Offences (Scotland) Act 2009

³ As defined by Sexual Offences (Scotland) Act 2009

When professionals share relevant and proportionate information they should record these decisions and reasons and, where this has been decided without the consent of the child or young person, should provide reasons and explanation to them.

Summary of Lawful Bases for Sharing Personal Information in a Child Protection Context	
Public interest or public task	Necessary for performance of a task carried out in the public interest, which is laid down by law, or in the exercise of an official authority, for example, a public body's tasks, functions, duties or powers.
Vital interests	Necessary to protect someone's life or, for example, if a child is deemed to be at risk of significant harm.
Legal obligation	Necessary to comply with a common law or statutory obligation.
Reference: Lawful basis for processing Information Commissioner's Office	

For more information refer to the [10-step guide to sharing information to safeguard children](#) (Information Commissioner's Office).

5. Responses to Sexual Activity of:

Young Children (under 13)

Sex with a child under the age of 13 is rape and must be referred as a child protection concern.

A child under the age of 13 is deemed to lack the capacity to consent to sexual activity, therefore any form of sexual activity with a child under the age of 13 should be referred as a child protection concern.⁴

⁴ Sexual Offences (Scotland) Act 2009

This applies to the online or digital world in the same way as any other sexual activity.

All children under the age of 13 involved in the sexual activity should be referred.

Older Children (13-15-year-olds)

Although the law makes it clear that society does not encourage sexual intercourse between young people under 16, many young people engage in a range of under-age sexual activity and this can be part of typical adolescent exploratory behaviour. Research has shown that digital technologies are integral to each stage of young people's romantic relationships. The intent of the law and our practice does not seek to criminalise older children but seeks to protect.

A proportionate, tiered and consistent approach to peer-to-peer image sharing may be appropriate and in line with the same underlying principles and values to ensure the safety and wellbeing of all those involved.

All young people who are, or who are planning to be, sexually active, have the right to access information and services to meet their health needs, e.g. contraception; protection; and any need for emotional support. Professionals in settings where these services are offered should be mindful of the Age of Legal Capacity (Scotland) Act 1991.

When practitioners become aware that an older child (13–15-year-olds) is involved in sexual activity, including online activity, it is essential to assess the nature of the relationship/activity between those involved and to consider the wider needs of each young person. Remember that abuse can take place between young people of a similar age.

The following factors should be considered. This is not an exhaustive list and other factors may influence an assessment:

- Whether the young person is competent to understand and consent to the sexual activity they are involved in;
- The nature of the relationship between those involved, particularly if there is a power imbalance;
- Whether overt aggression, coercion or bribery was involved including misuse of substances/alcohol as a disinhibitory;

- Whether the young person's own behaviour, for example through misuse of substances, including alcohol, places them in a position where they are unable to make an informed choice about the activity;
- 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;
- 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';
- Whether sex has been used to gain favours;
- The young person has a lot of money or other valuable things which cannot be accounted for.

and

- The child's vulnerabilities: disability, mental health issues, low self-esteem, sexual identity, previous experiences of abuse and/or neglect, looked after status, poverty, homelessness etc.⁵

Any concern that the relationship/activity was not consensual or was abusive should be referred as a child protection concern

⁵ Further definitions and information of the concepts in this list can be found in the [National Guidance for Child Protection 2021 \(updated 2023\)](#).

Following the Assessment

Where a practitioner carries out a risk assessment, the following responses may be indicated.

Older Child is not at risk of harm	Older Child is not at risk of harm but other concerns have been identified	Older Child is at risk of significant harm
<p>Where the sexual activity, whilst remaining illegal, is fully consensual with no abuse or coercion indicated, the practitioner will:</p> <ul style="list-style-type: none"> • Maintain the child's confidentiality beyond any information sharing already carried out. • Provide practical assistance and advice, signposting to appropriate services as required. • Record proportionately the information considered and rationale applied in assessing the risk as per agency requirements. 	<p>Where the sexual activity is fully consensual with no abuse or exploitation but there are other concerns e.g. about the child's behaviour, use of substances, or other factor not amounting to a risk of harm to them or others the practitioner will:</p> <ul style="list-style-type: none"> • Maintain the child's confidentiality about their sexual activity. • Provide practical assistance and advice, signposting to appropriate services as required. • Follow GIRFEC processes for other concerns. • Clearly record the information considered and rationale applied in assessing the risk as per local agency requirements. 	<p>Where the assessment indicates that the child is experiencing or is likely to be at risk of significant harm the practitioner must refer as a child protection concern.</p> <p>In these circumstances, practitioners have a duty to act to make sure that the child is protected. This always overrides the professional requirement to keep information confidential.</p>

16 and 17-year-olds

Over the age of 16, sexual activity is legal.

If the practitioner is concerned that the sexual activity may have been abusive or non-consensual, child protection procedures should be considered and must be applied when there is concern about sexual exploitation or trafficking.

A proportionate, tiered and consistent approach to peer-to-peer image sharing may be appropriate and in line with the same underlying principles and values to ensure the safety and wellbeing of all those involved.

It is a Child Protection issue if anyone aged 16 or 17 is involved in sexual activity with anyone who is in a position of trust in relation to them.⁶ This could be a teacher, sports coach, someone who looks after the young person in a residential unit, hospital staff, a driving instructor etc.

The person alleged to be the source of harm has to be in a position of trust for that young person. For example, a driving instructor having sex with one of his/her own pupils aged 17 is committing a criminal offence, and there are child protection issues for the young person. If a young person is having sex with someone who happens to be a driving instructor but is not their own driving instructor, that is not a child protection issue or a criminal offence, provided the young person has capacity to consent and consents.

All young people who are, or who are planning to be, sexually active, have the right to access information and services to meet their immediate health needs, e.g. contraception / protection etc. and any need for emotional support (Appendix C).

6. Involving Parents and Carers

It is understood that assurances of confidentiality for children and young people are essential if they are to be encouraged to seek their help and advice about sexual relationships. Whilst practitioners may encourage or help individuals speak to their parents and involve them in their decision-making about sexual activity, the practitioners are not required to inform the parents or carers at any stage of giving them advice or treatment.

In relation to child protection matters, the decision about when/if to share information with parents or carers will be made by participants in the Inter-agency Referral Discussion (IRD).

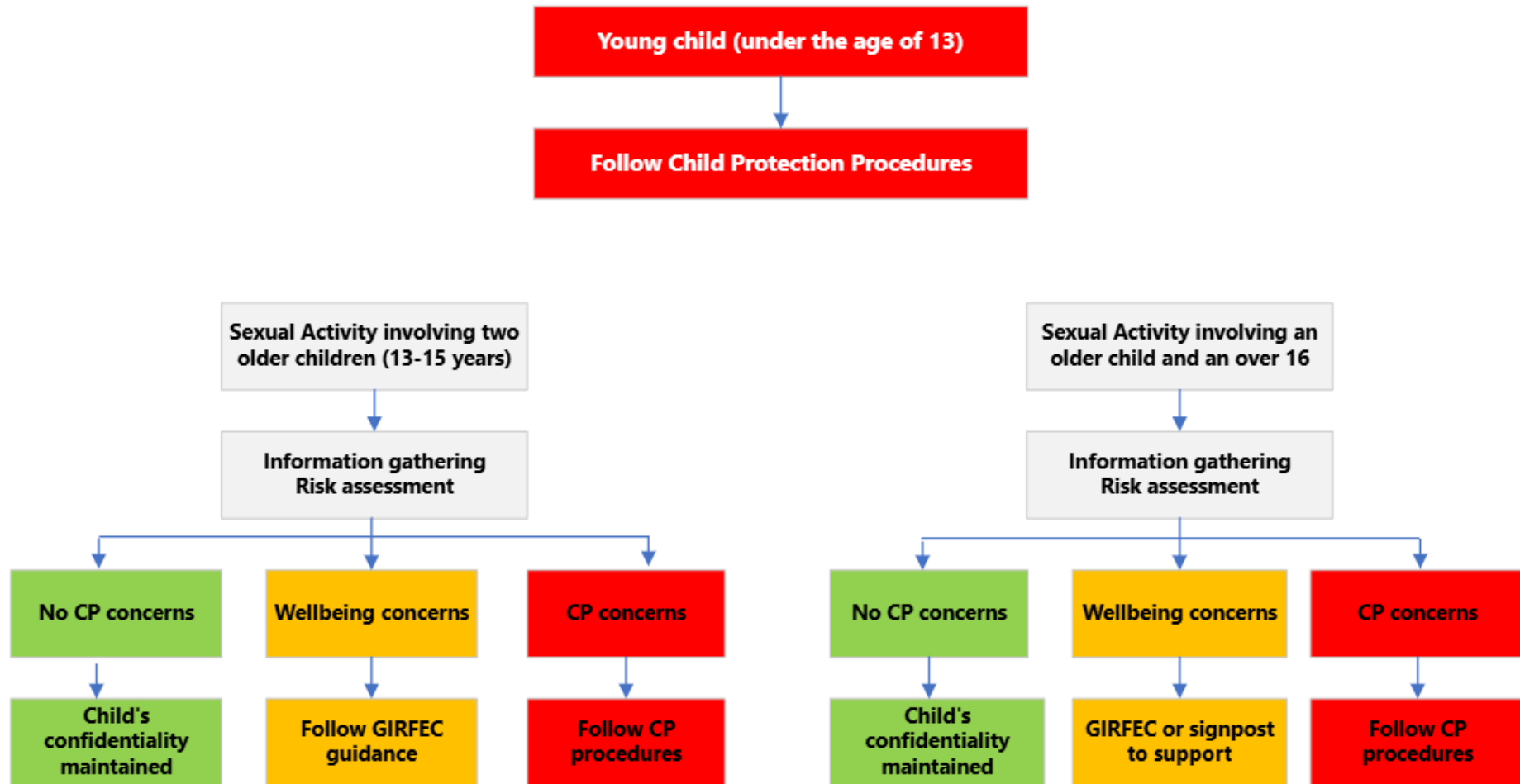
7. Non-recent Abuse

Where a practitioner becomes aware that an '*older child*' was involved in any form of sexual activity when under the age of 13 years they must share this information as a Child Protection concern.

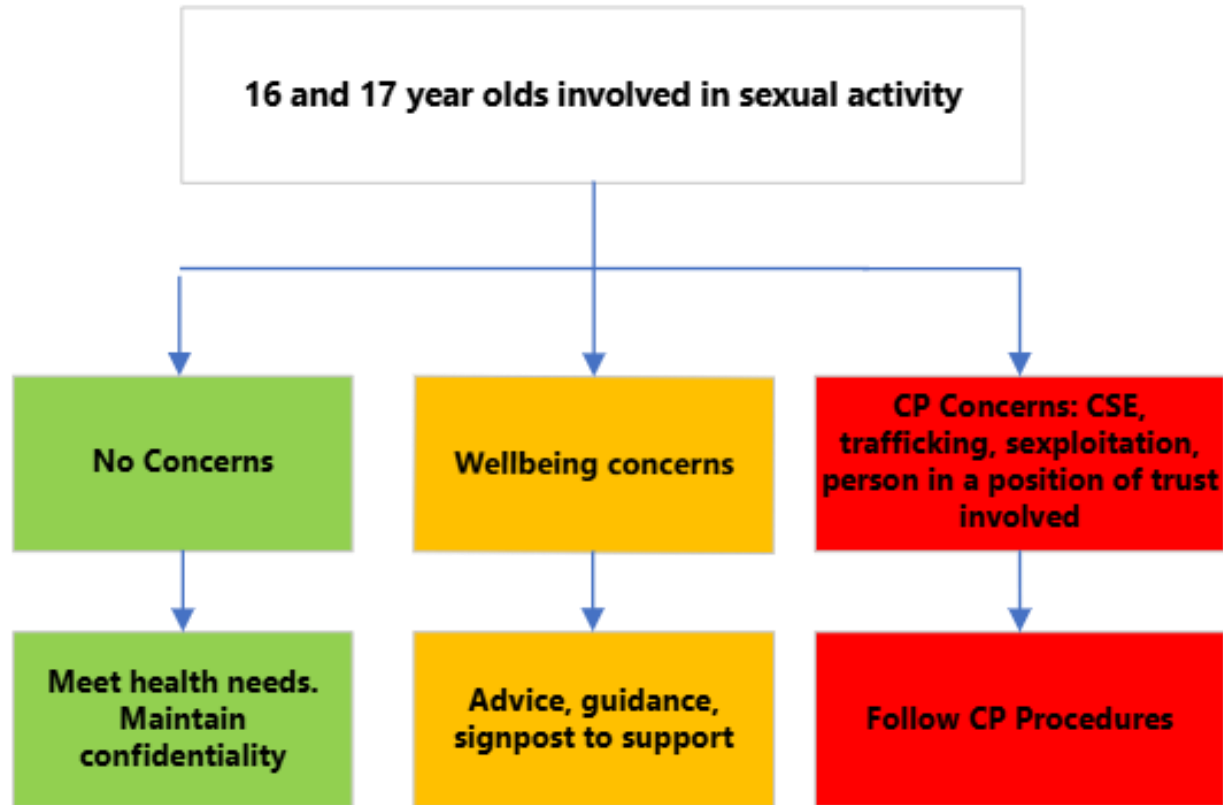
⁶ as defined in [Sexual Offences \(Scotland\) Act 2009](#)

Appendix A. Flow Charts - Under 16 years of age

Practitioner is aware that a child under the age of 16 is involved in sexual activity



Appendix B Flow Chart 16 – 17-year-olds



Appendix C – Contacts and Supports

Sexual Health Services for young people in Edinburgh, Mid, East and West Lothian.

Lothian wide

Healthy Respect+ Young People's Clinic at Chalmers Sexual Health Centre, 2A Chalmers St, EH39ES.

There is a drop-in service for young people 13 – 18 years Monday to Friday.

East Lothian Local Clinic

Healthy Respect+ Young People's Clinic at Tranent Medical Centre, Loch Road, Tranent, EH33 2JX.

There is a drop-in service for young people aged 13 and older on a Tuesday.

Edinburgh Local Clinic

Healthy Respect+ Young People's Clinic at Pennywell All Care Centre, 1D Pennywell Gardens, Edinburgh, EH4 4UA.

There is a drop-in service for young people aged 13 and over on a Friday.

Midlothian Local Clinic

Healthy Respect+ Young People's Clinic at Croft St, 18 Croft Street, Dalkeith, EH22 3BA.

There is a drop-in service for young people aged 13 and over on a Tuesday and Friday

West Lothian Local Clinic

Healthy Respect+ Young People's Clinic at 101 Youth Project, The Centre Livingston, Almondvale Boulevard, Livingston, EH54 6QL.

There is a drop-in service for young people aged 13 and older on a Friday
For more information and the opening times of these clinics visit:

bit.ly/services-lothian



Shorespace.org.uk

Run by the Lucy Faithful Foundation and backed by young people, shorespace.org.uk provides a safe and anonymous place for young people to get help and support. The aim of this website is to prevent harmful sexual behaviours among young people.

It's for anyone who:

- has questions about healthy sexual relationships
- wants to change their own behaviour
- is looking for reliable information to help them respond to someone else's behaviour

There is a combination of online advice and support; an instant chat service available Monday -Thursday 5-8pm; and email contact.

Star Project

The STAR project supports young people who have experienced any kind of sexual harm, in-person or online, recently or when a younger child. They support young people of all genders, aged 12-21 years who live in in Edinburgh, East Lothian and Midlothian.

You can speak to someone confidentially all you need to do is say 'Hi' via Text: 07908 663512

Or email: star@ercc.scot

Sexual Assault Response Co-ordination Service (SARCS)

The NHS Scotland sexual assault self-referral phone service can help to arrange care for you in the days following a rape or sexual assault.

Find out how [SARCS can support](#).

[SARCS Easy-read leaflet](#).

Cairn Service

Support for children and young people affected by crime. For all children aged 10-25 living in Edinburgh, East, Mid or West Lothian.

[6VT Cairn Service](#)

Or email: cairnteam@6vt.info

Appendix D - National policy, procedure, guidance and legislation

[GIRFEC Guidance](#)

[Edinburgh & the Lothians Multi-agency Child Protection Procedures 2023](#)

[National Guidance for Child Protection in Scotland \(2021, updated 2023\)](#)

[Key Messages for Young People on Health Relationships and Consent: A resource for professionals working with young people](#)

[Under-age Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns \(2010\)](#)

[UNCRC \(Incorporation\) \(Scotland\) Act 2004](#)

[Age of Legal Capacity \(Scotland\) Act 1991](#)

[Sexual Offences \(Scotland\) Act 2009](#)

[Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#)

[Civic Government \(Scotland\) Act 1982](#)

[Working with Children and Young People Who Have Displayed Harmful Sexual Behaviour](#) Evidence Based Guidance for Professionals Working with Children and Young People

[Safeguarding - Child Sexual Exploitation \(CSE\)](#) Outline of child sexual exploitation (CSE) Provides guidance and support for practitioners and senior leaders.

["Someone to talk to and Someone to listen" - Supporting young pregnant women and young parents in school](#) Guidance for practitioners to effectively support young pregnant pupils and parents in school.

[Pregnancy and parenthood while you are in school or education: leaflet](#)

Information for young people about how their school or college will support them to make decisions about their education while pregnant or a parent.

[Someone to talk to and Someone to listen – Supporting young pregnant women and young parents in school](#) – guidance for practitioners to effectively support young pregnant pupils and parents in schools.

[Scottish Council for Learning Disabilities- Safe-and-Healthy-Relationships](#) Evidence base and how people with learning disabilities can be supported to enjoy safe and healthy relationships.

Local CSE guidance

East Lothian & Midlothian

emppc.co.uk | [Learning more about Public Protection](#)

Edinburgh

[City of Edinburgh Inter-Agency Guidance on Child Sexual Exploitation](#)

West Lothian

[Organised/Large Scale Child Sexual Exploitation Procedure](#)

[Child Sexual Exploitation Guidance](#)