

# Children, Schools and Families

## HERTFORDSHIRE LOOKED AFTER CHILDREN AND CARE LEAVERS SEXUAL HEALTH AND RELATIONSHIPS POLICY

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## INDEX

<b>1</b>	<b>INTRODUCTION</b>	<b>3</b>
<b>2</b>	<b>ACKNOWLEDGEMENTS</b>	<b>4</b>
<b>3</b>	<b>AIM OF THE POLICY</b>	<b>4</b>
<b>4</b>	<b>OBJECTIVES</b>	<b>4</b>
<b>5</b>	<b>CONTEXT</b>	<b>5</b>
<b>6</b>	<b>POLICY FRAMEWORK</b>	<b>6</b>
<b>7</b>	<b>LEGAL FRAMEWORK</b>	<b>7</b>
<b>8</b>	<b>AGE OF CONSENT</b>	<b>8</b>
<b>9</b>	<b>DIVERSITY, EQUALITY AND ANTI DISCRIMINATORY PRACTICE</b>	<b>9</b>
<b>10</b>	<b>CHILDREN'S RIGHTS</b>	<b>11</b>
<b>11</b>	<b>CONFIDENTIALITY</b>	<b>13</b>
<b>12</b>	<b>THE COMMON LAW DUTY OF CONFIDENCE</b>	<b>15</b>

# 1 Introduction

- 1.1 Hertfordshire County Council is committed to the provision of the highest quality services for looked after children and young people both within the authority and in out of locality placements.
- 1.2 All services and agencies involved in the provision of services for looked after children and young people recognise the need to help and assist them to develop appropriate understanding of their personal relationships and sexual health. Access to this knowledge is essential for their future health and well being as adults.
- 1.3 The importance of sex and relationships education is recognised in the Children Act (1989) and is part of the responsibility of corporate parenting for looked after children. Research illustrates that there is a real need for all looked after children and young people to be equipped with knowledge and skills that will enable them to make informed decisions that may affect their health and relationships as they grow up.

*The experience of being 'looked after' should include the sexual education of young people... This is absolutely vital since sexuality will be one of the most potent forces affecting any young person in the transition from childhood to adulthood. (1) Children Act 1989 Guidance Vol. 4*

- 1.4 For young people who are looked after, developing appropriate personal relationships and having an understanding of sexual behaviour are fundamental to their maturation and future well being. This policy is intended to support staff and carers in this complex and often challenging area of their work.
- 1.5 This policy has been updated in close collaboration with colleagues from Children, Schools and Families and other partner organisations working with looked after children and young people. Information has also been gathered from young people who are currently looked after about their views on the ways in which personal relationships and sexual health need to be addressed with them during their placement.
- 1.6 The policy has been designed so that it is implemented in conjunction with the accompanying Practice Guidance on Sexual Health and Relationships for Staff and Carers.
- 1.7 For ease of reference the following conventions are used throughout the policy and guidance: 'Staff and Carers' refers to any appropriate professionals working with a young person. For example, field social workers, supervising social workers, residential social workers, foster carers, health professionals, learning mentors, personal advisors and any other relevant adult offering support to a young person whilst they

are being looked after around their personal relationships and sexual health needs.

- 1.8 'Young people' includes both children and young people who are 'looked after' by the local authority and also care leavers. This includes young people who are living within Hertfordshire and also in out of locality placements.
- 1.9 In the accompanying guidance, text boxes indicate 'best practice'. Italics indicate references to legislation, guidance and council policies.

## **2 Acknowledgements**

- 2.1 Hertfordshire County Council acknowledges the following local authorities whose policies helped to update theirs, Ealing, Slough and Sunderland.
- 2.2 The updating of this policy and associated guidance was facilitated by Hansa Patel-Kanwal OBE, Independent Consultant, in consultation with looked after young people, staff and carers.

## **3 Aim of the policy**

- 3.1 To provide information, guidance and best practice examples for staff and carers to enable them to provide young people with advice, information and guidance about personal relationships, sexuality and sexual health.

## **4 Objectives**

- 4.1 To enable young people to:

Make decisions and informed choices about personal relationships and sexual behaviour.

Be aware of and understand possible positive and negative consequences about personal relationships and sexual activity.

Understand their responsibilities in relation to making informed choices.

Obtain contraception and advice about how to use it properly.

Develop into responsible adults who can enjoy their sexuality in a safe and healthy manner through acknowledging the rights of others.

Gain skills and confidence in coping with personal relationships and sexual health issues.

Access confidential support and sexual health services.

Be involved in the implementation of this policy and accompanying practice guidance.

#### 4.2 To enable staff and carers to:

Respect, promote and support the rights of young people.

Give accurate and informed advice to young people.

Not perpetuate shame, guilt or prejudice.

Talk confidently to young people about personal relationships and sex in a safe and supportive environment.

Be respectful and responsive to diversity, e.g. ethnicity, gender, disability, religion and sexuality.

Be age appropriate and responsive to a young person's learning ability, previous knowledge and experience.

Access ongoing support and training about personal relationships and sexual health issues when working with looked after young people.

## 5 Context

5.1 The Children Act 1989 highlights the need for a sex and relationships policy relating to children and young people who are looked after. The emphasis is placed on sympathetically meeting the needs of all groups, including lesbians, young gay men, disabled young people and young people who have experienced abuse.

5.2 Peer group conformity is at its strongest in adolescence, making it difficult for young people to exercise choice and freedom of expression, and to resist the pressure to experiment and become involved in sexual activity, often in ignorance of and without regard to their own personal health.

5.3 Young people who are looked after face additional pressures. They have often experienced inadequate parenting in their earlier life and poor adult role models. Many have suffered earlier abuse which may lead them to display inappropriate personal and sexual behaviours with their peers and the adults who care for them. They often have low self-esteem and lack the necessary skills and confidence to negotiate personal

relationships. These young people are therefore particularly vulnerable, especially young women who may have experienced sexist and oppressive relationships.

- 5.4 In a bid to address these challenges around personal relationships and sexual health issues this policy promotes a positive and proactive approach to the provision of information, support and guidance to looked after children and young people.
- 5.5 The local authority cares for young people from different ethnic backgrounds who have, as part of their cultural heritage, a variety of different attitudes in relation to social activity and sexual behaviour. Due attention must be paid by staff and carers to understand and appreciate these differences and to support the young person in making informed decisions with regard to their cultural background and religious beliefs.

## 6 Policy Framework

- 6.1 The council's policy in relation to personal relationships and the sexual health needs of looked after young people is framed within the context of legislative requirements and its own childcare policy and associated procedures. Regarding personal relationships and sexual health, 'best practice' is achieved through:

A demonstrable commitment to the rights of young people.

Working in partnership with young people according to their age and level of understanding.

An acknowledgement that staff and carers are, in many cases, best placed to provide the support, advice and information about personal relationships to the young people they look after.

A commitment to practices that are anti-discriminatory and sensitive to the issues of race, culture, disability, religion, gender and sexuality.

A recognition that looked after young people should have opportunities to develop caring and fulfilling personal relationships. It is acknowledged that these relationships may at some stage involve sexual expression. Providing that this is not abusive, coercive or illegal, the Council will respect such relationships and manage them according to the context of each individual placement

The council acknowledges its responsibility to safeguard and promote the welfare of those in its care and that this should include the provision of advice, access to information and sexual health services, where it is considered necessary and appropriate.

A commitment to training, support and supervision for staff and carers involved in direct work with looked after young people to facilitate successful implementation of this policy and guidance.

## 7 Legal Framework

- Working Together to Safeguard Children Guidance (2006)
- The Children Act 2004
- The Children Act 1989
- The Children (Leaving Care) Act 2000
- The Care Standards Act 2000
- The Street Offences Act 1959
- The Female Genital Mutilation Act 2003
- Forced Marriage (Civil Protection) Act 2007
- The Sexual Offences Act 2003
- Sex and Relationship Education Guidance (DfEE 2000 – now the Department for Children, Schools and Families)
- The National Strategy Sexual Health and HIV (2001)
- The United Nations Convention on the Rights of the Child (1989)
- The mental Capacity Act 2005

### 7.1 The National Teenage Pregnancy Strategy 1999

Aims to reduce conceptions to under 18's by 50% by 2010. The strategy sets out actions in key areas such as the importance of Sex and Relationships Education, access to services and support for teenage parents. It emphasises the involvement of boys and young men in these areas. It states, children in, or leaving care, have repeatedly been shown to be at higher risk of teenage pregnancy and are therefore a key group in preventative work.

### 7.2 Promoting the Health of Looked After Children (2002)

Stipulates that social work professionals and foster carers have a key role and a professional duty, to ensure that looked after young people (including under 16 year olds) and care leavers are encouraged to seek contraceptive and sexual health advice if it appears that they are, or are likely to be, sexually active. Further information about that proactive role is set out in the Guidance produced by the Teenage Pregnancy Unit in 2004. Entitled "*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*"

## 8 Age of Consent

### Young people under the age of 16

- 8.1 Understandably staff and carers may be anxious about what to do when they are aware of young people below the age of consent who may be sexually active. In such circumstances, where there is concern about risk to the young person, such as the possibility of pregnancy and sexually transmitted infections, staff and carers should give information about where young people can access advice, help and services from health professionals. Staff and Carers should also take advice from their Line Manager or Supervising Social Worker.
- 8.2 It is an offence for a man or boy to have sexual intercourse with a girl under the age of 16. The girl herself is not committing any offence by having sex. Boys under 16 can commit offences involving sexual intercourse, although a prosecution is unlikely unless the boy is considerably older than the girl or the girl does not give consent.
- 8.3 The Sexual Offences Act 2003 was introduced to protect children under 16 from sexual abuse. However, the law is not intended to prosecute mutually agreed teenage sexual activity between two young people of a similar age, unless it involves abuse or exploitation.
- 8.4 The law protects children under 13, who cannot legally give their consent to any form of sexual activity. There is a maximum sentence of life imprisonment for rape, assault by penetration, and causing or inciting a child to engage in sexual activity. There is no defence of mistaken belief about the age of the child, as there is in cases involving 13-15 year olds.
- 8.5 Boys under 16 can commit offences involving sexual intercourse although a prosecution is unlikely unless the boy is considerably older than the girl or the girl does not give consent.
- 8.6 Boys aged nine and under are deemed incapable of sexual intercourse but can be charged with indecent assault.
- 8.7 A woman over the age of 16 who has sex with a young man under 16 can be charged with sexual assault. In reality a prosecution is unlikely unless the young man makes a complaint that he has been coerced into sex, or that the relationship is abusive.
- 8.8 Hertfordshire County Council cannot condone illegal sexual relationships, and where such a relationship is taking place we need to take steps to discourage it, whilst also ensuring that the young person receives appropriate advice regarding sexual health and contraception.

A disclosure of underage sex is not in itself a reason to break confidentiality.

- 8.9 In all cases where illegal sexual relationships appear to be taking place between a looked after young person and another young person, we need to

think about whether the relationship is exploitative, coercive or abusive and if so, invoke child protection procedures. An individual professional may not take this kind of decision; appropriate consultation is always required with a line manager or supervising social worker.

### **Young people 16 and above**

- The age of consent to any form of sexual activity is 16 for both men and women.
- Section 28 of the Local Government Act 1988 which previously prohibited a local authority from “intentionally promoting homosexuality or publishing material intending to promote homosexuality” was repealed on July 10 2003.

The following practice guidance has been designed to be implemented in conjunction with the Hertfordshire Looked After Children and Care Leavers Sexual Health and Relationships Policy.

## **9 Diversity, Equality and Anti Discriminatory Practice**

- 9.1 Hertfordshire County Council is committed to ensuring equality of opportunity and addressing issues around diversity for all looked after children and young people. We will ensure that no individual is disadvantaged because of their colour, class, religion, race, gender, disability, age, marital status or sexual orientation.
- 9.2 Looked after children and young people are from diverse racial and cultural backgrounds, who have, as part of their heritage, a variety of different attitudes to relationships and sexual behaviour. Staff and carers need to understand, appreciate and support the young person with regard to their cultural background and religious beliefs.
- 9.3 The young person's welfare is paramount when making decisions about their upbringing. When promoting issues of sexual health, staff and carers must always take into account issues of race, culture, religion, disability, gender, sexuality and HIV status as they relate to the young person.

### **Best practice:**

It is recognised that staff and carers hold their own cultural, religious and moral beliefs and while they will not be expected to alter those beliefs, they should not, however, impose those beliefs on young people, where they differ from this guidance and associated policy.

It is recognised that young men and women have different needs in terms of sex and relationship education and this should be reflected in its delivery. In order to be sensitive to young people it may be necessary that any programme meets specific needs i.e. discussions in single gender groups.

It is acknowledged that stereotypes exist. When considering personal relationships and sexual health issues therefore, staff and carers will be expected to actively challenge such stereotypes.

Disabled young people and young people with learning difficulties have an equal right to accurate information on personal relationships and sexual health that is appropriate to their age and understanding. Their disability should not preclude them from having fulfilling personal and sexual relationships.

To ensure that information is accessible to young people it may be necessary to use translation, interpretation, signing and Braille services.

Black and minority ethnic young people, young women, lesbian, gay, bisexual, transgendered and young people questioning their sexuality are particularly vulnerable to sexualised verbal abuse. Staff and carers need to be sensitive to young people facing such discrimination and challenge such behaviour. Young people themselves may also use sexualised language towards their peers or adults which staff and carers will need to challenge.

Sexual health advice is not just about providing information about sex but is also about putting this into a context in terms of emotions, informed choices and the risk of exploitation. This is particularly important when considering the needs of girls and young women and those young people who have been sexually abused.

Staff and carers should consider all the needs of a young person i.e. race, culture, religion, disability, gender and sexuality when addressing sex and relationship and sexual health issues.

Anti-discriminatory practice means staff and carers have a responsibility to examine their own beliefs and how that impacts on their work with young people.

Discriminatory attitudes, behaviour and comments about sex and sexuality will be challenged by staff and carers, whether they are being made by other carers or young people.

It is expected that any partner agency will also demonstrate how they value equality and diversity among looked after young people.

## 10 Children's Rights

- 10.1 Hertfordshire County Council is committed to undertaking its duties to the young people it looks after within a framework and working practice that supports, promotes and respects children's rights.
- 10.2 These rights apply universally to all young people and provide a benchmark for standards of care that young people deserve and have a right to expect when they are looked after by the local authority.
- 10.3 Young people looked after by Hertfordshire County Council have rights and responsibilities in relation to sexual health and personal relationships. These rights need to be upheld by all staff and carers working with looked after young people. They should be seen within the context of the overall service, which aims to improve the life chances, and empower looked after young people to lead a fulfilled life, with support as required.
- 10.4 The Council's policies aim to guide staff and carers in their work helping looked after young people manage their own sexual health and well being and personal relationships. Explicit within this guidance and delineated throughout, are the rights and responsibilities of the young people and their staff and carers. The rights of the young people need to be balanced against the decisions made to promote their health and well-being.
- 10.5 In relation to health, articles 24(1) & (3) of the 'UN Convention on the Rights of the Child' (2) states:

***Parties recognise the right of the child to the enjoyment of the highest attainable standard of health... and shall strive to ensure that no child is deprived of his or her right of access to such health care services.***

- 10.6 This includes access to information, resources and the provision of preventative initiatives. It also includes the provision of information on personal relationships and sexual health for young people who are looked after which should support, promote and respect their rights both legislatively and as individuals.
- 10.7 As part of the updating of this policy and guidance, young people who are looked after by the Council were asked to comment on the issues that were important for them in relation to personal relationships and sexual health.
- 10.8 Both national and local surveys reveal that young people prefer to gain information and advice on sexual health firstly from their parents and secondly from schools. Young people who are looked after can therefore face a dual disadvantage - they may not live at home with their parents and they may have missed substantial amounts of schooling.
- 10.9 Staff and carers have a duty to ensure that young people are provided with appropriate information in a manner that is accessible to them and that they are comfortable with.
- 10.10 Staff and carers need to provide young people with age appropriate, accessible and accurate information on which to base the choices they make.
- 10.11 Clearly, young people of different ages have different needs and a distinction has to be drawn between what is appropriate for young children as opposed to a mature young person. It is important that information is available and provided as a matter of course without the young person having to ask for it.
- 10.12 The range of information provided to young people on sexual health and relationships should develop from simple concepts to more complex issues as they mature and their understanding increases. It is important that such advice is not just based on sexual facts, but is framed within an understanding of different kinds of relationships, values, attitudes and beliefs.
- 10.13 Some young people may find accepting advice and support in the development of their personal relationships difficult if not impossible. In such circumstances, it should be made clear to the young person that their wishes will be respected but that support will be available to them should their wishes change in the future.
- 10.14 In helping young people to develop socially and culturally, staff and carers must be prepared to take some risks and to take responsibility for doing so. They also need to let young people take risks, for example, in making efforts to form relationships and to take responsibility for supporting young people through breakdowns in relationships.

**Best practice:**

Providing information on issues that young people identify as important without them needing to divulge the reason why they require it.

Responding to young people as individuals. Having their personal relationships and sexual health respected.

Allowing young people to define their own sexual orientation and to seek advice and support without fear of stigma and discrimination.

Within relationships, young people need to be able to take risks and make mistakes. They also need to learn from these experiences within a supportive and caring environment.

Having access to counselling on personal relationships, sexual health and sexuality and being advised by staff and carers of the most appropriate places to obtain this. If the young person requests this, staff and carers need to be prompt in providing support.

Young people have a right to privacy and confidentiality and an understanding about the distinction between both of these rights.

Young people need to be allowed to make choices in all aspects of their personal relationships and sexual health even if staff and carers do not support these choices.

- 10.15 In order to uphold these rights Children, Schools and Families recognises its responsibility to support staff and carers in providing information and access to services for young people.

## 11 Confidentiality

- 11.1 All looked after young people have the right to confidentiality of personal information unless it compromises the health, safety or rights of others or themselves.
- 11.2 Confidentiality is an issue that can cause anxiety for young people, staff and carers. Many looked after young people are reluctant to approach staff and carers due to concerns about personal information being discussed with others without their consent. It is essential that the boundaries of confidentiality are clearly understood by all concerned. It is important that young people understand that confidentiality is not absolute and might have to be breached if there is a child protection concern.
- 11.3 Research and experience has shown repeatedly that keeping children and young people safe from harm requires the sharing of information between professionals and others. This has been recognised in principle

by the courts. Any disclosure of personal information to others must always, however, have regard to both common and statute law.

- 11.4 Normally, personal information should only be disclosed to third parties, including other agencies, with the consent of the subject of that information. Wherever possible, consent should be obtained before sharing personal information with third parties. In some circumstances, consent may not be possible or desirable but the safety and welfare of a child dictate that the information be shared.
- 11.5 The best way of ensuring that information sharing is properly handled is to work within carefully worked out information sharing protocols between the agencies and professionals involved and taking legal advice in individual cases where necessary.
- 11.6 Although there is no formal legislation surrounding confidentiality, in terms of consent to treatment, for example with contraceptive services, health professionals interpret competency in terms of the young person's ability to understand their choices and the consequences of the possible risk of any treatment or non-treatment. The House of Lords' ruling in the 1985 Gillick case was when Lord Fraser clarified the current legal position in England for health professionals in relation to confidentiality. The Fraser Guidelines highlight consent to treatment such as the provision of contraceptive advice or supplies to young people under 16 years of age.
- 11.7 Those professionals who have received training for providing under-16s with contraception and/or advice need to be satisfied that the following criteria have been met:

That the young person can understand the advice and has sufficient maturity to appreciate what is involved in terms of the moral, social and emotional implications for themselves.

That the professionals can neither encourage the young person to inform his or her parents nor allow the carer to inform them that contraceptive advice is being sought.

That the young person is very likely to begin or is very likely to continue having sexual intercourse with or without the provision of condoms and/or contraceptive advice.

That without the provision of condoms and/or contraceptive advice, the young person's physical or mental health or both would be likely to suffer.

That the young person's best interests require the professional to provide condoms and/or contraceptive advice without parental consent.

- 11.8 If at any time staff and carers are uncertain about an under-16s relationship, for example, a 14-year old girl involved in sexual relations with a 25-year old male, they should seek further advice and support from their line manager or supervising social worker.

## 12 The Common Law Duty of Confidence

- 12.1 Personal information about children and families held by professionals and agencies is subject to a legal duty of confidence and should not normally be disclosed without consent of the subject. However, the law permits the disclosure of confidential information necessary to safeguard a child or children from the public interest: that is, the public interest in child protection may over-ride the public interest in maintaining confidentiality. Disclosure should be justified in each case, according to the particular facts of the case, and legal advice should be sought on cases where there are any doubts.
- 12.2 The Council has a confidentiality procedure which states that all service users have the right to expect that all personal information acquired by the Council should be kept in confidence.

Staff and carers need to respect the privacy of all young people in accordance with their age and level of understanding.

Staff and carers must never promise complete confidentiality to a young person. The boundaries regarding confidentiality should be clearly communicated to and understood by the young person. These boundaries are: if the young person's health and well-being is being put at risk or that their behaviour may be causing harm to themselves or others, then information will not be kept confidential.

Staff and carers do not have a duty to inform parents of evidence or suspicion of sexual activity; however, it is a principle of the Children Act 1989 that they should work in partnership whenever possible and appropriate. Staff and carers should first liaise with the young person's social worker to agree the appropriate course of action.

Young people should be informed about whether or not information they might divulge will be recorded and furthermore who might have access to it.

Staff and carers should only divulge information about young people regarding their sexual health and relationships with other professionals on a "need to know" basis, with the consent of the young person and through involving the young person as much as possible in the process.

Personal information must be stored securely and unauthorised access should not be permitted.

Young people should be informed that they may consult doctors, nurses and other specialist services confidentially and independently if they do not wish to discuss issues with staff and carers.