Multi-Agency Sexual Safety and Relationships Guidance 2024

Introduction

A key part of being human is in the relationships we have with their fellow beings; they are complex and individual to each relationship and are fundamental to our mental and physical wellbeing. An individual's sexuality can be a vital part of their sense of self and identity, and everyone should have the right to have relationships as they choose, express their sexuality and to have their personal sexual needs met within the confines of the law.

Equally everyone has the right to be safe from sexual harm, and to feel safe whether they are at home, at work or accessing a service. Therefore, organisational responsibility, commitment and leadership is crucial to ensuring that all people are safe from sexual harm whilst maintaining individuals' rights. Sexual safety needs to be supported at every level of the organisation, to make sure that the right support and structures and resources are in place for staff to understand these rights, and support people to meet their needs safely. This is especially important for people who live in shared residential settings.

It is expected that services will have a policy or guidance that sets out their expected standards and requirements to achieve a safe environment and to lay out a process they will follow if concerns are identified. This guidance is designed for any service to adopt or adapt to suit their organisation or to use to ensure their own policy is sufficiently robust.

The purpose of this guidance is to support staff and managers to understand what processes they need to have in place and how to respond where there has been an actual or alleged sexual safety incident or concerns about the appropriateness of a relationship.

It is important for providers, stakeholders, staff, people who use services, the police, and safeguarding teams to work together on the approach to sexual safety incidents to make sure that concerns and allegations are taken seriously and given the attention and sensitivity they deserve.

This guidance cannot anticipate every situation, therefore, it is essential that staff seek help and support from appropriate colleagues, such as their line manager, safeguarding leads, police, or Local Authority Safeguarding Team whilst ensuring that those who have care and support needs or who are at risk are always protected. Staff need to ensure that their actions are non-discriminatory. The Safeguarding Adults Threshold Document maybe useful in guiding professionals' decision making.

The use of language in risk assessing, determining safety or harm or abuse, and in recording or reporting sexual incidents is important. For instance, 'inappropriate behaviour' does not describe a sexual assault. Professionals and line managers need to be clear and use the correct terminology when describing incident(s) and whether they are crimes, assault, harm, abuse, harassment, or something else.

Sexual Safety: Feeling safe from sexual harm means feeling free from being made to feel uncomfortable, frightened or intimidated in a sexual way by anyone.

Sexual Incidents: Any behaviour of a sexual nature that is unwanted, or makes another person feel uncomfortable or afraid. It also extends to being spoken to using sexualised language or observing other people behaving in a sexually disinhibited manner, including nakedness and exposure.

Sexual Wellbeing: Defined as feeling and being sexually safe, including being free from unwanted sexual activity, sexual harassment, and sexual assault.

Sexual assault: This definition is adapted from The Crown Prosecution Service: 'Is when a person is coerced or physically forced to engage in sexual activity against their will, or when a person (of any gender) touches another person sexually without their consent. Touching can be done with any part of the body or with an object.' Sexual assault does not always involve physical violence, so physical injuries or visible marks may not be seen. Sexual assaults are crimes.

Rape: The legal definition of rape is when a person intentionally penetrates another's vagina, anus or mouth with a penis, without the other person's consent. Sexual assault and rape are serious crimes.

Sexual consent: Where an individual has the freedom and capacity to agree to sexual activity with other persons. It is important to note that individuals with mental health conditions or any cognitive impairment may appear to consent to activity but may lack capacity due to their mental health condition or cognitive impairment.

Sexual harassment: Sexual harassment includes behaviour that is characterised by inappropriate sexual remarks, gestures or physical advances which are unwanted and make a person feel uncomfortable, intimidated, or degrade their dignity.

Verbal and non-verbal sexual gestures or behaviours: Sexual harassment including staring, leering, and suggestive comments/jokes. These unwanted behaviours may only happen once or be an ongoing series of events.

Sexual activity: Includes exposure to body parts and/or self-stimulation and exposure to unwanted online sexual activity (use of the internet, text, audio, video), and this includes unwelcome sexual advances or unwelcome requests for sexual conduct.

Other: This category is for sexual incidents where an individual may have witnessed or experienced something of a sexual nature that does not fit in to the categories of sexual harassment or assault, and which made the person feel uncomfortable and/or sexually unsafe.

It is important that when documenting or reporting an incident, that the detailed circumstances of what took place are accurately recorded, together with observations of any visible or verbal impact on anyone involved. It is only possible to conduct a meaningful risk assessment and respond with a safe management plan if all the details are known, accurately described, and included in the assessment.

Sexual safety is considered on an individual basis

Organisations should be aware of how a person's age, social, cultural and religious factors as well as any learning difficulty or diagnosis of autism or dementia for example can affect their perception of sexual safety and sexual behaviour and modify their approach and style of discussion to meet their needs and level of understanding. Knowing what makes each person feel safe and unsafe, and their triggers, can contribute to a better understanding of how to provide person-centred, individualised care and support.

People should have a choice about who is involved in their care, including the gender of the care worker and be included in all conversations about their care and support. In some cases, this may need organisations to provide information and advocacy in alternative formats or languages in order to help people make decisions about who its involved in their care.

An assessment of sexual risk upon admission to a new service is important. This can be done by asking the person and others, review of records and raise any concerns and mitigating actions when making a referral to a new service.

Duty of Care

The articles under the European Convention on Human Rights have been adopted into the Human Rights Act 1998 and breaches of people's rights can lead to legal action. Article 8 gives people the right to respect for privacy and family life thus allowing individuals to make decisions and choices about their lives and relationships without undue interference. This right is not absolute, meaning that in some circumstances this right may need to be overridden to protect the individual or others.

The emphasis should be on preventing harm and to that end each organisation should have clear and robust policies and procedures that focus on having a good relationship and understanding with the person they are caring for and establishing their view on many aspects of their lives. This will support staff to have the confidence to discuss sexuality and intimate relationships. It is essential that care plans or care records are accurate, detailed and available to support staff to operate in an individual way to support an individual to live their fullest life according to their wishes whether in residential, day care or their own home.

The Royal College of Nursing provides useful guidance on the subject of Older People in Care Homes: Sex, Sexuality and Intimate Relationships including ways to accommodate sexual relationships in care settings and case examples to support good practice.

If an incident of concern occurs there may be a requirement on the staff to report the matter to another body who also have a duty of care to fulfil. If the victim of any alleged sexual safety incident is a child, or an adult with care and support needs, appropriate safeguarding referrals must be considered.

In the context of the legislation,(Care Act 2014 factsheet) Local Authorities have a duty to undertake safeguarding enquiries for any adult who:

- has needs for care and support (whether the local authority is meeting any of those needs or not), and
- is experiencing, or at risk of, abuse or neglect, and
- because of those care and support needs is unable to protect themselves from either the risk of, or the experience of abuse or neglect.

The key guidance for child protection is Working Together to Safeguard Children (2023) which sets out the importance of agencies working together to safeguarding children and promote their welfare. It sets out the organisational responsibilities and provide clear guidance around information sharing.

In addition, section 11 of the Children Act (2004) places a statutory duty on certain agencies to co-operate to safeguard and promote the welfare of children. This includes:

- local authorities
- NHS services and trusts
- police
- probation services and young offenders' institutions.

People who work in these agencies and who do not report suspected cases of abuse or neglect may be subject to disciplinary proceedings.

Relationships between staff and people who use services

Relationships between people in a position of trust and people who they serve are never appropriate. The only appropriate relationship between a person and a member of staff is a professional one that focuses upon the assessed, legitimate needs of the person who uses services. Staff should be aware of the imbalance of power in this relationship caused by the person who uses services' mental or physical health needs and consequent need for care, assistance, guidance, and support. It is the responsibility of each member of staff to always maintain appropriate professional boundaries within relationships.

Helping and supporting others can be both physically and emotionally demanding. Appropriate boundaries are therefore required to allow a person who uses services and a member of staff to engage safely in a professional caring relationship. Staff can also seek advice from their line manager, professional lead, or professional body on how to manage approaches by people who are trying to initiate relationships which would breach professional boundaries.

Internal policies should be very clear on intimate relationships and on sharing telephone numbers, contact through social media, contact outside of work setting, accepting gifts, financial relationships and similar contact with family members.

Where a member of staff becomes aware that there is a risk that they could, or have developed, a non-professional relationship with a person who uses services, they must immediately seek advice from their line manager or another senior manager.

On receipt of such a report, action must be taken by line management and the staff concerned to prevent further development of a non-professional relationship. This can include (and is not limited to), support, guidance and/or investigation under the

disciplinary policy, as appropriate. Appropriate action must be taken to ensure any issues are reported and investigated using the correct processes.

Where colleagues become aware of the possibility that an inappropriate relationship is developing between a person who uses services and a member of staff, they should immediately raise it with their manager, if they do not feel able to raise any concerns through the usual management channels, they may wish to use alternative routes offered in the Whistle Blowing Policy. Such relationships should be reported through the PiPoT process (see below), it is likely that a safeguarding concern should be raised.

Relationships between staff and people who used to use services

Special consideration should be given to circumstances when a member of staff develops a relationship with a former resident or person who has been in receipt of services. Such deliberations should include when the relationship started, power differential – position of authority- status, a person who used to use services' vulnerabilities, and nature of care received, history of relationship (of any capacity), etc. In cases where staff members enter into a relationship with a person who used services, the staff member should disclose this to their manager who should then seek advice.

Pre-existing Relationships

It is possible that a close friend, partner, or family member of a member of staff accesses services from the same organisation. In such circumstances, it is the responsibility of the member of staff to notify their line manager immediately of this conflict of interest, to maintain each relationship within its own appropriate boundary. When a relationship precedes the professional relationship staff must be given all support to avoid conflict of interest and essentially breaching this guidance. This may include referring the person to an alternative provision or assigning the member of staff to an alternative team or duties, temporarily.

Relationships between people who use services

It is important to have a culture of openness and confidence to talk about sexual safety and sexuality, in order to protect people, support respectful relationships and promote people's human rights.

The Care Quality Commission (CQC) have produced guidance which sets out how care providers should consider people's relationship and sexuality needs. It covers a diverse range of often complex issues, including supporting people to form and maintain relationships, while also helping them to understand risks. It also highlights the importance of offering an environment that is welcoming to LGBT+ people, as well as looking at how to support those with physical disabilities.
Relationships and sexuality in social care
This guidance should be followed by all services regulated by CQC and provides comprehensive insight into how to support people in an individual person centred way.

If staff become aware that two people who use services have entered into an intimate relationship it is important that the circumstances and potential risks are considered.

Whether this is a safeguarding issue will depend on factors such as:

- Whether both people who use services have the mental capacity to enter into a relationship.
- The presentations of both people who use services.
- If either person is living in vulnerable circumstances which increase the risk of harm, for example, risk of exploitation.

If either or both people are not able to consent to a sexual relationship, or there is a concern that there is any coercion or any exploitation, this should be treated as a safeguarding concern and potentially a criminal offence. Staff have a duty to ascertain the circumstances and support both parties involved, accordingly.

Staff may come across situations when the capacity of a person to consent to sexual relations needs to be assessed or re-assessed in changing circumstances. For instance, when caring for people living with dementia, long term mental health conditions, a learning disability and/or neurodiversity. It is important to note that people in these groups can and do consent to sexual relations which may also then require a further assessment. Decision specific guidance under the Mental Capacity Act 2005 from Essex Chambers Law may be helpful Mental Capacity Guidance Note - Relevant Information for Different Categories of Decision May 2024.pdf (39essex.com)

The British Institute Of Human Rights guide on Mental Capacity and Sexual Relations provides valuable information, including caselaw, that staff helps when assessing individuals needs and preparing appropriate care plans. Staff involved in these decisions must ensure that an assessment of their capacity to consent to relations is reviewed regularly and by staff who are competent to do so. Staff should note that best interest decisions cannot be made in relation to a person's ability to consent to sex. Therefore, if staff become aware that there has been intimacy between two or more people who use services, and any of them are deemed to lack capacity to consent to this, this must be treated as both a safeguarding concern and a criminal matter.

The Alzheimer's Society produced a fact sheet to explain how dementia can affect sexual feelings, desires and needs of a person with dementia.
Factsheet_sex_and_intimate_relationships.pdf
This is helpful for staff working with people with dementia to understand how to approach this subject and support them with individualised care plans that meet their needs as well as protecting others.

Allegations against People in Positions of Trust

If there is a reported sexual safety incident where the perpetrator is or is alleged to be a staff member - a manager needs to be made aware of the incident urgently.

If there is a potential risk of further harm from the alleged perpetrator, the manager needs to consider whether it is appropriate for the person to remain in work in their

current role. Advice should be sought urgently from senior manager and the Local Authority Safeguarding Team.

An urgent investigation may be required to provide supporting evidence on whether the incident did or did not occur on the balance of probabilities. Ideally this should take place in the first instance before deciding on further actions. However, in instances where the allegation is serious and a decision is made that an immediate police report is required, the police investigation will take precedence. Otherwise, the allegation/concern may need reporting to the Police following the investigation.

It is the role of the Local Authority Designated Officer (LADO) to manage and have oversight of any allegations against people who work with children (whether paid or voluntary, including in the work environment or outside of work), regardless of the agency that the person works for:

- Where an individual may have behaved in a way that has harmed or may harm a child.
- Where an individual has possibly committed a criminal offence against or related to a child.
- Where an individual has behaved towards child/children in a way that indicates they may pose a risk of harm to children.

If concerns arise about someone who works with adults with care and support needs, (including in the work environment or outside of work) the Local Authority Person in Position of Trust (PipoT) procedure in the relevant area must be followed. Examples of such concerns include:

- Person has behaved in a way that has harmed or may have harmed an adult or child.
- Person has committed a criminal offence against, or related to, an adult or child.
- Person has behaved towards an adult or child in a way that indicates they may pose a risk of harm to adults with care and support needs.
- Person may be subject to an investigation by police as a perpetrator of harm.

Staff should refer to their safeguarding policies and/or contact the Local Authority Safeguarding Team for further advice as required.

If the concern has been raised by a person who uses services; risk assessments and care plans may need to be reviewed, and they should be supported to feel safe and understand the process that may follow. Equally, the alleged staff member may need support while the investigation is underway, managers should refer to their internal procedures.

If it is identified that a person who uses services has made a false allegation (due to past trauma, a deterioration in their mental health etc), support may be required to establish and understand the reason for the allegation, and this needs to be reflected in care plans to ensure both the person is protected from potential harm and staff members are protected from further allegations.

Allegations by Staff Members

If a staff member is affected by a sexual safety incident, they should be supported by their manager to report the matter to the police and offer support from occupational health if required. If the incident has uncovered ongoing risks to the staff member or anyone else, the manager may need to take the decision to report to the police without the affected person's consent in the public interest. The manager would be expected to consider the affected person's safety and ability to continue to work in their current area.

If the alleged perpetrator of the incident was a person who uses services, as well as the steps above, the care plans and risk assessments may need review to prevent the risk to others. If the alleged perpetrator was another member of staff, the guidance above in respect of persons in a position of trust should be followed together with internal policies.

Allegations between people who use services

If there is a sexual safety incident or an alleged incident between people who uses services, an investigation should take place to establish what happened and the need for immediate support or medical attention.

The investigation should consider if there are any specific vulnerabilities which need to be considered, for example, disability, past child sexual abuse, trauma. Police reports and safeguarding referrals must be considered depending on the circumstances of the concern.

Risk assessments and care plans should be reviewed and accurately reflect the exact nature of the allegation and there should be clear documentation on what actions have been taken and how the potential risk to others is being robustly managed. Actions may include finding an alternative, more appropriate, care setting for an alleged perpetrator when there is a risk to other people. A care plan must be developed for the alleged perpetrator of the sexual abuse which is carefully and regularly monitored and evaluated. A specialist risk assessment and management plan eg from a forensic psychiatrist / psychologist in order to protect others may be required.

Should restrictions imposed as a response to a sexual safety incident amount to a deprivation of liberty these restrictions must be legally authorised eg through criminal justice mechanisms / a Deprivation of Liberty Safeguard authorisation / Mental Health Act or through the Court of Protection.

Preservation of Evidence

If there has been an allegation of sexual assault or rape, the location of the incident is potentially a crime scene and needs to be made inaccessible, until the police have confirmed that they no longer require access to the location.

Any clothing that the individual has worn when the incident was alleged to have taken place may be required for evidence. This should be placed in a previously unused plastic bag and should not be touched by anybody other than the victim.

There may be opportunities to recover forensic evidence from the victim themselves. This should be explained to the victim to prevent loss of evidence from washing or physical contact with others.

Sexual harm or abuse can occur through forms other than face to face, incidents can occur through online methods. The impact of these can still be traumatic and there may be evidence, requiring police attention. Screenshots of messages or saving e-mails would be good examples of how to preserve electronic evidence.

If a crime has occurred care should be taken through the investigation process not to prejudice any criminal investigation and early guidance from the police may be useful.

Trauma Informed Care

Organisations need to deliver care that is trauma aware and sensitive to the impact of actual, potential, and vicarious trauma on the lives of everyone who uses services, including those who work within them. Staff therefore need to work towards ensuring that our processes and pathways do not re-enact peoples' experiences of trauma but promote safety and recovery. This could be achieved by collaborative working to build and maintain cultures and atmospheres where both services users and staff feel supported, validated, and included.