



HOME OFFICE

# Caring for young people and the vulnerable?

Guidance for preventing  
abuse of trust

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## Guidance for preventing abuse of trust

- The Government believes all organisations involved with caring for young people or vulnerable adults should have codes of conduct to protect against sexual activity within relationships of trust.
- This guidance sets out the main principles for such codes.
- These could be self standing or part of existing codes to provide safeguards and to prevent abuse.
- It is up to each organisation, profession or occupation to develop its own proposals to suit its individual circumstances in the light of the principles in this guidance.

The first part of this booklet explains the Model Principles. The second part sets out the Principles themselves.

The Booklet is produced by the Home Office, Northern Ireland Office, the National Assembly for Wales, Department of Health, and Department for Education and Employment. Contact points are given at the end of the booklet.

# Guidance on model principles

## Which organisations or services is this guidance for?

**This guidance is intended to apply to those caring for young people or vulnerable adults (for definitions, see below) in both paid and unpaid work, including volunteers, regardless of whether they are in the public, private, voluntary or volunteering sectors.** Different individual codes will need to be worked out by organisations to suit individual circumstances.<sup>1</sup> The code could be included in existing wider codes or principles governing the welfare and safety of young people or vulnerable adults or it could stand alone, but it should be specifically designed to cover relationships of trust.

## Is the guidance statutory?

**The guidance itself has no statutory force but contains principles of good practice.** It is intended to help organisations draw up their own codes of conduct on how to provide safeguards and prevent an abuse of trust involving some form of sexual activity.

## What do we mean by sexual activity in this context?

We mean activity which would normally be recognised as sexual, in all the circumstances, without knowledge of the intentions of the parties involved. Obvious examples include sexual intercourse, oral sex and masturbation.<sup>2</sup>

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<sup>1</sup>For example, the code could form part of an employee/volunteer written agreement of some kind.

<sup>2</sup>There are some areas where carers may be working with people with particular learning or physical difficulties to assist them in the development of their sexuality. It is very important that principles and clear parameters are established in relation to such work to protect both carers and those being cared for.

## Who is the guidance intended to protect?

**It is primarily intended to protect young people over the age of consent but under 18 years of age and vulnerable adults where a relationship of trust with an adult looking after them exists.**

**Young people.** Although young people of 16 or 17<sup>3</sup> can legally consent to some types of sexual activity, they may still be relatively immature emotionally. In many areas of the law, for example the right to vote or the provisions of the Children Act 1989, they are still classed as children. It is essential that those looking after young people recognise this vulnerability and make sure it is not exploited.<sup>4</sup>

**Vulnerable adults.** There is no simple definition of vulnerable adult based on age or disability. For example, there is no one age at which elderly people should be classed as vulnerable and many would rightly resent such a classification. Nor could or should all those with physical or other disabilities be classed as vulnerable. Moreover some people might go through periods of being vulnerable, for example, someone who had a nervous breakdown but subsequently recovered. There are however certain services provided for adults where the service providers are in a particular relationship of care to all those receiving such services, the majority of whom are likely to be vulnerable, and this guidance is aimed at those services. Examples are at Appendix B.

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<sup>3</sup>In England, Wales and Scotland the age of consent for heterosexual sex is 16.

In Northern Ireland the age of consent for heterosexual sex is 17. At present for all four countries the age of consent for male homosexual acts and anal sex is 18, although the proposals in the Sexual Offences (Amendment) Bill would change this to equalise it with the age of consent for heterosexual sex in each country.

<sup>4</sup>If the proposals in the Sexual Offences (Amendment) Bill become law, it will become an offence for someone looking after young people to engage in sexual activity with them in some particular care settings and in full time education. These proposals are set out in Appendix A. The proposals would only apply in the limited settings specified, and only to young people, not to adults.

## What about protection for the carers themselves?

**A code on abuse of trust is needed to protect both those in a position of trust and those for whom they care.** This dual purpose should be made clear in any preamble. It is important those in a position of trust have a clear understanding of the responsibilities this carries and clear guidance to ensure they do not abuse their position or put themselves in a position where allegations of abuse, whether justified or unfounded, could be made.

## Principle of equality

**The principles apply irrespective of sexual orientation: neither homosexual nor heterosexual relationships are acceptable within a position of trust.** They apply equally to all without regard to gender, race, religion, sexual orientation or disability. This is an area where it is very important to avoid any sexual or other stereotyping. In addition, it is important to recognise that women as well as men may abuse a position of trust.

## What is meant by a relationship of trust?

In considering a code, it is important to understand what constitutes a relationship of trust. Broadly speaking, a relationship of trust can be described as one in which one party is in a position of *power* or *influence* over the other by virtue of their work or the nature of their activity. But such a definition on its own could be seen as spreading over a whole range of activities including everyday relationships between managers and their staff in the workplace. *Care is always needed when such a relationship potentially exists*, but such a wide interpretation goes beyond what is reasonably defined as a relationship of trust.

For the purposes of drawing up a code, such a relationship needs also to be defined *by reference to the other party to the relationship*. A code should apply where the other party is particularly vulnerable, whether through age (under 18) or in circumstances such as those set out in Appendix B.

In some professions, such as medicine, nursing, education or social services, all relationships with patients/pupils/clients are founded on trust. Other examples of relationships of trust include sports coach/trainee or scout/scout leader.

The individual in the position of trust may have the power to confer advancement or failure. The relationship may be distorted by fear or favour. It is vital for all those in such positions of trust to understand the power this gives them over those they care for and the responsibility they must exercise as a consequence.

While such a relationship of trust exists, allowing a relationship to develop in a way that might lead to a sexual relationship is wrong. A sexual relationship itself will be intrinsically unequal within a relationship of trust and is therefore unacceptable. It is also inappropriate since the ‘professional’ relationship of trust would be altered.

This guidance should not be interpreted to mean that no genuine relationship can start between two people within a relationship of trust. **But given the inequality at the heart of a relationship of trust, the relationship of trust should be ended before any sexual relationship develops.**

## Abuse of trust and sexual or other abuse

Sexual and other forms of abuse take place where the victim **does not or cannot consent to his or her treatment**. There need not be any abuse of a relationship of trust. Any sexual activity which is not freely consenting is criminal. In contrast, the sexual activity covered by abuse of trust may be ostensibly consensual, but rendered unacceptable because of the relative positions of the parties concerned. This can be seen as undermining the ability of the individual being looked after to give free consent.

**All organisations which work with young people or vulnerable adults should already have in place guidance or principles of good practice for the protection of those in their care from sexual and other forms of abuse. This includes coercive sexual relationships, sexual relationships where a party is unable to give consent, and sexual relationships with a child below the age of consent.**

A number of model codes or principles on preventing or dealing with sexual and other forms of abuse already exist and any organisation which cares for children or vulnerable adults which does **not** already have one is strongly recommended to develop such a code.<sup>5</sup> It should not be assumed however that these existing codes will necessarily cover abuse of trust. It must be stressed that any code on abuse of trust should complement guidance and codes of conduct on sexual and other abuse, not replace them.

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<sup>5</sup>Arrangements for **inter-agency working to protect children** are set out in *Working Together Under the Children Act* (available from the Department of Health, PO Box 410, Wetherby LS23 7LN), and supported by local protocols drawn up by multi-agency Area Child Protection Committees. Advice to voluntary organisations on **principles of good practice relating to the protection of children** is set out in *Safe from Harm*, produced by the Home Office, and in *Our Duty to Care*, funded by DHSS Northern Ireland. Examples of **codes on sexual or other abuse or guidance on such codes** include 'Safe and Alert', published by the National Centre for Volunteering; and the codes issued by the General Medical Council (GMC), the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (UKCC), and the Council for Professions Supplementary to Medicine (CPSM); but there are numerous others.

# Model principles

**A Code of Conduct on sexual activity between individuals within a relationship of trust should contain the following points:**

- **A clear policy statement on the paramount need to safeguard and promote the welfare of young people/vulnerable adults and protect them from sexual activity from those looking after them within a relationship of trust.** This should make it clear that those taking on work or already working with young people/vulnerable adults must be aware that they are in a position of trust and the responsibilities this brings with it; and that they are bound by the Code. It should also make clear that the purpose of the Code is two-fold:
  - it aims to protect the young person/vulnerable adult being looked after from an unequal and potentially damaging relationship; and
  - it aims to protect the person in a position of trust by preventing him/her from entering into such a relationship deliberately or accidentally by providing clear and enforceable guidance on what behaviour is acceptable.
- **An explanation of the relationship between the Code on abuse of trust and policies and procedures for safeguarding young people and vulnerable adults more widely from other abuse.<sup>6</sup>**

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<sup>6</sup>All organisations should also have in place clear policies and procedures to safeguard the welfare of children and vulnerable adults and protect them from harm of all kinds.

- **An explanation of the circumstances in which a relationship of trust will arise and the responsibility that arises from that relationship.** In broad terms a relationship of trust will arise where one party, through their work or activity, whether paid or unpaid or as a volunteer, has responsibility for the care of a young person/vulnerable adult in a way which gives them power or influence over him/her. The circumstances will vary in each organisation. If a list of circumstances in which such a relationship of trust is present is produced, it should normally not be viewed as exhaustive. Posts may need to be reviewed on a regular basis to take account of any changes of responsibility.
- **A definition of those to be protected by the Code.** In some circumstances this might possibly cover those, such as close friends or siblings of those in foster care, who are outside the immediate relationship of trust but come into close contact with the carers, but this would depend on the individual circumstances to be dealt with in each code.
- **A clear statement that any behaviour which might allow a sexual relationship to develop between the person in a position of trust and the individual or individuals in their care should be avoided; and that any sexual relationship within a relationship of trust is unacceptable so long as the relationship of trust continues.**
- **A clear supporting explanation of what behaviour is or is not acceptable within the particular organisation.** This is particularly important in areas such as sports coaching which may involve non-sexual physical contact or in care situations where intimate services may need to be performed for another person. This will need to be worked out in detail for each organisation but unacceptable activity would include sexual

intercourse, masturbation, and oral sex or other sexual activity. This is not an exhaustive list. An objective test of sexual activity is important in this context i.e. what a reasonable observer would consider was sexual in all the circumstances. Thus some behaviour, such as cuddling another person when they are hurt or distressed or spontaneous activity such as celebratory embraces, for example on the sports field, would not normally be construed as sexual. Guidelines are needed in each area to help avoid misunderstanding or misuse of the Code.<sup>7</sup>

- **A clear statement that all those in the organisation have a duty to raise concerns about behaviour by staff, managers, volunteers or others which may be harmful to those in their care, without prejudice to their own position.**
- **A clear statement that the principles apply irrespective of sexual orientation:** neither homosexual nor heterosexual relationships are acceptable within a position of trust; and that they apply equally to all without regard to gender, race, religion, sexual orientation or disability.
- **The detailed procedures to be put in place;** the Code should serve to protect the young person/vulnerable adult from abuse of trust; it should also serve to help organisations to deal properly with false, malicious or mistaken allegations of abuse of trust and contain safeguards to protect those maliciously, falsely or mistakenly suspected or accused; it should be constructed to protect both the young people/vulnerable adults and those in a position of trust; the procedures should include:

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<sup>7</sup>There are some areas where carers may be working with people with particular learning or physical difficulties to assist them in the development of their sexuality. It is very important that principles and clear parameters are established in relation to such work to protect both carers and those being cared for.

- how to ensure abuse of trust is identified if it occurs; this includes ensuring a culture of openness within the organisation; that the young people/vulnerable adults know their right to say ‘no’ and know that sexual relationships with staff are not allowed; it also means ensuring that they know what to do if they believe that they have been subjected to inappropriate behaviour; for example, consideration could be given to nominating a single named person within an organisation to whom the child/vulnerable adult knows they can turn, to discuss concerns or receive advice in confidence;
- what to do if abuse of trust is reported or suspected;<sup>8</sup> this includes procedures for reporting concerns, whistle blowing, and the action the organisation should take when a complaint is made; it will need to reflect the internal processes of each organisation and should identify the person, both within and outside the organisation, to whom the complaint should be made; if a complaint is made it is good practice always to ensure that the particular relationship of trust is suspended until the matter is resolved;
- how to minimise the risk of situations where abuse of trust could occur or relationships which could lead to abuse of trust could develop; or where false, malicious or mistaken accusations might be made;<sup>9</sup> in looking at this, organisations

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<sup>8</sup>All allegations should be given urgent consideration following proper internal procedures but the police should only be involved if a suspected criminal offence is involved. However, it should be noted that, where a relationship falls within the scope of the new offence of abuse of trust (see Appendix A), once enacted, any allegation relating to behaviour after this date should be reported to the police at the earliest opportunity since it constitutes, or may constitute, an offence against a child.

<sup>9</sup>For some organisations or situations this might include procedures to minimise time spent alone with one individual apart from others as far as possible; for others it could involve advice covering conduct where people are necessarily alone together, such as counselling and perhaps building in checks through supervision or one-off checks etc.

will need to consider how to disseminate the codes; this might involve training and support for staff and monitoring arrangements, depending on the organisation concerned, and could form part of such arrangements already in place to prevent sexual or other forms of abuse;

- what an individual should do if they are concerned they are developing a relationship which could represent an abuse of trust;
- what an individual should do if they are concerned the other person is becoming attracted to them;
- what an individual should do if they are concerned a colleague is becoming attracted to someone in his/her care; and
- what an individual should do if they are concerned that their actions or words have been misunderstood.

- **The sanctions for abuse of trust;** the seriousness of the abuse of trust should be reflected in the sanction. This is an area which should always be taken very seriously with dismissal as a possible sanction.

# Appendix A

## Proposals for Criminal Offence of Abuse of Trust in Sexual Offences (Amendment) Bill

The Sexual Offences (Amendment) Bill which was rejected by the House of Lords on 14 April 1999 contained proposals which would have created a new offence to protect *those under 18 years of age in particular areas from abuse of trust in the form of inappropriate sexual relationships*. The Government announced on 23 July 1999 that it would re-introduce the Bill in identical form next session and that the Parliament Acts would be used if necessary to secure its passage.

It is possible that some changes could be made to the proposals in the Bill *after* its re-introduction to Parliament. This guidance covers the position in the Bill in the form in which it was rejected by the House of Lords.

The proposed criminal offence would make unlawful any sexual intercourse (whether anal or vaginal) or other sexual activity between a person in a position of trust *in certain defined areas* and any person *under 18* subject to their authority. It would be concerned with ostensibly consensual behaviour within a relationship of trust. The areas to be covered would be:

- full-time education;
- detention under any court order or enactment;
- those looked after by the local authority, whether in foster care, residential care or semi-independent accommodation; and

- those in a hospital (including private hospitals), a nursing home, children's home or other institution providing health and/or social care.

The younger party would not be guilty of the offence. There would be a defence if the person did not know, and could not reasonably be expected to know, that the younger party was under 18 or that they were in a relationship of trust with the young person. There would also be a defence if the parties were married to each other *before* the sexual relationship takes place. As a matter of good practice, however, we would not expect those married to remain in a relationship of trust. 'Other sexual activity' would be defined as what a reasonable person would consider as sexual in all the circumstances, without knowledge of the intentions of the parties involved. Within this it would be up to the courts to make the final judgement on what constitutes sexual activity, but obvious examples include oral sex and masturbation.

# Appendix B

## **Services for adults which should consider codes of conduct on sexual activity within a relationship of trust for those working in them.**

There are some types of services provided for adults where the relationship of trust is so strong that no sexual activity is permitted between the person in the position of trust and the person he/she is caring for. The obvious example is doctors and patients where this is a matter of professional ethics.

Outside such clearly defined and recognised categories, the position may be more complex as adults over 18 should be seen as fully competent and able to make their own decisions whatever their age or any disability they may have.<sup>10</sup>

Nevertheless there are some services which can be identified where the relationship is so clearly one based on authority and trust and the potential for exploitation is so strong that any sexual relationship would be unacceptable while the relationship continues.

Examples of such services include:

- counselling services, including for the bereaved or those suffering nervous breakdowns etc;
- all psychiatric services;
- residential care services;
- domiciliary care of various kinds;
- detention settings of all kinds;
- probation services; and
- services specifically for those with learning disabilities.

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<sup>10</sup>The exception to this is those adults who are legally deemed incapable of consent by reason of mental incapacity.

This is an illustrative, not a definitive, list. While there is no precise definition of a vulnerable adult and it is preferable to look at the kinds of services provided, it may also be helpful to bear in mind the definition suggested by the Law Commission and referred to in the Lord Chancellor's Department's Consultation Paper 'Who decides?'. This was a person who:

‘is or may be in need of community care services by reason of mental or other disability, age or illness; and who

is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation’.<sup>11</sup>

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<sup>11</sup>Law Commission Report 231, 1995: 'Who decides?' a Consultation Paper issued by the Lord Chancellor's Department December 1997.

## Further information contact points

- **Home Office**

Voluntary Organisations: Active Community Unit:  
Mr Matthew Foote: 0171 217 8559.

- **Department of Health**

Social Care Group (Children Side):  
Mr Gerry Egan: 0171 972 4074

Social Care Group (Adult Side)  
Mr Peter Dunn: 0171 972 4268

National Health Service  
Mr Godfrey Perera: 0113 2545757

- **Department for Employment & Education**

Education: Mr Mel Barker: 01325 392129  
Employment Policy: Mr Jonathan Bailey: 0114 2594806

- **All Organisations in Wales**

National Assembly for Wales, Children & Families Division  
Mr David Middleton: 01222 825919

- **Contacts in Northern Ireland**

Northern Ireland Office, Criminal Justice Policy:  
Mrs Linda Connolly 01232 527511

Dept of Health & Social Services, Child Care Unit  
Mrs Elizabeth Campbell: 01232 524755

Pupil Support Unit  
Mrs Mary Potter: 01247 279386

- **All other enquiries**

Mr Hement Acharya  
Home Office, Sentencing & Offences Unit: 0171 273 2985

