

BEST PRACTICE GUIDANCE FOR DOCTORS AND OTHER HEALTH PROFESSIONALS ON THE PROVISION OF ADVICE AND TREATMENT TO YOUNG PEOPLE UNDER 16 ON CONTRACEPTION, SEXUAL AND REPRODUCTIVE HEALTH

Summary

This revised guidance replaces HC (86)1/HC (FP) (86)1/LAC (86)3 which is now cancelled.

Doctors and health professionals have a duty of care and a duty of confidentiality to all patients, including under 16s.

This guidance applies to the provision of advice and treatment on contraception, sexual and reproductive health, including abortion.

Research has shown that more than a quarter of young people are sexually active before they reach 16¹.

Young people under 16 are the group least likely to use contraception and concern about confidentiality remains the biggest deterrent to seeking advice. Publicity about the right to confidentiality is an essential element of an effective contraception and sexual health service.

The Government's ten year Teenage Pregnancy Strategy, launched in 1999, set a goal to halve the under 18 conception rate by 2010. This is a Department for Education and Skills Public Service Agreement jointly held with the Department of Health. Progress towards meeting local under 18 conception rate reduction targets is one of the NHS Performance Indicators for Primary Care Trusts (PCT).

The contribution of PCTs to improving young people's access to contraceptive and sexual health advice is a key element of all local Teenage Pregnancy Strategies, linked to implementation of the Sexual Health and HIV Strategy, and is performance managed by Strategic Health Authorities.

The Sexual Offences Act 2003 does not affect the duty of care and confidentiality of health professionals to young people under 16.

¹ Wellings, K., Nanchahal, K., Macdowall, W., McManus, S., Erens, R., et al. (2001) Sexual Behaviour in Britain: early heterosexual experience. *Lancet* 358: 1843-50

Action

- **PCT commissioners and clinical governance leads should bring this guidance to the attention of all health professionals responsible for the care of young people in any setting.**
- **All services providing contraceptive advice and treatment to young people should:**
 - **Produce an explicit confidentiality policy making clear that under 16s have the same right to confidentiality as adults.**
 - **Prominently advertise services as confidential for young people under 16, within the service and in community settings where young people meet.**
- **Health professionals who do not offer contraceptive services to under 16s should ensure that arrangements are in place for them to be seen urgently elsewhere.**
- **Directors of Social Services should ensure that social care professionals working with young people are aware of this guidance and the Teenage Pregnancy Unit guidance – ‘*Enabling young people to access contraception and sexual health information and advice: the legal and policy framework for social workers, foster carers and other social care practitioners*’.**

Confidentiality

The duty of confidentiality owed to a person under 16, in any setting, is the same as that owed to any other person. This is enshrined in professional codes².

All services providing advice and treatment on contraception, sexual and reproductive health should produce an explicit confidentiality policy which reflects this guidance and makes clear that young people under 16 have the same right to confidentiality as adults.

Confidentiality policies should be prominently advertised, in partnership with health, education, youth and community services. Designated staff should be trained to answer questions. Local arrangements should provide for people whose first language is not English or who have communication difficulties.

Employers have a duty to ensure that all staff maintain confidentiality, including the patient’s registration and attendance at a service. They should also organise effective training³ which will help fulfil information governance requirements⁴.

² *Confidentiality: protecting and providing information*. General Medical Council, London. 2004. *Code of professional conduct*. Nursing and Midwifery Council 2002

³ An example of an effective training resource is ‘*Confidentiality and young people: improving teenager’s uptake of sexual and other health advice*’. This publication is endorsed by the Royal College of General Practitioners, the British Medical Association, the Royal College of Nursing and the Medical Defence Union.

Deliberate breaches of confidentiality, other than as described below, should be serious disciplinary matters. Anyone discovering such breaches of confidentiality, however minor, including an inadvertent act, should directly inform a senior member of staff (eg the Caldicott Guardian) who should take appropriate action.

The duty of confidentiality is not, however, absolute. Where a health professional believes that there is a risk to the health, safety or welfare of a young person or others which is so serious as to outweigh the young person's right to privacy, they should follow locally agreed child protection protocols, as outlined in *Working Together to Safeguard Children*⁵. In these circumstances, the over-riding objective must be to safeguard the young person. If considering any disclosure of information to other agencies, including the police, staff should weigh up against the young person's right to privacy the degree of current or likely harm, what any such disclosure is intended to achieve and what the potential benefits are to the young person's well-being.

Any disclosure should be justifiable according to the particular facts of the case and legal advice should be sought in cases of doubt. Except in the most exceptional of circumstances, disclosure should only take place after consulting the young person and offering to support a voluntary disclosure.

Duty of Care

Doctors and other health professionals also have a duty of care, regardless of patient age².

A doctor or health professional is able to provide contraception, sexual and reproductive health advice and treatment, without parental knowledge or consent, to a young person aged under 16, provided that:

- *She/he understands the advice provided and its implications.*
- *Her/his physical or mental health would otherwise be likely to suffer and so provision of advice or treatment is in their best interest.*

However, even if a decision is taken not to provide treatment, the duty of confidentiality applies, unless there are exceptional circumstances as referred to above.

The personal beliefs of a practitioner should not prejudice the care offered to a young person. Any health professional who is not prepared to offer a confidential contraceptive service to young people must make alternative arrangements for them

Copies can be obtained from Department of Health, PO Box 777, London SE1 6XH. Email:

doh@prolog.uk.com (quoting reference 31451)

⁴http://www.dh.gov.uk/PolicyAndGuidance/InformationTechnology/PatientConfidentialityAndCaldicottGuardians/Caldicott/ProtectionAndUsePatientInformation/fs/en?CONTENT_ID=4015627&chk=rdaggG

⁵ ISBN 011 322309 9

to be seen, as a matter of urgency, by another professional. These arrangements should be prominently advertised.

Good practice in providing contraception and sexual health to young people under 16

It is considered good practice for doctors and other health professionals to consider the following issues when providing advice or treatment to young people under 16 on contraception, sexual and reproductive health.

If a request for contraception is made, doctors and other health professionals should establish rapport and give a young person support and time to make an informed choice by discussing:

- *The emotional and physical implications of sexual activity, including the risks of pregnancy and sexually transmitted infections.*
- *Whether the relationship is mutually agreed and whether there may be coercion or abuse.*
- *The benefits of informing their GP and the case for discussion with a parent or carer. Any refusal should be respected. In the case of abortion, where the young woman is competent to consent but cannot be persuaded to involve a parent, every effort should be made to help them find another adult to provide support, for example another family member or specialist youth worker.*
- *Any additional counselling or support needs.*

Additionally, it is considered good practice for doctors and other health professionals to follow the criteria outlined by Lord Fraser in 1985, in the House of Lords' ruling in the case of Victoria Gillick v West Norfolk and Wisbech Health Authority and Department of Health and Social Security. These are commonly known as the Fraser Guidelines:

- *the young person understands the health professional's advice;*
- *the health professional cannot persuade the young person to inform his or her parents or allow the doctor to inform the parents that he or she is seeking contraceptive advice;*
- *the young person is very likely to begin or continue having intercourse with or without contraceptive treatment;*
- *unless he or she receives contraceptive advice or treatment, the young person's physical or mental health or both are likely to suffer;*
- *the young person's best interests require the health professional to give contraceptive advice, treatment or both without parental consent.*

Sexual Offences Act 2003

The Sexual Offences Act 2003 does not affect the ability of health professionals and others working with young people to provide confidential advice or treatment on contraception, sexual and reproductive health to young people under 16.

The Act states that, a person is not guilty of aiding, abetting or counselling a sexual offence against a child where they are acting for the purpose of:

- protecting a child from pregnancy or sexually transmitted infection,
- protecting the physical safety of a child,
- promoting a child's emotional well-being by the giving of advice.

In all cases, the person must not be causing or encouraging the commission of an offence or a child's participation in it. Nor must the person be acting for the purpose of obtaining sexual gratification.

This exception, in statute, covers not only health professionals, but anyone who acts to protect a child, for example teachers, Connexions Personal Advisers, youth workers, social care practitioners and parents.