

Policy and Guidance on Relationships, Sex and Sexuality

Social Care and Education Services

Approved At		SMG		
Date				
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Purpose

To outline the legal and policy background as to how issues relating to personal relationships, sex and sexuality are dealt with by the department and provide guidance on its implementation.

Scope

This policy and guidance applies to all Social Services staff and external agencies carrying out work on behalf of the Department. The guidance should be available to individuals and their families if appropriate to help their understanding of the services they receive.

Responsibilities

It is the responsibility of managers to ensure that all staff are aware of this policy and guidance, that they comply with it and that they receive training and support to enable them to do so.

It is the responsibility of staff to be aware of this policy and guidance, to familiarise themselves with it and to use it appropriately to inform their day to day work.

It is the responsibility of all managers and staff to refer and report through the Safeguarding procedures should there be a breach of duty in relation to the policy and the guidance laid out within this document.

Abbreviations

Throughout this document:

The term 'staff' is used to apply to all those involved in providing a service on behalf of Conwy Social Care and Education Services whether they are employed by the Authority or otherwise.

The term 'Individual' is used to apply to all those who receive a service from the Department.

Equality and Diversity

Conwy believes in providing an equal and fair service. Conwy want to challenge any discrimination to those accessing our services.

The Equalities Policy must be applied to ensure there is no discrimination on the basis of: Race and Ethnicity; Disability; Age; Gender; Sexual Orientation; Religion and Belief; Welsh Language or Human Rights; Pregnancy and Maternity; Gender Re-assignment and Marriage and Civil Partnership.

Related Documents:

Disciplinary Policy and Procedures

Mental Capacity Policy and Guidance

Working Together to Safeguard people: Volume 6 – Handling individual cases to protect adults at risk

North Wales Adults Professional Concerns 'Interim' Protocol

Equality and Diversity Policy

General Data Protection Regulations

Dress Code Guidelines 2018

Social Media Policy

INTRODUCTION

1. POLICY STATEMENT

Conwy Social Care and Education Services recognises that:

- a)** People who use adult services have the same personal and sexual needs and rights as other people. Sexuality is a natural part of an individual's life experience, and staff should support those accessing our services to explore and understand their sexuality if that is the individual's wish.
- b)** Adult Services are committed to working practices that encourage Individuals to lead a normal and healthy life and have lifestyles which are meaningful to the individual.
- c)** The Council will exercise its legal responsibilities to ensure that personal sexual expression is within the law and does not devalue, stigmatise or exploit individuals.
- d)** Services will ensure that staff will be appropriately selected, supported, trained and supervised to enable them to work with individuals to express their personal choices and preferences in respect of personal relationships and sexuality.
- e)** Staff will work to support Individuals in maintaining a wide range of relationships with partners, family, friends and people in their communities.
- f)** It is the responsibility of all staff to ensure that their relationships with Individuals remain of a professional nature only, whether within or outside of their work place; failure to do so could be considered gross misconduct.

2. PRINCIPLES

Any person provided with services directly or commissioned by Conwy Social Care and Education Department has rights to:

- a. Information concerning the choices they make and access to information held about them.
- b. Marry or have a civil partnership.
- c. Respect for private and family life (Article 12 Human Rights Act).
- d. Be responded to as individuals in a person-centred way.
- e. Have access to culturally sensitive counselling on personal relationships, sex and sexuality.
- f. Be fully involved in making decisions about personal relationships and sexual relationships which concern them.
- g. Protection from abusive and exploitative relationships including forced marriage.
- h. Not be judged by the individual cultural and sexual attitudes of different staff and carers.
- i. Make a complaint if they feel their rights have been breached.
- j. Develop and maintain intimate personal relationships with people of their choice and to

information with specialist guidance.

3. EQUALITY AND DIVERSITY

The Equalities Policy must be applied to ensure there is no discrimination on the basis of: Race and Ethnicity; Disability; Age; Gender; Sexual Orientation; Religion and Belief; Welsh Language or Human Rights; Pregnancy and Maternity; Gender Re-assignment and Marriage and Civil Partnership.

4. LEGAL FRAMEWORK

The Criminal Law

4.1 The Sexual Offences Act 2003

- a) Under this Act the legal age for people of either gender to consent to have sex is 16 years
- b) Sexual activity with adults without capacity is always illegal as they can never legally give their consent. There should always be a referral made to the Police in these circumstances. If it is known that someone without capacity is engaging in sexual activity a referral must be made to the police.
- c) There are three categories of offences to give extra protection from sexual abuse to those with a mental disorder. This includes protecting those who have the capacity to consent but, are vulnerable to exploitative behaviour.
- Causing or inciting a person with a mental disorder impeding choice to engage in sexual activity.
 - Engaging in sexual activity in the presence of a person with a mental disorder impeding choice.
 - Causing a person with a mental disorder impeding choice to watch a sexual act.
- d) It is a criminal offence for care workers to -
- Engage in sexual activity with a person with a mental disorder.
 - Cause or incite sexual activity.
 - To carry out sexual activity in the presence of a person with a mental disorder.
 - To cause a person with a mental disorder impeding choice to watch a sexual act.
- e) There are exceptions where the care worker is married to a person with a mental disorder or where it can be proved that the sexual relationship predated the start of the relationship of care as long as that sexual relationship was lawful.

4.2 The Mental Capacity Act 2005: Consent, Decision Making and Capacity

- a) The Mental Capacity Act 2005 requires that it should be assumed that a person has capacity to make a decision unless proven otherwise through a single clear test for capacity to take a particular decision at a particular time.
- b) Where it has been evidenced that a person lacks capacity, decisions must be taken on the person's behalf in their best interest while involving the person in this decision as much as possible. Where a person does not lack capacity they must not be prevented from reaching a decision on the basis that it is unwise.

c) Consequently in a situation where the ability of an individual to consent to sexual activity is at issue a decision is made, based on an assessment of that person's capacity if lacking capacity if the activity is in their best interest.

d) It must be noted that consent is not the same as capacity. A person may have the capacity to consent but choose not to do so.

e) The person's potential to make a decision for themselves should be maximized and this includes effective language and communication skills by those trying to ascertain whether the individual can make the decision. All practical steps to communicate with, and involve, people must be used and include:

- The use of appropriate words, pictures and symbols.
- Involving people skilled in using these techniques.
- Involving people close to the individual and familiar with their ways of and communicating.
- A suitable environment and enough time for the communication to take place.

These include for example:

- Whether there is a power imbalance between people involved in the relationship.
- Whether tangible inducements has been used by one person; and coercive control is a criminal act.
- Whether, in the case of heterosexual relationships, the people involved know about the risk of pregnancy.
- Where partners know about safer sex and are able to use this knowledge.

This is a crucial point for people with physical and learning disabilities, some of whom do not use speech and many of whom are easily excluded from the decision making by complicated language and concepts.

f) Where decisions may need to be taken concerning the welfare of a person without capacity there may be a requirement to refer to an IMCA (Independent Mental Capacity Advocate).

4.3 Family and Carers

a) Many Individuals live with family members carers or are dependent on them for support in the community. The influence and importance of those relationships must be recognised as is the cultural diversity of individuals and their families which may influence values, attitudes and decision-making.

b) It must also be recognised that family members and carers may have extreme difficulty coming to terms with their relatives approach to the personal relationships and their sexuality.

c) In these circumstances the rights of the person will be protected while consideration is given to inclusion of family members or carers in the decision as to the person's best interest. This may be by means if a best interest meeting (ref to Policy and Guidance for Decision – Makers Mental Capacity Act 2005).

d) Individuals may be given support in asserting their rights with parents and carers over choices they may make, in relationships or participation in a programme of sex education or counselling.

e) Family Members or carers of Individual's do not have the right to prevent or control the consensual sexual activity of users, but may need support and help in coming to terms with their son or daughter's sexuality.

5 RELATIONSHIPS WITH STAFF

5.1 Sexual Relationships

- a)** It is a legal and disciplinary offence for a member of staff to seek or engage in intimate or sexual relationships with those accessing services. Any such relationship would be classified as gross misconduct leading to immediate suspension and disciplinary proceedings.
- b)** Any incident will also be subject to the Safeguarding procedures and prosecution will be possible under the Sexual Offences Act 2003.
- c)** It is the responsibility of all staff to ensure that their relationships with Individuals' remain of a professional nature only, whether within or outside of their workplace; and avoid any accusation of improper conduct, failure to do so could also be considered gross misconduct.
- d)** Managers have a responsibility to ensure that staff are not put in a position whereby they are isolated or vulnerable to their behaviour being misinterpreted by Individuals or others.
- e)** Staff who may feel themselves to be in a vulnerable situation in relation to someone they provide support for should inform their manager immediately.
- f)** Any staff member having concern about an inappropriate relationship or an issue of staff or management conduct should report this to the relevant line manager or through the Whistleblowing policy.

5.2 Dress

Staff have a responsibility to dress appropriately and in a manner that reflects the ethos of Social Care and Education Services.

5.3 Privacy

- a)** Staff should respect the right to privacy for vulnerable adults they support. However, a balance is needed between respecting privacy and ensuring the person's safety. This should be agreed with the person and if needed documented in their care and support plan usually as private time.
- b)** It is accepted that staff will hold their own religious, cultural and moral views and that they will not be expected to alter their personal beliefs. However, staff will not be allowed to impose their own values and beliefs on those accessing services and will be expected to support the implementation of agreed programmes of education or counselling. For example, they will support Individuals who are in gay and lesbian relationships in the same way as they would support people in heterosexual relationships.

6 EDUCATION AND ADVICE FOR PEOPLE CONCERNING SEXUALITY AND RELATIONSHIPS

6.1 Developing Personal Relationships.

- a)** Vulnerable adults have a right to develop personal relationships with other people and receive appropriate support from staff in doing so. Where they wish to have a sexual relationship with another adult, and are capable of giving informed consent, support and advice may be offered.

b) Support and Advice will include access to as much information about themselves and their bodies and other people, their emotions, appropriate social behaviour, etc. as they can assimilate. They have this right regardless of whether they have a full awareness of their sexuality.

c) Staff will be given induction and further training with regards to supporting Individuals in all aspects of their relationships and will have support from their line manager in addressing and seeking further guidance on any issues, including seeking support from external agencies.

6.2 Education

a) All education on sexual matters should be person-centred and within the comprehension of the individual. To make a free and informed decision about relationships, an adult over the age of consent (16 years) must be supported to consider the options and possible consequences and communicate their decision.

b) Education and counselling will be provided for individuals when they express a clear wish or display a clear need for such assistance. It can also be considered when families and/or professionals request it. Some adults will need support or continued education for their personal development.

c) Sex education should be carried out as part of an agreed care and support plan from appropriately qualified staff with support of other identified people.

6.3 Signposting- Sexual Activity and Behaviour

Masturbation and Solo Sexual Behaviour.

a) The sexual exploration and stimulation of one's own body is legal (as defined by the Obscene Publication Act) behaviour for people, although it may conflict with the philosophies of some cultural and religious groups.

b) Masturbation will not be discouraged but is illegal, and unacceptable, in public places. Staff will direct people who wish to masturbate to a private place as soon as is reasonable. (See section on Education). (Sexual offences act 2003).

c) Some adults with learning disabilities may benefit from staff assistance in differentiating between private and public places.

d) Some people may need further education or verbal guidance to learn to masturbate successfully. Others may require physical aids and assistance to masturbate. Staff will not, themselves, physically assist Individuals to masturbate.

e) Where necessary consideration will be given to refer a person needing guidance to a specialist agency for guidance. This decision will be taken by manager following a care planning meeting.

6.4 Sexually Stimulating Material

a) Staff will not promote or initiate the introduction of pornographic material in their work, but may support and assist those who wish themselves, to buy legal sexual stimulating material, provided that such assistance supports the notions of privacy and discretion and is legal. Staff need to indicate to Individuals that such material may offend others and respect given to this i.e. storage and visibility of such materials.

b) If an Individual living in residential accommodation requests assistance to obtain legal pornographic material this must be discussed with the Manager regarding storage and viewing of the material and the outcome recorded.

c) Staff must not bring any kind of pornographic material into any establishment, nor must they influence or incite Individuals to obtain pornography.

7 SEXUAL ORIENTATION

a) Everyone has the right, within the law, to express their sexuality in the way they choose and to identify themselves in the way that feels most comfortable to them.

b) Sexual orientation should be included in an Employee's Equal Opportunities Policy and, if so, state it is a disciplinary offence for staff to discriminate against anyone because of their sexual orientation. Staff should offer the same degree of support and respect to everyone.

c) Staff should also try to ensure that people are not subjected to prejudice or abuse (verbal or physical) by others and any complaint relating to such discrimination should be treated seriously.

d) Staff should remember that people are not always open and maybe uncertain about their sexual orientation. Any "disclosure" or even hints must be treated as confidential, unless permission is given by the service user to share the information for a specific reason or where abuse is suspected /evident.

e) Staff should avoid making stereotypical assumptions about a person's sexual orientation based upon dress, mannerisms, appearance etc. Staff should resist labelling people within sexual types unless the person concerned specifically chooses this.

8 SEXUAL HEALTH

a) Vulnerable Adults have the same rights as all other people to have their sexual health needs met. This should include sexual health education, empowering the person to have the same opportunities to develop sexuality identify and where possible support the person in a healthy expression of sexuality. This should be done without prejudice or bias.

b) As vulnerable adults may need assistance in accessing mainstream sexual health services, staff working with them need to be proactive in developing links by providing and seeking guidance via management to appropriate services.

c) A person with sexual health problems may be referred for advice and support to their GP.

8.1 Contraception

a) People may wish to make a decision about contraception themselves or they may wish to make a decision with their partner. It should be made clear that it is usual that if there is the possibility of pregnancy through a sexual relationship then both parties have responsibility for contraception.

b) Decisions around the use of contraception should be based upon the informed choice of the person with learning disabilities and if they require assistance should be part of a multidisciplinary approach.

c) Staff need to maintain confidentiality over matters to do with contraception.

9 MEDICAL INTERVENTION

- a)** Any medical intervention, involving contraception, anti-libidinal medications, vasectomy or sterilisation can only be considered with the express agreement of the individual and their medical practitioner.
- b)** The use of irreversible procedures (or procedures with dubious reversibility) such as sterilisation (including vasectomies) cannot, and will not be taken for people lacking or with impaired capacity without reference to the Court of Protection.

10 PREGNANCY AND BIRTH

Should a planned or unplanned pregnancy occur, counselling should be offered with regard to the implications of having a child i.e. housing, health and wellbeing of mother and child. Qualified personnel throughout all the stages of pregnancy and birth should provide this counselling.

11 PARENTING

- a)** People with learning disabilities have the same rights as everyone to become parents. However, parenthood carries serious responsibilities and the needs of children are always paramount.
- b)** Parents with learning disabilities may encounter difficulties and a review of the literature [McGaw 1993] revealed that often, when such parents do not receive specific support and intensive teaching, the children are taken into care. Information and advice about parenting should be made available to people when it is needed or requested.
- c)** Some people with learning disabilities may need counselling to explore the expectations and to assess their parenting capacities. Some people with specific disabilities may require practical assistance in looking after any children and this may be provided as part of that care package based on assessed need.
- d)** Many people with learning disabilities will be as capable as the rest of us of providing a loving and nurturing environment for children. However, under the Children's Act 2004, where the welfare of the child is thought to be at risk, Social Services and health have a duty to intervene.

12 SAFEGUARDING SERVICE USERS AND CARERS

All staff and carers working with vulnerable adults have a responsibility to be aware of abuse and neglect and to report any concern that they may have that a person is experiencing abuse or may be at risk of abuse. A report should be made following the procedures in the Adult Safeguarding Guidance: Working together to safeguard people: volume 6 – handling individual cases to protect adults at risk and the North Wales Adults Professional Concerns 'Interim' Protocol.

12.1 Sexual Abuse

- a)** This is defined as direct or indirect involvement in sexual activity without consent.
- b)** Consent to a particular activity may not be given because:
- A person has capacity and does not want to give it.
 - A person lacks capacity and is therefore unable to give it.

- A person with capacity feels coerced into activity because the other person is in a position of trust, power and authority.

c) Indirect involvement can include: inappropriate looking, photography, indecent exposure, harassment, serious teasing or innuendo, photography.

d) Sexual abuse can involve both:

- **Contact abuse:** touching of breasts, genitals, anus and mouth, masturbation, of either or both persons. Penetration or attempted penetration of vagina, anus, mouth with or by penis, fingers, or objects.
- **Non - Contact abuse;** being encouraged or made to look upon pornographic materials, obscene telephone calls, indecent exposure, serious teasing or innuendo. [Brown and Turk, 1992].

12.2 Disclosure of Abuse

a) In some instances where people are receiving advice or taking part in a sex education programme they may disclose on past or present issues. All disclosures of sexual abuse made by adults over the age of 18 years must be reported under Adult Safeguarding Guidance: Working together to safeguard people: volume 6 – handling individual cases to protect adults at risk and the North Wales Adults Professional Concerns 'Interim' Protocol.

b) Such disclosures will be investigated within the procedures of the Adult Safeguarding Guidance: Working together to safeguard people: volume 6 – handling individual cases to protect adults at risk and the North Wales Adults Professional Concerns 'Interim' Protocol.

12.3 The Use of Information Technology

a) Individuals may be at risk of committing an offence when viewing or downloading certain sexually explicit information or pictures from the Internet or using inappropriate chat rooms.

b) Staff therefore have a responsibility to inform and advise Individuals on the appropriate use and benefits of the internet and the dangers / consequences of visiting certain sites such as chat rooms, picture libraries and pornographic sites and explain the consequences of failing to follow advice.

c) All staff should be aware of their responsibilities in relation to the authorities Social Media Policy 2014. Staff are reminded that their relationships with Individuals must remain of a professional nature only, as set out in Section 5 the policy.

13 COHABITATION AND MARRIAGE

a) People who express a mutual wish to live together or marry should be afforded assistance to accomplish this aim.

b) Some people with learning disabilities may need assistance in understanding the responsibilities of marriage and staff may need to provide them with whatever assistance and information they need, so that they can make an informed choice.

c) Some staff, relatives/carers or other Individuals may have moral or religious objections to sexual relationships outside marriage. While these views should be respected they should not lead to imposition of, moral and religious codes not shared by the couple.

14 CIVIL PARTNERSHIPS

Individuals who wish to enter into a Civil Partnership under the Civil Partnership Act 2004 should be supported to understand the meaning and expectations for and of people who choose to enter into this arrangement.

15 DIVORCE & SEPARATION

a) It must be recognised that any relationship, no matter how long it has been in existence, can break up. This will be no different for people with learning disabilities.

c) In such situations, staff need to be equipped to provide the appropriate support and guidance but only at the request of both parties. If staff suspect one of the partners is being abused, then appropriate action should be taken in accordance with the Adult Safeguarding Guidance: Working together to safeguard people: volume 6 – handling individual cases to protect adults at risk and the North Wales Adults Professional Concerns 'Interim' Protocol.

b) Staff should not attempt to persuade the couple to either part or stay together. The decision is ultimately for the two people concerned.

c) Counselling/support from outside agencies e.g. Relate, should be offered to the individual/s.

d) In cases where there are children involved, issues around custody should be explained. However, under the Children and Families Act 2014, where the welfare of the child is thought to be at risk, the Social Services Department has a duty to intervene.

e) People should have choices as to where they go for information and who supports them in finding out the information. Gender may be an issue e.g. who provides the information, who provides any support or advocacy.

16 CONFIDENTIALITY AND RECORD KEEPING

a) All information about Individuals regarding personal and sexual relationships must be treated as confidential and only shared with other professionals/care staff on a 'need to know' basis. Individuals have the right to access information held about them.

b) Where it is considered there is a need to safeguard an Individual or other people consideration will be given to the disclosure of information concerning an individual's sexual activity or health.

17 IMPLEMENTATION of Policy and Guidance on Relationships Sex and Sexuality Policy

a) This policy will be reviewed three years after its implementation date or earlier if monitoring indicates amendments are required and/or there are changes in legislation which impact upon its contents.

b) This guidance will be included within the relevant Human Resource Policies for Adult Services.

c) All new staff should be made aware of this policy as part of their induction. Existing staff should be aware and have access to this policy.

d) All staff who may need to provide information and support to those accessing services will be identified and offered specialist training and support.

e) The principles of this policy will be extended to provider contracts for all service Groups.

f) Conwy will ensure that those using services will be consulted about the operation and review of this policy and that it will be in a format that will be easily accessible.

APPENDIX 1

The four key principles of 'Valuing People' can be realised at both local and national level. They are grounded in the legislation that confers rights on all citizens including people with learning disabilities:

- Obscene Publications Act 1959 (updated 2019)
- The Human Rights Act 1998
- The Sexual Offences Act 2003
- Children's Act 2004
- Civil Partnership Act 2004
- Equality Act 2010
- Mental Capacity Act 2005