



BEXLEY LOCAL SAFEGUARDING CHILDREN BOARD

Joint Service Protocol to Meet the Needs of Sexually Active Young People under 18 yrs

December 2011
(Review 3 yearly)

Introduction

This protocol has been devised with the understanding that most young people under the age of 18 will have a healthy interest in sex and sexual relationships. It is written on the understanding that those working with young people will want to do as much as they can to provide a safe, accessible and confidential service whilst remaining aware of their duty of care to safeguard them and promote their wellbeing. This process applies to contact by any practitioner working in Bexley including health professional, youth worker, social worker, Bexley Youth Advisor or voluntary agency worker with someone who is sexually active and under 18.

All agencies, which have contact with children and young people, should use this protocol to develop and implement local guidance for their own staff.

Aims of this guidance

1. To assist staff in reaching decisions when considering the vulnerability of a young person presenting for sexual health advice and to identify where these relationships may be abusive and the provision of protection or additional services may be required.
2. To ensure that the guidance on confidentiality and its limits is clear to both health professionals and young people
3. To identify the referral pathway

This guidance is written in accordance with:

- The London Child Protection Procedures 4th edition (Apr 2011)
<http://www.londonscb.gov.uk/procedures/>
- 'Safeguarding Sexually Active Children-Supplementary Procedure London Safeguarding Children Board 2006
- Safeguarding Sexually Exploited Children-Supplementary Procedure London Safeguarding Children Board 2006
- 'Working Together to Safeguard Children' *DCSF 2010*
- Safeguarding Children & Young People from Sexual Exploitation - Supplementary guidance to Working Together DCSF 2009
- Tackling Sexual Exploitation – Action Plan DfE 2011
- 'What to do if you are worried a child is being abused' *DfES 2003*
- The Children Act 1989.
- The Children Act 2004
- Sexual Offences (Amendment) Act 2000 & Sexual Offences Act 2003
- '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' *DOH gateway ref. No. 3382 July 2004*

The Sexual Offences Act 2003

The Sexual Offences Act 2003 does not affect the duty of care and confidentiality of health and social care professionals to young people under 16. Although the age of consent remains at 16, it is not intended that the law should be used to prosecute mutually agreed teenage sexual activity between two young people of a similar age, unless it involves abuse or exploitation.

Anyone acting to protect a young person from Sexually Transmitted Infections, becoming pregnant or promoting their wellbeing is not in contravention of the Sexual Offences Act 2003.

Young people under 13

In law (Sexual Offences Act 2003), children under 13 are deemed to be unable to give informed consent to sexual activity, so professionals working with such children need to ensure that they have taken all reasonable steps to protect the child's welfare and prevent them from harm, and that they have operated within the guidance issued by their organisation

In all cases where the sexually active young person is under the age of 13, a full assessment must be undertaken. Advice or guidance should be obtained from the organisation's Child Protection lead, the Designated/Named clinician, or line manager.

Although each case must be assessed individually, any sexual offence involving a child under 13 is very serious and should be taken to indicate a risk of significant harm and in most cases this will lead to a referral to the Children's Social Care in line with London Child Protection Procedures. A strategy discussion (appendix 2) with the police and other agencies will be held. In order for this to be meaningful, the young person will need to be identified, as will their sexual partner if details are known.

All actions taken by the professional **MUST BE RECORDED** and the rationale for these actions clearly given.

A decision not to refer can only be made following a case discussion with the nominated lead for child protection within the professional's employing organisation. When a referral is not made, the professional and agency concerned is fully accountable for the decision and a good standard of record keeping must be made, including the reasons for not making a referral.

When a girl under 13 is found to be pregnant, whether or not she intends to proceed with the pregnancy, a referral to the Children's Social Care must be made following LSCB child protection procedures and a strategy discussion (appendix 2) with the police and other agencies will be held. At this stage a multi agency support package should be formulated.

Young people between 13 and 16

The difference in procedure reflects the position that, whilst sexual activity under 16 remains illegal, young people under the age of 13 are not competent to give consent to such sexual activity.

The Sexual Offences Act 2003 reinforces that, whilst mutually agreed, non-exploitative sexual activity between young people does take place and that often no harm comes from it, the age of consent is 16 years. This acknowledges that this group of young people is still vulnerable, even when they do not view themselves as such.

Sexually active young people in this age group should still have their needs assessed using this protocol. Discussion with Children's Social Care will depend on the level of risk/need assessed by those working with the young person.

Whether or not a young person has additional needs may only be determined by undertaking an assessment using the **BEAN** (Bexley Early Assessment of Need). This should always be considered when a practitioner identifies that the young person may benefit from early help from other agencies or services. It is important this is discussed with the young person and their consent obtained if the practitioner wishes to proceed.

Within this age range the presumption will be that the younger the child or the wider the age gap the stronger the presumption that sexual activity is a matter of concern. Professionals should be mindful of possible sexual exploitation of children. Children may be coerced into sexual activity by criminal gangs or be the victims of trafficking. The DCSF published guidance in June 2009 'Safeguarding Children and Young People from Sexual Exploitation'.

Cases of concern will be discussed with the agency's nominated child protection lead and subsequently with other agencies. Where there is reasonable cause to suspect that significant harm to the child has, or might occur the case will be referred to Children's Social Care under London Child Protection procedures and a strategy meeting (appendix 2), to include the referrer, will be held to discuss next steps.

All cases will be carefully documented including where a decision is taken not to share information.

Young people between 17 – 18

Although sexual activity in itself is not an offence over the age of 16, young people under the age of 18 are still entitled to protection under the Children Act 1989.

Consideration should be given to issues of sexual exploitation through prostitution and abuse of power in circumstances outlined above. Young people, of course, can still be subject to offences of rape and assault and the circumstances of an incident may need to be explored with a young person.

Young people over the age of 16 and under the age of 18 are not deemed able to give consent if the sexual activity is with an adult in a position of trust or a family member as defined by Section 27 of the Sexual Offences Act 2003.

Where it is believed by the practitioner that a young person is suffering or at risk of significant harm referral to Children's Social Care, under London Child Protection Procedures, should be made.

Confidentiality

All young people under 18 have the same right to confidentiality as adults. Confidentiality can only be breached where the health, safety or welfare of the young person or others would be at risk.

It must be made clear at the earliest appropriate opportunity that absolute confidentiality cannot be guaranteed, and there will be circumstances where the needs of the young person can only be safeguarded by sharing information with others. The question of when to refer a case to Children Social Care and the Police is a difficult one and will require professional judgement and robust supervision arrangements. Every attempt should be made to persuade the young person to make the disclosure themselves or consent to the disclosure to a third party. Only when this is not successful should a health professional break confidentiality and the young person informed of the action.

Consent to treatment

All professionals will work to the Fraser Guidelines (see appendix 1), which state that if a young person under 16 is assessed and found to be competent according to the Fraser Guidelines, they are able to consent to treatment. There is no lower age limit for this consent. The judgement about whether a young person is Fraser competent is made by the health professional completing the assessment.

Sharing Information with parents and carers

Decisions to share information with parents and carers will be taken using professional judgement, consideration of Fraser guidelines and in consultation with the Child Protection Procedures.

Decisions will be based on the child's age, maturity and ability to appreciate what is involved in terms of the implications and risks to themselves. This should be coupled with the ability of the parents and carers and their commitment to protect the young person.

Exceptionally, a Social Worker or Police Officer as part of a child protection enquiry/investigation (under sec 47 Children Act 1989) may need to speak to a

suspected child victim without the knowledge of the parent or carer. Relevant circumstances would include the possibility that a child would be threatened or otherwise coerced into silence; a strong likelihood that important evidence would be destroyed; or that the child in question did not wish the parent to be involved at that stage, and is competent to take that decision. In all cases where the police are involved, the decision about when to inform the parent or carer will have a bearing on the conduct of police investigations, and the strategy discussion should decide on the most appropriate timing of parental participation.

Given the responsibility that parents have for the conduct and welfare of their children, professionals should encourage the young person, at all points, to share information with their parents and carers wherever safe to do so.

Assessment

All young people, regardless of gender, or sexual orientation who are believed to be engaged in, or planning to be engaged in, sexual activity must have their needs for health education, support and/or protection assessed by the agency involved.

In assessing the nature of any particular behaviour, it is essential to look at the facts of the actual relationship between those involved. This may require a level of assessment that may not be possible through a single contact with one practitioner.

The decision making process must consider the relationship between the professional and the young person, and seek to build trust as far as possible. The amount of information that will be forthcoming will vary from one setting to another, and will be affected by whether the professional has any prior knowledge of the young person. Therefore a pharmacist issuing emergency contraception as a one-off will probably only gain some of the answers to the questions or prompts that the guidance proposes, whereas a GP for example may be more confident that they will see the young person again. As a result, the threshold for discussions with a designated staff, social services, or the police, is likely to be lower when the opportunity for further discussions between practitioner and young person is less likely.

Some of the answers to these questions may be gained over the course of several consultations. It is up to the professional to use their judgment as to how much information they can seek each time but full account must be taken of the potential risk to the child of delaying intervention.

If the young person has a learning disability, mental disorder or other communication difficulty, they may not be able to communicate easily to someone that they are, or have been abused, or subjected to abusive behaviour.

The purpose of assessment is to ensure that the young person seeking advice is not being sexually exploited or suffering or at risk of suffering sexual abuse.

In order to determine whether the relationship presents a risk to the young person, the following factors should be considered. This list is not exhaustive and other factors may be needed to be taken into account -

- The age of the child - sexual activity at a very young age is a strong indicator that there are risks to the welfare of the child (boy or girl) and possibly others.
- Whether the young person is competent to understand and consent to the sexual activity they are involved in. The level of maturity and understanding of the child or young person.
- The nature of the relationship between those involved, particularly if there are age or power imbalances. Power imbalances occur through differences in size, development and especially age. Gender, sexuality, race and levels of sexual knowledge may also be used to exert such power. The imbalance of power if the young person's sexual partner is in a position of trust in

relation to them e.g. teacher, youth worker, carer etc. is potentially a criminal offence under sec 27 Sexual Offences Act 2003

- What is known about the child's living circumstances or background, including any familial sexual offences.
- Whether overt aggression, coercion or bribery was involved including misuse of substances/alcohol as a disinhibitor.
- Whether the young person's own behaviour, for example through misuse of substances, including alcohol, places them in a position where they are unable to make an informed choice about the activity.
- Whether any attempts have been made to secure secrecy by the sexual partner beyond what would be considered usual in a teenage relationship.
- Whether the sexual partner is known by the agency as having other concerning relationships with similar young people. This presupposes that checks have been made with other agencies.
- If accompanied by an adult, whether the relationship gives any cause for concern?
- Whether the young person denies, minimises or accepts concerns.
- Whether methods used to secure compliance and/or secrecy by the sexual partner are consistent with behaviours considered to be 'grooming'.
- Whether sex has been used to gain favours, for example exchanging sex for goods; cigarettes, clothes, CDs, trainers, alcohol, drugs etc or shelter.
- Whether the young person has a lot of money or other valuable things which cannot be accounted for.

Where a professional worker expects to discuss a case with Named/Designated staff, and/or also with their line manager, or to have an informal conversation outside their own organisation thus breaching confidentiality; then this should be done in consultation with the young person, except where the professional believes it is not in their best interests to be informed.

Where a serious crime is suspected, advice should be sought from the police at the earliest opportunity to protect the child and minimise the risk of any evidence, such as emails or pictures, being destroyed before they can begin their investigation. All staff must be aware that the police will formally record contact made by an agency. An incident will be recorded as a crime where on the balance of probability an offence defined by law has been committed and there is no evidence to the contrary.

Any referral or potential referral should be discussed in the first instance with the young person. The organisation making the referral then has a duty of care to the individual to secure their physical and mental well-being and offer support during that time.

The assessment may also identify additional needs. Practitioners should consider whether a BEAN is indicated and the young person may benefit from early help from other agencies or services. It is important this is discussed with the young person and their consent obtained if the practitioner wishes to proceed.

Process

In working with young people it must always be made clear to them, at the outset of a consultation that absolute confidentiality cannot be guaranteed, and that there will be some circumstances where the needs of the young person can only be protected by sharing information with others.

This discussion with the young person may prove useful as a means of emphasising the gravity of some situations.

On each occasion that a young person is seen by an agency, consideration should be given as to whether their circumstances have changed or further information has been given which may lead to the need for referral or re-referral.

In some cases urgent action may need to be taken to protect the young person. However, in most circumstances there will need to be a process of information sharing and discussion in order to formulate an appropriate plan. There should be time for reasoned consideration to define the best way forward. Anyone concerned about the sexual activity of a young person should initially discuss this with the nominated person in their agency responsible for child protection. There may then be a need for further consultation with the Children's Social Care. All discussions should be recorded, giving reasons for action taken and who was spoken to.

It is important that all decision making is undertaken with full professional consultation either within the practitioner's own agency or, where necessary, with another agency, this may be done without initially sharing detailed information about the child, although an informed decision can only be made when in possession of all the facts.

In accordance with guidance from the Department of Health, a health professional is responsible for deciding when a referral is or is not made. Where there is any uncertainty and a referral is not made, the reasons and rationale must be fully documented in the young person's notes at the time. This is particularly important in the case of under 13s because the law treats them as unable to give informed consent to sexual activity and the health professional is fully accountable for their decision not to refer in these circumstances.

Each agency must recognise that they only hold some pieces of the "jigsaw". For example, health professionals would not routinely have access to the Sex Offenders register, those with a Child Protection Plan or to wider multi-agency intelligence about a young person, their partner, or their family, without making a referral.

When a referral is received by Children's Social Care a search of their database will be made to check if the young person is known to the service as part of an Initial Assessment to assess whether the information indicates that child protection enquiries should be undertaken under sec 47 Children Act 1989. If the criteria are met a strategy discussion (appendix 2) with the Police, the profession making the referral and other partner agencies will be undertaken. It is possible the Police Child Abuse Investigation Team &/or Sapphire Unit may be involved. Project Sapphire specialises in investigating rape and sexual assault cases and to provide victims with the support. Child Abuse Investigation Teams investigate allegations of abuse against children, under 18 years of age, involving family members, carers or people in a position of trust.

For those referrals on a young person under 13 years the London CP Procedures indicate that these should be managed under sec 47. This discussion should be informed by the assessment undertaken using this protocol and, in the majority of cases, may be largely for the purposes of consultation and information sharing.

In many cases, it will not be in the best interests of the young person for criminal or civil proceedings to be instigated. However, Police and Children Social Care and other agencies may hold vital information that will assist in assessment of risk.

Following any referral to Children's Social Care and after a strategy discussion with the Police and/or any other agencies there may be one of these responses:

- no further action deemed necessary
- step down to the referrer to consider initiating an early assessment using the BEAN
- an initial assessment undertaken which may identify the young person as a child in need and additional services provided.

- an initial assessment undertaken which may identify the young person as a child at risk of significant harm and in need of child protection intervention.

The outcome of the referral will be formally fed back to the referring agency.

During this process agencies must continue to offer the service and support to the young person.

Any girl, either under or over the age of 13, who is pregnant, must be offered specialist support and guidance by the relevant services. These services will also be a part of the assessment of the girl's circumstances.

What to do if you have concerns

- Discuss your concerns with senior/specialist colleagues. If unsure of further action **seek advice**, see below.
- Unless the young person is in immediate danger, in which case child protection procedures should be followed (see appendix 3), your course of action should be a considered response and not dealt with out of hours. Most situations can be followed up the following day.

For sexual health advice 9am – 5pm:

Dr Jyotsna Abhyankar

Lead Clinician Sexual Health Services
SLHT Queen Mary's Hospital site

020 8308 0645 x2534
Mobile: 07789 174939

Young People's Sexual Health Advice
Oxleas NHS Foundation Trust

Mobile: 07789 174940

For child protection advice 9am – 5pm:

Children's Social Care Duty Teams
Safeguarding Children Unit
(Offers a consultation/advice service)

0203 045 5440
01322 356302

BEAN Administrator

020 3045 4058

Family Information Services (FIS)

Provides a central point of contact for information on all aspects of childcare and support for children and young people from 0-19 years.

email: fis@bexley.gov.uk

020 3045 4448

Early Assessment Hub

020 3045 4448

Police

Child Abuse Investigation team

0207 230 3700

(investigate allegations of abuse against children, under 18 years of age, involving family members, carers or people in a position of trust).

Sapphire Unit

020 8284 9261

(specialises in investigating rape and sexual assault cases and provides victims with support).

To refer

1. Inform the young person of your concern and the reasons why you are informing Children Social Care.
2. Encourage the young person to involve their parent/carer.
3. You may wish to telephone social care duty team in the first instance to discuss your referral further. This will be the area in which the young person lives.
4. It is preferable that you inform the parent/carer at this stage, however if the young person refuses to give you permission to do so it is important you inform Children's social care of this and agree who will take responsibility for informing the parents/carers. Document all decisions and actions.
5. Take personal contact details if available for young person. Complete as much as possible of interagency referral form and fax to Duty social care team

Fraser guidelines

When agencies talk about the assessment they make as to whether a young person can be provided with confidential sexual health services without parental consent they often talk about using what has been called the *Fraser Guidelines*. The House of Lords ruled that people who are under 16, who are fully able to understand what is proposed, and its implications, are competent to consent to medical treatment regardless of age.

In making his judgement the Law Lord, Lord Fraser, offered a set of criteria which must apply when medical practitioners are offering contraceptive services to under 16's without parental knowledge or permission. The so-called *Fraser Guidelines* (some people refer to assessing whether the young person is *Gillick competent*) state that all the following requirements should be fulfilled.

The guidelines suggest that before providing a service to under 16's to which parents have not given consent the staff member should ensure that the following criteria are met:

The *Fraser Guidelines*:

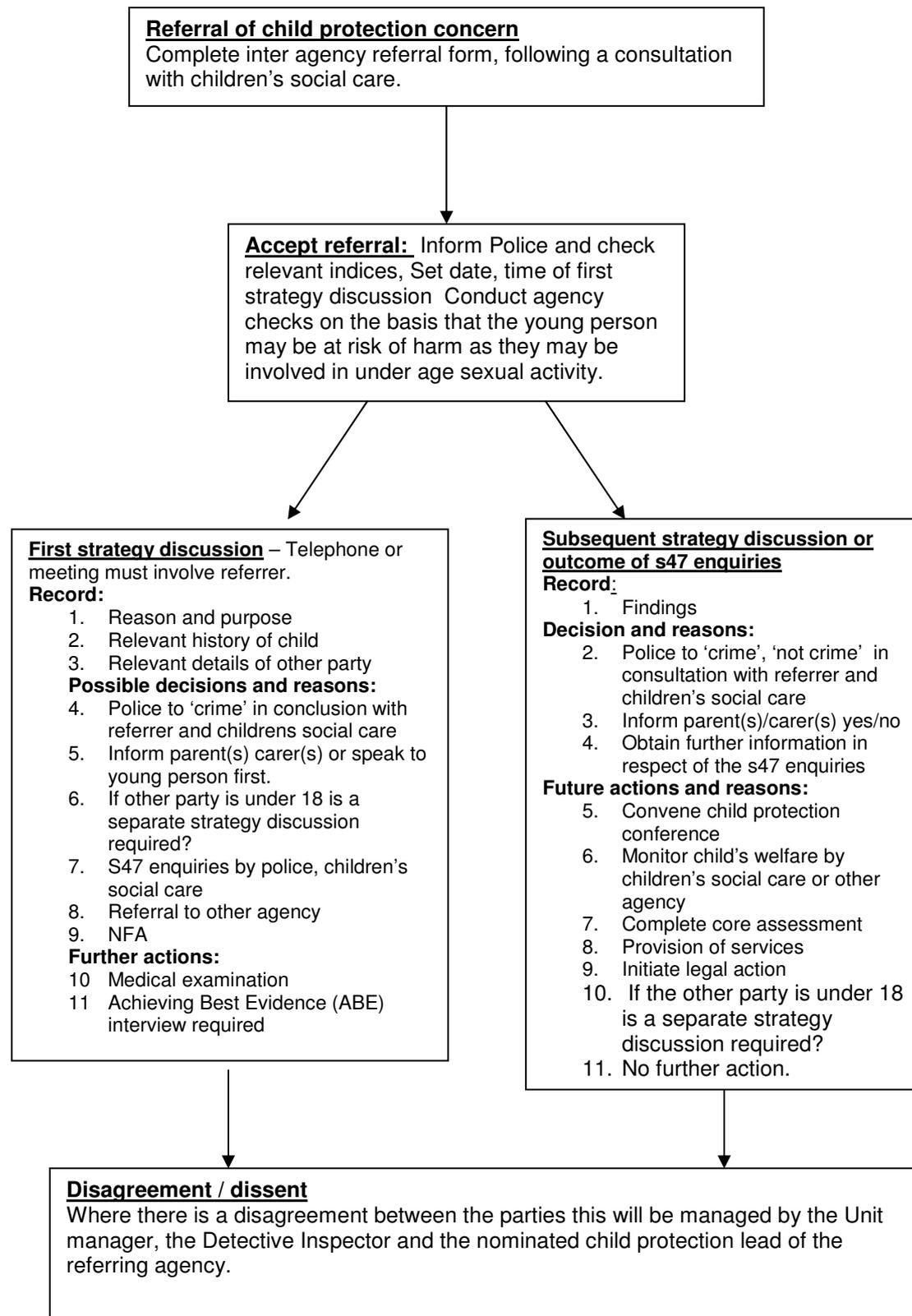
1. The young person understands the advice being given.
2. The young person cannot be convinced to involve parents/carers or allow the medical practitioner to do so on their behalf.
3. It is likely that the young person will begin or continue having intercourse with or without treatment/contraception.
4. Unless he or she receives treatment/contraception their physical or mental health (or both) is likely to suffer.
5. The young person's best interests require contraceptive advice, treatment or supplies to be given without parental consent.

Further, in terms of the Law Lords judgement, although a young person or their partner may still be committing an offence if having sex under the age of 16 Lord Fraser also stated that "doctors giving such advice in good faith are not committing a criminal offence of aiding and abetting unlawful intercourse with girls under 16".

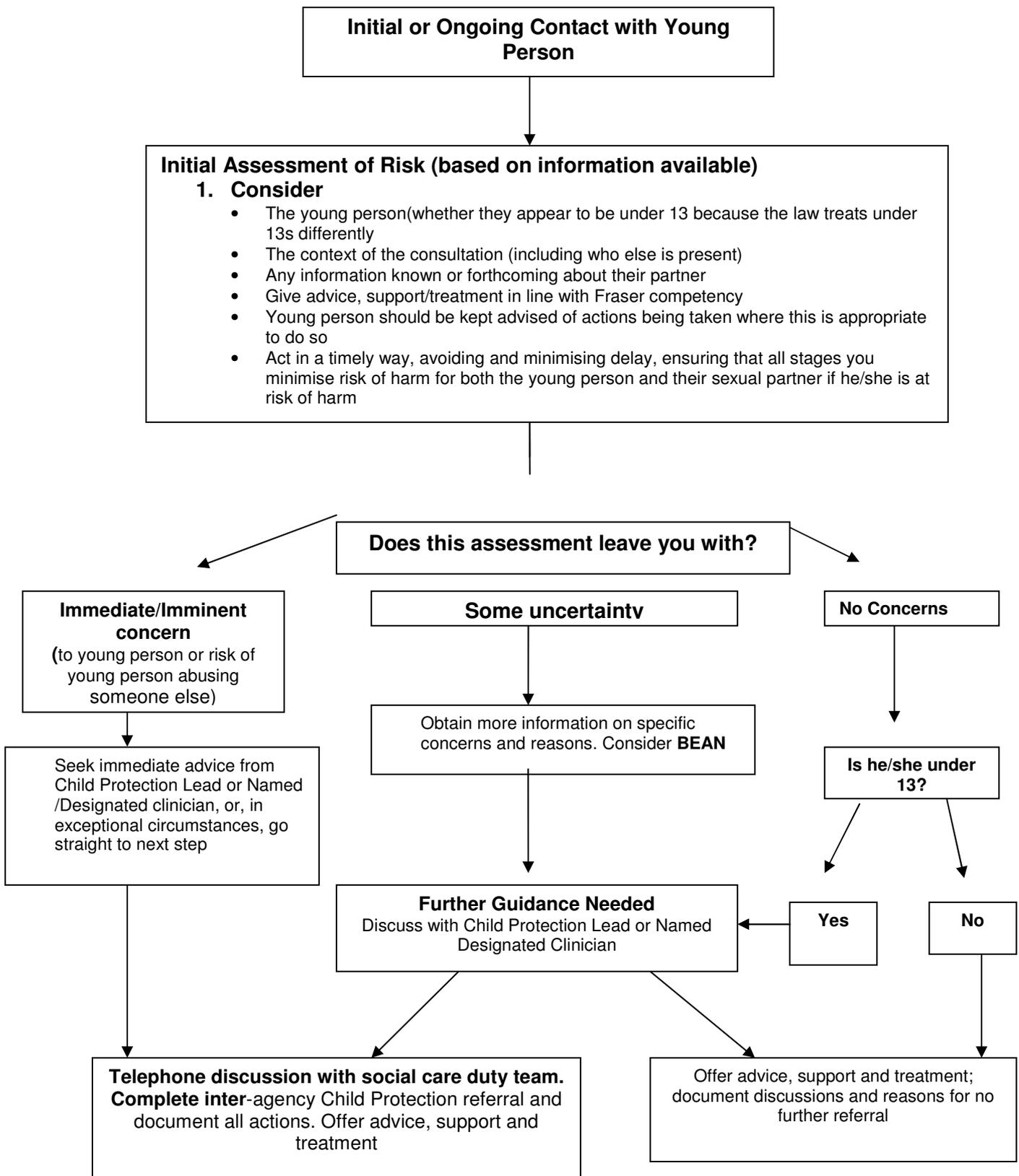
Further consideration must also be given to the special situations some young people might be in. Being subject to a supervision order does not affect an under 16's capacity or rights to consent to medical treatment and young people with a physical or learning disability have the same right to appropriate sex education, contraceptive information, confidential advice and treatment as any other young person. They may also have particular individual needs which a professional person may have to consider, but their rights to services remain the same.

The Strategy Discussion

Flow chart: Strategy process for children and young people to be considered potentially at risk of significant harm resulting from their sexual activity



Flow Chart for Professionals Working with Sexually Active Under 18's



Sex and relationships

**Free and confidential
contraception
and sexual
health advice
for young people
under 25 at our
drop-in centres**



- Emergency contraception, contraceptive pills, implants, injectables
- C-card for free condoms (for under 20s only)
- Pregnancy testing
- Referrals for unwanted pregnancy
- Chlamydia screening and treatment

MONDAY

Erith Health Centre
50 Pier Road
Erith DA8 1RQ
Tel 01322 357953
3.30pm - 7.30pm

Bexley Youth Advice
233 Broadway
Bexleyheath DA8 7EJ
Tel 020 8301 3900
4pm - 6.30pm

TUESDAY

Erith Health Centre
50 Pier Road
Erith DA8 1RQ
Tel: 01322 357953
4pm - 7.30pm

WEDNESDAY

Lakeside Health Centre
Yarston Way,
Thamesmead
SE2 9LH
Tel 020 8320 7357
4.30 - 6.30pm

THURSDAY

Bexley Advice
233 Broadway
Bexleyheath
DA8 7EJ
Tel 020 8301 3900
4pm - 6.30pm

FRIDAY

The Oval Clinic
Sherwood Park
Avenue
Sidcup DA16 9HW
Tel 020 8302 3387
3.30 - 7.30pm

Gray Surgery

42 Gray Road
Foolscray
DA14 5BZ
Tel 020 8309 7993
3.30 - 5.00pm

MONDAY - FRIDAY

**Northumberland Heath
Medical Centre**
Hind-Crescent,
Erith DA8 8DB
Tel 01322 336555
9am - 5pm

Time to chat - no appointment needed

improving lives



Oxleas **NHS**

NHS Foundation Trust