

# Sexting in Schools

Information for Staff September 2020



Many professionals consider sexting to be 'sending or posting sexually suggestive images, including nude or semi-nude photographs, via mobiles or over the Internet. Yet when young people are asked 'What does sexting mean to you?' they are more likely to interpret sexting as 'writing and sharing explicit messages with people they know'. Similarly, many parents think of sexting as flirty or sexual text messages rather than images.

This advice covers the sharing of sexual imagery by young people. Creating and sharing sexual photos and videos of under-18s is illegal and therefore causes the greatest complexity for schools.

This advice introduces the phrase 'youth produced sexual imagery' and uses this instead of 'sexting'. This is to ensure clarity about the issues the advice addresses.

'Youth produced sexual imagery' best describes the practice because:

- 'Youth produced' includes young people sharing images that they, or another young person, have created of themselves.
- 'Sexual' is clearer than 'indecent.' A judgement of whether something is 'decent' is both a value judgement and dependent on context.
- 'Imagery' covers both still photos and moving videos (and this is what is meant by reference to imagery throughout the document).

The types of incidents which this advice covers are:

- A person under the age of 18 creates and shares sexual imagery of themselves with a peer under the age of 18
- A person under the age of 18 shares sexual imagery created by other person under the age of 18 with a peer under the age of 18 or an adult
- A person under the age of 18 is in possession of sexual imagery created by another person under the age of 18.

Sharing photos and videos online is part of daily life for many people, enabling them to share their experiences, connect with friends and record their lives.

Photos and videos can be shared as text messages, email, posted on social media or increasingly via mobile messaging apps, such as Snapchat, WhatsApp or Facebook Messenger.

90% of 16-24 year olds and 69% of 12-15 year olds own a smartphone, giving them the ability to quickly and easily create and share photos and videos.

This increase in speed and ease of sharing imagery has brought concerns about young people producing and sharing sexual imagery of themselves. This can expose them to risks, particularly if the imagery is shared further, including embarrassment, bullying and increase vulnerability to sexual exploitation. Producing and sharing sexual images of under 18s is also illegal.

Although the production of such imagery will likely take place outside of school, these issues often manifest in school and we need to be able to respond swiftly and confidently to ensure that our children are safeguarded, supported and educated.

The response to these incidents should be guided by the principle of proportionality and the primary concern at all times should be the welfare and protection of the young people involved.

### **How much is this really happening?**

*'Parents expect you to be involved in sexting even when you are not.'* Simone, 14

Most young people aren't sharing sexual imagery of themselves.

A 2010 NSPCC/Office of the Children's Commissioner England study found that just over one in ten boys and girls (13%) had taken topless pictures of themselves (around one in four of those were girls) and 3% had taken fully naked pictures. Of those who had taken sexual images, 55% had shared them with others. 31% of this group had also shared the image with someone that they did not know.

Although most young people aren't creating or sharing this type of imagery, the potential risks are significant and there is considerable concern about the issue in schools and amongst parents. Research conducted by 'The Key' found that 61% of its secondary school head teacher members reported 'sexting' as a concern. This placed it higher than drugs, obesity and offline bullying in terms of frequency of reporting it as a concern.

Research from the PSHE Association similarly found that 78% of parents were either fairly or very concerned about youth produced sexual imagery, compared to 69% who were concerned about alcohol misuse and 67% who were concerned about smoking.

### **The Law**

Much of the complexity in responding to youth produced sexual imagery is due to its legal status. Making, possessing and distributing any imagery of someone under 18, which is 'indecent', is illegal. This includes young people, if they are under 18, TAKING PICTURES OF THEMSELVES.

The relevant legislation is contained in the Protection of Children Act 1978 (England and Wales) as amended in the Sexual Offences Act 2003 (England and Wales)

Specifically:

- It is an offence to possess, distribute, show and make indecent images of children.
- The Sexual Offences Act 2003 (England and Wales) defines a child, for the purposes of indecent images, as anyone under the age of 18.

'Indecent' is not defined in legislation. When cases are prosecuted, the question of whether any photograph of a child is indecent is for a jury, magistrate or District Judge to decide based on what is the recognised standard of propriety. For most purposes, if imagery contains a naked young person, a topless girl, and/or displays genitals or sex acts, including masturbation, then it will be considered indecent. Indecent images may also include overtly sexual images of young people in their underwear.

## **Criminalisation of children**

The law criminalising indecent images of children was created long before mass adopting of the internet, mobiles and digital photography. It was also created to protect children and young people from adults seeking to sexually abuse them or gain pleasure from their sexual abuse. It was not intended to criminalise children.

Despite this, young people who share sexual imagery of themselves, or peers, ARE BREAKING THE LAW.

We should not, however, unnecessarily criminalise children. Children with a criminal record face stigma and discrimination in accessing education, training, employment, travel and housing and these obstacles can follow a child into adulthood.

Whilst young people creating and sharing sexual imagery can be very risky, it is often the result of young people's natural curiosity about sex and their exploration of relationships. Often, young people need education, support or safeguarding, not criminalization.

## **Handling Incidents**

All incidents involving youth produced sexual imagery should be responded to in line with our school's Safeguarding and Child Protection Policy.

When an incident involving youth produced sexual imagery comes to your attention:

- The incident should be referred to the DSL as soon as possible

### **Disclosure**

Any decisions on action that needs to be taken will be made by the DSL with input from the Headteacher and input from other members of staff if appropriate. The decision will be recorded in line with our school policy.

The decision will be in line with our Child Protection Procedures and will be based on consideration of the best interests of the young people involved. This will take into account proportionality as well as the welfare and protection of the young people. The decision will be reviewed throughout the process of responding to the incident.

### **Example:**

If a young person has shared imagery consensually, such as when in a romantic relationship, or as a joke, and there is no intended malice, it is usually appropriate for the school to manage the incident directly. In contrast any incidents with aggravating factors, for example, a young person sharing someone else's imagery without consent and with malicious intent, should generally be referred to police and/or children's social care.

### **Assessing the risks**

When assessing the risks the following will be considered:

- Why was the imagery shared? Was the young person coerced or put under pressure to produce the imagery?
- Who has shared the imagery? Where has the imagery been shared? Was it shared and received with the knowledge of the pupil in the imagery?
- Are there any adults involved in the sharing of imagery?
- What is the impact on the pupils involved?

- Do the pupils involved have additional vulnerability?
- Does the young person understand consent?
- Has the young person taken part in this kind of activity before?

### **Searching devices, viewing and deleting imagery**

We should **not** view youth produced sexual imagery unless there is good and clear reason to do so. Wherever possible responses to incidents should be based on what the DSL has been told about the content of the imagery.

The decision to view imagery should be based on the professional judgement of the DSL and should always comply with the Child Protection Policy and procedures of the school. Imagery should never be viewed if the act of viewing will cause significant distress or harm to the pupil.

If a decision is made to view imagery the DSL will need to be satisfied that viewing:

- Is the only way to make a decision about whether to involve other agencies (i.e. it is not possible to establish the facts from the young people involved)
- Is necessary to report the image to a website, app or suitable reporting agency to have it taken down, or to support the young person or parent in making a report
- Is unavoidable because a pupil has presented an image directly to a staff member or the imagery has been found on a school device or network

If it is necessary to view the imagery then the DSL will:

- Never copy, print or share the imagery; this is illegal.
- Discuss the decision with the Headteacher.
- Ensure viewing is undertaken by her or another member of the safeguarding team with delegated authority from the Headteacher.
- Ensure viewing takes place with another member of staff present in the room, ideally the Headteacher or a member of the senior leadership team. This staff member does not need to view the images.
- Wherever possible ensure viewing takes place on school or college premises, ideally in the Headteacher or a member of the senior leadership team's office.
- Ensure wherever possible that images are viewed by a staff member of the same sex as the young person in the imagery.
- Record the viewing of the imagery in the school's safeguarding records including who was present, why the image was viewed and any subsequent actions. Ensure this is signed and dated and meets the wider standards set out by Ofsted for recording safeguarding incidents.

If youth produced sexual imagery has been unavoidably viewed by a member of staff either following a disclosure from a young person or as a result of a member of staff undertaking their daily role (such as IT staff monitoring school systems) then our DSL will ensure that the staff member is provided with appropriate support. Viewing youth produced sexual imagery can be distressing for both young people and adults and appropriate emotional support may be required.

### **Deletion of Images**

If we have decided that other agencies do not need to be involved, then consideration should be given to deleting imagery from devices and online services to limit any further sharing of the imagery.

The Searching, Screening and Confiscation advice highlights that schools have the power to search pupils for devices, search data on devices and delete youth produced sexual imagery.

The Education Act 2011 amended the power in the Education Act 1996 to provide that when an electronic device, such as a mobile phone, has been seized, a teacher who has been formally authorised by the Headteacher can examine data or files, and delete these, where there is good reason to do so. This power applies to all schools and there is no need to have parental consent to search through a young person's mobile phone.

If during a search a teacher finds material which concerns them and they reasonably suspect the material has been or could be used to cause harm or commit an offence, they can decide whether they should delete the material or retain it as evidence of a criminal offence or a breach of school discipline. They can also decide whether the material is of such seriousness that the police need to be involved.

## **The following are the questions that the DSL will consider when deciding whether or not to involve the police and/or Children's Social Care**

### **Are there any concerns about the young persons' vulnerability?**

- Consideration should be given to whether a young person's circumstances or background makes them additionally vulnerable. This could include being in care, having special educational needs or disability or having been a victim of abuse.
- Where there are wider concerns about the care and welfare of a young person then consideration should be given to referring to Children's Social Care.

### **Why was the imagery shared? Was it consensual or was the young person put under pressure or coerced?**

- Young people's motivations for sharing sexual imagery include flirting, developing trust in a romantic relationship, seeking attention or as a joke.
- Though there are clearly risks when young people share imagery consensually, young people who have been pressured to share imagery are more likely to report negative consequences.
- A referral should be made to the police, by the DSL, if a young person has been pressured or coerced into sharing an image, or imagery is being shared without consent and with malicious intent.
- Consideration should also be given to a young person's level of maturity and the impact of any special educational needs on their understanding of the situation.
- Disciplinary action will be taken against pupils who pressure or coerce others into sharing sexual imagery. If this is part of a pattern of behaviour then the DSL will consider making a referral to a Harmful Sexual Behaviour service, such as the National Clinical Assessment and Treatment Service (an NSPCC service).

### **Has the imagery been shared beyond its intended recipient? Was it shared without a consent of the young person who produced the imagery?**

- The imagery may have been shared initially with consent but then passed on to others. A pupil may have shared the image further with malicious intent, or they may not have had a full understanding of the potential consequences.

- Consideration should also be given to a young person's level of maturity and the impact of any special education needs on their understanding of the situation.
- The police will be informed, by the DSL, if there was a deliberate intent to cause harm by sharing the imagery or if the imagery has been used to bully or blackmail a pupil.

**Has the imagery been shared on social media or anywhere else online? If so, what steps have been taken to contain the spread of the imagery?**

- If the image has been shared widely on social media, this could cause significant embarrassment for the pupil and have a long term impact on their online reputation. It could also increase the risk of them being bullied or contact by strangers online.
- The young person will be supported to report the imagery to any sites it is hosted on. The DSL will help with this.
- If the young person is being contacted by people they don't know who have viewed the image then this will be reported to NCA-CEOP by the DSL.

**How old is the young person or young people involved?**

- Children under the age of 13 are unable to consent to sexual activity. Any imagery containing sexual activity by under 13s will be referred to the police by the DSL.
- Being older can give someone power in a relationship so if there is a significant age difference it may indicate the young person felt under pressure to take the image/video or share it.
- Consideration should also be given to a young person's level of maturity and the impact of any special educational needs on their understanding of the situation.
- The imagery contains acts which a young person of their age is not expected then the DSL will refer the matter to the Police.

**Did the young person send the image to more than one person?**

If a pupil is sharing sexual imagery with multiple people this may indicate that there are other issues which they need support with. Consideration should be given to their motivations for sharing.

If there are wider safeguarding concerns then the DSL will make a referral to Children's Social Care.

**Does the young person understand the possible implications of sharing the image?**

- Young people may produce or share imagery without fully understanding the consequences of what they are doing. They may not, for example, understand how it may put them at risk or cause harm to another young person. They may also not understand consent.
- Exploring their understanding may help plan an appropriate response helping assess, for example, whether they passed on an image with deliberate intent to harm.

**Are there additional concerns if the parents or carers are informed?**

- Parents should be informed of incidents of this nature unless there is good reason to believe that informing them will put the young person at risk. This may be due to concerns about parental abuse or cultural or religious factors which would affect how they or their community would respond.
- If a young person highlights concerns about involvement of their parents then the DSL will use their professional judgement about whether it is appropriate to involve them and at what stage. If we choose not to involve a parent the DSL will clearly record the reasons for not doing so.
- Where possible young people will be supported to speak with their parents themselves about the concerns.

## **Age considerations**

Children under 13 are given extra protection from sexual abuse under the Sexual Offences Act 2003. This law makes it clear that sexual activity with a child under 13 is never acceptable, and that children of this age can never legally give consent to engage in sexual activity. This applies to children who have not yet reached their 13<sup>th</sup> birthday i.e. children who are aged 12 and under.

Any situations involving children under 13 and youth produced sexual imagery must be taken seriously as potentially being indicative of a wider safeguarding or child protection concern or as being problematic sexual behaviour.

The understanding of children and young people around the potential implications of taking and/or sharing youth produced sexual imagery is likely to be influenced by the age and ability of the children involved. In some cases children under 13 (and indeed older) may create youth produced sexual imagery as a result of age appropriate curiosity or risk-taking behaviour or simply due to naivety rather than any sexual intent. This is likely to be the behaviour more commonly identified within primary schools. Some common examples could include sending pictures of their genitals to their friends as a dare or taking a photo of another child whilst getting changed for PE. Within this context it is unlikely that police or Children's Social Care involvement is required or proportionate and the DSL will need to use their professional judgement to consider the specific context and the children involved.

## **Sexual behaviour**

Difficulties in defining harmful sexual behaviours displayed by children and young people are made worse by a general lack of knowledge of childhood sexuality and what constitutes normal sexual development.

Hackett (2010) has proposed a continuum model to demonstrate the range of sexual behaviours presented by children and young people, from those that are normal, to those that are highly deviant:

### **Normal**

- Developmentally expected
- Socially acceptable
- Consensual, mutual, reciprocal
- Shared decision making

### **Inappropriate**

- Single instance of inappropriate sexual behaviour
- Socially acceptable behaviour within peer group
- Context for behaviour may be inappropriate
- Generally consensual and reciprocal

### **Problematic**

- Problematic and concerning behaviours
- Developmentally unusual and socially unexpected
- No overt elements of victimization
- Consent issues may be unclear
- May lack reciprocity or equal power
- May include levels of compulsivity

### **Abusive**

- Victimising intent or outcome

- Included misuse of power
- Coercion and force to ensure victim compliant
- Intrusive
- Informed consent lacking, or not able to be freely given by victim
- May include elements of expressive violence

### **Violent**

- Physically violent
- Highly intrusive
- Instrumental violence which is physiologically and/or sexually arousing to the perpetrator
- Sadism

### **A continuum of behaviours**

It is vital for professionals to distinguish normal from abnormal sexual behaviours. Chaffin et al (202, p208) suggest a child's sexual behaviour would be considered abnormal if it:

- Occurs at a frequency greater than would be developmentally expected
- Interferes with the child's development
- Occurs with coercion, intimidation or force
- Is associated with emotional distress
- Occurs between children of divergent ages or developmental abilities
- Repeatedly recurs in secrecy after intervention by caregivers.

## Flowchart for responding to incidents

### Considerations – risk assessment

- Vulnerability of the child
- Coercion
- How shared and where
- Impact on children
- Age of the children

### Initial Disclosure

This could come from a pupil directly, a parent, a pupil's friend

### Initial Review with Safeguarding Team

At this initial stage the Safeguarding Team review the information and consider the 5 points for immediate referral. An initial decision needs to be made about whether the incident can be dealt with in house

### Risk assessment / Dealing with the incident

Consider the risk of harm and at any point if there are 'causes for concern' refer back to the police / social care

### 5 points for referral

- Adult involvement
- Coercion or blackmail
- Extreme or violent
- Under 13
- Immediate risk of harm

### Police / Social Care / MASH referral

Refer to local arrangements for dealing with incidents and contact local services

### Management in School

Ensure parents are informed and the incident recorded following all Child Protection and Safeguarding procedures

*N.B. Referrals to the police, Children's Social Care will be made by the DSL*