

THE BICHARD ENQUIRY - ACPC GUIDANCE (PROVISIONAL)

The document below offers guidance to practitioners on responding to the recommendations of the Bichard Enquiry.

Bichard looked into the events surrounding the Soham Murders of 2002 and in particular what was previously known about the murderer Ian Huntley. The concern existed that professionals in Humberside were aware that Huntley had a history of sexual relationships with girls under the age of sixteen. However, this information did not appear to have been readily available and as a consequence when the school where Huntley was subsequently employed carried out its statutory checks on him nothing untoward came to light.

Bichard made a number of recommendations, some of which impinge on the work of ACPC members. This new guidance offers a provisional (because further government guidance is due) Norfolk response to these recommendations.

NORFOLK ACPC

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The Bichard Enquiry

Introduction

This new ACPC guidance note has been designed to help partner agencies implement the recommendations of the Bichard Enquiry.

The principal issue relates to Bichard's recommendation that, whenever the social services limb of the Children's Services Department becomes aware of a sexual offence, actual or suspected, against a child, they must refer the matter to the Police, unless there are exceptional circumstances that mitigate against the Children's Services Department so doing.

The bulk of this guidance therefore attempts to help clarify those instances when the Children's Services Department may legitimately decline from making such referrals to the Police. In doing so, it is hoped that it will also empower other partner agencies to continue offering appropriate services to children and young people, by clarifying the existing framework for addressing potential concerns.

It must be noted that, whilst partner agencies are not under the same injunction as the Children's Services Department to make referrals to the Police, they remain a vital part of the safeguarding process. Provisions exist within this guidance, and the existing ACPC Protocols, for such agencies to:

- Make referrals to the Children's Services Department in those instances where they hold concerns for a child's or young person's welfare
- Make appropriate consultations with either the Children's Services Department, or the Norfolk Youth Offending Teams Sexually Appropriate Youngsters (NYOT SAY) project in respect of sexual behaviour by young people who are below the age of consent.

Great care has been made throughout this document to avoid the situation whereby compliance with the Bichard recommendations leads to a young person being effectively criminalised for partaking in normal age-appropriate exploration of their sexuality.

The Background

Following the conviction of the Soham murderer, Ian Huntley, Sir Michael Bichard was empowered to make enquiries into the Child Protection procedures in Humberside Police and Cambridge Constabulary. He was to pay particular attention to, amongst other areas, information sharing.

One of the features of the Soham case had been the fact that Ian Huntley was known to have had sexual relationships with several girls under the age of 16, whilst he had been resident in Humberside. Although he was never convicted of any offences against these children, it is quite likely that events around his life would have unfolded differently had his history of abusive behaviour been retained, and shared with other agencies. If nothing else, he may never have been able to get a job as a school caretaker.

Bichard's Recommendations

In his final report, Sir Michael made a number of recommendations: many were specific to the Police and/or related to issues of national strategy. However, there were some directly focussed on details that are within the aegis of the ACPC. These were:

- **73.1** The government should reaffirm the expectation that social

services should, other than in exceptional circumstances, notify the police about sexual offences committed or suspected against children

- **73.2** National guidance should be provided to assist social services departments in making the decision about when to notify the police – or not
- **73.3** Social services records, in particular the Integrated Children's System (ICS), should record those cases where a decision is taken **not** to notify the police
- **73.4** The decision-making in these cases should be inspected by the Commission for Social Care Inspection.

These recommendations being prefaced by the note that:

- **72** There is already guidance in *Working Together to Safeguard Children 1999*, requiring Social Services departments, save in exceptional circumstances, to inform the police about sexual offences committed, or suspected of having been committed, against children. But this case has demonstrated the need to ensure that this guidance is conscientiously applied, and I believe that some further action is needed to ensure this happens.

ACPC Guidance on the Bichard Recommendations

Primarily, Bichard's recommendations aim to protect children from abuse, by adults, by enabling the collation of information on people who may go on to present a risk to them. In complying with the referral recommendations, a balance needs to be struck in relation to whether or not to report sexual activity involving young people. It should be recognised that in some instances young people can also present a significant risk to children: if so, their sexually abusive behaviour should likewise be reported to the Police. However it is not the intention to criminalise young people who engage in normal age-appropriate sexual activities.

It may be noted that, at this time, it is deemed neither necessary nor pertinent to devise a new protocol to address these issues, because:

- Further guidance is awaited from the Bichard Enquiry Team, under Recommendation 73.2

- It is considered that the existing ACPC Protocols already provide the necessary inter-agency frameworks to address those situations covered by the Bichard Enquiry.

The Existing ACPC Protocols

It is considered that the existing ACPC Protocols offer sufficient practice guidelines to the agencies involved in safeguarding children.

The most relevant protocols are:

- Protocol 1 – Protocol for the Conduct of Child Protection Enquiries. It must be noted that if there are professional concerns that any child or young person involved in a sexual relationship is subject to significant harm, as a result of that relationship, then Child Protection procedures need to be instigated. Clearly, under these procedures, the Children's Services Department would make referrals to the Police, as part of the normal Strategy Discussion/Meeting process.
- Protocol 3 – Responding to Children Involved in Prostitution or other forms of Child Sexual Exploitation. It may be noted that children and young people are not deemed able to give consent to such activities. In all such cases, the child/young person should primarily be viewed as a victim. Such an approach must underscore the assessment of the child's needs. Professionals who become concerned about a child or young person being exploited in this way must refer to the appropriate Children's Services Team. There may need to be liaison with the Police, in order to investigate and prosecute those who seek to exploit and abuse children in this manner.
- Protocol 8 – Sharing Information in Child Protection. This provides information on issues such as confidentiality of information and the Data Protection Act 1998.
- Protocol 14 – Abuse by Children and Young People. There are instances where a child or young person sexually abuses another child. It is for this reason that it is important to consider the power balances in any sexual relationship involving young people. In those instances where a young person is a suspected abuser, their needs, as well as those of the alleged victim, will need to be assessed. The NYOT SAY project will be involved in this process. Because of their expertise in this area, the NYOT SAY project already offers a consultation service to all ACPC agencies, and are in an ideal position to offer consultations to professionals with regards to these matters.

The Police do not have any discretion to choose not to investigate once an offence has been reported to them. It is therefore imperative that the correct balance is struck before a referral is made to them.

The only agency working with children on which Bichard placed a duty to report sexually abusive incidents was Children's Services (formally social services). Many professionals, across a wide range of agencies, may become aware that young people below the age of consent are engaged in sexual activities. In some cases, substantial professional concern may result, yet in other cases a more pragmatic professional approach may be taken. Technically, many of these activities may constitute an offence. In making sense of this, the issue of professional opinion/judgement and, where necessary, professional consultation, becomes significant, because these are the mechanisms whereby risk assessments can be made.

Should professionals from any agency become concerned that a risk assessment has highlighted child protection concerns regarding a young person, then a referral to a Children's Services Social Work Assessment Team would become appropriate. At that point, the Children's Services Department becomes bound by the Bichard recommendations, and must, after making an assessment, make a decision whether or not referral to the Police is required.

Of course, it is possible for Social Workers to become aware of sexual activity regarding young people in a wide range of differing circumstances, i.e. a young person, under the age of consent, who is Looked After, asks for their Social Worker's advice about contraception. Bichard also binds these cases.

Guidance on When Referrals to the Police Should be Considered

The Sheffield ACPC was one of the first ACPCs to address the Bichard recommendations, and its work was positively reviewed in the report on the implementation of the Bichard recommendations. The following guidance draws on the Sheffield model, as well as local experience.

Context

Those professionals who become aware of young people being engaged in sexual activity will need to consider the context of that behaviour, in order to determine whether or not further action is needed (refer to appropriate ACPC protocols for guidance). The guidance below is offered to aid the decision-making process. It is hoped that it will help in two different areas:

- Those cases where a professional from a partnership agency is considering referring an issue to the Children's Services Department

- Those cases, which have come to the Children's Services Department's attention, but where there appears to be some debate as to whether or not a referral to the Police is in the child/young person's interest.

In assessing the nature of any particular behaviour, it is essential to look at the facts of the actual relationship between those involved, and the context of the behaviour. Power imbalances are very important, and can occur through differences in size, age, level of understanding and development, and where gender, sexuality, race and levels of sexual knowledge are used to exert such power.

If the young person has a learning disability, or other communication difficulty, and cannot easily communicate to someone that they have been abused, then consideration must be given to whether or not the behaviour is abusive. There may also be an imbalance of power if the young person's sexual partner is in a position of trust in relation to them (i.e. baby sitter): the same being true if there is an element of care involved within the relationship.

In order to consider whether the relationship presents a risk to the young person, the following factors should be considered:

- whether the young person is competent to understand, and consent to, the sexual activity they are involved in. "Consent is based on choice. Consent is active not passive. Consent is only possible where there is equal power. Forcing someone to give in is not consent. Going along with something because of wanting to fit in is not consent...If you can't say 'no' comfortably then 'yes' has no meaning. If you are unwilling to accept 'no' then 'yes' has no meaning." (From Adams and Fay 1984)
- the nature of the relationship between those involved
- whether coercion, bribery, deception, or overt aggression is involved in gaining compliance; including misuse of illegal substances, and/or alcohol as a disinhibitor
- whether the young person's own behaviour, for example through misuse of illegal substances and/or drugs, places them in a position where they are unable to make an informed choice about the activity
- any attempts to secure secrecy by the sexual partner, beyond what would be considered usual in a teenage relationship
- whether the sexual partner is known to the agencies as having other concerning sexual relationships

- whether the young person denies, minimises, or accepts any concerns
- whether any methods used to secure compliance and/or secrecy by the sexual partner are consistent with behaviours considered to be 'grooming' for either sexual exploitation, or sexual abuse.

It must be noted that the above list is not comprehensive, and each situation must be assessed on an individual basis.

If, at any stage, there are concerns that the young person may be at risk of sexual exploitation through prostitution, please refer to the Norfolk ACPC's Protocol 3. If professionals are uncertain whether the behaviour should cause concern, the existing consultation service should be used- see ACPC Protocol 14.

Process

In working with young people, it must always be made clear to them at the earliest appropriate point that absolute confidentiality cannot be guaranteed, and that there will be some circumstances where their needs can only be safeguarded by sharing information with others. This discussion with the young person may prove useful as a means of emphasising the gravity of some situations. It is of note that some young people will not consider they are being abused/exploited, even though this is apparent to the professionals involved.

On each occasion that a young person is seen, consideration should be given as to whether their circumstances have changed. Any new information obtained should be reviewed, as it may lead to the need for referral, or re-referral.

In some cases, urgent action may need to be taken to safeguard the welfare of a 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 unit, or individual, in their agency, responsible for child protection. The existing consultation service with NYOT SAY project also provides specialist advice on sexual activity and can give guidance in this area. The Children's Services Department can also be contacted. All consultations should be recorded, giving reasons for action taken, who was spoken to, and the professional decisions made. It is important that all decision-making is undertaken with full professional consultation, never by one person alone.

Following any referral to Children's Services there may be one of these responses:

- No further action deemed necessary
- An initial assessment undertaken (in consultation with the NYOT SAY project, where both parties are juveniles), which may identify the young person as a child in need
- An initial assessment undertaken (in consultation with the NYOT SAY project, where both parties are juveniles), which may identify the young person as a child at risk of significant harm, and in need of child protection intervention.

Whenever possible, appropriate support should be offered and agencies should continue to offer any services provided.

Young people under the age of 13

In all cases where the sexually active young person is under the age of 13, there must be a formal Consultation with the Children's Services Department, who must make an enquiry to the Child Protection Register. All such cases should be viewed as possible instances of Child Sexual Abuse. In order for any professional Consultation to be meaningful, the young person will need to be identified, as will their sexual partner, if details are known.

In some cases, it may not be in the best interests of the young person for criminal or civil proceedings to be instigated. However, Police and Children's Services may hold vital information that will assist in a clear assessment of risk. Whether or not to support a victim in making a complaint to the police should be the subject of professional judgement, taking advice as and when appropriate. Any adult involved in such activity should be assessed as to whether or not they present a risk to children and young people.

Action to be taken when a girl under 13 is found to be pregnant will be informed by the in-house protocols of Children's Services Department and Police, but, again, such girls should **always** be the subject of a formal Consultation with the Assessment Team within Children's Services.

Young people between 13-16

There is also a need to consider the level of offence; is it one which would not lead to an investigation because it falls below the level of offence considered appropriate for prosecution under the guidance to the Sexual Offences Act 2003?

The Sexual Offences Act 2003 reinforces that, whilst mutually agreed non-exploitative sexually activity between teenagers does take place, and that often no harm comes from it, the age of consent should still remain at 16. 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 to have their needs assessed using this guidance. Consultation with Children's Services, or the NYOT SAY project is not mandatory, and will depend on the level of risk/need assessed by those working with the young person. The same considerations as to making a criminal complaint apply as set out above, e.g. a 14 year old and a 25 year old man.

This difference in procedure reflects the position that, whilst sexual activity under 16 remains illegal, young people under the age of 13 are deemed unable to give consent to sexual activity.

Young people under 18 and over 16

Although sexual activity in itself is no longer an offence over the age of 16, young people under the age of 18 are still offered the protection of Child Protection Procedures under the Children Act 1989. Consideration still needs to 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 the Sexual Offences Act 2003. It may also be pertinent to consider the young person's circumstances. For example, a young person in the care of the Local Authority, because of having experienced previous emotional harm, may be more vulnerable, and in greater need of safeguarding, than a similarly aged young person who has not had that experience.

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

Sharing information with parents

Decisions to share information with parents will be taken using professional judgement, and 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 parents' ability and commitment to protect the young person. 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 wherever safe to do so.

For further information and guidance on this issue refer to ACPC Protocol 1.

This guidance is written on the understanding that those working with this client group 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 their welfare.

Consultation

Professionals, including Social Workers, who require further advice or consultation in order to clarify whether a child/young person is at risk, because of involvement in sexual activities, may seek a consultation with the NYOT SAY project on 01603 223 589.

Social Services Recording

Bichard recommends that the Social Services (Children's Services, social work arm) establish a mechanism to record all those instances when a referral is not made to the Police.

The ACPC considers this to be an issue for the Children's Services Department to address. The ACPC strongly recommends that the Children's Services comply with this proposal, both as a matter of good practice, and because it is likely that this will become a CSCI inspection criterion.

However, concern must be expressed that the establishment of such a database will de facto include recording information on many sexually active young people. Such information is highly sensitive, and access to it must be carefully regulated.

The Future

At some point in the near future, it is expected that there will be further guidance, under Recommendation 73.2, on when to and when not to refer issues to the Police, coming from central government. Although initial indications suggest that these will mirror some of the work produced by the Sheffield ACPC, there may well be more detailed changes included. When this new guidance is forthcoming, the Norfolk ACPC will review the advice offered above and, where necessary, amend it.

Useful Links

The following websites may prove useful:

- www.lscb.norfolk.gov.uk
- www.bichardinquiry.org.uk

**Norfolk ACPC
May 2005**

Note: Norfolk ACPC was succeeded by Norfolk LSCB (Local Safeguarding Children Board) in April 2006