

Personal Relationships and Sexuality for People with Learning Disabilities

**Guidance for Workers working with People with
Learning Disabilities**

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Reference:
BBC/BoP/DHUFT/
Oct16/LDPR&S

Version: V1.0

Issue date: 3 November
2016

Review date: As required

Document Control

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Produced by:	Borough of Poole ASC-S Policy Unit	
Ratified by:	All partner organisation Senior Management and Leadership Teams	
Target audience:	All workers working with people with Learning Disabilities	
Policy should be read alongside:		See section
Equality Impact Assessment (EQIA):	Date undertaken:	20 October 2016
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Contents

Reason.....	5
Purpose.....	5
Responsibilities	5
Local Authority Services and Partners.....	5
Introduction	5
Consent.....	6
Supporting people with learning disabilities with sexual health and relationships	7
Sex and Relationship Practitioners.....	7
Sexually explicit materials	8
Access to sex workers.....	8
Privacy	8
Masturbation	9
Same sex relationships	9
Unconventional sexual behaviours	9
Sexually harmful behaviours	10
Marriage, Civil Partnerships, living together and divorce	10
Diverse community views	10
Contraception.....	11
Sterilisation.....	11
Abortion.....	12
Parenthood.....	12
Sexually Transmitted Infections.....	12

HIV and AIDS.....	13
Condoms and safer sex.....	13
Sexual health screening	13
Appendices	14
Appendix 1: Sex and relationships Pathway V3 (May 2016) - DHUFT	15
Appendix 2	16
Legal Context	16
Human Rights Act 1998 - Human Rights Act 1998	16
Mental Capacity Act 2005 - Mental Capacity Act 2005	16
Sexual Offences Act 2003 - Sexual Offences Act 2003	17
Equality Act 2010 - Equality Act 2010.....	17
Care Act 2014 – Safeguarding sections 42 to 46.....	18
National Context.....	18
Valuing People (2001) and Valuing People Now (2009)	18
Changing Our Lives: Quality of Life Standards (2014).....	18
Local Context	18
Local Policies – that may support work around personal relationships	19

Reason

The guidance supports workers working with people with learning disabilities aged 16 or over, and their carers to enhance the way they respond to personal relationships and sexuality.

It seeks to ensure a balance between individual rights and responsibilities, physical and emotional safety, and the rights and responsibilities of others.

Purpose

The purpose of this guidance is to ensure an appropriate and consistent approach towards personal relationships and sexuality when working with people with learning disabilities. In addition it provides greater clarity about issues relating to relationships where there is concern about person's capacity to understand and manage relationships independently.

The guidance is inclusive of all sexualities and recognises that relationships can be long term or brief, or anything in between.

Responsibilities

People with learning disabilities have the same responsibilities as any other citizen:

- ▶ To seek advice when needed;
- ▶ To respect people's views and feelings and not to impose their personal views on others;
- ▶ To be clear about their own needs and wants in order to get the right support;
- ▶ Not to break the law

Local Authority Services and Partners

Managers of Services should:

- ▶ ensure that workers understand and respect that the people they work with have needs in regards to personal relationships and sexual expression;
- ▶ support their workers to ensure a consistent approach to relationship and sexuality;
- ▶ ensure that their workers are familiar with the [Multi Agency Safeguarding procedure](#) and are clear on their duty to report and record any suspicions of abuse of people by workers, other individuals, relatives, friends, and members of the public;
- ▶ support their workers to develop their skills and knowledge in working with people with learning disabilities;
- ▶ ensure that assessments and support plans take account of any specific needs relating to relationships and sexuality;
- ▶ provide advice regarding issues that arise, and seeking specialist or legal advice if needed;
- ▶ ensure that information is available so that individuals with learning disabilities can be supported to develop their knowledge and their ability to make choices in personal relationships and sexuality where appropriate.

Workers working with people with learning disabilities should:

- ▶ not impose their own values and beliefs if different on people with learning disabilities with whom they work;
- ▶ be aware of and comply with the legal framework which has been designed around people with learning disabilities;
- ▶ take account of needs relating to relationships and sexuality that have been identified when considering how they support the individual;
- ▶ consult with their manager if they need advice regarding a particular concern or decision;
- ▶ consider recommending a specialist service in order to meet a particular need.

Introduction

The guidance includes procedural processes and information based on current best practice.

It is important for workers to be aware that the guidance does not under any circumstances permit, encourage, or condone any activity which is illegal. The relevant legal references and information are in [Appendix 2](#).

The sexuality of people with learning disabilities raises questions and dilemmas; to allow and encourage the opportunity to secure freedom, choice and rights for individuals whilst acknowledging the duty to protect them from exploitation or abuse.

Supporting people with learning disabilities in the area of sexuality and relationships will involve workers having a positive attitude and sensitive approach when offering help and advice. Workers should not impose their own beliefs on individuals and should be aware of and respect others' cultural and religious beliefs and practices.

Senior Workers and Managers have a responsibility to create a climate whereby workers who feel worried or distressed about any situation in their place of work are able to approach a senior member of workers to discuss their anxieties.

If workers feel embarrassed or uncomfortable in discussing sex and relationships this should be brought to their supervision / managers and consideration of allocation to another worker may be appropriate. Training may support workers to develop confidence in talking about these issues.

In the guidelines, supporting people with learning disabilities in sex and relationship work will be abbreviated to SRW. For the purpose of this document CTPLD refers to both the Community Team for People with Learning Disabilities in Bournemouth and the Community Learning disabilities Team as it is referred to in Poole.

Consent

Consent is crucial in deciding whether a particular sexual relationship or act is abusive. The Sexual Offences Act 2003 contains for the first time a clear definition of consent as follows:-

- ▶ A person consents if s/he agrees by choice and has the freedom and capacity to make that choice.

What needs to be decided is:

- ▶ Whether the individual had the capacity about whether or not to take part in the sexual activity at the time in question.
- ▶ Whether s/he was in a position to make that choice freely, not being constrained in any way.

It is not permissible for a decision on consenting to have sexual relations to be made on behalf of another person.

Capacity to consent should be assumed unless there are given reasons/ concerns that an individual lacks capacity (see [Mental Capacity Act 2005](#)). There are some individuals with a learning disability who would be considered as being unable to give consent and who would lack capacity (the ability to make informed choice) and workers should seek guidance from the Community Team for People with Learning Disabilities (CTPLD).

In practical terms, it will be necessary to carry out some form of assessment of capacity for some individuals with a learning disability. Assessing the degree to which this is significant in terms of meaningful consent in a person's life should be done by those who know them well. An assessment of capacity for the purposes of sexual relationships requires the assessment to be specifically about the adult's abilities to understand sexual and personal relationships. Evidence of mutuality should be looked for by those assessing consent, to show that the relationship is not abusive. This is reflected in factors such as:

- ▶ both parties seeking each other out
- ▶ spending spare time together
- ▶ shared resources

- ▶ shared leisure activities
- ▶ restriction of activities with other potential partners.

There are clear situations in which any consent given would be considered invalid. Factors which might make a person's consent to sex invalid include:

- ▶ if a person does not really understand what is being asked;
- ▶ if a person does not know they have the right to refuse sex;
- ▶ if a person does not know how to refuse sex;
- ▶ if a person is afraid to refuse sex;
- ▶ if a person does not know that sex is not meant to be painful or uncomfortable
- ▶ if a person does not know that he or she is being exploited when a reward / incentive or payment for sex is used
- ▶ if a person does not know that some relationships are illegal, such as those within families, or between workers and clients.

Consent can only be said to be valid if the person knows what they are consenting to, and has a real option of saying yes or no.

There are situations where people may be engaging in activities which other people view as morally wrong or not in the best interests of the individual. Some examples are same sex relationships, not using condoms, having multiple partners or being in a violent relationship. The individual could be very aware of what they are doing, and aware of the implications, positive or negative, and may still wish to continue to engage with this activity. Workers are not expected to make a value judgement about the rightness of any sexual activity which is taking place. However, they are expected to be sensitive to the possibility of abuse. If workers are unsure, they must bring any observations or concerns to the attention of their line manager. If at any time workers become aware of a particular situation or act taking place which is, in their opinion, abusive they should take immediate action to intervene. For advice refer to [Safeguarding Adults Policy](#) and [Safeguarding Adults Procedures](#)

Every person has a right to engage in sexual activities that are lawful, wanted and understood, without being exposed to exploitation or sexual violence. Sexual activity between workers and a vulnerable adult is exploitative, abusive and is forbidden by law. Any allegation of abuse made against a worker will be investigated. The Policy on Safeguarding Vulnerable Adults explains this procedure in detail.

Supporting people with learning disabilities with sexual health and relationships

It is important for people to have the opportunity to develop a range and variety of relationships, that may or may not have a sexual element. Some people with learning disabilities will need support and assistance with relationships and sexuality. The aim of support in this area should be to help them to develop the self and social awareness needed to make personal relationships with others, and an appropriate awareness of sexuality.

Sex and Relationship Practitioners

Sex and Relationship Practitioners are available to offer practical help and support to workers who lack the experience or confidence in this work ([see Appendix for DHUFT Sex and Relationship Pathway](#)). All workers should be encouraged to seek support if required from CTPLD, the peer SRW support groups or via supervision.

All SRW needs to be tailored to the needs of the individual and their learning style. During the planning stage, workers should give consideration to parental concerns. Parents may wish to have the opportunity to discuss the work and view materials with the consent of the person with learning disabilities.

Some people with learning disabilities may use informal or colloquial terms for body parts and sexual practices, and workers should be prepared to use language which can be understood by the person with learning disabilities. However, workers should also support people with learning

disabilities to understand other terms, especially those that are used more widely and by the medical profession.

Social Skills, Sex and personal relationship education

This is offered to small groups of people with learning disabilities can be beneficial. Training can be arranged for a wide variety of topics that includes areas such as marriage, body awareness, same sex relationships, personal health and making choices. For more information on the full range of training available contact CTPLD.

Sexually explicit materials

Sexually explicit materials are readily available to members of the public at the legal age of 18. Providing that the material is only viewed or read in private and the materials are lawful.

An interest in such material can be seen as sexual development, especially where the opportunity of sexual discussion is limited or suppressed. People with learning disabilities should not be criticised if found in possession of sexually explicit material. However, those who wish to use these materials should not infringe the rights of other people who do not wish to view or use such materials. Nor should they break the law in what material they have and how they use or view that material.

If an individual, who is living in supported accommodation, requests assistance to obtain sexually explicit materials, including those available through the internet, this must be discussed with the Manager and the outcome recorded. When the agreement is made to assist the individual to buy or view sexually explicit materials, it is imperative that only legal materials are provided.

Council computers can not be used to access sexually explicit material.

People with learning disabilities can be supported in exploring various images of sex, which may be sexually explicit, as part of an educational programme. However, the use of pornography within a teaching programme is not appropriate and should not be used.

Access to sex workers

In the UK it is legal to pay for sex but there are legal limits, such as kerb crawling, procurement and running brothels which are all illegal acts. There are two distinctly different issues that may arise in service:

- ▶ Individuals seeking to pay for sex, or already having done so.
- ▶ Access to a sex worker being suggested for an individual

In facilitating access to sex workers, such as providing addresses and providing transport, the Sex Offences Act (2003) is clear that if the person cannot give informed consent to the sex, the workers would be committing an offence of “causing or inciting a person with a mental disorder impeding choice to engage in sexual activity”. In working with a individual who is already accessing sex workers the support may be focused on making less exploitive and risky sexual choices. Any support provided around the use of sex workers should be a multi-disciplinary team decision that is documented and not an individual decision.

Privacy

In our society, sexual activities are expected to be conducted in a private place, and it is important to respect the rights of people with learning disabilities around relationships, sexuality and privacy. People with learning disabilities should have the opportunity to develop a range and variety of relationships. Relationships that develop may or may not have a sexual element.

Residential establishments need to cater for privacy and the following principles should apply:

- ▶ People should be able to restrict access to their bedrooms.

- ▶ Workers should not go into a client's room without seeking their permission and having very good cause. However, there may be times when permission is not required, for example, Landlords' entry rights.
- ▶ Workers should assist in helping the client to make the room a comfortable environment.
- ▶ Workers should support people with learning disabilities to entertain friends in private.
- ▶ All sexual acts should take place in private. Sexual behaviour in public may be offensive to others and could lead to prosecution of those involved. Day Centres are public buildings and consequently are not acceptable venues for any sexual behaviour which may cause offence to others.
- ▶ In providing privacy for residents, workers will need to remain aware that some people with learning disabilities are vulnerable to abuse by others and may need support so that their rights and wishes are protected. Some people with learning disabilities will require help in making informed decisions.

Masturbation

Masturbation may be an outlet for sexual feeling and it is considered an acceptable sexual behaviour for females and males. People should not be discouraged from masturbating, providing that it is done in private. If masturbation seems to be taking place excessively, for example if it is interfering with day to day living, or taking place in inappropriate situations, it may indicate other issues which need to be addressed.

Points for consideration may include:

- ▶ sexual frustration
- ▶ are they experiencing difficulties with a relationship?
- ▶ is the person bored or needing other stimulation?
- ▶ are they able to masturbate effectively? (If not, see below)
- ▶ is the environment appropriate? i.e. privacy.
- ▶ reacting to an infection

Some people with learning disabilities may need specific support in being able to masturbate; this may take the form of education or therapy from a Sex and Relationship Practitioner CTPLD. Line managers should be consulted about any proposed training programme or intervention and permission and guidelines should be written down following input from the specialist practitioner.

Workers are strictly forbidden to perform physical sexual relief or other sexual acts, with/for an individual. Any contravention of this instruction would be a disciplinary matter and in addition workers could be charged with indecent assault.

Same sex relationships

People with learning disabilities have the right to conduct a consenting sexual relationship with someone of the same gender aged 16 and above. Workers should not impose their own beliefs on people with learning disabilities and any discrimination must be challenged. If a person with learning disabilities thinks they may be lesbian, gay or bisexual (LGB), they should be offered full support by workers to help them discover their sexuality. Possible sources of support are:

- ▶ contacting agencies to meet other LGB people.
- ▶ access specific support or counselling.

The same might apply to people who are questioning their gender. People with learning difficulties are just as likely to be lesbian, gay, bisexual or transgender as the general population. Sexual health and relationship education programmes may provide an appropriate forum for people with learning disabilities to enable further discussion of the issues. These important issues should be regularly addressed through workers supervision.

Unconventional sexual behaviours

There are many diverse ways that people express their sexuality, this is no different for people with learning disabilities. In working with someone who expresses their sexuality in an unusual

way the first considerations should be is there the potential of harm to the individual or other people. This may include other people's reactions including ridicule or even risk of physical violence. Providing the sexual behaviour is legal, the following support should be considered:

- ▶ Education to maintain privacy in sexual expression.
- ▶ Support in recognising possible consequences of sexual expression
- ▶ Support in reducing risks associated with the sexual expression, including other people's reactions.
- ▶ Support in recognising this sexual expression is not unique and there are others who have these feelings too.
- ▶ Where appropriate signposting to counselling to specific support groups.

Sexually harmful behaviours

If workers have any concerns regarding sexually harmful behaviour they should immediately notify their line managers. The [Safeguarding Policy and Procedures](#) should be followed and if appropriate the police informed.

Marriage, Civil Partnerships, living together and divorce

People with learning disabilities have the same rights in law as anyone else to marry or live together. Providing the person is over 16 years and has a general understanding of what it means to get married and they have the legal capacity to consent to marriage no other consent is required. The Registry Office can refuse to authorise a marriage taking place if they believe one of the parties does not have the mental capacity to consent.

If people with learning disabilities express a desire to marry or live together, workers should be willing to discuss this option with them sensitively and seriously. Only if the couple agree, can workers involve family carers. However, the benefit of family carer support should be emphasised.

The workers responsibility is to:

- ▶ clarify the implications and to assess practical support needed by the couple;
- ▶ assist the couple if required, to access appropriate information and advice with regard to changes to their financial and legal obligations.

However, as with all marriages, not all will be successful. The law relating to divorce is the same for a couple with learning disabilities as for others. The professional's role would be to:

- ▶ signpost where appropriate to support services on offer e.g. counselling with Relate;
- ▶ offer guidance on the implications of any action;
- ▶ offer support in accessing agencies such as housing and solicitors;
- ▶ ensure that couples who live in residential care homes are offered practical provision to allow them to separate.

Workers must have an awareness of the possibility of forced marriages and if they suspect a forced marriage has or is taking place they must follow the [Bournemouth and Poole Safeguarding Adults Board Procedures](#).

Diverse community views

People with learning disabilities, workers, and family carers may come from a range of diverse and minority communities, some of which will have very clear views about the place of sexuality in people's lives. Workers and family carers from particular communities may have strong views on matters such as sexual orientation, masturbation, pornography and sexual relationships outside of marriage.

- ▶ Consider not just to the situation in question, but to the wider context of that person's life including the religious/cultural context.
- ▶ In making decisions and judgements about any individual's sexual behaviour understand that cultural and religious perspectives need to be taken into account
- ▶ Understand religious and cultural considerations can be complex, as it is not always clear what is in fact a religious belief and what is a cultural norm.

- ▶ Where appropriate seek advice and support from specialist agencies, including use of interpreters.

It is also important that, just like anybody else, the person has the right to step, or be aided to step, outside the values of their community, as long as they remain within the limits of the law. However, the consequences for the person of doing so will often have far reaching effects in terms of their place within their family and the larger community. At times like this, workers have a duty to act sensitively to the family's needs; therefore decisions which may have long-term consequences must not be taken lightly, and should be part of the care planning process. Particularly sensitive issues should be discussed with line managers and Community Team for People with Learning Disabilities (CTPLD).

Contraception

People with learning disabilities have the same right to information and help with contraception as others and this should be discussed sensitively as part of the overall care plan. In making their own decisions about birth control methods, individuals should be supported and consideration given to:

- ▶ ensuring the individual has all the necessary information and is referred on to the relevant services;
- ▶ consideration of the person's cultural and religious values, which may forbid the use of some forms of contraception;
- ▶ ensuring that contraception is seen in terms of the needs of the person rather than in terms of relieving the anxieties of workers and relatives;
- ▶ ensuring that the person understands any contraceptive method and contraindications;
- ▶ the person's wishes with regard to whether to inform relatives must be respected.

Where a person with a learning disability is unable to understand and take responsibility for contraception:

- ▶ Involved parties, including carers, should meet to address issues around the apparent need for contraception and to establish programmes for future work in support of that person.
- ▶ Consider the Mental Capacity Act and the 'best interests' of the person.
- ▶ Remember if a woman has not used contraception or her contraception has failed e.g. she has had a burst condom, she can access emergency contraception from a Family Planning Clinic or her family doctor. Emergency Contraception should be taken within 72 hours of intercourse – the sooner the better. See swish.org.uk or fpa.org.uk for specific information.

Leaflets on the methods of contraception are available free from family planning clinics and easyhealth.org.uk.

Sterilisation

Sterilisation as a means of contraception is a medical intervention and is a radical procedure intended as an irreversible course of action. This can have major consequences and therefore all other acceptable alternative methods of birth control must be considered first. Demands for sterilisation from family carers must not override the well being of the individual and their right to choose. Workers must not discuss or make any decisions about sterilisation without first consulting their line manager and CTPLD.

When considering sterilisation it is important to ensure that if it is the choice of the individual that they are given the opportunity to access intensive counselling from a specialist advisor.

In cases where the individual lacks capacity an IMCA must be appointed if there are no family members to speak on their behalf. Such cases might go to court of protection for a decision. Where a person is unable to give consent sterilisation, on a non-emergency basis, can legally only be carried out as the result of a court application.

Counselling for sterilisation is only available through referral to Family Planning and GP Services, or referral to gynaecology or urology.

Abortion

Abortion can only be authorised by appropriate medical practitioners.

A woman with learning disabilities has the right to information, counselling and support to make a reasoned decision about whether to continue the pregnancy or to terminate it, regardless of the reason for her choice. The well being of the woman must always come first and she has the right to choose. It is unlikely that a woman will be given a termination in the later stages of pregnancy unless there is severe foetal abnormality or her life is at risk.

Parenthood

People with learning disabilities have a right to be parents and many of them have a desire to choose to become parents. Those who do should be given access to unbiased pre-parenting advice, if requested.

Counselling people with learning disabilities who wish to be parents involves the exploration of their expectations. It should be noted that people with learning disabilities can be good parents. Many believe that people who have learning disabilities will, because of this, have children who will have learning disabilities. This is not always the case, and should not be assumed.

Some of the areas that could be explored with the individual or couple who wish to be parents are:

- ▶ What is the expectation of the individual or couple about becoming parents?
- ▶ How much help would realistically be needed to help this couple cope with a child?
- ▶ Is this level of help likely to be available?
- ▶ What other support is available:
 - ▷ from the individual or couples friends or families?
 - ▷ from statutory services?
 - ▷ from private and voluntary services?
- ▶ Is genetic counselling necessary? Are there risks to the baby?

The Children's Act (1989) stresses that the welfare of any child will be paramount and generally will prevail over the interest of the parents; whether the parents have learning disabilities or not. However, it should be remembered that parents also have rights. The local authority has a duty to provide a range and level of services appropriate to children in need who are in its area and to promote their upbringing by their family.

Sexually Transmitted Infections

People with learning disabilities need to know:

- ▶ how an STI is passed on;
- ▶ the symptoms of STIs, and that some people often don't have symptoms;
- ▶ where to go for diagnosis, testing and treatment;
- ▶ how to access services;
- ▶ who to talk to for confidential advice;
- ▶ how to avoid getting an STI;

Workers need to be aware of existing agencies offering advice/support and treatment of STIs, such as Family Planning Services, or Primary Care. Workers should take an active role to encourage and promote the use of appropriate services.

When a person with learning disabilities complains of symptoms associated with an STI, workers should agree a plan of action with the person, which would include seeking medical advice and treatment as appropriate.

The medical background and matters relating to the sexual health of a person with learning disabilities is strictly confidential. Information on STI would be restricted to essential persons only. Leaflets on a range of STIs are available from Family Planning Clinics, GPs and easyhealth.org.uk

HIV and AIDS

People with learning disabilities should be offered education around HIV and AIDS as an essential part of their health education programme, in a way which is accessible to them.

Basic information on HIV and AIDS can be found in leaflets held in Health Promotion Libraries. There should also be information and support for HIV negative and untested people with learning disabilities who experience a disproportionate risk of exposure to HIV and subsequent transmission of the virus. This may include those who have high numbers of sexual partners. There should be provision of specific resources for people with learning disabilities.

Condoms and safer sex

Condoms are useful in preventing the spread of sexually transmitted infections (STI) and HIV, as well as pregnancy. People with learning disabilities need to know:

- ▶ why using condoms is important;
- ▶ how to ensure the condom is not damaged;
- ▶ how to put one on correctly, and how to dispose of it;
- ▶ where to get free condoms and where to buy them;
- ▶ the different names for condoms;
- ▶ how to negotiate use of condoms with a partner;
- ▶ which condoms are appropriate for anal sex, oral sex as well as vaginal sex - with information about the use of lubrication;
- ▶ what to do if a condom bursts.

Sexual health screening

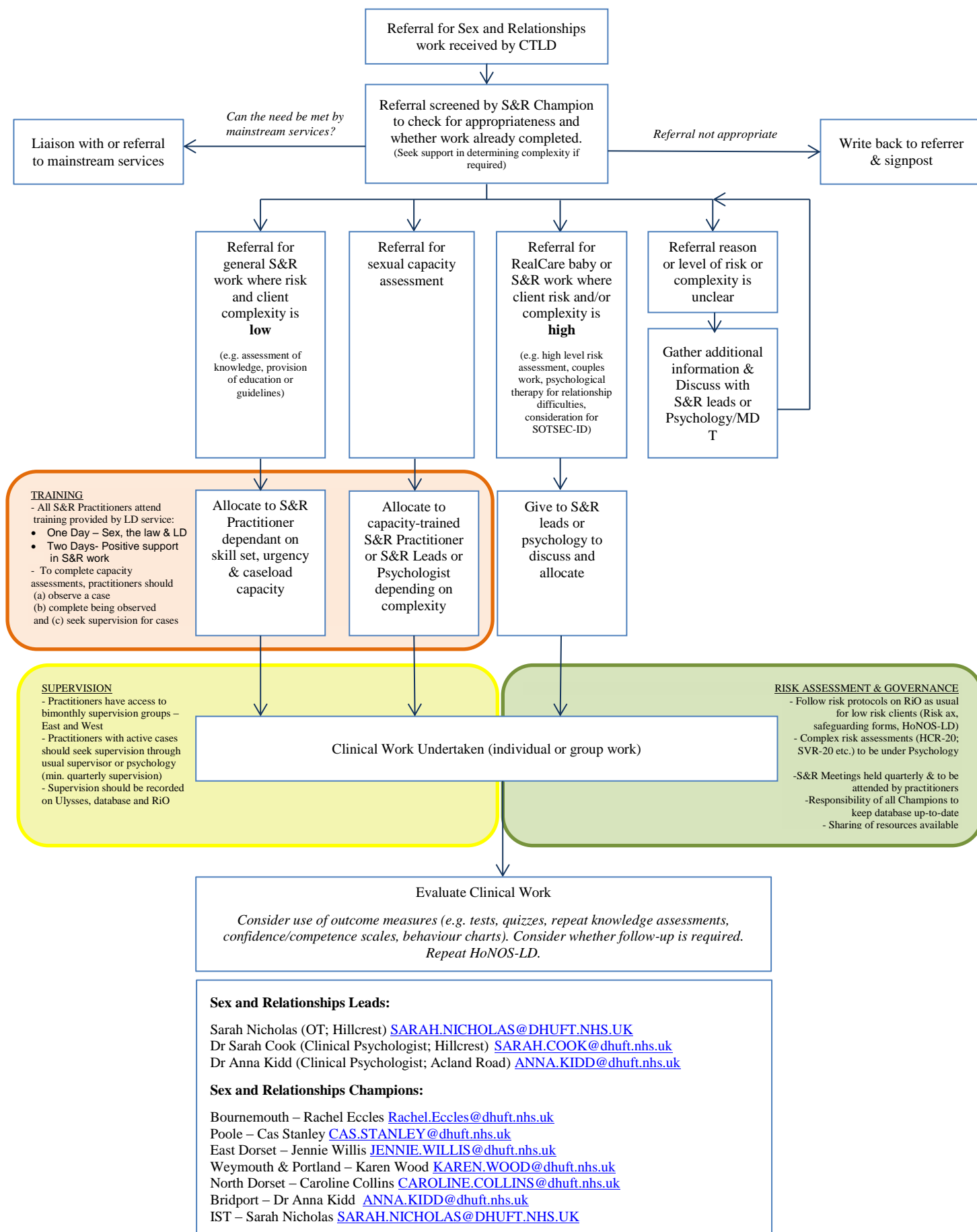
People with learning disabilities are entitled to and benefit from sexual health checks and screening. In order to access these checks, people with learning disabilities may require:

- ▶ provision of clear information and advice, including use of easy read information;
- ▶ support to learn self-examination, such as checking for lumps in testicles and breasts;
- ▶ support to access medical health screening, including cervical and prostate cancer tests;
- ▶ reasonable adjustments to be made i.e. pre appointment visits and longer appointments;

Where an individual lacks capacity to access sexual health screening, best interest processes should be followed. The outcome and treatment plan following this should be clearly documented.

Appendices

Appendix 1: Sex and relationships Pathway V3 (May 2016) - DHUFT



Appendix 2

Legal Context

Human Rights Act 1998 - [Human Rights Act 1998](#)

The Human Rights Act 1998 came into force in the United Kingdom in October 2000. It is composed of a series of sections that have the effect of codifying the protections in the European Convention on Human Rights into UK law.

The following convention rights are of particular relevance to this policy:

- ▶ Article 8 – Right to respect for private and family life;
- ▶ Article 9 – Freedom of thoughts, conscience and religion;
- ▶ Article 12 – Right to marry

Mental Capacity Act 2005 - [Mental Capacity Act 2005](#)

When supporting people with learning disabilities about relationship the principles of Mental Capacity Act should apply. There are five principles are set out at the beginning of the Act:

- ▶ **Presumption of capacity:** a person must be assumed to have capacity unless it is established that he/ she lacks capacity.
- ▶ **Maximising decision-making capacity:** a person is not to be treated as unable to make a decision unless all practicable steps to help him/ her to do so have been taken without success.
- ▶ **Unwise decisions:** A person is not to be treated as unable to make a decision merely because he / she make an unwise decision.
- ▶ **Best interest:** Decisions made on behalf of a person who lacks capacity must be done in his/ her best interest.
- ▶ **Least restrictive alternative:** Before the act is done, or the decision is made, consider whether the purpose can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

The Mental Capacity Act 2005 is about all decisions, including those around sex and sexual/personal relationships. The Act also states that no one should make decisions for those who have capacity to make their own.

There may need to be an assessment of an individual's capacity to consent to sex. Current case law suggested the only knowledge an individual would need to be able to consent would be:

- ▶ The mechanics of the act
- ▶ That there are health risks involved particularly the acquisition of sexually transmitted diseases and infections
- ▶ The sex between a man and a women could result in a pregnancy

All sexual activity between individuals must be consensual. Any sexual act that takes place between two or, more, people where one of them is not consenting , or does not have the capacity to consent is classed as sexual assault or rape.

The following may be considered when assessing whether an individual has the capacity to consent to a sexual relationship:

- ▶ They understand what sexual acts are,
- ▶ They understand they can say 'no' to anything they do not want to do, and are able to communicate this,
- ▶ They understand that the age of consent is 16,
- ▶ They can understand what behaviour is inappropriate, e.g. Sexual acts between members of the same family are not normal, and are illegal,
- ▶ They can understand, in general terms, the possible consequence of a sexual act, e.g. Pregnancy or sexually transmitted infection.

The ability of a person should be judged in each particular circumstance and time. Advice of professionals, such as psychologists, psychiatrist, speech and language therapist and independent advocates may be sought if there is doubt that a person can give consent. A best Interests decision cannot be used in this instance (see 'legal framework') – they are either able to give consent themselves, or not.

There are two aspects to capacity in relation to consenting to sex that need to be considered:

1. Does the individual have capacity to consent to sex in general
2. Does the individual have the capacity to consent to sex with particular individuals

Individuals may have either type of capacity it is therefore important to follow the Mental Capacity Act principles when working with individuals around capacity and consent.

Mental Capacity Act: Sexual Activity, Marriage and Civil Partnership

Note that the Mental Capacity Act specifically prohibits the use of a best interest's decision to enable sexual activity, marriage and civil partnership. Accordingly if a person with a learning disability does not have the capacity to decide it is also unlawful for others to support or facilitate such activity on their behalf. This does not apply to supporting individuals with social activity or friendships.

When it comes to marriage or civil partnership the person officiating (registrar etc) has to be satisfied that both parties have the capacity themselves to make that decision.

Sexual Offences Act 2003 - [Sexual Offences Act 2003](#)

This provides a comprehensive legislative framework for sexual offences, setting out clear boundaries for what is and is not acceptable. Sections 30 to 33 relate to offences against people who cannot legally consent to sexual activity because of a mental disorder impeding choice. Sections 34 to 37 relate to offences against people who may or may not legally be able to consent to sexual activity but are vulnerable to inducements, threats or deception because of a mental disorder.

The Act does not intend to interfere with the right to a full and active life, including sexual life, of people with mental disorder who have capacity to consent. Neither does it intend to prevent care workers from providing legitimate care including sex education. However it does recognise the importance of protecting people with mental disorders from sexual abuse by people with whom they are in a relationship of care.

Sections 38 to 44 contain offences for people who are engaged in providing care, assistance and services to someone with a mental disorder (including people with learning disabilities).

These sections are intended to protect people with learning disabilities from abuse. While it is acknowledged the majority of people working with vulnerable adults are conscientious, responsible people, the law must be able to deal with the minority who betray the trust placed in them.

Impact on relationships for the person with a learning disability

If a person with a learning disability enters into a relationship with someone who may be more vulnerable than them, or where there may be a power imbalance, support may be needed to help them both understand what might be deemed to be exploitative and how to conduct themselves in that situation. The aim should be to support both individuals so that they don't put themselves at risk of exploitation or of being accused of a sexual offence.

Equality Act 2010 - [Equality Act 2010](#)

The Equality Act 2010 brings together nine separate pieces of legislation into one single act. It provides protection from discrimination on the basis of 'protected characteristics'. The Equality Act covers the same groups that were protected by previous equality legislation - age, disability,

gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

People with learning disabilities may be at risk of discrimination either because of their disability, or through any of the other protective characteristics, for example their race or religion, and in particular those that relate to this policy such as their sexual orientation. The risk of discrimination should be taken into account when working with any individual, when advising individuals and arranging support and services.

Care Act 2014 – Safeguarding sections 42 to 46

Safeguarding is everyone's business, and it is important that organisations work together to protect people who need help and support.

The Care Act requires that each local authority must:

- ▶ Make enquiries, or cause others to do so, if it believes an adult is experiencing, or is at risk of, abuse or neglect. An enquiry should establish whether any action needs to be taken to prevent or stop abuse or neglect, and if so, by whom;
- ▶ Arrange, where appropriate, for an independent advocate to represent and support an adult who is the subject of a safeguarding enquiry or Safeguarding Adult Review (SAR) where the adult has 'substantial difficulty' in being involved in the process and where there is no other suitable person to represent and support them

National Context

Valuing People (2001) and Valuing People Now (2009)

These strategy documents recognised that people with learning disabilities are often socially isolated. Under the heading of "Fulfilling Lives" they recommend that good services will help people with learning disabilities develop opportunities to form relationships, including ones of physical and sexual nature, become parents and continue to be parents they should be supported to do so through accessible sex and relationships education and information.

Changing Our Lives: Quality of Life Standards (2014)

These nationally recognised Quality of Life standards were written by over 650 young people and adults with learning disabilities, in partnership with their peers with a range of physical disabilities, sensory impairments and mental health needs, and sets out rights and expectations in relation to:

- ▶ Making friends and relationships
- ▶ understanding sex, relationships, and partnerships
- ▶ expressing sexuality and gender

[\(Changing Our Lives, 2014\)](#)

Local Context

This policy has been developed in the context of ['The Big Plan'](#) The Big Plan is an overall strategy for people with learning disabilities and was produced by the Learning Disability Partnership Boards for Bournemouth and for Poole. Relationships are one of the three big priority areas identified within the Big Plan. Other local initiatives include the ['The Loving Feeling Report'](#) and 'The Bill of Rights', produced by people with learning disabilities and their families. People with learning disabilities in Bournemouth and Poole worked together to produce ['The Bill Of Rights Charter'](#) This includes 'the right to relationships' including:

- ▶ To learn about friendships;
- ▶ To marriage and civil partnerships;
- ▶ To engagements;
- ▶ To sex and relationships education;
- ▶ To choose when to have a relationship or not.

Local Policies – that may support work around personal relationships

The '[PAN Dorset MCA Policy and Procedures](#)' provides a synopsis/condensed advice and includes a 'best interest' checklist for people acting on behalf of others. This includes consideration of the person's wishes, feelings, beliefs and values (including any written advance statement they made when they had capacity) and taking account of the views of their friends and family. Workers should refer to the Code of Practice when in doubt about their responsibilities under the Act.

The Bournemouth, Dorset & Poole Multi-Agency [Safeguarding Adults Policy](#) is about effective safeguarding to protect an adult's wellbeing and the right to live in safety, free from abuse and neglect. There is also Bournemouth, Dorset & Poole Multi-Agency [Safeguarding Adults Procedures](#) to offer practical guidance where there are safeguarding concerns. These should be used if there are concerns about the safety and wellbeing of the individual when considering personal relationships and sexual health. This could include exploitation or sexual abuse by others, or be related to other forms of abuse. It may or may not be linked to a lack of capacity to consent or set boundaries. Responses to safeguarding should involve the individual in line with making safeguarding personal and respect the principles outlined in this policy.