



## **PEOPLE WITH LEARNING DISABILITIES - RELATIONSHIPS AND SEXUALITY: POLICY AND PRACTICE GUIDANCE FOR STAFF**

### **1.0 INTRODUCTION**

The need for intimate emotional, physical and sexual closeness is a basic human need – one of the human givens. An inability to successfully meet this need will prevent the individual concerned from achieving optimal mental health and may result in considerable unhappiness and personal distress for some individuals. Fulfilling a need for intimacy and emotional closeness will contribute significantly to meeting other key human needs such as security, attention and a sense of status. Emotional connection with another human being goes a long way to giving our lives meaning and purpose.

Every human being benefits from the sense of closeness and mutual support that comes from having a network of relationships developed through school, work, hobbies and community activities. Experience of a variety of relationships helps us to develop the social skills, confidence and self esteem that underpin our ability to make, sustain and break more personal relationships and to express our sexuality.

*‘To be a human being is to be a sexual being. Although there may be a range of intensity, varying over time, we all have sexual needs, feelings and drives from the most profoundly disabled to the most able among us. Although we can shape (and mis-shape) sexual expression, sexuality is not an optional extra which we in our wisdom can choose to bestow or withhold according to whether or not some kind of intelligence test is passed.’ Dr Ann Craft Mental Handicap and Sexuality Issues and Perspectives, Costello 1987.*

Many of our service will not express a need for an active sexual relationship – however all our service users have a need for personal contact, friendship and opportunities to express their own individuality.

People with learning disabilities often have few opportunities to socialise, develop loving relationships and have their sexual needs met. They may find it difficult to get the information they need about relationships and sex. People with learning disabilities are also around four times more likely to be abused than the general population. People with profound disabilities and complex communication needs are especially vulnerable.

People’s sexuality is shaped by their environment, experience and personal history. The way that an individual’s sexuality is expressed (e.g. masturbation, sexual touching) may have been

adversely affected by years of institutional/communal living, with a significant lack of privacy and an absence of education or emotional support.

This policy and guidelines are intended to provide a framework within which staff can provide appropriate support to service users while ensuring that professional and statutory boundaries are recognized and maintained.

DRH is committed to treating all service users with dignity and respect, providing privacy which is essential for healthy sexual development and supporting staff through clear guidelines and training so that they are able to foster independence and recognise vulnerability.

While our services are committed to enabling service users to engage in positive and consensual relationships it is important to recognize that many of our service users are vulnerable and at risk of sexual exploitation. DRH is committed to ensuring that service users are protected from all forms of physical and emotional abuse.

## **2.0 RELATIONSHIPS**

The White Paper, "Valuing People" (DoH. March 2001) states that it is a government objective: "to enable people with learning disabilities to lead full and purposeful lives within their community and to develop a range of friendships, activities and relationships." Valuing People stresses the need for good services to "help people with learning disabilities develop opportunities to form relationships, including ones of a physical and sexual nature."

All people with learning disabilities have the right to experience a full range of relationships, including friendships and community links, as well as personal relationships. To achieve these rights means also having the freedom to take informed risks. Support should be provided with social activities which are planned according to individual needs, interests and personal circumstances rather than the needs of the service. Activities should be appropriate to an adult lifestyle and support personal growth and development. People should have access to accurate information and responsible guidance to enable informed choices about any activities that may involve risk. Assessments of people's needs and any support required should be part of the individual care planning process and recorded and monitored as in other areas of support.

Close personal relationships, with or without sexual activity, are for the majority of people the most important factor in their lives. This applies equally to people with a learning disability..

Services that treat service users with dignity and respect are most likely to create and sustain environments that also recognise the importance of relationships.

In the midst of providing stimulating and interesting lives we sometimes forget the most basic needs " ....*to be listened to, to be valued, to be respected, and, above all, to have someone to talk to who will truly listen and help make sense of our lives*" – in other words a friend or partner. (Gardner, A. 1997) Services need to place appropriate emphasis on simple activities such as sharing a pot of tea, or watching a film together. It is these everyday events that sustain and develop our friendships and relationships.

People who have few social opportunities are unlikely to develop good social skills, meet new friends or potential sexual partners. Many service users need a great deal of support from

services in order to have the opportunity to make friends and to develop and sustain relationships (whether sexual or not).

Service users with profound/complex needs and a high level of dependency may often be severely restricted in the extent to which they are able to express their feelings or form close relationships. It is essential that staff make every effort to improve communication skills (for the service user as well as support staff) and provide a wide variety of sensory experiences to enable the service user to more directly experience the world around them.

### **3.0 SEXUALITY**

“Sexuality can be defined as the quality or state of being sexual. Quite often it is an aspect of one's need for closeness, caring, and touch.”

‘Sexuality is defined as that aspect of human development that relates to a person’s capacity (including their learned behaviour) to experience and respond to sexual needs and feelings, to behave sexually, and to participate in sexual activity and intimacy with others. It includes sexual identity and orientation. Sexuality has psychological, emotional and reproductive aspects that are influenced by gender, class, politics and religious, social and cultural factors. A person’s understanding of their sexuality is central to their self-image and self-awareness as well as impacting greatly on how they relate to themselves and others. A person’s sexuality and sexual behaviour should be viewed in the context of overall personal and social development, knowledge and skills. A person’s sexuality is expressed through various forms of sexual activity. The term ‘sexual activity’ covers a far broader range of behaviour than just the act of sexual intercourse. It also includes kissing, self stimulation (masturbation) and any kind of erotic stimulation.”

Everyone has a right to express themselves sexually in an appropriate way and may, from time to time, need the support of staff to enable them to do this, just as we support service users to express themselves in other aspects of their life. However, it is essential that staff understand the need to protect service users and themselves while promoting the best interests of the individual service user.

### **4.0 LEGAL FRAMEWORK**

- The United Nations provides that people with a learning disability have: “to the maximum degree of feasibility, the same rights as other human beings..... (and) a right to protection from exploitation, abuse and degrading treatment”.
- The European Convention on Human Rights states that everyone has the right “to respect for his private and family life, his home and his correspondence and that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society”

### **SEXUAL OFFENCES ACT 2003**

The Sexual Offence Act 2003 includes several provisions which are intended to protect persons with a "mental disorder" and this term would certainly include individuals with a learning disability who lack the capacity to consent. Offences include:

- Sexual activity with a person with a mental disorder impeding choice
- Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity
- Engaging in sexual activity in the presence of a person with a mental disorder impeding choice
- Causing a person, with a mental disorder impeding choice, to watch a sexual act
- Inducement, threat or deception to procure sexual activity with a person with a mental disorder
- Causing a person with a mental disorder to engage in or to agree to engage in sexual activity by inducement, threat or deception
- Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder
- Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception
- Care workers: sexual activity with a person with a mental disorder
- Care workers: sexual activity in the presence of a person with a mental disorder  
are workers: causing a person with a mental disorder to watch a sexual act
- Care workers: causing or inciting sexual activity

Care workers must ensure that the support they provide to an individual service user does not lead them to be accused of the latter provision of the Act.

### **CAPACITY**

**The Mental Capacity Act** stipulates that every adult has the right to make their own decisions if they have the capacity to do so. The law requires us to assume that a person has the capacity to make decisions, unless it can be established that the person does not have capacity.

- People should receive support to help them make their own decisions. Before concluding that individuals lack capacity to make a particular decision, it is important to take all possible steps to try to help them reach a decision themselves. People have the right to make decisions that others might think are unwise. A person who makes a decision that others think is unwise should not automatically be labelled as lacking the capacity to make a decision.
- Any act done for, or any decision made on behalf of, someone who lacks capacity must be in their best interests.
- Any act done for, or any decision made on behalf of, someone who lacks capacity should be an option that is less restrictive of their basic rights and freedoms – as long as it is still in their best interests.

**The MCA is based on five statutory principles:**

- 1 A person must be assumed to have capacity unless it is established that they lack capacity.
- 2 A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- 3 A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- 4 An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- 5 Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

While MCA contains provisions for some decisions to be made in the best interests of someone who lacks capacity the Act does **not** allow decisions to be made on behalf of another person in of the following areas:

1. Consent to marriage or civil partnerships.
2. Consent to sexual relations.

**CONSENT**

Consent is crucial in the area of sexual activity, especially in relation to vulnerable people. For example, in the course of a police investigation, the degree of consent will be determined in so far as whether the person has the capacity to consent and if so did they consent.

When considering the above, the relationship with the other party should also be taken into account. It may be the person is in a position to exert undue influence on the vulnerable person.

It must also be determined whether both parties understand the legalities and consequences of sexual activities.

There is specific legislation related to sexual acts with people with severe learning disability:

It is an offence for any person, male or female, to engage in a sexual act with someone with a learning disability if the individual did not consent or was

incapable of consenting, or their consent cannot be regarded as valid, e.g. due to threats or intimidation. Someone is regarded as incapable of consenting if they are unable to:

- Understand what the act is
  - Form a decision about whether to engage in the act; or
  - Communicate any such decision
- Sexual act means any activity which a reasonable person would regard as sexual, previously only sexual intercourse was illegal.  
It is an offence for a worker to engage in a sexual act with someone in their care.

## **PROTECTING VULNERABLE ADULTS**

We have a duty to promote the best interests of service users in regard to issues of relationships and sexuality. We also have a clear duty to protect service users from abuse, including sexual abuse. All DRH staff have a clear duty to understand their responsibilities in terms of the organization's Adult at Risk Policy which links to the multi-agency Dorset arrangements for protecting vulnerable adults.

DRH Adult's at Risk Policy recognises that all our Service Users have the following rights:

- To live without fear and without abuse
- To be treated at all times with dignity, respect and friendliness
- To be able to enjoy a reasonable degree of privacy
- To have their confidences respected
- To receive the support and information necessary to make informed choices
- To enjoy security of possessions
- To be advised, supported and treated with regard to their health and well-being
- To be listened to and supported if they have a complaint, concern or grievance
- To have sexual needs and orientation respected (providing it does not infringe the rights of others)
- To be free to express concerns about any form of ill-treatment or abuse, without recrimination

All DRH staff have a duty to report any concerns they may have that abuse is or may be taking place. Home Managers should ensure that all their staff are aware that they are free to "speak out" without fear of recrimination, bullying or intimidation.

**Any member of DRH who fails to report an incident or reasonable suspicion of abuse is colluding with that abuse and will be subject to disciplinary action – which may include termination of employment.**

It is important to recognise that sexual abuse can be perpetrated against a service user by another DRH service user. No abuse should be tolerated.

## **ASSESSMENT AND SUPPORT PLANNING**

### **ASSESSING RISK**

Individual risk assessments should clearly identify where a service user is vulnerable to sexual exploitation or may pose an unacceptable risk to others.

Assessments should identify the specific supports, including education, that are necessary to enhance the service users relationships. Interventions and supports should be clearly identified within the service users support plan.

### **ASSESSING CAPACITY TO CONSENT**

Whilst a person may be incapable of making certain decisions in their life, they may be capable of making and retaining other decisions. An assessment of capacity for the purposes of sexual relationships requires to be specifically about the adult's abilities to understand sexual and personal relationships.

Clearly, professional intervention and assessment is not necessary in every situation. In areas where there is any doubt, workers should ask for a professional assessment of the person's intellectual functioning, communication skills and current level of knowledge and understanding of 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 one individual may judge 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. (See DRH Adults at Risk Policy). The welfare and well-being of those in their care are of prime importance and not to act quickly would be to have neglected their duty of care. (ref: Making Choices, Keeping safe)

The Mental Capacity Act Code of Practice says that “before deciding that someone lacks capacity to make a particular decision, it is important to take all practical and appropriate steps to enable them to make that decision themselves. It emphasizes that a person’s capacity (or lack of capacity) refers specifically to their capacity to make a particular decision at the time it needs to be made. Any assessment of capability or mental capacity must be subject to regular review – in the context of the specific decision in question.

An individual service user’s ability to make a decision relating to any aspect of their relationships with others will be dependent on a number of factors:

#### ***Providing relevant information***

- Does the person have all the relevant information they need to make a particular decision?
- If they have a choice, have they been given information on all the alternatives?

#### ***Communicating in an appropriate way***

- Could information be explained or presented in a way that is easier for the person to understand (for example, by using simple language or visual aids)?
- Have different methods of communication been explored if required, including non-verbal communication?
- Could anyone else help with communication (for example, a family member, support worker, interpreter, speech and language therapist or advocate)?

#### ***Making the person feel at ease***

- Are there particular times of day when the person’s understanding is better?
- Are there particular locations where they may feel more at ease?
- Could the decision be put off to see whether the person can make the decision at a later time when circumstances are right for them?

#### ***Supporting the person***

- Can anyone else help or support the person to make choices or express a view?
- Are there particular times of day when the person’s understanding is better?

- Are there particular locations where they may feel more at ease?
- Could the decision be put off to see whether the person can make the decision at a later time when circumstances are right for them?

### ***Supporting the person***

- Can anyone else help or support the person to make choices or express a view?

(Mental Capacity Act Code of Practice. TSO. 2007)

There is no clear agreement on how exactly capacity to consent to sexual activity should be assessed. During consultation on the Home Office review of sexual offences (2000) it was suggested (Foundation for Learning Disabilities) that people should at least know:

1. that sex is different from personal care.
2. that penetrative vaginal sex can lead to pregnancy
3. that penetrative anal sex is associated with a risk of HIV/AIDS

## **SPECIFIC GUIDELINES**

### **GUIDELINES FOR PRACTICE – RELATIONSHIPS AND SEXUALITY**

These are general guidelines intended to promote positive interpersonal relationships for people with a learning disability. They will also provide some guidance for staff working with people with a serious, enduring mental illness. All issues discussed and decisions reached by the team regarding personal relationships, sexuality, and intimate care should be clearly recorded in the residents care documentation. There is a natural tendency for many staff to avoid the issues relating to sexuality. However, failure to address issues of sexuality may impact negatively on the service users quality of life and in some circumstances leave the service open to a charge of negligence (e.g. failure to warn a vulnerable service user regarding potential abuse)

#### **SPECIFIC ISSUES:**

**MASTURBATION:** Masturbation is one natural expression of sexuality and should not be discouraged. However, service users may need assistance to understand that this activity should only take place in private. Service users may also need guidance and support with masturbation but the nature of this support should be fully discussed within the staff team and documented. Advice should be taken from external sources of advice, where appropriate (e.g. FPA). The basis for a legal challenge would involve situations where there was intimate contact between staff and service user. Intimate physical contact in this context must always be avoided.

**INTIMATE TOUCH:** Intimate touch of another person's body is an entirely natural expression of sexuality. However, there are circumstances when such behaviour is unacceptable or inappropriate and staff will need to assist service users to advise when and where intimate exchanges of affection are appropriate.

**SEXUAL RELATIONSHIPS:** People with a learning disability have the freedom to engage in a sexual relationship provided they can give informed consent and such activities are within the law and take place in private. If there are doubts about the capacity of either party to give informed consent then the Home Manager should ensure that these concerns are fully discussed with all relevant individuals.

**SEXUALLY EXPLICIT MATERIAL/PORNOGRAPHY:**

An interest in material, which some people may regard as pornographic, can be part of the natural expression of sexuality, and should be permitted as it is with adults without a disability. However material of this nature should be kept in the privacy of the individual's room. The impact of this material on staff and other residents in the Home should also be taken into account. Staff may also need to provide sensitive advice to residents regarding the distorting effect such images may have on their expectations of any future relationship. Staff should **not** promote the introduction of pornographic material into the home. Staff may undertake to help a service user to purchase legally permitted sexually explicit material – but only if this is clearly the wish of the service user and that this wish is clearly documented.

**CROSS-DRESSING:** A service user who is motivated to cross-dress in a more public manner should be advised as to the possible consequences. For example, cross-dressing may interfere with community integration.

Staff may need to consider assisting service users to purchase clothing normally worn by the opposite sex – particularly if the service users has resorted to taking clothing without the owner's permission.

**HOMOSEXUAL ACTIVITIES:** Homosexual activities between consenting men or women (that is, men or women who have the capacity to consent) are not illegal. Where two adults of the same gender have made a clear decision to engage in a sexual relationship then they should be supported by staff. Staff *do* need to ensure that service users are not living in a setting that precludes sexual relationships with people of the opposite sex.

**COHABITATION AND MARRIAGE:** When a couple are considering cohabitation staff should endeavour to ascertain that the couple have a fair understanding of the implications. It is unreasonable to expect our residents to have given more consideration than the average couple may. If the couple have sufficient capacity to consent to cohabitation they should be given reasonable help and support.

**PARENTHOOD:** Residents who express a wish to become parents will need skilled help to explore their expectations, to assess their parenting skills and to ensure that they are aware of their responsibilities as parents. People with a learning disability or mental illness have a right to become parents but this right has to be balanced against the rights and needs of the children. Any discussions would need to include representatives of the local social services childcare team and child health services.

**CONTRACEPTION:** Advice on contraception should include a full explanation to the resident on the relative benefits and disadvantages.

Contraceptive advice should always be available to people who have the capacity to consent to a sexual relationship. Men should be encouraged to accept their own responsibility for using appropriate contraception if sexually active. Staff should encourage residents to use the Family Planning Services but will need to ensure that suitable support is available to the resident and family planning professional.

**PREGNANCY:** If pregnancy should occur the service user should receive counselling on all available options – including support in raising the child, adoption and abortion. Staff should ensure that the service user has access to skilled advice, including social services child care team and impartial pregnancy advisory services. Consideration of the best interests of mother and child should always come first. In certain cases the decision regarding the outcome of the pregnancy and/or the future of the child may need to be referred to a court of law.

**STERILISATION AND VASECTOMY:** Sterilisation and vasectomy should only be considered as an option when all other forms of contraception have been considered and found unsuitable. Decisions should take account of significant others, particularly parents, but the interests of the service user remains paramount. Again, decisions may need to be referred to a court of law.

**SEXUALLY TRANSMITTED DISEASES:** Some people with a learning disability may need advice and guidance on the prevention of sexually transmitted diseases. If a service user is known to be involved with several partners consideration should be given to regular check-ups in the local sexual health clinics. Staff should ensure that such sexually active residents receive appropriate contraceptive advice and practical assistance.

**RACE, CULTURE, ETHNICITY & RELEGION:** Liberal, Western norms regarding sexuality are unlikely to be acceptable to many followers of major world religions. Certain types of relationships and activities may be unacceptable to those from particular traditions. However, staff should avoid projecting their own assumptions about a religious tradition on to the individual service user. While ensuring sensitivity to the beliefs and customs of the traditions into which an individual may have been born, every effort should be made to respond to the individuals wishes and preferences.

**PROTECTING STAFF:** DRH recognises an absolute duty to do our best to protect service users from abuse but we also recognise a responsibility to protect staff from unwarranted allegations that may arise in the course of fulfilling their work responsibilities. This kind of risk can be minimised by open communication within the team, good observation, careful assessment and effective documentation.

- ❑ When any service user is known to display sexually provocative behaviour towards members of staff, this must be clearly documented. The service users support plan should contain guidance for the management of this behaviour, including the need for a *chaperone* in certain situations.
- ❑ A record should be made of any comment or act by service users that could result in a compromising situation or result in an allegation of abuse.
- ❑ Any allegation of sexual abuse against staff must be clearly recorded and investigated in accordance with DRH policies.

**TRAINING:** DRH will actively promote effective training relating to sexuality and sexual health. We will seek to ensure that each care home has at least one team member who has undergone 2 day specialist training via the FPA. The FPA provides range of relevant courses – Appendix 1

**REFERENCES:**

**Sexuality & Learning Disability – A resource for staff.** Fanstone & Katrak. FPA (2003)

**Learning Disabilities, Sex and the Law – a practical guide.** Fanstone and Andrews. FPA. (2005)

**Mental Capacity Act Code of Practice.** Dept. of Constitutional Affairs. 2007

**Capacity of Adults with intellectual disabilities to consent to sexual relationships.** Murphy & O'Callaghan. Psychological Medicine. 2004. 34. 1347-1357

**DRH Policy** No. 2 Adults at Risk

**DRH Policy** No. 19 Professional Boundaries

**DRH Policy** No. 45 Decision Making

**Sex and the 3 Rs – Rights, Responsibilities & Risks.** Pavilion. 2007

**Sexuality and Sexual Health in Nursing Practice:** An RCN discussion and guidance document. RCN. 2000

**17<sup>th</sup> July 2008**

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## APPENDIX 1

### FPA TRAINING

#### **Liberating life choices: promoting the positive sexuality of adults with learning disabilities**

A two-day course aiming to give staff an awareness of the rights of people with learning disabilities, and the knowledge, confidence and skills to apply inclusive practice. Includes sex and relationships policies, legal aspects and capacity to consent.

Accreditation: Staffordshire University (15 credits, level one).

#### **Delivering sex and relationships work with people with learning disabilities: practical approaches**

A four-day course aiming to provide the knowledge, skills and confidence to plan, deliver and evaluate sex and relationships work to groups and individuals with learning disabilities. Participants must have completed Liberating life choices: promoting the positive sexuality of people with learning disabilities (see above) or be able to show evidence of the equivalent.

Accreditation: Staffordshire University (30 credits, level two/three).

#### **Autistic spectrum disorder (ASD), sexuality and SRE**

This two-day course aims to increase participants' awareness and knowledge around the spectrum of autism and how this affects the area of sex and relationships education (SRE) with people with ASD, and to improve confidence and skills in working around issues of sexuality with people with ASD.

#### **Enhancing expression: working with people with learning disabilities**

A two-day course aiming to enhance awareness and skills in working more effectively in the area of relationships and sexuality with people with severe learning disabilities.

#### **Learning disabilities, sex, law and policy**

This one-day course is for anyone wanting to clarify what the law currently says about sexual activity and people with learning disabilities. It also gives participants the opportunity to look at some sex and relationships work policies, and to consider how these can be of use in the workplace.

(ref: <http://www.fpa.org.uk/training>)